

The Facts on Progressive Prosecutors

How and Why Prosecutors Should Help End Mass Incarceration

BY ALLISON YOUNG MARCH 19, 2020

What is the role of a prosecutor?

Prosecutors are powerful actors in the criminal justice system. For years, these elected county officials have been regarded as “administrators of justice” and supervisors of public safety. They wield far-reaching discretionary powers, such as determining which charges to pursue, whether to recommend bail, which witnesses to interview, and what sentences to recommend. Prosecutors also control the plea bargaining process, by which an estimated 95 percent of criminal cases are resolved. With more than 2,300 prosecutors’ offices across the country, these gatekeepers of the criminal justice system affect the lives and outcomes of millions of individuals each year.

How have prosecutors affected mass incarceration?

For decades, prosecutors have won elections by championing tough-on-crime policies that empowered them to use their discretion to levy harsh punishments that have disproportionately affected low-income communities of color, especially Black communities. Prosecutors’ success has often been measured by their ability to increase the number and severity of convictions.

These traditional priorities and policies have contributed to the explosion of mass incarceration in the United States, which has the largest incarcerated population of any country in the world and more than 10.6 million admissions to prison each year. Yet research has shown that lengthy sentences do not meaningfully contribute to crime prevention and public safety.

What makes a prosecutor “progressive”?

Across the country, reform-minded prosecutors have set a new precedent of winning elections on platforms committed to both public safety and reducing mass incarceration. They have pursued a range of policies, including using diversion and treatment programs as alternatives to drug related crimes, refusing to prosecute cases brought by officers with a history of dishonesty or unreliability, and reducing prosecutions of lower-level crimes.



Who is implementing reforms?



In **Cook County, Illinois**, State’s Attorney Kim Foxx has implemented a suite of reforms, including raising the threshold for felony charges of retail theft to \$1,000 and increasing the use of diversion programs as an alternative to incarceration by 25 percent.



In **Philadelphia**, District Attorney Larry Krasner has pushed for police accountability, reduced the use of cash bail, and prioritized lighter sentencing recommendations and terms of probation. Krasner’s pledge to curb mass incarceration has contributed to a 30 percent decrease in the jail population and a 46 percent decrease in the average length of sentences.



In **King County, Washington**, Prosecuting Attorney Dan Satterberg—first elected in 2007—has a long-standing public health and harm reduction approach to prosecution, which includes support for prearrest diversion programs for low-level drug cases and youth offenders, prioritizing restorative justice as an alternative to youth detention, and providing sustained support for supervised injection sites and drug treatment programs as the frontline response to substance use disorders.

In San Francisco, for example, District Attorney Chesa Boudin prohibited his staff from using California’s three-strikes law to increase sentences. And Portsmouth, Virginia, Commonwealth’s Attorney Stephanie Morales committed to reducing bias in the criminal justice system and decriminalizing misdemeanor drug possessions.

What’s the opposition to progressive prosecutors?

Critics have opposed reforms by claiming that the changes pursued by progressive prosecutors would pose a threat to public safety. However, statistics in these jurisdictions have generally not shown a corresponding spike in crime after the implementation of progressive reforms. Many critics also object to prosecutors refusing to prosecute entire classes of crimes, such as marijuana possession. This, however, is simply a different application of the standard discretion afforded to prosecutors to decide which cases they will pursue.

“When you talk about holding people accountable ... I don’t think our primary responsibility should be incarceration. That should be the last option.”

—BROOKLYN DISTRICT ATTORNEY ERIC GONZALEZ

Traditionally, cooperative relationships between law enforcement agencies and prosecutors’ offices have come into conflict amid disagreements over proposed and enacted reforms. In Orlando, Aramis Ayala, the state attorney for the 9th Judicial Circuit Court of Florida, was met with swift retaliation from Gov. Rick Scott (R) after announcing office priorities to abandon the use of the death penalty.

St. Louis’ first Black women chief prosecutor, Kim Gardner, successfully fought to overturn convictions marred by claims of police misconduct and created an “exclusion list” of police officers accused of corruption. As a result, she has faced consistent resistance and retaliation from the St. Louis Police Officers’ Association, which prompted Gardner to pursue a federal civil rights lawsuit against the city and police union.

Despite this opposition, more and more communities are electing prosecutors who have prioritized reforming the criminal justice system along with ensuring public safety.

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2,300

Prosecutor’s offices across the country

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“Virginia’s Newly Elected Progressive Prosecutors,” December 2019 | A Center for American Progress-hosted discussion with Virginia’s newly elected reform-minded prosecutors on the evolving role of the prosecutor: Parisa Dehghani-Tafti, Commonwealth’s attorney of Arlington County and City of Falls Church; Steve Descano, Commonwealth’s attorney of Fairfax County; and Buta Biberaj, Commonwealth’s attorney of Loudoun County

“The Politics of Prosecutors” | An interactive tool designed by The Appeal to track state and local policies and priorities implemented by reform-driven prosecutors

Fair and Just Prosecution | A network of prosecutors committed to embracing and innovating equitable approaches to public safety rooted in local communities, with the aim to reduce punitive outcomes and increase prevention and intervention

Institute for Innovation in Prosecution (IIP) at John Jay College of Criminal Justice | A collaborative national platform, network, and resource that brings together prosecutors, policy experts, and the communities they serve to promote data-driven strategies, cutting-edge scholarship, and innovative thinking

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For a full list of sources, please see the web version of this fact sheet, available at www.americanprogress.org/?p=481939.