



Time for Action: 10 Things Prosecutors Can Do Now

By Kristine Hamann

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The killing of George Floyd by police was a tragic and disturbing event that is a call to action for those in the criminal justice system. As protests and outrage have surfaced in almost every corner of our nation and worldwide, the injustice and inequality in our society are receiving increased scrutiny and study. It is clear that we must all do better.

The focus now is on those in the criminal justice system, and prosecutors are uniquely situated to champion improvement. Modern prosecutors are problem solvers, and it is time for every prosecutor to pledge to build trust with his or her communities and to embrace reforms that make the criminal justice system fair and just. Though prosecutors cannot singlehandedly solve the systemic inequities suffered by people of color in health care, education, housing, or employment, there is much they can do to create a more equitable society.

The role of the prosecutor has evolved dramatically over the past decades (see Kristine Hamann & Sarah Solano Geisler, Prosecutors' Ctr. for Excellence (PCE), *The Role of the Modern Prosecutor: Spearheading Innovation* (Oct. 2020), <https://bit.ly/3951um7>), and many positive steps have already been taken. However, more can be done.

Here are **10 things that prosecutors can implement now**, along with examples of these initiatives already in prosecutor offices around the country. These examples are only a small sampling of similar programs led by prosecutors. (For additional examples, see *id.* and an interactive map of innovations at *Sampling of Prosecutor Innovations*, PCE, <https://bit.ly/392TJxc>).

Listen and Learn

1. *Engage in Self-Reflection*

A prosecutor's office should ask the legal and nonlegal staff how they are feeling about the issues of the day and what suggestions they have for improvement. The office should sponsor trainings for the staff about implicit bias and the history of racism. Committees can be formed to continue the discussion and develop recommendations. Prosecutors should encourage empathy for those they serve by addressing the underlying causes of crime and looking for solutions that reduce recidivism—all with the goal of creating a healthy community and improving public safety.

King County Attorney's Office (Seattle), Washington. County Attorney Daniel Satterberg formed an internal Equity and Social Justice Team that leads discussions within the office about implicit bias and racism and makes policy recommendations to the office's leadership. The team focuses on three principles: healing, understanding, and action. It meets regularly, writes a newsletter, and has trained facilitators to assist with group conversations. The team also works with the King County Office of Equity and Social

Justice. *Equity & Social Justice: Our Team*, King Cnty., <https://bit.ly/2MFGXxb>.

2. *Reach Out to the Community*

Prosecutors should identify the many neighborhoods that make up the community in the office's jurisdiction. The office should reach out regularly to members of those neighborhoods to seek their input. The meetings can start by listening to concerns and asking, "What does public safety mean to you?" Outreach can simply be a conversation, the development of organized education and recreation programs, or the coordination of social service providers around a particular issue. Offices can determine what type of outreach is right for them based on their available resources.

Nassau County District Attorney's Office, New York. District Attorney Madeline Singas created a Community Partnership Program that works consistently with various advocacy/affinity groups and reentry organizations. It is a community-based resource and referral office that provides social services to the general community, with a focus on young people at risk of gang involvement, as well as the reentry population and other justice-involved individuals. Through the pandemic, the office has been meeting remotely with these groups and found that engagement has increased. At Thanksgiving, the whole office participated in a food drive for needy community members. *Community Partnership Program (CPP)*, Nassau Cnty. Dist. Att'y, <https://bit.ly/3pUZGTM>.

3. *Create a Community Advisory Board*

Prosecutors can seek the advice of community leaders by creating an advisory board to learn directly about community concerns and receive input on prosecutor policies.

Jackson County Prosecuting Attorney's Office (Kansas City), Missouri. Prosecuting Attorney Jean Peters Baker established a Community Advisory Board that provides a critical perspective on crime and policy ideas. Board meetings offer a formal opportunity for the office to share data and ideas, give the community a deeper understanding of crime in the city, as well as full knowledge of the policies and programs already in place, and for the office to receive input. The Board is composed of persons who live or work in the urban core, where the majority of crime in Jackson County occurs. The Board meets five times per year, including an orientation session; the members also have frequent contact with the office in between meetings. *Presentation by Kate Brubacher, Assistant Prosecuting Attorney and the Director of Innovative Prosecution Solutions, Jackson County Prosecuting Attorney's Office, Missouri, January 11, 2021.*

4. *Use Data*

Prosecutor offices should review available data to inform their work and to learn if there are unfair disparities in arrests, pretrial detention, and sentencing. It should be noted that data are a challenge for many prosecutor offices as many have insufficient resources and systems to adequately capture the information. However, offices of all sizes can find innovative ways to use the available data for improvement. For example, during the pandemic, prosecutors across the country have been reviewing who is held on bail, why they are held, and whether the use of bail can be reduced. Though they did not always agree, prosecutors and defense attorneys have used data to work together to identify pretrial detainees who can be released from jail in light of COVID-19.

Some offices that have data and resources have created a public data dashboard to increase transparency in the work of a prosecutor.

Hennepin County Attorney's Office (Minneapolis), Minnesota. County Attorney Michael Freeman developed a data dashboard that provides public access to data. The data provide many details including

cases charged and diverted, the race of defendants, and maps plotting the location of crimes charged. The information is updated daily. *Data Dashboard*, Hennepin Cnty. Att’y, <https://bit.ly/2L3Yy1a>.

Philadelphia District Attorney’s Office, Pennsylvania. District Attorney Larry Krasner has also created a public data dashboard that tracks data on exonerations and reductions in years of incarceration in addition to information on arrests and case outcomes. *Public Data Dashboard*, Phila. Dist. Att’y’s Off., <https://data.philadao.com>.

Police

5. *Develop Policies for Officer-Involved Fatalities*

Fatalities at the hands of a police officer are a flash point of controversy. Prosecutors stand at the center of this issue as they must evaluate the evidence and apply the law. Long delays and short reports on these cases are no longer tolerated by the public. Thus, prosecutors are developing ways to independently and quickly investigate officer-involved fatalities and fully report on the findings.

Ramsey County Attorney’s Office (St. Paul), Minnesota. County Attorney John Choi and the mother of a man killed by police in 2016 participated in a working group sponsored by the Institute for Innovation in Prosecution to develop an Officer-Involved Fatality Toolkit. The group consisted of prosecutors, police chiefs, academics, family members who have lost loved ones to police, and advocates. The toolkit provides tangible actions for prosecutors and communities to take before and after an officer-involved fatality occurs. See Inst. for Innovation & Prosecution, *The Prosecutor’s Role in Addressing Officer-Involved Fatalities and Critical Incidents: A Toolkit for Prosecutors and Communities*, by Prosecutors and Communities (Feb. 2019), <https://bit.ly/3ohXmpb>.

6. *Identify and Track Problematic Cops*

Police officers have an important and challenging job, and most perform their duties honorably. However, there are officers who do not meet the high standards required of them. Prosecutors should develop guidelines for how to collect, analyze, and disclose credibility issues and acts of misconduct involving law enforcement officers. This is challenging as the information can be difficult to obtain and assess; however, it is a critical step in improving public confidence and enhancing the reliability of cases.

Pennsylvania District Attorney’s Association Best Practices Committee. This nonpartisan, statewide Best Practices Committee of prosecutors addresses the challenging issues of the day. As part of its work, it created statewide guidelines to assist prosecutors with the complex issue of how to identify and track problematic police officers. The guidelines define the legal obligations of the prosecutor and provide tips for when and how to locate the information, review the information, and create a disclosure list of problematic officers. See PDAA *Offers Guidelines on Disclosing Potential Credibility Issues Involving Police Witnesses*, Pa. Dist. Att’y Ass’n (Dec. 11, 2019), <https://bit.ly/398Bsyk>.

Reducing the Criminal Justice Footprint

7. *Reduce the Prosecution of Low-Level Offenses*

The prosecution of low-level offenses can have significant collateral consequences that can impact public safety, such as when a defendant loses a job or loses housing. Low-level offenses may also impose fines and fees that disproportionately impact the poor and may lead to incarceration for failure to pay. Finally, in a time of diminishing funds, the prosecution of low-level offenses can drain prosecution resources from more serious offenses. Prosecutors should review their dockets to determine whether some low-level offenses can be handled outside of the criminal justice system.

Shelby County District Attorney General's Office (Memphis), Tennessee. Memphis police annually made thousands of arrests for unlicensed driving that were disposed of through the payment of a fine, increased fines, or incarceration for nonpayment of fines. This had a particularly devastating impact on the poor and people of color. To ameliorate this hardship, in 2019, District Attorney General Amy Weirich dismissed over 20,000 unlicensed-driver cases pursuant to her policy that she will only prosecute unlicensed-driving cases that are associated with serious aggravating circumstances, such as cases involving driving while intoxicated, injuries, or death. See *Shelby County District Attorney Declines to Prosecute Driving on a Suspended License Where Underlying Suspension Is for Unpaid Fines and Fees*, Fines & Fees Just. Ctr. (Oct. 20, 2018), <https://bit.ly/2JNt4f3>. DAG Weirich no longer accepts simple unlicensed-driving cases for prosecution. This has reduced a significant burden on the community and freed up resources for the office, which is facing a large increase in violent crime.

Yolo County District Attorney's Office, California. District Attorney Jeff Reisig instituted a neighborhood court where offenders arrested for certain low-level crimes were sent instead of being charged in the traditional criminal court. The court is based on restorative justice principles that give the victim a say in whether the case goes to the neighborhood court and allows the victim to participate in the process. In collaboration with a nonprofit, the court coordinates, trains, and provides support for over 200 community volunteers, or "panelists," who meet with low-level offenders and victims to address and resolve the harms that their crime has caused to the victim and the community. Since 2013 when the program began, the neighborhood court has expanded from primarily diverting low-level offenders to allowing participation by offenders in some felony cases and also those with a past criminal history. See Jeff Reisig, Jake Whitaker & Nicole Kirkaldy, *Neighborhood Court: Restorative Justice for a Better Community*, 34 Crim. Just. Mag., no. 1, Spring 2019, at 35, <https://bit.ly/3nhzctG>.

8. *Prevent Crime*

Prosecutors can develop or encourage programs that prevent crime in the first instance, such as education and mentoring programs for at-risk youth. Though resources are needed for these programs, they can be found by partnering with social services agencies, nonprofits, government entities, or local businesses.

East Baton Rouge District Attorney's Office, Louisiana. District Attorney Hillar Moore established the TRUCE Program as a 501(c)(3) nonprofit organization with the goal of reducing violence by identifying and supporting at-risk youth by providing them and their families continued outreach and resources. The program is a partnership between the prosecutor, the police, and local businesses. A prosecutor manages the program and has recently hosted weekly Zoom calls with football star Tyrann Mathieu, who speaks with kids in the TRUCE program about topics from sports to life challenges. See Grace Toohey, "*That Personal Aspect*": *Baton Rouge Officials Ramp up Custom Home Visits Hoping to Intervene in Group Violence*, The Advoc. (June 16, 2018), <https://bit.ly/3b9Mg1N>; Joe Andrews, *Tyrann Mathieu Launches Speaking Series for Louisiana Youth*, FanNation (July 2, 2020), <https://bit.ly/398DHle>.

9. *Assist with Expungement and Sealing*

Prosecutors can agree to dismiss old low-level outstanding warrants and assist with sealing or expunging eligible convictions from court records. This can improve the ability of offenders to obtain employment, housing, and other needed benefits, all of which contributes to the reduction of recidivism.

New York County District Attorney's Office (Manhattan), New York. District Attorney Cyrus Vance collaborated on the Clean Slate program with the courts, the police, and public defenders to resolve outstanding summons warrants without fear of arrest. The event took place in a community center and included referrals for job training, health care provisions, and general social service assistance. *Clean Slate*, Dist. Att'y, N.Y. Cnty. (2018), <https://bit.ly/38hcsWw>.

Douglas County District Attorney's Office, Kansas. District Attorney Charles Branson partnered with the University of Kansas Law Legal Aid Clinic and Kansas Legal Services to host a free clinic to assist with expungement applications. These applications seal certain records of arrests or convictions from public view. News Release, Univ. of Kan., KU Legal Aid Clinic, Community Partners Host Free Expungement Clinic (Feb. 13, 2019), <https://bit.ly/2MwPx0R>. District Attorney Marc Bennett of the Sedgwick County District Attorney's Office (Wichita), Kansas, ran a similar program. Oliver Morrison, *Lawyers Still Processing Record Expungements Weeks After Clean Slate Day*, The Wichita Eagle (Mar. 23, 2016), <https://bit.ly/2XeJfFi>.

10. *Support Treatment and Diversion from Incarceration*

Prosecutors should promote treatment and diversion programs for those with substance abuse or mental illness and advocate for social services in the community. Some diversion programs are run through the prosecutor's office, while others are found in specialty courts, which are growing in number. In addition to drug and mental health courts, courts addressing domestic violence, human trafficking, homelessness, and veterans are increasingly being developed. Prosecutor-led treatment and diversion programs, as well as specialty courts, can reduce recidivism by treating the root causes of crime. Though these programs require resources, there are multiple funding streams that provide support. See *Courts*, Off. Of Just. Progs., U.S. Dep't of Just., <https://www.ojp.gov/topics/courts>. Prosecutors can advocate for the creation or expansion of these treatment-oriented programs.

Bronx District Attorney's Office, New York. District Attorney Darcel Clark created the Alternatives to Incarceration Bureau, which promotes treatment and diversion programs for those with substance abuse and/or mental illness. The Bureau also provides referrals for people with other resource needs and has programs focusing on restorative justice. The Bureau coordinates with prosecutors, courts, other agencies and treatment providers on available programs and approaches. *Strategic Enforcement & Intergovernmental Relations Division*, Off. of Bronx Dist. Att'y, <https://on.nyc.gov/2JO8YBx>.

Washoe County District Attorney's Office, Nevada. District Attorney Chris Hicks established the Specialty Courts Division, which oversees prosecutors and staff serving a wide variety of courts that include the Veterans Court, Felony DUI Court, Medically Assisted Treatment Court, Diversion Court, Adult Drug Court, Young Offender Drug Court, Prison Re-Entry Court, and Mental Health Court. Demonstrating smart collaboration between jurisdictions, the Western Regional Drug Court in Washoe accepts cases from neighboring counties. See Nat'l Prosecutors' Consortium, *Nevada's Prosecutors—Innovative Programs* (Aug. 2019), <https://bit.ly/3bbYAyP>.

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What some might find surprising is that prosecutors from offices of all sizes and in all parts of this country, regardless of political party, have several of these programs already. For those prosecutors that do not, the good news is that many of the initiatives can be implemented with little or no cost. These programs have improved prosecutors' relationships with the community, initiated opportunities to address implicit bias and racism, put a spotlight on identifying problematic police officers, and spurred development of programs to reduce recidivism. Internally these programs have enhanced prosecutor morale, deepened prosecutors' understanding of the people they serve, and created efficiencies to allow prosecutors to focus their resources on the matters most critically needed to keep communities safe.

Prosecutors can spearhead reform of the criminal justice system. They have the experience and clout needed to reevaluate procedures, convene stakeholders, and implement effective new initiatives. The key is to start. One step will lead to another, and additional initiatives will emerge and develop. Ultimately, with the help of all criminal justice stakeholders, the criminal justice system will evolve and improve, providing enhanced safety and justice to victims, the accused, and the community.