
A New Approach:

Alternative Prosecutorial Responses to Violent Crime

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The opinions, findings, and recommendations expressed in this publication are those of the authors and do not necessarily represent the positions of Arnold Ventures or the participating prosecutors' offices.

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STUDY OVERVIEW

- Researchers interviewed over 30 prosecutors from five diverse jurisdictions to understand their use of alternatives to incarceration (ATIs) in cases involving violence.
- Findings highlighted the ways prosecutors balance competing goals of punishment and rehabilitation, the role of discretion, and the variability in definitions of violence.
- Prosecutors described how local context (e.g., politics, community concerns, and media) and national discourse on criminal legal system reform can shape prosecution decisions about violent crime at both the office- and case-level.
- Prosecutors' offices seeking to pursue alternatives in cases involving violence should consider finding champions to tout the benefits of alternatives, investing in data and research, starting off with low-level instances of violence before expanding, collaborating across silos, and centering the needs of community.

Despite significant gains in shrinking the criminal legal system's footprint through alternatives to incarceration (ATIs) for non-violent and drug crimes, incarceration is still the de facto response for crimes involving violence.¹ Reliance on jail and prison for such crimes is rooted in the assumption that incarceration promotes community safety. However, research has documented that unnecessary detention can increase the likelihood of re-arrest.² In addition to failing to promote public safety, with two-thirds of individuals released from state prisons re-arrested within three years of release,³ carceral options contribute to the cycle of mass incarceration. Carceral responses to violent crime perpetuate underlying systemic issues (e.g., unemployment, housing instability),⁴ fail to adequately address the underlying behavioral health needs that bring many individuals into contact with the legal system,⁵ and further expose individuals to trauma and institutionalized violence.⁶ The collateral consequences associated with any criminal conviction are stark, but they are amplified for returning citizens forever labeled "violent."⁷ Finally, research suggests that status quo approaches do not reflect survivors' preferred case outcomes.⁸

While more than three decades of research confirm that therapeutic and community-based alternatives to incarceration *can* work, these programs frequently exclude individuals charged with violent crimes as a matter of policy.⁹ However, identifying what constitutes a violent crime is often unclear; definitions are a mix of those determined by statute and individuals' own interpretations.¹⁰

Prosecutors act as gatekeepers, with a sizeable role in determining how cases proceed through the system—both in terms of what charges are filed and what alternatives are offered. As such, prosecutors have the opportunity to remove barriers to ATIs and rethink

what successful case resolutions might look like for crimes of violence.¹¹ Although there is a growing body of research examining the outcomes of specific case processing decisions (e.g., charging decisions, sentence type),¹² much remains unknown about *how* prosecutors arrive at these decisions.

While less carceral policies may be prioritized at the highest levels of a prosecutor's office, how they are applied in individual cases is impacted by office norms, policies, and feedback loops.¹³ Even in so-called "progressive" prosecutors' offices, shifting the culture of prosecution requires significant buy-in from line staff and supervisors. Recent research on plea bargaining in three jurisdictions (Philadelphia, Milwaukee, and St. Louis) sheds some light on the power of prosecutorial discretion and identifies factors contributing to decision-making.¹⁴ For example, although line prosecutors in Philadelphia have tremendous discretion in plea negotiations, offers are influenced by the policies and practices of specific units, statewide sentencing guidelines, and the reputation of the judge overseeing the case.¹⁵

The current study seeks to contribute to recent inquiries into prosecutorial decision-making by examining how prosecutors think about violence specifically and how they decide when to offer alternatives in such cases. In early 2020, the Center for Justice Innovation (the Center)—in collaboration with Fair and Just Prosecution (FJP) and NORC at the University of Chicago—was awarded a grant from Arnold Ventures to address the urgent question of how prosecutors consider alternative approaches to the prosecution of cases involving violence.

The first phase of this work was a national survey of prosecutors' offices designed to document how agencies define violence and utilize ATIs in such cases.¹⁶ The survey relied upon random sampling techniques that allowed us to generalize the findings from the 274 responding agencies to the 3,926 agencies in our sampling frame. Phase 2 involved case studies in five diverse jurisdictions that have been using alternative approaches for crimes involving violence: Arlington County, VA; Denver County, CO; Maricopa County, AZ; Monroe County, IN; and Prince George's County, MD. The sites varied in terms of geography, populations served, agency characteristics (e.g., size, tenure of the elected), and use of alternatives (See Table A.1). In contrast to the survey sample, most of these sites were recruited through Fair and Just Prosecution's network and all five were already engaging in some alternative approaches for crimes involving violence. Thus, the case study findings may reflect the practices and policies of more progressive offices than those included in the broader survey sample. Nevertheless, we believe the lessons learned are valuable for any agency considering ways to enact alternatives in cases involving violence.

Our case study approach relied primarily on interviews with local stakeholders, allowing us to engage in more thorough follow-up beyond what was possible in the survey. Throughout this paper, we reference trends observed in the survey relative to our case study interviews to help add nuance to the survey findings. The case studies also enabled us to document concrete examples of how some agencies have shifted culture and practice, empowering prosecutors to apply non-carceral responses to violent crime. Each of these jurisdictions implements alternatives at different stages in the life of a case, highlighting possibilities that might be applied in a broad array of contexts (for program descriptions, please see innovatingjustice.org/publications/alternative-prosecutorial-responses-violent-crime).

Ultimately, these five case studies explore how incremental change can shift thinking about traditional approaches to violence. Most of the sites apply alternatives to cases involving *low-level* violent charges, though there are a handful of examples of prosecutors developing ATIs to address high-level violent felonies.¹⁷ However, our interviews revealed an appetite to expand alternatives beyond their current use, a sentiment shared among both prosecutors and the other stakeholders we spoke with. Such expansion needs to be informed by documented results and feedback from staff, partners, and communities.

Lastly, we conducted these interviews between 2021 and 2023 during a period in which prosecutors grappled with responding to increases in crime and community demands for racial equity. Rather than present the individual case studies, this report aggregates major themes across interviews with over 30 prosecutors in the five sites and draws parallels with findings from our national survey of over 250 prosecutorial agencies. We hope that the examples below will provide an opportunity for other prosecutors' offices to begin to consider alternative approaches to violent crime.

How Do Prosecutors Think About Violence?

Respondents to our national survey commonly characterized their offices' general prosecutorial philosophies as focused on upholding the law, ensuring equity and fairness, centering survivors, and maintaining public safety. Few described a general "tough-on-crime" approach. However, responses shifted when we asked specifically about violent crime, with respondents emphasizing seemingly competing goals of punishment and rehabilitation. While the prosecutors we interviewed did not draw distinctions in their approach to prosecuting non-violent versus violent crime, the case studies revealed a similar tension around competing goals, even in environments that are otherwise supportive of alternatives.

Approaches Most frequently, **prosecutors described their primary approach as providing alternative forms of accountability for those charged with violence.** As one interviewee described, “I think with our current elected DA, we’re more focused on restoration and rehabilitation. It’s not that we’re not focused on prosecution ... [but] I think we would all agree that not everyone who commits crimes is a bad person.” The second most common style was a tailored, case-by-case approach, considering the underlying factors associated with a crime. Although infrequent, some prosecutors noted that specific case characteristics might influence their approach—for instance, in cases where the collateral consequences might be particularly high (e.g., immigration issues), the target of the crime was particularly vulnerable (e.g., bias crime), or when the person charged was young. Lastly, a handful of prosecutors from the case study sites mentioned that their prosecutorial goals prioritized deterrence and being tough on violent crime.

Definitions If prosecutors apply different approaches in crimes involving violence, identifying what constitutes violence is crucial. Equal proportions of survey respondents reported that violence was either statutorily defined *or* defined on a case-by-case basis, guided by office policy or custom. The case study findings also highlight different definitions of violence both in terms of policy and personal attitudes. **Most interviewees described their offices as using statute as the basis to define violence,** but a handful noted that violence was also influenced by office culture or determined on a case-by-case basis. When asked how prosecutors personally defined violence, common hallmarks ascribed to incidents deemed violent included **physical injury or the involvement of a weapon.** These factors largely comport with statutory definitions. Although less common, some personal definitions also included non-physical injuries such as threats and emotional harm, as this interviewee pointed out.

[Violence] impacts you psychologically. That is where violence ultimately really resides, because oftentimes you recover from your injuries ... But psychologically, are you okay around people? Do you trust people? Are you living a normal and full life or has your life in any way been limited? Because now you’re afraid. Those are the kind of things that I look at and I believe my prosecutors look at as violent.

Training Given the complexities underlying prosecutor definitions and decision-making, further training and education on diverse strategies and their relative benefits and potential impacts on recidivism are essential. A number of case study sites emphasized **the need for regular training and direct outreach to line prosecutors to increase awareness of**

alternatives to incarceration for violent crimes, however, survey findings suggest that training on such topics is offered infrequently.

The Role of Local Context in Decision-Making

External considerations may factor into prosecutors' willingness to apply alternative approaches. In both surveys and interviews, we explored how prosecutors perceived the influence of local politics, broader community concerns, and the media on decision-making in cases involving violence.

Politics In discussing the history of criminal legal system reform in their respective jurisdictions, many prosecutors described how their ATI programs developed against the backdrop of national and statewide reform efforts. For example, some noted that they sought to adapt models enacted in other prosecutors' offices. Others cited changes in statewide policies or politics as the catalysts for shifting towards ATIs. In a few instances, local election cycles served as the source of change, with communities endorsing more progressive candidates as a referendum on traditional approaches to prosecution. In general, **prosecutors in the case study sites described voters in their local jurisdiction as having mixed to progressive leanings, with communities in neighboring counties deemed more conservative.**

Some prosecutors described how reform-friendly state legislation could trickle down to local prosecutors, paving the way for them to experiment with alternative approaches. However, others noted that this did not give them a free hand; prosecutors must carefully consider the types of cases they advanced for ATI consideration to avoid jeopardizing credibility with judges, other prosecutors, and politicians. By contrast, some interviewees spoke of the importance of doing the "right" thing, despite political pressures. As one interviewee noted, "The higher you go up in any prosecutorial office, you're going to have to deal with the political ramifications of what you do ... We try to do the right thing and then deal with it." Another noted their commitment to alternatives despite the "pendulum swing" of political changes that impacts their work:

Our job has to be the same regardless of the political or popular sentiment that we get about it. I think a lot of our course is doing what we think is right. Sometimes that'll be more popular and sometimes it'll be less popular. You just got to wait it out until it turns back around. It feels like it does just go back and forth, and so trying to chase that isn't any more productive than just staying the course.

Community Concerns Responses were mixed regarding community perceptions of crime. While some prosecutors explicitly mentioned alarm about perceptions of increased crime, violence, and homelessness in their jurisdiction, others maintained that their communities felt safe.

Prosecutors also had mixed perceptions about how the community viewed criminal legal system reform efforts. **The majority felt that their community viewed reforms positively, citing growing awareness about racial and ethnic disparities in the criminal legal system** and demands for change after George Floyd's murder. **Those who believed their communities had negative perceptions of reform attributed eroding public support to *perceptions of rising crime***—both overall crime and violent crime specifically. Prosecutors we spoke with noted two important factors they believe lead community members to have mixed feelings about reforms. First, most members of the public lack awareness of the specifics of current crime policy and, therefore, may have inaccurate perceptions about the status quo and/or what reform might actually look like in practice. Second, while reform might be welcome for minor crimes and opposed for the most severe offenses, community members are less clear on what they wish to see done with the cases in between.

Prosecutors responding to our national survey rarely rated community concerns and possible community responses as among the most important factors influencing their decision-making in cases involving violence. However, the prosecutors we interviewed frequently described how **community accountability could play a part in decision-making**. Community pressure can create a need for greater transparency and explanations for prosecutorial decisions in certain cases (e.g., officer-involved shootings). At the same time, there is community pressure for prosecutors to explain any increases in crime, as well as how they intend to respond. One interviewee summarized the way in which diversion could be a response to community concerns:

Some of [our] policies are shaped by the political discussion within the community. I think diversion is a really good example of that, and how our diversion has grown. Part of it's because the community is not happy with how we're handling certain cases, and so giving an option to say, 'Hey, we are addressing some of the criticisms about our office by trying to expand diversion programs.'

Media Prosecutors frequently discussed how media attention on violent crime shaped community perception of crime rates, reform efforts, and prosecutorial practice. For

example, several individuals noted **the tendency for media to devote extra attention to cases involving violence**, along with specific types of incidents (e.g., domestic violence, victims perceived as particularly vulnerable, individuals with extensive criminal histories). Others noted that **this excessive focus on violence might drive perceptions that crime is higher than it is**, or that reforms and prosecutorial practices are to blame.

Of the factors included in our national survey, respondents rated possible media response as the least important factor in prosecutorial decision-making. Although some interviewees felt the media did not influence office practices or case-level decisions, others noted the potential to influence policy and practice. For example, prosecutors could imagine the potential media attention and subsequent policy fallout due to a hypothetical situation in which an ATI participant committed a heinous act. Interviewees noted that junior prosecutors and judges alike might be less inclined to support the use of alternatives on account of such media scrutiny. As one interviewee noted, concerns about negative media “definitely prevents referrals from younger deputies who are more concerned with personal repercussions.”

Building a Supportive Culture for Non-Carceral Responses

Overall, the prosecutors we interviewed supported ATIs emphasizing both **rehabilitative and pragmatic benefits** (e.g., reduced caseloads, off-ramping low-level crimes to maximize resources). The focus placed by prosecutors on low-level crimes, even those that are violent, recalls the tension noted above regarding the balance between punishment and rehabilitation goals. That is, even in policy environments that are supportive of ATIs, crimes involving low-levels of violence are deemed more appropriate for alternatives than others involving greater severity. Public safety was also a clear consideration among those prosecutors who were less supportive of ATIs, who deemed some charges inappropriate for alternative prosecution (e.g., interpersonal violence, “severe” crimes). Interviewees noted the need **to reconsider how prosecutors apply alternatives in specific types of cases**: “[Prosecutors need to] start pushing ourselves out of our comfort zones a little bit and start making ourselves a little uneasy with the cases that maybe we’re referring.”

Generational Divide Results also suggest a generational divide when it comes to support for alternative prosecution. Prosecutors frequently described **younger attorneys as being more receptive to progressive approaches and open to treatment as a means of case resolution**. While this runs counter to the suggestion (above) that less experienced prosecutors may be more fearful of critical media attention, it may suggest that younger line staff may need support and “cover” from more senior staff—or from an office that has adopted alternative approaches.

Challenges The prosecutors in our study noted that **institutional culture change does not happen immediately**. Some described initial pushback (both within and outside their agencies) to reform-minded approaches, while others highlighted that it takes time and experience to figure out how to apply ATIs. When asked to expand upon challenges, a handful of prosecutors mentioned barriers likely common for any program implementation (e.g., limited resources). However, the required **culture change was the most frequently mentioned challenge**. This finding reflects some of the internal challenges discussed above related to buy-in from other prosecutors within the office and external pressure from the community and media. Interviewees also emphasized **the need to secure buy-in from partners** (e.g., law enforcement, defense attorneys, judges, survivors, community members).

Data and Research Prosecutors can build cross-agency and community support for alternative approaches to traditional prosecution in cases involving violence using data and research. Interviewees identified **data and research as essential in shifting perceptions and increasing support for alternatives**. Our survey findings suggest limited data tracking about alternatives by prosecutors' offices, however, each of the five case study sites offers an example of how offices can use data and research to develop and grow programming. For example, data tracked by these offices were not limited to participant and criminal legal system measures (e.g., charges, incident details, criminal history), but also included **short- and long-term outcomes beyond recidivism** (e.g., enrollment in and compliance with services, employment, housing referrals, user satisfaction with services). Prosecutors perceived this wealth of information as beneficial, enabling programmatic improvements, informing resource allocation, and enhancing understanding of prosecutor engagement with alternatives (e.g., which attorneys make referrals, need for targeted outreach and training, racial and ethnic disparities in application). One prosecutor noted the importance of micro- and macro-level data:

Metrics taken at the program level help provide perspective on that program. Without metrics, it's going to be case-by-case focus ... You know the old metaphor, 'You can't see the forest for the trees?' Believe me, what program staff do with those trees is extremely important. Each case is an individual defendant, but they need to be able to be given the picture from time to time of what that forest looks like.

Additionally, **interviewees noted that documenting and regularly reporting the success stories associated with ATIs were often crucial to securing buy-in**.

We're also trying to emphasize the importance of qualitative data. We're really trying to create a sense of safety and a sense of peace and a sense of justice for the community at large.

Conclusions & Recommendations

Collectively, the findings from our national survey and case studies largely aligned to shed insight into the complex considerations at play in the prosecution of crimes involving violence. No matter the local context, prosecutors often must balance the competing goals of punishment and rehabilitation. Despite statutory definitions of violence, discretion plays a prominent role in determining if such cases will be referred for ATIs. Although prosecutors often think about violence in terms of the use of a weapon or physical injury, there is still variability that also encompasses threats and emotional harm.

Survey respondents frequently reported that local context (e.g., politics, community concerns, and the media) did not factor highly in their decision-making; however, results from the case studies diverged. Interviewees in the case study sites described that such factors influenced both office policy and case-level decisions. This difference in responses may reflect either differences between study methods or the samples (e.g., general population of prosecutors vs. purposive sample of sites known for using alternatives to incarceration for violent crimes). In other words, interviews allowed us to gain a deeper understanding of prosecutorial decision-making relative to a survey checklist. Still, this finding highlights an important consideration for all prosecutorial agencies: a move towards alternative responses to violence may invite scrutiny, necessitating both evidence and buy-in to support continued efforts.

As part of our interviews, we asked interviewees to share recommendations and lessons learned that might be helpful for other jurisdictions seeking to expand ATIs for cases involving violence. Across the five diverse case study sites, several shared lessons emerged.

- **Find a champion.** Shifts in the policy landscape can create opportunities to facilitate the referral of cases statutorily defined as violent to ATIs, but interviewees noted that the pendulum also swings in the opposite direction. Offices that undertake this work need strong champions at the state or local level (e.g., the elected prosecutor, community leaders, legislators, etc.) to capitalize on such opportunities and insulate programs from shifting politics. These leaders can play a pivotal role in bringing together stakeholders to identify common goals and establish a common language (e.g., How is violence defined? What ATI model best fits local needs?) to inform programming. As many noted, this

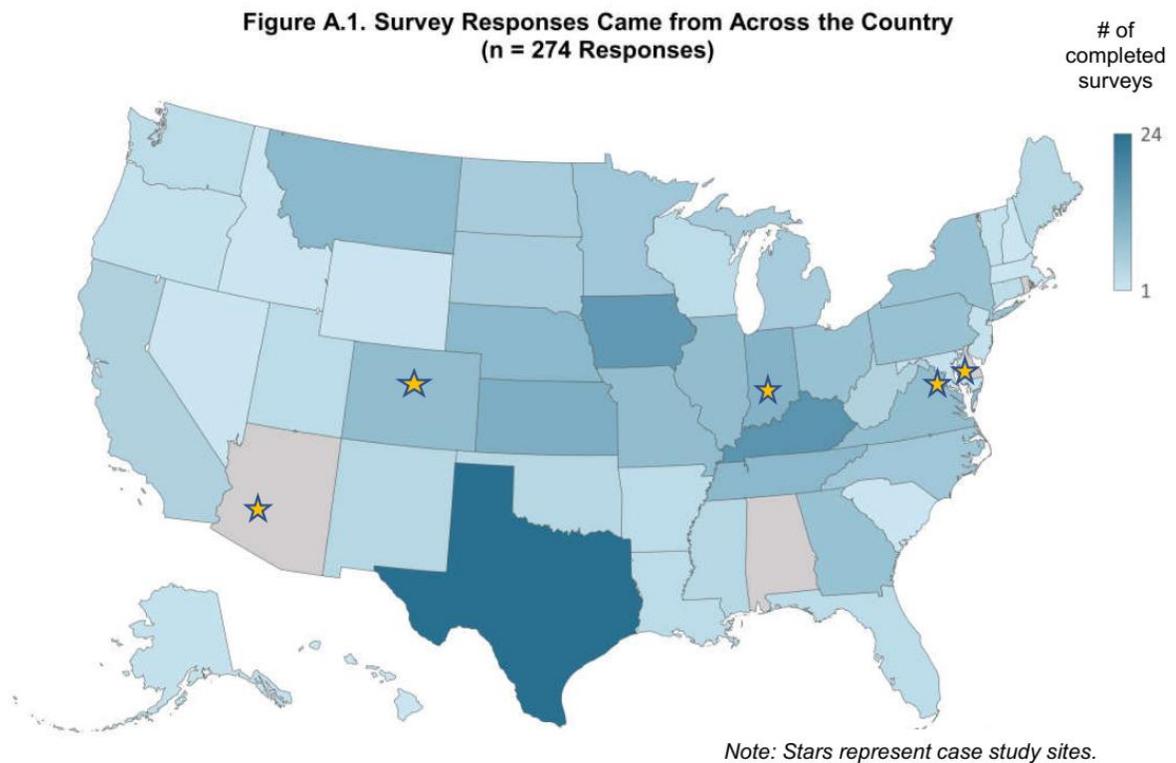
work takes time and requires significant trust building both with staff and community. Although the backing of a strong elected prosecutor is required for this work, to sustain it requires the support of prosecutors in management positions or designated programmatic points of contact to ensure the message trickles down to line staff.

- **Establish a culture of data and research.** Interviewees frequently described data as essential for program monitoring and a tool to promote transparency, secure buy-in, and refute arguments that ATIs are to blame for shifts in crime rates. Others described the value of educating and training program staff in the evidence-based literature supporting alternative approaches (e.g., cognitive development, behavioral health, risk-need-responsivity theory, restorative practices). Finally, many of the sites offered examples of research-practice partnerships that offices can tailor to meet the needs and resources of any locality. For example, some agencies embedded a dedicated researcher within their diversion program for ongoing support, whereas others partnered with local academic institutions or research organizations for discrete projects.
- **Start small and evolve.** Many interviewees emphasized the value of starting small (e.g., violent crimes of a lower severity) and then expanding charge eligibility based on data and feedback from partners. A slow, intentional expansion was viewed as a means of establishing credibility and trust among prosecutors and external stakeholders. We commonly heard from non-attorneys working within programs that they would be willing to accept cases with more serious charges. Yet the prosecutors we interviewed emphasized the need to better understand how taking more severe cases could jeopardize public safety.
- **Collaborate to break down barriers.** Raising awareness of alternative approaches to the prosecution of violence requires frequent and consistent communication. Engagement with legal system stakeholders (e.g., the defense bar, law enforcement, judiciary) and service providers is vital to raise program awareness and provide opportunities to course correct. To accomplish this, offices may consider staffing a non-prosecutor liaison such as an internal researcher or program manager to serve as a neutral party that addresses stakeholder concerns in an effort to promote transparency.
- **Center the needs of community.** Although the nature of community engagement varied, each site emphasized that ATI programming must be responsive to community needs, safety, and well-being. Some sites achieved this by staffing their ATI programs with individuals who shared similar lived experiences to those of program participants.

Others intentionally involved the community during program development to build toward systemic change. Each site also emphasized the need to listen to the concerns of the community and use this feedback to shift programming.

Appendix A. Case Study Approach

The project team recruited five diverse case study sites in consultation with FJP and subject matter experts at the Center (see Figure A.1 and Table A.1). Sites varied in the focus of and motivation for ATIs in cases involving violence. For example, some programs developed or broadened their approach in response to shifts in statewide policy (e.g., declining treatment court referrals resulting from decriminalization, legislation empowering prosecutors to reconsider sentences), whereas others were implemented in response to local need (e.g., community representatives advocating for alternative system responses to address the disparate impact of the legal system on communities of color). The timing of the approaches undertaken in these sites vary, ranging from pretrial to resentencing. For in-depth program descriptions, please see innovatingjustice.org/publications/alternative-prosecutorial-responses-violent-crime.



Members of the project team – which included researchers and practitioner experts – worked with subject matter experts at FJP to design a structured interview protocol tailored to prosecutors of all levels (elected/supervising prosecutors, prosecutors working directly with ATI programs, line prosecutors); programmatic staff; criminal justice stakeholders (judges,

defense attorneys, law enforcement); and service providers to ensure consistency in data collection across sites. Each protocol ranged from approximately 20-45 questions with an eye toward producing in-depth understanding of ATI development and implementation, while also documenting jurisdictional context, culture, and policies related to prosecuting violence. Additionally, we asked interviewees to describe the strengths, challenges, and lessons learned from using ATIs for cases involving violence to guide other jurisdictions interested in adapting similar approaches.

The project team conducted virtual site visits with the five jurisdictions between November 2021 and January 2023. Each site visit consisted of hour-long individual interviews or focus groups, observations (e.g., virtual court hearings, programmatic meetings), and a review of programmatic materials. Interviews were recorded and transcribed to identify common themes across sites.

We analyzed interview and focus group data by manually identifying and coding key themes. We specifically examined themes within broad categories related to the political climate, prosecutorial approach, office support for diversion, personal definition of violence, office definition of violence, prosecutorial decision-making, and challenges with using diversion for violent crimes. For the purposes of this report, all qualitative results are aggregated and reported across the five sites.

A total of 74 individuals were interviewed including prosecutors of all levels (n = 31) and non-prosecutors (n = 43). Other interviewees include criminal justice stakeholders (e.g., judges, probation officers, public defenders), restorative justice coordinators/facilitators, service providers (e.g., mental health treatment), and community members (e.g., teachers, animal control officer). Unless otherwise noted, we limit our analysis to the interviews with prosecutors to establish parallels with the broad themes observed in our survey findings.

Table A.1. Case Study Characteristics

	Arlington County, VA	Denver County, CO	Maricopa County, AZ	Monroe County, IN	Prince George's County, MD
Model	Restorative Justice	Restorative Justice, Post-File Diversion, Treatment Court	Felony Diversion	Pretrial Services, Problem Solving Courts, Reentry Court	Prosecutor Initiated Re-sentencing, Reentry court
Earliest Year Program(s) Began¹	• Restorative Arlington (2022)	• Restorative Denver (2019) • Adult Diversion (2018) • DIVERT Court (revamped 2020) • Veterans Court (2018)	• Felony Diversion (2020) • Serious Mental Illness Felony Diversion (2019)	• Pretrial Services Program (2016) • Drug Treatment Court (1999) • Mental Health Court (2015) • Veterans Court (2016) • Reentry Court (2014)	• Reentry Court (2013) • Conviction & Sentence Integrity Unit (2019)
Elected Prosecutor Tenure (years)¹	3	6	2.5 ²	4	4
Office Size (approximate # of prosecutors)¹	20	85	324	19	100
Size of Region	26 square miles	153 square miles	9,202 square miles	395 square miles	482 square miles
Population Size (approximate)	233,000	711,000	4.5 million	139,000	955,000
Racial/Ethnic Composition	74% White 15% Latinx 11% Asian 10% Black < 1% Other	81% White 29% Latinx 10% Black 4% Asian < 3% Other	82% White 32% Latinx 7% Black 5% Asian 3% Am. Indian/AK Native	86% White 7% Asian 4% Black 4% Latinx < 1% Other	64% Black 27% White 20% Latinx 4% Asian < 2% Other

¹ Approximates at the time of the case study visit.

² The elected in Maricopa resigned during the project in March 2022.

Endnotes

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