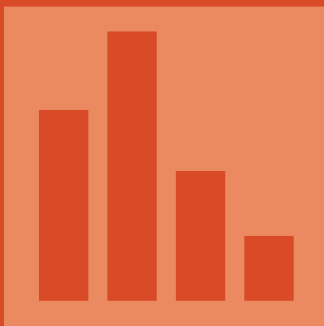


PROSECUTOR ATTITUDES, PERSPECTIVES, AND PRIORITIES: MULTNOMAH COUNTY

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FOREWORD FROM DISTRICT ATTORNEY MIKE SCHMIDT

At the Multnomah County District Attorney's Office (MCDA), we're building a new vision of justice based on the ideals of effective, just, and fair prosecution. Justice should not be measured in arrests, prison sentences or fines. In fact, those measures set up the wrong incentives and reinforce punishment over accountability and healing. MCDA is striving to use data and research toward building healthier and safer communities in which individuals are treated fairly and equitably irrespective of their race, ethnicity, gender, sexual orientation, religion, immigration status, or income.

This work starts by looking within, examining our own contributions to justice and fairness. Understanding prosecutors' perspectives and priorities helps us engage in meaningful discussions about the direction of the office and identify improvements to prosecutorial policies and practices. I believe that great policy ideas can come from line prosecutors who have daily interactions with victims, defendants, and their families.

Such transformative change can be better achieved through external partnerships. I am grateful our office was selected to be part of the Prosecutorial Performance Indicators (PPIs) project, which aims to provide new measures of prosecutorial success and ameliorate racial and ethnic disparities that can emerge from criminal case processing. This partnership is funded through the John D. and Catherine T. MacArthur Foundation's Safety and Justice Challenge, which our county has been part of since the inception of this landmark initiative.

Partnerships between prosecutors and researchers remain uncommon, and we want to change that. Departing from the status quo, MCDA invited researchers to conduct interviews and surveys with our staff. The outcome of these activities is this report, which provides rich qualitative and quantitative data about how prosecutors think about success, racial justice, community engagement, and the use of scientific knowledge as they process criminal cases. We need to remember that as prosecutors we hold enormous power over people's lives and freedoms. Therefore, it is our obligation that the exercise of discretion maximizes the good for the communities we serve. The benefits of research is precisely that: it forces us to step away from assembly line case processing and look at the bigger picture about how our cumulative decisions heal or harm defendants, victims, and their families.

MCDA's role in the justice system is downstream. Harms in our community come to our doorstep after they have occurred. Yet, prosecution strategy, authentic community partnerships, and adherence to data can contribute to preventing future harm, aiding the fight upstream. In a time of backlogged courts, resulting in historic caseloads and barriers to investigation along with all of the other challenges brought on by the pandemic, data is more critical than ever, knowing a return to "normal" is off the table. This is a moment of reset. I am grateful for our incredible partners at Portland State University, Florida International University, Loyola University Chicago, and Justice System Partners for stewarding this work with their objectivity, expertise and willingness to innovate.

Select findings from the prosecutorial interviews

1. **Shifting Priorities:** Prosecutors indicated that the office is adapting its priorities to better meet the overall goal of achieving justice and advancing public safety. These shifting priorities involve: data-driven policy making, using a racial equity lens, and increasing transparency with the public.
2. **A Victim-Centric Approach:** Prosecutors in the office are particularly focused on protecting and serving victims. This theme cuts across the interviews in many contexts. For example, prosecutors underscored the importance of ensuring that victims are heard and satisfied with the process, and that working with community partners provides the office with valuable tools for assisting victims.
3. **Internal Communication & Transparency:** Prosecutors indicated that there is room for growth in internal communication within the office. Prosecutors acknowledged the office's new commitment to transparency with the public, but perceived that internal transparency and communication could be strengthened as well, specifically, along the topics of evaluations, promotions and re-assignment.
4. **Striving for Racial Equity:** Prosecutors overwhelmingly agreed that they should be involved in reducing disparities and the disproportionate impact of crime on people and communities of color. But prosecutors struggled when trying to articulate how this can be achieved. Connecting what prosecutors are able to do in their role and the racially equitable outcomes they want to achieve remains a challenge.

Moving forward with this knowledge in mind

MCDA's priorities and culture are, by nature, entrenched in the agency as a result of decades of reinforcement. The research described in this report provides several avenues for reenvisioning our role in building a more just and effective office. While public safety remains our priority, this cannot be achieved through aggressive law enforcement alone. Partnerships with public health, education, and racial justice experts will offer us more effective tools for improving our work.

Integration of these findings and our corresponding goals within the office will require both an internal and external approach. To apply an effective "bottom-up" methodology to decision making and direction, with clear benefit to the public, feedback and ideas must be collected from prosecutors doing the work as well as those impacted by our work. Facilitating a feedback loop between line prosecutors and community through listening sessions will assist us in understanding pressing community concerns, and turn the feedback into actionable policy. In doing so, it is our goal to build lasting community partnerships to make Multnomah County a safer place.

Clear communication with line prosecutors regarding MCDA's values, mission and goals as well as internal changes coupled with positive social interactions from casual conversations in the hallway to Unit meetings where there are opportunities for in-depth conversation about casework, must also be bolstered. Honest dialogue and directives about applying an equity lens to everyday work must be carried out alongside leading by example through internal policy changes and hiring and promotions within the agency. Efforts to reduce caseloads through this lens have already begun.

These will be among the top considerations as MCDA acts on the findings from the interviews and surveys described in this report.

Note about the Data Presented

This report draws on two different types of data collected in 2021 from the Multnomah County District Attorney's office.

First, in-depth interviews with a random sample of 21 Deputy DAs guided discussions in four primary areas: goals and priorities of the office, views on prosecutorial success, opportunities for reform in the office and the criminal justice system, and tracking the office's success. Prosecutors with differing levels of experience participated: six Level 1s, four Level 2s, seven Level 3s, and four Level 4s. Interviews lasted between 39 and 86 minutes, averaging 64.5 minutes.

RELEVANT DATA FROM THESE INTERVIEWS IS PRESENTED IN THE FORM OF QUOTES FROM PROSECUTORS ("WHAT WE'VE BEEN TOLD") AND SUMMARIZED USING SHORT PARAGRAPHS ("WHAT WE'VE LEARNED"). IMPORTANTLY, IT IS IMPOSSIBLE TO REPORT ALL INFORMATION GLEANED FROM THE INTERVIEWS, RATHER THE FINDINGS REPORTED REPRESENT DOMINANT THEMES.

Second, survey data was collected via an online platform from 51 deputy DAs, which for the purpose of this report supplements the interview data described above. The average years of experience of prosecutors who participated was 10.3 years. In this survey, we asked prosecutors to rate indicators of success in prosecution, their views of the treatment of defendants in the system (i.e., office punitiveness versus leniency), race in the criminal justice system, community engagement, and topics related to communication and the office environment. The median time to completion was roughly 7.25 minutes.

THE DATA FROM THESE SURVEYS ARE PRESENTED IN THE FORM OF TABLES, CHARTS, AND BAR GRAPHS AT THE END OF EACH REPORT TOPIC.

Additional information about recruitment and data can be found in the Appendix, including copies of the full interview and survey questionnaires.



OVERVIEW OF THE TOPICS

COMMUNITY SAFETY & WELL-BEING, FAIRNESS & JUSTICE

DEFINITIONS OF PROSECUTORIAL SUCCESS

OFFICE MISSION & THE CURRENT PRIORITIES

COMMUNITY ENGAGEMENT

TREATMENT OF DEFENDANTS (USE OF INCARCERATION & OTHER SENTENCES)

RACIAL/ETHNIC DISPARITIES IN THE CJ SYSTEM

OFFICE: CULTURE, CAPACITY, & EFFICIENCY

SUPPORT, PROMOTION & RE-ASSIGNMENT

COMMUNICATION

CAPACITY & EFFICIENCY

COMMUNITY SAFETY & WELL-BEING, FAIRNESS & JUSTICE

Topic One: Definitions of Prosecutorial Success

THEME 1.1- DEFINING AND MEASURING SUCCESS IN PROSECUTION IS DIFFICULT. IT MIGHT BE EASIER TO FIRST DEFINE WHAT SUCCESS IS NOT

What we've learned

Prosecutors initially had difficulty defining success in prosecution. Some of this is likely related to difficulty in considering how to measure success, especially quantitatively. Prosecutors typically began by first defining what success in prosecution is not, as opposed to what it is or how best to measure it. Success in prosecution is not simply defined by convictions or "win rates", the number of trials conducted or motions filed, nor the sentence length given to the defendant. Success is much more holistic.

What we've been told

"Well, I can say that winning trials should not, by any means, define our success."

"[Measuring success] isn't that you should be judged by how many convictions we get. There should never be an incentive for people to win at all costs in a criminal case when you're on the prosecution side of things."

"You're never winning or losing a trial. You're seeking justice. Our job is to present the facts to the factfinder, and they determine who's guilty or not guilty. It's not about winning or losing. It's did you prove the case or not?"

"My measure of success should not be tied completely to the number of convictions that I can secure. What I want to see is basically in line with how we evaluate the office's general success - what are the outcomes of the cases that I personally handle, how are the victims/defendant doing after the fact. Has the behavior been addressed? Are we still having those problems?"

THEME 1.2- PROSECUTORS OFTEN DEFINE SUCCESS IN THE ABSTRACT, CONSIDERING GLOBAL MEASURES AS MORE IMPORTANT GOALS, BUT ULTIMATELY, THERE ARE INDICATORS OF SUCCESS THAT GUIDE THE OFFICE

What we've learned

Defining the office's success often means considering some of the more abstract, difficult to quantify goals such as community trust (e.g., confidence in the office by the community) and victim satisfaction in the handling and prosecution of cases. Similarly, prosecutors identified intangible qualities that make a good prosecutor such as preparedness, being honest and fair, compassionate, and having good judgment. Ultimately, prosecutors came up with a variety of quantitative indicators that can be used to gauge the success of the office such as case resolutions, lower crime and recidivism rates (under which, prosecutors discussed the importance of addressing the root cause of behavior and getting defendants into appropriate treatment services), restitution for victims, and eliminating racial/ethnic disparities. Importantly, some of these outcomes may be impacted by factors outside of the office's control (e.g., recidivism may be influenced by the level of services and treatment defendants receive post-conviction), but regardless, can be used as an indication of success in prosecution.

What we've been told

Community trust- *"My main goal in prosecution is to reflect community values, our community, and to ensure that we're serving them. For me, the criteria to gauge how well our office is doing has to do with a variety of programs that we can make sure that we're making our community whole... The measure of our success is really how much are we making this community feel safe and feel like they can trust this office to do the right thing."*

"Confidence in our office by our community. That is what our goal should always be, and I think that should always be what we strive for. That can shift over time and mean a lot of things, but I think we always need to be listening to our community and knowing what they want to see out of us. Because we serve our community, and if we don't have the confidence of our community, they don't trust us, and we're not doing our job."

Victim satisfaction- *"If I have done enough on a case where the victim is satisfied, or if there is no victim, I'm satisfied about public safety and rehabilitation, then I would say that I have been successful."*

"Making sure that our victims and survivors are heard and understood is how we gauge the success of our office."

Case resolutions- *"You measure success not just by having a community feel (because that's qualitative data), but you still have to have some sort of quantitative measure to measure your success. And how we do that is by conviction rates, by whether or not offers are being taken, the bench is departing very far from the offer that we're making. That's how we measure the quantitative measure of our success."*

"[I judge my success by] ... victim engagement, as well as my prosecution rates, my number, my caseload vs. my outputs (pleas) and my resolution of cases."

Crime rates (public safety)- *"Our job is to work ourselves out of a job. A community without crime would be ideal."*

"Reducing crime. I think that is what our function for the community is, prosecuting people, enforcing the laws, and trying to reduce crime in the community. If we're able to do that, I think we're achieving our goal and performing our function..."

Recidivism rates- *"We could look at [recidivism] numbers and say that the resolutions we're putting out are actually preventing people from continuing to commit crimes."*

"Reduction in recidivism would be the biggest measure of change...If we can address the root cause of why people commit crimes, then people will not just continue to follow the same patterns..."

"In the analysis of outcomes of criminal cases that we have [and] the decisions that we're making on resolution - that should really have a focus on 'Are we addressing problem behaviors?' and 'Are we having fewer issues with this particular person?' That's hard to do in an office that handles so many cases, but at the end of the day, that's where we headed, right? The idea is to get people who need help, the help that they need, to have those issues not happen again, and make the community safer..."

Reducing racial/ethnic disparities- *"Success could be measured by closing the gap of racial discrepancies amongst defendants. That would be a huge marker of success."*

Individual prosecutor success- *"Being prepared, open-minded, fair, compassionate, and invested in outcomes for all the participants in the case...that's probably the best way I can describe being a successful prosecutor."*

"A good prosecutor is somebody who is thorough and applies the law evenly and appropriately and seeks out a goal that's equitable amongst the defendant population but also tailors to

the needs of each offender. You cannot just blanket sentence everyone the same way. Human beings are vastly different. I think a good prosecutor is also somebody who treats everyone with dignity and respect, to opposing counsel, the bench, and defendants."

TABLE 1. IMPORTANCE OF INDICATORS OF SUCCESS IN PROSECUTION

	Average Score	Unimportant	Of Little Importance	Moderately Important	Important	Very Important
Defendants with mental health and substance use problems receive appropriate services	4.61	0%	0%	3.9%	31.4%	64.7%
Victim satisfaction with the handling of cases	4.37	0%	2.0%	7.8%	41.2%	49.0%
Imprisonment of serious offenders	4.32	0%	0%	14.0%	40.0%	46.0%
Fewer defendants re-arrested after prosecution	4.53	0%	2.0%	7.8%	25.5%	64.7%
Lower crime rates	4.43	0%	4.1%	6.1%	32.7%	57.1%

Note. Items ranged from "Unimportant" = 1 to "Very Important" = 5. Bolded percentages indicate the most frequently reported response.

Topic Two: Office Mission & the Current Priorities

THEME 2.1- THE OFFICE'S MISSION IS TO ACHIEVE JUSTICE AND ADVANCE PUBLIC SAFETY; THE MISSION REMAINS THE SAME, BUT THE PRIORITIES OF THE OFFICE AND METHOD TO GO ABOUT ADVANCING THAT MISSION HAVE CHANGED

What we've learned

The office's primary mission is to advance public safety and achieve justice for victims and the community. There has not been any change to that core mission; but rather, the method to go about achieving the mission has slightly shifted. The office's priorities have shifted in three major ways: (1) using a more data driven approach to inform policy and decisions, (2) using an equity lens in prosecution, and (3) increasing transparency with the public.

What we've been told

"Always, the top priority is to advance public safety, and we are getting better at drilling down on that and what that means.... I don't think that our view of our mission has really changed so much as our view of how to go about that [has]...we have learnt what ought to be prioritized and why."

Data-driven approaches- "Aligning criminal justice policies with where the data's at, creating more data-driven sentencing and charging decisions."

"I think since [the DA] has come on board the folks here have been identifying where we can make positive changes in our policy as an office to move more towards restorative justice in prosecuting. That's the heart of the office's goal right now, but the reality is COVID. A lot of that is taking precedence over what the mission of the office is right now. I think that the ultimate priority is to identify where we're getting it wrong, where the CJ system is getting it wrong. I see concerted efforts to get more data-based and coming up with a more restorative justice resolution approach."

"I know that our office has been engaged in data collection with regards to racial and ethnic disparities in the CJ system... I know that it is a priority ...figuring out the numbers, what are the numbers of defendants that are being convicted and not being convicted. The community is just yearning for more transparency which is tough in the work that we do, but I think that transparency is super needed for dealing with racial disparities and things like that in the CJ system. The community should know why we're making the decisions that we're making...and know that that's not because of race, or that we see that there is this disparity and what we're doing to remedy that."

Using an equity lens- *"And that's one of the [office's priorities to] to really identify why [there are disparities] and make sure we address the root of the issues there."*

"The overall mission is achieving justice, so I think the change and shift has been what are we going to focus on to meet that ultimate goal. And I think that [the DA] has shifted and is making a big push, rightfully so, to focus on bias crimes and prosecute bias crimes. [The DA] has highlighted the disparity in some of the implementation of sentences with ballot Measure 11 and the like, in part because of the racial disparities and minorities getting arrested and/or charged with those crimes. But ultimately, it still comes down to achieving justice."

"Current priorities to provide an increased level of community safety, with a diversity lens to how we accomplish that."

Increasing transparency with the public- *"I think that our office right now is prioritizing transparency in the community...open communication with the public about the decisions that [the DA is] making and why he's making them."*

"I think a lot of it is data-driven, so that we can identify what problems exist...I think we're on the right track, and one of the many things [the DA] has been very interested in doing is tracking [racial disparities]. So, we do have a very forward-facing, transparent view of 'here's all the numbers of the stuff that we do here as prosecutors in Multnomah County' to show whether we're meeting those goals of not having disparate prosecution and results for people of color. I really think that the best way to tackle that is continuing to collect data to support where we want to be."

THEME 2.3- THE OFFICE SEEKS TO BALANCE FAIRNESS, AND THAT INVOLVES PROTECTING THE COMMUNITY AND THE VICTIM, AND DOING YOUR BEST BY THE DEFENDANT

What we've learned

Prosecutors noted that the office's mission, or one of its key priorities, is to balance fairness for all parties involved to the extent possible. Balancing fairness involves protecting the community, which means being firm and taking a tougher stance in some cases. This is in line with protecting the victim, taking their requests into account, and working to make them whole. Balancing fairness also means protecting defendants' constitutional rights (prosecutors are one of the first lines of defense), thinking carefully about their situation, and considering the most fair and appropriate response to the event. Overall, it is impossible to make everyone happy in every case. Instead, prosecutors work towards this balance; striving to be fair and using good judgment were perceived as key characteristics of a successful prosecutor.

What we've been told

"Hold the line and be firm when there's real community risk and safety at stake. When there's not, get creative and figure out what the best resolution would be..."

"I also think that we have to be hard where we have to be hard. There are cases that really do merit that. One thing that is a little difficult in this county is that everything is very much defendant oriented. And when it comes to victims and making them whole, we kind of forget

about that, because that is not a main priority. We really need to make sure that we're working for the victims."

"We want to serve justice and to give the outcome that is called for. We want to have victims not only receive what they want as just outcomes, but also have a good experience with the process... And we want to do so in a fair way that is respecting the rights of the defendants as well as our goals in getting a conviction and an appropriate sentence."

THEME 2.3- RESTORATIVE JUSTICE, SPECIFICALLY GETTING DEFENDANTS INTO TREATMENT AND PROGRAMMING, AND CONSIDERING THE CAUSES OF CRIMINAL BEHAVIOR, IS A KEY PRIORITY OF THE OFFICE

What we've learned

Criminal justice reform is an expressed priority of the office, specifically restorative justice and helping defendants get into programming (i.e., treatment, rehabilitation) as opposed to punishment, especially for lower-level crimes. These efforts at the office-wide level involve relying on diversion programs and re-thinking carceral sentences. At the state-wide level, this involves the DA taking on a more active role advancing policy at the legislature.

What we've been told

"Not every case should get the same type of disposition. So, really trying to listen to defendants and defense attorneys, trying to get at what is the source of the problem, what caused the situation in which the defendant has committed these crimes, and then trying to tailor the disposition to address those issues in the most effective way possible. If we're doing that, then I think we will achieve better community safety."

"I think the mission of our office now is about criminal justice reform, so that means actively pursuing legislative changes and trying to allow opportunities for diversionary and rehabilitative programs...as opposed to seeking convictions."

"[We are] coming up with our own ways [of satisfying the office's goals] as far as avoiding prison and getting people into treatment whenever possible, rehabilitating defendants rather than incarcerating them."

"Looking at drug convictions more with a lens of mental health and rehabilitation as opposed to punishment..."

Topic Three: Community Engagement

THEME 3.1- WORKING WITH COMMUNITY GROUPS CAN HELP BREAK DOWN MISCONCEPTIONS AND ASSUMPTIONS BETWEEN THE OFFICE AND THE COMMUNITY

What we've learned

Community engagement opens a line of communication between the office and the community. This line of communication can help to break down assumptions and misconceptions about the office and criminal justice system more generally, and educate prosecutors about experiences with which they may have little understanding. First, community engagement can increase the community's understanding of the role of the office and what their local DA's office and prosecutors really do (e.g., how decisions are made, available program options). Whereas presently the DA's office is frequently conflated with other criminal justice institutions such as the police or the courts

despite being a separate agency. Community members may see events in other cities and assume their local public safety agencies (the DA's office included) operate in the same way, which might not be the case. Second, community engagement can also help "bust" misconceptions about the office, which is a particularly strong issue amongst non-Native or English as a second-language speaking community members. These misconceptions can prevent community members from engaging in the process (e.g., unwilling to report crimes). Lastly, similar to how increasing the visibility of the office will help to educate the community about the work of the office, engaging with the community can educate prosecutors about other people's lived experiences/situations.

What we've been told

Visibility- "I think the community doesn't even really know what we do. I feel like people just make a lot of assumptions, and they don't actually know what we do. So, working with community groups would make it clear what we do and that we're not evil prosecutors that are out to lock everybody up. We're here because we want to make the community better."

"We don't have appropriate community involvement for [the community] to be educated as to what we really think and what we really do and all the programs that we do."

"I think working with community groups increases the visibility of what we do, how we are helping protect the population or the public, what purpose the public serves in the system, and how they fit into it...it is important for all people to understand, because this whole system does not work unless there is engagement from the population."

Prosecutor explains a common misconception and says, ... *"I understand why someone would think that, but that is not the case. It's a huge misconception, and I think our office needs to do a better job, making sure that we're busting those myths. Because it's going to help keep people safe, which is one of the top goals of our office.... So, making sure that you break down that fear barrier, it's huge. That should be one of the top priorities, to make sure that everyone has access to justice."*

"I know that many people - particularly women of color, migrant women, and people who do not speak English generally - they don't want to call the police for a lot of different reasons. If we start interacting with them, maybe they still won't want to be involved with the CJ system or maybe they will. But we need to establish and trust the relationships in the community, where we're not just seen as coming in and doing harm to families and neighborhoods by making people lose their jobs. You have to be talking to people, get out of the office, and meet people where they are literally..."

Education- *"Educating people within the office about perspectives that they maybe don't have firsthand experience with can also be very beneficial... Anything that we can do to increase our understanding of people that are not like us and also of people that could be in the CJ system...it's also good for us, because it's going to inform our decision-making more, and it's going to really give us a better idea of what we should be doing with our cases."*

"The two-way communication is good...I want people to know what it is that we're doing, I want to learn from them as well."

"It's a two-way street - us being able to interact with different community groups [allows] the people to have a greater understanding of the work that we do and understand it better...The reverse is just as important. I've had a set of experiences in my life and they are potentially going to be much different than people who have different backgrounds and affiliations. And meeting and communicating with people has given me greater appreciation for where they're coming from. That's helpful in terms of understanding people better. It's helpful for me in terms of better appreciating some other things that I wouldn't otherwise see, know, or understand."

THEME 3.2- WORKING WITH THE COMMUNITY PROVIDES THE OFFICE WITH VALUABLE TOOLS TO ASSIST VICTIMS AND DEFENDANTS

What we've learned

Community engagement gives the office a better understanding of available resources within the community that can ultimately assist the office in fulfilling their mission and goals. Community engagement can be beneficial for the office as it gives prosecutors knowledge of available resources for defendants and victims (e.g., eligible treatment providers, culturally-specific community groups), as well as helps to advance community-based solutions and ideas. The benefits of engaging with the community were made most salient in a case example (below) shared by one prosecutor who was able to find, in coordination with the victim's advocate, a culturally-specific community network to support the victim. Connecting the victim to that network was not only the compassionate thing to do, but also likely impacted the victim's willingness to continue to work with the office, ultimately leading to successful prosecution of the case. This case example embodies the benefits of engaging with the community.

What we've been told

"[Community engagement] may give us information about access to resources that we didn't know [about]. Our advocates often times have a ton of information about services or resources that I don't know existed because of who they're connected to...We are more aware of what resources are available in the community that are going to help people on probation, have a better understanding of like, 'Oh, this is a program that is up and running. They've got a good track record for working with people.' They will know that is an option in the community for this person."

Case example- "I had a case... This woman is a refugee. Her husband assaulted her, and she was pregnant...This woman was reaching out to a man who had caused so much fear in her, because he was the only person she knew in this country... [I worked with the victim advocate and said], 'I'm friends with people at [this specific organization]. I'm sure they can point to the aunties in the [culturally-specific] community that speak that language and go help her. Give me those names and I'll pass them onto her.' That way, she does not feel like the only option she has, is to go back to this offender. At the same time that happened, she gave birth to her child, and she had support from her country...people that spoke her language, that understood her culture, and she felt on board and empowered. She still feels like we care about her because we went to this extent to find a community partner. So, I think it helps our office in our success rate."

THEME 3.3- AN OPEN LINE OF COMMUNICATION AND LISTENING ARE ESSENTIAL TO BUILDING A RELATIONSHIP BASED ON TRUST WITH THE COMMUNITY

What we've learned

Open communication between the DA's office and the community allows both parties to learn from one another and work together to solve problems. At the heart of this relationship is trust; trust was a central theme that came up when discussing working with the community. Many prosecutors felt the office (more generally, the criminal justice system) has lost the public's trust. Some of this might be related to local policies/actions, but also likely stems from national events that have generated more mainstream attention over the past decade. To build trust, the lines of communication have to go both ways. That is, instead of the office coming in and imposing on a group, the community needs to feel that they can share with the office their needs and be heard. Allowing the community to "come to the office" not only gives the office the benefit of hearing what certain neighborhoods or organizations need, but also allows them to share feedback about the office and how it is (or is not) serving the community.

What we've been told

"It is incredibly valuable for people in our community to understand what their DA's office does. That is the golden-nugget in community involvement. When we have that trust they will very candidly explain to us what issues are adversely impacting the livability of their community. Not what I think that neighborhood needs, or what DA Schmidt thinks that community needs, rather it's the neighborhood telling us what they need. It might mean that their need is not in writing tickets or putting people in handcuffs. It might be working with the city to replace lights or trim overgrown shrubbery. That level of community involvement, it takes time and consistency, but is very much worth it."

"Because if we don't listen to [the community], then we don't really know where our own shortcomings are and where we need to be thinking about other ways of handling certain cases. That feedback comes from them, so if you don't have that relationship, then we just won't know. That's a real potential problem for us...It's very important for the communication to be going both ways."

"At the end of the day, the more feedback that we get from the community (whether it's from specific community groups, individuals, elected officials) ... I think it's one of the most important things that we can do in figuring out how we handle the cases that come across our desks because [the community is who] we're serving."

THEME 3.4- IF COMMUNITY ENGAGEMENT IS IMPORTANT TO THE OFFICE, THE OFFICE NEEDS TO CONSIDER BARRIERS TO INVOLVEMENT AND THE IMPORTANCE OF REWARDING THE WORK

What we've learned

Prosecutors would like to engage more with the community, and agree that working with community groups is important for identifying problems and finding solutions. But ultimately, there are barriers to community engagement that the office must address if this work is to be a priority.

One potential barrier may stem from a lack of clear directive as to how to engage with the community and what this work involves. When asked generally about community engagement, prosecutors responded with a variety of different groups: county commissioners, the legislature, treatment providers and culturally-specific resources, criminal justice agencies (e.g., the police), local high schoolers, and neighborhood associations. Prosecutors differed in how they construed "community". Without a clear understanding of who the community is and how to engage with groups, some may see this responsibility as more the elected DA's role than line prosecutors (e.g., the role of the politician versus the public servant). Second, prosecutors do not perceive that community engagement work is incentivized by the office (see table on following page). This problem is exacerbated by high caseloads because not only do prosecutors have little to no time to engage with the community, they may not prioritize this work if it is not recognized and rewarded in annual evaluations and promotion decisions.

What we've been told

"Historically, our office hasn't really had those relationships in the past, so I can see how the community might see it as a skeptic. So, in that respect, that's where [the DA] would come in and smooth those relationships, create those bridges, and let the line workers cross them."

"[If] you divert manpower from what we're currently doing to [community engagement], then you're left with less time to do the substantive work of trying cases."

"But that would come back to resource issues, where we're already overworked. We already need 50 more DAs. I wish we could have more [community engagement]. We just don't have the resources for it."

TABLE 2. ATTITUDES TOWARD COMMUNITY ENGAGEMENT

	Average Score	Strongly Disagree	Disagree	Somewhat Disagree	Somewhat Agree	Agree	Strongly Agree
Working closely with community groups is important for identifying the most pressing problems and finding solutions	5.06	0%	0%	2.1%	29.2%	29.2%	39.6%
Community engagement is more the responsibility of the elected DA than the deputies	3.46	14.6%	16.7%	18.8%	22.9%	12.5%	14.6%
I would like to engage more with the community	4.77	2.1%	2.1%	8.3%	27.1%	25.0%	35.4%
There are no office incentives to participating in community engagement	5.07	0%	2.2%	6.5%	15.2%	34.8%	41.3%
I am unsure how to go about engaging with the community	3.91	12.8%	10.6%	14.9%	17.0%	23.4%	21.3%

Note. Items ranged from “Strongly Disagree” = 1 to “Strongly Agree” = 6 Bolded percentages indicate the most frequently reported response.

Topic Four: Treatment of Defendants (Use of Incarceration & Other Sentences)

THEME 4.1- PURSUING ALTERNATIVES TO INCARCERATION IS PERCEIVED POSITIVELY BY PROSECUTORS, BUT THERE ARE CAVEATS

What we’ve learned

Prosecutors feel positively about alternatives to incarceration, and perceive that the office is continuously exploring these different avenues. There was an appreciation for the importance of diversion programs and mental health and drug treatment, especially as the first point of contact, and for low-level offenses.

Amongst prosecutors, there is a split in perceptions regarding whether the office needs to divert more cases (see table on page 19). It is possible that the general statement of “divert more cases” as opposed to more “misdemeanors” or “felonies”, was ambiguous and open to interpretation. In the interviews, when discussing diversion programs, prosecutors often reverted to discussing lower-level crimes, or highlighted the importance of diversion for first-time offenders, as a better option than jail or prison. But ultimately, prosecutors noted that diversion is not appropriate for all defendants and all crimes. And, for these programs to work, they need resources. There may also be a level of comfort in the office’s current level of diversion, and instead a perception that time, energy, and resources should be put towards the current programs, rather than creating new ones. Ultimately, while there is an overall positive perception of alternatives to incarceration, there are caveats, specifically that diversion is more appropriate in some circumstances than others.

What we've been told

"Identifying those cases that are not going to produce the best results by going through traditional court process, but rather would benefit both the victim and the defendant by going through a meaningful diversion of some sort makes a lot of sense to me. Only if we're going to do it correctly. If we're going to try to do it with 2 full time people when we need 10, I'd prefer not doing it. For any diversion program to be useful, it's going to involve services."

"There are just so many ways we can resolve cases, and sometimes, I'm surprised how creative we can get. It's almost like they're action plans for defendants rather than terms of a sentence. They're really geared towards getting them on the right road...There are just so many ways that we can do that, and they all involve getting to know that defendant and what they need."

"Diversionary programs are extremely useful especially for first time offenders. I'm thinking with an eye towards jail vs. prison. Because when we're looking at prison, we're looking at much more serious criminal activity. That's [the] big thing - getting to folks early on and when you do, considering the consequences of what that prosecution is gonna be - considering the value of a diversionary program as an alternative to jail or prison so that that's not the default solution."

Discussion specific to misdemeanors- "I would really love to see more diversionary programs...I will say that it's a goal of the office as well...a new mission that has been implemented; we're really trying not to put people in jail. Part of that is just the office recognizing that there are too many people in the jail system. So, I would love to see more programming. Mental health and drug addiction are two areas that are really difficult to know how to fairly prosecute those cases. The big issue there is programming...having resources for these people to go to, and then having it be reliable. So, we can relay to victims what that actually looks like...what is this person going to get, how are we going to make sure this person is not endangering the community or themselves. There are resources, but I think the mental health and drug programming really needs to be amped up."

Not always appropriate- "I don't think it would necessarily be appropriate to put people who shoot, stab, or rape others into some type of diversionary program, right? But setting up in the community greater resources for those people to try to direct them out of that environment...I think would have an overall effect of reducing those types of crime."

THEME 4.2- PROSECUTORS EXERCISE CAUTION IN THE USE OF INCARCERATION, AND CAREFULLY CONSIDER THE IMPACT OF JAIL/PRISON ON DEFENDANTS

What we've learned

The decision to recommend incarceration is one that requires careful thought and deliberation (and includes meetings with supervisors to review these decisions). This careful thought ranges from considering the impact of incarceration for first-time felons as well as the appropriate sentence length when the decision is made to recommend a carceral sentence. Prosecutors highlighted that the decision to recommend incarceration is reserved for special cases (i.e., more serious, violent cases) and that the office does not abuse this power. Overall, prosecutors did not perceive that the office offers too few downward departures in sentencing, nor that pretrial offers for felony cases are too lenient (see table page 19). Taken together, prosecutors exercise caution in the decision to recommend incarceration and the length of time suggested, and there seems to be some level of agreement with where the office stands.

What we've been told

"I feel like generally, the people that we are saying, 'This person has to go to prison. This is a prison case,' it is for the right reason. And cases that are identifiable as not a prison case, they are getting probation, and I think we have a reputation in this county as being fair with the way we implement some of those sentencing laws..."

"We have always been pretty good about consistently using those two sanction options - jail/

prison or probation – for the right cases. I think we have always been (this is not a new thing [with the current administration]) mindful of what the implications are for first-time felons.”

“Prison is the last worst option anyway. I would always love for there to be resources that we can give to somebody to feel like, ‘Hey, this is going to help this person not be back in this position in the future.’ There are just not always good guarantees for that kind of stuff, so we are having to make those difficult decisions. But now, I think we are generally where we should be.”

“We have a much more direct goal of carefully analyzing our cases and really making sure that we’re not sending people to prison or otherwise incarcerating them when that’s really not necessary. Also, looking at the length of time that we are sending people if we do think it is necessary from a community safety standpoint, to see if that length of time really is an appropriate amount of time or not.”

THEME 4.3- IN CONSIDERING THE APPROPRIATE RESPONSE TO CRIMINAL BEHAVIOR, IT IS IMPORTANT NOT TO LOSE SIGHT OF THE VICTIM AND COMMUNITY SAFETY

What we’ve learned

When talking about the use of incarceration, prosecutors also noted the importance of thinking about the victim and the community, and that criminal justice reform and the desire to become more “defendant-focused” (e.g., considering their needs) should not come at the expense of the victim and community safety. Prosecutors most commonly referenced this in relation to person crimes, specifically domestic violence and crimes against children (where maybe jail or prison time is a measure for safety). However, prosecutors cautioned that property crimes negatively impact people too, and these issues are a concern amongst community members as well. Ultimately, this caution to consider the needs of victims and the community ties back to the office’s mission of advancing public safety. In examining the quantitative data, roughly 2/3 of prosecutors agreed that we need more aggressive prosecution to control crime. In the context of examining these data, it is important to address the historical confound that might be impacting these data; that is, gun violence across the country and case backlogs as a result of local-level court closures.

What we’ve been told

“We need to also take care of our victims and not lose that piece in this mission for reform. I really worry about that because our victims kind of feel left out of this big picture. I work person crimes, where victims’ lives are ruined because of what happened to them. And that piece is very important to me, helping people is why I got into this work. And I know we need to help the offenders, but we can’t lose sight of helping the victims. And I worry that because it is too trendy to have criminal justice reform that we start losing sight of what should be one of our primary missions and goals, which is helping victims of crime.”

Does the office seek jail/prison sentences more or less often than it should - “Should is the real issue, right? The “should” according to whom. I’ll speak for myself. I definitely seek jail sentences probably a lot more than I should. Because I have [a domestic violence caseload]. According to the bench, these cases do not merit jail time as much as I’m asking for. However, when I’m talking with a victim whose husband just beat her in front of her child and this man is going to be out and about soon after his conviction, she’s going to feel very scared. And she’s not going to know what to do, because he knows where she lives, all her resources, how to control the systems around her to make sure that he gets back at her for what she did to him. So, I definitely ask for more jail than I should, but it’s warranted.”

“I think you also have to be honest about the impact property crimes have on people, because we have this tendency to only take violent crimes seriously. If you’re a blue-collar guy trying to get to your job as a janitor and somebody steals your car and you get fired, that’s a big deal in the community. I think we need to expand our consideration of the impact that non-violent crime has on public safety and take them more seriously into the concept of the kind of recidivism that we find concerning.”

TABLE 3. PERCEPTIONS OF THE TREATMENT OF DEFENDANTS

	Average Score	Strongly Disagree	Disagree	Somewhat Disagree	Somewhat Agree	Agree	Strongly Agree
We are filing too many misdemeanor cases	3.33	10.4%	22.9%	22.9%	16.7%	20.8%	6.3%
We should divert cases more often	3.67	2.0%	16.3%	22.4%	40.8%	8.2%	10.2%
Our pretrial offers for felony cases are too lenient	3.11	0.0%	45.5%	20.5%	18.2%	9.1%	6.8%
We offer too few downward departures	2.47	15.6%	40.0%	31.1%	11.1%	0.0%	2.2%
We need more aggressive prosecution to control crime	3.82	7.8%	9.8%	15.7%	39.2%	13.7%	13.7%

Note. Items ranged from “Strongly Disagree” = 1 to “Strongly Agree” = 6. Bolded percentages indicate the most frequently reported response.

Topic Five: Racial/Ethnic Disparities in the CJ System

THEME 5.1- USING A RACIAL EQUITY LENS IS IMPORTANT WHEN CONSIDERING THE DISPROPORTIONATE IMPACT OF CRIME ON DEFENDANTS AND VICTIMS

What we’ve learned

When discussing racial/ethnic disparities in the criminal justice system, a commonly referenced theme is the importance of using a racial equity lens in prosecution (this also ties back to the priorities of the office). When thinking about defendants, this involves considering the root causes of criminal behavior (e.g., disproportionate effects of poverty), historical racism, and the long-term impacts that policing and incarceration have had on communities of color. It also involves appreciating that a ‘one size fits all’ response is unlikely to affect every defendant in the same way (e.g., the importance of culturally specific treatment options), and may even have a disproportionate effect on some defendants (e.g., those who might face threats to their immigration status or deportation risks). Prosecutors also discussed crime type over-representation (i.e., that racial minorities are overrepresented in specific types of crime), which is intertwined in discussions of disparities, equity, and equality.

Prosecutors also highlighted that crime has a disproportionate impact on victims and communities of color (e.g., as a result of geographical location, housing affordability). When asked generally about racial/ethnic disparities, prosecutors frequently referenced victims, not solely defendants, and discussed the importance of remembering that some communities are over-represented as well (i.e., in terms of victim concentration). Along these lines, prosecutors emphasized the importance of prosecuting bias crimes, and recognizing the role this plays in increasing community trust, specifically amongst Black, Indigenous, and People of Color, and minority and/or minority community members.

What we’ve been told

Defendants- “We should spend time advocating for programs that help improve people’s lives to begin with so that they don’t end up in the CJ system. Invest in marginalized communities to make their lives better before they ever even come in contact with the system. But then once they already here, doing the best that we can to try to get them to not return...Having more

culturally specific treatment options, more culturally specific housing, and just recognizing the role that someone's race has played in every aspect of their lives and not trying to treat them like everyone is equal and everything is the same...like acknowledging all of the problems that are there to begin with."

Victims- "If you look at gang-on-gang violence, you're usually looking at generally black defendants and black victims. That's the flipside. If you look at racial disparities in CJ, victims tend to also be overly represented from minority groups. And I care about that. I care about those people who are losing their children, young kids who should be able to go to school safely and have a sense of hope in their lives."

"As a society, if we're going to try and address [racial/ethnic disparities], all minorities need to be treated equal. Any organization, including ours, needs to take a very close, careful look when interacting with anyone that is a minority, whether that is with a victim, a defendant, or an employee."

Bias crimes- "We should be treating bias crimes like our high-level assaults. [When you're the victim of a bias crime], you will forever walk around knowing that just because of the way you look, people you love, and how you feel, society is just going to harm you. And you're going to live with that for the rest of your life... It's very different, and those cases need to be dealt with differently...Because that's how you give back power to communities of color who have lost it - by prosecuting people who have done that."

THEME 5.2- BALANCING EQUITY AND EQUALITY IS DIFFICULT IN PROSECUTORIAL DECISION-MAKING

What we've learned

Prosecutors overwhelmingly agree that they should be working to reduce racial disparities in case outcomes (i.e., ensuring equal treatment for all defendants). But many prosecutors noted that such actions do not take into consideration issues of equity. Prosecutors are not shy about discussing historical racism or structural inequalities, but whether or not that knowledge should factor into individual decision-making and the appropriateness of that is less clear. Balancing issues of equity with equality is difficult from the perspective of prosecutors making charging and sentencing decisions. Prosecutors are aware that treating people equally, although admirable, fails to account for "pre-through the DA's office door disparities", but others highlight the constitutional issues with treating people equitably, as opposed to equally. For instance, both the US Constitution and the Oregon State Constitution dictate that different groups of people should be treated equally by the law. The DA's office is expected to carry out the law as written. Ultimately, how to ethically balance equity and equality is difficult for individual prosecutors to navigate.

What we've been told

"Those are also thorny issues; how do you resolve the tension between treating people fairly and equitably and representing and reflecting historical racism that has existed within our community, both small and national (since before any of us were born)?"

Equality- "Everyone's talking about equity these days, but we are not allowed constitutionally to engage in equity practices. We have to engage in equality under the Constitution, which took me a long time to figure that out, in terms of people using this term 'equity.' Because we get training in talking about equity is about equal outcomes, which means we have to treat people differently based on their backgrounds to get there. But yet, the 14th Amendment requires that we don't treat people differently based on their race. So, what do we do?"

Equity- "No matter what your race or ethnicity is, we will treat your cases the same. And the data is there to support that. But the problem is, it doesn't account for the disparities that arise because of the way the police interact with people. The police bring us cases, and we treat cases the same...You treat everyone the same. But if we're treating everyone the same, we're not accounting for the pre-through the DA's office door disparities. We're not accounting for disparities in who's willing to talk to the police. We're not accounting for disparities in terms of who suffers the brunt of police-initiated contacts. I think the mistake we're making is that we're not actively accounting for someone's race in both the cases before us and in their criminal history."

THEME 5.3- PROSECUTORS HAVE DIFFERING OPINIONS ABOUT WHETHER THE OFFICE (OR MORE BROADLY, THE PROFESSION) SHOULD TAKE A MORE PROACTIVE (VERSUS REACTIVE) APPROACH TO PROSECUTION

What we've learned

Prosecutors believe it is their responsibility to charge the crime when appropriate, regardless of the race of the individual (reactive approach). But other prosecutors noted that the office should take on a more proactive approach (e.g., considering issues stemming from systemic racism in their decision-making, and working with law enforcement on these issues), but still expressed difficulty in responding to what happens before the case file ends up at the DA's office. Ultimately, there are differences of opinion about how to best go about tackling racial/ethnic disparities and if that involves taking a more proactive approach to prosecution, which some believe is not appropriate under the prosecutorial function.

There was general agreement that prosecutors should work to reduce the overrepresentation of people of color in the justice system (see table on page 23), but prosecutors want guidance about how to ethically implement practices into their work to help reach this overall goal (e.g., prosecutors asked the question, 'So what do I do?').

What we've been told

Reactive- *"But the bottom line is, as much as we keep that in mind, if a case comes across my desk and somebody (regardless of their race) committed a crime, and I think they committed a crime and I think I can prove it, it doesn't really matter what race they are then. I'm going to charge that crime because it's my job."*

"So much of our jobs is reactive, it's not proactive. So, we don't find out about a case until it has happened and been investigated and submitted to the DA's office for prosecution. At that point, our choice is to charge the case or decline it. And I don't think it would be appropriate for us to make that decision based on the race of the involved people. Because first of all, that would have some constitutional problems. Just from a fundamental fairness standpoint, that wouldn't be appropriate either. But the by-product of that is, whatever cases are coming in, if the disparity is already there, then we're going to be making charging decisions on cases where there already exists a disparity... So, then the disparity gets carried through the police investigation into the DA's office. And then, you start looking at, what do we have control over? It's really only two things - whether the case gets charged in the first place and once charged, how does it resolve? Then, when we're looking at resolving the case, should we be taking into consideration the race of the people involved and changing the sentences based on that? I don't know. I think that would raise some constitutional issues too, if we were doing that. So, that's why it's such a difficult issue to deal with."

"I think the only way really from the DA's office standpoint to address some of those disparities is to decide that an entire category of cases will not be prosecuted, regardless of the race of the person that allegedly committed the crime. We did this recently. [Interfering with public transportation] was identified as a particular crime that was having a hugely disparate impact on certain communities. So, we couldn't say, if you're a member of one of those communities, we're not going to charge a case, but if you're not, we are going to. We can't do that. So, we said, 'We're just not going to charge those cases at all anymore.' So, that's all well and good for no fare, interfering with public transportation cases. But if you try to expand that out into gun possession cases or violent crimes where you have victims who are hurt, it's much harder to say categorically, we're not prosecuting those cases anymore because we've identified a disparity in the way those cases are being referred to our office. It's a very difficult question for prosecutors, specifically, to deal with."

Proactive- *"We believe ourselves to be reactive, sort of part of the criminal justice system. We believe that we don't really have anything to do when someone gets arrested. We are just reacting to the police report, and once we see there has been a crime in that report, we can't do anything but charge the crime that exists. I get that our office thinks that it's reactive,*

but I disagree. I think that we can be very active participants by changing the culture of our conversations with the police, with other members of law enforcement."

THEME 5.4- INCREASING THE DIVERSITY OF THE OFFICE AND ENSURING A HEALTHY WORKPLACE FOR ALL SHOULD REMAIN ONE OF THE OFFICE'S MAIN GOALS

What we've learned

Prosecutors are cognizant of the importance of increasing diversity in the office. Many benefits of increased diversity were raised such as better reflecting the community, increasing the diversity of lived experiences in the office, and hearing from a wider range of viewpoints, which helps to keep these issues on the forefront of everyone's minds and policy decisions. Although the overwhelming response to the survey item indicates that prosecutors feel comfortable talking about race in the office, not all responded this way. The interview responses highlight the importance of continuing to think about the office environment and making sure that all employees feel supported and valued, and conversations about race are welcomed and encouraged.

What we've been told

"If we are looking to make as much change as we can, in terms of equity and diversity in the workforce, having as much representation in prosecutors and attorneys of people of color, of women, and minorities...all of that is helpful...We have a lot of work still to do, but having a more diverse workforce helps us out in that regard because I'm not going to be sensitive to things inherently the same way, even as much as I try to be. There are folks who have experienced life as a minority. In the legal profession in particular, it's a tough place to operate often times."

"We have to make sure that we are reflecting [equity practices] by recruitment and retention of communities of color in our office. Because I think that is how you measure success...if you have people who feel so unhappy working here because they don't feel our values reflect those of the community, I don't think that we're going to be successful."

"We need to have people of color working in the office as DAs, that's important. You just cannot know what you're missing when you don't have those experiences..."

"I think the office really needs to focus on equality. We need a lot more diversity in our office, a lot more respect of minority members in our office. We also need to look at historical trends in practices, because that creates a stereotype which creates a culture and an expectation. And I think there needs to be a lot of attention paid to who's getting promoted and why and when and where they get moved - all of that."



TABLE 4. PERCEPTIONS OF RACE IN THE CRIMINAL JUSTICE SYSTEM

	Average Score	Strongly Disagree	Disagree	Somewhat Disagree	Somewhat Agree	Agree	Strongly Agree
Prosecutors should work to reduce the overrepresentation of people of color in the justice system	4.98	2.1%	2.1%	2.1%	25.5%	25.5%	42.6%
Prosecutors should reduce racial disparities in case outcomes	5.26	2.1%	0.0%	4.3%	6.4%	38.3%	48.9%
I am comfortable talking about race in this office	4.52	4.3%	4.3%	4.3%	32.6%	30.4%	23.9%
Our office needs to be more racially diverse	4.61	2.2%	6.5%	6.5%	21.7%	39.1%	23.9%

Note. Items ranged from “Strongly Disagree” = 1 to “Strongly Agree” = 6. Bolded percentages indicate the most frequently reported response.

OFFICE: CULTURE, CAPACITY, & EFFICIENCY

Topic One: Support, Promotion, & Re-Assignment

THEME 1.1- FORMAL AND INFORMAL TRAINING OPPORTUNITIES ARE IMPORTANT TO PROSECUTORS IN THE OFFICE

What we’ve learned

Training was one of the most frequently noted items when asked what the office could do better/improve (survey); it also came up frequently in the interviews when asked what would increase prosecutors’ own success and the office’s success. Prosecutors highlighted that continuous training and updates are essential, as policies and laws are constantly changing both locally and at the state level. For example, at the office-level, when policies change, prosecutors need more training on how to implement practices into their daily work (e.g., thinking critically about overcharging and charge stacking, but what does that mean?). Prosecutors might be aware of the office-wide policy, but are less clear about what that means for their daily work practices. It is not a lack of understanding the law or new policy, but more so, procedurally, how to do something. Similarly, Continuing Legal Education Trainings on bigger picture topics such as implicit bias/racial bias are helpful and important, but are abstract, and again prosecutors may be unsure how to implement that knowledge into their daily work practices and stay in-line with office expectations (e.g., implement strategies to identify racially biased practices in their work). Some prosecutors noted that the office provides plenty of training opportunities, and online options over the past year have made trainings easier to attend. Importantly, given prosecutors current caseload expectations, time for training, and/or the ability to consider how to incorporate practices into one’s daily activities, are sparse. Training area needs are noted in Appendix 4.

What we've been told

"But there should be more internal training on everything...how to do trial work, how to talk with victims or families, how to send out subpoenas, how to work the computer system, all the little things that we do every day that you just learn over time."

"We need more training. When someone joins the office, whether they are brand new as a lawyer or has been practicing for a number of years, we need a mini-course, whether you attend in person, whether it's a series of Zoom trainings, or a manual that says, 'This is what we do, this is how we do it. If you have questions on this topic, call this person.'"

"There's very little training, very little hand holding. It is just like 'here, figure this out.' The office would be much more successful if we weren't all forced into that. Having more shared resources and training, because you're not going to be running into a problem for the first time."

"We're really good about Continuing Legal Education Trainings and learning a law, that kind of stuff. Getting legal training is fine in this office. But more candid conversations about policies and why we do things happens more on an ad-hoc basis...and it would help me to be more effective if I knew more of the reasons behind guidelines..."

"Training is important, but there is a very obvious reason that we don't have more training. That is because we are so underfunded... [My supervisor] is a total rockstar. [They are] one of the smartest people I know. [They] care immensely, and help as much as [they can, but they also carry] a significant caseload...I do think there is an underutilized resource in the office. There are obviously many people in the office who've been here for a long time...Even just shadowing people for a few days would probably be very helpful."

"With our current staffing numbers, we don't move people until someone is absolutely needed in that position...And you're not really able to train during that time, because you're still needed in the position you are at. So, the transfer from one position to the next is so rapid that everyone who gets bumped up... the learning curve is so steep and you learn by just being thrown into it and on the go, which isn't ideal."

"There's no training, overlap time...so that you can spend some time with the person you're replacing to be like 'What's going on with the cases?', 'How are things done in this unit?', 'What are things that I need to look out for?' There's nothing there."

"Better training for everybody who's a manager would be important, because we've got fantastic attorneys ...and people get promoted to supervisor positions... [But] for managers, there's no training for them."

"Training the past year has been good- but there is insufficient time to attend/engage/or re-watch trainings. We need TIME to participate in the trainings that have been done, so we can identify what areas would still be helpful."

THEME 1.2- LACK OF TRANSPARENCY SURROUNDING EVALUATIONS, PROMOTIONS, AND OFFICE RE-ASSIGNMENT

What we've learned

Prosecutors highlighted a general lack of transparency surrounding evaluations, promotions, and re-assignment across units within the office (e.g., information about reasoning or factors that prompted promotion or reassignment). Specifically, in the context of annual evaluations, prosecutors sometimes had difficulty answering the question of how the office evaluates their success. The quantitative data provide mixed support; overall, 51.1% of the prosecutors agree that annual evaluations adequately assess their work performance (the remaining respondents disagreed). Of note, this perception of annual evaluations did not correlate with years of experience in the office. That is, being in the office longer (versus shorter) did not predict the response (i.e.,

no significant difference). Prosecutors noted that the evaluation process could be improved and strengthened (e.g., more critical feedback on how prosecutors can improve, and also a discussion of what prosecutors are doing right). This issue of transparency extends beyond evaluations and into promotion and re-assignment across various units in the office.

What we’ve been told

“The main thing (for me at least) is to have criticism that is constructive and transparent, it’s not the rumor mill, but rather, ‘[Name], you’re not being hard enough on these cases. There are other things that you should be charging,’ or ‘You are being too easy or hard on the charging,’ or ‘Here’s how to better resolve these cases...if you want to offer this plea instead of that, maybe that’ll resolve your case faster.’ Concrete steps that are things that I can work towards, making sure I can do better...I think that having transparency and having the ability to understand what I’m doing, what I can improve on, how is it that I’m not measuring up to someone else or expectations of management...that’s important to me, making sure I’m doing my job correctly, and that I can successfully thrive and continue to move on in my career.”

“There’s no transparency, no explanation for why certain people get promoted or why others are not, why certain people are chosen for certain projects and why others are not...so it creates a lot of heartburn in a lot of folks and resentment. I think management could do a better job in trying to communicate with all the employees why certain things are occurring. It doesn’t need to be public obviously...it could be just a private conversation.”

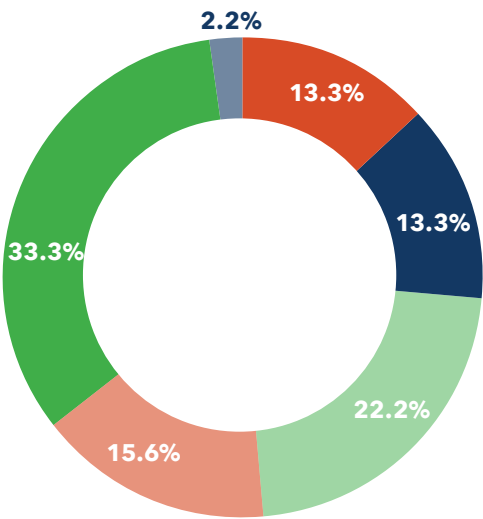
“I think there needs to be a lot of attention paid to who’s getting promoted and why and when and where they get moved.”

TABLE 5. PERCEPTIONS OF ANNUAL EVALUATIONS

Average Score

Annual evaluations adequately assess my work performance	3.49
Strongly Disagree	13.3%
Disagree	13.3%
Somewhat Disagree	22.2%
Somewhat Agree	15.6%
Agree	33.3%
Strongly Agree	2.2%

Note. Items ranged from “Strongly Disagree” = 1 to “Strongly Agree” = 6



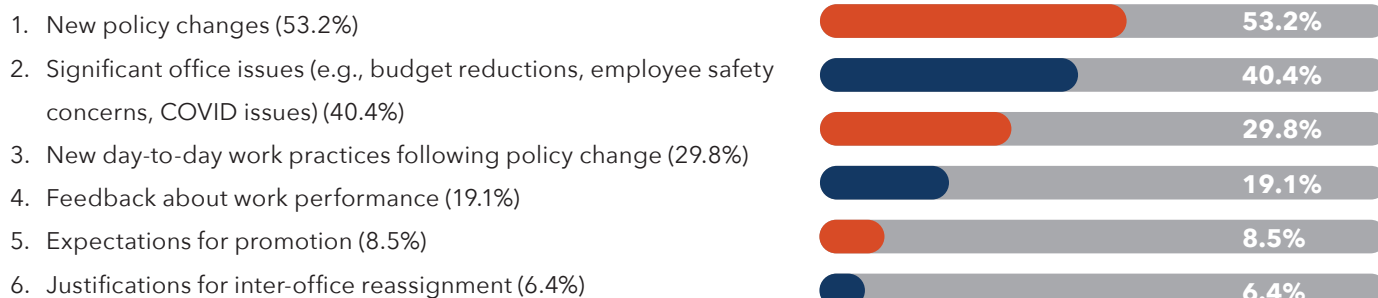
Topic Two: Communication

THEME 2.1- THERE IS ROOM FOR GROWTH IN TRANSPARENCY AND COMMUNICATION WITHIN THE OFFICE

What we've learned

Prosecutors noted that transparency with the community (i.e., outward facing transparency and communication) is a current priority of the office (see 'Office Mission & Current Priorities' above). But largely, the internal communication and transparency around some topics is lacking, with room for growth. This theme came up in the interviews and in the survey data. When asked the open-ended question of what can the office do better/improve on, communication and transparency about promotion and re-assignment were two of the most frequently mentioned items ('training' being the third). Using the interview data to guide our creation of the survey, we included a question assessing the office's communication on a variety of topics. Prosecutors could indicate as many options as they wanted. Below, the percentages corresponding to each item represent the percentage of prosecutors who responded that the office was doing a 'good job' of communicating about the following topics.

In regards to information, what is the office doing a good job of communicating?



Topic Three: Capacity & Efficiency

THEME 3.1- HIGH CASELOADS CONTRIBUTE TO A VARIETY OF NEGATIVE OUTCOMES

What we've learned

The theme of high caseloads was salient throughout the interviews. This theme came up most frequently when asked what would increase prosecutors' own success and the office's success. Prosecutors discussed this theme broadly, but ultimately, a few common impacts of high caseloads were noted: (1) decreased morale, (2) decreased capacity for training/shadowing, and (3) inability to give cases, defendants, and victims the time and energy they deserve. First, high caseloads contribute to decreased morale within the office, as this workload impacts both prosecutors' work and personal lives. Second, those in supervisor positions also carry a caseload (sometimes more serious cases), which leads to less time that they are able to devote to both informal (e.g., shadowing, invitations to come along and observe) and formal mentoring opportunities (e.g., observing a junior colleague at trial). And lastly, prosecutors feel unable to give cases, victims, and defendants the attention they deserve. Prosecutors highlighted frustration with getting behind on emails and calls with victims and witnesses, and difficulty in dealing with a high volume of serious cases (e.g., the emotional toll of these cases, homicide call outs). Having less time to devote to each case also means prosecutors are at times unable to get crafty with resolutions and instead just boil down all the case information for the sake of efficiency. This may impede the office's ability to execute new policy priorities that will contribute to the overall mission.

What we've been told

Morale- *"You build morale by first looking at caseloads. Nothing will drive good prosecutors out of the office quicker than drowning under an unrealistic caseload. Happens in the office time and time again. I understand this is driven by budget, but, doesn't change that it diminishes morale significantly."*

"[Attorneys are] going to burn out, leave, we're going to lose their experience."

"I think the number one issue that we have is that we are under-funded and understaffed. And so, when you're putting a person in the situation of...are you ever going to spend time with your family, or are you going to do a really good job at work? That's not a fair expectation to have."

Mentoring and Training- *"[What would help me to be more effective as a prosecutor is] if I had less work, candidly. If I had more time to spend supervising my people, training them. I also have cases that are on my caseload. So, it's just a constant...you're drinking from a fire hose, putting your finger in the dam. We would do better at what we do if we had less of it to do."*

Time to devote to each case - *"When your goal is to do justice in every case, that takes time... There's just a lot more to it, when you're doing it right, it's a lot more labor-intensive than just saying, 'I'm just going to go for broke on any case. I'm going to throw the book at everyone.' That's easier by a lot. I think the number one issue that we have is that we are underfunded and understaffed."*

"You know there are only so many hours in a day. We get really good at making serious decisions in a short time frame; there are many times we could make better decisions if we had more time to make them. It comes down to volume."

"We cannot, at our current levels, give each case the amount of attention that it probably deserves. We're able to manage the cases and the caseloads, but as that grows and our staffing levels continue to be cut, it gets harder and harder to stay on top of emails and phone calls with the victims and witnesses. I think that the relationship that you try to build and that rapport that you try to build with the people involved in the case suffers, the less time you have available to put into that. That's probably the single biggest thing. If I were able to reduce my caseload by even a small percentage, that would free me up to be more able to effectively communicate with the people involved in the case and ultimately, be a more effective prosecutor."

"It takes away from our ability to give as much attention as each case deserves, because each case is kind of special in that we craft resolutions to those cases. And having fewer cases gives us the ability to do research and background in those cases that are necessary to make sure that we're doing due diligence. But, the level at which cases are coming in makes it impossible. [You get to] the point where you have to boil it down to the sake of efficiency, so that the system doesn't get completely backlogged."

"With our caseloads currently and our staffing numbers, I'm barely able to successfully manage my major caseload, let alone be able to do what I want to do in the first place [which is] coming up with solutions to the problems."

Appendix 1: Methodology Note

QUALITATIVE INTERVIEWS

The primary source of data for this report is a series of interviews conducted in 2021. Interviews took place over a three-week period in April 2021. The Multnomah County District Attorney's office provided the research team with a complete list of Deputy District Attorneys (DDAs) in the office. DDAs involved in the PPI project or who reviewed the interview questions were not eligible to participate. DDAs in the office were stratified into four groups based on seniority and participants were randomly selected from each stratum, to ensure that prosecutors at all levels of the office would be represented in the sample. Selected DDAs were sent an individualized email inviting them to participate in a formal interview. One follow-up email was sent to those who did not respond. Prosecutors who did not respond to the follow-up email, declined to participate, or were unavailable were not contacted again. This procedure yielded a 64% response rate (21 out of 33 contacted DDAs participated in an interview).

In response to the COVID-19 epidemic and Portland State University Human Research Protection protocols, interviews took place remotely via Zoom. DDAs were emailed the Informed Consent document when contacted about participation. The statement made clear that participation was voluntary, participants could decline to answer any question or stop the interview at any time, participants' identities would be kept confidential, and no quotes used in any report would be associated with any individual. As the interviews were conducted remotely, no signature was required (scheduling the interview was indicative of consent). DDAs were asked at the beginning of the interview to verbally consent to being recorded. Interviews were recorded and transcribed (with the exception of one interview, where hand-written notes were collected). Transcriptions were read in their entirety multiple times by the researcher to identify themes in responses and organized into themes by key topics. The key topics were: Definitions of Prosecutorial Success, Office Mission & the Current Priorities, Community Engagement, Treatment of Defendants (Use of Incarceration & Other Sentences), and Racial/Ethnic Disparities in the CJ System. The full interview instrument is provided in Appendix 2. The interview instrument was the same used in past PPI jurisdictions with the exception of one question about organizational structure, which MCDA asked to include. Interview recordings were deleted after transcription. MCDA does not have access to the recordings or the identities of participants.

ONLINE SURVEYS

Results from an online survey completed by DDAs in July – August 2021 supplement the interview findings. A list of all DDAs in the office was provided (excluding those DDAs who reviewed the survey), and an initial email invitation was sent to all individuals included on the list. The email included

a web link to the online survey questionnaire, hosted on Portland State University's Qualtrics platform. Those who chose to complete the questionnaire were asked to first read the Informed Consent document detailing the purpose of the questionnaire. The consent statement made clear that participation was voluntary, information collected would be kept confidential, and all reports based on the data would be presented in the aggregate without associating any responses to individual prosecutors. After reading the statement, participants were asked to indicate consent to participate by clicking, "proceed to survey". In an effort to increase the participation rate and maximize the utility of the data being collected, three follow-up emails were sent to prosecutors with the web link to the survey. This procedure yielded a 66% response rate (51 out of 77 DDAs participated in the survey). Importantly, 47 respondents fully completed the survey, and 4 were partial responses.

Most questionnaire items were presented in a multiple-choice format. Items pertaining to indicators of success in prosecution were rated on a five-point scale ranging from "Unimportant" to "Very Important". Items pertaining to the office's treatment of defendants, race in the criminal justice system, and community engagement were rated on a six-point scale ranging from "Strongly Disagree" to "Strongly Agree". Items pertaining to current topics within the office (e.g., annual evaluations, training, and communication) were a mixture of multiple-choice, open-ended response, and check-all-that-apply formats.

The full survey instrument is provided in Appendix 3. The survey was drafted by the research team, and MCDA provided input and reviewed the final set of questions. MCDA does not have access to the data or the identities of participants.

Appendix 2: Qualitative Interview Questions

1. Why did you decide to become a prosecutor? Where do you see your career going from here?

SECTION 1: GOALS AND PRIORITIES FOR THE OFFICE

2. In your own words, what do you see as the current priorities in your office?

Probes:

- a) How are these priorities communicated to you and your colleagues?
- b) To what extent are priorities set by administration, and to what extent are they set by individual prosecutors or units?
- c) Do you understand the priorities?
- d) Do the priorities reflect your priorities?

3. In your view, have there been any changes in terms of how the office views its mission since the new administration took over?

Probe: If supervisor, how do you communicate priorities set by management to your staff?

4. What criteria would you use to assess the overall success of your office?
5. What changes do you think would increase your office's overall success? (This can be anything including training, new guidelines, caseload management, technology upgrades, new diversion programs, etc.)

Probe: Are there any organizational changes (i.e., to the organizational structure) that you think would increase your office's overall success?

SECTION 2: PERCEPTIONS OF WHAT CONSTITUTES A GOOD PROSECUTOR

6. How do you judge your own success as a prosecutor?

Probe: How does the office evaluate your success as a prosecutor?

7. To what extent is your view about what makes a good prosecutor shared by other line prosecutors in your office?
8. What changes do you think would increase your own ability to be more effective as a prosecutor?

SECTION 3: SUGGESTIONS FOR REFORM (OFFICE-WIDE)

9. What do you see as some areas of reform necessary to promote the mission of your office?
10. Do you think your office seeks jail/prison sentences more or less often than it should?
11. In what ways can working with community groups help improve the work of your office?

Probe: What do you believe the role is of a line prosecutor in working with the community?

12. Are there specific changes in existing law that you think should be made to increase or reduce the use of incarceration?
13. What is your view of racial/ethnic disparities in the CJ system?
 - a. Can you describe them and why do you think they exist?
 - b. What efforts is your office making, if any, to

reduce racial and ethnic disparities in the justice system?

- c. Are there specific changes in the existing law or office policies that you think should be made to reduce these disparities?
- d. Is there anything you think lawmakers can do to reduce these disparities?

14. Are there data reports that you wish you could have on specific things that would help you to be more efficient and fairer in your job?

Probe: When was the last time you thought to yourself, "I wish I had [this] data or [this] piece of information?"

SECTION 4: SUGGESTIONS OF WHAT TO MEASURE WITH PERFORMANCE INDICATORS

As you may know, we are developing indicators to measure the performance of prosecutors' offices over time. We wanted to get a sense of what you think should be measured under the following broad categories.

15. Community safety and wellbeing - what are some specific ways we can think about and measure "community safety and wellbeing" as it pertains to your office's work? (e.g., successful completion of diversion programs)
16. Capacity & Efficiency - what are some specific ways we can think about and measure "capacity & efficiency" as it pertains to your office's work? (e.g., timeliness of case processing)
17. Fairness & Impartiality - what are some specific ways we can think about and measure "fairness/ impartiality" as it pertains to your office's work? (e.g., differences in custodial sentences for similar offenders)

SECTION 5: PROSECUTORIAL CHARACTERISTICS

18. Race - what is your race (let them self-identify)?
Other _____
19. Ethnicity - what is your ethnicity (let them self-identify)?
Hispanic Non-Hispanic Other _____
20. Age - what year were you born? Include number

21. Unit identity - in what unit/division of your office are you currently assigned?
22. Experience level as a prosecutor - how many years of prosecutorial experience do you have? Include number _____

23. Experience level as an attorney – how many years of overall experience do you have as an attorney? Include number _____

24. Prior experience as a defense attorney – have you ever worked as a defense attorney?
YES NO

25. Prior experience as a law enforcement officer– have you ever worked as a law enforcement officer?
YES NO

26. Caseload – how many open criminal cases do you currently have? Include number _____

Appendix 3: Survey

You will be asked a series of questions assessing your perceptions about the work and role of prosecutors within the criminal justice system (e.g., indicators of success, engaging with the community), and perceptions about the office and current priorities (e.g., diversity within the office). The questions are Likert-item (scales) or open-ended. For the Likert-item questions, please indicate the response option that most closely aligns with your opinion.

SECTION 1: INDICATORS OF SUCCESS IN PROSECUTION

How important is each indicator of success to you as a prosecutor?

1. Fewer defendants re-arrested after prosecution.
2. Victim satisfaction with the handling of cases.
3. Lower crime rates.
4. Defendants with mental health and substance use problems receive appropriate services.
5. Imprisonment of serious offenders.

Measured on Likert item matrix

Unimportant	Of Little Importance
Moderately Important	Important
Very Important	

SECTION 2: OFFICE PUNITIVENESS/LENIENCY (I.E., YOUR VIEWS OF THE TREATMENT OF DEFENDANTS)

6. We need more aggressive prosecution to control crime.
7. We are filing too many misdemeanor cases.
8. Our pretrial offers for felony cases are too lenient.
9. We offer too few downward departures.
10. We should divert cases more often.

Measured on Likert item matrix

Strongly Disagree	Disagree
Somewhat Disagree	Somewhat Agree
Agree	Strongly Agree

SECTION 3: RACE IN THE CRIMINAL JUSTICE SYSTEM

11. Prosecutors should work to reduce the overrepresentation of people of color in the justice system.
12. Prosecutors should reduce racial disparities in case outcomes.
13. I am comfortable talking about race in this office.
14. Our office needs to be more racially diverse.

Measured on Likert item matrix

Strongly Disagree	Disagree
Somewhat Disagree	Somewhat Agree
Agree	Strongly Agree

SECTION 4: COMMUNITY ENGAGEMENT

15. Working closely with community groups is important for identifying the most pressing problems and finding solutions.
16. Community engagement is more the responsibility of the elected DA than the deputies.
17. There are no office incentives to participating in community engagement.
18. I would like to engage more with the community.
19. I am unsure how to go about engaging with the community.

Measured on Likert item matrix

Strongly Disagree	Disagree
Somewhat Disagree	Somewhat Agree
Agree	Strongly Agree

SECTION 5: CURRENT TOPICS

20. Annual evaluations adequately assess my work performance.

Measured on Likert item matrix

Strongly Disagree	Disagree
Somewhat Disagree	Somewhat Agree
Agree	Strongly Agree

21. In regards to information, what is the office doing a good job of communicating with you? [check all that apply]
 - New policy changes
 - New day-to-day work practices following policy change
 - Expectations for promotion
 - Justifications for inter-office reassignment
 - Feedback about my work performance
 - Significant office issues (e.g., budget reductions,

employee safety concerns, COVID issues, etc.)

22. Identify the one area of training that would be helpful for you. [open-field]
23. List two things that the office can do better/improve on. [open-field]

SECTION 6: YOUR BACKGROUND INFORMATION

24. Which of the following best describes your gender?
 - a. Male
 - b. Female
 - c. Other
25. What is your racial/ethnic background?
 - a. Asian or Pacific Islander
 - b. Black, non-Hispanic
 - c. Hispanic
 - d. White
 - e. Other or more than one race (please specify)

26. How long have you been with the prosecutor's office? ____ years
27. How many open criminal cases do you currently have? _____
28. Are you a supervisor or unit head?
 - a. No
 - b. Yes

This concludes the survey. Thank you very much for your participation.

Appendix 4: Training Areas

On the survey, prosecutors were asked to identify one area of training that would be helpful for them. Training areas are listed in alphabetical order (i.e., are not sorted by the number of prosecutors who mentioned them). This list is not exhaustive.

Frequently identified areas for training:

- Ability to attend ODAA conference and CLEs
 - a. "An office-wide policy of attending the ODAA state conference, and the CLEs given there."
- Basic training for new hires
- Effective trial strategies
 - a. Example: Working with expert witnesses
 - b. Example: Strategies for how to question challenging witnesses
 - c. Example: Case-specific training (person felonies, homicide, and child sexual assault)
- Investigation-oriented
 - a. Homicide call-outs
 - b. Crime scene investigations
- Legal issues

- a. Example: Update on case law relating to cell phone warrants/affidavits
- Management/supervision training
- Pretrial proceedings
 - a. Example: Grand juries
 - b. Example: Motions
- Sentencing
 - a. Example: Guidelines and eligibility for treatment courts
- Transition from unit-to-unit
 - a. "Initial training packets/orientations upon entry to a new unit that focuses on core issues relative to that unit."



**PROSECUTOR
ATTITUDES,
PERSPECTIVES,
AND PRIORITIES:
MULTNOMAH COUNTY**