

Vera Institute of Justice

Criminal Justice Issues and Prisoners' Rights

<https://www.vera.org/unlocking-the-black-box-of-prosecution>

Policy Issue Resources

Because prosecutors work occurs outside of the public eye, prosecution is often called the black box of America's criminal justice system. In order to help unlock this black box, the Vera Institute of Justice created this guide: a tool for interested community members and prosecutors to better understand what prosecutors can do to advance equal justice.

After serving for more than a decade as prosecutor, I know firsthand the detrimental impact our criminal justice system has on people. I know from my experience that individuals who are arrested are not always guilty and that even those who have committed the most serious crimes have usually been victims themselves of traumatic experiences that made their life choices predictable, if not inevitable.

I have learned that even the most well-intentioned prosecutors can at times end up as cogs in the wheels of a system that relies too heavily on incarceration. I've seen that a focus on incapacitating individuals rather than treating their underlying issues has not made us safer and has decimated many of our communities—especially our communities of color. Growing up in Detroit, I saw firsthand the far-reaching impact of violence—physically, emotionally, and economically—when my father suffered a severe head injury after he was robbed on his way to work. The pain and stress this caused our family manifested in different ways, including contributing to my brother's development of a substance use disorder. Predictably, he eventually came into contact with the criminal justice system. Despite having no criminal record, he was charged with 32 felony counts from a single incident where he stole from his job to buy drugs. What should have been treated as a public health issue resulted in dozens of felony convictions, nearly \$2,000 in fines and fees, and a year of his life spent in a jail cell.

These experiences shaped me as a prosecutor and helped me to recognize that our overly punitive justice system does not make victims feel any safer and is ill equipped to address the plethora of issues that underlie criminal behavior.

With the tremendous power and discretion afforded to prosecutors, they are uniquely situated to stem the tide of mass incarceration and to ensure that justice and fairness are more than lofty ideals for victims, those accused, and the communities they serve. Prosecutors have an obligation to consider the impact of their actions on more than just individual cases; they must also assess how their offices' practices impact systemic issues of racial inequities and mass incarceration.

I am encouraged by the recent efforts of advocates to elect lead prosecutors who reflect their values and will change the system. Here at Vera, we are privileged to work closely with some of those prosecutors to transform campaign promises into reforms that produce measurable outcomes toward equal justice.

This guide is a natural continuation of Vera's years of work in the field of prosecution reform. In 2005, perhaps somewhat ahead of the curve, we launched the Prosecution and Racial Justice Program and partnered with prosecutors' offices in Mecklenburg County (Charlotte), North Carolina; Milwaukee, Wisconsin; San Diego, California; and New York County, New York, to understand how prosecutorial discretion at key decision points contributed to racial disparities in those justice systems. In [The Anatomy of Discretion](#), Vera examined how prosecutors in two offices made decisions at key points in a case to determine what influenced the exercise of prosecutorial discretion. And, in 2014, we analyzed decisions made by prosecutors in the [New York County District Attorneys Office](#) in more than 200,000 cases to understand how those decisions might contribute to racially disparate outcomes.

It is my hope that this guide will serve as a tool in the ongoing efforts to educate and empower communities to hold prosecutors accountable. It is also my hope that prosecutors will examine their own offices and find inspiration in the examples we highlight of lead prosecutors who are working to make justice and fairness a reality. It is clear that the public is calling for change; it is equally clear that we need more chief prosecutors to lead from the inside.

Jamila Hodge

Director, Reshaping Prosecution

Just a few years ago, prosecutors' elections occurred without much public attention, discussion of policy positions or, often, even a challenger against the incumbent. But today, the role of the prosecutor has become one of the central topics of discussion in the criminal justice reform movement. In what may have otherwise been quiet off-year elections, advocacy groups like Color of Change and the ACLU organized outreach campaigns that led to increased voter turnout and the election of new lead prosecutors committed to reforms that will reduce incarceration and address racial disparities in the justice system. Many organizations and individuals operating at the local and national level too many to name here have used their influence to advocate for change and made unprecedented investments in the campaigns of reform-minded candidates. See for example Jon Schuppe, Criminal Justice Reformers Aim Big by Targeting Local DA Races, NBC News, February 14, 2018, <https://perma.cc/T6TX-C3F9>; and Paige St. John and Abbie Vansickle, Prosecutor Elections Now a Front Line in the Justice Wars, The Marshall Project, May 23, 2018, <https://perma.cc/85LZ-ZZ9Q>. Also see John Legend, Hey, Meet Your DA! ACLU of Northern California, <https://perma.cc/25PR-5JY5>; and Shaun King, The Single Most Important Person to Reform the Criminal Justice System is Not The Appeal, February 13, 2018, <https://perma.cc/R5RN-2768>. King's organization Real Justice aims to elect progressive prosecutors, <https://perma.cc/UF3W-CUJA>. Activist groups such as Reclaim Chicago, Chicago Appleseed Fund for

Justice, and Philadelphia Coalition for a Just DA have also been instrumental in local campaigns and voter education efforts to elect reform-minded prosecutors in their communities. Others have convened lead prosecutors to share reforms and lessons learned from their efforts to advance change. Fair and Just Prosecution, *Our Work and Vision*, <https://perma.cc/SMN5-8F6E>; and Institute for Innovation in Prosecution, *Mission and Our Work*, <https://perma.cc/PX8M-S24R>.

Already, we are seeing big changes in the way these newly elected reform-minded prosecutors operate, as they issue policies overturning business as usual approaches to bail, discovery, and sentencing and profoundly alter how they handle charging and case processing. See for example Maya Wiley, *Power of the Prosecutor*, *New Republic*, May 24, 2018, <https://perma.cc/KXJ6-M357>.

And yet, despite the recent attention on prosecutors and their elections, the role of the prosecutor remains one of the least understood and least transparent in American government. Unlike police, prosecutors exercise their significant power almost entirely without regulation or civilian or government oversight. On August 20, 2018, however, New York Governor Andrew Cuomo signed a bill that will create the nation's first prosecution accountability commission. See Office of Governor Andrew M. Cuomo, *Governor Cuomo Signs Legislation to Establish Nation's First Commission on Prosecutorial Conduct*, press release (Albany, NY: Office of the New York State Governor, August 20, 2018), <https://perma.cc/GZQ9-YE4H>. By and large, prosecutors are not required by law to justify their decisions to the courts or the public, and offices very rarely release information or even gather data about the choices they make. Much of what prosecutors do occurs and remains behind closed doors.

Meaningful change will require reforms to an office's policies, practices, and culture and a fundamental reshaping of the role of the prosecutor. Through formal policies and trainings, lead prosecutors must require their line prosecutors to make decisions based on a holistic and equitable view of public safety that actively counters how traditional prosecution perpetuates mass incarceration and racial inequity.

It's time to unlock the black box of prosecution. This guide is a tool to help both community members and prosecutors evaluate the policies and practices that shape the decisions line attorneys make. It can also serve as a starting point for conversations between prosecutors and the communities they serve about how they can reshape their role and the justice system as a whole.