



# National Prosecutors' Consortium

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November 2019

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# Acknowledgements

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The National Prosecutors' Consortium (NPC) is a collaboration between Prosecutors' Center for Excellence and Justice & Security Strategies funded by the Office of Justice Programs of the U.S. Department of Justice. This report was prepared by Kristine Hamann and Sarah Solano Geisler of Prosecutors' Center for Excellence. Special thanks to District Attorney David Soares, former President of the District Attorneys Association of New York State, and Morgan Bitton, Executive Director of the District Attorneys Association of New York State for their outstanding support and guidance with this project. Thanks also to District Attorneys Eric Gonzales, Tony Jordan, David Soares, Patrick Swanson, and Cyrus Vance for contributing to this report.

The National Prosecutor Consortium project was supported by Award No. 2015-DP-BX-KOO4 awarded to Justice & Security Strategies, Inc. by the Bureau of Justice Assistance, Office of Justice Programs, U.S. Department of Justice. The opinions, findings, and conclusions or recommendations expressed in this paper are those of the authors and do not necessarily reflect those of the Department of Justice.

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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 New York Prosecutor Programs

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New York prosecutor offices range in size and in the types of communities that they serve. Some serve in large bustling cities like Manhattan and Brooklyn and others work in suburban districts or rural areas. The available resources and staff vary greatly between the offices, as does the needs of their communities.

Out of 62 prosecutor offices, 42 (68%) of the prosecutors in New York participated in the NPC survey. The survey demonstrates that the responding New York prosecutors participate in a wide variety of programs and initiatives. These programs include Drug courts, Domestic Violence courts, Community Service, Victim assistance, and Co-located Child Abuse reduction programs.<sup>2</sup>

The survey found that all of New York’s responding prosecutors engage in problem solving courts or other programs that offer alternatives to incarceration. Most frequently, Community service (83%), drug treatment (80%), anger management (73%), mental health services (71%), and training/education programs (63%) were offered. Many offices (78%) also offered Victim Assistance and Victim Services without Arrest (63%).

Community programs that prosecutors either run or participate in are also common. New York prosecutors are involved with Co-located Child Abuse reduction (76%), Community Engagement (56%), and Youth Education (54%) programs. Some offices were also involved with Violence Reduction (46%), Co-located Domestic Violence reduction (46%), and Adult Education (39%) programs.

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

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## Innovative Programs - Examples

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To demonstrate the variety of innovative programs initiated in New York, five offices are highlighted: Manhattan and Brooklyn, two of the largest offices with over one and a half and two and a half million residents, respectively; Albany, a mid-size office with approximately 300,000 residents; Chautauqua County, a smaller office with almost 130,000 residents; and Washington County, the smallest office of the group with just over 60,000 residents.

Manhattan implements a Crime Strategies Unit that uses technology and data analytics to identify prolific crime drivers and more effectively deploy resources and engage with affected communities. Manhattan has also taken important steps to better understand and address implicit bias through various initiatives. The Brooklyn program is a bail reform strategy that encourages prosecutors to seek non-traditional and non-justice system options first and foremost for low level offenders to reduce incarceration. Albany implements a Clean Slate program that provides both expungement and re-entry services to former offenders. Chautauqua takes a proactive approach to school safety and attack prevention, leveraging a team of experts to identify and properly respond/provide services to students of concern. Washington County implements drug and domestic violence diversion to better address the underlying needs of offenders and reduce recidivism.

# Manhattan (New York County)

## District Attorney's Office

Population: 1.63 million

Number of Prosecutors: 525 full-time prosecutors

### Crime Strategies Unit

In 2010, District Attorney Cyrus Vance created the first-ever Crime Strategies Unit (CSU) that spearheaded a proactive, data-driven approach to crime fighting through a prosecutor's office. Additionally, to combat implicit bias, the Manhattan District Attorney's Office designated a Chief Diversity Officer and adjusted its prosecution strategy in order to address racial disparities that came to light from a Vera study of the Office. Under the Manhattan District Attorney's Office intelligence-driven prosecution model, prosecutors harness, analyze, and share intelligence in order to craft proactive strategies that address specific crime trends and target priority offenders.



In the CSU, Manhattan is divided into five geographic areas, and a senior prosecutor is assigned to each area to work with local residents to analyze trends and solve problems. These prosecutors partner with investigators, community liaisons, and intelligence analysts to identify opportunities to reduce and prevent crime by improving the timely and accurate sharing of criminal intelligence gathered not only by the District Attorney's Office, but from other law enforcement agencies as well.



The focus on data analytics was at the forefront of the CSU from its inception, but when the CSU first launched, it was extremely difficult to comprehensively identify chronic offenders who perpetrated crime throughout New York City. Recognizing the need to connect disparate data sources to obtain a fuller picture of each high priority offender, the CSU created a comprehensive, searchable database. This evolved into what is known today as the “Arrest Alert System”. When someone in the database is picked up on a minor parole violation or arrested in any part of New York City, CSU prosecutors, police and parole officers are immediately notified. The CSU prosecutor can contact the local prosecutor to whom the case is assigned, and the offender in question can be appropriately prosecuted without slipping through the cracks. The notifications can be customized to alert prosecutors to a particular priority offender or defendant, and the data in the database can be sorted and filtered based on crime type and location.



DA Cyrus Vance addressing prosecutors and investigators from around the country at the Manhattan District Attorney’s Intelligence Driven Prosecution Conference.

In addition to Arrest Alert, the CSU has created or modified other data systems in furtherance of their mission to remove the city’s biggest crime drivers. One such system, the “Crime Prevention System”, focuses on violent crimes and contains useful and previously disparate information on defendants such as physical characteristics, friends, social media, jailhouse phone calls, and more. The CSU leverages social media in particular to the fullest extent in the fight to reduce gang violence and other crimes.



The CSU takes Crime Prevention System and Arrest Alert data and turns it into actionable results, leading to increased public safety. One of the most significant manifestations of this has been the dismantling of 17 notorious gangs and counting, which resulted in a significant drop in homicides in the areas dominated by the gangs. New York City continues to see record low crime levels after CSU implementation. Violence rates remain low in the CSU's targeted areas, and shootings have dramatically declined.

Due to the success of the program, the District Attorney's office hosts regular symposiums around the country on Intelligence-Driven Prosecution for prosecutors who are interested in learning more about the office's crime-fighting strategies. Since CSU's inception, 20 jurisdictions throughout the nation have worked with the District Attorney's office to replicate the approach, with new "Crime Strategies Units" established in: Albuquerque, NM; Annapolis, MD; Baltimore, MD; Baton Rouge, LA; Boston, MA; The Bronx, NY; Brooklyn, NY; Chicago, IL; Cleveland, OH; Delaware; Jersey City, NJ; Flint, MI, Philadelphia, PA; Phoenix, AZ; Rockford, IL; Seattle, WA; San Francisco, CA; Santa Clara, CA; Louis, MN; Staten Island, NY; and Tucson, AZ.

## **Implicit Bias**

The Manhattan District Attorney's Office has taken important steps to better understand and address implicit bias. In 2012, they partnered with the Vera Institute of Justice (Vera) to examine 220,000 criminal cases disposed of in 2010 and 2011, in order to evaluate discretionary decisions and racial disparities in case processing. The study compared similar black, Latino, Asian, and white defendants, accounting for factors such as defense counsel, seriousness of charges, prior criminal record, and offense type.

Vera found that the best predictors of case outcomes were indeed factors that directly related to the legal aspects of a case—seriousness of the charge, defendant's prior record, and offense type. However, Vera's research also indicated that race remained a factor in case outcomes. Black and Latino defendants were more likely to be detained pre-trial, particularly for misdemeanor "person crimes" (such as assaults); receive a custodial plea offer; and receive more punitive sentences. There was also a higher likelihood that these defendants would have their cases dismissed, particularly for misdemeanor drug offenses.

In order to address the disparities that came to light from the study, District Attorney Vance began exercising prosecutorial discretion to end the criminal prosecution of low-level offenses that do not compromise public safety, and as such, put an end to the perpetuation of racial disparities underlying those arrests. He also began directly confronting implicit biases through training and leadership, as well as developing alternatives to cash bail and pretrial detention.

In terms of training and leadership specifically, the District Attorney's Office worked towards promoting an organizational structure that embraces diversity by designating a Chief Diversity Officer in 2014. She has since spearheaded and overseen numerous legal and non-legal staff trainings, leveraging respected outside experts to develop best practices tailored to office culture generally, and to the specific work of legal and non-legal staff. Trainings have included focus groups in order to identify implicit bias and areas where it can be interrupted, mandatory two-part trainings from a Harvard psychology professor on recognizing and interrupting implicit bias, and cultural competency training also conducted by an expert in the field.

The Manhattan District Attorney's Office is the first prosecutor's office in the United States – state or federal – to institute mandatory, comprehensive implicit bias training for every assistant district attorney and staff member.



# Brooklyn (Kings County) District Attorney's Office

Population: 2.58 million

Number of Prosecutors: 492 full-time prosecutors

## Bail Reform

The Brooklyn District Attorney's Office recognizes that prison can be appropriate for dangerous individuals who engage in predatory behavior or pose a threat to public safety, but continues to strive to find better ways to hold offenders accountable. Having a criminal conviction can create barriers to education and employment—the very things that can be most helpful in reducing someone's likelihood of continued criminality. In response, Brooklyn Assistant District Attorneys (ADA) in every case first seek out non-conviction, non-jail resolutions, and are encouraged to think through all available options before reaching a determination that a conviction or incarceration is necessary.



Another decision point for ADAs is whether to ask a judge to set bail on a case at the first court date. In 2017 District Attorney Eric Gonzalez changed the Office's bail policy in misdemeanor cases. He began requiring ADAs to state their reasons for asking for bail instead of consenting to a person's release. Previously, the default was to ask for bail and ADAs would have to justify not asking for it. Due to this simple change, the number of people being held in on bail pre-trial in Brooklyn has declined 58%, with a 43% decline in 2018 alone.



The Office saw another opportunity for a better approach in cases of drug possession, given the devastating effects of the drug epidemic. In New York City, someone dies of a drug overdose every six hours. Traditional criminal justice approaches to opioid misuse and overdose are not fixing the problem. Rather, drug misuse is more appropriately treated as a health issue instead of a criminal issue. In the past, underlying issues related to drug misuse were not addressed and the risk of overdose was not diminished despite strict laws and incarceration for drug offenses.

In the spring of 2018, the Brooklyn District Attorney's office began the Collaborative Legal Engagement Assistance Response (CLEAR) program, which takes people who are arrested for small amounts of drugs out of the criminal justice system before a charge is brought and directs them to treatment or other services. Successful engagement with the CLEAR program results in the case being dismissed. As a result, the person never winds up in court or with a criminal record. Every person who enters the program gets trained in overdose prevention.

As of January 1, 2020, New York's new bail statutes take effect. This new law eliminates bail for most misdemeanors and low-level felonies.



# Albany County District Attorney's Office

Population: 307,117

Number of Prosecutors: 39 full-time prosecutors

## Clean Slate

The Clean Slate initiative is a collection of programs (*Reclamation, Restoration, and Redemption*) hosted by the Albany County District Attorney's Office. It aims to steer young adults away from the traditional criminal justice system, by both avoiding criminal conviction and addressing the harsh realities that ex-offenders often face after re-entering society.

In order to reduce the negative effects of prison on young defendants, Clean Slate seeks to implement solutions through *Reclamation, Restoration, and Redemption* that address critical areas of criminal justice reform:



- Reducing the root causes of poverty, crime, and recidivism in a way that directly and significantly involves the local community, through comprehensive and effective youth crime prevention strategies on a large scale level
- Better leveraging the prosecutor's role in addressing the crisis of public confidence by including broad access to information about offenders and victims through a Restorative Justice model, knowledge of the law, and discretion to proceed with felony-level offenses in alternative ways
- Providing new and innovative tools for prosecutors, thereby allowing them to address the causes of offending conduct in appropriate cases while also providing offenders with a path to avoid a criminal conviction and its stigma

## *Reclamation*

The Reclamation Felony Youth Diversion Program seeks to engage the entire community in redirecting youth away from the criminal justice system. Program leaders screen potential candidates through a structured Diversion Board process. Once accepted, eligible participants ages 16 to 24 charged with certain non-violent felonies are offered the opportunity to take accountability for criminal wrongdoing, repair harm to any victimized party, and become contributing members of the community – all without the stigma of a felony criminal conviction or time served in state prison.

Eligible felonies are considered on a case-by-case basis, and typically can include non-violent felonies such as: Grand Larceny, drug crimes, and property crimes. Although technically deemed “violent” under New York’s penal code, some robbery and burglary cases can be considered after a thorough evaluation of the alleged case facts. Felonies that do not qualify for the program are those that include serious physical injury to the victim, the use or display of a firearm or dangerous instrument, or cases where the victim does not consent to the diversion process. Additionally, domestic violence offenses; crimes where victims are children, elderly, disabled, or pets; and DWI-related offenses do not qualify.

Employing a restorative justice model, the Felony Youth Diversion Program begins after a thorough screening of the case after a felony arrest. The Diversion Board, comprised of community leaders in education, criminal justice, housing, and youth development programming, flags cases for evaluation that fit criteria for the program. Accepted participants enter into an agreement to abide by many conditions throughout the process. Depending on the case, a defendant may be referred to a felony level Community Accountability Board, among other court diversion options.

Key to the restorative justice model, obtaining victim input is paramount. A main goal of the program is to have the offender address the harm caused to the victim, society, and his or herself. Those who successfully complete the program can avoid the life-altering consequences of a felony conviction when the District Attorney consents to the dismissal of the felony charge in the interest of justice. The legal effect of the dismissal will be the complete sealing of the offender’s arrest and prosecution records.

In addition to the felony-level program, the District Attorney’s Office also employs a misdemeanor ["Community Accountability Board" \(CAB\) model](#). This model exists to serve those who have committed misdemeanor crimes and has been in use for many years.



## *Restoration*

The Restoration effort is a collaboration between the Community Justice Outreach Office and several community agencies focusing on the promotion of re-entry resources and services to formally incarcerated individuals and their families. At the Outreach Office, community members can use computers, create and send resumes, and search for employment.

The restoration aspect of Clean Slate addresses a crucial need—67.8% of former prisoners are re-



Young man gets his court case dismissed through the Clean Slate program.



Clean Slate Felony Youth Diversion Program board members collaborate at a meeting.

arrested within three years of release, and 76.6% are rearrested within five years. Taking steps to provide helpful re-entry resources can greatly impact these individuals and the communities in which they live.

## *Redemption*

The Redemption Expungement program includes efforts aimed to clear records of criminal convictions for non-violent or low-level offenders who have shown positive rehabilitation. Efforts to reach this goal are a vital piece of the Clean Slate model, as studies have shown that ex-felons suffered from a 15% to 30% higher unemployment rate than non-felons.

The program helps participants to take advantage of new sealing statutes implemented in October of 2017 under New York State CPL § 160.59. The statutes seal certain past criminal convictions so that potential employers and others cannot access them. They allow for sealing up to two past criminal transactions, including up to one felony criminal transaction. A criminal transaction may include more than one criminal conviction, if the convictions are closely related in time or purpose. Misdemeanor convictions, with the exception of sex crimes, and most drug crimes are eligible.





District Attorney Patrick Swanson (left) and SUNY Fredonia Chief of Police Brent Isaacson (right).

The STAR team was partially modeled after the behavioral intervention team at SUNY Fredonia, a key partner agency with excellent experience in counseling students. Led by Tracy Stenger, Director of the college's Counseling Center, the behavioral intervention team frequently deals with kids who struggle with homesickness or feel disconnected to peer groups. They have a team of experts that meets once a week to discuss students that are struggling and what can be done to improve those student's outcomes.

With cooperation from every school superintendent in the county, the STAR team can be activated to address early indicators of student threats aimed at local schools. Local school districts can reach out to the STAR team with questions regarding what to do about a student making threats of violence, and then the District Attorney's Office coordinates a group meeting or conference call within 24 hours. The STAR team then gathers as much information on the student as possible, by searching social media posts, conducting interviews, or beginning a police investigation. They put in place a safety plan and offer services to the school, the student's family, and the student with the goal of preventing a school shooting. Services for the student can in-



clude mental health counseling, or in some instances, the provision of a mentor outside school if one is lacking at home.

District Attorney Swanson stresses that STAR is designed to be proactive; the goal is for group members to be brought in early enough to guide troubled students to accessible resources. Any imminent acts of violence are immediately handled by the school and law enforcement. As the program was implemented, it became clear that most school districts were not equipped to handle a viable threat or student of serious concern.

A testament to the expertise and dedication of the group, the STAR team has successfully resolved four situations in the past 12 months. Two incidents in particular involved a Jamestown Public School, where Superintendent Bret Apthorpe reached out to STAR in 2018 with concerns. Superintendent Apthorpe touted the success of the District Attorney and FBI special agent's intervention, noting that the former students of concern are now thriving.

According to Superintendent Apthorpe, "It was so effective that under the FBI and DA's leadership they created a model, the STAR team, that can be activated by a superintendent calling and saying 'I have a situation'. The goal isn't to arrest and punish people. Rather the goal is to positively intervene, and not only prevent the violence, but put the children involved into a positive track."

# Washington County District Attorney's Office

Population: 61,197

Number of Prosecutors: 6 full-time prosecutors

## Misdemeanor Diversion

With just six prosecutors and a great dedication to improving the community they serve, the Washington County District Attorney's Office successfully implements a variety of misdemeanor diversion programs. Knowing that the county is geographically long – spanning close to 100 miles from north to south – with limited to no public transportation, they had to explore other options than centralized specialty courts in order to make diversion a reality.

Working with many supportive local judges, Probation Officers, Sheriff's Officers, and their Alternatives to Incarceration Department, they began implementing diversion programs on an individual basis in each local court for people facing a multitude of challenges. This process began close to five years ago with the Addiction diversion program, and within past year has also resulted in the formation of the Domestic Violence diversion program. While these two programs are the most frequently implemented, individualized diversion can additionally occur for offenders with mental health issues, poverty, or other circumstances that drive their criminal behavior.





The diversion programs were initially developed with the goal of helping teens and young adults, but have expanded to other age groups. The District Attorney's Office has consistently seen positive results stemming from diversion efforts. In one particular drug case, a teen was using acid and faced significant charges. The District Attorney's Office worked with state police, the teen, and the teen's mom to develop options in lieu of prosecution. The teen ended up going through a yearlong treatment program and completed all requirements, avoiding having his charges being filed. Perhaps one of the greatest indicators of success was the personal responsibility and initiative the young man took at the end of his program. He felt as though he needed additional mental health counseling despite having his charges dropped, and the Alternative to Incarceration Office continued to work with him. A few years have passed, and he has not reoffended and remains a productive member in his community.

Other diversion outcomes are not always as positive, with offenders relapsing and struggling to complete program requirements with consistency, but nonetheless successes are still present when those individuals are kept alive and take small steps forward to overcome addiction or other serious challenges. Without the diversion option, they would have almost certainly found themselves in a worse condition.





Domestic violence diversion in particular has evolved to better serve defendants, and ultimately, victims. Previous options for addressing a perpetrator's conduct were limited. A treatment program known as the Men's Opportunity Program was available, but lasting 26 weeks at cost in excess of \$85 per session, it was not something most defendants could afford. As a result, most plead guilty risking only a short jail sentence, which most judges were unwilling to impose. Wanting to find a better option, the District Attorney's Office examined the problem more closely, and observed that harassment charges were most often the gateway to domestic violence in the county. Harassment is only a violation in New York state, but repeated contact, threats, and a general sentiment of being unable to "let go" of the relationship typically led the offender to commit increasingly worse actions in the future.

With this in mind, an ADA and Victim Specialist engaged in a very extensive process to develop a risk assessment method with the Alternative Sentencing Group. The method examines burgeoning domestic violence offenders to determine if their actions constitute an isolated incident or a precursor to future violent action. The Risk Assessor spends 3-4 hours with the offender assessing their propensity for future violence. This has allowed the District Attorney's Office to identify factors that make an offender a risk and address those factors before they worsen. At the end of the assessment, if the offender is determined not to be a risk, their charge is often dismissed. Similarly, if they are indeed determined to be a risk, they have the option to address their underlying issues through the further treatment or programs including the Men's Opportunity Program and again possibly have their charges dismissed upon successful completion.

These diversion programs have helped at least 40-50 individuals in the community and have garnered positive feedback from most judges and the defense. Advocacy groups are beginning to see the benefits as well. The District Attorney's Office continues to enhance its diversion programs and truly help offenders in the community.