



American Prosecutors  
Research Institute

A REPORT OF THE  
PROSECUTION  
PERFORMANCE  
MEASUREMENT  
PROJECT

*Do Lower  
Conviction Rates  
Mean Prosecutors'  
Offices Are  
Performing Poorly?*

**National District Attorneys Association  
American Prosecutors Research Institute**  
99 Canal Center Plaza, Suite 510  
Alexandria, VA 22314  
[www.ndaa.org](http://www.ndaa.org)

**Thomas Charron**  
Executive Director

**Roger Floren**  
Chief of Staff

**M. Elaine Nugent-Borakove**  
Director, Office of Research & Evaluation

**Debra Whitcomb**  
Director, Grant Programs and Development

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*M. Elaine Nugent-Borakove  
Lisa M. Budzilowicz*



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# INTRODUCTION

**DA Fails to Convict Majority of Defendants**—*The District Attorney's Office has the lowest conviction rate in the state, convicting less than a third of defendants in criminal cases...*

**Majority of Suspected Criminals Don't Face Criminal Charges**—*No other DA in the state declines to prosecute a larger percentage of felony cases than the DA in this county. The DA filed charges in only 40 percent of the cases brought to the office's attention last year and resolved the majority of those cases through plea bargains.<sup>1</sup>*

**T**oo often, the effectiveness of prosecutors is judged on the basis of conviction rates, plea bargains, or the outcome of a single high-profile case. Are these the results most prosecutors would look to as the sole indicators of effectiveness? Probably not. Yet, these are the very indicators of interest for so many. In fact, approximately 90 percent of the media calls to the National District Attorneys Association (NDAA) deal with low conviction rates and high plea bargain rates.

Unfortunately, when the media, legislators, and county/city councils rely solely on conviction and plea bargain rates to

This publication is one in a series from the Prosecution Performance Measurement Project. Other publications in the series include:

- *Prosecution in the 21st Century: Goals, Objectives, and Performance Measures*
- *Ensuring Public Safety: How Do Prosecutors Measure Up?*
- *Performance Measures for Prosecutors: Findings from the Application of Performance Measures in Two Prosecutors' Offices*

To access these publications, please visit NDAA's Office of Research and Evaluation Web page at: [http://www.ndaa-apri.org/research/research\\_home.html](http://www.ndaa-apri.org/research/research_home.html).

<sup>1</sup> These are illustrative news articles based on a collection of real newspaper articles from across the country on prosecutor performance. The examples are not reflective of news coverage in any specific jurisdiction or of any specific prosecutor's office.

define “success,” prosecutors may find it difficult to surmount negative public opinion, and worse yet, challenges to their funding needs. So why is it that the media, legislators, county/city councils seem to be the only ones deciding on appropriate results for prosecutors? Why are prosecutors left to defend their positions without any hard data to support their responses to critics? Until now, prosecutors lacked any specific guidance on how to measure their offices’ performance and how to use this information to support requests for funding, foster public support, and respond to criticisms with well-defined and empirical responses.

This publication is intended to help state and local prosecutors understand performance measurement. In particular, the publication is designed to help prosecutors establish performance measures using the American Prosecutors Research Institute’s (the American Prosecutors Research Institute merged into the National District Attorneys Association in 2006) performance measures framework; how to measure their offices’ performance; and how to use this information to support requests for funding, foster public support, and respond to criticisms by defining “success” in their own terms.



# WHY MEASURE PERFORMANCE?

**P**ublic accountability has become paramount in a world of social interests competing for limited public resources. In this climate, prosecutors must increasingly hold themselves accountable to their constituents by demonstrating their success and changing their strategies, policies, and programs when necessary.

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“Our client—the public—expects us to have a clear plan for success and use the limited resources we have to maximize that success. Simply put, we must plan our work, then work our plan. For the benefit of the public and our own benefit, we must be willing to measure our work in clear, tangible ways.”

—Bill Gibbons, District Attorney General, Shelby County, Tennessee

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Performance measures can help prosecutors in several ways:

- *Performance measures give prosecutors evidence to support and justify their funding requests.* The ability to document the achievement of specific goals and objectives with hard data can be a powerful asset in funding negotiations.
- *Performance measures provide ammunition to fend off vague and amorphous criticism.* Prosecutors should be able to demonstrate the effectiveness of programs they have initiated. Imagine the impact of data showing that positive drug screens for offenders who complete a drug treatment program declined steadily over a period of months or even years.
- *Performance measures can help with overall office management.* By rigorously and systematically assessing the effectiveness of different policies and practices in their offices, prosecutors can target areas for improvement.

Performance measurement can also help prosecutors answer important questions about their work:

- How do we define success?
- What do our actions mean in terms of results?
- Have we accomplished goals and objectives that support our mission?
- Are our resources being used as effectively as possible?
- What changes need to be made to improve performance?

## ARE PROSECUTORS OFFICES PERFORMING POORLY

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“Measuring prosecution performance is another resource to assist prosecutors in office management and the efficient utilization of their staff. This is especially helpful when funding is scarce and many times being reduced, yet caseloads are increasing.”

—Mathias Heck, NDAA President, County Prosecutor, Montgomery County, Ohio

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In addition, performance measures can be useful management tools when used to improve the quality of services by:

- Setting priorities for staff and incentives for changing focus;
- Tracking progress and improvement in achieving goals; and
- Directing resource allocation towards accomplishment of mission objectives (Bazemore, 2006).

With input from leading prosecutors, scholars, and policy makers, the APRI has created and tested a framework for measuring performance in prosecutors’ offices.<sup>2</sup> The elements of this framework are described below.

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<sup>2</sup> APRI wishes to acknowledge the National Institute of Justice and the Charles G. Koch Charitable Foundation for their generous support.

## DEFINING PERFORMANCE MEASURES

**F**or performance measures to have value and utility, the measures must be:

- Meaningful and relevant
- Sensible
- Logically related to prosecution goals and objectives
- Supported by empirical evidence
- Precise
- Easy to understand
- Measured against a baseline

Moreover, the performance measures must be representative of the mission of the local prosecutor. As part of the effort to develop a framework for prosecutor performance measures, an expert group of prosecutors defined the mission of local prosecution as follows:

*Through leadership, the local prosecutor ensures that justice is done in a fair, effective, and efficient manner (Dillingham, Nugent, & Whitcomb, 2004).*

Historically, the concept of “doing justice” has been interpreted narrowly, referring primarily to the prosecutor’s clear role in holding offenders accountable and hence, the intense interest in conviction and plea bargain rates. However, recent years have witnessed a significant movement toward community prosecution—a proactive approach to prosecution involving prosecutorial leadership; partnerships with the community; concerted efforts to resolve the underlying problems that contribute to crime; and the use of a variety of tools, such as civil abatement, to address crime and disorder (Nugent, Fanflik, & Bromirski, 2004).

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“Our job [as prosecutors] is not simply to make arrests and preserve convictions at all costs. Our job is to seek the truth and achieve justice.”

—Dan Conley, District Attorney, Suffolk County (Boston), Massachusetts<sup>3</sup>

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In this context, “doing justice” often includes addressing a host of community desires and needs, decreasing citizen fear of crime, improving the quality of

<sup>3</sup> Excerpted from “In Profile: Dan Conley.” *The Prosecutor*. (2005). 39 (1): 16–17.

life for community residents, and using problem-solving techniques to resolve problems. These shifts in philosophy and practice have important implications for measuring and evaluating the performance of prosecutors' offices.

Over the years, there have been several attempts to measure prosecutor performance (see for example, Cole, 1993; Jacoby, 1982; Forst, 2001; Packer, 1968; Roach, 1999 among others); however, these efforts have either been too broad to be applied to prosecution, or fall short in taking into consideration the quality of justice for victims, the leadership role of the prosecutor, or the non-case processing activities of the prosecutor. In addition, as noted earlier, these previous attempts at performance measurement have tended to rely mostly on the number of cases filed, conviction rates, and crime rates.

Although these more traditional measures are useful for assessing the performance of prosecutors' offices, these measures overlook the changing philosophy of prosecutors and the expansion of their roles to focus on problem solving, community involvement, and leadership. Defining and measuring success under this broader philosophy requires a fresh look at the goals and objectives of prosecution.

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Because prosecutors no longer limit their services to just courtroom advocacy, we can no longer limit measurements of success to just successful jury trial statistics. We've learned through the success of our Community Prosecution Division that citizen's perceptions of public safety and fair justice are key indicators of a prosecutor's effectiveness.

—Carl Brizzi, Prosecuting Attorney, Marion County, Indiana

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In 2003, with funding from the National Institute of Justice and the Charles G. Koch Charitable Foundation, APRI convened a study group of experienced prosecutors, policymakers, economists, and academics to articulate measurable goals and objectives as part of a performance measurement framework for prosecutors. APRI implemented the framework in two distinct jurisdictions to determine the value of the measures and the challenges of implementing performance measures in a real world setting. The result of these efforts is a framework to guide prosecutors on how to implement performance measures to improve their offices.

# A FRAMEWORK FOR MEASURING PROSECUTOR PERFORMANCE

Working closely with an expert working group of prosecutors, researchers, and policy makers, APRI articulated three specific goals for prosecutors:

1. To promote the fair, impartial, and expeditious pursuit of justice;
2. To ensure safer communities; and
3. To promote integrity in the prosecution profession and effective coordination in the criminal justice system (Dillingham, Nugent, & Whitcomb, 2004).

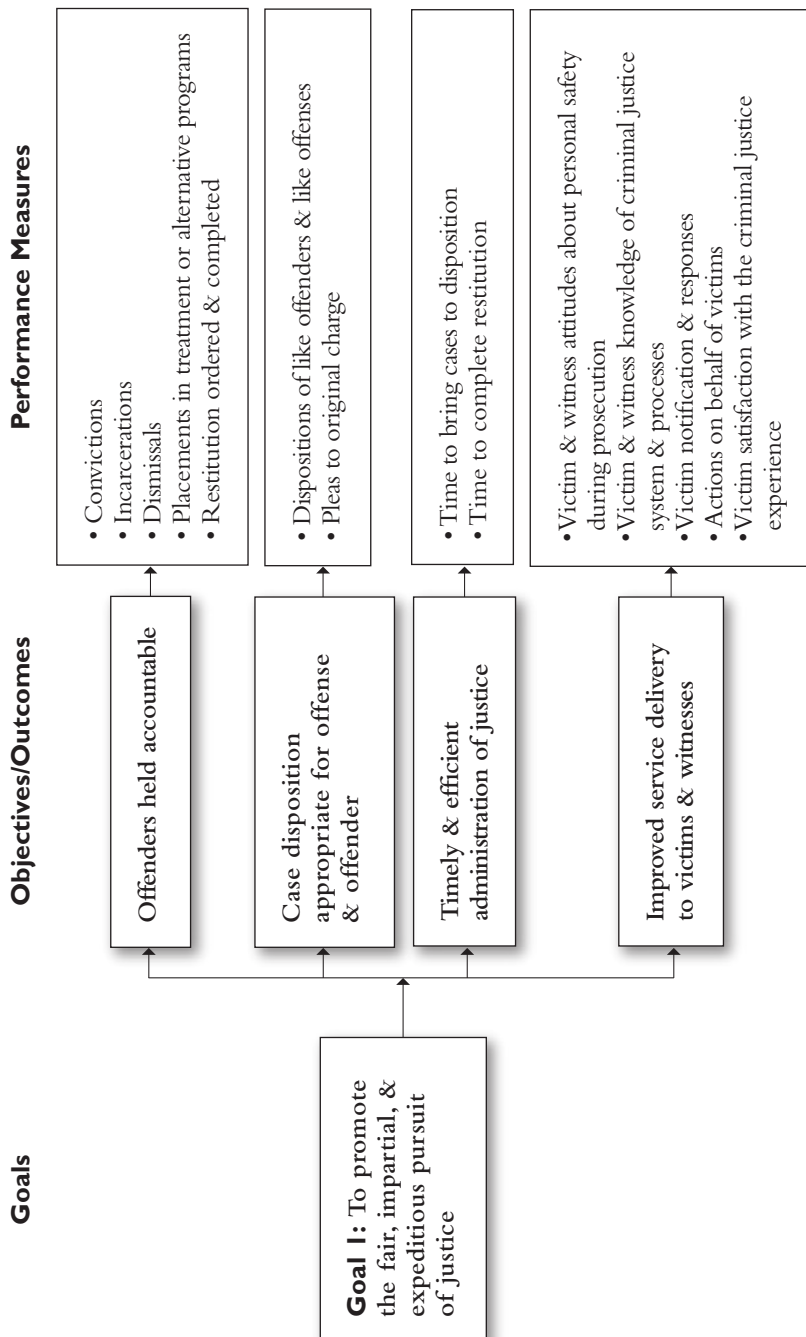
These three goals are designed to capture the intended results of all the various functions of the local prosecutor—case processing, crime prevention and intervention, and the overall administration of justice—respecting the unique role of the prosecutor and accounting for the continual evolution of the prosecutorial function. Related to each of these goals is a series of objectives from which performance measures can be generated. Exhibit 1 shows the relationships between goals (what prosecutors are trying to achieve in the long-term), objectives (changes that must occur in order for goals to be met), and performance measures (indicators that change is taking place).

The framework is intended to provide a guide for performance measurement in prosecution that can be tailored to the unique situations of individual prosecutors' offices but also broad enough to suggest appropriate measures for more large scale research on prosecution. It takes into account the expanding role of local prosecutors and moves beyond the traditional measures of filings, convictions, and crime rates.

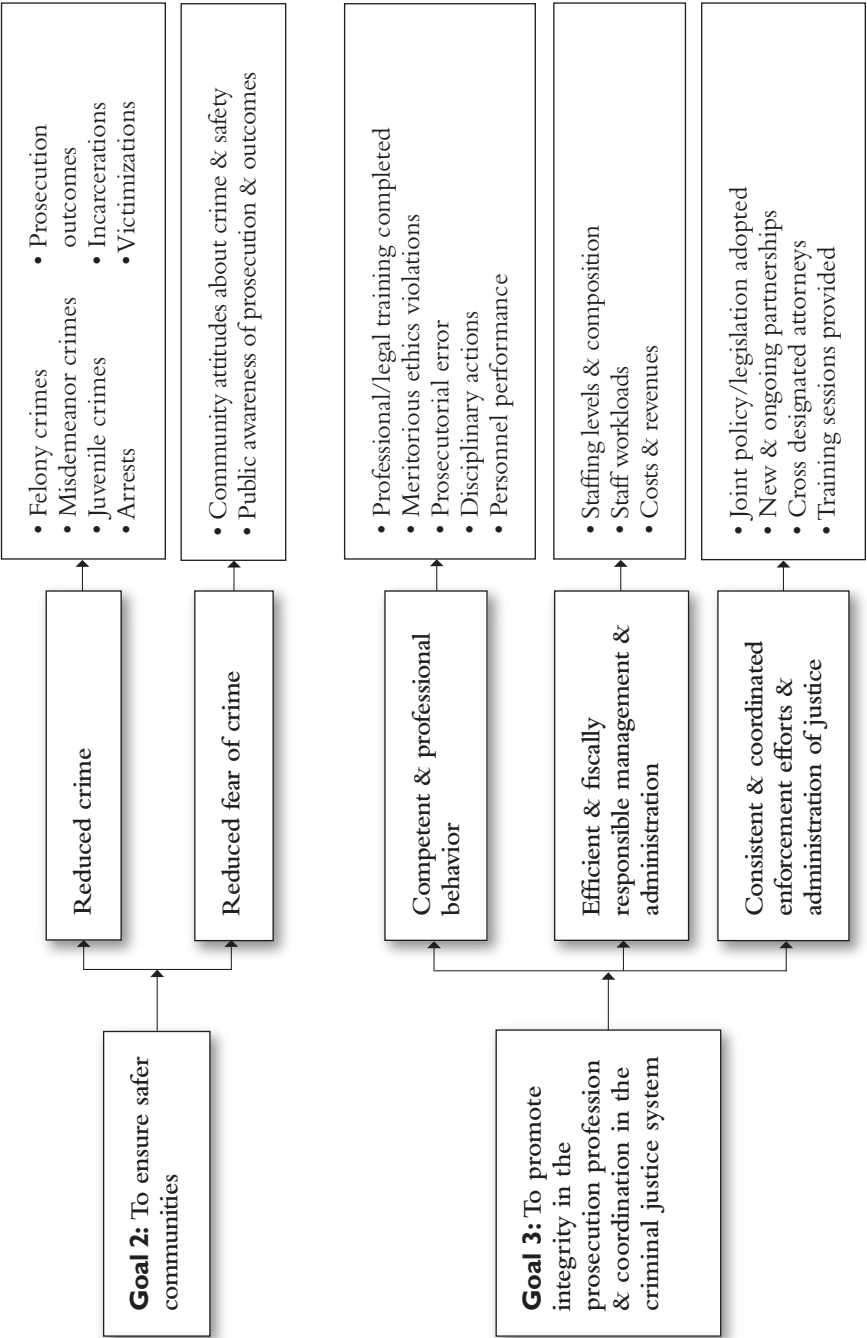
## ***Goal 1: Promotion of Fair, Impartial, and Expeditious Pursuit of Justice***

The promotion of fair, impartial, and expeditious pursuit of justice captures the intended impact of more “traditional” prosecutorial roles. As the chief law enforcement executive in the community, most prosecutors would agree that the primary function of the local prosecutor is to enforce the laws and prosecute offenders.

**Exhibit 1: Prosecution Goals, Objectives, and Performance Measures**



A FRAMEWORK FOR MEASURING PROSECUTOR PERFORMANCE



With this role comes the responsibility to ensure that the laws are enforced equally and without bias and that prosecutorial discretion in charging decisions is exercised uniformly and with the interests of justice in mind. This means that prosecutors are responsible for holding offenders accountable, ensuring that case dispositions are appropriate for both the offense and the offender, administering justice in a timely and efficient manner, and improving service delivery to victims and witnesses.

### ***Goal 2: Ensuring Safer Communities***

Clearly, prosecuting offenders and enforcing the laws creates both specific and general deterrence and helps to make communities safer. However, with the advent of community prosecution and involvement in more prevention and treatment efforts, prosecutors are taking a more preventative approach to crime. Using varied enforcement methods and problem-solving techniques, prosecutors are educating their constituents about crime prevention and attempting to address the underlying causes of crime such as neighborhood disorder, drug addiction, mental health issues, and more. Thus, ensuring safer communities takes on a dual purpose as a goal for prosecutors.

The two primary objectives for prosecutors in ensuring safer communities are a reduction in crime and, equally important, a reduction in the fear of crime. Although it can be argued that prosecutors alone cannot reduce crime, as noted earlier, prosecuting offenders, holding them accountable for their actions, and sending a general deterrent message to would-be offenders is an important function that ultimately can have some impact on crime rates. It is important, however, that these measures be placed in context with other performance measures and the specific prosecutorial practices be aimed at reducing crime in order for crime rates to be a useful measurement of performance.

The vast majority of the public will never come into direct contact with the criminal justice system (Surette, 1997). However, community members have strong opinions about crime and particularly how safe they feel in their homes, places of work, and communities in general. Too often, these attitudes are shaped by media attention to high profile crimes, and can be unfairly biased.



Prosecutors are increasingly called upon to help explain the true prevalence of crime in the community, and conversely, residents are increasingly working with prosecutors to identify their crime priorities through such efforts as community prosecution. The prosecutor's role in helping shape public opinion about crime is new and evolving, and the intent is to help reduce fear of crime by changing community attitudes about crime and safety and to increase public awareness of prosecution and prosecution outcomes.

In addition, as prosecutors work in closer partnership with community members to address crime and fear of crime, citizens gain a greater understanding of the prosecutor's role and his/her limitations, and perhaps more importantly, become engaged in the process and more aware of the prosecutor's role in the criminal justice system.

### ***Goal 3: Promotion of Integrity in the Prosecution Profession and Coordination in the Justice System***

The third and final goal—to promote integrity in the prosecution profession and coordination in the criminal justice system—takes into account the leadership role of the prosecutor. This particular goal is difficult to measure because the types of information needed to assess integrity and coordination generally do not exist. Nonetheless, prosecutors are accountable to their constituents, and the public should have the tools to measure a prosecutor's performance in terms of his/her conduct. It must be ethical and professional. Moreover, as a publicly funded agency, prosecutors' offices must be fiscally responsible. Continued work is necessary on the part of organizations such as NDAA to develop meaningful tools and methods for documenting prosecutors' performance on this goal.



## APPLICATION OF THE FRAMEWORK IN TWO PROSECUTORS' OFFICES

The development of a framework is all well and good but must be tested in a real world setting before its true utility is known. As such, APRI implemented the performance measurement framework in two jurisdictions to determine whether or not the framework measures adequately captured the work of prosecutors' offices and to assess the challenges associated with implementing the framework in real prosecutors' offices.

The offices chosen for the study represent two different prosecution philosophies. The first office is more traditional in its approach to prosecution, focusing on holding offenders accountable and case processing, with some additional efforts aimed at addressing and preventing certain types of crime such as gang and gun violence, domestic violence, child abuse, and truancy. The second office is more community-oriented, having implemented a community prosecution approach to crime which involves proactive problem-solving, partnerships with the community, and use of techniques other than criminal prosecution to address certain types of crime and public safety issues.

One of the first tests of the framework was determining the extent to which the measures already existed and to develop data collection tools for those measures with no identifiable source for the data. Measurements were collected over an 18-month period and examined for reliability and validity. In addition, APRI collected detailed information about the policies and practices of the offices and how these were related to the different performance measures.

The study found that the most relevant measures of Goal 1 (shown in Exhibit 1) were those relating to the objectives of holding offenders accountable and the timely and efficient administration of justice. Among the measures used by the sites to measure holding offenders accountable were:

- Ratio of convictions to cases charged
- Sentence length

For the timely and efficient administration of justice, measures included:

- Average case processing time
- Pleas to lesser charges

<b>Goal 1:</b> Promoting the fair, impartial, and expeditious pursuit of justice	
<b>Objective 1:</b> Holding offenders accountable	<b>Objective 2:</b> Timely and efficient administration of justice
<b>Performance Measures:</b> 1. Ratio of convictions to cases charged 2. Sentence length	<b>Performance Measures:</b> 1. Average case processing time 2. Pleas to lesser charges

Other objectives relating to the goal of promoting the fair, impartial, and expeditious pursuit of justice, such as case dispositions that are appropriate for offense and offender and improved service delivery to victims/witnesses, were not relevant as expected. APRI did not collect measures related to the objective of improving service delivery to victims and witnesses, therefore did not expect any findings on this objective. There was, however, an expectation that measures of the ratio of cases pled as charged to cases pled to lesser charges would be indicative of appropriate case dispositions for like offenders/like offenses. In fact, this measure was more relevant for objective 1, holding offenders accountable. Measures related to recidivism under the objective of reducing crime were also more closely related to holding offenders accountable.

Both objectives related to the second goal of ensuring safer communities—reducing crime and reducing fear of crime—proved to be relevant when measured by crime rates and reported crimes/calls for service. Specifically, the measures used included: gun, gang and robbery crime rates; crimes involving juveniles; reported incidents of solicitation/prostitution; and response to calls for service to problem properties.

In addition, APRI designed and implemented a public safety survey to measure fear of crime. Results of the public safety survey support the expectation that there were five primary factors that measure the public's perception of:

<b>Goal 2:</b> Ensuring public safety	
<b>Objective 1:</b> Reducing crime	<b>Objective 2:</b> Reducing fear of crime
<b>Performance Measures:</b> 1. Gun, gang, and robbery crime rates 2. Crimes involving juveniles 3. Reported incidents of solicitation/prostitution	<b>Performance Measures:</b> 1. Responding to calls for service to problem properties

- Fear of crime;
- Climate of safety;
- Assessment of prosecutor effectiveness;
- Familiarity with prosecution and the legal system; and
- Proximity to violence.

Although this study found that prosecutors' offices have limited resources (both physical and technical) to assess performance, the types of data available can be used to measure performance as long as they are viewed in the context of the policies and strategies used to achieve the outcomes they are measuring.



## LESSONS LEARNED AND NEXT STEPS

In addition to the findings above, several key details regarding the implementation of performance measures in prosecutors' offices were discovered. The study demonstrates the importance of collecting data that measure what they are intended to measure, and that there is clear understanding of what the data represent. In this particular study, although there appeared to be common performance measures across the sites, there were in fact subtleties in the data that complicate such comparisons. Specifically, not all definitions are the same. For example, gang crime data are dependent on how the office defines a gang and how gang members are "identified." In one jurisdiction, gang cases included cases in which there were three or more defendants, who may or may not be members of a gang. In addition, the number of juvenile gang crimes was based on self-reports of gang status among juveniles who had been arrested.

Each local prosecutor's office is unique. There is significant variation in how offices are organized. Some prosecutors opt to organize their office into units to handle specific offense types; others focus on functional areas such as charging units, grand jury units, and trial units. Still other offices may be organized according to both offense type and functional area. Smaller offices are less likely to have the luxury of specialization and have less organization. The array of policies and practices within prosecution are numerous and vary significantly. These factors must be taken into account in selecting and using performance measures. The performance measures must be logically and clearly related to the unique circumstances of each office.

For prosecutors interested in implementing a system of performance measures in their office, there are several key steps they should take to ensure the measures are appropriate and adequate:

- Starting with the framework described above, determine how the goals and objectives are related to the operations of the office.
- Determine what policies, procedures, and strategies are in place that are used to achieve those results. How do they shape the organization of your office? Do they affect multiple units or types of offenses? How are they related to the goals and objectives?

- Determine what performance measures most appropriately and accurately measure those outcomes. For example, you would not use truancy rates to gauge the effectiveness of a gun violence prevention program; ask yourself if the proposed measures can clearly be linked to the office's activities.
- Conduct an assessment to determine what data are available to construct those measures. Additionally, determine what additional data it may be possible to collect, either within the office or from other sources (courts, law enforcement, etc.), to create the most accurate and comprehensive measures possible.

Other questions prosecutors should ask when considering the implementation of performance measures in their office include:

- How will I relay the importance of performance measures to my staff? How will I get them to buy into the idea? *It is extremely important to have buy-in from staff—they will likely be the ones responsible for collecting and tracking data, and need to know that their efforts have an impact on the success of the office.*
- Who will be responsible for collecting, tracking, and reporting data? How often will this occur? *Prosecutors may choose to assign one person to be responsible for all data collection, or may divide the responsibilities among different units. Data should be collected as often as possible, ideally on a monthly basis with reports issued every quarter.*
- How will the data be used? *The data can be used to support proposal writing, justify budget expenses, track program progress, provide feedback to staff on their work, etc.*
- Do I need outside assistance to develop and implement performance measurement in my office? *Professional organizations such as NDAA and universities have a wealth of knowledge regarding performance measurement and data assessment, and are often willing to lend their support, especially if you agree to share your data for their research.*

Answering these questions before implementing performance measurement will strengthen the implementation plan and ensure the measures and related processes are a good fit for the office.

Using APRI's study, prosecutors have a firm foundation on which to build a system of performance measures for their offices. As federal, state, and local governments move toward performance-based planning and budget-



ing, prosecutors' offices that have already begun to measure and track their successes are one step ahead and are able to define measures in a way that is adequate and appropriate for their jurisdiction. Justifying budget expenditures to funders is not the only benefit; prosecutors can use performance measurement to show their accountability to the public, prioritize activities within the office, track progress in achieving goals, and modify practices as needed to strengthen their impact. Furthermore, prosecutors who share knowledge of the availability, replicability, and value of performance measurement in their jurisdictions serve to strengthen the importance and usefulness of the measures through their experience.



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National District Attorneys Association  
American Prosecutors Research Institute  
99 Canal Center Plaza, Suite 510  
Alexandria, Virginia 22314  
Phone: (703) 549-9222  
Fax: (703) 836-3195  
<http://www.ndaa.org>

