



# National Prosecutors' Consortium

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November 2019

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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 Colorado Prosecutor Programs

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Colorado prosecutor offices range in size and in the types of communities that they serve. Some serve in large bustling cities like Denver 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 22 judicial districts, 16 (73%) of the prosecutors in Colorado participated in the NPC survey. The survey demonstrates that the responding Colorado prosecutors participate in a wide variety of programs and initiatives. These programs include Drug courts, community service, Drug treatment, Victim assistance, Restitution, Youth Education, and Co-located Child Abuse reduction programs.

The survey found that all of Colorado’s prosecutors that responded to the survey engage in problem solving courts or other programs that offer alternatives to incarceration. Many offices reported Drug courts (81%), Witness Assistance (69%), Victim/Witness Relocation (69%), community service (67%), and Drug treatment (60%). All offices offered Victim Assistance and Restitution programs.<sup>2</sup>

Community programs that prosecutors either run or participate in are also common. Colorado prosecutors are involved with Community Engagement programs (75%), Youth Education programs (69%), Co-located Child Abuse reduction (56%), and Adult Education Programs (50%). Some offices reported participating in Violence Reduction (31%), Co-located Domestic Violence (31%), and Neighborhood Clean-up (13%) 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: Colorado. Justice & Security Strategies, Inc.

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## Innovative Programs - Examples

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To demonstrate the variety of innovative programs initiated in Colorado, three offices are highlighted: Denver, the largest city and county, Boulder, a slightly smaller county with just under half a million residents, and La Plata, the smallest of the group with just 55,541 residents.

The Denver program integrates personnel from the District Attorney’s Office into a family justice center to improve outcomes for domestic violence victims. Two deputy district attorneys are assigned—one as a liaison between domestic violence detectives and the District Attorney’s Office, and another who serves as the Firearms Relinquishment Investigator that collects information related to firearm possession by domestic violence offenders. The Boulder programs include the ability for low-level offenders to resolve active warrants outside of court, restorative justice, multiple diversion programs, and a conviction integrity unit. The La Plata programs include problem solving courts, pre-file diversion, and restorative justice.

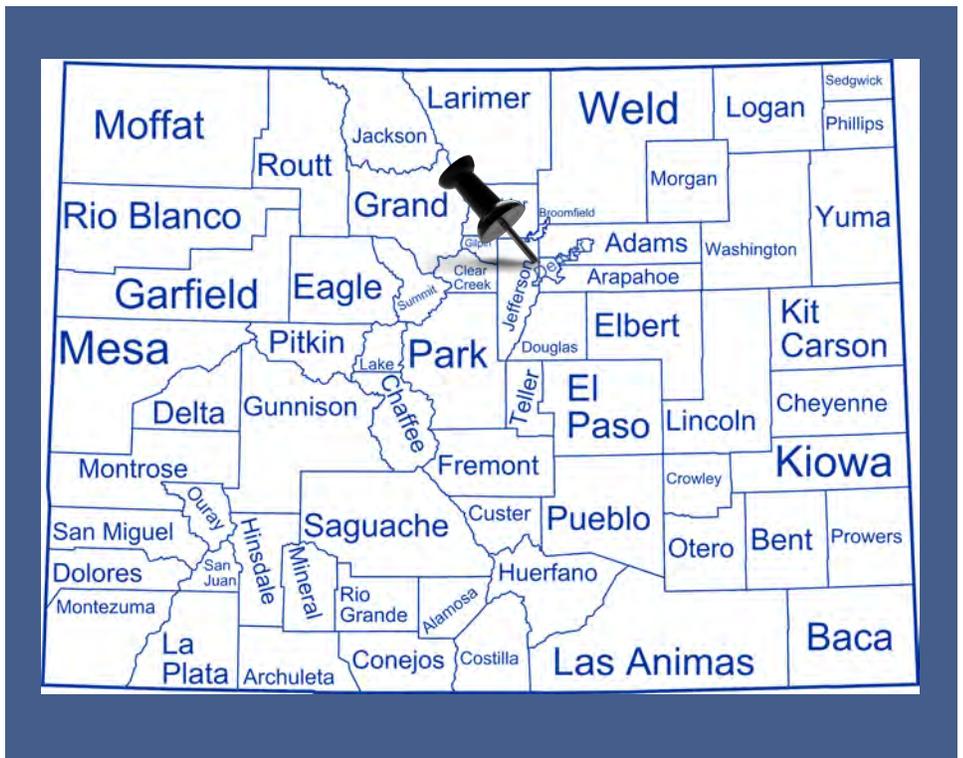
# Denver District Attorney's Office– 2nd Judicial District

Population: 716,492

Number of Prosecutors: 94 full-time prosecutors, 2 part-time prosecutors

## Reducing Domestic Violence– Firearms Relinquishment Investigator

In 2016, the Rose Amond Center was opened as Colorado's first family justice center. It is a collaboration between community-based organizations and government agencies who are committed to making it easier for domestic violence victims to ask for and obtain help. The Denver District Attorney's Office created a dedicated Senior Deputy District Attorney position to be housed at the Rose Amond Center. This Senior Deputy acts as the primary liaison



between the domestic violence detectives and the District Attorney's Office, and is responsible for intake, review of search warrants, and assisting with triage. Additionally, the Senior Deputy conducts trainings for the District Attorney's Office, Denver Police Department, and community agencies, and represents the office in various community meetings. Having one person responsible for the oversight of domestic violence intake has increased the quality of filings and improved the continuity of initial charging decisions.

After the opening of Rose Amond, removing guns from the hands of domestic violence offenders became the next priority, as domestic violence victims are significantly more likely to be killed

if their abuser has access to a gun. One of the most effective interventions is removing firearms from known domestic abusers. Research indicates that abusers do not use alternative weapons to kill when they do not have access to guns. According to the Ontario Domestic Assault Risk Assessment (ODARA), the single most important red flag to predict a lethal response was a “recent separation.” Forty-five percent of domestic violence homicides occur within 90 days of separation, most within the first few days. Thus, ensuring firearms are removed as soon as a victim seeks help is critical.



Photo Courtesy of: [Rose Andom Website](#)

In light of this, District Attorney Beth McCann created the Firearms Relinquishment Investigator—a new investigator position to be housed at Rose Andom and work closely with the Senior Deputy. They are responsible for collection of information relating to firearm possession by domestic violence offenders, with the goal of removing firearms from their control as soon as possible in order to ensure victim safety.

By way of background, in 2013 Colorado passed a firearms relinquishment statute that prohibits those subject to a domestic violence protection order from possessing or purchasing any firearm or ammunition for the duration of the order. Additionally, the defendant must relinquish any firearm or ammunition in the defendant’s immediate possession or control. The defendant has 24 hours to relinquish after release from custody. Defendants



Photo Courtesy of: [Rose Andom Website](#)

subject to the domestic violence protection order are told at first advisement that they are statutorily prohibited from possessing or purchasing any firearms, and that they must relinquish any guns in their possession. However, a vast majority of defendants refuse to make any affirmative statements, claiming that to do so would violate their Fifth Amendment rights.

In light of the fact that these defendants were not admitting to owning firearms, the District Attorney's Office started looking for alternate ways to determine whether an offender, subject to a mandatory domestic violence protection order, possesses or has access to firearms. Because relying on the offender to admit possession of a weapon is not realistic, alternate sources that demonstrate evidence of gun ownership must be found. These include witness statements, responding officer observations, 911 calls, neighborhood surveys, social media, pawn shop records, and other databases. The Firearms Relinquishment Investigator reviews each new domestic violence case and collects this information. The Investigator also keeps track of any information regarding firearms on pending cases. Any new information is downloaded to the District Attorney's Office central file system so that the assigned deputies are aware of the new firearms information.

If there is evidence of gun ownership, there are several options to be determined on a case-by-case basis, including (1) filing a motion for contempt for failing to relinquish; and/or (2) filing a motion for violation of bond conditions; and/or (3) seeking a search warrant where there is sufficient probable cause to establish that the guns are still in the home. Additionally, the Firearms Investigator works closely with the domestic violence detectives, including the two detectives that are part of Denver Police Chief Pazen's High Risk Offender Domestic Violence Initiative, an offender-based model which seeks to identify high-risk homes in order to provide resources and contacts before domestic violence occurs.

# Boulder County District Attorney's Office –

## 20<sup>th</sup> Judicial District

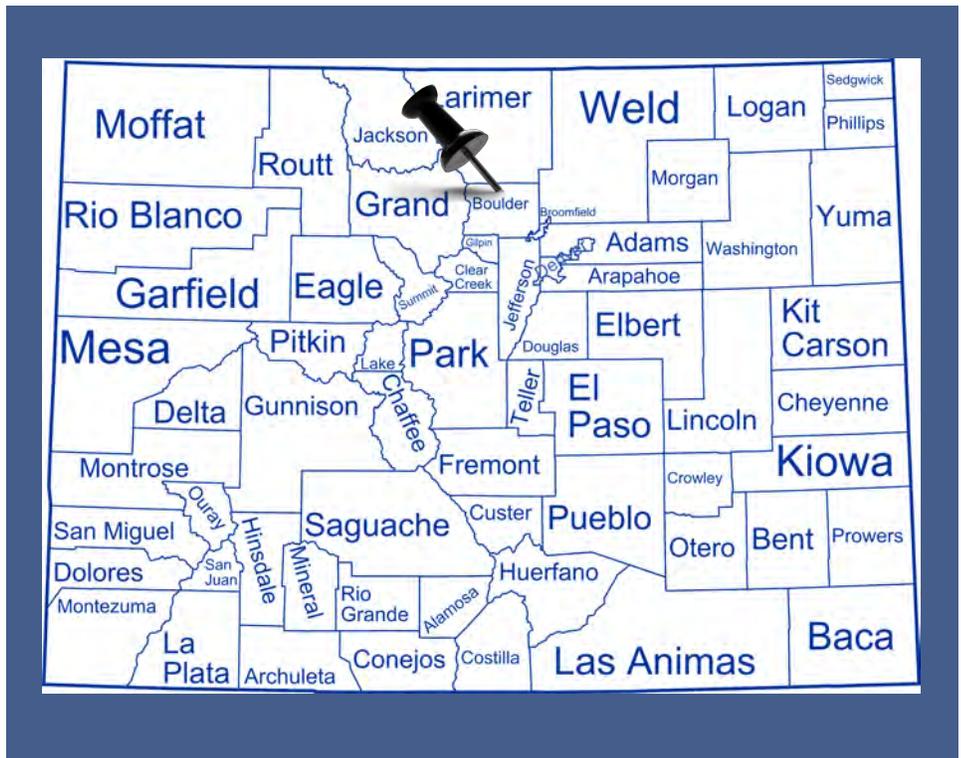
Population: 324,073

Number of Prosecutors: 32 full-time prosecutors

### Multiple Initiatives

#### Fresh Start Program

Through the Fresh Start Program, the Boulder County District Attorney's Office gives individuals with active warrants stemming from non-violent and low-level misdemeanor or traffic cases an opportunity to move toward a resolution in their case. The program is a collaborative effort between the District Attorney's Office, Boulder City Attorney's Office, Municipal Court, judges, criminal defense attorneys, immigration attorneys, courthouse staff, and the Sheriff's Office. It is hosted at the Boulder County Justice Center, where individuals with warrants in qualifying cases can speak with representatives from the District Attorney's Office and either resolve their case or set a new court date.



A total of seventy-six people most recently attended the program, including family members of offenders and other visitors. As a result, over thirty warrants were efficiently resolved. In order to maintain success and increase participation, the program ensures that one key consideration is em-

phasized—that nobody who attends the program is ever arrested on a warrant.

## Restorative Justice and Diversion

The Boulder County District Attorney’s Office has highly a highly innovative and successful Diversion Program that has become a model at the local, state, and national level. The program emphasizes accountability and prevention, applies restorative justice practices and principles, matches services to needs, and effectively achieves community safety by decreasing risk of recidivism.

Key to the program are high-quality restorative services that include community group conferencing, victim-offender dialogue, and restorative justice processes for drug or alcohol-related violations. Through these services, victims and harmed individuals, community members, and family members are empowered to participate in a facilitated restorative justice process that supports the person who committed the crime to take meaningful responsibility and repair the harm created by their actions.



Restorative justice staff receive an award.

Critical to restorative justice programs is not only the successful re-entry of the offender, but also the healing, justice, and restitution provided to the victim. It is evident that Boulder County has put this outcome at the forefront of their restorative justice program, as 99% of victims in the program reported satisfaction with the way their case was handled. Furthermore, 98% of restitution was collected for no-file diversion cases.

In 2018, the District Attorney's Office expanded the program and diverted over 600 cases while maintaining a 92% successful completion rate. The program enhances community safety and also reduces the risk factors for recidivism. With each successful completion, a criminal case is dismissed, and the individual can move forward without any negative impact on their future opportunities for education, housing, and employment. In fact, 100% of participants have said that diversion helped them make positive changes in their life.

### **Mental Health Diversion Program**

Mental health struggles are a devastating reality for every jurisdiction. Last year, roughly 2.2 million admissions to local jails in the United States involved people with a mental health disorder. On average, there are 750,000 people with mental illnesses incarcerated in jails and prisons across the United States every day.

Colorado in particular experienced 10,256 deaths by suicide between 2006 and 2016, landing in the top six states in the nation for suicides. The criminal justice system is impacted by this reality firsthand, as many defendants enter the system due to a mental health crisis. For the person struggling with mental health issues, and for the welfare of the community, the justice system must more effectively respond to mental health issues. On any given day, approximately 40% of the offenders in the Boulder County Jail have a diagnosed mental health disorder.

Using state funding and federal grant funds, the Boulder County District Attorney's Office has helped launch the first pre-file Mental Health Diversion Program in Colorado. It is a pre-file diversion program for individuals arrested on low-level charges who will benefit from mental health treatment. By providing needed mental health services, the District Attorney's Office is confident that the program will ultimately lower the rate of re-offense and enhance community safety.

When a person is arrested for a designated low-level offense, he or she will

receive a mental health assessment. If the offender is eligible for treatment, he or she will be diverted out of the jail, and the District Attorney's Office will defer the filing of charges. Instead of facing charges, the individual is connected to a treatment provider as soon as possible to support professional treatment of mental health disorders that are driving their criminal behavior. The District Attorney's Office is committed to this program achieving the combined goal of reducing recidivism and supporting positive life outcomes.

### **Conviction Integrity Unit**

The Conviction Integrity Unit (CIU) provides a sound, transparent and collaborative review mechanism for claims of wrongful conviction in Boulder. The CIU accepts claims of actual innocence where credible evidence of innocence exists. The District Attorney worked with the Boulder Public Defender's Office, the private defense bar, and Colorado University's Innocence Project to establish the protocols and reviewing innocence claims. The Unit also has a Conviction Integrity Board (CIB) comprised of members representing the Colorado Public Defender's Office, the defense bar, the University of Colorado Law School, Alternative Defense Counsel, and the Boulder County District Attorney's Office. Crucial in developing the conviction integrity process was the partnership between the prosecutors and defense attorneys, something that the District Attorney's Office stresses for all offices seeking to implement a similar program.

Under the direct supervision of District Attorney Michael Dougherty, CIU Coordinators from the Boulder District Attorney's office work collaboratively with the CIB to organize the work and lead all investigations of meaningful claims of actual innocence where the pursuit of truth and justice requires CIU's review. Once a claim is accepted and deemed appropriate, the review process involves the CIU Coordinator or the CIB member presenting the application to the CIU. Because the circumstances surrounding each case are unique, so are the investigative procedures used for each case.

After initial review and intake of the case, an in-depth review and re-investigation takes place. The District Attorney makes the final decision after re-evaluating the evidence and considering the applicant's claim.

The program's full policy can be viewed [here](#).

# La Plata County (Durango)

## District Attorney's Office– 6th Judicial District

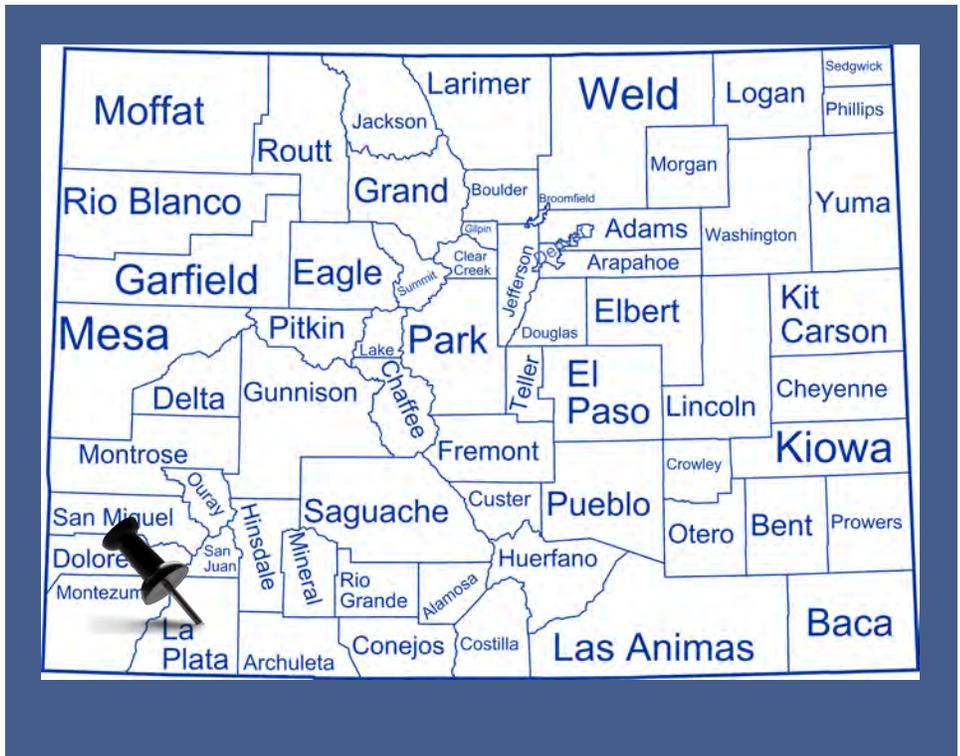
Population: 55,541

Number of Prosecutors: 11 full-time prosecutors

With just eleven prosecutors, the 6<sup>th</sup> Judicial District Attorney's office in southwest Colorado runs a multitude of programs for the citizens it serves. Despite its limited staff, the District Attorney's Office demonstrates that even a small office can promote and develop creative solutions to assist and hold accountable those who are brought into the criminal justice system.

### Problem Solving Courts

The District Attorney's Office supports a number of robust problem solving courts that focus on a range of crime types. The longest program in existence is the Drug Court, which the District Attorney's Office has operated for over 10 years. The Court has approximately 30-40 participants at any given time. Additionally, a Behavioral Health Court is in place to help those with mental illness as the root cause of their criminal behavior. The Behavioral Health Court routinely has 8-12 participants. The third and final problem solving court is a DUI Court, which focuses on third time and higher DUI offenders.



## **Pre File diversion**

Diversion efforts are also well underway in Durango. The District Attorney's Office has a juvenile diversion program that diverts low needs/low risk juveniles out of the court system and helps address accountability issues. Similarly, an adult diversion program exists to handle low needs/low risk adult offenders. The District Attorney's Office recently started a mental health diversion program as well. All of these programs divert eligible persons prior to the filing of charges by the District Attorney.

## **Restorative Justice**

The District Attorney's Office regularly implements restorative justice practices that seek to give crime victims an active voice in the resolution of their case and allow them to directly address the offender. The goals are to hold the offender accountable for the harm they have caused, and to bring the parties together to find a mutually agreed resolution that will repair the harm.

The District Attorney's Office uses this program in property cases, neighbor disputes, and community based crimes, including traffic offenses and others. Highly trained facilitators screen the cases to ensure they are appropriate and conduct the restorative justice events, including victim-offender dialogues and community conferences. In the conferences, community leaders and stakeholders come together with offenders to help them understand the harm they have caused, how to repair the harm, and how to avoid the same mistake in the future. Restorative practices increase understanding on the part of the offender and help bring them into community with the victim of the crime, as opposed to the separation and isolation that typically occurs in the traditional criminal justice system. Victims also benefit through the ability to express their feelings directly to the offender. Many times, the victim and offender come together in a closer relationship as a result of the restorative event, which builds a stronger and safer community.

Generally, individuals who participate in the diversion and restorative justice programs have approximately a 9% recidivism rate. Compared to the prison recidivism rate, which is roughly 50% within 3 years, the programs produce significantly better outcomes for offenders and the community.

