COLLECTING AND USING DATA FOR PROSECUTORIAL DECISIONMAKING
FINDINGS FROM 2018 NATIONAL SURVEY OF STATE PROSECUTORS’ OFFICES

Statement of
Robin Olsen*
Senior Research Associate, Urban Institute

before the
Connecticut General Assembly

PRESENTATION ON PROSECUTORIAL DATA
AND TRANSPARENCY

April 24, 2019

* The views expressed are my own and should not be attributed to the Urban Institute, its trustees, or its funders.

I would like to thank Chloe Warnberg and Leigh Courtney for help in preparing this testimony.
Summary

Prosecutorial data collection, data use, and data-driven decisionmaking are subjects of emerging interest among prosecutors, other criminal justice stakeholders, advocates, and policymakers. Despite this interest, comprehensive research on how prosecutors collect and use data, and what barriers prevent an expanded use of data, is extremely limited. To fill this gap, the Urban Institute surveyed state-level prosecutors’ offices across the country in 2018. Elected prosecutors and staff members responded from 158 offices representing jurisdictions of all sizes, from sparsely populated rural parts of the country to urban areas with more than a million residents. Survey results are organized around five findings:

1. Almost all offices collect at least one foundational measure describing case flow, but fewer than half collect all seven.
2. Most offices collect data on screening, alternative approaches, or sentencing; 47 percent collect data on pretrial release decisionmaking.
3. Almost all offices (except small ones) have at least one electronic case management system and have staff that work on data; however, data accuracy and resource constraints pose significant barriers to greater use of data.
4. Many prosecutors use data to manage their offices and outcomes, but systematic approaches for tracking compliance with office policies guiding decisions or for tracking emerging trends within the data are uncommon.
5. Higher levels of data collection are associated with a greater reported use of data.

Based on these findings and a review of relevant literature, Urban researchers also identified eight steps prosecutors’ offices can take to increase their collection and use of data in decisionmaking (outlined below).

Background

Information about prosecutorial decisionmaking is essential to understanding justice, effectiveness, and efficiency in our criminal justice system. Prosecutors have high levels of discretion from the point of referral to sentencing; however, limited data are available to identify, understand, and evaluate the key decisions prosecutors make in case processing. Additionally, prosecutors themselves often lack information that would help them track the outcomes of their decisions, such as recidivism results or whether similar cases result in similar outcomes.

With support from the Laura and John Arnold Foundation, the Urban Institute surveyed prosecutors’ offices nationwide about their capacity to collect and use data at crucial decision points. The survey sought to clarify both what data are needed to understand prosecutorial decisionmaking and what prevents prosecutors from tracking these data.

1 Percentages for answers to single questions use the total number of respondents to that question as the denominator. Cross-question analysis uses the total number of offices responding to all single-response, nonlogic questions (n = 130) as the denominator for all percentages.
Methodology

Urban surveyed more than 680 prosecutors’ offices across the country, including a census of prosecutors’ offices representing at least 250,000 residents and a stratified random sample of offices representing fewer than 250,000 residents. Outreach to offices consisted of two phases involving first a long-form survey, then a short-form survey. Overall, 158 offices (23 percent) completed either the short or long survey: 141 offices (21 percent) completed the long form, and 17 offices (2 percent) completed the short form. Findings presented here are not intended to be representative, but descriptive of selected offices in a subject field that heretofore has been generally limited to a single office, decision point, or offense type.

In addition, a number of offices were contacted for follow-up interviews based on their survey responses. Five offices spanning all but one size category (district population of 100,000 to 249,999) agreed to participate in an interview and to be named publicly. The interview information was distilled into five case studies (included in the research brief) and informs the findings presented here.

Findings

94 percent of offices are collecting at least one foundational measure describing basic case flow, but only 41 percent are collecting all seven measures identified in the survey.

After reviewing the research literature, Urban researchers identified seven “foundational measures” crucial to tracking prosecutorial activities: (1) the number of cases coming into an office, (2) the number of charges at arrest, (3) the number of final charges, (4) the number of cases declined, (5) the number of cases dismissed, (6) the number of cases resolved by guilty plea, and (7) the number of cases resolved by trial. Almost all offices (94 percent) collect at least one foundational metric, and the vast majority (78 percent) collect more than half of them. However, only 41 percent of offices collect all seven foundational metrics. Small offices (those representing fewer than 100,000 residents) generally collect less foundational information than the largest offices (those representing 1,000,000 or more residents).

In addition to foundational metrics, many offices report tracking data by various case characteristics. For at least one decision point, 82 percent of offices collect data by offense type; 81 percent track whether the case is a misdemeanor or felony; 64 percent track by assigned prosecutor; 42 percent track by defendant characteristics, such as race and criminal history; and 31 percent track by victim characteristics. Offices that track foundational measures are more likely to track case characteristics; for example, 51 percent of offices that collect all seven foundational metrics also track some data by victim characteristics, compared with 31 percent of all reporting offices.

---

Most offices collect data on screening, alternative approaches, and sentencing, but fewer than half collect data on pretrial release decisionmaking. Fewer still collect data on systemwide impacts or provide information to the public.

Survey questions were divided into four steps of decisionmaking: screening and charging; pretrial release decisionmaking; alternative approaches, such as diversion and deferred prosecution; and plea bargaining and sentencing. The vast majority of offices collect at least one item from screening (94 percent), alternatives (87 percent), or sentencing (88 percent). Pretrial release decisionmaking was much lower, with 47 percent of offices reporting collecting any metric related to pretrial release decisionmaking. At each stage, smaller offices were less likely to collect data.

Prosecutors also collect some data, although at lower rates than other items, on how their decisions affect systemwide metrics. For example, 23 percent of offices collect information on recidivism results. Additionally, 29 percent collect information on the number of cases where the prosecutor recommends pretrial supervision, 29 percent collect information on the number of defendants in pretrial detention, and 43 percent collect information on the number of cases recommended for incarceration or probation.

Lastly, half of offices reported encouraging or soliciting input from community groups or residents, and about a quarter publish analyses publicly.

Almost all offices (except small ones) have at least one electronic case management system and have staff that work on data. Resource constraints and data accuracy are significant barriers to greater use of data.

Almost all offices report having at least one electronic case management system except small offices, where 32 percent report they do not have one. Nearly 75 percent of offices report keeping information in a combination of paper files and electronic case management files, and 15 percent report using two or more electronic case management systems.

When asked where they primarily get their data for each stage of decisionmaking, three-quarters of offices report getting it from electronic case management systems, and a smaller share report getting it from paper files. At any given decisionmaking point, no more than 28 percent of offices report using paper files as the primary means of collecting data. Additionally, three-quarters of offices report having access to some information from other criminal justice agencies, although this is rarely their primary data source.

All offices representing at least 500,000 people report that staff spend some time on data collection, analysis, or research; 24 percent of offices representing between 250,000 and 499,999 people, 39 percent representing between 100,000 and 249,999 people, and 52 percent representing fewer than 100,000 people say no one spends time on data. Across all offices, various people are involved in data collection or analysis. The most commonly referenced staff members are senior attorneys, at 47 percent; IT staff are the next most likely, at 35 percent. Other staff referenced are data analysts (19 percent), outside research partners (10 percent), and analyst teams (10 percent). Twenty-five percent of respondents note that other staff work on data collection, including paralegals, office managers, and legal assistants.
The most commonly cited barrier to data collection and use is the accuracy of the data, both at the front end (data entry) and the back end (produced analyses and reports). Offices also often report challenges related to resource limitations including a lack of time, a lack of resources for data infrastructure, and a lack of staff (especially with the appropriate skills or expertise). In addition, some offices note concerns about the inability of data to capture elements critical to prosecutorial practice, and others note that data analysis can contradict an individualized approach to prosecution. Despite some offices expressing these concerns, many respondents report successfully using data to improve their prosecutorial practice, from better managing their office to producing more just outcomes.

*Many prosecutors use data to manage their offices and outcomes, but systematic approaches for tracking either compliance with decisionmaking guidelines or emerging trends within data are uncommon.*

Offices are more likely to use data to manage their office than to track broader system metrics. Seventy-two percent of offices say they use data to manage the allocation of time or resources, and 65 percent say they use data to set policy or guidelines. Three-quarters of offices collect information on caseload size, although few (13 percent) report tracking time spent on case processing. Caseload information is used to inform budget requests, staff allocation, and staff performance management. Additionally, respondents report varied levels of tracking the reasons behind their decisions. Specifically, 84 percent track the reasons for dismissal of any/all charges, 60 percent track the reasons for declinations, and 41 percent track the reasons for a bail recommendation. Some offices comment that these metrics are more difficult to analyze because prosecutors need to extract relevant information from open-ended text, rather than predetermined response options.

Offices are less likely to use data to track or address systemwide trends, although some offices do. Thirty-seven percent of offices report using data to implement crime suppression strategies, and some offices report specific, innovative examples of using data to more efficiently and effectively prosecute crimes. These include implementing and evaluating alternative programs, driving organizational change to address concerning offense trends, and better identifying cases for enhanced prosecution.

While most offices have guidance in place for decisionmaking, generally offices are not using data to track compliance with this guidance. At any key decisionmaking point, no more than a third of offices report collecting data on compliance. Only about a quarter (23 percent) of offices use a data dashboard to measure or assess staff performance.

*Higher levels of data collection are associated with a greater reported use of data.*

Survey results demonstrate a correlation between data collection and data use. As defined by the number of metrics they collect relative to other survey respondents, “high collectors” (collecting at least 19 of the 29 selected metrics) are more likely to use data for allocating time or resources, for training and evaluating staff, for setting policy or guidelines, for crime suppression strategies, and for managing evidence; “low collectors” (collecting 11 or fewer metrics) are the least likely to use data for each of these categories.
Recommendations

Based on survey data, interview data, and existing research, Urban researchers identified eight recommendations for offices aiming to increase their collection and use of data:

1. Assess if your office is a low, medium, or high data collector.
2. Ensure your office is collecting foundational information that describes case flow: cases referred, initial charges, final charges, cases declined, cases dismissed, cases resolved by plea, and cases that go to trial.
3. Ensure your office is collecting relevant case details: offense type, misdemeanor/felony classification, referring law enforcement agency, assigned prosecutor, defendant characteristics, and victim characteristics.
4. Consider collecting at least one metric at each stage of decisionmaking (screening and charging, pretrial release decisionmaking, alternative approaches, and plea bargaining and sentencing).
5. Equip and train staff to collect and analyze data. Take advantage of outside resources where possible.
6. Strengthen technology infrastructure to improve data collection. Consider automating data entry and report generation; integration with other agencies’ systems; and low-cost, electronic alternatives to a case management system (such as an Excel file) if necessary.
7. Learn from peers to implement innovative approaches, such as dashboards, to track and respond to changes in trends and operational metrics.
8. Solicit information from, and share findings with, your local community.

Conclusion and Implications

Across the country, prosecutors and other criminal justice system stakeholders are grappling with how to best use data to improve outcomes. The findings presented here demonstrate that many prosecutors’ offices collect and use data throughout the case decisionmaking process, from screening to sentencing. And, many respondents express interest in and a desire to learn more about data collection and how it can be used to improve prosecutorial practices. Some offices have implemented innovative, data-driven initiatives to better manage their offices and address systemwide trends such as rising crime rates. Nevertheless, significant barriers—such as a lack of resources and concerns about data accuracy—stand in the way of broader collection and use of data.

One major component of ongoing conversations regarding expanding prosecutors’ ability to collect and use data relates to the data collection form. Offices in our survey, especially large offices, report relying heavily on electronic case management systems for data collection at each decisionmaking point. However, offices also report challenges associated with their data infrastructure, such as not being able to produce relevant reports in a timely manner and not having staff with adequate skills or training to use the electronic case management system. Many offices also report using a mix of paper and electronic files. As evidenced by the Eighth Judicial Circuit of Florida, which is featured as a case study in our brief, moving to a paperless system can help offices increase efficiency, track their successes, and accurately represent the work the office is doing.
The findings presented here also suggest that offices that collect data are more likely to use those data. Offices report benefits of data including better allocation of resources, more effective crime suppression strategies, and advocating for the expansion of initiatives such as diversion programs. Nevertheless, sharing data with the public is rare among survey respondents.

Future efforts that aid prosecutors’ offices in collecting data, particularly in a reliable and accessible format, can help expand the practice of data-driven decisionmaking. By increasing data collection efforts, and later using those data in decisionmaking, prosecutors’ offices can better identify and respond to trends, demonstrate their successes, and link their decisions to safety and justice goals.