

The BJA Executive Session on

# Police Leadership

2013

*The BJA Executive Session on Police Leadership* is a multi-year endeavor started in 2010 with the goal of developing innovative thinking that would help create police leaders uniquely qualified to meet the challenges of a changing public safety landscape.

In support of an integrated approach to creating safe and viable communities across America, the project directors recruited 20+ principals from a range of disciplines. The principals, in turn, led national field teams of practitioners focused on the work of policing and the organization of the future.

To gain new insights on leadership, the *BJA Executive Session on Police Leadership* engaged police chiefs in documenting their own paths and invited leaders to participate in various audio and video forums to tell their stories and discuss the future of policing and police leadership.

Please visit our website, <http://bjaleader.org>, to learn more about this project and to access a broad array of interactive, multimedia resources.

The principals are supported in their work by a team that includes project co-directors Darrel W. Stephens and Bill Geller, project strategist Nancy McKeon, and BJA Senior Policy Advisor Steve Edwards.

## Creative Problem-Solving and the Law: Challenges and Opportunities for Leaders of Police and Prosecution Organizations

### Part II: Prosecution Organizations

by

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#### A. A Multidimensional Approach to Prosecution

The traditional criminal justice system—and particularly the work of prosecutors and courts—has a case-oriented approach: prosecutors evaluate the strength of a case to determine whether to charge the offender. Prosecutors' interaction with crime is largely reactive—i.e., their work begins after it happens—and their primary ability to protect public safety is by taking the offender off the street. The system is largely siloed; cases pass from one point to the next

with limited collaboration among prosecutorial staff, let alone collaboration with personnel in other criminal justice agencies.

In many jurisdictions, overreliance on this model has resulted in congested courtrooms, overtaxed resources and delayed resolution—for offender, victim and the larger community— with little success in reducing recidivism or otherwise enhancing public safety. The vast majority of cases are resolved through pleas, contributing to the perception of the criminal justice system as a black hole where consequences, if any, are removed from the community (and the arresting officer). Moreover, consequences are grounded in punishment rather than restoring victims. This model frustrates police organizations across multiple dimensions: investigations that don't result in a charged case, time spent testifying in court that seems inconsequential, recidivating offenders revolving from the courthouse and jailhouse back to the street.

To be sure, there will always be scenarios for which the traditional jury courtroom process is the best fit, such as serious and violent crimes, complex crimes, and persistent offenders. But as prosecution organizations embrace a broader view of their duty to enhance public safety and promote good, sustainable communities, they are also embracing a suite of multidimensional strategies that support this redefined core function.

While there are many examples of this multidimensional approach, we reflect below on five categories of this work, both outside and inside the courthouse walls:

- Prevention
- Community prosecution
- Restorative justice
- Problem solving/collaborative courts
- Recidivism reduction-based sentencing and reentry

These categories reflect a diverse range of roles, strategies and expertise for prosecuting organizations. Nonetheless, they share core values: problem solving, collaboration, and an expanded view of the prosecutor's role in enhancing public safety and the sustainability of our communities.

## **1. Prevention**

Prosecution organizations have hard earned and keen knowledge of the dangers and nuisances faced by members of the public. Prosecutors know that some members of the public routinely face dangers that others likely will never experience—such as residents of a few neighborhoods plagued by gun violence, or a minority group of gender variant individuals harassed because of their appearance. They also know that some crimes are under reported, requiring creative and continuous outreach to educate potential victims, such as teenagers at risk of dating violence or elderly non English speaking immigrants at risk of targeted financial scams. Moreover, prosecutors witness the transformation, for some individuals, from their initial involvement in the criminal justice system as a victim, to the role of offender. Prosecutorial organizations and other criminal justice agencies are structured in a way that they could thrive as learning organizations—as the constant flow of

cases continually paint the problems of the community. With effective leadership, prosecutorial organizations can use this information to support the crime prevention efforts of the organization, other agencies and community.

With the knowledge of these problems, prosecutors are well positioned to lead the community to sustainable solutions through the prevention of future crime. Such prevention requires that the pattern of problems be addressed, while the concurrent prosecutorial review and prosecution of each case proceeds.

Traditionally, prosecutors have achieved prevention through incapacitation—responding to a crime by using incarceration to prevent the offender from committing future criminal acts. However, prosecutors increasingly have identified a crime prevention role for their organizations. In a 2004 survey by American Prosecutors Research Institute, a large majority of prosecutors (69%) reported that their responsibilities include implementing crime prevention efforts and addressing quality of life concerns that affect public safety.<sup>1</sup>

Crime prevention is vast in scope; at its core, it focuses on reducing risk factors and increasing protective factors. From physical changes, such as better streetlights and cameras, to neighborhood watch groups, to increasing school graduation rates, to ambitious community redevelopment, there are many versions of this work along a continuum of intensity and complexity.

As prosecutors embrace an emphasis on the social, environmental and other community conditions that lead to crime, a simple starting point is engaging in prevention through community education. Indeed, the community prosecution principles of recognizing the community's role, problem solving and establishing partnerships are at the core of public awareness campaigns. These campaigns can target two broad audiences:

**a. Educating potential victims**

In the San Francisco District Attorney's Office, prosecutors have conducted public awareness campaigns on such crimes as mortgage/investment fraud and elder abuse. These campaigns have engaged the community on multiple levels: mass education through the dissemination of information on outdoor kiosks, print materials, media coverage, and enhanced education for vulnerable individuals through more intimate information sessions in community settings. There are multiple benefits to this strategy. Having critical information enables potential victims and other community members to prevent crime or recognize it faster, and can enhance participation by victims and witnesses when a crime does occur. Awareness campaigns can lead to community building and mobilization by encouraging and empowering neighbors to look out for one another. Finally, these efforts can enhance perceptions of partnership, reassurance, access and shared values between the community and prosecutors, police and other agents of public safety.

**b. Educating potential offenders about legal implications of crime.**

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<sup>1</sup> American Prosecutors Research Institute (February 2004). *APRI Special Topics Series*, "The Changing Nature of Prosecution: Community Prosecution vs. Traditional Prosecution Approaches," page 17.

Prosecution organizations are able to deliver a unique message: this is a priority issue for us, we want to support you to keep safe and lawful, but we are committed and able to hold you accountable if you fail to do so. While violence reduction models such as Boston Ceasefire present a more intensive example of this type of messaging, it resonates for other types of risk behavior, and particularly for young people and their families. In the San Francisco District Attorney's Office, a public awareness campaign focused on truancy has used a multi-level approach—including messages on buses, print materials, media coverage, mass mailings and targeted meetings with truant students and their families. Combined with a very small number of prosecutions, this strategy has helped to reduce chronic truancy across the district by 38% over five years.<sup>2</sup> As a key gatekeeper to the criminal justice system, the prosecutor elevates the seriousness of the message; school district staff regularly report that families that have rebuffed outreach from the district attend informational meetings when the invitation arrives on District Attorney letterhead. Moreover, prosecutors add a powerful dimension to the “stay in school” message: they bear witness to the fact that truant students are far more likely to become perpetrators or victims of crime.<sup>3</sup> Issues arising from poor digital citizenship (cyberbullying, “sexting”) are also good subjects for this strategy.

Collaboration is critical to this strategy. For both potential victims and offenders, public awareness campaigns are most effective when the message is provided by prosecutors standing shoulder to shoulder with partner agencies who play other critical roles—both supportive roles and enforcement roles (e.g., police, school district, community-based service providers, business organizations, senior centers). Part of such collaboration is that shared messages result in dependency on other institutions to make good on the message that the prosecutors deliver.<sup>4</sup> Prosecuting organizations may also be dependent on other institutions to help identify the potential victims and offenders who can benefit from receiving the information.

## 2. Community Prosecution

Prosecutorial organizations have tremendous power in the lives of offenders, victims, and impacted communities. Members of neighborhoods and communities most impacted by crime and incarceration hold strong opinions and beliefs about prosecutors based on their observations of how fairly family members and friends are treated—as offenders, survivors or victims. District Attorneys can pivot the perception of these disproportionately impacted communities by engaging in collaborative processes to solve shared problems.

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<sup>2</sup> San Francisco Unified School District Chronic/Habitual Truancy Data, 2007-2012. This change was particularly significant given the fact that truancy levels in the district had remained consistent over the three years prior to this strategy, despite the implementation of other truancy intervention strategies during that period.

<sup>3</sup> From 2003-2008, 94% of homicide victims under age 25 in San Francisco were school dropouts.

<sup>4</sup> Sherman, L.W., Farrington, D.P., Welsh, B.C., and MacKenzie, D.L., eds. (2002). *Evidence Based Crime Prevention*. Routledge Press, page. 4.

The evolution of prosecutors from simply case processors to crime preventers and problem solvers is rooted in the philosophy of community prosecution. Community prosecution first gained a foothold in the early 1990s across a handful of jurisdictions<sup>5</sup> and has evolved over time and across prosecution organizations. In 1993, the U.S. Department of Justice's Bureau of Justice Assistance and the American Prosecutors Research Institute (APRI) convened an advisory group at the National Advocacy Center in Columbia, South Carolina to define community prosecution. The final definition agreed upon was that "*community prosecution focuses on targeted areas and involves a long-term, proactive partnership among the prosecutor's office, law enforcement, the community and public and private organizations, whereby the authority of the prosecutor's office is used to solve problems, improve public safety and enhance the quality of life in the community.*"<sup>6</sup> The late 1990s saw a gradual growth in jurisdictions adopting community prosecution initiatives, followed by large-scale expansion in the early 2000s, stimulated by US Department of Justice funding support through its Byrne and Project Safe Neighborhood programs.

Like community policing, community prosecution takes varied forms.<sup>7</sup> It may be a discrete unit, an organization-wide orientation, or an extra role that prosecutors take on after their regular workday. It may target select neighborhoods or divide an entire jurisdiction into prosecutor- assigned zones ("geo-prosecution"). Community prosecutors are most often housed by the district attorney or city attorney; sometimes, as in Portland, Maine, the police department directly employs the community prosecutor.

Based on data analysis and stakeholder input (including police, community members, businesses and other public and private agencies), community prosecutors develop a variety of strategies along a continuum: from outreach and prevention to vertical prosecution of high-interest cases to complex partnerships with federal agencies. While many jurisdictions focus their community prosecution strategies on quality of life crimes, code enforcement, or other low-level persistent crime issues, others focus on gangs and gun crimes.

Despite the variability of the model, the approach itself is grounded in four key principles:

- Recognizing the community's role in public safety
- Engaging in problem solving
- Establishing and maintaining partnerships

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<sup>5</sup> The prosecuting organizations credited with developing community prosecution in the early 1990s include the Multnomah County DA's Office (Portland, OR), Kings County DA's Office (Brooklyn, NY), Montgomery County State's Attorney's Office (Rockville, MD), Marion County Prosecutor's Office (Indianapolis, IN), and Suffolk County DA's Office (Boston, MA).

<sup>6</sup> American Prosecutors Research Institute (2005), APRI/BJA Community Prosecution Focus Group.

<sup>7</sup> Nugent, M.E., Fanflik, P., and Bromorski, D. (2004), *The Changing Nature of Prosecution: Community Prosecution vs. Traditional Prosecution Approaches*. American Prosecutors Research Institute. For descriptions of a number of jurisdiction-specific approaches, see Wolf, R., and Worrall, J., (2004). *Lessons from the Field: Ten Community Prosecution Leadership Profiles*. American Prosecutors Research Institute.

- Evaluating outcomes of activities<sup>8</sup>

In San Francisco, a new team of five Neighborhood Prosecutors are assigned to the City's ten police districts. These Neighborhood Prosecutors work with the community along a spectrum of strategies, from prevention to neighborhood capacity building to vertical prosecution. They analyze data to inform their neighborhoods about crime trends and hot spots. They help community members make data-informed decisions about where to establish Neighborhood Watch groups and physical public safety improvements. At the other end of the continuum, they vertically prosecute cases of community importance to ensure that those cases are treated seriously by the courts.

Moreover, as prosecution models evolve, community prosecutors can play a valuable role in communicating these changes to the community. San Francisco's Neighborhood Prosecutors are a primary point of contact for individuals who are cited by the police for misdemeanor and infraction offenses eligible for Neighborhood Court, a pre-charging restorative justice model (described in the following section). Individuals cited for these offenses call or visit the Neighborhood Prosecutors in person to learn about Neighborhood Court and determine if they want to participate. The Neighborhood Prosecutors conduct training at police roll calls in each of their assigned stations to help police understand how—and why—to refer individuals to Neighborhood Court and to contact victims with an explanation of why their cases are not going through the traditional process. In short, the Neighborhood Prosecutors are responsible for educating these diverse stakeholders about this new way of doing business and why they each should participate in it. As experienced prosecutors, they are able to deliver this message with a proven commitment to public safety.

An excellent example of the multifaceted strategy developed by a community prosecutor is the return of Los Angeles's MacArthur Park to its residents. The park, which had been a focal point for a bustling community, became overwhelmed by narcotics sales and possession, gang activity, counterfeit document sales, drinking in public, gambling, homeless encampments, illegal vending and loitering after park closing time. The Los Angeles City Attorney's neighborhood prosecutor teamed with police officers and used stay away orders as an effective tool in vertical prosecution, initiating a zero-tolerance policy for all offenses. Prior to enforcement, the prosecutor worked with the City to post 65 alert signs warning park visitors that offenses would not be permitted. The community, police and businesses partnered to install surveillance cameras, which aided successful arrests and prosecutions. Upon conviction, a stay away order was issued as a standard condition of probation and enforced by police. From 2001 to 2006, property crimes in the area decreased by 53 percent, violent crimes decreased by 50 percent and more than 245 stay-away orders were obtained to keep problem individuals out of the park. Families and joggers now enjoy the park, a youth soccer league and fishing derbies have been established, and a non-profit organization was founded to revive a band shell where summer

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<sup>8</sup> National District Attorneys Association/National Center for Community Prosecution (2008), [http://www.ndaa.org/pdf/final\\_key\\_principles\\_updated\\_jan\\_2009.pdf](http://www.ndaa.org/pdf/final_key_principles_updated_jan_2009.pdf)

concerts now take place.<sup>9</sup>

As prosecuting organizations adopt this approach, both leadership and assigned community prosecutors have to reorient their role. Depending on the model, prosecutors may have to operate outside their comfort zone, moving from the courtroom to community meetings and representing their office in groups that may not understand the potential—or limitations—of a prosecutor’s office. They must use skills that, in most cases, are not transferable from either their legal education or from their experience prosecuting cases, such as data analysis, project management, convening, and inspiring collaboration. If the path may seem risky, however, the rewards of this new perspective may be substantial: Prosecutors may develop more productive relationships with community members and victims and see, first-hand, the impact of their work on neighborhoods.

Community prosecution takes the longstanding partnership between police and prosecutors to a new level by transforming the interactions from a linear exchange of information between community and police, and then police and prosecutor, to a networked flow of information among all three partners.<sup>10</sup> For police leaders who have long embraced community policing, this paradigm shift may seem obvious—but also may raise questions about the respective roles of police and prosecution organizations, and how these expanded prosecution strategies may affect police functions and resources.

### 3. Restorative Justice

The traditional prosecution model is ill equipped to handle a significant number of the cases that fill our courtrooms. Take the case of a first-time low-level offender. As the case grinds through the criminal justice system—drawing on the limited resources of prosecutors, courts, police and defense counsel—the action of the offender becomes increasingly removed from the resulting punishment (both in time and in addressing the harm caused by the offense), and from the community impacted by the crime. At the same time, these cases congest our courtrooms, preventing more serious cases from reaching timely resolution and delaying justice for those victims.

Restorative justice offers an alternative approach to traditional prosecution. Put most simply, it is “a process to involve, to the extent possible, those who have a stake in a specific offense and to collectively identify and address harms, needs, and obligations, in order to heal and put things as right as possible.”<sup>11</sup> There are several models that have evolved from the restorative justice philosophy, including community boards, victim-offender mediation, family group conferencing and circle sentencing.<sup>12</sup> These models share three primary goals: (1) to better include community members in the justice process, (2)

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<sup>9</sup> Tremblay, A. (2009). *Beyond Community Policing: Engaging Prosecutors in Community Safety Partnerships*. MetLife Foundation Community Safety Initiative Paper Series, p. 5. Available at: [www.lisc.org/files/8195\\_file\\_csi\\_metlife\\_prosecutors.pdf](http://www.lisc.org/files/8195_file_csi_metlife_prosecutors.pdf)

<sup>10</sup> *Ibid.*, p. 1.

<sup>11</sup> Zehr, H. (2002). *The Little Book of Restorative Justice*. Intercourse, PA: Good Books, page 37.

<sup>12</sup> Karp, D.R. and Walther, L. (2001), “Community Reparative Boards in Vermont: Theory and Practice.” In *Restorative Community Justice: Repairing Harm and Transforming Communities*, ed. G. Bazemore and M. Shiff. Anderson Publishing Co., page 199.

to identify and rectify harm caused by criminal offenses, and/or (3) to successfully reintegrate offenders into positive community life.<sup>13</sup> Restorative justice programs have the potential to reduce recidivism in a cost-effective manner while increasing community involvement. Although there is limited evidence on the efficacy of restorative justice programs,<sup>14</sup> there is promising early evidence that these programs can substantially reduce recidivism.<sup>15</sup>

Vermont Community Reparative Boards is a longstanding example of the community board model and is the only statewide example of this work; it has been in operation since 1995 and operates in over 30 communities across the state. The boards are primarily used with adult offenders convicted of nonviolent and minor offenses who are sentenced to participate in Reparative Probation. Offenders appear before a small group of highly-trained community volunteers who help the offender to understand the harm caused by the offense and develop a Reparative Agreement outlining specific steps he/she will take to address the harm, such as fixing damaged property, attending a victim impacts class, and writing letters of apology. The offender then has a set period of time to complete these activities and must return for a review hearing to provide documentation of these efforts. Victims are invited to participate in both initial and follow up hearings.<sup>16</sup>

The San Francisco District Attorney's Office has developed its own restorative justice model designed to completely remove appropriate cases from our traditional criminal justice case process. The Neighborhood Court (NC) Initiative invests the power to resolve quality-of-life offenses in community members who volunteer as adjudicators in lieu of traditional prosecution. The District Attorney's Office designed the new model to achieve four primary goals:

- Efficient case resolution. NC participants can have their case heard within a couple of weeks and fully complete the process before they would have even appeared at their criminal court arraignment.

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<sup>13</sup> Ibid.

<sup>14</sup> Although there is insufficient data to conclude that restorative justice programs consistently reduce recidivism, it appears safe to conclude that implementation of restorative justice programming does not produce societal harm. There is no evidence at all that a restorative justice approach will increase criminality or recidivism. Shapland, J. et al. (2008) *Does Restorative Justice Affect Reconviction? The Fourth Report from the Evaluation of Three Schemes*. U.K. Ministry of Justice, p. 24. One scholarly article has opined that even a badly managed restorative justice program is unlikely to increase recidivism. Id. at 16.

<sup>15</sup> Anecdotal examples abound. For example, Colorado's Longmont Community Justice Partnership participants recidivated at a rate of 10% between 2001 and 2008 compared with the national average rate of 70%. National Research Center (2010), "Analysis of Longmont Community Justice Partnership Database 2007-2009: Report of Results," National Research Center, Inc.. Hawaii's Huikahi Restorative Circles has reported a 30% recidivism rate for participants compared to a 54.7% recidivism rate for those incarcerated in state prison, although this sample size is not at this time statistically significant. Walker, L. and Greening, R. (2010), "Huikahi Restorative Circles: A Public Health Approach for Reentry Planning," 74 *Federal Probation* 1. The British Ministry of Justice reported a statistically significant reduction of recidivism for property crimes in Northumbria: the reconviction rate was 93.8 % for conventional justice and 61.3% for restorative justice.

<sup>16</sup> Karp, D.R. and Walther, L. (2001).

- Community-driven solutions. The community that is affected by the crime gets to direct the plan for repairing that harm.
- Reduced burden on criminal courts. NC has the potential to significantly save both time and money for criminal courts and the agencies that work in them.
- Reduced recidivism. By keeping low-level offenders out of the traditional system—and keeping convictions off their record—NC removes an obstacle to meaningful participation in the community. As individuals gain a true understanding of the impacts of their actions, they may be less likely to reoffend.

NC referrals are made on a pre-filing basis by Neighborhood Prosecutors—prosecutors stationed in each of the City’s ten police districts—who screen offenders for eligibility and suitability. Potentially eligible individuals are notified by police at the time of arrest that they may contact a Neighborhood Prosecutor to be scheduled on the NC calendar in the community where the offense occurred. NC adjudicators are not finders of fact; individuals interested in appearing before NC are informed by the DA’s Office that if they wish to contest their guilt they should go through the traditional court process. The NC hearings are not recorded. The District Attorney treats NC hearings as confidential and will not use any statements made against the participant should he end up in criminal court. Currently, only non-custodial offenders are referred.

Offenders appear in front of a NC panel of volunteer adjudicators who have been trained in restorative justice, cultural competency, hearing facilitation and developing meaningful directives. The adjudicators engage the participant using restorative justice principles, to help the participant understand the nature of the harm he caused and to take responsibility for his actions. If victims wish to participate, they may also address the panel regarding the harm caused. Adjudicators decide on and propose a directive to the participant that is aimed at repairing the harm caused by the offense. This directive most often involves community service, counseling, restitution and/or a letter of apology, but may also include elements creatively tailored to unique situations.<sup>17</sup> If the offender completes the directive, the Neighborhood Prosecutor discharges his case and he need not appear in court.

Every effort is made to resolve an NC matter through completion of the directive prior to the NC participant’s arraignment date. Only cases that are viable criminal cases are referred to NC in an effort to ensure that there is a consequence for NC participants who either fail to appear at their hearings or complete their directives.

The District Attorney has established NCs throughout San Francisco, generally divided by police district. The NC is administered through a public-private partnership with community-based organizations that provide training and technical assistance to the adjudicators, administer the hearings, and track the performance of participants. They may also direct participants to additional supportive services. Case outcomes are tracked in a customized database and can be reported easily to police and victims.

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<sup>17</sup> In one case, for example, a business school student who had damaged storefronts was directed to work with those small business owners to develop more effective business plans.

Because there are no attorneys, no court staff and no witnesses involved in the NC hearings, there are substantial cost savings when a NC case is compared to a conventional criminal court case. The typical NC case costs approximately \$800, whereas a typical court case costs approximately \$1500.

Benefits to the NC participant include the speedy resolution of his or her criminal matter and avoidance of criminal conviction and collateral consequences that flow from the conviction. Other benefits from the NC program include decreased court congestion, engagement of the community in solving its own problems and, potentially, reductions in recidivism for NC participants.

Unlike restorative justice models that begin at sentencing time, San Francisco's model requires a change in police protocol. As a result, all police officers must learn the Neighborhood Court eligibility criteria and referral process. In a jurisdiction that already has multiple problem-solving court models and diversion programs—each with its own eligibility criteria—this requires ongoing training and support. Officers who are skeptical about the effectiveness of the restorative justice approach or the Neighborhood Court model may be especially frustrated by the additional expectations imposed by this process. At the same time, NC offers multiple benefits to police officers, including reduced court time, efficient resolution and reduced recidivism. Officers may also take part in the process by sitting alongside the volunteer adjudicators in the hearings and reading the police report as part of the proceeding.

In designing and implementing San Francisco's Neighborhood Courts, prosecutors and policy makers have addressed challenges that can provide guidance to other jurisdictions considering this model. First, to encourage police to refer appropriate cases to NC, prosecutors and office leadership must repeatedly reach out to SFPD at multiple levels to prompt officers to be fluent about NC and to inform all eligible individuals about it at the time of citation.<sup>18</sup> At the same time, this encouragement must be balanced by discouraging net widening; that is, ensuring that this new option does not result in citations for individuals who previously would not have been cited. A second challenge has been to maintain consistency across all Neighborhood Courts as the pilot has grown to scale; to ensure that proceedings maintain high quality standards; and to ensure that adjudicators maintain a balance between developing directives that originate from their own community's perspective while also maintaining equitable outcomes for similar offenses across the City. The SFDA and its community-based partners have provided ongoing training and technical assistance to the volunteer adjudicators to ensure that hearings are anchored in restorative justice practices, and that adjudicators resist the inclination to act as fact finders. Finally, in determining which crimes and which individuals are eligible for NC, prosecutors and policy makers have to balance public perceptions about being "soft on crime" with clear information about the model and solid arguments for its benefit as a public safety strategy.

#### **4. Problem-Solving/Collaborative Courts**

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<sup>18</sup> SFDA has addressed this challenge by instituting a second protocol: eligible participants are sent a letter by the SFDA informing them about NCT and how to access it.

Many offenders are not appropriate for Neighborhood Courts due to the nature of their crimes or level of criminal involvement, but also persistently fail to respond to traditional criminal sanctions. Collaborative courts, also known as problem-solving courts, evolved between these two ends of the spectrum, incorporating restorative and punitive elements, and leveraging both community and court-based interventions. Drug courts are the oldest and most prevalent type of collaborative courts.

More than 20 years ago, when drug courts first launched, they offered prosecutors a novel sentencing option for one of the largest crime issues, in terms of numbers of arrests, facing the United States.<sup>19</sup> Drug courts—and the collaborative court models they have given rise to, including juvenile drug courts, mental health courts, truancy courts, and community courts, to name just a few—combine strict accountability with social services. By emphasizing offender monitoring and treatment, facilitating collaboration between prosecutors and defense attorneys, and elevating judicial discretion, drug courts have become enormously popular throughout the criminal justice system, as well as across the political spectrum. Increasingly, drug courts are also viewed by many police departments as a tool to remove repeat offenders from the streets by addressing the root causes of certain criminal behaviors.

This popularity is bolstered by numerous positive evaluations demonstrating that drug courts can serve as an effective and cost-saving alternative to incarceration. A 2011 report by the Government Accountability Office (GAO) on the topic of drug courts identified seven highly rigorous “Tier 1” evaluations, four of which found statistically significant recidivism reductions ranging from 10 to 14 percent.<sup>20</sup> The GAO also found that drug courts were associated with reduced drug use, and for the most part, generated cost savings. Interestingly, the participation of prosecutors and police appears to be a critical aspect of drug court success: drug courts that include prosecutors and police on the collaborative team are significantly more cost-effective than those that do not.<sup>21</sup> While other collaborative courts have yet to be studied as extensively as drug courts, it is reasonable to believe that they will replicate many of the results summarized above.

One of the most anticipated and comprehensive of the Tier 1 studies reviewed by the GAO, the Multi-Site Adult Drug Court Evaluation (MADCE) provides new insight into the question of who is best served by drug courts. The MADCE, which evaluated 23 drug courts and 6 comparison sites in 8 states, found that drug court participants who previously used drugs more frequently showed particularly large reductions in substance use;

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<sup>19</sup> In 1989, drug violations accounted for the third largest category of arrests: 9.5% of all arrests (Bureau of Justice Statistics. Arrest Data Analysis Tool. Retrieved September 3, 2012 from <http://bjs.gov/index.cfm?ty=datool&surl=/arrests/index.cfm#>). In 2010, drug violations accounted for the largest portion of arrests: 12.5% (Federal Bureau of Investigation. Crime in the United States 2010. Retrieved September 3, 2012 from <http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2010/crime-in-the-u.s.-2010/persons-arrested/>).

<sup>20</sup> Government Accountability Office. (2011) “Adult Drug Courts: Studies Show Courts Reduce Recidivism, but DOJ Could Enhance Future Performance Measures Revision Efforts” (GAO Publication GAO-12-53). Washington, D.C. Retrieved from <http://www.gao.gov/products/GAO-12-53>

<sup>21</sup> Carey, S.M., Finigan, M.W., Pukstas, K. (2008). *Exploring the Key Components of Drug Courts: A Comparative Study of 18 Adult Drug Courts on Practices, Outcomes, and Costs*. (U.S. Department of Justice Publication 223853). Washington, D.C. Retrieved from <https://www.ncjrs.gov/pdffiles1/nij/grants/223853.pdf>

and, those with violent histories showed greater reductions in criminal behavior than other offenders.<sup>22</sup> The authors conclude that the common practice of drug courts to restrict eligibility to less serious offenders—nearly 90 percent exclude offenders with any history of violence, and half exclude defendants on parole, probation or who have another open case<sup>23</sup>—“may be counterproductive.”<sup>24</sup>

The MADCE findings have important implications for the future expansion of drug courts and collaborative courts more generally. There are now over 2,600 drug courts in the United States serving roughly 120,000 offenders each year,<sup>25</sup> with the potential to reduce a great deal of crime. And yet, these courts are reaching only a small proportion—less than 10 percent—of the 1.5 million arrestees per year estimated to be impacted by drug abuse or dependence, and likely to participate in court-monitored substance abuse treatment.<sup>26</sup> Two constraints appear to be preventing drug courts from “going to scale”: capacity and eligibility. One survey found that over 50 percent of drug courts did not have the capacity to serve even the limited pool of eligible offenders.<sup>27</sup> While drug courts can generate savings, they can also prove costly to implement. Contrary to current practice, it may be best to reserve the resource intensive drug court model for higher risk and higher need offenders, and seek other interventions for the huge unmet need for treatment in the criminal justice system.

Two existing models, both inspired by drug courts, but distinct in important ways, may enable the criminal justice system to provide some of the benefits of collaborative courts to the larger offender population, and prioritize the most intensive and expensive resources for the highest need and highest risk: Hawaii's Opportunity Probation with Enforcement (HOPE) and the San Francisco Community Justice Center (CJC). Similar to drug courts, both HOPE and the CJC use the judge's unique role to coerce desirable behaviors, both emphasize immediate and certain sanctions when those expectations are not met, and both demand a problem-solving, rather than an adversarial approach on the part of prosecutors and defense attorneys. These programs are distinct from drug courts in that they serve a much larger and more diverse array of offenders, and utilize triage models to determine the level of intervention.

HOPE, which as of 2008 supervised over 1,000 substance-abusing felony probationers in Oahu, focuses its resources on the provision of swift and certain jail sanctions for every detected violation of its primary mandate: abstain from illicit drugs. After a “Warning

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<sup>22</sup> Rossman, S. B. et al. (2011). *The Multi-Site Adult Drug Court Evaluation: The Impact of Drug Courts, Volume 4* (U.S. Department of Justice Publication 237112). Washington, D.C. Retrieved from <http://www.nij.gov/topics/courts/drug-courts/madce.htm>

<sup>23</sup> Bhati, A.S., Roman, J. K., and Chalfin, A. (2008). To Treat or Not to Treat: Evidence on the Prospects of Expanding Treatment to Drug-Involved Offenders. Urban Institute Justice Policy Center. Washington, D.C. Retrieved from <http://www.urban.org/publications/411645.html>

<sup>24</sup> Rossman, S. B. et al. (2011b). *The Multi-Site Adult Drug Court Evaluation: Executive Summary*, page 7. (U.S. Department of Justice Publication 237108). Washington, D.C. Retrieved from <http://www.nij.gov/topics/courts/drug-courts/madce.htm>

<sup>25</sup> National Association of Drug Court Professionals. Types of Drug Courts. Retrieved September 3, 2012. From <http://www.nadcp.org/learn/what-are-drug-courts/types-drug-courts>

<sup>26</sup> Bhati, A.S., Roman, J. K., and Chalfin, A. (2008).

<sup>27</sup> Bhati, A.S., Roman, J. K., and Chalfin, A. (2008).

Hearing,” at which the judge explains the rules to all participants, judicial interaction and intensive treatment interventions are reserved only for those who fail to comply. This “Behavioral Triage” approach allows offender behavior—as detected by dirty drug tests—to drive referrals to more intensive drug court programs or residential substance abuse treatment. UCLA Professor of Public Policy Mark Kleiman asserts that “since HOPE is much less expensive and much less time-consuming for the judge and the judge’s staff, it can—where drug courts cannot—be expanded to mass scale.”<sup>28</sup> There has been only one evaluation to date, but the results of this randomized controlled trial (the gold standard of program evaluation) were very impressive: HOPE participants were 61 percent less likely to miss probation appointments, 72 percent less likely to test dirty, and 55 percent less likely to be arrested for a new crime.<sup>29</sup> As of 2013, the Department of Justice is implementing and evaluating HOPE demonstration projects in four jurisdictions across the United States.

Police and prosecutors play a critical role in HOPE’s ability to respond to noncompliance with immediacy and certainty, the foundation of HOPE’s approach to behavioral change. When HOPE participants fail to report, the police help to locate absconders and serve warrants. This short leash provided by the police enables the court to sanction participants immediately at noncompliance hearings. Prosecutors participate in both the HOPE Warning Hearing and any subsequent noncompliance hearing, emphasizing offender accountability.

Based on New York’s Community Courts, the San Francisco Community Justice Center (CJC) takes the drug court model to scale on a neighborhood level. Rather than focusing on one specific problem, such as drug abuse (drug court), mental health (mental health court) or homelessness (homeless court), the CJC is a problem-solving program for an entire community: San Francisco’s high crime central city region. A 2008 needs assessment conducted prior to the implementation of the CJC found that this area, in which less than ten percent of the city’s population resides, generates roughly one-quarter to one-third of the city’s crime (excluding vehicle-related offenses), and 57 percent of San Francisco’s drug-related offenses. All misdemeanors and low-level felonies in the region are eligible for CJC processing (unlike most other community courts, the San Francisco CJC accepts felonies and felony probationers). In order to maximize resources, defendants are assessed to determine the appropriate case disposition, level of supervision and frequency of court monitoring, and social service intervention. This triage approach to resource delivery has enabled the CJC to serve 4,500 defendants in just three years; the same number served by San Francisco’s Drug Court in its first 15 years of activity.

As a court embedded in the neighborhood it serves, the CJC has strong ties to both residents and the local police district stations. Community members are invited to guide the CJC’s work through participation at public CJC Advisory Board meetings. Police captains and officers are also incorporated into CJC problem-solving: they are the primary

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<sup>28</sup> Kleiman, M. (2009) at 41.

<sup>29</sup> Office of Justice Programs: CrimeSolutions.gov. Program Profile: Hawaii Opportunity Probation with Enforcement (HOPE). Retrieved September 3, 2012 from <http://www.crimesolutions.gov/ProgramDetails.aspx?ID=49>

referral source of misdemeanants and, as members of the Advisory Board, they help identify and address issues affecting the neighborhood. The CJC prosecutor works closely with the District Stations to educate beat cops about appropriate case types and the case referral process. The prosecutor is also actively involved in shaping the legal parameters of each defendant's CJC participation, ensuring a balance between rehabilitation and accountability.

The CJC's collaborative, community focus is intended to enhance its legitimacy and that of the criminal justice system more broadly, engendering social change beyond the doors of the courtroom. Research has demonstrated that collaborative court methods have the potential to improve public safety, and in doing so, generate significant cost savings. However, experience has shown that traditional collaborative courts may not be able to go to scale to maximize this potential. The RAND Corporation recently commenced a comprehensive outcome evaluation of the CJC's case processing efficiency, criminal justice and public health outcomes, which will determine if the CJC has been effective in taking collaborative court principles and results to scale.

Ultimately, it is prosecutors who serve as the gatekeepers to these sentencing alternatives, and it is prosecutors who—as we determine how and for whom these methods work best to enhance public safety—are in the position to institute the most effective options. For many prosecuting agencies, innovating in this direction will be challenging. For prosecutors and police, the basic principles of collaborative courts can be rather foreign: the shift away from longer and more severe punishments; the emphasis on collaboration with traditional adversaries; and the renewed focus on rehabilitation and behavior change rather than punishment as a means to crime prevention. But the evidence is mounting that these principles will further the objectives of 21<sup>st</sup> century prosecution and policing—to be problem-oriented and proactive, multidimensional, and trusted by the public—while also addressing our over-arching responsibility to make communities safer for all.

## **5. Recidivism Reduction-Based Sentencing**

The result of a multidimensional approach is that many of the cases that come before police and prosecutors are resolved in appropriate settings outside of the traditional courtroom process. Restorative justice programs, neighborhood courts, and collaborative courts can effectively address the needs of the victim and the underlying drivers impacting the offender's behavior to hold the offender accountable and reduce re-offense rates. Still, even for the remaining cases, there is a prominent role for multidimensional problem solving in the traditional courtroom process.

### **a. Alternative Sentencing**

The traditional prosecutor evaluates criminal cases at three stages. First, the prosecutor must determine if the presenting police agency has provided sufficient evidence such that the prosecutor can prove the case beyond a reasonable doubt. At this stage, a prosecutor may elect to charge the entire case presented, charge only those Penal Code sections deemed provable by the prosecutor, or decline to charge the arrestee. Second, once

charges have been filed, the prosecutor must evaluate the case for the purposes of presenting it to a judge and/or jury and securing a plea or a verdict. At this stage, the prosecutor is focused primarily on the facts of the incident, the interpretation of relevant law, and best arguments to persuade a judge or jury.

The third stage of evaluation is related to the sentencing phase of a criminal case. Beyond the question of guilt, prosecutors must determine what they think the case is “worth” to determine the punishment they will advocate for in the plea bargaining process and/or in court. This assessment traditionally involves focusing on the strength of the evidence in the case and the maximum allowable punishment identified by the Penal Code.

What is often missing from this traditional assessment at the sentencing phase is an appraisal of the most appropriate punishment in order to reduce the likelihood the offender will re-offend. A “recidivism reduction” analysis asks different questions, questions that go beyond the strength of the evidence and the Penal Code punishment guidelines. A recidivism reduction analysis requires the prosecutor to understand the science of recidivism and the predictive factors that influence the likelihood a person will commit a crime again. The emerging science on recidivism is generally not a formal part of training for prosecutors or district attorney offices.

The science of recidivism reduction identifies what is known about behavioral and situational patterns and how they relate to the frequency of re-offending. In other words, at this point in criminology, there are known factors that are predictive of the chance that a person will commit another crime in the future. These factors are called “risk and protective” factors, and emerging criminal justice practices seek to identify and address risk factors to decrease the likelihood a person will commit a new crime. Some risk and protective factors are static, like the age of a person at the time of their first arrest, and some are malleable, like if a person has mental health issues, drug addiction issues, steady employment, a supportive adult in their lives, or stable housing.

Reducing recidivism then becomes an exercise in identifying the malleable factors and the sanctions that are most likely to motivate the person to eliminate the risk factors and enhance the protective factors. Studies on a wide variety of programs point to sanctions, both punishment and rehabilitation oriented, that work better or worse with individuals experiencing different risk levels.<sup>30</sup>

Armed with information about the science of recidivism, the ways prosecutors look at cases change. Rather than advocating for the maximum allowable punishment, prosecutors shift to consider questions such as: what sanctions would change this person’s behavior? What sanctions would keep this person from coming back into the justice system? These questions require prosecutors to more deeply understand risk management and to take risk and protective factors into consideration when assessing sanction options. A recidivism reduction analysis would consider such wide-ranging factors as the offender’s

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<sup>30</sup> See generally Warren, R.K. (2007). *Evidence-based Practice to Reduce Recidivism: Implications for State Judiciaries*. National Institute of Corrections and Crime Justice Institute. Retrieved from <http://www.wicourts.gov/courts/programs/docs/cjjudicialpaperfinal.pdf>.

criminal history, alcohol and drug issues, mental health issues, family history of involvement in criminal activity, employment, education, children or other family caretaking responsibilities and housing stability.

To be sure, many of these factors already enter into the prosecutor's consideration or awareness. Often they informally influence how cases are settled. However, they are not necessarily part of a formal analysis of recidivism reduction. The difference that seems promising would be to weigh these factors to determine what scientific evidence says about the most effective interventions. For example, studies on recidivism conclude that putting a low-risk offender into incarceration, or into an intensive intervention with high-risk offenders, can actually increase his or her likelihood of recidivating.<sup>31</sup> Research suggests that incarcerating these individuals for short periods with similar offenders is more effective at reducing recidivism. If that conclusion were widely understood by prosecutors, then understanding the risk level of offenders would be key to determining their most appropriate length of incarceration. This would change prosecutorial advocacy at sentencing significantly.

Additionally, even in cases that do not qualify for collaborative courts (drug courts, mental health courts, etc.), alternatives such as drug and alcohol treatment, community supervision with specific requirements such as employment training, etc., may become more effective sentences to reduce recidivism than incarceration alone. It is likely that far fewer cases would result in a punishment of incarceration alone, given that this method of punishment works to reduce recidivism for only a small number of offenders. Instead the majority of cases would likely result in either a combination of some incarceration time with community supervision requirements that address and reduce risk factors or no incarceration but a robust community supervision approach.

In the San Francisco District Attorney's Office, this new alternative approach to sentencing – taking the science of recidivism into consideration – is underway. The DA's Office recently created the nation's first Alternative Sentencing Planner position in a district attorney's office. The Alternative Sentencing Planner (ASP) is an expert in the science of recidivism reduction and a support to prosecutors in court. The ASP evaluates cases to review what is known about the risk level and protective factors of the offenders and then make sentencing recommendations that will reduce the likelihood the offender re-offends. In addition, the ASP acts as a "secret shopper," conducting site visits to programs to determine their effectiveness in reducing recidivism, and as a trainer for all staff so the recidivism reduction approach can be integrated into the fabric of all case prosecutions.

As an example of the impact of this position, the ASP recently worked on the case of a female offender charged with second degree burglary, attempted forgery, receiving/buying stolen property, and identity theft. The offender was a young woman with a history of second degree burglaries and substance abuse; she also had a young child (allegedly fathered by her pimp) who had been removed from her custody and was living in kinship care. The prosecutor's initial offer was a split sentence of 2 years in custody and 4 years

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<sup>31</sup> Ibid.; Lowencamp, C.T. and Latessa, E.J. (2004). "Understanding the Risk Principle: How and Why Correctional Interventions Can Harm Low-Risk Offenders." *Topics in Community Corrections*, 5. Retrieved from <http://www.yourhonor.com/dwi/sentencing/RiskPrinciple.pdf>.

on supervision; defense counsel was advocating for probation and out-patient drug treatment or transitional housing for six months. In reviewing the case, the ASP identified five critical milestones for the young woman: completion of female-specific residential drug treatment (because she exhibited a pattern of making poor decisions around older men); completion of parenting classes and counseling; reunification with her son; successful completion of mandatory supervision; and obtaining full time employment and remaining drug-free. The ASP's analysis guided the prosecutor's offer and, ultimately, the court's disposition of the case: one year in jail and three years on supervision, with specific supervision terms aligned with each of the milestones identified by the ASP.

Based on their casework, prosecutors are well positioned to provide principled and practice-grounded leadership to community-based collaborations engaged in promotion of alternatives to jail and supportive services. As the San Francisco DA's Office has begun to emphasize the use of community-based alternatives to detention, some prosecutors have voiced concerns about organizations that lack understanding about how to work with the criminal justice system – from knowing how to present information in court, to understanding case processing and different types of offender supervision. As a result, the DA's Office is partnering with other City agencies to design an intensive training session for San Francisco nonprofit providers so that they will understand how to work effectively with the court and prosecutors to provide alternative services to offenders while promoting public safety.

### **b. Sentencing Commissions**

The science of recidivism reduction is not only missing from the fundamentals of the job of most prosecutors, it is also largely absent from most state Penal Codes and federal criminal law. Most criminal law is developed through the political process, with mandatory minimum sentences and sentence enhancement laws changing annually. Often this process is influenced by political reactions to high profile cases or attempts by elected officials to look “tough on crime.”

The challenge with politically driven sentencing schemes is that the resulting hodgepodge of criminal laws are largely disconnected from what is known about the most effective strategies to prevent or reduce crime. If the goal of reducing recidivism were a major goal of the development and design of sentencing schemes, it is likely they would look very different.

The United States incarceration rate is higher than any other developed nation in the world. Until very recently, the number of Americans behind bars has steadily grown proportionally for the last three decades. The average length of stay in prison and jail has grown as well. The disproportionate impact on communities of color of this growth has been nothing short of extreme. The costs associated with incarceration are also staggering. California alone spends more than 9 billion dollars per year on prisons.

In this context, it is imperative that we have confidence in the effectiveness of the sentences being meted out. Given the severity of the economic crisis facing the nation and every state and local jurisdiction, it is incumbent upon criminal justice professionals and

government leaders to take a close look at local, state, and federal sentencing schemes to assess the impact of those schemes, and consider alternate approaches that may more effectively reduce recidivism. Prosecutors at both local and state levels are natural leaders for this work.

Several states across the country have used Sentencing Commissions as nonpartisan governmental entities designed to assess existing sentencing schemes and propose alternate approaches. Several of these commissions have succeeded at revamping major penal code sections and bringing consistency and clarity to the jurisdictions' approach to sentencing.

In San Francisco, the District Attorney's Office led a citywide effort to establish the first county-level Sentencing Commission in the State of California with the explicit purpose of assessing the impact on recidivism of current approaches to sentencing. While the commission is not empowered to change state law, it will be able to make recommendations and build consensus across criminal justice agencies and government administrators on the most effective strategies to reduce recidivism among various categories of offenders and offenses. By holding these important discussions in a public forum, the commission can facilitate community participation and demystify sentencing laws and practices.

The San Francisco Sentencing Commission can serve as a model for other local and state commissions. Participants in the SF Commission include the District Attorney, the Police Chief, the Probation Chief, the Sheriff, the Public Defender, the Human Services Agency, the Public Health Department, as well as experts from academia, victim services, offender reentry, and community service providers.<sup>32</sup> Convened in August 2012, the commission is projected to complete its work in two years.

## **6. Offender Reentry**

Because so many people repeatedly commit offenses, support for the successful reentry of individuals exiting the criminal justice system is paramount to increasing public safety. By supporting individuals to live lawful, safe, and productive lives, crime is prevented. Prosecutorial leadership in reentry policies and strategies can be powerful.

Increasingly, local collaborations of community based organizations, local government, formerly incarcerated individuals, and police have emerged as popular vehicles for municipalities to foster public support for reentry initiatives. In the City and County of San Francisco and San Diego County, the District Attorney's Office has played key leadership roles in the development of formal reentry councils that develop policies to support full reintegration and engagement of people who have been involved in the criminal justice system. For example, the San Francisco Reentry Council is co-chaired by the District Attorney, Chief Probation Officer, Sheriff, Public Defender and Mayor, in order to demonstrate their collective ownership of effective prisoner reentry. Additional members include representatives from the Board of Supervisors, police, juvenile probation, economic and workforce development, social services, children/family services, public

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<sup>32</sup> The full Sentencing Commission Ordinance can be found on the San Francisco District Attorney's website at <http://www.sfdistrictattorney.org/index.aspx?page=191>.

health, the court, state and federal corrections. Council members work together to identify barriers to successful offender reentry, from legal issues such as expungement reform and “ban the box” efforts<sup>33</sup> to gaps in supportive services, and to advocate for legislative changes, create local policies, and secure funding to address these issues.<sup>34</sup> In both San Francisco and San Diego, the District Attorney provides visible personal leadership as well.

In Brooklyn, NY, Kings County District Attorney Charles Hynes has taken a different kind of hands-on approach to offender reentry by creating a comprehensive program, ComALERT (Community and Law Enforcement Resources Together) to increase the chances for men and women returning from prison to successfully reintegrate into Brooklyn communities. The program provides an effective combination of immediate wrap-around transitional services that target individuals who have histories of substance abuse and are currently under mandated community supervision. These services include substance abuse treatment and counseling, anger management, GED classes, workforce development services including job readiness workshops with job placement assistance, mentoring, transitional housing, and health insurance enrollment. Individuals are enrolled in the program within a few days of their release from custody. In order to graduate from ComALERT, the participant must be drug-free or working or in school. The model is supported by a strong partnership with the Brooklyn parole division of the New York State Department of Correction and Community Supervision. ComALERT’s wraparound service model was validated in 2007 in a two-year evaluation of the program.<sup>35</sup>

Partnerships with community based organizations, public health or human services agencies, or initiatives with formerly incarcerated people may be unfamiliar territory for a prosecutorial agency. Yet, prosecutors are essential to the success of many of these reentry partnerships. Participation in a reentry council or other local problem solving advisory body can demystify and educate the public about the District Attorney’s powers, duties, and policy priorities. At the same time, prosecutors themselves learn practical information through their participation in these bodies that helps them understand why the traditional criminal justice and reentry systems have yielded such high recidivism rates. In addition, prosecutors may be especially capable of bringing critical partners to the reentry table. In San Francisco, then District Attorney Kamala Harris was able to recruit the business community to support the City’s reentry efforts by helping business leaders to understand why they stood to benefit from effective offender reentry – and how their willingness to provide employment training and opportunities to reentering individuals could enable the District Attorney’s Office to resolve cases in innovative ways that would promote successful reentry.

Prosecutors are well familiar with the nexus between successful reentry and public safety. But as they increasingly recognize the contribution they can make to support successful

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<sup>33</sup> “Ban-the-box” laws typically restrict employers that have government contracts from asking prospective employees if they have a criminal history. The name comes from the fact that many job applications have a box to check asking if the applicant has a criminal record.

<sup>34</sup> The full Reentry Council Ordinance can be found on the Reentry Council website at <http://sfreentry.com/wp-content/uploads/2011/07/Admin-Code2011-07-13.pdf>.

<sup>35</sup> For more information on ComALERT, see <http://www.brooklynda.org/ca/comalert.html>.

reentry—and, moreover, that reentering individuals are themselves stakeholders in our communities—they can play a powerful role in supporting this work, bringing their community prosecution strategies full circle.

## **B. Innovative Performance Measures**

Discussing performance measures and applying them to criminal justice agencies is hardly a new concept. However, recent applications of performance measurement have not only resulted in more efficient use of resources, but also the opportunity to invest in innovation and improve the delivery of fair and efficient justice. Quality performance measures established in police and prosecution agencies benefit the organizations and the individual police officer, prosecutor, investigator and victim services staff. With clearly identified goals, activities, and methods for measurement and feedback, performance measurement has a positive effect on problem solving, information gathering, personnel retention, efficient workflow (targeted deployment and manageable caseloads), and ultimately leads to reductions in crime.<sup>36</sup> While the benefits of performance measurement are wide in scope, measures can be difficult to develop and implement depending on the organizational culture, the agency's relationship with other criminal justice partners and department access to technology resources.

As police and prosecution organizations move toward multidimensional strategies and a goal of increasing public safety, performance measures must be developed to measure the effectiveness of those new strategies and broader goals. This section provides a brief overview on the evolution of performance measurement, the essential components for quality and innovative measures, and lastly practical applications of innovative performance-based prosecution.

An individual's criminal history is one of the greatest predictors of future criminal activity.<sup>37</sup> In a sense, criminal justice professionals, who are responsible for the enforcement of the law and set the consequences that build the individual's "rap sheet," are in the best position to monitor and measure the effectiveness of interventions imposed by the system. We do our jobs best when we use this information to identify what improvements can be made to facilitate the effective administration of justice. This responsibility is what compels police and prosecution agencies to develop meaningful performance measure frameworks.

### **1. Evolution of Criminal Justice and Prosecutorial Performance Measures**

Research on this topic dates back to a 1970s RAND study which demonstrated the feasibility of applying performance measures to data already available in agency files to draw

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<sup>36</sup> Cordner, G.W., and Scarborough, K.E. (2007). *Police Administration*. Newark, NJ: Lexis Nexis.

<sup>37</sup> Loeber, R. & Farrington, D. P. (1998) (Eds.) *Serious and Violent Juvenile Offenders: Risk Factors and Successful Interventions*. Thousand Oaks, CA: Sage.

inferences about changes in jurisdictions based on those performance measures.<sup>38</sup> This research resulted in a comprehensive guide for practitioners and included some of the first recommendations for integrated performance measures across criminal justice disciplines including police, prosecutors and the courts. For the last two decades the Bureau of Justice Assistance has invested resources in exploring what elements provide the best analysis for justice outcomes. In the early 1990s BJA focused critical attention beyond crime rates, conviction rates, and recidivism rates and explored the complexity of relevant and reliable criminal justice measures.<sup>39</sup> Through this research, four broad goals or principles for the criminal justice system were identified:

- Doing justice
- Promoting secure communities
- Restoring crime victims
- Promoting non-criminal justice options

Since 1986 The Harvard Kennedy School of government has held an Executive Session on State and Local Prosecution and in the early 1990s provided descriptive models for the various roles of prosecutors.<sup>40</sup> Building on this preliminary research and recognizing the evolving role and activities of prosecutor's offices, the National Institute of Justice awarded a series of research grants from 2003 to 2004 to the American Prosecutors Research Institute (APRI) of the National District Attorneys Association. These grants resulted in four publications from the Prosecution Measurement Project. These publications explain the development of goals and objectives and include detailed models of frameworks for measuring prosecutor performance. The APRI further explored the validity of the identified measures for evaluating prosecution office performance. The objectives that were found to be valid include holding offenders accountable, timely and efficient administration of justice, reduced crime, and reduced fear of crime.

Most recently the BJA commissioned the Association of Prosecuting Attorneys (APA) to host roundtable discussions with prosecutors to capture the changing field of prosecution. During these roundtable meetings prosecutors commonly identified recidivism reduction as a key element in their crime reduction strategies.<sup>41</sup> APA also cites examples of prosecutor offices that participate in planning bodies or councils focused on prisoner re-entry, like those described above. This is an indicator of the evolving role of prosecutors. The climate is ripe for adaptation of at minimum basic performance measures.

Policing agencies have led the field of criminal justice performance measurement. Cities such as New York have implemented Compstat, the well-known comparative statistics organizational management tool, which has led to more focused, efficient, and intelligent police organizations. However, not all jurisdictions have seen successful implementation

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<sup>38</sup> Wildhorn, S., Lavin, M., Pascal, A., (1976). *Indicators of Justice: Measuring the Performance of Prosecution, Defense, and Court Agencies involved in felony proceedings: A Guide to Practitioners*. RAND

<sup>39</sup> Bureau of Justice Statistics (1992). *Rethinking Criminal Justice System: Toward a New Paradigm*. U.S. Department of Justice, Office of Justice Programs: Washington, DC. NCJ-139670

<sup>40</sup> Jansen, S., and Hood, R., (2011) *A Framework for High Performance Prosecutorial Services*. Association of Prosecuting Attorneys and Center for Court Innovation.

<sup>41</sup> Davis. R., (2012). *Selected International Best Practices in Police Performance Measurement*. RAND Center on Quality policing.

of performance measurement systems like Compstat.<sup>42</sup> This points to the difficulty of broadly establishing valid and meaningful performance measures and the need for the organizations to establish feedback mechanisms, which allow for creative problem solving and are not driven by shame. Prosecutor offices have a special opportunity to learn from the experience of police agencies and benefit from the transformational impact provided through performance measurement.

## 2. Developing Comprehensive Prosecution Performance Measures

Prosecutor's offices ultimately use performance measures to track what the office does and how the community benefits from it. There are system activities, individual interventions and external forces (political or regulatory constraints), which can impact the ability of an office to meet public safety goals. This is why it is important to identify and distinguish between outcome variations that may result from something outside of the control of the prosecutor's office and those outcomes that are largely within the office's control. These can be divided into *Process based measures* (system) and *Individual worker based measures* (focusing on individual actions); each presents challenges. It is essential to identify boundaries for the scope of the performance measurement. The culture of the office and investment in innovation will guide the development of these performance measures. Are prosecutors seen as exclusively case oriented? Or is there a more holistic approach that includes community prosecution and a shared responsibility toward reducing crime?<sup>43</sup>

As discussed in the previous pages, the services and operations of many prosecutors' offices now extend beyond the halls of justice, focusing attention and resources on prevention and protection in addition to prosecution. Innovative performance measures capture the diversity of activities completed by the office, including but not limited to the attorney casework, victim/witness services and compensation, investigations, and community outreach and engagement. Because of the complexity of the office's work and the interdisciplinary collaboration that is required to effectively hold offenders accountable and support victim restoration, performance measures cannot be created or reviewed in isolation. For example, singular measures looking at victim/witness court participation without the support or context of the auxiliary or parallel service provided by victim services can lead to misinterpretation.

There are several publications that provide detailed overviews of essential steps for building out prosecutorial performance measures.<sup>44</sup> The commonly identified first step is to review and potentially revise the mission and goals of the office. The mission typically covers the purpose of the office, and sets broad goals for the outcomes that the office will strive to achieve. Next, the office identifies the objectives, which specify the outcomes

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<sup>42</sup> Willis, J., Mastrofski, S., and Weisburd, D., (2003). *Compstat in Practice: An In-Depth Analysis of Three Cities*. The Police Foundation.

<sup>43</sup> Davis, R., (2012). *Selected International Best Practices in Police Performance Measurement*. RAND Center on Quality Policing.

<sup>44</sup> Nugent-Borakove, M., Budzilowicz, L., Rainville, G., (2009). *Exploring the Feasibility and Efficacy of Performance Measures in Prosecution and Their Application to Community Prosecution*. American Prosecutors Research Institute, National District Attorneys Association.

related to a specific action or activity. Objectives should be specific, measurable, achievable, relevant, and time bound. These are the benchmarks that the office's activities will be measured against. Some goals and objectives may apply to the office as a whole or they may only capture a subdivision or specialized unit of the office. Additionally, goals and objectives can have cross-system impact that is shared across criminal justice agencies – for example, the goal of holding offenders accountable. This objective was validated for two jurisdictions, meaning that is an appropriate measure for the goal to promote the fair, impartial, expeditious pursuit of justice. The work of APRI further identified potential core prosecutorial performance measures:

- Sentencing strength
- Case processing time
- Gun, gang, and robbery crime rates
- Ratio of repeat offenders to total offenders
- Fear of crime
- Climate of safety
- Community attitudes about prosecutor effectiveness.<sup>45</sup>

While these are excellent core measures, they should not be reviewed in isolation. When combined with measures focused on victim restoration and recidivism reduction, we find the true basis for innovative performance-based prosecution.

### 3. Innovative Performance-based Prosecution

As prosecution organizations expand their work beyond traditional investigation and prosecution, they are increasingly identifying three key measures—swiftness and certainty of outcomes; victim/community restoration; and recidivism reduction—to augment the traditional prosecution measure (severity of penalties). The following three examples are based on the evolving role of prosecutor's offices.

1. ***Goal: Divert suitable cases from prosecution.***<sup>46</sup>

This may include but is not limited to the use of pretrial diversion, or community/neighborhood courts.

*Objective: Reduction in caseload prosecuted in court due to appropriately diverted cases.* There are significant court cost savings related to this measure and once policy and strategy are implemented effectively the prosecutors' office can benefit from the redistribution of staff resources to focus on serious and violent crimes which are often more complex cases.

2. ***Goal: Improve service delivery to victims and witnesses.***

Shifting the focus of victim witness services from exclusively a courtroom focus to include restorative and stabilizing support services requires an innovative and

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<sup>45</sup> Nugent-Borakove, M., Budzilowicz, L., Rainville, G. (2007) *Performance Measures for Prosecutors: Findings from the Application of Performance Measures in Two Prosecutors' Offices*. National District Attorneys Association, APRI April 2007.

<sup>46</sup> Office of the Legislative Auditor. (1997) *Non-Felony Prosecution: A Best Practices Review*. State of Minnesota. April 1997 accessed at <http://www.auditor.leg.state.mn.us/ped/pedrep/9707-ALL.PDF>.

comprehensive series of objectives, which are ultimately rooted in customer service.

*Objective 2a: Percent of victims/witnesses contacted who appear in court as scheduled at or above an established median.*

*Objective 2b: Percent of victim/witness contacted who utilize the program assistance increases.*

*Objective 2c: Percent of successful referrals for victim/witness to external support services.*

*Objective 2d: Percent of victim/witness clients who report high or moderately high satisfaction with victim/witness assistance program.*

Previously a prosecutor's office may only focus on objective 2a, however to do so misses the full scope of the mission of victim/witness services and could lead to misguided decision making.

3. ***Goal: To promote inclusive community-based crime prevention.***

As described above, prevention and collaboration are key activities of a multidimensional prosecutors' office. Establishing community trust and confidence serves not only to support a prevention campaign but also provides the foundation through which a prosecutor's office can respond to the issues that require a community response.

*Objective: Respond to emerging needs and trends identified in the community.*

A more specific representation of this objective may include tracking the outcomes of initiatives where the prosecutor's office participates. For example, how many community meetings or other partnership gatherings did the office attend? What documents were created? Did the office participate in any merchant or community walks?

These are just a few examples that expand upon the excellent work found in the APRI Framework, *Prosecution in the 21st Century: Goals, Objectives, and Performance Measures*.

## **4. Using What You Know**

Performance measures are most impactful when leadership is able to clearly identify the value of the method and directly connect it to the daily activities of the workforce, including victim services staff, prosecutors, paralegals and investigators. The ability of the leadership to adapt to implementation challenges is essential; however, effective implementation usually is not a top-down approach. Those staff primarily responsible for implementation must have confidence that the performance measure framework makes sense and is a valuable tool.

Regular feedback mechanisms must include clear plans for data utilization and standards for implementing any proposed changes, especially changes that have cross-criminal justice system impact. Because of the sensitive nature of prosecution and investigation work, it may be determined that a particular set of measures is regularly reported to the public, while more sensitive measures are maintained as confidential. In addition, a regular means of communication with other criminal justice agencies should be established.

Ultimately this key question must be answered: How does this information contribute toward efficient management, utilization of resources and advocacy for additional financial or collaborative support? Without this critical thinking, staff expected to implement any changes resulting from information gathered likely will not buy into the system. Having a clearly defined purpose for “using what you know” supports arguments for any changes when communicating with other criminal justice agencies, and the public.

## **5. Impact on Police Agencies**

From arrest to reentry there is a system of criminal justice partners that rely on each other to successfully achieve various public safety goals. It is essential that the innovation that results from the implementation of performance measure systems in police, prosecution and probation agencies does not hinder or obstruct those criminal justice partners from meeting these shared goals. A lapse in communication about changes in office policy or standards can lead to unintended consequences, including poor case development and/or supervision. For example, if a prosecuting agency shifts the scope of the office’s focus to modify charging decisions based on a new minimum standard for evidence, this must be communicated to the police and investigative agencies that bring their cases forward for review. This should be achieved through multiple venues, especially if the change is related to a process that has been in place for several years. This communication strategy should include leadership input and feedback into the new strategy, collaborative development of training resources, multi-media notification including roll call briefings, department bulletins and intranet and email blasts. The prosecution strategy in this example, to strengthen cases, may result in more police investigative resources. It is therefore critical that agencies addressing process-based measures such as this consult with and inform criminal justice partners.

## **6. Data Systems and Technology Investments**

Both management and technical capacity contribute toward the efficient and effective utilization of resources. An agency may question how, during a time of reduced budgets and staff, it can allocate the resources to conduct performance measurement analysis. Each jurisdiction has unique circumstances that require assessing whether external support or internal office resources will work best. Internal analysis of staffing resources may reveal that staff are already reviewing the goals and objectives of the office but that such review is not coordinated and not routine. In those cases, management level interventions could generate the desired system start up with minimal costs. Research support can be externally funded through non-profits and universities. In addition, there may be tools in place that only need to be slightly modified to meet the needs of a jurisdiction or department to start a performance measurement project. Once a performance measurement system is established, that jurisdiction may be ready to utilize more comprehensive data systems including predictive analytics.

## **7. Toward Integrated Performance Measurement**

Since the 1970s researchers have explored the value and application of performance measurement tools in criminal justice settings. Police agencies have led and modeled the

implementation of outcome-based and data-driven decision making. With the evolving role of prosecuting agencies, more district attorney's offices are establishing performance-based frameworks and applying them to every aspect of the office's work. As criminal justice partners recognize a broader duty to enhance public safety and develop more complex methods to define success and evaluate performance it is evident that police and prosecution organizations need to collaborate and establish integrated performance measurement.

## Conclusion

At this moment, the criminal justice system is faced with a unique and exciting opportunity for a paradigm shift. The staggering economic and social costs of our criminal justice system have become unsustainable. At the same time, we have seen the power of innovation—from problem-solving policing to the growing community prosecution movement—to reduce crime. This alchemy of necessity and inspiration has moved both police and prosecution organizations to embrace a broader vision of our duty to enhance the public safety and sustainability of the communities we serve. While this broader vision is itself significant, it is only one step toward meaningful change. Police and prosecutors have to identify our respective and collective roles that we will play to achieve this vision, and engage each other in new ways.

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