



# Delaware's Prosecutors - Innovative Programs -

## National Prosecutors' Consortium

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# The Evolving Role of the Prosecutor

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Over the last forty years, there has been a dramatic transformation and expansion of prosecutors' mission, to not only vigorously prosecute criminal cases, but also to engage in crime prevention, problem solving and community partnerships. Prosecutors' fundamental goal is to protect the community and ensure justice when enforcing the law. Traditionally, a prosecutor's role was a limited and relatively passive one - to evaluate and prosecute arrests made by the police.<sup>1</sup> That role has expanded and evolved significantly. The shift is driven by the need for more complex solutions that not only seek positive outcomes for victims, but also strive for long-term solutions for preventing crime and assisting those who are entangled in the criminal justice system.

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 community relationships and to build trust in the criminal justice system.



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

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## The National Prosecutors' Consortium

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The National Prosecutors' Consortium (NPC) project is designed to collect information on innovative programs employed by prosecutor offices, to assist prosecutors in developing and deploy-

ing new programs, and to expand their research capabilities. The main areas of focus are the prevention of violent crime, community engagement, and encouraging victim/witness cooperation.

Many of the nation's prosecutors relish the opportunities presented by their expanded roles in the criminal justice system and have adopted innovative programs. However, the nature of their new initiatives is impacted by the size and resources of the organization. A large office with plentiful resources can implement multiple forward-thinking initiatives that impact a large segment of their population. Conversely, a smaller jurisdiction may only have the capacity to develop a smaller, yet still meaningful initiative.

Innovative programs described in this paper are newly developed initiatives undertaken by an office in keeping with its unique resources and the needs of its community. Ideas for new programs are freely shared amongst prosecutors and can nevertheless be innovative when they are introduced, implemented, and customized to suit the needs of a particular office. For instance, a program that would be considered innovative in a smaller office, may be more common-place in a larger office. We seek to highlight those offices that are embracing their new role by working within their capacity to bring effective and proactive programs to their communities.

As part of the NPC project, a prosecutor survey was administered during 2019 at the county level across the United States on a state-by-state basis. The survey captures baseline information about prosecutor offices and collects information about the various evolving and non-traditional aspects of a prosecutor's office, such as alternatives to incarceration, preventing violent crime, community outreach, victim/witness support, and treatment programs.



## Overview of Delaware Prosecutor Programs

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Delaware prosecutor offices range in size and in the types of communities that they serve. The available resources and staff vary between the offices, as does the needs of their communities. The prosecutors are appointed by the Attorney General of Delaware.

Out of three total counties, all of the prosecutors in Delaware participated in the NPC survey. The survey demonstrates that the responding Delaware prosecutors participate in a wide variety of programs and initiatives. These programs include Drug courts and Veterans' courts, Drug Treatment, Anger Management, Victim Assistance, and Co-located Child Abuse programs.

The survey found that 100% of Delaware’s prosecutors engage in problem solving courts or other programs that offer alternatives to incarceration. All three offices reported participating in Drug courts, Veterans’ courts, and Mental Health courts. The Kent and New Castle offices reported participating in Alcohol/ Driving Sobriety courts, and the Sussex office reported participating in Domestic Violence courts. All three offices offered Victim Assistance, Victim Services without Arrest, Witness Assistance, and Victim/ Witness Relocation Services. The Sussex and Kent offices additionally offered Drug Treatment, Anger Management, and Mental Health Services.

Community programs that prosecutors either run or participate in are also common, with all three offices implementing a variety of programs. The Sussex County office reported participating in Community Engagement, Co-located Domestic Violence, Co-located Child Abuse, and Truancy programs. The New Castle County office reported participating in Community Engagement and Co-located Child Abuse programs. The Kent County office reported participating in Truancy programs.

Solomon, S. E., Uchida, C. D., Connor, C., Swatt, M. L., Revier, L., Hock, S., Quigley, A. M., & Barrera, V. (2019). National Prosecutors’ Consortium Survey Highlights: Delaware. Justice & Security Strategies, Inc.

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## Innovative Programs - Examples

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### New Castle County

Population: 556,419

Number of Prosecutors: 72 full-time prosecutors

### Kent County

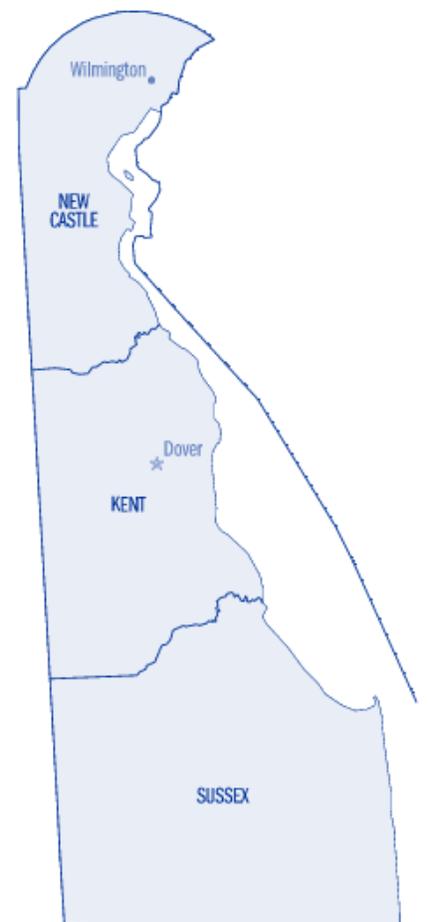
Population: 176,445

Number of Prosecutors: 17 full-time prosecutors

### Sussex (Wilmington) County

Population: 224,214

Number of Prosecutors: 21 full-time prosecutors, 2 part-time prosecutors



To demonstrate the variety of innovative programs initiated in Delaware, all three of the state's county offices are highlighted: New Castle, the largest county with over half a million residents; Sussex, located on the south side of the state with over 200,000 residents; and Kent, the smallest county with just over 175,000 residents located between Sussex and New Castle.

Because the prosecutorial arm of Delaware's criminal justice system is structured differently than other state prosecutor offices, a brief explanation is provided for additional context. The entity responsible for the prosecution of criminal cases throughout the state from misdemeanors to murders is the Delaware Criminal Division. The Delaware Attorney General leads the Criminal Division, with offices located in each one of Delaware's three counties. In each county, the Attorney General appoints a County Prosecutor who reports back to the Attorney General through the State Prosecutor. As a result of this unique setup, the Attorney General initiates many innovations and programs in Delaware and each program applies to all three county prosecutors' offices. As such, all innovations will be discussed together rather than by individual county office.

### **Criminal Justice Reform Policy Changes**

At the direction of Attorney General Kathleen Jennings in February 2019, the Delaware Criminal Division is making significant internal policy changes to emphasize judicial discretion, increase diversion for lower-level offenses, refrain from charging juveniles as adults, reduce collateral consequences associated with criminal records, and guide an overall shift in focus toward more violent crime. The changes are presumptive guidelines, and prosecutors will have the flexibility to seek exceptions to policies when the facts and circumstances of an individual case warrant the deviation.

The key provisions include<sup>3</sup>:

- Support for pretrial practices that deemphasize cash bail for routine misdemeanors
- Guidance to avoid unjust "stacking" of minimum mandatory sentences and to reduce requests for the courts to declare a defendant a habitual offender in order to increase sentences, especially with non-violent crimes
- Policies that aim to address the opioid epidemic by relying on mental health and drug treatment needs before prison sentences
- Emphasis on diversion and alternatives to prosecution for several categories of low-level offenses, including simple possession of marijuana and prostitution
- Consideration of alternatives to prison that limit collateral consequences while accounting for public safety, such as house arrest
- Emphasis on judicial discretion in sentencing, shorter sentencing recommendations, probation in lieu of some prison sentences, and recommending judges limit probation to one year in most scenarios

- Opposition to the issuance of warrants and driving license revocation for failure to pay fines and fees when the accused is without the ability to pay
- Consideration of collateral consequences for undocumented victims and witnesses
- Juvenile justice provisions that encourage extended Family Court jurisdiction and discourage trying children as adults except when necessary
- Support for expungements for crimes that are now legal, and for nonviolent charges in which a *nolle prosequi* (a decision not to pursue charges) has been entered on the basis of insufficient evidence
- Support for pardons for isolated, non-violent crimes when the applicant has demonstrated sufficient rehabilitation

These policies make important progress toward fairness in the criminal justice system and place emphasis on mental health and addiction issues.

3. For the full memo on the new policies, see:

<https://news.delaware.gov/files/2019/02/Memo-Internal-Policy-Changes-2.15.pdf>

### Community Engagement Unit (CEU)

Attorney General Jennings has also turned the Department's Crime Strategies Unit into a Community Engagement Unit (CEU) focused on supporting re-entry efforts, building trust in the criminal justice system, and working proactively and collaboratively with communities to reduce crime. In addition to integrating innovative approaches to resolving cases – including recommending to trial prosecutors specific reentry-based supports and programs that focus on substance abuse and mental health treatment, as well as workforce development programming – CEU is spearheading a number of initiatives with a goal of standardizing them statewide. Among these initiatives are:

- **What's Next:** A first-ever forum that provides support for families who have a loved one returning to the community after serving a prison sentence. The forum is comprised of two parts: first, a panel that will speak to attendees about the types of issues that recently-released individuals and their families encounter as that individual embarks on his/her re-entry journey, and second, various agencies that will set up resource tables that family members can visit after the panel discussion.

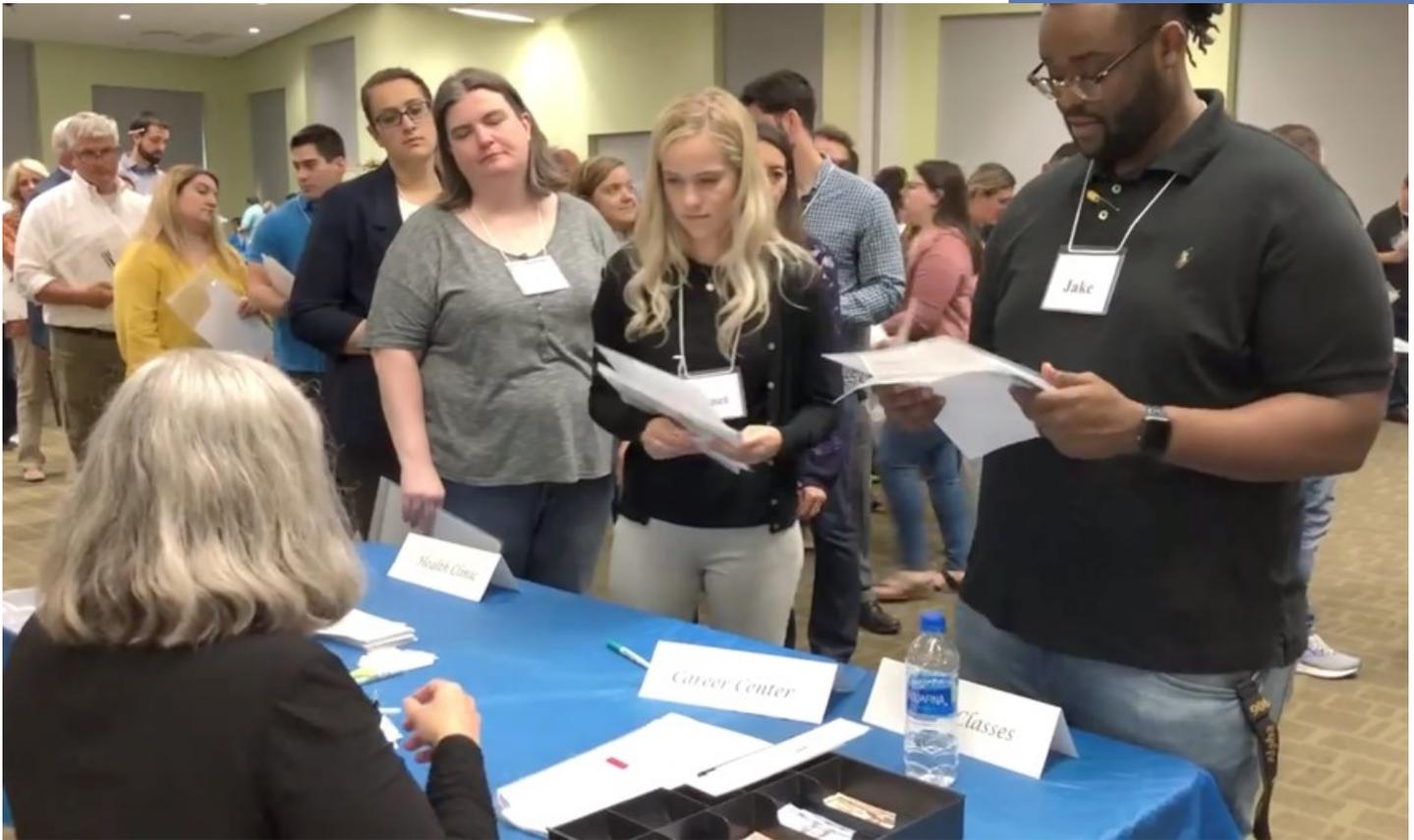


DOJ's Community Engagement Specialist Corie Priest engages with an attendee of a "What's Next" panel.

Photo Courtesy of: Chris Both

- **Neighborhood Empowerment Walks:** A series of walks in the City of Wilmington. These walks will include personnel from the Department of Justice, Wilmington Police Department, the Delaware Department of Health and Human Services, and other providers with an immediate goal of providing community members with access to resources and building trust between the community and law enforcement. These walks complement a series of visits to area neighborhood association and civic association meetings by the Community Engagement Unit.
- **Re-entry Simulation:** The Community Engagement Unit played an integral role in the Re-entry Simulation that the Criminal Division participated in at the end of May 2019. The simulation was designed to give criminal prosecutors the perspective of a person re-entering society after serving a prison sentence. The simulation highlighted the barriers and obstacles faced by those making the transition.

- Numerous mentoring, volunteering, and youth outreach initiatives, including Big Brothers Big Sisters and local non-profits that give children free access to basketball programs.



Deputy Attorneys General attend a re-entry simulation organized by the Delaware Department of Justice and the U.S. Attorney's Office.

Attorney General Jennings has also worked work with legislators, community advocates, and law enforcement to change Delaware's criminal laws to reinforce the initiatives started in her office and to advance fairness in the criminal justice system, restore judicial discretion, and reduce the collateral consequences that make it harder for people to rebuild their lives after completing a prison sentence. Out of 19 total proposals, 11 have passed with another six months of legislative session remaining in 2020. By way of example, some of these bills rewrite Delaware's drug code to reduce unintentional racial disparities; give sentencing judges greater discretion to impose multiple sentences concurrently, rather than consecutively; and expand the pool of former offenders eligible for automatic or discretionary expungements of their criminal records.