

# How Prosecutors Can Support A Reimagined Police Response

Since the summer of 2020, jurisdictions across the country have proposed a wide range of policing reforms. Some have focused on improving training and increasing accountability for misconduct, while others have discussed redirecting resources away from police departments and to social services.<sup>1</sup> While responses have varied, there is a growing consensus that the criminal system should leave a smaller footprint, particularly in communities of color. Even leading police chiefs have expressed agreement that police are tasked with solving too many of society's problems.<sup>2</sup>

As members of law enforcement who play an outsized role in the criminal system, prosecutors must participate in this conversation. Moreover, prosecutors should reduce reliance on the criminal system as a backstop to many of society's problems. As described in this Action Guide, prosecutors can answer calls for criminal justice reform by implementing policies in coordination with, or parallel to, police reforms in three ways:

## 1. Create alternative means of addressing social problems that the criminal system is ill-equipped to solve.

Just as police around the country are beginning to recognize that they are not the right answer to many social problems, prosecutors should acknowledge that the current criminal system is ill-equipped to respond to issues such as substance misuse disorders, homelessness, and many crimes of poverty. Prosecutors can implement policies to minimize reliance on incarceration and a punitive approach to solve some social issues, including:

- A. Exercise **discretion to decline** a larger portion of cases - particularly for criminalized behavior related to poverty, substance use, and mental health. Relatedly, prosecutors should only use jail and prison as a last resort, rather than the default option.
- B. Stop prosecuting most cases for **school-based crimes**.
  - i. In 2019, the prosecutor in [Durham, North Carolina](#) stopped accepting referrals from school-based incidents except for serious crimes.

<sup>1</sup> A recent [Bloomberg](#) analysis shows many cities increased their police budgets, despite calls to "defund" the police.

<sup>2</sup> These leaders include former chief of police in [Dallas](#) (who now runs the Chicago Police Department), chief of police in [San Francisco](#), and the [International Association of the Chiefs of Police](#).

- C. Work to **reduce the number of times that police are asked to respond** to social problems. For example, prosecutors can promote specialized courts - in the absence of other alternatives - for [people suffering from mental illness](#), [experiencing homelessness](#), or those with substance misuse disorders if appropriate. If these programs are well-designed and successful, they will result in fewer interactions with police because the underlying causes of the person's behavior will be addressed.
- D. **Incentivize line prosecutors** to avoid unnecessary prosecutions and reduce incarceration when appropriate.
  - i. Evaluate individual prosecutors, and the office as a whole, not based solely on trial performance and lengths of sentences, but on [nuanced and holistic criteria](#) such as successful referrals to diversion programs.
  - ii. Create an [internal culture](#) that celebrates instances in which the accused respond well to diversion, have their cases dismissed after completion of a program, or when prosecutors exonerate someone.
- E. **Advocate** for alternative forms of policing, such as programs that divert people before they even reach the prosecutor's office.
  - i. An example is the elected prosecutor's instrumental role in establishing the [LEAD program](#) in King County, Washington.
- F. Prosecutors can **combat exploitation** of the poor, which contributes to poverty, by aggressively targeting those who take advantage of the vulnerable. For example, some prosecutors have [civil enforcement powers](#) that they can use to address wage theft and consumer protection violations. Poverty is [linked](#) to contact with the police and it is incumbent on prosecutors to ensure communities do not enter cycles of poverty as a result of corporate malfeasance.

## **2. Set the standard for government transparency by making public the office's policies and allocation of resources.**

Transparency breeds both accountability and legitimacy, necessary ingredients to a functioning democratic system. Many prosecutors think of transparency as it relates to individual cases -- for example, why an office chose (or chose not to) present a police killing to the grand jury. But prosecutors can embrace transparency beyond the individual case and educate the public about their general policies and practices:

- A. **Collect, analyze, and release data** on as many metrics as possible. At a minimum, prosecutors should report the number and types of crimes prosecuted annually, demographics of the accused, and how often prosecutors drop cases (or have them dismissed by a judge) because of Fourth Amendment violations. Communities should also know how many people their

elected prosecutors have sent to jail or prison each year, and the convictions of those individuals (i.e., petit larceny, drug offenses, robbery, rapes, and homicides).

- i. Prosecutors should work with data experts to analyze racial disparities at key decision points like charging, pretrial release, offers, and sentencing, and should publish those results. Elected prosecutors should also collaborate with experts to ensure that the data they have is reliable and user-friendly for community members. By taking these steps, prosecutors can provide the public with a data-based portrayal of their role in the criminal legal system. [Click here](#) for more information and examples of putting these principles in practice on the IIP and Vera Institute's Motion for Justice page.
- B. **Post a detailed office budget** on the prosecutor's website. This information could reveal, for example, how much money is spent on a large office's sex crimes unit, conviction integrity unit, and community engagement staff. For smaller offices, simply specifying how much money is spent on attorneys, and a breakdown of the number and type of cases that the office handles each year, can give a community information about how the office allocates its resources.
  - i. In addition, prosecutors should detail how much of their budget comes from local, state, and federal governments, asset forfeiture (including local versus state or federal forfeiture funds), private foundations, and other sources.
- C. Prosecutors should **create, and then make public, internal policies** such as their protocol for an [officer-involved fatality](#), how the office handles internal reports of police misconduct, and discovery policies.

### **3. Use the prosecutor's powers to ensure police accountability.**

Our communities will not trust the criminal legal system unless they believe police officers are held accountable for misconduct. Although prosecutors routinely work with police officers, prosecutors must retain independence from police departments and address police misconduct. Below are examples of policies prosecutors can implement to ensure they hold police officers accountable:

- A. Develop **proximity** between prosecutors and people directly impacted by police violence. Prosecutors typically spend a significant amount of time with police officers throughout their careers, but comparatively little time hearing about the community's experience with police violence.<sup>3</sup> Whether a prosecutor decides to bring charges against a police officer or declines

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<sup>3</sup> Ramsey County Attorney John Choi and Valerie Castile (the mother of Philando Castile, who was shot and killed by a police officer) [collaborated](#) to create the IIP's Officer-Involved Fatality Toolkit. Their partnership is an example of how a prosecutor can work closely with a directly-impacted individual to foster mutual understanding in a challenging context.

to do so in a police brutality case, the prosecutor should keep the victim and their family apprised of all developments. A prosecutor should, at a minimum, hold an introductory meeting at the very beginning of an investigation, in which the victim and relatives can learn what to expect and ask any questions. Families should never hear about the result of an investigation for the first time through the media – the prosecutor should give them notice before the public is informed of their decision with sufficient time to ask questions and voice concerns, particularly in a police-involved fatality.

- B. Create a **centralized mechanism** for line prosecutors to report police misconduct or possible *Brady/Giglio* information to ensure other prosecutors in the office are aware of that officer's history.
- C. Create a unit within the office dedicated to **investigating and prosecuting official misconduct**.
  - i. Ensure that the head of this unit reports directly to the elected prosecutor.
  - ii. Assign line prosecutors who do not interact with police officers on any cases other than those related to official corruption or misconduct.
  - iii. For smaller prosecutors' offices that cannot dedicate multiple prosecutors to an independent unit, the elected prosecutor should have clear protocol in place for what line assistants should do in the event they uncover misconduct in their cases.
  - iv. For offices that do not have their own investigators, elected prosecutors should establish a partnership - before an incident occurs - with another state agency that can investigate police misconduct.
- D. Using their positions as elected officials, prosecutors can serve as **leaders in public discourse** and legislative debates. Prosecutors can partner with their local law schools and community organizations to analyze existing state statutes and develop a legal framework that provides a path to appropriate accountability.
- E. **Examples of putting these concepts into practice:**
  - i. In June 2020, the [San Francisco](#) District Attorney's Office announced a new policy declining to charge cases that rely solely on uncorroborated reports from officers with prior serious misconduct. The office also implemented a new policy [requiring review](#) of body-worn cameras or other available independent evidence - such as video surveillance footage - prior to filing charges such as resisting arrest or assault on an officer. In addition, as part of the work in building proximity to those impacted by police violence - and supporting them - the office implemented a [policy to compensate victims of police violence](#) even when police reports fail to corroborate victims' accounts.
  - ii. In September 2020, the [Suffolk County](#) District Attorney released a list of over 100 police

officers who had been accused of misconduct that tainted their credibility as witnesses.

- iii. In October 2020, the prosecutor's office in [Wyandotte County](#), Kansas expanded its conviction integrity unit's mandate to include the investigation of police misconduct.
  - iv. The [St. Louis](#) Circuit Attorney's Office maintains a list of officers whose testimony the office will not rely upon to prosecute cases.
- F. **For more information** on procedures to implement to hold police officers accountable, see the [IIP's Officer Involved Fatalities Toolkit](#). The toolkit also provides a sample policy from Ramsey County's Prosecutor's office on *Brady* disclosures for police officers (page 23 of the document).