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# Changing the Narrative:

The Prosecutor's Role in Fostering  
Connections to Community-Based Care



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The Council of State Governments (CSG) Justice Center is a national nonprofit, nonpartisan organization that combines the power of a membership association, representing state officials in all three branches of government, with policy and research expertise to develop strategies that increase public safety and strengthen communities. For more information about the CSG Justice Center, visit [www.csgjusticecenter.org](http://www.csgjusticecenter.org).

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The Association of Prosecuting Attorneys (APA) elevates promising and practical strategies to federal, state, local, and Tribal prosecutors, as well as their justice and community partners to enhance prosecutorial excellence. In order to address disparities and inequities in the justice system, APA strives to elevate the voices of victims, survivors, their families, formerly incarcerated individuals, and others with lived experiences through meaningful community engagement. APA develops resources to help elected, mid-level, and line prosecutors implement model policies and practices, all of which are featured [on APA's website](#). Through federal grants, private foundation, and member support, APA designs and delivers specialized training to tens of thousands of prosecutors and justice partners annually. APA also works across disciplines to increase public safety and eliminate disparities in the justice system by providing prosecutors with the most effective and innovative resources and guidance to better serve everyone in their communities.

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The National District Attorneys Association (NDAA) is a national, nonpartisan nonprofit membership association that provides training, technical assistance, and services to prosecutors around the country in support of the prosecution profession. As the oldest and largest association of prosecutors in the country with over 5,000 members, NDAA's mission is to be the voice of America's prosecutors and to support their efforts to protect the rights and safety of the people by providing its members with the knowledge, skills, and support they need to ensure justice is attained. NDAA serves as a nationwide, interdisciplinary resource center for research, training, knowledge building, and accountability as it works to promote a fair and equitable administration of justice.

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# Introduction

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**For years, behavioral health professionals, community advocates, and criminal justice leaders have faced challenges decreasing the overrepresentation of people with behavioral health needs in the justice system.<sup>1</sup> While many have worked to find solutions, implementing diversion opportunities and increasing health care and treatment options when possible, time and again, individuals with these needs have continued to cycle through the criminal justice system at great health, fiscal, and human costs.<sup>2</sup>**

When implemented equitably, treatment and health care have helped reduce recidivism among people with behavioral health needs.<sup>3</sup> However, local stakeholders and the broader public have not always understood the benefits of offering people pre-arrest and post-arrest diversion opportunities, especially amid concerns of increases in violent crimes throughout the country.<sup>4</sup> Because of this, many efforts to increase diversion opportunities in communities have stalled, even when there is evidence showing that diversion to treatment and relapse prevention planning reduce risks of recidivism for this population and increase public safety.<sup>5</sup>

As leading public servants, prosecutors have the opportunity to change this narrative and to support more effective connections to community-based treatment and supports in their jurisdictions. They can also help change the status quo and move the criminal justice system toward more fair, just, and equitable outcomes through their charging decisions, diversion offers, recommended sentences, and engagement with victims. And while connecting people to appropriate treatment improves public safety, these diversion efforts also reduce court backlogs, allowing prosecutors the ability to focus on cases involving more serious, violent crime.<sup>6</sup>

The prosecutor's stance on alternative-to-incarceration opportunities often holds great weight, especially when working with a variety of groups and people—including judges, defense attorneys, and community-based organizations. Because of this and the discretion they are afforded in their positions, they have the ability to reduce or drop charges, recommend when people with behavioral health needs are diverted to community-based treatment, as appropriate, and even to build diversion programs within their offices.

Prosecutors should be mindful, however, that there are decades of racial, ethnic, and income-level disparities that contribute to who is given opportunities for diversion even among people who have behavioral health needs. Just as Black and Latino Americans and Native Peoples are disproportionately arrested in the U.S.,<sup>7</sup> they have historically also had less access to diversion programs. Prosecutors have been more likely to grant pretrial diversions to White defendants than to Black or Latino defendants.<sup>8</sup> Research also shows that people of color have less access to community behavioral health care than White people.<sup>9</sup> And while there is limited research about access to diversion based on a person's primary language, it is still important for prosecutors to ensure that services can be offered in a culturally responsive way and in that person's primary language if diversion is offered. Doing so has been shown to increase the chances of success in programming.<sup>10</sup>

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1 HJ Steadman et al., "Prevalence of Serious Mental Illness Among Jail Inmates," *Psychiatric Services* (2009): 761–765, <https://doi.org/10.1176/ps.2009.60.6.761>.

2 The Council of State Governments (CSG) Justice Center, *Frequently Asked Questions: A Look into Court-Based Behavioral Health Diversion Interventions* (New York: CSG Justice Center, 2020), <https://csgjusticecenter.org/publications/faq-a-look-into-court-based-behavioral-health-diversion-interventions/>.

3 Sheryl Kubiak et al., "Cost Analysis of Long-Term Outcomes of an Urban Mental Health Court," *Evaluation and Program Planning* (2015): 52, <https://doi.org/10.1016/j.evalprogplan.2015.04.002>.

4 John Gramlich, *What the Data Says (and Doesn't Say) about Crime in the United States* (Washington DC: Pew Research Center, 2020), <https://www.pewresearch.org/fact-tank/2020/11/20/facts-about-crime-in-the-u-s/>.

5 Christine M. Sarteschi, Michael G. Vaughan, and Kevin Kim, "Assessing the Effectiveness of Mental Health Courts: A Quantitative Review," *Journal of Criminal Justice* 39, no.1 (2011):12–20; HJ Steadman et al., "Effect of Mental Health Courts on Arrests and Jail Days," *Archives of General Psychiatry* 68, no. 2 (2010):167–172, <https://www.ncbi.nlm.nih.gov/pubmed/20921111>.

6 Center for Health and Justice at TASC, *A National Survey of Criminal Justice Diversion Programs and Initiatives* (Chicago: Center for Health and Justice at TASC, 2013).

7 J.C. Barnes et al., "Arrest Prevalence in a National Sample of Adults: The Role of Sex and Race/Ethnicity," *American Journal of Criminal Justice* 40, (2015): 457–465, <https://doi.org/10.1007/s12103-014-9273-3>.

8 Traci Schlesinger, "Racial Disparities in Pretrial Diversion: An Analysis of Outcomes Among Men Charged with Felonies and Processed in State Courts," *Race and Justice* 3, no. 3 (2013): 210–238, <https://doi.org/10.1177/2153368713483320>.

9 American Psychiatric Association, *Mental Health Disparities: Diverse Populations* (Washington, DC: American Psychiatric Association, 2017).

10 Tetrine Sentell, Martha Shumway, and Lonnie Snowden, "Access to Mental Health Treatment by English Language Proficiency and Race/Ethnicity," *Journal of General Internal Medicine* (2007), doi:[10.1007/s11606-007-0345-7](https://doi.org/10.1007/s11606-007-0345-7).

As prosecutors consider how to use their position to enact meaningful change for people with behavioral health needs, this brief provides guidance for how to support equitable connections to community-based treatment and supports. Given all of their responsibilities and potential political considerations to navigate due to the public nature of their positions, they may be unsure of what steps to take to adequately support connections to community-based treatment and address systemic inequities in who gets opportunities to be diverted. To help address these concerns, the brief details what prosecutors can do in their capacity, offers tips for determining who they may want to partner with, and suggests practical actions they can take to support diversion efforts locally.

For more information and to sign onto a nationwide prosecutor call to action to reduce incarceration and increase treatment opportunities for people with behavioral health needs, visit [Propelling Change: A Prosecutor Call to Action](#).

## Understanding People with Behavioral Health Needs in the Criminal Justice System

Research shows that the presence of a mental illness does not automatically predispose a person to violent behavior<sup>11</sup> and that diversion to treatment and relapse prevention planning can reduce risk of recidivism for people with behavioral health needs.<sup>12</sup> Unfortunately, however, a common misconception persists that there is a direct connection between behavioral health needs and violence. It may not be surprising then to see that people with behavioral health needs are arrested and booked into jail at a disproportionate rate,<sup>13</sup> and they are also detained in jails significantly longer than people without behavioral health needs while awaiting trial, even when they do not pose a more significant public safety risk.<sup>14</sup> They are also more likely to have their parole and probation revoked and are more likely to be re-incarcerated.<sup>15</sup>

Some prosecutors have expressed feeling “paralyzed” by the fear of releasing someone into a diversion program who then goes on to commit a serious, violent crime. While this is a valid concern, it is also important for prosecutors to remember that the vast majority of people with mental illnesses are not violent and only about 4 percent of violent crime can reasonably be attributed to people with a mental illness.<sup>16</sup> Also, most people will eventually be released from incarceration; therefore, if a connection to treatment and supports is not made for someone with behavioral health needs before adjudication, and they are sentenced to jail or prison time, they may ultimately be released with little to no supervision, oversight, or connections to treatment. If they are offered diversion, however, they will be supervised and mandated to services for a set period of time.

For more information, read [Understanding and Managing Risks for People with Behavioral Health Needs: FAQs for Local Prosecutors](#) and [Addressing Misconceptions about Mental Health and Violence](#).

11 Seena Fazel et al., “Schizophrenia and Violence: Systematic Review and Meta-Analysis,” *PLOS Medicine* 6, no. 8 (2009).

12 Ryan Cotter, *Length of Incarceration and Recidivism* (Washington, DC: United State Sentencing Commission, 2020), [https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2020/20200429\\_Recidivism-SentLength.pdf](https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2020/20200429_Recidivism-SentLength.pdf)

13 Center for Behavioral Health Statistics and Quality, *Key Substance Use and Mental Health Indicators in the United States: Results from the 2015 National Survey on Drug Use and Health* (Washington, DC: U.S. Department of Health and Human Services, 2016); Jennifer Bronson and Jessica Stroop, *Drug Use, Dependence, and Abuse Among State Prisoners and Jail Inmates, 2007–2009* (Washington, DC: Bureau of Justice Statistics, 2017); Henry J. Steadman, et al., “Prevalence of Serious Mental Illness Among Jail Inmates,” *Psychiatric Services* 60, no. 6 (2009): 761–765.

14 Hallie Fader-Towe and Fred Osher, *Improving Responses to People with Mental Illnesses at the Pretrial Stage: Essential Elements* (New York: CSG Justice Center, 2015).

15 Jacques Baillargeon et al., “Parole Revocation Among Prison Inmates with Psychiatric and Substance Use Disorders,” *Psychiatric Services* 60, no. 11 (2009): 1516–1521; Lorena Lee Dauphinot, “The Efficacy of Community Correctional Supervision for Offenders with Severe Mental Illness,” Dissertation Abstracts International: Section B: *The Sciences and Engineering* 57, no. 9-B (1996): 5912; Nena Messina et al., “One Year Return to Custody Rates Among Co-disordered Offenders,” *Behavioral Sciences and the Law* 22, no. 4 (2004): 503–518.

16 John S. Rozel and Edward P. Mulvey, “The Link Between Mental Illness and Firearm Violence: Implications for Social Policy and Clinical Practice,” *Annual Review of Clinical Psychology* 13, (2017): 445–69.

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# A Prosecutor's Role in Fostering Connections to Care

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It is understandable if the first set of questions that a prosecutor asks about behavioral health diversion are *why me* and *what can I do?* It is the prosecutor's job, after all, to charge and try cases against people accused of crimes. However, prosecutors are also responsible for protecting public safety and the needs of victims of crime. Proper treatment for defendants with behavioral health conditions, instead of costly incarceration (and often re-incarceration), has been shown to be more effective at achieving these goals.<sup>17</sup>

While pre-arrest diversion for people with behavioral health needs is an ideal way to divert them from the criminal justice system, that type of diversion is not always possible, and many cases involving people with behavioral health needs end up on a prosecutor's desk. (See the [Police-Mental Health Collaboration Toolkit](#) and the [Expanding First Response: A Toolkit for Community Responder Programs](#) for additional information about pre-arrest diversion options).

Ultimately, the prosecutor's role may vary in different jurisdictions, but it generally includes being an influential supporter of existing diversion efforts and programs or creating a prosecutor-led diversion program in their own office. Prosecutors can also serve both of these roles at the same time. Additionally, they should be working with others to establish cross-system partnerships, ensure victims of crime are meaningfully engaged in any diversion opportunities, and navigate the limitations that can exist in this work, such as securing funding for new programs and workforce shortages.

## Facilitating Connections to Community-Based Treatments and Supports

One of the main roles of a prosecutor when it comes to supporting behavioral health diversion is as a facilitator who can connect people to the support and treatment that already exists in their community. This starts by having prosecutors understand the array of treatment providers in their jurisdictions and carefully considering their charging options. As most prosecutors know, one of the most important decisions they can make is whether to file charges once someone with behavioral health needs has been arrested. Once prosecutors know the options at their disposal regarding whether to file charges and, if so, which charges to file, they can better consider if there are other ways to connect people to treatment or obtain accountability that are less costly and time-consuming and more effective than jail or prison.

This is especially true when someone has been arrested for a low-level offense or when their arrest is directly related to their mental health status. For example, a person who is hospitalized in an inpatient psychiatric unit or in a psychiatric emergency room might be arrested for assaulting a nurse. If that case comes across a prosecutor's desk, this can be an opportune time for a prosecutor to determine if it is necessary to file charges or to look at what other options are available to both protect the victim and to make sure that person has access to proper treatment and services without the increased risk of further psychiatric destabilization that typically comes with justice system contact. Instead of defaulting to prosecuting and potentially offering jail time for these types of cases, prosecutors with an understanding of the services and supports available can put policies in place to review incidents like these while protecting the safety of nurses and other hospital staff and adhering to the rights of crime victims.

Further, prosecutors can create partnerships with existing treatment providers and attend trainings to better understand the ways that prosocial supports, such as family, community, and faith, may help a person stay engaged with treatment and away from criminal activity. All of these efforts put together can help to make them better advocates for and facilitators of connections to community-based supports and treatment.

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<sup>17</sup> David Cloud and Chelsea Davis, *Treatment Alternatives to Incarceration for People with Mental Health Needs in the Criminal Justice System: The Cost-Savings Implications* (New York, Vera Institute of Justice, 2013).



## Getting Started: Building Knowledge on Behavioral Health Diversion

A basic knowledge of behavioral health conditions and treatment can help prosecutors most effectively support behavioral health diversion efforts. This knowledge should include:

- An understanding of behavioral health conditions—including mental illness, substance use disorders, appropriate treatment options, and violence and recidivism risk management as measured by validated risk instruments—and how these conditions impact behavior beyond what constitutes competency in the courtroom and Not Guilty by Reason of Insanity (NGRI) issues.
- A recognition that people with behavioral health needs are not a monolithic population, and services and treatment plans need to be tailored to individual needs.
- A thorough understanding of the community behavioral health resources and support programs, such as supportive housing, that exist in the prosecutors' jurisdiction.

For more information about behavioral health diversion programs and ways to develop a cross-systems behavioral health diversion strategy, read [Behavioral Health Diversion Interventions: Moving from Individual Programs to a Systems-Wide Strategy](#) and [Frequently Asked Questions: A Look into Court-Based Behavioral Health Diversion Interventions](#).

### Building Prosecutor-Led Programs

There are often opportunities for prosecutors to create diversion programs, as well. For larger jurisdictions, these prosecutor-led diversion programs can be departments within a prosecutor's office and are typically staffed with prosecutors and clinicians. In a smaller office, this may be a function that all attorneys need to play. The prosecutors managing these types of diversion programs typically partner with existing community-based agencies to provide the direct case management and treatment services, while the prosecutor is responsible for determining the eligibility criteria, whether diversion is offered to a defendant, the conditions of diversion, and then whether a participant successfully completes the diversion conditions.<sup>18</sup> This may contrast with programs where decisions about clinical eligibility are made by the treatment provider and decisions about granting diversion are made by the judge with input from both parties. Some prosecutor-led diversion programs may also require that a participant take a plea or admission prior to entering the program, while others do not have this requirement. Particularly in smaller, more rural jurisdictions there can sometimes be a lack of community infrastructure for treatment or other services. In these instances, prosecutors' offices that decide to build programs may need to be creative around treatment and monitoring options, such as partnering with other nearby jurisdictions or offices to help connect people to services and using teleconferencing and telehealth technologies.

For prosecutors interested in building programs within their office, the Association of Prosecuting Attorneys (APA) has developed a [Prosecutor-Led Diversion Toolkit](#) that provides background information, resources, and tools for prosecutors to develop their own diversion programs. The National District Attorneys Association (NDAA) also manages the [Prosecutor-Led Diversion Map](#), which is an interactive map of prosecutor-led diversion programs around the country.

### Establishing Cross-System Partnerships

Every prosecutor knows one truth: they cannot effectively do their work alone. Therefore, prosecutors will need strong cross-systems partnerships in order to offer appropriate and effective diversion options to people with behavioral health needs. At the outset of any new effort to support behavioral health diversion opportunities, prosecutors should focus on partnering with community-based treatment providers—particularly ones who have strong relationships with the people most impacted by systems in their community—in order to build trust and ensure they are being responsive to the community's needs. When

<sup>18</sup> "What is Prosecutor-Led Diversion?," *The Association of Prosecuting Attorneys*, accessed August 2, 2022, <https://www.diversiontoolkit.org/getting-started/what-is-prosecutor-led-diversion/>.

there are only a few established service providers in the community or the providers that exist are far from many of the people who live in the jurisdiction, prosecutors should look to partner with agencies that can assist with transportation support, such as community responder programs, and opportunities to connect people with appropriate telehealth services. Prosecutors should also look to engage people with lived experience of the criminal justice and behavioral health systems, jail mental health staff, peer support agencies, housing providers, defense attorneys, police departments, and judges. Additionally, it will be important for them to listen to forensic peer specialists and treatment providers to learn the types of outcomes to expect for different diversion candidates. These partners each bring expertise about their various systems and can provide information that is crucial to understanding what diversion opportunities are available in the community and how prosecutors can best support them or help to create new ones.

Some initial ways to develop these partnerships can be through the creation of a behavioral health jail review committee that might include the jail sheriff, jail behavioral health provider, defense attorneys, community treatment providers, and the prosecutor; in-person or virtual visits to other agencies; or regular stakeholder meetings. Agency visits can be an opportunity for prosecutors to see treatment program facilities firsthand, build relationships with program staff, and gain a better understanding of the services offered.

## Engaging Victims of Crimes

To ensure victims of crime are meaningfully involved in any discussions concerning diversion to treatment and services, prosecutors should partner with community-based organizations to provide forums for victims of crime to communicate any concerns and needs. They should also commit to seek each individual victim's input when considering diversion as an option.<sup>19</sup> Typically, victims of crime are only provided information related to the person's criminal justice status without identifying issues unique to cases that present mental or behavioral health concerns.<sup>20</sup> However, it can be helpful if the victim is provided with information (as appropriate) that outlines how behavioral health issues influenced the actions of the person or people who committed the crime.

It is also important for prosecutors to recognize that, in many cases, victims may be family members of the defendant, and family will need tailored support and resources around how to support their family member while also managing their own feelings and self-care needs. [The National Alliance on Mental Illness \(NAMI\)](#) can be a great resource for information and support groups for family members of people with mental illnesses. Prosecutors' offices can also consider offering internal support groups for family members who have been victims of crime committed by family members with behavioral health needs, if staffing allows.

## Navigating Limitations

Even with their substantial influence, prosecutors can face limitations when seeking to support new or existing behavioral health diversion efforts. For example, changes in bail laws may limit prosecutorial options for recommending behavioral health diversion for people who are charged with low-level misdemeanor cases.<sup>21</sup> However, this should encourage prosecutors to consider more creative diversion options for this specific population, especially to assist in pre-arraignment and pre-prosecution diversion. Being aware of pretrial supervision agencies, police department mental health units, and crisis stabilization units can also help prosecutors understand the options available for pre-arraignment and pre-prosecution diversion.

Additionally, prosecutors are among the many professions experiencing workforce shortages, which can make the idea of adding training or new programs particularly daunting. While there is no panacea, NDAA and APA are both supporting prosecutors' offices trying to increase recruitment and retention. While promoting diversion programs does not necessarily

19 Alliance for Safety and Justice, *Crime Survivors Speak: The First Ever National Survey of Victims' Views on Safety and Justice* (Oakland, CA: Alliance for Safety and Justice, 2016), <https://allianceforsafetyandjustice.org/crimesurvivorsspeak/>.

20 Monica Anzaldi Ward and Hope Glassberg, *Responding to People Who Have Been Victimized by Individuals with Mental Illnesses* (New York: CSG Justice Center, 2008).

21 Isabella Jorgensen and Sandra Susan Smith, *The Current State of Bail Reform in the United States: Results of a Landscape Analysis of Bail Reforms Across All 50 States* (Massachusetts: Harvard Kennedy School Faculty Research Working Paper Series, 2021), <https://www.hks.harvard.edu/publications/current-state-bail-reform-united-states-results-landscape-analysis-bail-reforms-across>.

result in less work for prosecutors' offices, many prosecutors report that work connecting people to needed treatment is one of the most rewarding parts of their jobs, and this may be work that attracts new attorneys or is sought out by people experiencing burnout and looking for a change. Some communities and states are exploring whether there are ways to centralize expertise in behavioral health with certain attorneys who can be available as advisors to others, even across a state. At the same time, individual attorneys and prosecutor offices are encouraged to think realistically about what is manageable and strategic given current resources. Leadership within prosecutors' offices can help to work around this challenge by visibly supporting diversion efforts, making them a priority, and ensuring that staff have the time to dedicate to this work in addition to their other responsibilities.

Securing funding to implement new prosecutor-led diversion programs and hire additional staff can be another significant limitation, especially if community resources are scarce. However, prosecutors' offices are encouraged to think creatively about funding options, and to specifically consider the U.S. Department of Justice's Bureau of Justice Assistance's Justice (BJA) and Mental Health Collaboration Program (JMHCP) as an opportunity for funding. JMHCP offers grants to help entities implement collaboration programs that promote public safety and public health, such as cross-system diversion opportunities. (Read [BJA Program Brief: Justice and Mental Health Collaboration Program](#) for additional details about this funding opportunity). The National District Attorneys Association has also released [Mapping Prosecutor-Led Diversion: Funding Approaches Report](#), which provides information about funding options for diversion programs. It is also worth noting that many communities have started diversion programs without new funding by working together to better align existing resources.

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## Practical Actions Prosecutors Can Take

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Not all prosecutors have decision-making authority for an entire office, but whether they are elected, appointed, or hired, prosecutors play a vital role in determining how the criminal justice system responds to people with behavioral health needs. While there are multiple ways to enact change as a prosecutor—and each prosecutor will ultimately need to determine what works best in their jurisdiction—any prosecutor office can take any or all of the following **nine actions** to support equitable diversion opportunities for people with behavioral health needs:

**1. Lead by example.** Prosecutors are often viewed as leading authority figures. Therefore, they can use their influence to encourage other prosecutors to support diversion opportunities, participate in relevant training—especially around early identification of people with behavioral health needs—, and learn more about the evidence-based treatment options available in their jurisdiction. The most effective way to do this is by supporting efforts themselves, attending trainings, and showing their increased knowledge of the available options. Also, prosecutors can lead by example by being the ones to foster a culture of collaboration with defense attorneys and judges, considering what truly needs to be contested in cases, and working with them to find areas where there are places for mutual agreement.

**2. Promote interdisciplinary collaboration** to build trust among prosecutors and treatment providers. It is very important that prosecutors and treatment providers feel comfortable working together and understand each other's roles and responsibilities. To facilitate this trust, prosecutors can visit treatment programs in the community, conduct regular meetings with community treatment providers to better understand the challenges each are facing and reach collective solutions, or even host a resource fair in the community.

**3. Establish clear criteria** for who should be diverted and develop written policies and procedures about diversion eligibility and plea processes. Each of these items can help to ensure that diversion options are offered as equitably as possible, and that the prosecutor's office is clear and transparent in their diversion decisions. Additionally, more than 90 percent of criminal cases are disposed of via plea bargaining.<sup>22</sup> Therefore, it is often in the best resolution of a case to

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<sup>22</sup> Ram Subramanian et al., *In the Shadows: A Review of the Research on Plea Bargaining* (New York: Vera Institute for Justice, 2020). <https://www.vera.org/downloads/publications/in-the-shadows-plea-bargaining.pdf>.



consider behavioral health diversion as an option (and to develop criteria for it), even when prosecutors are not preparing cases for trial, so that people with behavioral health conditions can access proper treatment and reduce their chances of reappearing in court.

**4. Champion equity in diversion** by first monitoring for disparities and then working with partners to ensure equitable access across race, ethnicity, gender, languages, and sexual orientation. Multiple disparities exist in terms of who is granted diversion opportunities, who has access to community mental health treatment, arrest rates, sentencing lengths, and so on. While there is limited literature about gender disparities in diversion, research shows, for example, that men and women have different risk factors and enter the criminal justice system through different pathways. This can be important for prosecutors to consider when making decisions about offering diversion.<sup>23</sup> Prosecutors need to be aware of all these disparities and make conscious decisions that can help to positively impact them. Some concrete ways to do so include:

- Tracking diversion and plea process data by crime category and demographics, including race, gender, sexual orientation, language, and ethnicity to monitor for disparities in who is referred to diversion, who is offered diversion, who is granted diversion, who succeeds in diversion, who does not succeed in diversion and why, and recidivism rates post-diversion.
- Developing an office-wide racial equity statement and racial equity action plan.
- Considering using a [“blind charging tool”](#) when making diversion decisions.
- Partnering with legislators, researchers, universities, treatment providers, and police departments to coordinate data collection related to equity and to support each other’s equity initiatives.
- The [Prosecutorial Performance Indicators](#) (PPI) website is a helpful resource prosecutors’ offices can use to track racial and ethnic disparities in their jurisdictions. APA also has [resources](#) dedicated to PPIs, including a webinar series explaining each phase of PPI implementation. [The Data Collection on Racial Disparities Report](#) from the NDAA also provides data on racial disparities as they relate to diversion.

**5. Attend trainings** relevant to prosecutors regarding behavioral health, treatment options, risk assessment (pretrial risk, recidivism, violence), and community treatment services for both mental health and substance use disorders to ensure that all staff in the prosecutor’s office are aware of the basic foundations of mental health conditions, symptoms, and treatment options in their jurisdictions. Training and technical assistance about the rights and needs of victims of crime committed by people with mental illnesses should also be highlighted because this can be an especially thorny issue for prosecutors that requires skilled communication. Training should also include culturally responsive best practices and tools, with special attention to situations where the victim is a family member and/or where the person who committed the crime is found not competent to stand trial. (Read [Just and Well: Rethinking How States Approach Competency to Stand Trial](#) for additional background information about the competency process).

**6. Support prosecutor self-care and wellness initiatives** to prevent staff burnout. Prosecutors’ jobs are often very fast-paced, stressful, and traumatic, and they need resources to manage these tensions so that they do not negatively impact their jobs and decision-making abilities. For example, prosecutors’ offices can create an informal peer support program, a well-being committee, or an easily accessible Employee Assistance Program (EAP). The National District Attorneys Associations [Wellbeing Task Force Resources Overview](#) offers resources and information for building out such programs.

**7. Set up accountability mechanisms** to ensure people who are diverted are effectively engaging in treatment and services that can help reduce their risk of recidivism and maintain stability in the community. Prosecutors can develop a process that prioritizes working with providers to receive updates on participants’ progress, such as creating dedicated weekly meetings outside of court. Court reporting requirements and expectations should also be clarified at the beginning of a participant’s treatment, wherein the prosecutor and treatment provider agree on the frequency of court progress reports, how those reports are submitted, and what constitutes an immediate notification to the prosecutor. Individualizing conditions of release and program participation based on each person’s needs and circumstances is also key, such as ensuring frequent reporting requirements will not make it difficult for the person to obtain employment or provide childcare.

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23 Elizabeth Swavola, Kristine Riley, and Ram Subramanian, *Overlooked: Women and Jails in an Era of Reform* (New York: Vera Institute of Justice, 2016).

**8. Designate a “victim services point person”** in the prosecutor’s office, as resources and staffing permit. This person should be responsible for obtaining relevant case and custody status information and sharing it as appropriate. They should also be well-versed in complying with both federal and state confidentiality laws and regulations and be in regular contact with local victim service providers. Cross-training of other staff members within an office around victim services can also provide additional support in case the identified point person is unavailable, or it is not possible to dedicate a single point person.

**9. Meet with former diversion participants and their family members** to understand what is working well in diversion, and what some of the challenges are. Participants of diversion are the experts about how diversion programming and processes function, and their voices and perspectives should be included as much as possible. This can be done one-on-one with former participants, in focus groups, or townhall-style meetings. Note: current diversion participants are typically represented by defense counsel, so to be mindful of ethical obligations, if prosecutors choose to meet with them, they should do so in a court setting monitored by a judge or defense counsel and service provider.

## **Propelling Change: A Prosecutor Call to Action**

For years, behavioral health professionals, community advocates, and criminal justice leaders have faced challenges in decreasing the overrepresentation of people with behavioral health needs in the justice system. As leading public servants, prosecutors now have the opportunity to make significant changes to the criminal justice system by supporting effective connections to community-based treatment and supports in their jurisdictions. *Propelling Change* is a national call to action for prosecutors that aims to break the cycle of arrest and incarceration for people with behavioral health needs and change the status quo toward more fair, just, and equitable outcomes.

For more information and to sign onto the nationwide call to action, visit [\*Propelling Change: A Prosecutor Call to Action.\*](#)



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