

# WHEN YOU'RE A HAMMER, EVERYTHING'S A NAIL

Examining the “Progressive Prosecutor”  
Movement and Possibilities for Future Reform

Chicago Appleseed Center  
for Fair Courts & Chicago  
Council of Lawyers  
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Chicago Appleseed Center for Fair Courts is a volunteer-led, 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 first public interest bar association, working toward the fair and effective administration of justice for all people since 1969.



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“Because you still have a system which operates in that way, we don't have many tools; **I am very much a hammer...I only have [a] certain number of tools and my tools are all punitive.** And they all have [a] long-term impact on both individuals, and their families, and their communities, and their victims, honestly. So what do we do next?”

## ACRONYMS

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- **ASA** Assistant State's Attorney
- **CCSAO** Cook County State's Attorney's Office
- **CIU** Conviction Integrity Unit
- **CPD** Chicago Police Department
- **DA** District Attorney
- **SA** State's Attorney



## KEY TERMINOLOGY

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- **DIVERSION** – A broad term that describes an alternative to traditional prosecution (and possible incarceration) via an agreement between prosecutors, an accused person, and their attorney in exchange for meeting certain requirements like treatment program attendance, community service, or life skills training.<sup>1</sup> Diversion programs include both pre-plea and post-plea programs: pre-plea programs allow participants to complete the program requirements without pleading guilty to the charges whereas post-plea programs require the person to plead guilty to allegations but allows a judge to vacate the conviction upon successful completion.
- **DOWN-CHARGING** – A process where prosecutors review the facts of a case and decide to pursue lesser charges than recommended by the arresting agency.
- **PROSECUTOR** – A lawyer who is elected or appointed by government officials to represent the state in criminal cases brought in a designated county or judicial district. The official titles of elected prosecutors vary between jurisdictions (i.e., District Attorney, State's Attorney, Solicitor, etc.). In Illinois, all courts are state courts and therefore prosecutors are State's Attorneys.
  - **“PROGRESSIVE PROSECUTOR”** – The term “progressive prosecutor” is a broad generalization that is used to encompass people in an elected prosecutor position who campaigned using a reform-based agenda.

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<sup>1</sup> Johnson, A. & Ali-Smith, M. (2022). Diversion Programs, Explained. Vera Institute of Justice. Retrieved from: <https://www.vera.org/diversion-programs-explained>



# INTRODUCTION

This report<sup>2</sup> is a high-level examination of ideas behind the nationwide “progressive prosecutor” movement, culminating from over six years of research conducted by Chicago Appleseed Center for Fair Courts, the Chicago Council of Lawyers, and our various community partners. Prosecutors are among the most powerful criminal legal system actors; they make decisions around whether or not someone receives a conviction, prison sentence, and permanent criminal record.<sup>3</sup> The term “progressive prosecutor”<sup>4</sup> is a broad generalization that is used to encompass people campaigning for positions as elected prosecutors (primarily State’s Attorneys and District Attorneys) using a reform-based agenda.

**We use the term “reform-oriented prosecutor,” as opposed to “progressive prosecutor” because our research has shown significant concerns with the term and conflicts with the idea of “progressive prosecution” in theory as well as in practice. The term reform-oriented prosecutor broadly refers to prosecutors that aim to use their discretionary powers to reduce mass incarceration and inequity in the criminal legal system.** As we discuss in more detail throughout the report, Chicago Appleseed Center for Fair Courts and the Chicago Council of Lawyers are uniquely positioned to examine the phenomenon of reform-oriented

prosecutors because of the many years of research we have conducted on the Cook County State’s Attorney’s Office (CCSAO) since Kim Foxx was elected in 2016. From the time State’s Attorney (SA) Foxx took office in December 2017 through September 2022, Chicago Appleseed Center for Fair Courts and the Chicago Council of Lawyers collaborated with The People’s Lobby and Reclaim Chicago to publish nine reports<sup>5</sup> on the policies and practices of the CCSAO. The purpose of these reports was to examine, among other things, the state and status of the campaign promises made by SA Foxx, who was elected as a reformer – a “progressive prosecutor” – after the long tenure of her predecessor, tough-on-crime prosecutor Anita Alvarez.

In this report, we discuss (a) the history of the “progressive prosecutor” movement on a national and local level, (b) the broad spectrum of reform-oriented prosecution and what commonalities cause certain prosecutors to be considered under the umbrella of “progressive,” (c) the critical issues with the term “progressive prosecutor” and the conflicts that arise because of it, and (d) our vision for how prosecutors of the future can contribute meaningfully to criminal legal system reform. We also provide a toolkit for voters who are concerned about accessibility, transparency, and justice to use when voting for prosecutors in their area.



# METHODOLOGY

The findings of this report are based on primary data collection through interviews, supplemented with literature reviews and historical information collected throughout our several years of research<sup>6</sup> on prosecution in Cook County. We conducted 14 semi-structured interviews with 21 people who included scholars,

policy experts focused on issues of prosecution, community organizers, and current or former prosecutors or staff. We interviewed these connections until we were unable to recruit additional participants.<sup>7</sup> Interview questions were developed after a careful consideration of the existing academic literature

<sup>2</sup> This report was researched and authored by Naomi Johnson, Alexa Cinque, CJ Beck, and Austin Segal, and edited by Stephanie Agnew, Briana Payton, and Maya Simkin for Chicago Appleseed Center for Fair Courts and the Chicago Council of Lawyers.

<sup>3</sup> Chicago Appleseed Center for Fair Courts, Chicago Council of Lawyers, The People’s Lobby, Reclaim Chicago. (2022). Progressive Promises: Results of a Reform Prosecutor in Cook County. Retrieved from: [https://www.chicagoappleseed.org/wp-content/uploads/2022/09/2022-09-Report-Kim-Foxx\\_FINAL.pdf](https://www.chicagoappleseed.org/wp-content/uploads/2022/09/2022-09-Report-Kim-Foxx_FINAL.pdf)

<sup>4</sup> Davis, A. J. (2019). Reimagining prosecution: A growing progressive movement. *UCLA Crim. Just. L. Rev.* 3, 1.

<sup>5</sup> Chicago Appleseed Center for Fair Courts, Chicago Council of Lawyers, The People’s Lobby, Reclaim Chicago. (2017-2022). [Prosecutorial Accountability & Transparency Reports]. Accessible at <https://www.chicagoappleseed.org/library/#criminal-justice-publications>; see the most recent report (2022), Progressive Promises: Results of a Reform Prosecutor in Cook County, at [https://www.chicagoappleseed.org/wp-content/uploads/2022/09/2022-09-Report-Kim-Foxx\\_FINAL.pdf](https://www.chicagoappleseed.org/wp-content/uploads/2022/09/2022-09-Report-Kim-Foxx_FINAL.pdf)

<sup>6</sup> *Id.*

<sup>7</sup> O’Reilly, M. & Parker, N. (2013). ‘Unsatisfactory Saturation’: A critical exploration of the notion of saturated sample sizes in qualitative research. *Qualitative Research*, 13(2),

on reform-oriented prosecutors and with an eye towards identifying the future of the reform prosecutor movement and next steps for the prosecutors dedicated to reform.

To analyze interview data, we conducted two rounds of coding using the flexible coding method of analysis.<sup>8</sup> Our first round of coding established a series of overarching themes through the lens of our interview questions. This was an extensive process that entailed multiple iterative discussions about interview content and repeated themes.<sup>9</sup> During the coding phase, our researchers reviewed transcripts of interviews that they themselves did not conduct or participate in, allowing for a fresh perspective on each set of responses. We then collectively generated a series of analytic codes related to themes that we used for further analysis. Each interview was coded twice by two separate researchers in order to ensure proper and consistent coding; each series of excerpts attributed to a code was then systematically reviewed and summarized by a researcher. The summaries and excerpts

identified during this process became the basis for the findings that are discussed in this report.

## ETHICAL CONSIDERATIONS

This research was carried out according to social science research principles, as guided by the Chicago Appleseed Center for Fair Courts research standards.<sup>10</sup> Across all research projects, our methodological approach is rooted in the protection of human subjects, mitigation of risk, and reduction of any forms of harm the study may cause participants during or following the research process. Consent was given by all individuals to utilize interview data in the development of this report. Due to the political nature of prosecutorial work, we have anonymized organizations' and individual participants' names and identity markers, such as gender and race.



## BACKGROUND

The number of people incarcerated in the United States more than tripled between the 1970s and the 2000s, at its peak coming to include more than 1% of the total population aged 15-to-64 years old.<sup>11</sup> Though prosecutors have not historically been the focus of discussions of mass incarceration, their broad discretion over cases and charges grants them significant control over the scale and use of incarceration not only for individual cases, but entire locales and our country at large.

In his book *Locked In: The True Causes of Mass Incarceration and How To Achieve Real Reform*, John Pfaff (2017) argues that prosecutors wield significant power over not only what cases are prosecuted but what sentences accused people are threatened

with if they go to trial.<sup>12</sup> Data shows that prosecutors tend to use this discretion for more carceral outcomes: for example, prosecutors throughout the country have charged a significantly larger number of felonies in recent decades even as documented crime rates have decreased.<sup>13</sup> Since 1970, jurisdictions nationwide increased the number of line prosecutors they employed; overall, the number of prosecutors in the United States increased from 3,000 in 1970 to 20,000 in 1990, then up to 30,000 by 2007 – a 900% increase in 37 years – even as violent and property crime decreased.<sup>14</sup>

**With increased staffing and resources distributed to prosecutor's offices, the power afforded to prosecutors**

190-197; Green, J. & Thorogood, N. (2004). *Qualitative Research Methods*.

<sup>8</sup> Deterding, N. M., & Waters, M. C. (2021). Flexible coding of in-depth interviews: A twenty-first-century approach. *Sociological Methods & Research*, 50(2), 708-739.

<sup>9</sup> *Id.*

<sup>10</sup> Chicago Appleseed Center for Fair Courts. (2021). Standards for Ethical and Rigorous Research. Retrieved from: [www.chicagoappleseed.org/wp-content/uploads/2021/10/2021-Research-Standards-Framework-2.pdf](http://www.chicagoappleseed.org/wp-content/uploads/2021/10/2021-Research-Standards-Framework-2.pdf)

<sup>11</sup> Bonzcar, T. (2003). Prevalence of Imprisonment in the U.S. Population, 1974-2001. Bureau of Justice Statistics. Retrieved from: <https://bjs.ojp.gov/content/pub/pdf/piusp01.pdf>

<sup>12</sup> Pfaff, J. (2017). *Locked In: The True Causes of Mass Incarceration and How To Achieve Real Reform*. Basic Books.

<sup>13</sup> Griffin, L. & Yaroshefsky, E. (2017). Ministers of justice and mass incarceration. *Geo. J. Legal Ethics*, 30, 301-335. Retrieved from: <https://digitalcommons.pace.edu/cgi/viewcontent.cgi?article=2069&context=lawfaculty>

<sup>14</sup> *Supra* note 12.

## allowed mass incarceration and tough-on-crime ideology to flourish.

Similar trends were recorded in Cook County, with 1,048 per 100,000 people (1.048%) between the ages of 15-to-64 incarcerated at the peak in 1999.<sup>15</sup> In Cook County specifically, discretion, anti-Black racism, and a corrupt institutional culture in law enforcement has historically incentivized prosecutors to secure as many convictions as possible. This “win at all costs” mentality led prosecutors to overlook instances of police torture, perjury, and misconduct, which has made Cook County the leader<sup>16</sup> in false confessions and wrongful convictions.<sup>17</sup> For over four decades, Chicago Police Department (CPD) Commander Jon Burge, facilitated by Cook County prosecutors, led a “saga” of “torture, cover-up[s], and perjury,”<sup>18</sup> where over 120 people (mostly Black men) were brutally tortured, forced into false confessions, and blatantly denied due process through obstructions of justice.<sup>19</sup>

## THE “PROGRESSIVE PROSECUTOR” MOVEMENT

The “progressive prosecutor” movement came about as a reaction to rampant and racially disparate mass incarceration and perceived corruption in prosecutors’ offices across the country. In 2016, billionaire philanthropist, George Soros, began donating to the campaigns of local candidates for States’ and District Attorneys races who “ran on platforms sharing major goals...like reducing racial disparities in sentencing and directing some drug offenders to diversion programs instead of to trial.”<sup>20</sup> According to *Politico*,

Soros donated to campaigns in Florida, Illinois, Louisiana, Mississippi, New Mexico, and Texas in 2016.<sup>21</sup> While the “progressive prosecutor” moniker gained national attention around 2016, the phenomenon of reforming prosecutors’ offices began much earlier. Milwaukee County Prosecutor John Chisholm, for example, was one of the first reform-oriented prosecutors and was elected in 2006. Chisolm used evidence-based approaches to reduce racial disparities and divert people from the criminal legal system.<sup>22</sup> King County prosecutor Dan Satterberg, a Republican first elected in 2007, fought for policies like safe injection sites and ending the death penalty.<sup>23</sup> Tori Verber Salazar in San Joaquin, California, who ran on a nonpartisan ticket and was elected in 2014, also implemented reforms when in office.<sup>24</sup>

## DEFINING “PROGRESSIVE” PROSECUTORS

When studying reform-oriented prosecutors, it is important to note that there is a political, procedural, and ideological spectrum of elected prosecutors who may be framed as part of the “progressive prosecutor” movement. Scholar Benjamin Levin defines four different types of “progressive prosecutors:” (1) the “progressive who prosecutes,” which includes those who are left or left-of-center in their personal political beliefs, but do not necessarily bring those views to administer their job; (2) the “proceduralist prosecutor,” who is likewise politically progressive but does, in fact, use those values in practice to eliminate corruption in their office and ensure due process for all, but respects prosecution as a force of justice; (3) the “prosecutorial

<sup>15</sup> Cook County, IL. (2023). Vera Institute of Justice. Retrieved on August 16, 2023, from: [https://trends.vera.org/state/IL/county/cook\\_county](https://trends.vera.org/state/IL/county/cook_county)

<sup>16</sup> Cherone, H. (2023). “Chicago Ranks No. 1 in Exonerations for 5th Year in a Row, Accounting for More Than Half of National Total: Report.” *WTTW*. Retrieved from: <https://news.wttw.com/2023/05/16/chicago-ranks-no-1-exonerations-5th-year-row-accounting-more-half-national-total-report>

<sup>17</sup> Chicago Appleseed Center for Fair Courts, & Chicago Council of Lawyers. (2023). Fear and Silence: How Culture, Policy, and the “Win at all Costs” Mentality Allows Police Testifying to Thrive. Retrieved from: [https://www.chicagoappleseed.org/wp-content/uploads/2023/01/2023\\_01\\_10\\_Police-Perjury-Report-FINAL.4.pdf](https://www.chicagoappleseed.org/wp-content/uploads/2023/01/2023_01_10_Police-Perjury-Report-FINAL.4.pdf)

<sup>18</sup> Thayer, A. (2023). “County Prosecutors Criminally Charged in Burge Torture Cover-Up.” *Loevy + Loevy*. Retrieved from: <https://www.loevy.com/county-prosecutors-criminally-charged-in-burge-torture-cover-up/>

<sup>19</sup> Chicago Torture Justice Center. (n.d.). History. Retrieved from: <https://www.chicagotorturejustice.org/history#:~:text=Burge%20was%20a%20Vietnam%20War,spent%20years%2C%20some%20decades%20incarcerated>

<sup>20</sup> Bland, S. (2016). “George Soros’ Quiet Overhaul of the Criminal Justice System.” *Politico*. Retrieved from: <https://www.politico.com/story/2016/08/george-soros-criminal-justice-reform-227519>

<sup>21</sup> *Id.*

<sup>22</sup> Toobin, J. (2015). “The Milwaukee Experiment.” *The New Yorker*, 11, 24-32. Retrieved from: <https://www.newyorker.com/magazine/2015/05/11/the-milwaukee-experiment>

<sup>23</sup> KIRO 7 News Staff. (2019). “Timeline: The Fight For Seattle-Area Injection Sites and Cases Against Them.” *KIRO 7 News Seattle*. Retrieved from: <https://www.kiro7.com/news/local/timeline-the-fight-for-seattle-area-injection-sites-and-cases-against-them/625593672/>; Jenkins, A. (2018). King County Prosecutor Calls for Repeal of Death Penalty. *Northwest News Network*. Retrieved from: <https://www.nwnetwork.org/crime-law-and-justice/2018-01-21/king-county-prosecutor-calls-for-repeal-of-death-penalty>

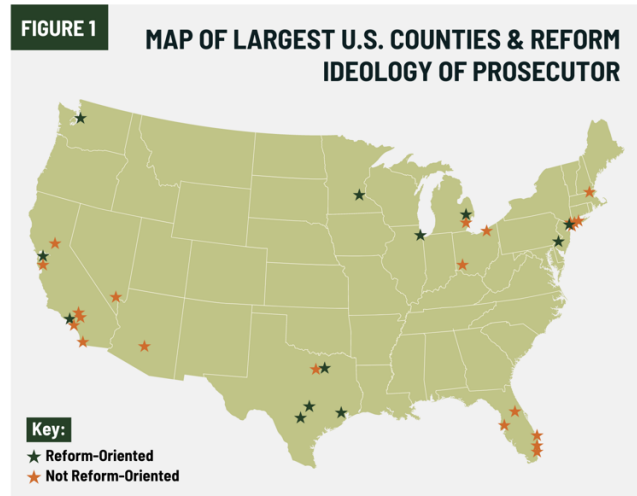
<sup>24</sup> Nichanian, D. (2022). “Meet The Other Two Northern California Das Facing Law Enforcement Blowback.” *Bolts*. Retrieved from: <https://boltsmag.org/contra-costa-san-joaquin-district-attorney-elections/>

progressive,” whose prosecutorial decisions are “rooted in concerns about structural inequality” and institutes policies that redistributes prosecutorial resources to crimes that disproportionately harm minorities, such as corporate crime, police misconduct, and gender-based violence; and (4) the “anti-carceral prosecutor,” who understands that criminal law is fundamentally flawed and cannot nor will ever right social wrongs or balance unequal political and socioeconomic systems, and as such uses their power to shrink carceral institutions “or perhaps do away with them altogether.”<sup>25</sup>

Nonetheless, reform-oriented prosecutors tend to employ a set of similar policy priorities.<sup>26</sup> It should be noted that reform-oriented prosecutors use these policies to varying degrees; prosecutors may use some but not others or may invest in policies differently:

- **Non-Enforcement** – Declining to prosecute certain low-level charges and/or promises to focus prosecutorial resources on more serious, “violent” charges.
- **Diversion** – Allowing more people to avoid traditional criminal processes and convictions in favor of programs focused on rehabilitation.
- **Decarceration** – Focusing efforts on decreasing the overall number of people committed to prisons and jails.
- **Police Accountability** – Actively prosecuting police who commit wrongdoing, are corrupt, or injure and/or murder civilians.
- **Reform of Administrative Practices** – Changing hiring and managerial practices to embrace staff committed to changing the culture of the office, enforcing mandatory disclosure of evidence that may benefit the defense and other legal rules for prosecutors, and increasing transparency.

- **Policy Advocacy for Criminal Legal System Reform** – Active support of policies that reduce the harm of the legal system, such as ending cash bail, increasing the sealing and expungement of criminal records, addressing wrongful convictions, and a host of other priorities.



**FIGURE 1:** This map presents the largest 36 counties in the U.S. by population according to 2020 census records and the reform ideology of the county’s prosecutor as of December 2023. Map adapted from a list of progressive prosecutors identified in Pfaff, J. F. (2022). *The Poor Reform Prosecutor: So Far From the State Capital, So Close to the Suburbs*. *Fordham Urb. L.J.* 50, 1013. See Appendix 1 for a table.

## NATIONAL LENS

There are currently several reform-oriented prosecutors in office across the United States. Cook County’s State’s Attorney Kim Foxx – who took office in December 2016 and was re-elected in November 2020 – was part of the first wave of “progressive prosecutors,”<sup>27</sup> followed soon thereafter by Kimberly Gardner in St. Louis, and Larry Krasner in Philadelphia who ran on a platform of ending mass incarceration.<sup>28</sup> Successive, similar elections have since brought reform prosecutors to Los Angeles, Dallas, Boston, and dozens of smaller jurisdictions across the country.<sup>29</sup>

It is estimated that the reform prosecutor movement covers nearly 20% of the U.S. population, including some of the most

<sup>25</sup> Circuit Court of Cook County. (n.d.). Restorative Justice Community Courts [webpage]. Retrieved on January 19, 2024, from: <https://www.cookcountycourt.org/ABOUT-THE-COURT/Restorative-Justice-Community-Courts/>

<sup>26</sup> *Supra* note 5.

<sup>27</sup> Cheney-Rice, Z. (2020). “Progressive Prosecutor Kim Foxx Wins Reelection in Chicago.” *Intelligencer*. Retrieved from: <https://nymag.com/intelligencer/2020/03/kim-foxx-wins-re-election-in-chicago.html>

<sup>28</sup> Gonnerman, J. (2018). “Larry Krasner’s Campaign To End Mass Incarceration.” *The New Yorker*. Retrieved from: <https://www.newyorker.com/magazine/2018/10/29/larry-krasnars-campaign-to-end-mass-incarceration>

<sup>29</sup> Recently, Detroit, Michigan, Los Angeles, California, Orlando, Florida, Austin, Texas, and the San Luis Valley in Colorado have also elected reform-minded prosecutors (see e.g., <https://theconversation.com/progressive-prosecutors-scored-big-wins-in-2020-elections-boosting-a-nationwide-trend-149322>). Jurisdictions including Little Rock, Arkansas, Portland, Oregon, and Omaha, Nebraska had reform candidates running in prosecutorial elections as of April 2022 (see e.g., <https://www.city-journal.org/another-wave-of-progressive-prosecutors-may-be-coming>).



populous cities and counties in the country, such as Los Angeles and Alameda, California; Cook, Illinois; Kings and New York, New York; and Philadelphia, Pennsylvania.<sup>30</sup> These prosecutors share general goals like decarceration, safety, and addressing racial disparities in sentencing and diversion.<sup>31</sup> “Progressive prosecutors” are often elected in urban districts that often align with relatively progressive politics in their state, although these kinds of prosecutors have been successful in more conservative states, as well. The influence of these prosecutors have led to considerable policy reforms and in many cases have suffered significant political pushback that will be addressed in following sections.

## COOK COUNTY CONTEXT

It should be noted that in Cook County, reform-oriented prosecutor Kim Foxx was elected due to impressive community organizing efforts, known as the #ByeAnita campaign, which ousted Foxx’s predecessor Anita Alvarez. The #ByeAnita campaign – which was led primarily by Chicago-based Black and youth activists – arose after former SA Anita Alvarez “came under fire following the disclosure of the [Laquan] McDonald video, which the city held onto for over a year until a judge ordered it released to the public.”<sup>32</sup> It took 13 months for the CCSAO led by Anita Alvarez to charge Chicago Police Officer Jason Van Dyke for shooting and killing Laquan McDonald, an unarmed Black teenager, 16 times.<sup>33</sup> He was ultimately convicted.<sup>34</sup>

The reform-oriented platform of Kim Foxx helped her to gain support from many community members and grassroots groups that were outraged by the injustice of Laquan McDonald’s murder. Because a number of grassroots organizations worked to elect and

support State’s Attorney Foxx, Chicago Appleseed Center for Fair Courts, the Chicago Council of Lawyers, and our partners at The People’s Lobby and Reclaim Chicago developed a collective process aimed to hold her administration accountable to the broad platform of “progressive” criminal legal reforms she campaigned on. Our organizations joined together in this effort because of our combined interests in court-related harm reduction, grassroots organizing, and the collective power of community-led social change. Our efforts led to the publication of nine reports on the CCSAO from 2017 and 2022, which focused on a variety of aspects of reform including the culture of the office, decarceration and diversion, and post-conviction relief among other things.<sup>35</sup> The Executive Director of Chicago Appleseed and the Chicago Council of Lawyers at the time, Malcolm Rich, also served on State’s Attorney Foxx’s transition team in 2016.

## POLITICAL PUSHBACK

Although reform-oriented prosecutors continue to be elected in jurisdictions across the country, these reformers experience significant political pushback on their policies and initiatives.<sup>36</sup> In the wake of the COVID-19 pandemic, cities have experienced an uptick in violence – especially gun violence – for the first time since the 1990s.<sup>37</sup> As the pandemic and subsequent increases in violence have coincided with the tenures of reform-minded prosecutors across various states, a false correlation has been drawn which has caused these District and State’s Attorneys to receive a great amount of criticism for their policies as being “soft on crime.” Crucially, however, there is limited evidence that prosecutorial reforms are associated with decreases in rearrest

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<sup>30</sup> Pfaff, J. F. (2022). The poor reform prosecutor: So far from the state capital, so close to the suburbs. *Fordham Urb. LJ*, 50, 1013. For larger view of the map in *Figure 1*, see the Appendix.

<sup>31</sup> Gajwani, S. & Lesser, M. G. (2019). The hard truths of progressive prosecution and a path to realizing the movement’s promise. *NYL Sch. L. Rev.*, 64, 69.

<sup>32</sup> Kampf-Lassin, M. (2016). “How Black Youth Helped Unseat Anita Alvarez and Transform the Face of Criminal Justice in Chicago.” *In These Times*. Retrieved from: <https://inthesetimes.com/article/chicago-black-youth-anita-alvarez-kim-foxx-cook-county>

<sup>33</sup> *Id.*

<sup>34</sup> Dukmasova, M. (2022). “Data Shows Leniency of Ex-Officer Jason Van Dyke’s Murder Sentence.” *Injustice Watch*. Retrieved from: <https://www.injusticewatch.org/news/2022/jason-van-dyke-murder-sentence-laquan-mcdonald-case/>

<sup>35</sup> *Supra* note 5.

<sup>36</sup> See e.g., White, J. (2023). “Progressive Prosecutors Contend with Backlash Politics.” *Politico*. Retrieved from: <https://www.politico.com/newsletters/politico-nightly/2023/08/16/progressive-prosecutors-contend-with-backlash-politics-00111510>; Goodman, D. (2023). “With an Array of Tactics, Conservatives Seeks to Oust Progressive Prosecutors.” *The New York Times*. Retrieved from: <https://www.nytimes.com/2023/08/12/us/conservatives-progressive-district-attorneys.html>; Tegethoff, E. (2023). “Behind the Right’s War on Prosecutors.” *The Appeal*. Retrieved from: <https://theappeal.org/conservatives-progressive-prosecutors-reform/>; Lacy, A. (2023). “17 States Have Now Tried to Pass Bills that Strip Powers from Reform-Minded Prosecutors.” *The Intercept*. Retrieved from: <https://theintercept.com/2023/03/03/reform-prosecutors-state-legistatures/>

<sup>37</sup> Rabin, R. C., & Arango, T. (2022). “Gun Deaths Surged During the Pandemic’s First Year, the C.D.C. Reports.” *The New York Times*. Retrieved from: <https://www.nytimes.com/2022/05/10/health/cdc-gun-violence-pandemic.html>

rates or spikes in community violence.<sup>38</sup> One person we interviewed for this report elaborated on the importance of being able to provide such evidence:

*When [a prosecutor] do[es] something different than incarcerating someone and getting a conviction, there will be elements of...the public that [they] serve that will react to that. And there is no program on Earth that has [a] 100% success rate. So when you have somebody that goes through [a] diversion program, or that...[is not] charge[d] for a certain offense, and they do something else and it winds up in the paper, you know, [the prosecutor's office] need[s] to be able to speak to that with data and information.*

In the past two years, these criticisms have evolved into legitimate political consequences for progressive prosecutors. In 2023, St. Louis prosecutor Kimberly Gardner resigned after many attacks on her discretionary power by Republican lawmakers.<sup>39</sup> In San Francisco, District Attorney Chase Boudin was recalled, although there is no evidence that his successor has meaningfully decreased crime rates.<sup>40</sup> In Philadelphia, the Pennsylvania House of Representatives filed articles of impeachment against District Attorney Larry Krasner, although their own investigative committee did not recommend impeachment.<sup>41</sup> In Hillsborough County (Tampa, FL), Governor Ron DeSantis unilaterally removed State's Attorney Andrew Warren after he indicated that he would not prosecute individuals for accessing abortion care<sup>42</sup> – and although a federal judge acknowledged that DeSantis broke the law in doing so, the court did not have the power to reinstate SA Warren.<sup>43</sup>

In August of 2023, DeSantis removed another reform-oriented prosecutor, Monique Morrell, from office.<sup>44</sup> The removal of officials from their democratically elected office for making decisions within their discretionary power has been described as a threat to democracy.<sup>45</sup> Our research highlighted the incredibly political nature of the pushback that prosecutors face. Interviewees also expressed a feeling that the overall reform-oriented prosecutor movement has backslid over the past few years:

*I can't think of anything that comes close to that moment we had in 2020. We've definitely lost ground. I am a cynic...it usually takes Black death to turn the tables again...in 2020, there was like a particular moment of opportunity with both George Floyd and COVID and those disparities, but it kind of does feel like years later, we've kind of lost that.*

Interviewees spoke to the current political reality, with one person who works in a prosecutor's office noting: "I feel like at the moment, most of what we should be doing is actually trying to hold our ground...the ground feels like it's shifting to the right a little bit...I feel generally like the movement itself is on the defensive." Interviewees also noted that some issues were more difficult than others for reform-oriented prosecutors to address: "anything gun-related is very political and very touchy." Reform-oriented prosecutors have faced challenges in combating media narratives around the causes and antidotes to crime and violence. 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

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<sup>38</sup> Baszynski, N. T. (2021). "Stop Fearmongering About Progressive Prosecutors and Decarceral Policies." *The Appeal*. Retrieved from: <https://theappeal.org/the-point/stop-fearmongering-about-progressive-prosecutors-and-decarceral-policies/>

<sup>39</sup> Salter, J. (2023). "St. Louis Prosecutor Who Replaced Progressive Says He's "Enforcing The Laws" In First 6 Months." *AP News*. Retrieved from: <https://apnews.com/article/st-louis-prosecutor-cases-cleared-prosecutions-rise-4309edf34647d96df5a86681b31ba2b9>

<sup>40</sup> Neilson, S. (2022). "Is SF DA Brooke Jenkins' Tenure Different Than Chesa Boudin? Here's What The Numbers Say." *San Francisco Chronicle*. Retrieved from: <https://www.sfchronicle.com/sf/article/brooke-jenkins-chesa-boudin-17616925.php>

<sup>41</sup> Cohen, R. M. (2022). "Pennsylvania Republicans' Attempt to Impeach Larry Krasner, Explained." *Vox*. Retrieved from: <https://www.vox.com/policy-and-politics/2022/10/5/23384868/philadelphia-progressive-prosecutor-midterms-larry-krasner-impeachment-pennsylvania>

<sup>42</sup> Berzon, A. & Bensinger, K. (2023). "Inside Ron DeSantis's Politicized Removal of an Elected Prosecutor." *The New York Times*. Retrieved from: <https://www.nytimes.com/2023/03/11/us/politics/desantis-andrew-warren-liberal-prosecutor.html>

<sup>43</sup> Mower, L. (2023). "Andrew Warren Ruling: A Deep Dive Into What The Judge Was Thinking." *Tampa Bay Times*. Retrieved from: <https://www.tampabay.com/news/florida-politics/2023/01/21/andrew-warren-ruling-deep-dive-into-what-judge-was-thinking/>

<sup>44</sup> Farrington, B. & Frisaro, F. (2023). "Florida Gov. Desantis Suspends Another Democratic Prosecutor As He Seeks GOP Presidential Nomination." *AP News*. Retrieved from: <https://apnews.com/article/desantis-suspends-florida-prosecutor-monique-worrell-45d2f5955b87fb5c0e817d9da9133393>

<sup>45</sup> McCann, S. (2023). "Efforts to Undermine Reform-Minded Prosecutors Pose a Threat to Democracy and Public Safety." Vera Institute of Justice. Retrieved from: <https://www.vera.org/news/efforts-to-undermine-reform-minded-prosecutors-pose-a-threat-to-democracy-and-public-safety>

control.<sup>46</sup>

One of our interviews commented on the struggle of reform-oriented prosecutors to communicate the efficacy of the reforms they have made:

*Ultimately, we have lost the messaging war...What happened with [Chesa Boudin] in San Fran ...[is that] we have allowed law-and-order folks to control this public safety narrative. And so, it is hard to maintain a Kim Foxx when we just lose the messaging war, like so much of this is messaging the way in which, like, crime statistics are gathered and like how you're able to spin the story around crime.*

Our interviewees consistently expressed sentiments that reform-minded prosecutors face significant challenges as it relates to “the messaging war.” Reform-minded prosecutors have been critically challenged by “law-and-order” and “tough on crime” narratives, which have challenged their abilities to connect reform-focused policy changes to greater public safety outcomes. Interviewees noted that a narrow focus on violence distorts the conversation about what creates safety:

*At the end of the day...we're still confronted with measuring any of these steps towards reform against the number of shootings, the number of homicides, the number of guns taken off the street, and like using...these measuring sticks that certainly say something about our communities, but it's maybe not telling the whole story of public safety.*

## RACISM + SEXISM

While all reform-oriented prosecutors receive critical feedback to some extent, their racial and gender identities have appeared to have an incredible impact on the pushback they receive while in office. Namely, Black women prosecutors face misogynoir and have received high levels of public and political pushback as compared to their white counterparts.<sup>47</sup> For example, Monique Morrell was suspended by Governor Ron Desantis in August of 2023,<sup>48</sup> Aramis Alaya did not seek reelection,<sup>49</sup> and Kim Gardner resigned<sup>50</sup>—all after being targeted by anti-Black and misogynistic rhetoric from local officials, the public, and the media. Although critique of any elected official is crucial to the democratic process, it is clear that Black women have received a level of scrutiny that prosecutors have not historically faced in this country. Kim Foxx, for example, has received death threats for her procedural and policy decisions.<sup>51</sup> One interviewee referenced “that ridiculous investigation of [Kim Foxx] that turned up nothing,<sup>52</sup> of course.” They stated:

*Millions of dollars [were] spent...only to find she didn't do anything wrong...and Kim Gardner...in St. Louis right now...Those two, Kim Gardner and Kim Foxx, I think have been attacked more than any other [reform-oriented prosecutor]...the fact that they're Black women I think has a lot to do with it, to be honest with you.*

Because of the influx of reform-oriented prosecutors in recent years, two things happened at once: more Black women became elected prosecutors and more people began to understand what

<sup>46</sup> Illinois Network for Pretrial Justice. (2022). Obscuring the Trust: How Misinformation is Skewing the Conversation about Pretrial Justice Reforms in Illinois. Retrieved from: <https://endmoneybond.org/wp-content/uploads/2022/10/misinformation-report-pretrial-fairness-act-illinois-network-for-pretrial-justice.pdf>; Payton, B. (2023). “Letters: Op-Ed Attacking Kim Foxx’s Tenure as Cook County Lacks Logic and Relies on Lazy Arguments.” *Chicago Tribune*. Retrieved on March 11, 2024, from <https://www.chicagotribune.com/2023/08/01/letters-op-ed-attacking-kim-foxxs-tenure-as-cook-county-lacks-logic-and-relies-on-lazy-arguments/>

<sup>47</sup> Carrega, C. (2020). “For The Few Black Women Prosecutors, Hate And ‘Misogynoir’ Are Part Of Life.” *ABC News*. Retrieved from: <https://abcnews.go.com/US/black-women-prosecutors-hate-misogynoir-part-life/story?id=68961291>

<sup>48</sup> Fineout, G. (2023). “Desantis Suspends Another Elected Prosecutor In Move Derided As ‘Politically Motivated!’” *Politico*. Retrieved from: <https://www.politico.com/news/2023/08/09/desantis-suspends-state-attorney-worrell-00110445>

<sup>49</sup> Funcheon, D. (2019). “With Challengers In The Wings, Florida Prosecutor Who Stood Against Death Penalty Won’t Seek Reelection.” *Politico*. Retrieved from: <https://www.politico.com/states/florida/story/2019/05/28/with-challengers-in-the-wings-florida-prosecutor-who-stood-against-death-penalty-wont-look-for-reelection-1030026>

<sup>50</sup> Lacy, A. (2023). “Why St. Louis’s Reform DA Kim Gardener Quit.” *The Intercept*. Retrieved from: <https://theintercept.com/2023/05/06/kim-gardner-st-louis-da-resigns-reform/>

<sup>51</sup> Spaulding, C. (2022). “Man Charged with Hate Crimes for Allegedly Threatening Kim Foxx and Lori Lightfoot.” *Chicago Tribune*. Retrieved from: <https://www.chicagotribune.com/politics/ct-lightfoot-foxx-threats-hate-crime-20220512-ibx45n4lz5hmjc7ocdhyxze7me-story.html>; Allen, K. (2019). “State Attorney Kim Foxx Gets Death Threats After Dropping Jussie Smollett Charges.” *ABC News*. Retrieved from: <https://abcnews.go.com/US/state-attorney-kim-foxx-death-threats-dropping-jussie/story?id=62568123>

<sup>52</sup> Burnett, S. (2021). “Report Details ‘Failure’ In Handling Of 1st Smollett Case.” *AP News*. Retrieved from: <https://apnews.com/article/jussie-smollett-arts-and-entertainment-crime-chicago-race-and-ethnicity-1839d47a7474876122c06202e6c3defc>

elected prosecutors do. As explained by one interviewee:

*When Foxx first came into office...she was much less beaten down by the intense backlash that she's experienced – which is like, obviously both racist and misogynist – but she would talk a lot more about the limitations of criminal prosecution...She would talk about how people expect the State's Attorney's Office to produce safety, and the ways that it couldn't do that, and all the other things that actually produce safety... And over time, I think we've seen her saying much, much, much less of that. And instead, we have seen the office shift into...this talking point...which is like we're not prosecuting retail theft and driving on a suspended license so that we can focus on violent crime. And all of that is reinforcing the idea that prosecuting people and criminalizing people actually*

*in some way will result in increased safety.*

Before the “progressive prosecutor” movement, there were very few Black people or Black women in leading prosecutor roles.<sup>53</sup> According to *ABC News*,<sup>54</sup> “women of color” represented 20% of the U.S. population but just 1.87% of the 2,396 elected prosecutor positions (District Attorney, County Attorney, State's Attorney, Solicitor General, etc.) prior to the November 2019 election cycle. Now that more people are aware of this position of power within the criminal legal system, and that more Black women are holding this position of power, the backlash is even stronger. As a result, Black women are forced to navigate the role of prosecutor in a very different way than prosecutors that came before because they not only have to consider what policies are best for their office and constituents, but ensure that they maintain their physical safety.

## WHAT IS PROGRESSIVE ABOUT PROSECUTION?

### CONFLICTS WITH THE TERM

The term “progressive prosecutor” was not embraced by the people interviewed for this report. Many interviewees balked at the term and stated that they prefer “reform-oriented prosecutor” instead. They raised several concerns with the term “progressive prosecutor,” including: (1) political relativity, (2) the fact that many prosecutors who make “progressive” campaign promises do not live up to these promises, (3) the inherent incompatibility of prosecution with progressivism, and (4) a resulting increase in prosecutorial power.

### POLITICAL RELATIVITY

Some interviewees reported that they did not find the term “progressive prosecutor” useful because the concept of “progressive” is relative; it depends on the political context of the prosecutor. As stated by one interviewee: “Progressive is also relative...as a result, it's not that hard to label yourself as a progressive prosecutor, because prosecutors and the law itself are

naturally conservative.” Furthermore, as Benjamin Levin (2020) explains,<sup>55</sup> the spectrum of “progressive prosecutors” is vast.

**A prosecutor might be labeled “progressive” because they have reform-oriented ideology in one area (i.e., believe in diversion) but may enforce conservative principles in all the other aspects of their office policies and priorities.** As one interviewee stated, prosecutors “can be really progressive with drug policies and then super conservative with everything else.” From our interviews, it appears that gun charges for instance, are an area where many reform-oriented prosecutors do not often display particularly progressive policies.

### CAMPAIGN PROMISES DON'T COME TO FRUITION

Historically, “progressive prosecutors” have not always made significant changes or delivered on campaign promises. For example, at a forum on February 11, 2016, Kim Foxx noted:

*[Under the Alvarez administration], there is no distinction*

<sup>53</sup> *Supra* note 47.

<sup>54</sup> *Id.*

<sup>55</sup> Levin, B. (2020). Imagining the progressive prosecutor. *Minn. L. Rev.*, 105, 1415.

*between a first-time offender and a career criminal...you [had] leadership that promote[d] and ha[d] hanging on walls the sentences of people like trophies, that's the mentality that gets driven down to our frontline [A]ssistants.*

Still, despite Foxx's awareness of the toxic culture in the CCSAO, as we noted in our October 2019 report: "Many ASAs, particularly those in supervisory positions and those with long histories in the office, still staunchly maintained Alvarez's tough-on crime policies,"<sup>56</sup> showing that the toxic culture of the CCSAO remained even three years after Foxx's election.

Since the prosecutors' positions are so highly politicized and reform-oriented prosecutors already receive intense political attacks from more conservative community members and politicians, interviewees reported the struggle to hold prosecutors accountable to their campaign promises:

*Prosecutors run on a reform platform and then, for a variety of reasons, [do] not necessarily follow through on it once in office, and because they've carried the reform mantle, sometimes it can be harder to critique what they're doing. And they can, maybe, not fulfill the promises that the community elected them to as much as they intended when they ran...People can run on a great platform, but not necessarily have the foresight to think through, "what does it look like to implement this thing? And to actually manage an office?" And if they don't have those skills, or [are] not bringing someone in the office with those skills, things can go awry.*

Another notable example is Larry Krasner, who promised to end cash bail during his successful campaign for the Philadelphia District Attorney's office in 2017, and only managed to slightly reduce the number of cases in which cash bail was set, and the rate at which it was set stayed about the same, due to a number

of exceptions and carve outs in his policies.<sup>57</sup> Kim Ogg, a Texas District Attorney (DA), has also failed to make good on her platform of bail reform while simultaneously dramatically increasing the size of her staff.<sup>58</sup> Likewise, New Orleans DA Jason Williams promised to reform pretrial discovery in an effort to abandon the "win-at-all-costs" culture, but hadn't made any formal changes as of March 2022.<sup>59</sup>

Interviewees, including a prosecutor quoted below, also expressed the struggle to maintain reform-oriented goals the longer they do this work:

*I think I would just say that there's something about doing this work in and of itself that pushes you to be more conservative. I feel it myself—that my decision-making is more conservative than it was five years ago. And it has, like, raised a lot of questions for me around whether we should even do this work forever.*

They noted that only receiving negative feedback and criticism can push them to a more central or conservative position:

*The only feedback you get as a prosecutor is feedback around decisions that you make where things go badly...like [if] a defendant gets out and...commits a serious crime [or] hurt[s] someone. I never get called about the guy I let out who, like, is doing great and supporting his family. And so I think having all of the inputs be negative, naturally, shifts your decision-making rightward.*

## **INCOMPATIBILITY OF PROSECUTION WITH PROGRESSIVE VALUES**

Some interviewees noted that the role of a prosecutor is inherently in conflict with progressive concepts, and therefore, the term "progressive prosecutor" is oxymoronic. According to

<sup>56</sup> Chicago Appleseed Center for Fair Courts, Chicago Council of Lawyers, The People's Lobby, Reclaim Chicago. (2019). Creating a Culture of Fairness and Accountability: Defense Attorneys Report on Kim Foxx's Progress Toward Transforming the Priorities of Her Office. Retrieved from: [https://www.chicagoappleseed.org/wp-content/uploads/2019/10/2019-10-Report-Kim-Foxx\\_ForPrint\\_FINAL.pdf](https://www.chicagoappleseed.org/wp-content/uploads/2019/10/2019-10-Report-Kim-Foxx_ForPrint_FINAL.pdf)

<sup>57</sup> Marin, M. (2021). "Philly DA Report Card: The Promises Krasner Kept (Or Didn't) In His First Term." *Billy Penn*. Retrieved from: <https://billypenn.com/2021/04/25/krasner-philadelphia-district-attorney-election-cash-bail-wrongful-convictions/>; Neal, M., & Matthias, C. (2021). Broken promises: Larry Krasner and the continuation of pretrial punishment in Philadelphia. *Stanford Law Review*, 543-63. Retrieved from: <https://law.stanford.edu/wp-content/uploads/2021/08/Neal-and-Matthias-Broken-Promises-16-Stan.-J.-C.R.-C.L.-543-2021.pdf>

<sup>58</sup> Barkow, R. E. (2021). Can prosecutors end mass incarceration? *Michigan Law Review*, 119(6), 1365. Retrieved from: <https://doi.org/10.36644/mlr.119.6.can>

<sup>59</sup> Chrastil, N. (2022). "Despite Campaign Promises and Settlement Agreement, DA Jason Williams Appears to Lack a Written Policy on Turning Over Evidence." *The Lens*. Retrieved from <https://thelensnola.org/2022/03/28/despite-campaign-promises-and-settlement-agreement-da-jason-williams-appears-to-lack-a-written-policy-on-turning-over-evidence/>

one interviewee:

*I don't actually believe in the concept [of progressive prosecutors]. There's no such thing as progressive prosecutor. If you are putting people in prison, there's nothing progressive about that. So I don't believe in that as a concept. I like to say reform-minded prosecutors.*

Interviewees also stated that the tools that prosecutors have available to them are not always most applicable to advancing progressive goals: "when you're a hammer, everything's a nail."

One prosecutor elaborated:

*Because you still have a system which operates in that way, we don't have many tools; I am very much a hammer...I only have [a] certain number of tools and my tools are all punitive. And they all have [a] long-term impact on both individuals, and their families, and their communities, and their victims, honestly. So what do we do next?*

The same prosecutor went on to say:

*The concept of administrative evil...is this idea that bureaucracies – even when the people who work in a bureaucracy have the best of intentions – the policies and the systemic nature of it cause harm. And people will say "I'm just doing my job," and, you know, "my job requires me to do this," "my job requires me to enforce fees and fines that the court has levied even though people come in and tell me, 'I'm gonna lose my home, I don't have enough money, I gotta choose between food and these fines,' I don't have any discretion."...So the prosecutorial process being used in the United States is full of administrative evil...even when you have somebody who is doing it in a neutral manner...even when you have somebody who's doing it in [a] reformed manner, the bottom line of my job is that I still put Black people in prison. Period. Full stop. And so even when you do it in a neutral manner, or in a reformed manner, that is how that system works.*

A major theme that emerged through the course of our interviews was the importance of prosecutors recognizing the limitations of

their office:

*The problem is also the way in which they view how you get people help, and like they still see the function of help being streamlined through their office...I think prosecutors would have...to be willing to step outside of themselves and be honest about what they can and cannot do....The prosecutor's office is like the hammer, all they have is a hammer and they have to be honest about that.*

Many interviewees, along with many abolitionist thinkers and scholars, agree with these sentiments and have rejected the very notion of a "progressive prosecutor" because, by nature of the role, a prosecutor is unable to "successfully alleviate the harm caused by the criminal legal system."<sup>60</sup>

***Because you still have a system which operates in that way, we don't have many tools; There's no such thing as progressive prosecutor. If you are putting people in prison, there's nothing progressive about that.***

## **"PROGRESSIVE PROSECUTOR" MOVEMENT INCREASED PROSECUTORIAL POWER**

Interviewees generally agreed that the ideal "progressive prosecutor" would work to reduce the scope of the prosecutorial system. As one attorney and policy reform advocate stated: "I think what we want is for the prosecutor's office to do less, not do more, and to take away the dominance that the prosecutor's office has in terms of media coverage and power within the criminal legal system." A criminal legal system and prosecutorial scholar we interviewed echoed this idea:

*I would like to see a progressive prosecutor diverting cases out of the system [and] making the system smaller...and I'm not talking about just, you know, minor*

<sup>60</sup> Yamahiro, H. & Garzón-Montano, L. (2022). A mirage not a movement: The misguided enterprise of progressive prosecution. *The Harbinger*, 46, 130-169. Retrieved from: [https://socialchangenyu.com/wp-content/uploads/2022/06/Yamahiro\\_Garzon-Montano\\_RLSC-The-Harbinger\\_46.130-1.pdf](https://socialchangenyu.com/wp-content/uploads/2022/06/Yamahiro_Garzon-Montano_RLSC-The-Harbinger_46.130-1.pdf)

*misdemeanors, because prosecutors have been diverting minor misdemeanors out of the system for decades. That's not really made a difference. Somebody who's really serious about, like, making the system smaller and keeping people out of the system to begin with...somebody who, ideally...would only seek prison time for someone who is truly a danger to the community. Right? Truly, at present, [a] danger to the community.*

As the interviewee suggests, the most impactful reform a prosecutor can make is to limit the size and scope of their own office and only focus on a small subset of "crimes." Some interviewees raised the concern that many "progressive prosecutors" have ultimately seen *increases* in funding to their offices, although increased funding to the criminal legal system is not typically favored by "progressives" or reformers. Several interviews discussed how the "progressive prosecutor" movement has actually led to more resources for their offices: "This so-called progressive prosecutor movement has, in many ways, only served to elevate prosecutors further and entrench their power and results in giving them more resources through private funding."

## REPRESENTATION + REDUCED HARM

Prosecutors, just like any publicly-elected official, represent a large population of people. In those populations, there are conflicting ideas and values. Prosecutors represent the people, are lawyers for their state, and are perceived as responsible for one of the most controversial and polarizing contemporary issues: crime. One interviewee shared:

*I think [electing a reform prosecutor] is a flag or, like, a signal of a jurisdiction's general approach to institutional reform and...can tell you a lot about a community and*

*where they're at, and their willingness to engage in criminal justice reforms or acknowledge that there is an issue with the system. Like wearing the badge of "progressive prosecutor" and being willing to take on that badge, I think it just tells you a lot about that individual's approach to policy, but then also the communities that have elected them into power.*

The election of reform-oriented prosecutors is not necessarily an indication that our criminal legal system is going through a radical transformation, but rather that community members are exhausted by the impact of mass incarceration and are using their voting power to reduce the harm caused by the reliance on incarceration as a response to social problems. Reform-oriented prosecutor elections are evidence that communities are looking for alternative ways of addressing crime, and a recognition that incarceration is, at minimum, not always effective. Interviewees noted that given prosecutors' extreme level of discretion, the policy priorities of the person holding the office makes a large difference in community members' lives. As one interviewee stated: "This work is very, very, very dependent on who sits in the elected's chair." Despite critiques of reform-oriented prosecutors, interviewees acknowledged that their approach to the criminal legal system is generally preferable to traditional, "tough-on-crime" prosecutors. As one interviewee said of Cook County: "We have a better criminal justice system, I think, with a Kim Foxx than with an Anita Alvarez."

**Interviewees, therefore, expressed conflicting feelings about reform-oriented prosecutors; while many have observed the benefits of harm reduction that these prosecutors are able to provide, they raise issue with their complicity in the incarceration of people and within a system that is well established to be systematically racist, classist, sexist, ableist is in inherent conflict with progressive ideals.**



## VISION FOR THE FUTURE

Throughout the course of our interviews, we asked people for their insights on the future of the "progressive prosecutor" movement. In reflecting on the successes and challenges of the past several years, interviewees were able to leverage their firsthand

experiences and lessons learned to imagine what a future for this movement could look like. Our recommendations based on our findings and the suggestions of interviewees' are discussed below.

# 1. REIMAGINE RESPONSES TO HARM AND USE POWER TO PUSH FOR CHANGES TO PUBLIC SAFETY NARRATIVES

Reform-oriented prosecutors have decreased incarceration in many districts.<sup>61</sup> For example, Cook County saw a 34% drop in prison sentences from 2012 (when Anita Alvarez was the SA) to 2019 (after Kim Foxx took office in 2017).<sup>62</sup> However, some advocates regard the “progressive prosecutor” movement as a distraction from efforts to reimagine our societal response to harm.<sup>63</sup> Advocates from the American Civil Liberties Union (ACLU), Taylor Pendergrass and Somil Trivedi (2021), have proposed that we have entered a second wave of prosecutorial reform with the potential to envision beyond the “progressive” or “reform-oriented” prosecutor. They have identified the need for continually-broadened national goals; a clear “accountability framework” for people to evaluate their local prosecutor; bipartisan support; and a cultural transition from carceral mindsets for the movement to dismantle mass incarceration.<sup>64</sup> As a unified framework, they propose the “transformative” prosecutor, who they define by a set of virtues that demonstrate commitment to permanently undermining the criminal legal system rather than by a set of policies that improve the system.<sup>65</sup> According to this framework, the values that define a prosecutor as “transformational” are making specific and measurable commitments to: (1) decarceration, (2) self-accountability, (3) transparency of public documents and data, (4) advocacy for legislative reforms that decarcerate, and (5) reducing the scope of the criminal legal system (including their own offices) and redirecting its resources.<sup>66</sup>

Elected prosecutors have enormous opportunities to, as one of our interviewees stated, “change the norms about what is acceptable” when it comes to how public safety is viewed and directly experienced. When a reform-oriented prosecutor takes a firm stand on their policies that may run as a counter-narrative to

prevailing “law-and-order” sentiments, they are ultimately signaling their commitment to a new perception of what constitutes public safety and who has the opportunity to define what that is:

*I think prosecutors are frequently viewed as the local law enforcement leaders in their communities... they have this pulpit and platform and so they can even change conversations. So I think just having someone who's willing to be outspoken about injustices in the system, how the system isn't providing safety as much as people think it is, why the system disproportionately impacts marginalized communities, and how that's not conducive for safety... People's positions can shift norms and change conversations, and even prompt people to change behavior.*

***The bottom line of my job is that I still put Black people in prison. Period. Full stop. And so even when you do it in a neutral manner, or in a reformed manner, that is how that system works.***

Quantitative data is no doubt useful, but it only depicts a part of the story; articulating the complexities that exist in analyzing quantitative data creates communication challenges if that data is not paired with something more tangible and meaningful to communities. Broad cultural buy-in is necessary for pushing a fundamentally new and different safety narrative. Reform prosecutors have the power to utilize evidence derived from both quantitative and qualitative sources to fundamentally shift conversations around what constitutes real safety. To craft this new narrative, reform-oriented prosecutors would benefit from collecting and uplifting stories of success that comes from

<sup>61</sup> Mitchell, O., Mora, D. O., Sticco, T. L., & Boggess, L. N. (2022). Are progressive chief prosecutors effective in reducing prison use and cumulative racial/ethnic disadvantage? Evidence from Florida. *Criminology & Public Policy*, 21(3), 535-565.

<sup>62</sup> Chicago Appleseed Center for Fair Courts, Chicago Council of Lawyers, The People's Lobby, Reclaim Chicago. (2020). Data Show Major Decrease In Felony Charges, Incarceration Rates for Black and Latinx Residents in Cook County Since 2017. Retrieved from: <https://www.chicagoappleseed.org/wp-content/uploads/2020/02/2020-02-SA-Report.pdf>

<sup>63</sup> *Supra* note 60.

<sup>64</sup> Pendergrass, T & Trivedi, S. (2021). Beyond Reform: Four Virtues of a Transformational Prosecutor. *Stan. J. C.R. & C.L.*, 16, (435-455). Retrieved from: <https://law.stanford.edu/publications/beyond-reform-four-virtues-of-a-transformational-prosecutor/>

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*



pursuing options other than severe punishment to affirm their policy choices to the community. While such efforts may come across as self-promoting rather than community-serving, prosecutor's offices can combat this misunderstanding by partnering with a wide range of community organizations that can lead the messaging around the need for shifts in various prosecutorial policies. It is equally important that reform-minded prosecutors remain accountable to those same organizations if and when their actions do not measure up to their messaging. As explained by one person we interviewed: "A huge part of the State's Attorney's potential role in benefiting movement demands to reduce criminalization is in the bully pulpit that they have, and having a prosecutor and a law enforcement officer saying those things [is] very valuable." Reform prosecutors can use their "bully pulpit" to promote a wider variety of community-based public safety measures that do not require the prosecutor's engagement, such as greater investment in community resources for violence interruption at the source.

## **2. UNDERSTAND DIVERSION IS NOT AN AUTOMATIC SOLUTION: DECLINE CASES, DOWN CHARGE, AND PUBLISH CHARGING POLICIES**

While it is undeniable that diversion is necessary for reform, it is not an automatic solution to decarceration. Most importantly, our interviewees emphasized the need for reform-oriented prosecutors to prioritize declining cases upfront to prevent people from entering the criminal legal system altogether. Across our interviews, there was a general agreement that charging is one of the most significant decisions a prosecutor can make and that policies focused on screening cases out based on charges or limited evidence upfront is a strong strategy for shrinking the overall size and scope of the criminal legal system, and most importantly, preventing people from entering the system in the first place.

Many stakeholders brought up diversion in their interviews as a positive development in the reform prosecution movement. There are many ways that reform prosecutors can divert people from the system without ever charging them in the first place. For example,

it was suggested that prosecutors should invest heavily in youth diversion programs that give young people an off-ramp from the criminal legal system at an earlier point in their life to help them avoid involvement with the adult system. Even with the potential benefits, several interviewees note that diversion is an area for improvement:

*Just because you have a tool in your toolbox doesn't mean it's the right tool for the job. And so, I think sometimes there can be this impetus that, "oh, this prosecutor has created all these great diversion programs and this person needs help. Let's arrest them and bring them to this diversion program." Yes, that is a resource. But is that the best resource? No.*

Interviewees emphasized that diversion should be the option if and when declining or reducing charges is undoable. They frequently agreed that diverting cases can be an important strategy to reducing the number of individuals incarcerated while connecting people to various social services<sup>67</sup> but also that many diversion programs can potentially widen the net on the number of individuals involved in the criminal legal system:

*There's definitely a concern about net-widening that as people try to...create more alternatives that are better for accountability and addressing safety and harm, that there can definitely be a desire to funnel more people towards those resources [within the system].*

**Wherever there's discretion, there's disparity.**

As one person explained:

*[The desire to funnel more people towards those resources] is, I guess, true of prosecutors but also true of conversations around jails. Like, obviously jail conditions are horrible and people want to improve them, but the danger of that is if you invest all this money in improving jail conditions, there can be a [net-widening]—which I've seen judges do. Like, "oh, this person needs treatment." They are not aware of something in the community. So like, "alright, well, I'm*

<sup>67</sup> Chicago Appleseed Center for Fair Courts, Chicago Council of Lawyers, The People's Lobby, Reclaim Chicago. (2021). Decarcerating Cook County: Use of diversion programs for low-level, "non-violent" felonies increased substantially under State's Attorney Kim Foxx compared to Anita Alvarez. Retrieved from: <https://www.chicagoappleseed.org/wp-content/uploads/2021/03/22021-03-CCSAO-Diversion-Report-FINAL.pdf>

*gonna send you to the jail." So to me, that's the danger in how we definitely see net-widening overall.*

Some stakeholders indicated that implementing diversion programs focused on charges that are considered more serious may be an avenue to enhance public safety outcomes and reduce some racial disparities. As one prosecutor told us:

*What I don't hear and I feel like [is] critical to the conversation is a conversation about guns... It's a really hard conversation to have, but like 95% of the people who are arrested for gun possession are people of color.<sup>68</sup> And... it tends to be the case that like white people get their guns licensed, and Black people are less likely to do that. And I think it has to do with people's relationships to the administrative state, like their criminal histories, obviously, and people just feeling unsafe in their communities.*

Overall, while stakeholders saw value in leveraging diversion programs to decarcerate and enhance individual and community outcomes, they strongly emphasized the importance of approaching the development and implementation of diversion programs with intentionality and nuance to ensure the programs do not harm the cause of racial equity. Previous research shows when diversion programs are discretionary, they actually widen racial disparities.<sup>69</sup>

*The concern that I have with greater use of diversion is who gets a second chance, you know, who gets a second look. Texas is a state where diversion is very, very commonly used. And just looking at my own data in Texas, I'm finding that defendants from majority White communities are much more likely to get diversion. And this isn't because they're more likely... to not have a criminal record, like, even among first time offenders. Like the class and the... ethnic makeup of the [accused person's] community has some relationship with their likelihood of getting diversion. Yeah, so it's*

*discretionary. And wherever there's discretion, there's disparity.*

Across the country, there is an increased interest in creating diversion programs for gun possession, as it becomes clearer through research and experience that many people in cities carry guns for their own safety while living in neighborhoods where gun violence is prevalent. Importantly, this research shows that prosecuting people for illegal gun possession does not necessarily improve public safety. According to *WBEZ Chicago*:

*Officials justify the focus on confiscating guns – even if they are not being fired at anybody – as a way of curtailing violence. But these tactics have not substantially reduced shootings in Chicago. In fact, as possession arrests skyrocketed, shootings increased, but the percentage of shooting victims where someone was arrested in their case declined.<sup>70</sup>*

Gun violence is at the forefront of every prosecutors' and community members' minds, so these types of diversion programs remain a controversial issue, but with limited evidence that traditional prosecution is yielding public safety benefits, focusing on serious cases may have the potential to simultaneously reduce mass incarceration and improve public safety. One study focused on Suffolk County, Massachusetts, found that people accused of certain misdemeanors are less likely to be rearrested at a later date when a prosecutor declines to prosecute their initial case.<sup>71</sup> Some stakeholders felt that prosecutorial charging policies may also impact police behavior, motivating police to make fewer arrests for low-level offenses. According to one elected prosecutor:

*[Many reform-oriented prosecutors] have done that; we just aren't filing charges on certain types of offenses. We are... making sort of uniform policy decisions, which is different than a diversion program, right? That's just saying,*

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<sup>68</sup> From 2010 to 2022, 8 out of every 10 people arrested for guns in Chicago were Black people. Most of them were Black men in their 20s and 30s. See Chavis, L. & Hing, G. (2023). "Black Men are Paying the Price for the Failed War on Gun Violence." *WBEZ Chicago*. Retrieved on December 7, 2023, from <https://www.wbez.org/stories/gun-possession-arrests-in-chicago-shootings-unsolved/58783eac-2375-49c6-8641-2c13d058d77d>

<sup>69</sup> Schlesinger, T. (2013). Racial disparities in pretrial diversion: An analysis of outcomes among men charged with felonies and processed in state courts. *Race and Justice*, 3(3), 210-238; MacDonald, J., Arkes, J., Nicosia, N., & Pacula, R. L. (2014). Decomposing racial disparities in prison and drug treatment commitments for criminal offenders in California. *The Journal of legal studies*, 43(1), 155-187.

<sup>70</sup> Olson et al. (2021). "Sentences Imposed on Those Convicted of Felony Illegal Possession of a Firearm in Illinois: Examining the Characteristics and Trends in Sentences for Illegal Possession of a Firearm." Center for Criminal Justice Research, Policy and Practice Loyola University Chicago; *supra* note 68.

<sup>71</sup> Agan, A., Doleac, J., & Harvey, A. (2023). Misdemeanor prosecution. *The Quarterly Journal of Economics*, 138(3), 1453-1505. Retrieved from: <https://doi.org/10.3386/w28600>

*“we're not charging this” or “we're not charging at this level”...One of the...most consequential decisions a prosecutor makes is...what to charge, how many charges, what they are, what level they are.*

Stakeholders also noted that one benefit to prosecutors' discretion is their ability to “down-charge.” Down-charging occurs when a case comes into the prosecutor's office for charging and prosecutors review the case details and pursue lesser charges than recommended by the arresting agency. For example, some cases may be sent to the prosecutor's office by police as a felony, but the facts of the case actually lend themselves to a misdemeanor. Prosecutors' offices also participate in “up-charging” – deciding that the evidence of an alleged crime lends itself to a more serious charge. In discussing the charge of gun possession, one attorney and policy advocate noted the importance of prosecutor's discretion overcharging based on their perception of a case's evidence:

*[Prosecutors] could charge...certain people with a misdemeanor UUW but choose to charge them with felonies. And that's certainly a political choice, right? There's a reason they're not treating those cases the same way they're treating the retail theft cases and the driving on a suspended license cases.*

There are immense benefits to dismissing cases as early as possible. According to a team of researchers we interviewed:

*The idea is [to] identify dismissible cases as early as possible, because if you reject those cases at screening, you are producing less paperwork for the private attorneys, but also individuals whose case is pending. They may be in pretrial detention for a long period of time, and ultimately that case can get dismissed... If you reject more cases upfront, you will have fewer cases you will dismiss potentially. So the idea is that we're also trying to push for more thorough case screening practices to eliminate dismissible cases as early as possible to reduce the burden on the defendants.*

As exemplified by the quote above, accused people also benefit greatly from more transparency and expediency in their case—and possibly spare them further entanglement in the criminal legal system or avoid or limit pretrial incarceration.

### **3. RECOGNIZE THE LEGAL SYSTEM IS NOT A SOCIAL SERVICE AGENCY: SUPPORT EFFORTS FOR SERVICES OUTSIDE THE SYSTEM**

Many interviewees noted concerns about the need for community-based social services and supportive grassroots agencies outside of and unrelated to the legal system. Most people we interviewed believed that charges related to substance use and drug possession should not be charged or handled by the criminal legal system at all. Interviewees shared that in their experience, mandating treatment for substance use through diversion or problem-solving courts rarely leads to positive outcomes for the individual or community broadly: “forced treatment, it usually fails.” A staff member of a prosecutor's office who we interviewed stated:

*If it were up to me, we would increasingly just decline [to prosecute] more [cases], especially like drug possession cases. I would like to see us just exit that space entirely...I do not actually believe that the court system can cure [substance use] problems...I'm very skeptical of the ability of a court-run diversion program...where defendants are expected to remain clean, to really solve the underlying issues at stake.*

Chicago Appleseed Center for Fair Courts' and the Chicago Council of Lawyers' past research on problem-solving courts drew similar conclusions: drug and mental health courts that use punishment as a means to have participants conform to courts expectations of abstinence are not effective drivers for many people.<sup>72</sup> Other interviewees communicated that they felt drug and mental health issues should not be addressed in the criminal legal system at all, but instead dealt with in the health system. It was also noted that it is crucial for prosecutors to simultaneously advocate for increased use of and support for external agencies, organizations, or programs that provide social services and substance use treatment outside of carceral systems. One stakeholder shared: “If it were...my campaign vision or whatever, my goal would be to transfer all substance use out of the criminal system to the health system; [the criminal legal system] shouldn't be dealing with none of this.”

<sup>72</sup> Chicago Appleseed Center for Fair Courts & Chicago Council of Lawyers. (2023). One Size Doesn't Fit All: A Review of Post-Pleas Problem-Solving Courts in Cook County. Retrieved from: <https://www.chicagoappleseed.org/wp-content/uploads/2023/04/One-Size-Doesnt-Fit-All-Chicago-Appleseed-FINAL-03202023-1.pdf>

Because the criminal legal system currently houses and attempts to treat the largest number of people in need of mental health services,<sup>73</sup> if a prosecutor's office were to stop charging all drug possession, many people could lose access to the little treatment they might be able to access. Regardless, diverting those people from the legal system would still be the best course of action, since incarceration may act like "a triage situation," but ultimately causes severe deterioration of mental health and worsens overdose outcomes for people who use substances.<sup>74</sup>

## 4. ENGAGE THE COMMUNITY IN MEANINGFUL WAYS

Interviewed stakeholders often spoke about the difficulties reform-oriented prosecutors' offices have had with engaging community members in meaningful ways because of the push and pull of conflicting priorities. One stakeholder used the metaphor that prosecutors' jobs are similar to hospital triage, comparing homicides and gun violence to "stage four cancer" and "catalytic converters...getting stolen" to the flu or a cold, noting: "So if you're a hospital, and some patients have stage four cancer, and other people might come in with the flu or cold, and you need to treat everyone, but you're obviously going to put more resources to the people who are experiencing cancer." They continued:

*You're hearing from communities [that] what they need to feel safe [is] you...spending more time and more energy in communities that are dealing with homicides and gun violence. And yes, you should also be listening and hearing from people whose catalytic converters are getting stolen too, because that's a legit safety concern. But you also have got to talk to people...and be honest and say, "Look, our government has finite resources. Our office cannot address everything, [the] police department cannot address everything. That's why we have to invest and build up these other models and ways to respond and prevent crime."*

Although reform-oriented prosecutors often emphasize the importance of engaging with and building trust between their office and communities during their campaigns, these efforts have seen limited levels of success. For instance, many prosecutors' offices engage through traditional methods, such as town hall meetings to collect community feedback. Although these engagement strategies can be used to gain insight into the needs and concerns of certain community members, issues remain. For instance, there are generally no accountability mechanisms to ensure that this feedback is considered and potentially implemented. Likewise, town hall meetings – especially if they are purely listening sessions – only reach a certain subset of constituents: people who are already open to and engaged with the issues, and have free time to get involved (i.e., retired people, students, or activists).<sup>75</sup> As one interviewee stated: "I think [community engagement is] a failed strategy, because I think what we've seen is there's no real accountability, like, I don't think [prosecutors] feel beholden to those community organizations."

Interviewees also noted that community engagement can be challenging because many people lack information about the role of a prosecutor's office. Importantly, reform-oriented prosecutors must recognize and understand the histories of harm and mistrust between marginalized communities and the criminal legal system. Communities of color, especially Black communities, are wary of engagement with criminal legal system actors because they have been continuously harmed by the system. According to the Pew Research Center, 87% of Black adults surveyed in 2019 said that Black people are "generally treated less fairly by the criminal justice system than Whites, a view shared by a much smaller majority of White adults (61%)."<sup>76</sup> This history of mistrust makes meaningful engagement difficult:

*There's such distrust, at least...[with] Black communities...with prosecutor's offices. On both sides of it, right? Like, people who have been victims of crimes—many didn't have a great experience dealing with the*

<sup>73</sup> Steinberg et al. (2015). "When Did Prisons Become Acceptable Mental Healthcare Facilities?" Stanford Law School Three Strikes Project. Retrieved from: <https://law.stanford.edu/publications/when-did-prisons-become-acceptable-mental-healthcare-facilities/>

<sup>74</sup> Prison Policy Initiative. (n.d.). Mental Health. Retrieved from: [https://www.prisonpolicy.org/research/mental\\_health/](https://www.prisonpolicy.org/research/mental_health/); Hser, Y. I. (2007). Predicting long-term stable recovery from heroin addiction: findings from a 33-year follow-up study. *Journal of Addictive Diseases*, 26(1), 51-60; Jacobs, L. A., & Giordano, S. N. (2018). "It's not like therapy": Patient-inmate perspectives on jail psychiatric services. *Administration and Policy in Mental Health and Mental Health Services Research*, 45, 265-275.

<sup>75</sup> See e.g., <https://paulsimoninstitute.siu.edu/common/documents/best-practices-for-townhall-meetings.pdf>

<sup>76</sup> Gramlich, J. (2019). From Police to Parole, Black and White Americans Differ Widely in Their Views of Criminal Justice System." Pew Research Center. Retrieved from: <https://www.pewresearch.org/short-reads/2019/05/21/from-police-to-parole-black-and-white-americans-differ-widely-in-their-views-of-criminal-justice-system/>

*prosecutor's office. And then on the flip side, when you have been charged with a crime.*

Some interviewees mentioned that providing data and transparent information could be helpful to start building trust between prosecutors and community members, while also educating the broader community about the role of a prosecutor's office. As one advocate and attorney stated:

*I don't immediately know what I think prosecutors' roles in terms of narratives in communities should be...it could be just being honest about what they do and the limitations of what they do.*

The strategies currently used to engage with community members have met mixed success. Our interviewees referenced several prosecutors who were able to have meaningful engagement with community members and groups but stated that this was not the norm. These first steps taken in engaging with local communities should be built upon by implementing additional strategies that offer more autonomy and power to community stakeholders and neighborhoods. Reform-oriented prosecutors should also consider developing opportunities for community advisory boards and/or participatory research projects that allow community members to collaborate directly with the public officials entrusted to represent them.

*It starts with the people in their community who are not experiencing safety, like, what do they need to feel safe? And I think prosecutors and policy experts have a role in helping to translate...what those needs are into what actual policy can be. But I do think the answer to that question starts with a very localized [approach]: What do people in those communities [say] that they need to feel safe and how can the prosecutor support that vision?*

Prosecutors ought to consider sharing transparently about how they exercise their discretion and be willing to recognize that strategies to achieve public safety may need to expand beyond the purview/work of their office. It is once again essential that the broader community defines what safety is and how a prosecutor might serve to support those ideals.

## **5. USE DATA FOR INTENTIONAL CHANGE**

Data transparency and accountability is frequently touted by

"progressive" prosecutors as an area of focus for reform. One interviewee, though, noted that the use of data is not necessarily "progressive" - for years, "data-driven" law enforcement strategies have actually been used in harmful and regressive ways, such as through self-reinforcing "crime hotspots" and the creation of unregulated databases. A team of researchers we spoke to stated:

*Being data driven in the criminal justice system is not progressive. Police departments have been putting out data for years. Corrections [policy] is data-driven—they use it all the time to determine recidivism rates and programming. Courts have used data in the past to look at cases that come in and out of the system. Being data-driven itself is not progressive, nor is being transparent. The Chicago Police Department put out public data long before Kim Foxx ever put out data about what [the CCSAO] does that included both crimes reported and arrest rates. So, if we think about those two pillars, right, data-driven and transparency, there's nothing inherently progressive about that because law enforcement, corrections, the judiciary have been doing it long before prosecutors did.*

Even with increased public access to datasets, data dashboards, and research and evaluation partnerships, interviewees noted that these data have not necessarily shifted conversations, rhetoric, and narratives surrounding public safety. According to a team of researchers we interviewed:

*The people who come into office saying, "I want to be labeled as progressive" end up getting into the office and then figuring out that those things that they feel like are going to make them super progressive are built on the foundation of data and the stuff that every other office is also working on. So they end up pursuing some of the same foundational goals about, like, improving data, about getting basic dashboards out there and available to the public and stuff.*

Frequently, according to our interviewees, these public data have been used as devices to push back against unfounded criticism against the offices, leveraging data in more reactive than proactive ways.

*Proactive use of data is really good because it gets out in front of the narrative, it sets the tone, it quells arguments before they start. Being reactive is tough. And those are the*

*political ones, right? Where somebody calls somebody out in the media and you have to reactively come back with some numbers if you're able to. Not all of the offices are able to because either they're not big enough, or they don't have the staff to do it, and they're kind of left without being able to push back on some of the narrative that gets put out there.*

Moving forward, interviewees stated that it is important that progressive prosecutors use their data and analyses to communicate with the public and counteract untrue narratives around public safety. Still, data-driven conversations are not often the main focus of people and families who live in neighborhoods where there are primary safety concerns:

*Using data to talk to the community is really hard, because...they want[ed] reform yesterday. They're asking prosecutors to solve really big problems that aren't completely within the prosecutors' control. I think the most effective prosecutors have used data quietly—what I like to call them [is] “quietly progressive.”*

Interviewees shared sentiments about the usefulness of data in identifying racial disparities in the system. While it is commonly understood that there are racial disparities at all levels of the criminal legal system, data analyses can illuminate policy and practice changes that may mitigate these disparities. One interviewee discussed a Vera Institute of Justice study called the *Prosecution and Racial Justice Program* that collected data in several prosecutors' offices on the race of the victim and defendant in each case and tracked prosecutorial decisions at different stages in the case.<sup>77</sup> The Milwaukee District Attorney's Office was highlighted as an office that had used data to impact racial disparities in practices. One scholar we interviewed described the study stating that:

*In every single office, they found some disparities...sometimes it was based on just, like, a certain person that was in that office, and other times it was just based on like, certain charges were only being like prosecuted for Black people, because the cops were targeting those neighborhoods for those charges...They were able to kind of drill down and identify...for the prosecutor where the problem was and the process, so that*

*the prosecutor can fix the problem...John Chisholm's office is a good example of someone who...was able to visibly show, like, how the racial disparities were reduced...So I think a lot of it is...data and sort of figuring out: “Am I creating these racial disparities? If so, what are the steps I can take to reduce them?” And that's going to vary from office to office, depending on how they're being caused.*

Consistently, stakeholders mentioned the importance of using data to impact racial disparities – highlighting a crucial area for further inquiry and intentional change. A national prosecutorial reform advocate provided another example of how data helped raise awareness of structural racism to a prosecutor:

*We...found that there were no similarly situated White kids. Like every child that got charged with something that [they] could be prosecuted for as an adult was Black. And faced with that data, [the reform-oriented prosecutor] said, “we need to take a drastically different approach.”*

They followed up with the importance of having open-minded, critically-thinking people in these prosecutorial positions of power who do not deflect blame or absolve themselves from alleviating these disparities:

*If you don't have reform prosecutors in these positions, they will just say: “Well, what can I do? The police bring me these cases...I just look at the evidence and charge the case or don't charge it without looking at these broader societal disparities.” So yeah, I think...reformed prosecutors have had a big impact, largely in just who they decide to keep out of the system.*

Importantly, interviewees spoke of the importance of using data in critical, nuanced, and intentional ways. One interview discussed how prosecutor John Choi in Minnesota was able to use data to significantly reduce the number of pretextual vehicle stops happening in that jurisdiction:

*[This] is maybe an example of both...charging power [and] changing narratives...John Choi in Minnesota [is] the prosecutor who brought charges against the officer who killed Philando Castile. [He worked] on a policy to stop*

<sup>77</sup> McKenzie et al. (2009). Vera Institute of Justice. Using Data to Advance Fairness in Criminal Prosecution. Retrieved from: <https://www.vera.org/downloads/publications/Using-data-to-advance-fairness-in-criminal-prosecution.pdf>

taking cases based off non-public safety—or what people know as “pretextual traffic stops”... As a result of his policy...pretextual stops have plummeted.<sup>78</sup> So, I think prosecutors can use their platform...[to] change norms about what's acceptable, because now several of the police officers won't do those stops anymore because he's used his platform to speak out to their injustice.

Taken together, our interviewees provided the following general recommendations for how reform-oriented prosecutors can use data in more intentional ways: use data to create intentional diversion programs and policies that enhance safety and justice outcomes;<sup>79</sup> partner with external researchers who will uphold results with integrity, even when the findings are disappointing or concerning for one's prosecutorial agenda; invest in data infrastructures to ensure data quality and transparency; help enhance data literacy for stakeholders implementing “evidence-based” programs; and partner with other city and community agencies to connect data intersectorally, such as with public health or education.

Data allows progressive prosecutors the opportunity to understand their work at a granular level, but it is also important to see these data points as the first point of entry to understanding a particular issue or policy. **Ideally, progressive prosecutors will see data as an opportunity to better formulate the types of questions they should be asking of the community and other sources of information, rather than looking to data alone for answers.**

## 6. BUILD ON EFFORTS TO ENHANCE TRANSPARENCY

Reform-oriented prosecutors must be dedicated to public transparency around policies, practices, and outcomes related to their offices. Much of the work prosecutors' offices perform takes place out of public view, and their decision-making processes are

largely shrouded in mystery. For example, the vast majority of criminal cases end in plea deals;<sup>80</sup> deals are negotiated between attorneys, however the prosecutor holds the ultimate discretion in offering a final deal. The use of dashboards in some prosecutorial jurisdictions has provided a higher level of visibility and allowed for important engagement with researchers and the media.

**Prosecutors can use their platform[s]...[to] change norms about what's acceptable.**

As one interviewee stated: “A lot of the really exciting things that have come out of, at least...Kim Foxx's administration, is the level of data transparency and the level of access that researchers and advocates now have.” Public information access promotes transparency by allowing advocacy groups to understand the functioning of prosecutors' offices. Conversely, transparency of data should not be considered the extent of prosecutorial reform. One former prosecutor staff member shared:

*At the end of the day, [data transparency] didn't change the narrative around public safety. It didn't change the narrative around the way we talked about prosecutorial reform...Instead, we've seen that data being used as like a cover...something to hold up to be like, “well, I put all this out there so how can you say that I'm not doing the thing?”...Putting that data out there is only as valuable as folks' abilities to engage with it and...tell the story that you're...trying to tell by making that data publicly available.*

As more and more data is released for public viewing, it is imperative that it is translated in such a way that it communicates to the public *how* this data translates to greater public safety and moreover reflects the concerns of the community.

<sup>78</sup> Choi, J. (2023). Ramsey County Reduction Of Non-Public-Safety Traffic Stops And Policy Goals Affirmed By Independent Research Results; Alternative To Stops Deployed [News Release]. Office of the Ramsey County Attorney. Retrieved from: <https://www.ramseycounty.us/sites/default/files/County%20Attorney/RCAO%20Press%20Release%206.7.23.pdf>

<sup>79</sup> Chisholm, J & Reed, T. (2019). From Funnels to Large-Scale Irrigation: Changing the Criminal Justice System Paradigm to Improve Public Health and Safety. Harvard Kennedy Papers from the Executive Session on Community Corrections. Retrieved from:

[https://www.hks.harvard.edu/sites/default/files/centers/wiener/programs/pcj/files/reed\\_chisholm\\_changing\\_the\\_criminal\\_justice\\_system\\_paradigm.pdf](https://www.hks.harvard.edu/sites/default/files/centers/wiener/programs/pcj/files/reed_chisholm_changing_the_criminal_justice_system_paradigm.pdf)

<sup>80</sup> Johnson, T. (2023). 2023 Plea Bargain Task Force Report. American Bar Association. Retrieved from:

<https://www.americanbar.org/content/dam/aba/publications/criminaljustice/plea-bargain-tf-report.pdf>

# CONCLUSION

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In this report, we use the term “reform-oriented prosecutor” as opposed to “progressive prosecutor” because we have significant concerns with the idea of “progressive prosecution” in theory as well as in practice. Broadly, reform-oriented prosecutors use their discretionary powers to reduce mass incarceration and inequity in the criminal legal system. They tend to employ a set of similar policy priorities (to varying degrees), such as: non-enforcement, diversion, decarceration, police accountability, reform of administrative practices, and advocacy for criminal legal system reforms.<sup>81</sup>

The aim of this report is to provide the public with a more nuanced understanding of this spectrum so they can make informed electoral decisions. Throughout the course of our research, we asked people to envision the future of the “progressive prosecutor” movement; using the insight and firsthand experience of these individuals, we’ve come up with six overarching goals that any reform-oriented prosecutor should

prioritize:

1. Reimagine responses to harm and change the narrative;
2. Decline cases and down-charge instead of using diversion as the only method for decarceration;
3. Support efforts to improve and expand services outside the criminal legal system;
4. Engage the community in meaningful ways;
5. Use data for intentional change; and
6. Enhance transparency.

**While there is a broad political, procedural, and ideological spectrum of elected prosecutors who may be framed as part of the “progressive prosecutor” movement, any reform-minded prosecutor has the power to reduce some of the harms inherent to the criminal legal system.**

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<sup>81</sup> *Supra* note 5.





## Largest U.S. Counties and Prosecutor Reform<sup>82</sup>

County	State	April 1, 2020, Census Pop	Name Prosecutor	Reform- Oriented?	Year Elected
<a href="#">Los Angeles</a>	<a href="#">California</a>	10,014,009	Gascon	Y	2020
<a href="#">Cook</a>	<a href="#">Illinois</a>	5,275,541	Foxx	Y	2016
<a href="#">Harris</a>	<a href="#">Texas</a>	4,731,145	Ogg	Y	2016
<a href="#">Maricopa</a>	<a href="#">Arizona</a>	4,420,568	Mitchell	N	2022
<a href="#">San Diego</a>	<a href="#">California</a>	3,298,634	Stephan	N	2017
<a href="#">Orange</a>	<a href="#">California</a>	3,186,989	Spitzer	N	2019
<a href="#">Kings</a>	<a href="#">New York</a>	2,736,074	Gonzalez	Y	2016
<a href="#">Miami-Dade</a>	<a href="#">Florida</a>	2,701,767	Rundle	N	1993
<a href="#">Dallas</a>	<a href="#">Texas</a>	2,613,539	Cruezot	Y	2018
<a href="#">Riverside</a>	<a href="#">California</a>	2,418,185	Hestrin	N	2015
<a href="#">Queens</a>	<a href="#">New York</a>	2,405,464	Katz	N	2020
<a href="#">King</a>	<a href="#">Washington</a>	2,269,675	Manion	Y	2022
<a href="#">Clark</a>	<a href="#">Nevada</a>	2,265,461	Wolfson	N	2012
<a href="#">San Bernardino</a>	<a href="#">California</a>	2,181,654	Anderson	N	2018
<a href="#">Tarrant</a>	<a href="#">Texas</a>	2,110,640	Sorrells	N	2022
<a href="#">Bexar</a>	<a href="#">Texas</a>	2,009,324	Gonzalez	Y	2018
<a href="#">Broward</a>	<a href="#">Florida</a>	1,944,375	Pryor	N	2020
<a href="#">Santa Clara</a>	<a href="#">California</a>	1,936,259	Rosen	N	2011

<sup>82</sup> Map and table adapted from Pfaff (2022). *Supra* note 30.

<a href="#">Wayne</a>	<a href="#">Michigan</a>	1,793,561	Worthy	N	2004
<a href="#">New York</a>	<a href="#">New York</a>	1,694,251	Bragg	Y	2021
<a href="#">Alameda</a>	<a href="#">California</a>	1,682,353	Price	Y	2022
<a href="#">Middlesex</a>	<a href="#">Massachusetts</a>	1,632,002	Ryan	N	2013
<a href="#">Philadelphia</a>	<a href="#">Pennsylvania</a>	1,603,797	Krasner	Y	2017
<a href="#">Sacramento</a>	<a href="#">California</a>	1,584,169	Ho	N	2022
<a href="#">Suffolk</a>	<a href="#">New York</a>	1,525,920	Tierney	N	2021
<a href="#">Palm Beach</a>	<a href="#">Florida</a>	1,492,191	Aronberg	N	2012
<a href="#">Bronx</a>	<a href="#">New York</a>	1,472,654	Clark	N	2016
<a href="#">Hillsborough</a>	<a href="#">Florida</a>	1,459,762	Lopez	N	2022
<a href="#">Orange</a>	<a href="#">Florida</a>	1,429,908	Bain	N	2023
<a href="#">Nassau</a>	<a href="#">New York</a>	1,395,774	Donnelly	N	2021
<a href="#">Franklin</a>	<a href="#">Ohio</a>	1,323,807	Tyack	N	2021
<a href="#">Travis</a>	<a href="#">Texas</a>	1,290,188	Garza	Y	2020
<a href="#">Hennepin</a>	<a href="#">Minnesota</a>	1,281,565	Moriarty	Y	2022
<a href="#">Oakland</a>	<a href="#">Michigan</a>	1,274,395	McDonald	Y	2020
<a href="#">Cuyahoga</a>	<a href="#">Ohio</a>	1,264,817	O'Malley	N	2017

