

THE PROSECUTOR'S EVOLVING ROLE

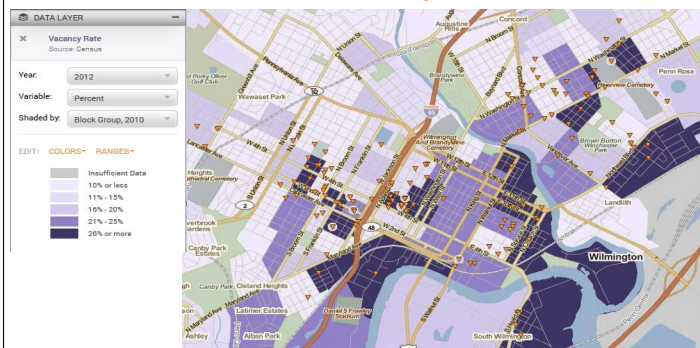
SEEKING JUSTICE THROUGH
COMMUNITY PARTNERSHIPS
AND INNOVATION



BRAVE Community Event
East Baton Rouge, Louisiana

Crime Strategy Unit
Delaware Department of Justice

Shooting Incidents by Percent of Vacant Properties



Prosecutors' Center for Excellence
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INTRODUCTION¹

Prosecutors have a core mission to protect the community and ensure justice when enforcing the law.² Traditionally, a prosecutor's role was a limited and relatively passive one - to evaluate and prosecute arrests made by the police.³ But over the last forty years, there has been a dramatic transformation and expansion of prosecutors' mission, to not only vigorously prosecute

¹ The authors of the article are Kristine Hamann, Executive Director of Prosecutors' Center for Excellence (PCE) and Laura Greenberg-Chao, a consulting attorney with PCE. Jessica Trauner and Rebecca Rader Brown, also consulting attorneys with PCE, provided the finishing touches. Georgetown Law School students Sandra Ghobraiel, Daniel Kroepsch, and Nicholas Russo did excellent research in support of the article. The work by Ms. Greenberg-Chao, Ms. Trauner, Ms. Rader Brown and Ms. Hamann (in part) was supported by Grant No. 2013-DB-BX-K005 awarded by the Bureau of Justice Assistance/Department of Justice to the New York Prosecutors Training Institute (NYPTI). The Bureau of Justice Assistance is a component of the Department of Justice's Office of Justice Programs, which also includes the Bureau of Justice Statistics, the National Institute of Justice, the Office of Juvenile Justice and Delinquency Prevention, the Office for Victims of Crime, and the SMART Office. Points of view or opinions in these materials are those of the author(s) and do not necessarily represent the official position or policies of the U.S. Department of Justice.

² See, e.g., *Mission Statement*, WORCESTER COUNTY DISTRICT ATTORNEY'S OFFICE, <http://worcesterda.com/home/our-mission-statement> (last visited Dec. 12, 2016) (Worcester County, MA: "office's twin missions – seeking justice through tough and fair prosecutions, and preventing crime with a variety of community-based outreach programs"); *Mission Statement*, ORANGE COUNTY DISTRICT ATTORNEY'S OFFICE, <http://www.orangecountygov.com/content/124/912/15340/default.aspx> (last visited Dec. 12, 2016) (Orange County, NY: "protecting the innocent through the pursuit of truth, justice, and the prevention of crime"); *Mission Statement*, CUMBERLAND COUNTY DISTRICT ATTORNEY'S OFFICE, <http://www.cumberlandcounty.org/183/Mission-Statement> (last visited Dec. 12, 2016) (Cumberland County, ME: "prompt, effective and compassionate prosecution . . . in a manner that protects the constitutional and legal rights of the accused, advocates for the interests of the victim, respects law enforcement agencies, promotes public safety, and responsibly stewards public resources"); *Mission Statement/Overview*, KENOSHA COUNTY DISTRICT ATTORNEY'S OFFICE, <http://www.co.kenosha.wi.us/index.aspx?nid=148> (last visited Dec. 12, 2016) (Kenosha County, WI: "to uphold the rule of law, vigorously prosecute criminals and seek justice for victims of crime"); *Mission Statement*, MARIPOSA COUNTY DISTRICT ATTORNEY'S OFFICE, <http://www.mariposacounty.org/index.aspx?nid=74> (last visited Dec. 12, 2016) (Mariposa County, CA: "[e]nsure the fair, impartial, and expeditious pursuit of justice, protect the rights of victims, [and] [r]educe crime by efficient enforcement of criminal laws").

³ Catherine M. Coles, *Evolving Strategies in 20th- Century American Prosecution*, in *THE CHANGING ROLE OF THE AMERICAN PROSECUTOR, 182-187* (John L. Worrall & M. Elaine Nugent-Borakove, eds., 2008).

criminal cases, but also to engage in crime prevention, problem solving and community partnerships. This shift is due to the recognition of a need for more complex solutions that not only seek positive outcomes for victims, but also strive for long-term solutions for defendants, potential defendants, and the community at large.

Prosecutors are uniquely situated to be effective in carrying out these new initiatives. They play a pivotal role in the criminal justice system, making decisions and exercising discretion about whether to prosecute, whom to prosecute, and how to prosecute. Also, as leaders in law enforcement, prosecutors can work with the police and other partners to improve police-community relationships and to build trust in the criminal justice system.

This article examines the modern prosecutor's evolving role in the criminal justice system with an overarching objective to share information among prosecutors and others seeking to improve the criminal justice system through innovation.⁴ With over 2300 prosecutors' offices across the country, it is impossible to provide an exhaustive list of every new project that prosecutors have launched.⁵ Rather, this article provides a selection of initiatives with the intent to share ideas, and to provoke conversation about what prosecutors are doing now and what prosecutors can do in the future.⁶

⁴ For an excellent in-depth study by criminal justice scholars of the evolution of the prosecutor's role and responsibilities, *see* THE CHANGING ROLE OF THE AMERICAN PROSECUTOR (John L. Worrall & M. Elaine Nugent-Borakove, Eds., 2008).

⁵ *See Prosecutors Offices*, BUREAU OF JUSTICE STATISTICS, <http://www.bjs.gov/index.cfm?ty=tp&tid=27> (last visited Dec. 12, 2016).

⁶ PROSECUTORS' CENTER FOR EXCELLENCE, <http://pceinc.org> (last visited Dec. 12, 2016). The National District Attorneys Association, (*see, History of NDAAs*, THE NATIONAL DISTRICT ATTORNEYS ASSOCIATION, http://www.ndaajustice.org/ndaa_history.html (last visited Dec. 12, 2016)) and The Association of Prosecuting Attorneys (*see, THE ASSOCIATION OF PROSECUTING ATTORNEYS*, <http://www.apainc.org> (last visited Dec. 12, 2016)) also provide trainings, conferences and other assistance to prosecutors.

This article begins by examining community-based initiatives by District Attorneys⁷ offices, including: community engagement, community prosecution, resources for families and children, alternatives to incarceration, juvenile diversion programs, re-entry programs and neighborhood courts. This first part covers a wide array of programs from around the country, demonstrating the far-reaching efforts by prosecutors to engage with their communities and to implement innovative methods to improve community safety. The second part of this article covers programs run within District Attorneys' offices, including crime strategies units, conviction integrity units and ethics training for prosecutors. Finally, the article concludes by examining emerging initiatives and considering what these trends will mean for the future of prosecution.

COMMUNITY ENGAGEMENT AND COMMUNITY-BASED PROGRAMS

Recognizing that their responsibilities begin long before a crime occurs and continue long after a criminal case concludes, prosecutors began establishing community outreach programs and certain models of community prosecution as early as the 1980s. The number of these community-centered programs and their reach have increased tremendously over time and have taken on new significance in light of recent calls for reform of the criminal justice system. This section focuses on a sampling of these community-based programs – community engagement, community prosecution, resources for families and children, alternatives to incarceration, diversion for juveniles, re-entry programs, and neighborhood courts – and how these programs have built upon each other over time.

⁷ Although there are a variety of titles for the chief prosecutor of a county or district depending on the jurisdiction, for the purposes of this article, we have used the term “District Attorney” interchangeably with “prosecutor.”

Community Outreach

Prosecutors engage in community outreach in a variety of ways. Through speaking engagements, education programs, courthouse tours, sports programs, sponsorship of community events, attending community meetings, truancy reduction initiatives and a whole range of other activities, prosecutors connect with the people who they represent. New outreach programs are emerging constantly, growing in both scope and impact, working to enhance community trust in the justice system. The descriptions below highlight just a few types of newer community outreach programs.

In New York County, the DA's Office uses forfeited money from drug cases to fund "Saturday Night Lights," a program where kids aged eleven to eighteen can drop-in at one of many sites throughout the city for sports training and academic support.⁸ In Baltimore, the State's Attorney's Office sponsors a summer program for rising eighth-graders, teaching them about careers in law enforcement and elsewhere within the justice system.⁹ In Boston, the Suffolk County District Attorney's Office has, for seven years, organized an annual Basketball for Peace Tournament, where the DA recognizes community members as role models, and prosecutors, victim advocates, and other DA staff participate in basketball games with community youth and their parents.¹⁰ The

⁸ *Saturday Night Lights*, NEW YORK COUNTY DISTRICT ATTORNEY'S OFFICE, <http://manhattanda.org/saturday-night-lights> (last visited Dec. 12, 2016). In addition to the other DA's Offices profiled in this section, *see also* Ben David, "Community-Based Prosecution in North Carolina: An Inside-Out Approach to Public Service at the Courthouse, on the Street, and in the Classroom," 47 WAKE FOREST L. REV 373, 390-393 (Spring, 2012) (discussing various community outreach initiatives conducted by the elected DA and the twenty ADAs in the Fifth District of North Carolina).

⁹ *First Day of Junior State's Attorneys Program is a Major Hit*, OFFICE OF THE STATE'S ATTORNEY FOR BALTIMORE CITY (Jul. 7, 2015), <http://www.stattorney.org/media-center/press-releases/775-first-day-of-junior-state-s-attorneys-program-is-a-major-hit>.

¹⁰ Patriot-Bridge Staff, *District Attorney Dan Conley's Tournament a Great Event*, CHARLESTOWN PATRIOT-BRIDGE (May 6, 2015), <http://charlestownbridge.com/2015/05/06/district-attorney-dan-conleys-tournament-a-great-event>.

Clergy Ambassador Program, organized by the U.S. Attorney's Office for the District of Columbia, runs six bi-monthly trainings for clergy about a variety of topics including community policing and the priest-penitent evidentiary privilege.¹¹

In a unique approach to engage the community and provide tangible assistance to residents of crime-ridden neighborhoods, prosecutors in Delaware have taken on a program called "It's Never Not My Job."¹² Here, prosecutors personally go into communities alongside of law enforcement doing neighborhood walks to speak with community members and identify neighborhood improvement needs, such as garbage removal and street lighting.¹³ In addition to seeking to improve the neighborhood and reduce crime, this program, although in its early stages, has increased cooperation with law enforcement.¹⁴

Virtually all prosecutors' offices participate in community education programs, recognizing them to be beneficial for crime prevention as well as for building relationships with community members. In Maryland and New Mexico, prosecutors educate students and senior citizens, teaching about fraud prevention, Internet safety, cyber bullying, alcohol and drug abuse prevention, and domestic violence.¹⁵ In San Diego, prosecutors explain the criminal justice system during

¹¹ *Community Outreach Programs: Clergy Ambassador Program*, THE UNITED STATES ATTORNEY'S OFFICE DISTRICT OF COLUMBIA, <http://www.justice.gov/usao-dc/programs/community-prosecution/community-engagements> (last visited Dec. 12, 2016). The U.S. Attorney's Office in D.C. handles both federal and state crimes.

¹² *Delaware Department of Justice Initiatives to Reduce Crime*, DIVISION OF PUBLIC HEALTH, DELAWARE HEALTH AND SOCIAL SERVICES, available at <http://dhss.delaware.gov/dhss/dph/mh/files/ddojinitiativestoreducecrime.pdf>.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Community Outreach: Innovative and Proactive Programs*, OFFICE OF THE STATE'S ATTORNEY FOR MONTGOMERY COUNTY, MARYLAND, <http://www.montgomerycountymd.gov/sao/units/community.html> (last visited Dec. 12, 2016); Aubrey Ashbaugh, *Committee and District Attorney Martinez fight Internet crime*, CIBOLA BEACON (Apr. 20, 2012), http://www.cibolabeacon.com/news/committee-and-district-attorney-martinez-fight-internet-crime/article_35c87832-8a99-11e1-a01d-0019bb2963f4.html.

courthouse tours, local events, within schools and at career fairs.¹⁶ In Dallas, residents can participate in a free “Citizen Prosecutor Academy” that helps members of the community to understand the work that goes on the District Attorney’s Office.¹⁷ This type of outreach is common in offices of all sizes. Even smaller offices like the seventeen-attorney office in Jackson County, Oregon participate in such outreach by sending their attorneys to speak at schools, community groups, and fraternal organizations.¹⁸

The importance of prosecutors’ community outreach cannot be overstated. Recently, the public’s faith in law enforcement has deteriorated in the wake of several high profile police shootings and homicides.¹⁹ Additionally, many witnesses to crimes are more reluctant than ever to testify because of intimidation or lack of trust in the criminal justice system.²⁰ A stronger, combined police and prosecutor presence in communities is essential to combat this mistrust in law enforcement. A robust police-prosecutor partnership with their communities will benefit all by reducing crime and making communities safer.

¹⁶ *Diversity in the DA’s Office: Community Involvement*, SAN DIEGO COUNTY DISTRICT ATTORNEY, <http://www.sdca.org/office/diversity/community-involvement.html> (last visited Dec. 12, 2016).

¹⁷ *Citizen Prosecutor Academy*, DALLAS COUNTY DISTRICT ATTORNEY, https://www.dallascounty.org/department/da/cpu_program.php (last visited Dec. 12, 2016).

¹⁸ *Speakers Bureau*, JACKSON COUNTY DISTRICT ATTORNEY, <http://jacksoncountyor.org/da/Prosecution/Speakers-Bureau> (last visited Dec. 12, 2016); *see also Community Connections*, 26TH PROSECUTORIAL DISTRICT OF NORTH CAROLINA DISTRICT ATTORNEY’S OFFICE, <http://charmeckda.com/districtattorney/communityconnections.html> (last visited Dec. 12, 2016). (Prosecutor’s office runs a Community Liaison Initiative, sending prosecutors into the community to attend meetings and events.) *See also Neighborhood State Attorney Initiative*, FLORIDA STATE’S ATTORNEY FOR THE 18TH CIRCUIT, <http://www.sa18.state.fl.us/page/nsai.html> (last visited Dec. 12, 2016). (Although reduced by budget cuts, the Neighborhood State Attorney Initiative involves prosecutors and community advocates in crime prevention and community partnerships.)

¹⁹ *See, e.g.,* Michael Schwirtz and Richard A. Oppel, Jr., *Experts Weigh Officer’s Decisions Leading to Fatal Shooting of Michael Brown*, N.Y. TIMES, (Nov. 27, 2014), at A1; Al Baker, J. David Goodman and Benjamin Mueller, *Beyond the Chokehold: the Path to Eric Garner’s Death*, N.Y. TIMES, (Jun. 14, 2015), at A1.

²⁰ For further information on witness intimidation and how witnesses can be protected, *see The Prosecutors’ Resource: Witness Intimidation*, AEQUITAS, 4 (2013), <http://www.aequitasresource.org/The-Prosecutors-Resource-Intimidation.pdf>.

Community Prosecution

Community prosecution, defined broadly for the purposes of this article as the use of different strategies to identify and address crime and disorder issues in local communities, has taken many forms over the past several decades.²¹ One model places prosecutors in neighborhood offices or police stations to interact directly with members of the community and create targeted responses to their complaints. As early as 1990, for example, the District Attorney in Portland, Oregon introduced his Neighborhood D.A. (NDA) Program, where a single prosecutor was assigned to a commercial neighborhood, targeting low-level offenders who were negatively impacting attempts to revive the economy.²² The community prosecutor also worked to clean up downtown areas in Portland populated by homeless people and transient campers whose presence and behavior, such as littering, panhandling and urinating in public, drove away businesses.”²³ By getting “residents and affected businessowners to patrol the [downtown area, also called the] gulch, post signs against trespassers, pick up trash, and remove and store property left behind at a location far from the gulch,” the area became a clean stretch of parkland a year later. Additional examples where

²¹ John S. Goldkamp et. al., *Community Prosecution Strategies Monograph xii*, BUREAU OF JUSTICE ASSISTANCE, (2003), available at <https://www.ncjrs.gov/pdffiles1/bja/195062.pdf>. Of course, the three models profiled here do not represent all the variations of community prosecution, and prosecutors in smaller offices and rural offices have found other creative ways to problem-solve with their communities. In Santa Fe, for instance, “the large geographic area and the dispersed population” require the prosecutor’s office to conduct door-to-door canvassing to determine and address the needs of the residents. *Id.* at 25-26. *See also* Coles, *supra* note 3; M. Elaine Nugent-Borakove & Patricia L. Fanflik, *Community Prosecution: Rhetoric or Reality?*, in *THE CHANGING ROLE OF THE AMERICAN PROSECUTOR*, (John L. Worrall & M. Elaine Nugent-Borakove, eds., 2008).

²² Goldkamp, *supra* note 21 at 29-30, 32; *see also* Michael D. Schrunk, *District Attorney, Portland, Oregon*, CENTER FOR COURT INNOVATION, <http://www.courtinnovation.org/research/michael-d-schrunk-district-attorney-portland-oregon> (last visited Dec. 12, 2016).

²³ Goldkamp, *supra* note 21 at 43.

prosecutors are physically stationed in community offices or police stations include Dallas and Austin, Texas, Kalamazoo, Michigan and Washington, DC.²⁴

Other offices have implemented community prosecution through so-called “zone” prosecution, where prosecutors handle only the cases from a particular geographical area. In 1991, the Brooklyn DA’s Office was restructured and certain prosecutors were assigned to a caseload from one or more neighborhoods in Brooklyn, allowing them to understand and prioritize crimes based on the community’s needs.²⁵ More recently in 2010, the Philadelphia DA’s Office followed suit, assigning one-quarter of their prosecutors to neighborhood teams handling cases from one of six zones within the city.²⁶

A third model of community prosecution, where non-lawyers serve as liaisons between prosecutors and the community, was established even earlier. Since 1985 in Manhattan and 1996 in Denver, community justice advocates and community affairs specialists meet with diverse community-based organizations, attending community and other neighborhood meetings and events, working with local police precincts, and providing educational outreach to address specific

²⁴ See Robert V. Wolf & John L. Worrall, *Lessons from the Field: Ten Community Prosecution Leadership Profiles*, AMERICAN PROSECUTORS RESEARCH INSTITUTE (2004), available at http://www.courtinnovation.org/sites/default/files/cp_lessons_from_the_field.pdf (last visited Apr. 10, 2016). In Dallas, Texas, thirteen prosecutors are stationed in police substations, storefronts, and the Martin Luther King, Jr. Multipurpose Center. *Id.* at 1. In Kalamazoo, Michigan, neighborhood prosecutors have two offices – one in the government building and one in the community as do the community prosecutors in Washington DC, who do not manage a caseload but are assigned instead to identify and target cases and issues of special interest to a particular community. *Id.* at 31. The Kalamazoo neighborhood prosecutors also spend a fair amount of time going door-to-door to engage the community. *Id.* In Austin, Texas, a neighborhood prosecutor stationed in the city’s downtown focuses on nuisance bars, vehicle break-ins, panhandling, and re-entry of released inmates back into the community. *Id.* at 62.

²⁵ *Id.* at 37-38.

²⁶ Craig McCoy & Nancy Phillips, *Zone system a dramatic shake-up for Philadelphia courts*, PHILLY.COM, (Dec. 1, 2010), http://www.philly.com/philly/news/special_packages/inquirer/courts-reform/20101031_Zone_system_a_dramatic_shake-up_for_Philadelphia_courts.html. Other examples of zone prosecution include: Hennepin County, Minnesota and Marion County, Indiana (where the community prosecutors are considered “ambassadors”). See Wolf & Worrall, *supra* note 25.

community problems.²⁷ Similar versions of this model exist all over the country today, including in Cook County, Illinois and Baltimore, Maryland.²⁸ The current concern about improving the community's trust in the criminal justice system is spurring prosecutors to enhance and expand these programs.²⁹

Resources for Children and Families

Starting as early as 1985, collaboration among law enforcement, victim advocacy groups, social services and medical professionals has led to the existence of almost one thousand child advocacy centers throughout the United States and in other countries.³⁰ A child advocacy center provides a singular, child-friendly location where law enforcement officers and prosecutors can investigate child abuse at the same time that medical, mental health and social service providers can help the child and his or her non-offending family members heal from physical, sexual and emotional abuse.³¹ Over the years, these centers have been established in not only big cities and populated areas, but also in smaller counties and rural areas. For instance, in rural central New York, the Chenango County District Attorney's Office, which has only two assistant district

²⁷ *Community Partnership Unit*, NEW YORK COUNTY DISTRICT ATTORNEY'S OFFICE, <http://manhattanda.org/community-partnerships-unit> (last visited Dec. 13, 2016); John S. Goldkamp et. al., *supra* note 21.

²⁸ See also *Community Engagement*, OFFICE OF THE STATE'S ATTORNEY FOR BALTIMORE CITY, <http://www.stattorney.org/community-affairs/community-engagement> (last visited Dec. 13, 2016). (There are more than ten community liaisons in the Baltimore State's Attorney's Community Engagement unit.) See also *Cook County State's Attorney's Community Justice Program*, COOK COUNTY STATE'S ATTORNEY'S OFFICE, <http://www.statesattorney.org/communityjustice.html> (last visited Dec. 13, 2016). (Two prosecutors and a non-lawyer community liaison are assigned to each Community Justice Center.)

²⁹ See Coles, *supra* note 3, 188-193.

³⁰ *Multidisciplinary Team*, NATIONAL CHILDREN'S ADVOCACY CENTER, <http://www.nationalcac.org/multidisciplinary-team/> (last visited Dec. 13, 2016).

³¹ See e.g. *Our Story*, NATIONAL CHILDREN'S ALLIANCE, <http://www.nationalchildrensalliance.org/our-story> (last visited Dec. 13, 2016); *Children's Advocacy Center*, LAKE COUNTY STATE'S ATTORNEY, <http://www.lakecountylil.gov/2066/Childrens-Advocacy-Center> (last visited Dec. 13, 2016).

attorneys, is a member of the multi-disciplinary team at the Chenango County Child Advocacy Center.³²

There are also a small handful of child advocacy centers on and near Native American reservations, although there is a great need for many more such centers. (One troubling study found that children from the Rosebud Reservation in South Dakota “must travel (at least) two and a half hours across the state... to receive the treatment they need”).³³ One of the existing centers serving Native Americans is the Heart-to-Heart Child Advocacy Center, which is administered by the Eastern Band of Cherokee and provides a location for tribal and federal law enforcement, tribal child protective services, prosecutors, mental health professionals, medical providers, educational representatives, and counselors to investigate, interview, treat, and provide services for abused children.³⁴

Prosecutors also assist in the creation of centers that offer services to domestic violence victims. With a focus on safety planning and providing services to empower victims, programs like the Family Justice Center in San Jose provide a centralized location for resources.³⁵ In addition to services such as crisis counseling, emergency shelter, assistance with obtaining restraining orders, advice regarding immigration, therapy, medical care and support groups, the San Jose center includes

³² *Child Advocacy Center*, CATHOLIC CHARITIES DIOCESE OF SYRACUSE, http://www.ccofcc.com/what_we_do/programs/childadvocacycenter.html (last visited Dec. 13, 2016).

³³ Randall Cooper, *Children’s Advocacy Centers and Indian Country*, NATIONAL CENTER FOR PROSECUTION OF CHILD ABUSE, NATIONAL DISTRICT ATTORNEYS ASSOCIATION UPDATE, Vol. 24, No. 2, at 3, *available at* http://www.ndaajustice.org/pdf/Update%20Vol24_No2.pdf (last visited Dec. 13, 2016).

³⁴ *Id.*

³⁵ *See Center to Help Domestic Violence Victims Opens in San Jose*, OFFICE OF THE DISTRICT ATTORNEY, COUNTY OF SANTA CLARA (October 19, 2015), <https://www.sccgov.org/sites/da/newsroom/newsreleases/Pages/NRA2015/center-domestic-violence-victims.aspx>.

an on-site prosecutor to help with court appearances and crime victim compensation.³⁶ With the help of prosecutors, varying forms of these centers have been established throughout the country.³⁷

Some programs combine the two types of services outlined above. In Milwaukee, the District Attorney's Office has joined with law enforcement, victim services organizations and other social service agencies to create the Sojourner Family Peace Center, a new facility that houses both a child advocacy center and services for domestic violence victims.³⁸ The Center also has a shelter with more than fifty beds, an education program, and forty-four officers from the Sensitive Crime Unit (which investigates child abuse, domestic violence, and sexual assaults).³⁹ The District Attorney has assigned prosecutors to the new facility, noting that the goal of the center is to provide victims with an alternative to "a potentially hostile environment at the courthouse [where they] can find security, services for their kids and tools to deal with exposure to violence in one place."⁴⁰

In a different approach, the Plymouth County District Attorney's Office outside of Boston, Massachusetts, connected the Brockton Public School system with a program at Harvard Law School that educates teachers and staff on how to recognize when a child is witnessing domestic violence at home.⁴¹ The program, the Trauma and Learning Policy Initiative, helps school staff learn

³⁶ *Id.*

³⁷ See e.g. *Services*, FAMILY JUSTICE CENTER OF ERIE COUNTY NEW YORK, <http://www.fjcsafe.org/family-justice-center/History/3> (last visited Dec. 13, 2016) (offering safety planning, orders of protection, and a forensic medical unit to document victim injuries); *The Gateway Center for Domestic Violence*, THE CITY OF PORTLAND OREGON, <http://www.portlandoregon.gov/gatewaycenter/52860> (last visited Dec. 13, 2016) (supported by the Multnomah County DA's Office).

³⁸ Ashley Luthern, *Innovative new Sojourner Family Peace Center pulls together range of help*, MILWAUKEE-WISCONSIN JOURNAL SENTINEL (Sept. 26, 2015), <http://www.jsonline.com/news/milwaukee/innovative-new-sojourner-family-peace-center-pulls-together-range-of-help-b99583133z1-329668371.html>. (This article also references the San Diego Family Justice Center, the first Family Justice Center in the country. *Id.*)

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ Krista M. Torralva, *Behind Broken Doors: Schools Work to Aid Children of Domestic Violence*, *Behind Broken Doors*, CALLER-TIMES, (Apr. 23, 2016), <http://archive.caller.com/news/behind-broken-doors/schools-work-to-aid-children-of-domestic-violence-2e044bc4-0fb5-5329-e053-0100007ff344-376757391.html>.

how to become trauma sensitive in an effort to identify these at risk children, provide them with any services they need, and keep them from engaging in criminal behavior in the future.⁴²

Alternatives to Incarceration

Prosecutors have also improved the criminal justice system by creating and collaborating on alternatives to incarceration. Over several decades, prosecutors have developed programs that intervene at a pre-disposition stage, and sometimes even before formal charges are filed, to re-route offenders and to identify and address the root causes of criminal behavior.⁴³ As explained below, the earliest of these programs focused on treating addicts who committed crimes to fuel their drug needs. More recently, prosecutors have cooperated with partners from all spheres of the criminal justice system to establish mental health courts and veterans' courts, which are designed to divert offenders from incarceration in favor of treatment and services.

Prosecutors involved in these specialized courts serve a very different function from their case-focused colleagues, working as part of a collaborative team focusing on the treatment of the defendant, as long as the risk to public safety is minimal. Thirty years ago, this collaboration fell far outside the purview of the prosecutor's responsibilities. Now prosecutors are addressing the needs

⁴² *Id.*

⁴³ See Melissa Labriola, *Research on Prosecutor-Led Pretrial Diversion Programs*, presented April 1, 2014 at *The Center for Evidence-Based Crime Policy at GMU and the Pretrial Justice Institute Present: Pretrial Justice: Research Evidence and Future Prospects*, https://www.youtube.com/watch?v=3T3accWbD_U; see also *No Entry: A National Survey of Criminal Justice Diversion Programs and Initiatives, Executive Summary*, CENTER FOR HEALTH AND JUSTICE AT TASC, (Dec. 2013), http://www2.centerforhealthandjustice.org/sites/www2.centerforhealthandjustice.org/files/publications/CHJ%20Diversion%20Report_ExecSumm.pdf (last visited Dec. 13, 2016); *Pretrial Diversion in the 21st Century: A National Survey of Pretrial Diversion Programs and Practices*, NATIONAL ASSOCIATION OF PRETRIAL SERVICES AGENCIES, 2009, available at <http://www.pacenterofexcellence.pitt.edu/documents/Pretrial%20Diversion%20in%20the%2021st%20Century.pdf>, (last visited Dec. 13, 2016). See also John L. Worrall, *Prosecutors in Problem-Solving Courts*, in *THE CHANGING ROLE OF THE AMERICAN PROSECUTOR*, (John L. Worrall & M. Elaine Nugent-Borakove, eds., 2008).

of veterans and people with mental illnesses or drug addictions who previously were marched through the criminal justice system and into jail.⁴⁴ In the past, jails and prisons were tasked with determining and administering “treatment.”⁴⁵ But, as prosecutors today focus heavily on strategies for crime prevention and recidivism reduction, specialized courts are a means of implementing those goals.

In drug courts, as with many alternative-to-incarceration programs, the prosecutor’s role is generally collaborative rather than adversarial, with an emphasis on recovery and productivity in society rather than punishment.⁴⁶ For offenders with substance abuse addictions, prosecutors have, for decades, been building programs that offer non-incarceratory treatment to foster rehabilitation as well as deterrence. For instance, the Drug Treatment Alternative to Prison Program (DTAP), established in Brooklyn in 1990 and now available to defendants throughout New York City, was the first prosecution-led residential drug treatment program in the country.⁴⁷ Having developed over time, these prosecutor-run programs are now widespread.⁴⁸ Around the same time that DTAP and

⁴⁴ See *People with Mental Illnesses Involved in the Criminal Justice System: Hearing Before the H. Subcomm. on Oversight and Investigations of the Energy and Commerce Comm.*, 113th Cong. (2014) (statement of J. Steve Leifman, Chair of Supreme Court of Fla. Task Force on Substance Abuse and Mental Health Issues in the Courts), <http://mentallillnesspolicy.org/imd/judgeleifmanpsychhospitaltestimony.pdf>.

⁴⁵ *Id.*

⁴⁶ See *The Role of the Prosecutor in Drug Courts*, STATE OF COLORADO JUDICIAL DEPARTMENT, https://www.courts.state.co.us/userfiles/file/Administration/Planning_and_Analysis/Problem%20Solving%20Courts/The%20Role%20of%20the%20Prosecutor%20in%20Drug%20Court.pdf (last visited Dec. 13, 2016).

⁴⁷ See *Program Profile: Drug Treatment Alternative to Prison (DTAP)*, NATIONAL INSTITUTE OF JUSTICE, at <https://www.crimesolutions.gov/ProgramDetails.aspx?ID=89> (last visited Dec. 13, 2016).

⁴⁸ *Cook County State’s Attorneys Office Deferred Prosecution Program*, COOK COUNTY STATE’S ATTORNEY’S OFFICE, available at <http://c.ymcdn.com/sites/www.nwsba.org/resource/resmgr/imported/Cook%20County%20States%20Attorneys%20Office%20Deferred%20Prosecution%20Program.pdf> (last visited Dec. 13, 2016); Bram Kranichfeld, *Pre-Arrestment Alternative Justice Programs in Vermont*, REPORT TO THE GENERAL ASSEMBLY, OCTOBER 1, 2014, located at <http://docplayer.net/2206472-Pre-arrestment-alternative-justice-programs-in-vermont.html> (last visited Dec. 13, 2016); *Maricopa County, Arizona’s Felony Pretrial Intervention Program: Felony Pretrial Intervention Program*, MARICOPA COUNTY ATTORNEY’S OFFICE, <http://www.maricopacountyattorney.org/prosecuting-criminals/felony-pretrial-intervention-program> (last

similar programs were developing, prosecutors were partnering with courts, the defense bar, and addiction treatment professionals to create specialized drug courts.⁴⁹

Mental health courts take a similar approach. The more than 300 mental health courts in the United States are an interdisciplinary endeavor.⁵⁰ With a singular goal of providing treatment and services to certain mentally ill offenders, mental health courts depend on a “problem-solving” team of prosecutors, defense attorneys, judges, law enforcement and correctional officers, mental health professionals and service providers.⁵¹ Miami-Dade County, Florida is home to one of the most cutting-edge mental health courts. The Eleventh Judicial Circuit Criminal Mental Health Project (CMHP), established in large part by Judge Steve Leifman with the cooperation of prosecutors, defense attorneys, mental health professionals, law enforcement and corrections, has both a pre-arrest component (where specially trained law enforcement officers respond to crises involving

visited Dec. 13, 2016); *Essex County Drug Diversion Program*, ESSEX DISTRICT ATTORNEY’S OFFICE, <http://www.mass.gov/essexda/prevention-and-intervention/school-safety/essex-county-drug-diversion-program.html> (last visited Dec. 13, 2016). For a collaborative D.A.-community not-for-profit program, see *The Choice is Yours*, JEVS HUMAN SERVICES, <https://jevshumanservices.org/job-readiness-career-services/the-choice-is-yours/> (last visited Dec. 13, 2016). In 2012, the Philadelphia D.A.’s office partnered with jevs HUMAN SERVICES, a non-profit offering various community assistance, and created The Choice is Yours (TCY), a highly successful diversion program for first time, non-violent felony offenders facing one to two year prison sentences. If the offender successfully completes the program, his criminal record can be expunged. TCY has received notice for its early success: as of 2013 it had a recidivism rate of only 5%. Laura Goldman, *The Choice is Yours, Philadelphia DA’s Program for Young Drug Dealers Succeeds With Minimal Recidivism*, HUFFPOST POLITICS, (Oct. 9, 2013), http://www.huffingtonpost.com/laura-goldman/the-choice-is-yours-phila_b_3732718.html.

⁴⁹ The first drug court was established in Miami-Dade County in 1989. *History, Justice Professionals Pursue a Vision*, NATIONAL ASSOCIATION OF DRUG COURT PROFESSIONALS, <http://www.nadcp.org/learn/what-are-drug-courts/drug-court-history>. For more information about drug courts, see David Mitchell, Ojmarrh Mitchell, & Doris Mackenzie, *A systematic review of drug court effects on recidivism*, 2 J. EXPERIMENTAL CRIMINOLOGY 459-487 (2006). See also Tammy Wescott, *The Proactive Prosecutor in Alternative Courts*, NATIONAL ASSOCIATION OF DRUG COURT PROFESSIONALS, <http://nadcp.org/sites/default/files/nadcp/Cybercafe/2013/handouts/C/C-20.pdf> (last visited Dec. 13, 2016).

⁵⁰ *Mental Health Courts*, Justice Center, THE COUNCIL OF STATE GOVERNMENTS: COLLABORATIVE APPROACHES TO PUBLIC SAFETY, <https://csgjusticecenter.org/mental-health-court-project> (last visited Dec. 13, 2016).

⁵¹ See e.g. *Mental Health Courts: A Primer for Policymakers and Practitioners*, JUSTICE CENTER, THE COUNCIL OF STATE GOVERNMENTS, <https://csgjusticecenter.org/wp-content/uploads/2012/12/mhc-primer.pdf> (last visited Dec. 13, 2016).

mentally ill people, de-escalate the situation, and provide access to services where appropriate in lieu of arrest) and a post-arrest component (where certain defendants charged with misdemeanors and low-level felonies are offered mental health treatment and services in lieu of incarceration).⁵²

In the typical model, prosecutors hold a screening function, determining which defendants and crimes are appropriate for diversion. They are also instrumental in designing the appropriate treatment plan, ensuring the protection of public safety and sometimes advocating for the victim's wishes as well.⁵³ In 2014, the Ocean County, New Jersey prosecutor's office founded the Mental Health Diversion Program using funds from the county as well as a grant from the Attorney General's Office.⁵⁴ With the increasing focus on mental health issues in the criminal justice system,

⁵² *Pre-Booking Diversion Crisis Intervention Team Policing (CIT)*, ELEVENTH JUDICIAL CIRCUIT DISTRICT OF FLORIDA, <https://www.jud11.flcourts.org/Pre-Booking-Diversion> (last visited Dec. 13, 2016); *People with Mental Illnesses Involved in the Criminal Justice System: Hearing Before the H. Subcomm. on Oversight and Investigations of the Energy and Commerce Comm., supra* note 45; *Post-Booking Diversion*, ELEVENTH JUDICIAL CIRCUIT DISTRICT OF FLORIDA, <https://www.jud11.flcourts.org/Post-Booking-Diversion> (last visited Dec. 13, 2016). *See also* John S. Goldkamp and Cheryl Irons-Guynn, *Emerging Judicial Strategies for the Mentally Ill in the Criminal Caseload: Mental Health Courts in Fort Lauderdale, Seattle, San Bernardino, and Anchorage*, BUREAU OF JUSTICE ASSISTANCES (April 2000), <https://www.ncjrs.gov/pdffiles1/bja/182504.pdf> (last visited Apr. 10, 2016).

⁵³ In Manhattan, the District Attorney's Office partnered with the Office of Court Administration and the defense bar to create the Manhattan Mental Health Court in 2011, with prosecutors playing a significant role in the approval and monitoring of each case. *District Attorney Vance, Chief Judge Lippman Announce Opening of Mental Health Court in Manhattan*, NEW YORK COUNTY DISTRICT ATTORNEY'S OFFICE (Mar. 16, 2011), <http://manhattanda.org/press-release/district-attorney-vance-chief-judge-lippman-announce-opening-mental-health-court-manha>. The ADAs in the Special Litigation Unit of the Manhattan DA's Office, who have specialized knowledge about mental health issues, staff the MMHC. Before each case is called, the prosecutor, the defense attorney, judge, case manager and resource coordinator meet in chambers to discuss eligibility, compliance, sanctions, and program advancement. The prosecutor also works with the defense attorney to draft a plea agreement, and recommends sanctions where the defendant has violated the agreement. *See, e.g.,* Erin J. Farley, *A Process Evaluation of the Manhattan Mental Health Court*, CENTER FOR COURT INNOVATION (Jan. 2015), <http://www.courtinnovation.org/sites/default/files/documents/MMHC%20Process%20Evaluation%20Final.pdf>.

⁵⁴ *Ocean County Prosecutor Marks Start of Mental Health Diversion Program*, OCEAN COUNTY PROSECUTOR'S OFFICE, (Sept. 23, 2014), <http://oceancountyprosecutor.org/ocean-county-prosecutor-marks-start-mental-health-diversion-program>.

and with support from federal, state, and local governments, these programs and the role of the prosecutor in shaping them continue to expand.⁵⁵

Veterans' courts are closely related to both mental health courts and drug courts, and the prosecutor plays a similar role, often serving more as a social worker than as a traditional prosecutor.⁵⁶ Prosecutors work collaboratively with social service providers to identify and recommend treatment and services for mental health, drug addiction, joblessness, homelessness and re-entry into society after combat.⁵⁷ For instance, in Dauphin County, Pennsylvania, a prosecutors' office with twenty-two lawyers, the deputy district attorneys screen potential veteran candidates and participate in regular hearings to assess the veteran's progress.⁵⁸ Likewise, in the much larger San Diego County District Attorney's Office, a selection committee evaluates potential candidates for the Veterans Court, requiring that there be a nexus between the criminal offense and the candidate's military-related mental health issue.⁵⁹ Although the above examples represent just a very few of the innovations, they illustrate how prosecutors are influencing alternatives to incarceration.

⁵⁵ *Justice and Mental Health Collaboration Program (JMHCIP)*, BUREAU OF JUSTICE ASSISTANCE, U.S. DEPARTMENT OF JUSTICE, https://www.bja.gov/ProgramDetails.aspx?Program_ID=66 (last visited Dec. 13, 2016).

⁵⁶ Spencer Michels, *In Veterans Courts, prosecutors become social workers for the accused*, PBS NEWS HOUR, (Feb. 24, 2015), <http://www.pbs.org/newshour/updates/surprise-prosecutors-social-workers-vets>.

⁵⁷ *Id.* See also *Veteran's Alternative to Incarceration Program*, ROCKLAND COUNTY DISTRICT ATTORNEY, <https://rocklandgov.com/departments/district-attorney/prevention-and-intervention/veterans-alternative-to-incarceration-program> (last visited Dec. 13, 2016).

⁵⁸ *Veterans' Court*, DAUPHIN COUNTY, PENNSYLVANIA, DISTRICT ATTORNEY, <http://www.dauphincounty.org/government/Publicly-Elected-Officials/District-Attorney/Pages/Veterans-Court.aspx> (last visited Dec. 13, 2016).

⁵⁹ *Veterans Court*, SAN DIEGO COUNTY DISTRICT ATTORNEY, <http://www.sdcda.org/prosecuting/veterans/veterans-court.html> (last visited Dec. 13, 2016).

“Clean Slate” Programs

Recently prosecutors’ offices have instituted programs, often collaborating with judges and defense attorneys, to expunge criminal records on low level offenses or to resolve outstanding warrants and summonses. Recognizing that there is a stigma associated with a criminal conviction, even for low level offenses, criminal record expungement programs can be a way to improve offenders’ chances of getting a job and moving on with their lives. With this goal in mind, the Sedgwick County District Attorney’s office (Wichita, Kansas) created “Clean Slate Day.”⁶⁰ Forty prosecutors, judges, and the local bar association partnered together for a one day program which provided legal advice and assistance, examined criminal histories and cases, and generated expungement petitions for offenders.⁶¹ In this short timeframe, the partnership identified 150 cases for expungement.⁶²

The Kings County District Attorney’s office in Brooklyn, New York has instituted a warrant forgiveness program titled “Begin Again.”⁶³ Their Begin Again program helped to resolve open warrants for approximately 2,396 people.⁶⁴ Similarly, the New York County District Attorney’s office, in collaboration with the Legal Aid Society, the police, the court system and a not-for-profit instituted “clean slate” programs with the goal of reducing open warrants and helping offenders avoid re-arrest.⁶⁵ In this program, the court expunged warrants for crimes such as disorderly

⁶⁰ *Clean Slate Day*, WICHITA BAR ASSOCIATION, <http://www.wichitabar.org/cleanslateday.php> (last visited Dec. 13, 2016).

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Begin Again Coming to Bushwick on June 11, 2016*, BROOKLYN DISTRICT ATTORNEY’S OFFICE, <http://brooklynda.org/begin-again> (last visited Dec. 13, 2016).

⁶⁴ *Id.*

⁶⁵ Gaby Del Valle, *Clear Your Outstanding Warrants at the DA’s “Clean Slate” Event*, NYULOCAL, (April 26, 2016), <http://nyulocal.com/city/2016/04/27/clear-your-outstanding-warrants-at-the-das-clean-slate-event>.

conduct and public consumption of alcohol and gave offenders an adjournment in contemplation of dismissal disposition, which results in a dismissal after six months if there are no further arrests.⁶⁶

Diversion for Juveniles

Closely related to the alternatives to incarceration for adults described above, prosecutors devote significant outreach efforts to supporting juveniles and reducing their involvement in crime. Recognizing that truancy is a risk factor for and a predictor of criminal activity and substance abuse and that truant children are more likely to be victims of criminal activity, prosecutors have, for decades, been working with school-related agencies to counsel, offer services and intervene where appropriate.⁶⁷ Prosecutors in even the smallest of offices have truancy-reduction initiatives; in the two-prosecutor office in Minnesota's Cottonwood County Attorney's Office, for example, the attorneys and staff partner with local school officials to send notifications, conduct mediations, and

⁶⁶ *Id.*

⁶⁷ In 1998, the former Brooklyn District Attorney, Charles Hynes, started TRACK (Truancy Reduction Alliance to Contact Kids), one of the first prosecutor-led truancy programs, where police bring truant students to one of seven centers. The parent/guardian is informed of the truancy, and when the parent/guardian comes to pick up the child, he or she is offered a meeting with a social worker and provided with other resources. The social worker then conducts a follow-up with school personnel. According to Hynes, the recidivism rate for truants in the TRACK program is in the single digits. The social worker at each TRACK Center makes appropriate referrals and stays in contact with the student, parents, and school. See Charles J. Hynes, *District Attorney, Brooklyn, New York*, CENTER FOR COURT INNOVATION, <http://www.courtinnovation.org/research/charles-j-hynes-district-attorney-brooklyn-new-york> (last visited Dec. 13, 2016). For a sampling of additional truancy programs run by prosecutors' offices, see *A Guide to Implementing the Abolish Chronic Truancy (ACT) Program*, DISTRICT ATTORNEY, COUNTY OF LOS ANGELES, available at http://www.educationcoordinatingcouncil.org/SATF_DOCS/SATF_Library/ACT_MANUAL_IN_PDF_FOR_2010-2011.PDF (In Los Angeles County, where the DA's office is the largest in the country, truant students and their parents meet with school officials and DA staff to identify the reasons for absence. If truancy persists, the family is referred to a School Attendance Review Team, a School Attendance Review Board, and ultimately to the DA's Office for mediation and prosecution.). See also George Simms, *Interagency Truancy Review Board*, OFFICE OF THE STATE'S ATTORNEY FOR MONTGOMERY COUNTY, MARYLAND, <http://www.montgomerycountymd.gov/sao/other/truancy.html> (last visited Dec. 13, 2016). (In Montgomery County, MD, an office of approximately 70 attorneys, the State's Attorney works with various county agencies to monitor truancy programs and to intervene and possibly prosecute if other services fail.)

participate in diversionary meetings for truant students and their parents or caregivers.⁶⁸ In another model implemented in 2006 by the Shelby County DA's Office in Tennessee, the Mentoring Based Truancy Reduction Program offers a mentor, who is trained by the DA's Office, to at-risk students and their parents through a contract with the DA's Office.⁶⁹ In Knox County, Tennessee, the District Attorney's Office recently rolled out a new initiative providing new bicycles and helmets for students from one elementary school who demonstrate perfect attendance during the 2015-2016 school year.⁷⁰

Juvenile-focused programs extend far past the truancy initiatives as well. In Washington, DC, for instance, the U.S. Attorney's Office holds an annual summit entitled "Breaking the Silence of Youth Violence" which, in 2015, educated students about their rights and responsibilities when interacting with law enforcement.⁷¹

Prosecutors have also been thinking outside the box to reduce the incarceration of juveniles. In Manhattan, for example, the District Attorney's Office is using cutting-edge technology to reform the traditional bail system for young defendants. Instead of requesting bail for certain 16 to 18 year-olds, the DA's Office monitors and tracks these defendants through GPS technology on

⁶⁸ *County Attorney Truancy Mediation Program*, COTTONWOOD COUNTY ATTORNEY, <http://www.co.cottonwood.mn.us/county-departments/county-attorney/county-attorney-truancy-mediation-program> (last visited Dec. 13, 2016).

⁶⁹ *Mentoring Based Truancy Reduction Program*, SHELBY COUNTY DISTRICT ATTORNEY, <http://scdag.com/preventingcrime/mentoring> (last visited Dec. 13, 2016); *see also Community Arbitration Program*, FLORIDA STATE'S ATTORNEY FOR THE 18TH CIRCUIT, <http://www.sa18.state.fl.us/page/community-arbitration.html> (last visited Dec. 13, 2016).

⁷⁰ *DA Announces Attendance Reward Program*, OFFICE OF THE DISTRICT ATTORNEY GENERAL KNOX COUNTY, www.knoxcounty.org/dag/feature/attendance.php (last visited Dec. 13, 2016).

⁷¹ *Youth Summit: Know Your Rights*, THE DISTRICT OF COLUMBIA YOUTH ADVISORY COUNCIL, <http://dcyac.dc.gov/event/youth-summit-know-your-rights> (last visited Dec. 13, 2016).

smartphones and electronic bracelets.⁷² If the defendants abide by the conditions of release, which might include attending school, work, or therapy, or maintaining a curfew, they will be considered for youthful offender adjudication or a non-jail sentence.⁷³

Several counties in Maryland have established “teen courts,” where teenagers who commit low-level crimes and who have minimal or no criminal history are diverted to courts where their peers play an important role in meting out justice.⁷⁴ In Montgomery County, for instance, first time juvenile offenders have an option to plead guilty and allow a jury of teenage volunteers and an adult judge determine the appropriate disposition.⁷⁵ Frederick County has a Juvenile Entry Diversion Initiative (JEDI) that aims to “prevent youth from becoming negatively involved in the juvenile justice system.”⁷⁶ The JEDI program moves low-level juvenile offenders and children in need of services into community-based programs, rather than the Department of Juvenile Services.

In East Baton Rouge Parish, Louisiana, the District Attorney’s Office is at the forefront of another innovative program designed to reduce youth violent crime, called the Baton Rouge Area Violence Elimination Project (“BRAVE”).⁷⁷ BRAVE is modeled after Operation Ceasefire, a program established in Boston in the mid-1990s that successfully reduced youth gun violence in

⁷² James C. McKinley Jr., *New Monitoring Program Aims to Keep Youths Out of Rikers Island*, N.Y. TIMES, (Aug. 14, 2015), at A20.

⁷³ *Id.*

⁷⁴ See e.g. *MTDCA Members*, MARYLAND TEEN COURT ASSOCIATION: PROMOTING JUSTICE FOR MARYLAND YOUTH, <http://www.mdtdca.org/mdtdca-members> (last visited Dec. 13, 2016); *Teen Court*, OFFICE OF THE STATE’S ATTORNEY FOR MONTGOMERY COUNTY, MARYLAND, <http://www.montgomerycountymd.gov/sao/other/teencourt.html> (last visited Dec. 13, 2016); *Teen Court: Youth Outreach*, CHARLES COUNTY SHERIFF’S OFFICE, <http://www.ccsso.us/teen-court> (last visited Dec. 13, 2016).

⁷⁵ *Teen Court*, *supra* note 76.

⁷⁶ *Juvenile Entry Diversion Initiative*, FREDERICK COUNTY, MARYLAND GOVERNMENT, <https://frederickcountymd.gov/4812/Juvenile-Entry-Diversion-Initiative> (last visited Dec. 13, 2016).

⁷⁷ Sergeant Herbert “Tweety” Anny, *Baton Rouge Area Violence Elimination: Working to Reduce Violence in the Capital Region*, THE CATALYST, May–Aug. 2012, at 19-20, *available at* http://www.brac.org/docs/catalyst/catalyst_may-aug2012.pdf.

Boston and other Northeastern cities.⁷⁸ Under BRAVE, prosecutors and other team members identify youths who are at the heart of the violence, and invite them to “call-ins” where the youths are offered services to divert them from violence.⁷⁹ Implemented in early 2013, the BRAVE project has already been evaluated in-depth; the two-year evaluation report concluded that the project has been, so far, successful in its goal to reduce violent juvenile crime.⁸⁰

The District Attorney in Rockland County, NY established the Partnership for Safe Youth (PSY), a center providing wrap-around services for at-risk youth and their families. PSY first worked with juveniles referred by their schools, but is expanding to accept referrals from the criminal justice system. By placing representatives from schools, juvenile justice services, social services, mental health services, and other key agencies all under one roof, PSY enhances the “effectiveness and productivity of services.”⁸¹

The Boulder County District Attorney is one of four Colorado offices participating in a state pilot program to help keep youth out of the court system by resolving their cases through restorative

⁷⁸ *Operation Ceasefire: Boston Gun Project*, HARVARD KENNEDY SCHOOL, MALCOLM WEINER CENTER FOR SOCIAL POLICY, <http://www.hks.harvard.edu/programs/criminaljustice/research-publications/gangs-guns-urban-violence/operation-ceasefire-boston-gun-project> (last visited Dec. 13, 2016).

⁷⁹ Herbert Anny, *supra* note 79. (This model is discussed in further detail in the **Crime Strategies Unit** section *infra*.)

⁸⁰ Guin, C. C., Barthelemy, J., Rizzuto, T., Thomas-Smith, J., Winchester, E., Maberry, S., Zhu, H., & Reed, A. *Baton Rouge Area Violence Elimination: 2-Year Evaluation Report*, BATON ROUGE: LOUISIANA STATE UNIVERSITY (2015), available at http://www.bravebtr.com/uploads/2/0/0/2/20025187/2015_bravereport_web-2.pdf.

⁸¹ *Rockland County District Attorney Zugibe, County Executive Day and Boces Superintendent Officially Open Center for Safe and Healthy Youth*, ROCKLAND COUNTY, (Jun. 5, 2015), <http://rocklandgov.com/departments/county-executive/press-releases/2015-press-releases/county-officials-launch-the-rockland-county-partnership-for-safe/>. See also *Second Chance*, 2007 – 2015, <https://www.secondchancearlington.org>. (The county of Arlington has created a program that involves the collaboration of family, school administrators, police, juvenile court system and prosecutors to help middle-school and high-school students who are caught for the first time using drugs or alcohol. In this program, youth are referred to a three-day abuse prevention and early intervention program providing education about drugs and alcohol and to help them learn to handle peer pressure and to create action plans to make healthy choices. Upon successful completion of this program, the charges are dismissed. Youth not formally arrested may participate as well with parental consent; and parents may join the workshops to learn how to communicate with their children over these issues.)

justice. Restorative justice is a unique program that focuses not on punishment, but on having the youth make amends directly to the people they affected by often coming face-to-face with the victims they have committed crimes against.⁸² Restorative justice programs can be impactful for both victims and the offenders; it can be empowering and healing for victims to ask “why me?”; and it forces the juvenile offender to see the direct consequences of his actions.⁸³ It is believed to be a strong deterrent for future crimes.⁸⁴

Re-Entry Programs

Of course, alternatives to incarceration and diversion programs are only appropriate for certain offenders, and many others are prosecuted traditionally and, when convicted, sentenced to prison. But the modern prosecutor’s role does not end there. Concern for reducing recidivism has led prosecutors to establish and lead re-entry programs, where recently released prisoners are provided with certain supports in order to help them abide by the law and remain self-sufficient.⁸⁵ In San Diego, for instance, the District Attorney successfully advocated for a bill codifying a prisoner re-entry program.⁸⁶ There, sentenced defendants work with the Department of Probation to develop a “Life Plan” which sets forth goals for the incarceration period as well as re-entry into the community.⁸⁷ Similarly, the King County Prosecutor in Washington has pushed for a bill authorizing a Certificate for Restoration of Opportunity, which would function “as a receipt that proves a person has fulfilled the conditions of a sentence or is in substantial compliance with paying

⁸² Michell Byars, *Face to face with victims: Boulder County to expand restorative justice*, DAILYCAMERA, (July 19, 2014), http://www.dailycamera.com/boulder-county-news/ci_26176550/face-face-victims-boulder-county-expand-restorative-justice.

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ See, e.g., *Prisoner Reentry Program*, SAN DIEGO COUNTY DISTRICT ATTORNEY, <http://www.sdca.org/office/sb618/> (last visited Dec. 13, 2016).

⁸⁶ *Id.*

⁸⁷ *Id.*

off fines” with the intent to help released prisoners avoid collateral consequences of their imprisonment.⁸⁸ Prosecutor-assisted re-entry programs are a prime example of the evolving role of prosecutors over time: whereas these programs have been traditionally managed by corrections departments and social services agencies, prosecutors around the country, and even in the federal justice system, are now creating and contributing to these programs. The U.S. Attorney’s Office for the Middle District of Pennsylvania, for example, created an attorney position in 2015 to handle their “Smart on Crime” initiative, which was dedicated to working towards reducing recidivism through crime prevention and re-entry programs.⁸⁹ This U.S. Attorney’s Office supports one of the first federal court re-entry programs, called “CARE.”⁹⁰ “CARE,” or Court-Assisted Reentry Program, is a program “designed to aid the rehabilitation and re-integration of persons recently released into the community under federal supervised release and who face a moderate to high-risk of recidivism.”⁹¹

Neighborhood Courts

With neighborhood courts, sometimes called community courts, prosecutors are stretching the boundaries of traditional prosecution even further. These courts handle low-level crimes and, unlike standard criminal courts, use community-service and treatment for the offender as the primary forms of sanction. One of the earliest of these courts, the Redhook Community Justice Center in Brooklyn, New York, was developed in 2000 through a partnership of non-profit agencies,

⁸⁸ Dan Satterberg & Brady Walkinshaw, *Inmates re-entering society should not face lifetime barriers to work*, THE SEATTLE TIMES, (Feb. 16, 2015), http://old.seattletimes.com/html/opinion/2025695938_satterbergopedreform17xml.html.

⁸⁹ *Smart on Crime, Reentry, CARE and CARES*, THE UNITED STATES ATTORNEY’S OFFICE MIDDLE DISTRICT OF PENNSYLVANIA, <http://www.justice.gov/usao-mdpa/smartoncrime> (last visited Dec. 13, 2016).

⁹⁰ *Id.*

⁹¹ *Id.*

the court system and prosecutors, and prosecutors work collaboratively with community members to achieve restorative justice.⁹²

In California, prosecutors have taken the neighborhood court model to the next level: in Yolo County and in San Francisco, where prosecutors established neighborhood courts, the traditional adversarial role is minimal. In 2013, the mid-sized Yolo County District Attorney's Office created a Neighborhood Court where prosecutors coordinate, train, and provide support for community volunteers or "panelists" to meet with low-level offenders to address the harms that their crime has caused to the victim and the community.⁹³ San Francisco has a similar model.⁹⁴ The victim is sometimes involved in this restorative process but the traditional advocates from the adversarial system are not: the defendant is not represented by counsel, and the prosecutor generally plays no role in the creation of the individualized plan.⁹⁵ Thus, although DA's Offices provide

⁹² The Redhook Community Justice Center was the country's first multi-jurisdictional community court, handling Family Court, Housing Court and Criminal Court matters. It was developed by the Center for Court Innovation, in close collaboration with the Brooklyn District Attorney's Office and the Office of Court Administration. A group of prosecutors with specific knowledge of the neighborhood are assigned to work at this "problem-solving" center, prosecuting and sentencing some defendants in the traditional manner but more frequently, recommending a sentence that incorporates the rehabilitative services that the Center provides, such as treatment for substance abuse, anger management classes, GED classes, and youth groups. *Red Hook Community Justice Center Bureau*, THE BROOKLYN DISTRICT ATTORNEY'S OFFICE, <http://www.brooklynda.org/red-hook-community-court/> (last visited Dec. 13, 2016).

⁹³ *Yolo County Neighborhood Court*, YOLO DISTRICT ATTORNEY, <http://yoloda.org/community-outreach-programs/neighborhood-court> (last visited Dec. 13, 2016). According to documents provided by Jonathan Raven, Chief Deputy District Attorney of Yolo County, an offender who has been deemed eligible for Neighborhood Court receives a letter from the DA's Office, explaining the process, guaranteeing confidentiality, and confirming that "the District Attorney's Office agrees not to use any potentially incriminating statements against you in a criminal court proceeding derived from this case if you later opt out of the program or fail the program." *Yolo County Neighborhood Court: Letter to Participant*, YOLO COUNTY DISTRICT ATTORNEY (on file with author).

⁹⁴ Max Aldax, *San Francisco's Neighborhood Court saves money and makes offenders contemplate their crimes*, THE SAN FRANCISCO EXAMINER, (Jan. 27, 2013), <http://archives.sfexaminer.com/sanfrancisco/san-franciscos-neighborhood-court-system-saves-money-and-makes-offenders-contemplate-their-crimes/Content?oid=2319937>.

⁹⁵ *Yolo County Receives \$1.9 Million Grant for Neighborhood Court Program*, YOLO COUNTY DISTRICT ATTORNEY, <http://yoloda.org/yolo-county-receives-1-9-million-grant-for-neighborhood-court-program> (last visited Dec. 13, 2016); Email from Jonathan Raven, Chief Deputy District Attorney of Yolo County, to Laura Greenberg-Chao, (Aug. 3, 2015) (on file with author).

funding and support for these county courts, they are designed to allow prosecutors to devote time and resources to more serious criminal matters.⁹⁶

PROGRAMS WITHIN THE PROSECUTOR'S OFFICE

Just as District Attorneys have long been creating initiatives designed to involve the community in crime prevention and alternatives to incarceration, they have also been creating initiatives within their offices designed to improve their justice-seeking function. For years, for example, prosecutors have been providing victim/witness services such as counseling and advocacy.⁹⁷ These programs assist victims and witnesses during all stages of a criminal prosecution, with services including crisis intervention and emergency services, orientation to the criminal justice system, notification about the status of a case, and support to prevent witness intimidation before, during and after a court appearance.⁹⁸ Almost all, if not all, prosecutors' offices offer either in-house

⁹⁶ Although Yolo County's Neighborhood Court has not been fully evaluated, early and on-going research emphasizes the benefits, suggesting that "conferences between victim and offender [lead to] the highest rates of victim satisfaction [and] offender accountability, and the lowest levels of recidivism." *Neighborhood Court 2014 Year-End Report*, YOLO COUNTY DISTRICT ATTORNEY'S OFFICE 6, <http://yoloda.org/wp-content/uploads/2014/01/2014-YEAR-END-REPORT.pdf> (last visited Dec. 13, 2016). From a financial perspective, as well, such courts appear to provide tangible advantages. In San Francisco County, for example, the District Attorney noted that in 2013, the Neighborhood Court was "80 percent cheaper than the traditional court system" and the fines that offenders paid went into a community restitution fund which was used for local safety projects. Max Aldax, *supra* note 96.

⁹⁷ Victim/witness services vary greatly from office to office. In some states, statutes mandate the services that prosecutors must provide to victims throughout the pendency of the case. *See, e.g.*, MASS. GEN. LAWS ch. 258B, § 3 (2012). Other offices contract with outside agencies to provide support for victims and witnesses. Manhattan established one of the first witness aid units (WASU) in 1975, first with the sole focus of obtaining corroborating affidavits from victims and witnesses, and later adding counseling and social services. Telephone interview with WASU staff member (Sept. 21, 2015). WASU has an office within the DA's Office in downtown Manhattan as well as an uptown office to serve victims and witnesses all over the city. *Witness Services Aid Services Unit*, NEW YORK COUNTY DISTRICT ATTORNEY'S OFFICE, <http://manhattanda.org/witness-aid-services-unit> (last visited Dec. 13, 2016).

⁹⁸ *See, e.g.*, *Victim Services*, SAN BERNARDINO COUNTY DISTRICT ATTORNEY, <http://www.sbcountyda.org/HelpingVictims/ServicesForVictimsAndWitnesses.aspx> (last visited Dec. 13, 2016); *Victim Witness Services*, WESTMORELAND COUNTY PENNSYLVANIA, <http://www.co.westmoreland.pa.us/index.aspx?NID=305> (last visited Dec. 13, 2016); *Victim Advocates*,

services or referrals to centers providing victim and witness services such as the ones described above.⁹⁹ Even smaller offices such as Warren County, New York, with only six assistant district attorneys, has had a Victim Assistance Program since 1997.¹⁰⁰

This section presents a selection of several other programs, recognizing that it would be impossible to document the thousands of internal initiatives that prosecutors have developed to address their local priorities. The programs described below – crime strategies units, conviction integrity units, ethics training, studies to better understand and reduce implicit racial bias, and Best Practices committees – illustrate just some of the creative and cutting-edge ideas that are emerging from within the prosecutor’s office. And once again, these initiatives demonstrate that the prosecutor’s role has evolved in comprehensive, far-reaching, and meaningful ways.

Crime Strategies Units

Intelligence-driven prosecution is an initiative that demonstrates how profoundly the responsibilities of today’s prosecutor have developed. Traditionally, case-focused prosecution has been relatively self-contained, in that prosecutors are primarily reactive to an arrest and focus on the investigation of that particular case. In contrast, crimes strategies units (“CSUs”) across the country have significantly broadened the prosecutor’s traditional focus to include analyzing community concerns about crime, identifying crime trends and the people who are the crime-drivers and coordinating with other prosecutors and law enforcement partners. This broader knowledge is used to prioritize prosecution efforts and to develop targeted solutions, addressing the underlying

TULSA COUNTY DISTRICT ATTORNEY, <http://da.tulsacounty.org/Advocates.aspx> (last visited Dec. 13, 2016).

⁹⁹ See **Resources for Children and Families** *infra*.

¹⁰⁰ *Victim Assistance Program*, WARREN COUNTY DISTRICT ATTORNEY’S OFFICE, <http://www.warrencountyny.gov/da/vap> (last visited Dec.13, 2016).

problems that lead to criminality.¹⁰¹ Crime strategies units in various forms and with varying priorities are being created around the country in large and mid-sized offices.¹⁰² Two CSU models are presented here.

In Manhattan's ground-breaking Crime Strategies Unit, created in 2010, a small team of senior prosecutors employ statistics and technology to "gather and deploy intelligence on Manhattan's crime patterns and serious offenders," thus amassing a wealth of information available to the rest of the office to inform about "the importance of a particular defendant in wider criminal activity" so as to make sure that those criminals do not "slip through the cracks."¹⁰³ In its own version of the "zone" prosecution described above, each of Manhattan's CSU prosecutors oversees a geographic area in the city to become experts on the particular impact of specific crimes and criminals on a community, and to create meaningful partnerships with police, other law enforcement groups, local community groups, and individuals.¹⁰⁴ Working closely with the non-lawyer advocates in the Community Partnerships Unit, the CSU prosecutors communicate the information that they have learned to line assistants who are handling the day-to-day cases. The Unit has developed and

¹⁰¹ See David O'Keefe, *Innovations in Prosecution and Research: Intelligence-Driven Prosecution*, TRANSLATIONAL CRIMINOLOGY, 6 (Spring 2013), available at <http://cebcp.org/wp-content/TCmagazine/TC4-Spring2013>.

¹⁰² See, e.g., Emily Lane, *Baton Rouge Law Enforcement Adopting NYC's 'Moneyball' Approach to Crime*, TIMES-PICAYUNE, (Sept. 1, 2015), http://www.nola.com/news/baton-rouge/index.ssf/2015/09/baton_rouge_moneyball_crime_hi.html. (In East Baton Rouge, two assistant district attorneys, three DA investigators, and one Assistant U.S. Attorney are assigned to work with the police crime strategies unit and data analysts.). See also Rob Nagle, *SF District Attorney Takes Crime Reduction into Neighborhoods*, THE EXAMINER, (Jan. 18, 2015), <http://archives.sfexaminer.com/sanfrancisco/sf-district-attorney-takes-crime-reduction-into-neighborhoods/Content?oid=2917009>. (In San Francisco, the Crime Strategies Unit consists of prosecutors within the police stations working with data analysts using predictive analysis and other tools to analyze crime trends.)

¹⁰³ Heather McDonald, *Prosecution Gets Smart*, CITY JOURNAL, (Summer 2014), http://www.city-journal.org/2014/24_3_intelligence-driven-crime-fighting.html. See also David O'Keefe, *supra* note 103; Chip Brown, *Cy Vance Jr.'s 'Moneyball' Approach to Crime*, N.Y. TIMES MAGAZINE, (Dec. 7, 2014), at MM22; *Crime Strategies Unit Uses 'Moneyball' Crime Fighting*, ST. LOUIS POST-DISPATCH, (June 29, 2015), <http://www.govtech.com/public-safety/St-Louis-Mo-Crime-Strategies-Unit-Uses-Moneyball-Crime-Fighting.html>.

¹⁰⁴ See David O'Keefe, *supra* note 103 at 7.

adopted countless technological tools for gathering and disseminating information.¹⁰⁵ Making such a wealth of information accessible to line assistants strengthens individual cases while highlighting connections between crimes, criminals, and locations, thus allowing for broad-reaching prosecutions that reduce crime and protect communities.¹⁰⁶

The St. Louis Circuit Attorney's Office, which is significantly smaller than Manhattan with approximately sixty attorneys, represents another model for CSUs: the attorneys gather information like their Manhattan counterparts, using the information to strengthen cases as well as for "focused deterrence" crime prevention.¹⁰⁷ The theory behind focused deterrence is that, even in large cities, the vast majority of violent crime is driven by a very small portion of the population. The St. Louis Circuit Attorney's CSU, which was created to combat a massive wave of gun violence, works to target individuals who are involved in crime but who are also good messengers to groups at the epicenter of criminal activity, as being part of a group "that drives the violence" around the city.¹⁰⁸ The Circuit Attorney's Community Partnership Bureau and a team of law enforcement partners then host a meeting with the targets where the various stakeholders and members of the community explain that violence must stop.¹⁰⁹ Although the targets are offered services and other alternatives to violence, they are also informed that they will face severe consequences if they decide to remain a

¹⁰⁵ For example, the Manhattan CSU uses an arrest alert system so that prosecutors have an opportunity to debrief a defendant before charges are filed and provide crucial information for bail purposes, and CSU has also created internal shared databases to provide information about defendants, their associates, and particular locations. *Id.* at 7.

¹⁰⁶ See Heather McDonald, *supra* note 105.

¹⁰⁷ See *Crime Strategies Unit Uses 'Moneyball' Crime Fighting*, *supra* note 105. The Kansas City CSU also follows the "focused deterrence" model. *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ See *Crime Strategies Unit Uses 'Moneyball' Crime Fighting*, *supra* note 105. The St. Louis CSU was also created in response to a 2014 state constitutional amendment expanding gun rights, which courts have since interpreted as authorizing convicted felons (except for convictions of a narrow list of violent felonies) to carry guns. See *Felons in Missouri Can Legally Carry Guns, Thanks to GOP's Poorly-Written Amendment 5*, PROGRESS MISSOURI, (Mar. 2, 2015), <http://www.progressmissouri.org/felons-missouri-can-legally-carry-guns-thanks-gops-poorly-written-amendment-5>.

part of a gang or a part of the violence: in addition to facing maximum sentence recommendations for their crimes, “probation may be revoked, major and minor crimes will be prosecuted and so will minor ordinance violations, building code violations and civil issues like failure to pay child support.”¹¹⁰ The goal is that the targets will transmit the information back to other members of their criminal enterprise, with the hope that they decide to relinquish violence.¹¹¹

Conviction Integrity Units

Since as early as 2000, with the acknowledgment that erroneous convictions have occurred, prosecutors have been “taking affirmative steps to safeguard and improve the integrity of their cases” by creating internal Conviction Integrity Units.¹¹² These units differ from office to office, but they generally have a dual function: to review claims of actual innocence by convicted defendants, and to reduce the risk of wrongful convictions by establishing reforms and creating guidelines within the prosecutor’s office. Prosecutors in these units not only investigate and confront claims of erroneous convictions, but they also learn from the past and incorporate the most effective investigation and prosecution techniques to move their offices forward towards justice. After all, the most reliable way to reduce wrongful convictions is to conduct a proper investigation and prosecution in the first instance.

Conviction Integrity Units (CIUs) are a growing trend in large and mid-sized offices that have the resources to support a unit. There are CIUs across the country, including in Santa Clara, CA (the first unit of its kind, established in 2000), Wayne County, MI, Oneida County, NY and

¹¹⁰ See *Crime Strategies Unit Uses ‘Moneyball’ Crime Fighting*, *supra* note 105.

¹¹¹ *Id.*

¹¹² Mike Ware, *Dallas County Conviction Integrity Unit and the Importance of Getting It Right the First Time*, 56 N.Y.L. SCH. L. REV. 1033 (2012); *Establishing Conviction Integrity Programs in Prosecutors’ Offices*, CENTER ON THE ADMINISTRATION OF CRIMINAL LAW 13 (2011), http://www.law.nyu.edu/sites/default/files/upload_documents/Establishing_Conviction_Integrity_Programs_FinalReport_ecm_pro_073583.pdf.

Multnomah County, OR.¹¹³ Typically, one or more prosecutors assigned to the unit are in charge of reviewing or delegating the review of claims of actual innocence. The CIU in St. Clare, IL uses polygraphs and voice-stress analyzers to assess these claims.¹¹⁴

Conviction Integrity prosecutors may also set office policy regarding discovery and Brady material, proper identification procedures, best practices for the use of forensic evidence, videotaping of interrogations, and other key prosecutorial issues.¹¹⁵ At least one Conviction Integrity Unit has created a list of considerations that help prosecutors identify or prevent possible weaknesses in their cases.¹¹⁶

Although it is certainly easier to establish CIUs in larger offices that have more personnel and money, some smaller offices have adapted the typical model to better fit their budgets. For instance, in 2013, the State's Attorney in Lake County, Illinois, which has seventy-five attorneys, has established a case review panel, designating former prosecutors and retired judges as "special state's attorneys" working independently from the prosecutor's office and on a volunteer basis to re-investigate claims of actual innocence and create protocols for ensuring justice in future

¹¹³ David Greenwald, *Santa Clara DA's Conviction Integrity Unit Draws Praise From Reform Advocates*, THE PEOPLE'S VANGUARD OF DAVIS, (Mar. 12, 2013), <http://www.davisvanguard.org/2013/03/santa-clara-das-conviction-integrity-unit-draws-praise-from-reform-advocates>. The non-exhaustive list of CIUs also includes Harris County, TX; New York County, NY; Denver, CO; Dallas, TX; Brooklyn, NY; Lake County, IL; Baltimore, MD; Philadelphia, PA; Cuyahoga County, OH; New Orleans, LA; Washington, DA; Pima County, AZ; Cook County, IL, and Los Angeles, CA. See also *Conviction Integrity Units: Vanguard of Criminal Justice Reform*, CENTER FOR PROSECUTOR INTEGRITY, 4-5 (2014), <http://www.prosecutorintegrity.org/wp-content/uploads/2014/12/Conviction-Integrity-Units.pdf>; *About the Cook County State's Attorney's Office*, COOK COUNTY STATE'S ATTORNEY'S OFFICE, http://www.statesattorney.org/about_the_office.html (last visited Dec. 13, 2016); Marisa Gerber, *L.A. County D.A. Jackie Lacey to unveil details on wrongful conviction unit*, L.A. TIMES, (Sept. 21, 2015), <http://www.latimes.com/local/lanow/la-me-ln-conviction-integrity-unit-20150629-story.html>.

¹¹⁴ George Pawlaczyk and Beth Hundsdorfer, *'Actual Innocence' Program in St. Clair County clears nine defendants*, BELLEVILLE NEWS-DEMOCRAT (Jan. 16, 2016), <http://www.bnd.com/news/local/article55051595.html>.

¹¹⁵ *Establishing Conviction Integrity Programs in Prosecutors' Offices*, *supra* note 114 at 4-7.

¹¹⁶ *Id.*

investigations and prosecutions.¹¹⁷ In Yolo County, CA, where there are approximately thirty deputy district attorneys, the chief of the unit reviews all claims of actual innocence, and, if there is a “strong indicia” of innocence, he assigns the case to one or more deputies for re-investigation.¹¹⁸ In New York State, prosecutors from larger offices help their smaller counterparts: the Committee on the Fair and Ethical Administration of Justice of the District Attorneys Association has created a mutual assistance subcommittee consisting of experienced prosecutors from throughout the state to assist prosecutors in smaller counties in the re-investigation of a credible claim of actual innocence.¹¹⁹

Ethics Training

Closely tied to the forward-looking reforms that Conviction Integrity Units promote, many District Attorneys have, for some time now, put significant emphasis on ensuring that their prosecutors are aware of their ethical obligations. In New York, the Ethics and Best Practices subcommittees of the District Attorney’s Association created a statewide ethics handbook, which has been used since 2011 to supplement existing ethics training around the state.¹²⁰ The handbook, “The Right Thing: Ethical Guidelines for Prosecutors,” summarizes the ethical, constitutional, common law, and statutory rules that serve as the baseline for the prosecutor’s conduct, and briefly addresses political activity by prosecutors.¹²¹ This guide has inspired similar guides, such as in

¹¹⁷ Bob Susnjara, *Lake County wrongful-conviction review panel sworn in*, DAILY HERALD, (Feb. 22, 2013), <http://www.dailyherald.com/article/20130222/news/702229905>.

¹¹⁸ *Conviction Integrity Unit, Departments*, YOLO COUNTY DISTRICT ATTORNEY, <http://yoloda.org/the-das-office> (last visited Dec. 13, 2016).

¹¹⁹ See Kristine Hamann, *Getting It Right: Practical Approaches for 21st Century Prosecution*, N.Y.L.J., (Sept. 2013), at n. 5; *Memorandum* issued by the DISTRICT ATTORNEYS ASSOCIATION OF THE STATE OF NEW YORK, establishing Committee for Fair and Ethical Administration of Justice 2-3 (Aug. 2009) (on file with author).

¹²⁰ See generally, *The Right Thing: Ethical Guidelines for Prosecutors*, ETHICS AND BEST PRACTICES SUBCOMMITTEES OF THE DAASNY COMMITTEE ON THE FAIR AND ETHICAL ADMINISTRATION OF JUSTICE, (3d ed. 2015), available at <http://upc.utah.gov/materials/2014fall/EthicsBook.pdf>.

¹²¹ *Id.*

Minnesota, North Carolina, and Washington State.¹²² Based on the Manhattan model, the New York Best Practices Committee¹²³ also created a set of “case review questions”, a guide designed to help line assistants throughout the state to assess whether there is any evidence that would indicate that the defendant did not commit the crime.¹²⁴ Further, in New York, on a quarterly basis, the New York Prosecutor’s Training Institute emails to the state’s prosecutors a bulletin providing updates of recent court decisions involving ethical issues.¹²⁵

A training team at the Hennepin County Attorney’s Office in Minnesota has recently established new ethics training for its prosecutors and support staff in that office. Using their own employees, the team created video clips of situations where prosecutors had to confront ethical issues ranging from witnesses with mental health problems to lying police officers. During the training, the prosecutors and support staff voted on the most appropriate response to each situation and then debriefed about the various answers.¹²⁶

Although there are some slight variations in local ethical rules, a prosecutor’s basic ethical obligations are consistent from jurisdiction to jurisdiction, allowing for the creation of a nationally

¹²² See generally, *Professionalism and Ethics: A North Carolina Prosecutor’s Guide*, NORTH CAROLINA CONFERENCE OF DISTRICT ATTORNEYS WITH ASSISTANCE FROM THE CHIEF JUSTICE’S COMMISSION ON PROFESSIONALISM (on file with author); *Ethical Guidelines and Expectations*, KING COUNTY PROSECUTING ATTORNEY’S OFFICE (Feb. 2015) (on file with author). Arizona prosecutors have also created a similar handbook, which includes a checklist for prosecutors to avoid misconduct during charging, plea negotiations, discovery, pretrial, and trial. See generally, Elizabeth Ortiz, *Prosecutorial Ethics*, ARIZONA PROSECUTING ATTORNEYS’ ADVISORY COUNCIL (Mar. 22, 2013), <http://www.maricopacountyattorney.org/pdfs/MCAO-Ethics-Handout-March-2013.pdf>.

¹²³ See **Best Practices Committees** *infra*. See also Kristine Hamann and Rebecca Rader Brown, *Best Practices for Prosecutors, A Nationwide Movement*, CRIMINAL JUSTICE MAGAZINE, AMERICAN BAR ASSOCIATION, Vol. 31, No. 1, (Spring 2016), at 28.

¹²⁴ *Case Review Questions*, NEW YORK BEST PRACTICES COMMITTEE (on file with author). The Case Review Questions are derived from the list of considerations that Manhattan’s CIU developed.

¹²⁵ Kristine Hamann, *supra* note 123.

¹²⁶ *Memorandum* from Michael O. Freeman, Hennepin County Attorney, on ETHICS Education Ideas – Focus on Brady/Giglio Issues, for NDAA Metropolitan Committee Members & NDAA Board Members (July, 2015) (on file with author). (Hennepin County’s training was inspired by the DAASNY handbook, “The Right Thing.”; see *The Right Thing: Ethical Guidelines for Prosecutors*, *supra* note 124).

circulated ethics training.¹²⁷ Judge Steve Wilson of Warren County, Kentucky, and Thomas Lockridge, the Commonwealth's Attorney for the 13th Judicial Circuit in Kentucky, have produced a trilogy of videos on prosecutorial ethics, which present common ethical problems, identify the ethical rules that govern prosecutors and suggest ethical responses.¹²⁸ The training has been shown and discussed at prosecutors' conferences across the country.¹²⁹

Identifying Implicit Bias

Over the past several years, the VERA Institute of Justice has partnered with several DA's offices including Milwaukee, Wisconsin, Mecklenburg, North Carolina, and, and most recently, Manhattan, New York to identify and study instances of prosecutorial discretion that reflect implicit biases.¹³⁰ Although the findings of these studies were varied, the prosecutors nonetheless responded meaningfully. For instance, among other initiatives, the Milwaukee DA established pre-arraignment diversion and deferred prosecution, the Mecklenburg DA implemented a more rigorous screening process for drug crimes and the Manhattan DA recently created a diversity committee, developed an

¹²⁷ See generally, NATIONAL DISTRICT ATTORNEYS ASSOCIATION, NATIONAL PROSECUTION STANDARDS (3d ed. 2009),

<http://www.ndaajustice.org/pdf/NDAA%20NPS%203rd%20Ed.%20w%20Revised%20Commentary.pdf>.

¹²⁸ See, e.g., *Ethics: The Movie III "The Cycle," Idaho Prosecuting Attorneys' Association 2013 Summer Conference Agenda*, IDAHO PROSECUTING ATTORNEYS ASSOCIATION, <http://www.ipaa-prosecutors.org/resources/SUMMERCONFERENCE2013.pdf> (last visited Dec. 13, 2016). (PowerPoint training on file with author.)

¹²⁹ In 2007, the first movie in the trilogy was shown at a prosecutors' conference in Oklahoma. *2007 DAC/ODAA Annual Summer Conference*, OKLAHOMA DISTRICT ATTORNEY COUNCIL & OKLAHOMA DISTRICT ATTORNEYS ASSOCIATION (2007), <http://www.ok.gov/dac/documents/Registration%20Brochure%20-%20Email%20Format.pdf>. In 2009, the movie was shown at a Kentucky prosecutors' conference. *KPC 2009 Program*, KENTUCKY PROSECUTORS CONFERENCE (2009),

<https://dspace.kdla.ky.gov/jspui/bitstream/handle/10602/14215/Kentucky%20Prosecutors%20Conference%202009.pdf>. In 2014, the movie was shown at a continuing legal education conference for the Kansas County and District Attorneys Association. Steve Kearney, *KCDAA 2014 Year in Review*, 11 Kan. Prosecutor, 1, 6 (2014).

¹³⁰ See *Race and Prosecution in Manhattan*, VERA INSTITUTE OF JUSTICE (Jul. 2014), <http://www.vera.org/sites/default/files/resources/downloads/race-and-prosecution-manhattan-summary.pdf>.

implicit bias training, and advocated for the decriminalization of certain low level marijuana charges.¹³¹ Smaller offices, such as the Yolo County District Attorneys Office, have conducted implicit bias training for their prosecutors. That training was taught in conjunction with the Museum for Tolerance.¹³²

Best Practices Committees

Finally, as prosecutors continue to move their practice forward, there is no better means of improvement than collaboration about the many new and complex issues faced by the criminal justice system. Statewide prosecutor-led Best Practices Committees have formed in twenty-two states over the past few years, with more under consideration.¹³³ They are made up of head prosecutors, senior prosecutors and prosecution coordinators, from all regions of the state, and provide a process for this collaborative policy work. Prosecutors' Center for Excellence, which is focused on improving the criminal justice system and analyzing emerging issues, supports these

¹³¹ See *id.*; Jeffrey Toobin, *The Milwaukee Experiment*, NEW YORKER, (May 11, 2015), <http://www.newyorker.com/magazine/2015/05/11/the-milwaukee-experiment> (the Milwaukee District Attorney's Office has also changed its treatment of low-level crimes to address racial disparity); *A Prosecutor's Guide for Advancing Racial Equality*, VERA INSTITUTE OF JUSTICE, (Nov. 2014), <http://www.vera.org/sites/default/files/resources/downloads/prosecutors-advancing-racial-equity.pdf>; telephone interview with Nitin Savur, Executive Assistant District Attorney for Strategic Initiatives and Deputy Chief of the Trial Division in Charge of Criminal Court, New York County District Attorney's Office (Sept. 11, 2015); email from Nitin Savur to Laura Greenberg-Chao, (Sept. 14, 2015) (on file with author). Executive ADA Savur noted that the study tended to show that the severity of the charge, prior record, and offense type were the most significant factors in determining various decisions made as a case progressed, but went on to explain that despite the mixed findings, his office has also identified other initiatives which work to remedy racial disparity: creating specialized courts, building the conviction integrity unit, working with NYPD to encourage summonses rather than arrests for violations (low-level offenses), and offering supervised release for misdemeanors. *Id.*

¹³² Caroline Staudenhaus, *The Yolo County District Attorney's Office Conducts Implicit Bias Training*, THE CALIFORNIA AGGIE (April 21, 2016), <https://theaggie.org/2016/04/21/yolo-county-district-attorney-office-conducts-implicit-bias-training/>.

¹³³ Arizona, California, Colorado, Delaware, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Maryland, Michigan, Minnesota, Missouri, New York, North Carolina, Pennsylvania, South Carolina, Tennessee, Utah, Virginia, and Washington have established Best Practices Committees, although some committees use different names. *Best Practices Committees*, PROSECUTORS' CENTER FOR EXCELLENCE, <http://pceinc.org/committees> (last visited Dec. 13, 2016).

committees with technical assistance and substantive information.¹³⁴ At meetings held several times annually, the Best Practices Committee members discuss core issues that face prosecutors, such as advances in forensic evidence, erroneous convictions, improvements to eye-witness identification procedures, recording custodial statements, ethics, and digital evidence.¹³⁵ The Committee meetings also address current topics that include investigative practices for police fatalities, preventing witness intimidation, engaging the community and police worn cameras.¹³⁶ When new practices or reforms are suggested, the committee representatives bring the ideas back to their offices and statewide associations to be evaluated in greater detail, and where possible, committee members work together to form a cohesive statewide policy.¹³⁷

For instance, through the New York Best Practices Committee, prosecutors spearheaded state-wide identification procedures and protocols for video recording interrogations that were adopted by the state's police departments in 2010.¹³⁸ The Colorado Best Practices Committee has issued "white papers" regarding body-worn cameras and recording of interrogations that have served as the basis for training of police and other law enforcement members.¹³⁹ The Colorado Committee also collaborated with the Innocence Project to pass legislation governing identification

¹³⁴ *About Us*, PROSECUTORS' CENTER FOR EXCELLENCE, <http://pceinc.org/about-us> (last visited Dec. 13, 2016). There are several other national organizations designed to support prosecutors in various ways, including the Association of Prosecuting Attorneys, the National District Attorneys Association and the National Association of Prosecution Coordinators. See, e.g., *About-*, ASSOCIATION OF PROSECUTING ATTORNEYS, *supra* note 6; *History of NDAA*, *supra* note 6; THE NATIONAL ASSOCIATION OF PROSECUTION COORDINATORS, www.napc.us (last visited Dec. 13, 2016).

¹³⁵ Kristine Hamann and Rebecca Rader Brown, *Best Practices for Prosecutors, A Nationwide Movement*, CRIMINAL JUSTICE MAGAZINE, AMERICAN BAR ASSOCIATION, Vol. 31, No. 1, (Spring 2016).

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ Kristine Hamann, *Police, District Attorneys Unveil Statewide Identification Procedures*, NEW YORK LAW JOURNAL, (Dec. 14 2010)

¹³⁹ See, e.g., *Body-Worn Cameras: A Report for Law Enforcement*, COLORADO BEST PRACTICES COMMITTEE FOR PROSECUTORS (2015) available at <http://pceinc.org/wp-content/uploads/2015/07/Colorado-Link-2.pdf>; see also *Professionalism and Ethics*, *supra* note 126; *Use of Body-Worn Cameras By Law Enforcement: Considerations, Issues, and Concerns*, WASHINGTON ASSOCIATION OF PROSECUTING ATTORNEYS BEST PRACTICES COMMITTEE (Jun. 29, 2015), available at <http://pceinc.org/wp-content/uploads/2015/07/Washington-Link-1.pdf>.

procedures.¹⁴⁰ In North Carolina, prosecutors created several guides including an ethics manual, a guide for handling post-trial relief motions, an open-file discovery training, and a white paper on body cameras.¹⁴¹ The California District Attorney Association (CDA) Foundation hosted a “National Body Cam Technology & Policy Summit and Expo” in February 2016. This two-and-a-half day training provided information for “policy makers and leadership to develop coherent, current, and sensible policies related to technology being made available to law enforcement today.”¹⁴²

Not only do Best Practices Committees bring together prosecutors from within a state, but they also provide for the sharing of information between states. Since late 2014, eight Regional Best Practices Meetings have been convened in various parts of the country for prosecutors from thirty

¹⁴⁰ *Innocence Project Lauds Colorado’s Enactment of Eyewitness ID Reform*, THE INNOCENCE PROJECT (Apr. 17, 2015), <http://www.innocenceproject.org/innocence-project-lauds-colorados-enactment-of-eyewitness-id-reform/>.

¹⁴¹ Email from Jessica Macari, North Carolina Best Practices Committee, to Laura Greenberg-Chao (Aug. 28, 2015) (on file with author).

¹⁴² *Media Advisory*, CDA FOUNDATION, <https://www.cdaa.org/wp-content/uploads/CDAABodyCamSummitPressAdvisory.pdf> (last visited Dec. 13, 2016). As there are too many committees to profile in this article, the text and this note provide only a sampling of the innovative work of these committees. For example, Missouri established its Best Practices Committee in 2013, creating specialized subcommittees to address forensic science, eyewitness identification, jailhouse informants, recorded interrogations, and the death penalty. *Missouri Prosecutors Pursue Best Practices for Criminal Justice*, MISSOURI ASSOCIATION OF PROSECUTING ATTORNEYS, (Sept. 5, 2013), <http://www.koamtv.com/story/23350330/missouri-prosecutors-pursue-best-practices-for-criminal-justice>. In Tennessee, the District Attorneys General Conference’s Justice and Professionalism Committee created a DVD training on discovery issues for prosecutors throughout the state. *District Attorneys Focus on Emerging Criminal Justice Issues*, D. MICHAEL DUNAVANT, DISTRICT ATTORNEY GENERAL, 25TH JUDICIAL DISTRICT, (June 9, 2015), <http://www.chattanooga.com/2015/6/9/302062/District-Attorneys-Focus-On-Emerging.aspx>. In Virginia, the Committee on Justice and Professionalism has discussed policy body cameras and looked “candidly and critically” at the way prosecutors do their jobs. Frank Green Richmond, *Commonwealth’s attorneys band for ‘best practices’ committee*, ROANOKE TIMES (Apr. 12, 2015), http://www.roanoke.com/news/politics/commonwealth-s-attorneys-band-for-best-practices-committee/article_46c2c02c-8168-552f-be52-429c927f64ed.html. Delaware, Pennsylvania, and Kansas have similar committees designed to improve the practice of prosecution and preserve integrity in the justice system. Wayne White, *Kansas prosecutors convene statewide committee on best practices*, OSAGE COUNTY NEWS, (July 23, 2015) <http://www.osagecountyonline.com/archives/17196>; *Biden’s Office Forms “Best Practices Committee” to Guide Police, Prosecutors*, DELAWARE DEPARTMENT OF JUSTICE, (Oct. 28, 2014) (on file with author); *PDA Launches Best Practices Committee*, PENNSYLVANIA DISTRICT ATTORNEYS ASSOCIATION, (Oct. 20, 2014), <http://www.pdaa.org/pdaa-launches-best-practices-committee/>.

states that either had a committee or were considering one.¹⁴³ The National Best Practices Meeting that took place in February 2016 included senior prosecutors from twenty-two states.¹⁴⁴ The theme of this meeting was the evolving role of the prosecutor and prosecutors shared information about their many innovative programs. The dissemination of work product has proven to be crucial, allowing prosecutors to learn from how their colleagues in other states are analyzing critical issues. As the collaboration grows, prosecutors in one state are benefiting from the work of the committee in another state.¹⁴⁵ Best Practices Committees expose prosecutors in offices of all sizes and all communities to new ideas, innovative solutions, and ways that they can benefit the criminal justice system as a whole.

CONCLUSION

If there is one conclusion to be drawn from this study of various prosecutorial initiatives, it is this: the prosecutor's responsibilities are expanding and evolving faster than ever. Despite all of this progress, however, it is clear that many communities do not think prosecutors are doing enough. Prosecutors must be aware of these perceptions and strive to develop even better ways to work effectively with their communities in order to promote trust in the criminal justice system.

¹⁴³ See *National Meetings*, PROSECUTORS' CENTER FOR EXCELLENCE, <http://pceinc.org/events-and-meetings/category/national-meetings> (last visited Dec. 13, 2016). (This includes a comprehensive list of national Best Practices meetings.) See also *Prosecutors from 15 States Gather in Washington DC for "Best Practices for Justice" Summit*, NATIONAL DISTRICT ATTORNEYS ASSOCIATION, (Apr. 15, 2015) (on file with author); *Best Practices Summit Draws Prosecutors from 15 States to Phoenix*, MARICOPA COUNTY ATTORNEY, (Mar. 4, 2015), <http://www.maricopacountyattorney.org/newsroom/news-releases/2015/2015-03-04-Best-Practices-Summit-Draws-Prosecutors-from-15-States-to-Phoenix.html>.

¹⁴⁴ *Prosecutors' Center for Excellence Leads National Meeting of Statewide Best Practices Committees*, PROSECUTORS' CENTER FOR EXCELLENCE, <http://pceinc.org/prosecutors-center-for-excellence-leads-national-meeting-of-best-practices-committees/> (last visited Dec. 13, 2016).

¹⁴⁵ See *Body-Worn Cameras: Concerns and Considerations*, NORTH CAROLINA CONFERENCE OF DISTRICT ATTORNEYS FOR THE NORTH CAROLINA BEST PRACTICES COMMITTEE (2015), <http://www.ncdistrictattorney.org/newsroom/Body-Worn-Cameras.pdf> (citing the Colorado report on body-worn cameras).

Even as this article ends, new initiatives emerge. Prosecutors today are engaging in truly transformative innovations, and the list of initiatives profiled in this article is by no means exhaustive. Prosecutors are leaders in the reform of the criminal justice system, implementing remarkable improvements in prosecution techniques from within their offices and creating diverse and widespread programs that benefit their communities. Even the smallest offices with the fewest resources are creatively adapting these initiatives to fit their means.

Although the prosecutor's core mission will always be case-focused, the responsibilities of modern prosecutors have expanded deeply into the realms of crime prevention, rehabilitation of offenders, and community engagement. New ideas and new programs abound on the prosecutorial horizon. Prosecutors from around the country who are embracing this broader vision are enhancing public safety and significantly benefiting the men, women and children in the communities that they serve.