
Police Chiefs and Prosecutors Work Through Challenges To Find Common Ground



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May 2020



POLICE EXECUTIVE
RESEARCH FORUM

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Police Executive Research Forum, Washington, D.C. 20036
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ISBN 978-1-934485-58-3

Graphic design by Dave Williams.

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Acknowledgments

Projects such as this often are the result of one person having a really good idea. In this case, it was two people: Manhattan District Attorney Cyrus Vance Jr. and New York City Police Commissioner James O’Neill.

The two leaders recognized that in the growing national debate over criminal justice reform, police chiefs and prosecutors were often talking *past* each other instead of talking *to* each other. So Commissioner O’Neill and District Attorney Vance proposed bringing together prosecutors and police executives from several cities for a frank discussion of policy issues where they may disagree, as well as issues they agree on.

PERF was asked to organize the meeting, which took place on June 24, 2019 in Washington, DC. Compared to most other PERF conferences in recent years, the gathering was atypical in several respects. First, it was small; elected prosecutors and police chiefs from only 11 jurisdictions were invited (see participant list, on page 3). Second, the meeting was held out of the public spotlight, in order to allow for honest dialogue that would get at the heart of the issues. (A news report about the meeting did appear in the Washington Post about a month later.¹) Third, the meeting format provided each of the prosecutors and police chiefs an opportunity to share their perspectives on the reform issues of importance to them, and then the entire group worked to find common ground.

The meeting produced important discussions and insights, which we have attempted to capture in this report. The gathering produced a “Statement of Key Principles” that can serve as a foundation for future dialogue and collaboration among police chiefs and prosecutors.

I want to thank the prosecutors and police chiefs who took part in this historic meeting. All of them are extremely busy people, so the fact that they devoted a day to this meeting reflects the importance that they place on these issues. To a person, meeting participants were forthcoming and passionate about their beliefs, and all of them are committed to the safety

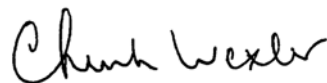
1. “In some big cities, reform-minded prosecutors and police chiefs have been at odds. Here’s what happened when they met in D.C.” By Tom Jackman, *The Washington Post*. July 17, 2019. <https://www.washingtonpost.com/crime-law/2019/07/17/prosecutors-launch-reforms-police-chiefs-convene-national-summit-dc-with-district-attorney-counterparts/>

and well-being of their communities. I also want to recognize their staff members who assisted with meeting preparations and, in some cases, traveled to Washington for the meeting.

Thanks also go to the PERF staff members who made this project possible. Chief Program Officer Kevin Morison oversaw the entire effort and was lead author of this report. Senior Research Assistant Amanda Barber conducted much of the research on key reform issues in each jurisdiction, and she oversaw meeting logistics. Kevin and Amanda were ably assisted by Research Assistant Nora Coyne and Senior Research Associate Sarah Mostyn. Director of Technical Assistance Jessica Toliver helped to staff the meeting. Assistant Communications Director James McGinty managed audio-visual needs and helped prepare the report. Communications Director Craig Fischer edited the document, which was laid out by Dave Williams. Photographs were taken by PERF staff. As usual, my Executive Assistant Soline Simenauer played a key role in providing guidance and support on all aspects of the project.

PERF is grateful to The Howard G. Buffett Foundation for its support of this project.

Relationships between police chiefs and prosecutors have always been complex. This is especially true now, as new criminal justice reform measures disrupt traditional ways of doing business. But as our meeting demonstrated, when you put reasonable and dedicated people in a room together and allow them to share ideas and perspectives, they can find common ground. This progress should encourage all police chiefs and prosecutors to continue talking to one another and working together on the difficult issues that confront them.



Chuck Wexler
Executive Director
Police Executive Research Forum
Washington, D.C.



This was one of the most important meetings I have ever been to. That's what I feel.

There are many, many people trying to divide us. To them, there's no better entertainment than to have cops and prosecutors shooting at each other.

So I think it would give the public hope to know that we are engaged in conversations at the highest level about our profession and about the people we serve. And that we think it's better for Americans if we are working together.

— **Kim Ogg, Harris County, TX District Attorney**

Meeting Participants

The following individuals participated in the meeting of police chiefs and prosecutors that PERF convened in Washington, DC on June 24, 2019.

Baltimore

- Police Commissioner Michael Harrison
- State's Attorney Marilyn Mosby

Boston

- Police Commissioner William Gross
- Suffolk County First Assistant District Attorney Daniel Mulhern
(representing District Attorney Rachael Rollins)

Camden, NJ

- Camden County Police Chief J. Scott Thomson

Chicago

- Cook County State's Attorney Kimberly Foxx
- Police Superintendent Eddie Johnson

Dallas

- Dallas County District Attorney John Creuzot

Houston

- Police Chief Art Acevedo
- Harris County District Attorney Kim Ogg

Los Angeles

- Los Angeles County District Attorney Jackie Lacey
- Police Chief Michel Moore

Miami

- City of Miami Police Chief Jorge Colina
- Miami-Dade County State's Attorney Katherine Fernandez Rundle

New York City

- Police Commissioner James O'Neill
- Manhattan District Attorney Cyrus Vance Jr.

Philadelphia

- District Attorney Lawrence Krasner
- Police Commissioner Richard Ross

Washington, DC

- Metropolitan Police Chief Peter Newsham
- District of Columbia Attorney General Karl Racine

NOTE: Subsequent to the June 24 meeting, four of the police executives have retired from their positions: NYPD Commissioner James O'Neill, Camden County Police Chief Scott Thomson, Chicago Police Superintendent Eddie Johnson, and Philadelphia Police Commissioner Richard Ross.

Agency Staff Members and Others in Attendance:

Karen Friedman Agnifilo
Manhattan Chief Assistant District Attorney

Dermot Shea
Chief of Detectives, NYPD
(now NYPD Commissioner)

Lori Pollock
Chief of Crime Control Strategies, NYPD

Star Harris-Lewis
Executive Assistant to the Chief of Police, Washington, DC
Metropolitan Police Department

Elizabeth Wieser
District of Columbia Deputy Attorney General for Public Safety

Michael Schatzow
Chief Deputy State's Attorney, Baltimore

Stephen Talpins
Chief of Staff, Miami-Dade County State's Attorney

Ann Kelly Bolten
President
The Howard G. Buffett Foundation

Introduction



Today's meeting is a remarkable opportunity—certainly one that I've never had before—to sit in the same room with police chiefs and prosecutors from other cities, to confer about our work, and to understand each other better.

— **Cyrus Vance Jr., Manhattan District Attorney**

For decades, local prosecutors in the United States were often elected on “tough-on-crime” platforms. As candidates, and once in office, these elected prosecutors typically focused on strong prosecution of many offenses, as well as pretrial detention for many suspects, and long, mandatory-minimum sentences for some offenders. In many cases, these positions were shared by police officials in their jurisdictions.

Recently, however, a new group of reform-minded prosecutors have been elected—often by wide margins—in major urban areas across the country. Unlike their predecessors, who typically came up within the criminal justice system, many of these prosecutors have backgrounds in other areas, including civil rights, criminal defense, private law practice, and government service outside of criminal justice.

Reform-minded prosecutors have been elected on platforms that emphasize policies such as:

- Fairness and racial equality in the justice system;
- Reform of the monetary bail system;
- More strategic use of resources to focus on violent crime;
- An end to mass incarceration;



I know most of the police chiefs in this room, and we are reform-minded. If you look at where our police departments were five or ten years ago and where we are now, it's clear that each of us has grown and improved. Police and prosecutors share the same mission, which is to keep everybody in our cities safe, and to make them feel safe, too.

— **James O'Neill, New York City Police Commissioner**

- Greater focus on treatment and rehabilitation as a way to reduce recidivism, especially among low-level offenders; and
- Renewed interest in restorative justice.

Many prosecutors, including some who have been in office for a long time, say that past practices of prosecutors have eroded trust in the entire justice system, especially among communities of color. In some cases, practices such as bail rules and strict mandatory-minimum sentences had been enacted into law and were not matters of choice for prosecutors.

There is a growing recognition that there are multiple ways to hold some offenders accountable other than arrest, prosecution, and incarceration. And prosecutors increasingly say that any prosecution and punishment should be proportional to the offense alleged, and should not vary by race or the wealth of the defendant. As Dallas County District Attorney John Creuzot explained, “I think what we’re trying to do is level the playing field for the populations that we serve.”



As an African-American who grew up in this community, I thought that we needed more emphasis on fairness and ethics in our office. I was tired of turning on “60 Minutes” and seeing prosecutors from other jurisdictions withholding evidence and referring to people of color as though they were somehow less than human.

And so the first thing I did was to rewrite our mission statement. We didn’t have a clear mission statement. Now it’s on everybody’s business card. It’s just one sentence, saying that we are “dedicated to protecting our community through the fair and ethical pursuit of justice and the safeguarding of crime victims’ rights.”²

Some people may not think a mission statement is important, but I wanted to brand it on our hearts and their minds. That way, every time we have to make a tough decision, we have the mission statement to guide us.

— **Jackie Lacey, Los Angeles County District Attorney**

2. <http://da.co.la.ca.us/about/mission-statement>

An Unusual Gathering of Prosecutors and Police Chiefs

It is an uncomfortable truth that the criminal justice reform movement, in many cases, has disrupted long-standing relationships between police and prosecutors. While prosecutors and police chiefs agree on some reforms, there are differences of opinion about how various reform efforts may impact crime, quality of life, community trust, and the work of police officers.

Recognizing that cooperation between police chiefs and chief prosecutors is critical to the functioning of the justice system and the safety of communities, two public safety leaders—Manhattan District Attorney Cyrus Vance, Jr. and New York City Police Commissioner James O’Neill—proposed a meeting of some of their colleagues to discuss criminal justice reform and what it means for police, prosecutors, and communities. The two men asked PERF to organize the meeting, which took place on June 24, 2109 in Washington, DC.

Compared to most PERF conferences, this was a relatively small event, held outside of the limelight. Police chiefs and local prosecutors from 11 jurisdictions—all urban locations with serious crime challenges—attended (see pp. 3–4 for the Participant List). The goal was to ask a select number of local prosecutors and police chiefs to talk through the difficult issues, listen to different perspectives, and search for common ground.

The meeting began with each of the prosecutors describing the types of reforms they have made, why they were implemented, and what the impact has been from their perspective. Each of the police chiefs was then asked how those changes are impacting crime and neighborhood conditions in their cities. It was from these discussions that the group was able to draft and agree upon the Statement of Key Principles that is outlined later in this report.

These key principles cover a range of important issues related to criminal justice reform, such as focusing resources on the most serious and violent crimes, providing treatment services for many defendants accused of low-level crimes, ensuring the voices of crime victims are heard, and working collaboratively to address quality-of-life concerns. The key principles provide a foundation for future discussions and greater collaboration among prosecutors and police officials across the country.



I think probably all of our police departments are reform-minded. We acknowledge there are things that must be fixed in law enforcement and in the criminal justice system.

For example, in Philadelphia we have a myriad of diversion programs, from school to police-assisted diversion. We believe in these concepts.

— **Richard Ross, Philadelphia Police Commissioner**

Prosecutors' and Police Chiefs' Perspectives on Criminal Justice Reform

The term “criminal justice reform” has become a catch-all phrase that has multiple meanings and incorporates a variety of ideas. In many of the conversations about reform, people too often seem to be talking *past* one another, instead of talking *to* each other.

A key purpose of the PERF meeting was to give the prosecutors in attendance an opportunity to explain the reforms they are implementing and the rationale behind those changes. Police chiefs then had a chance to discuss how those reforms are impacting their work and the work of their officers. This section summarizes the key takeaways from that discussion.

Prosecutors' Perspectives: Key Changes in Policies and Practices

Prosecutors at the PERF meeting described many of the key policy changes their offices have implemented in recent years, including the following:

Some prosecutors are no longer bringing charges for certain low-level crimes.

Because crimes such as shoplifting and trespassing are often associated with poverty, drug addiction, mental illness, homelessness, and other conditions, some prosecutors are scaling back criminal prosecutions in these cases. In the place of prosecution, some prosecutors are looking for alternative approaches for holding defendants accountable.

- In Suffolk County, for example, District Attorney Rachael Rollins developed a list of 15 nonviolent offenses—shoplifting, larceny under \$250, trespassing, drug possession, and simple resisting arrest, among others—for which her office would not prosecute first-time defendants.
- The Cook County State’s Attorney’s Office is now bringing retail theft charges only when the value of the goods taken is greater than \$1,000 or if the subject has 10 prior offenses.



What has historically happened is that we have criminalized substance abuse, we have criminalized quality-of-life crimes, and then we wonder why it hasn't worked.

Locking someone up can't be the first response, because there are collateral consequences. These individuals can no longer apply for a job, housing, school, or financial aid. So what can they do to survive? Now they're stuck in this vicious cycle that becomes a public safety concern.

I think that we need to really reconsider our perspective when it comes to these low-level offenses.

— **Marilyn Mosby, Baltimore State's Attorney**

- Dallas County prosecutors won't prosecute people who have stolen food or other necessities because they are poor and don't have the money to pay for them.
- Miami-Dade County is moving to civil citations for 11 low-level crimes.

Some prosecutors are changing how they handle marijuana possession.

- In Baltimore, possession of most quantities of marijuana is being treated as a minor offense, unless there are indicators of intent to distribute (such as how the drug is packaged or if large amounts of cash are discovered nearby).
- In Houston, people found in possession of four ounces or less are eligible to go into a diversion and treatment program.
- The Dallas District Attorney's Office is not prosecuting misdemeanor possession for first-time suspects whose offense did not occur in a drug-free zone and did not involve use of a deadly weapon, if there is no evidence of distribution.

More prosecutors are emphasizing diversion and other alternatives to prosecution, including for some more serious offenses.

Several jurisdictions have developed both pre- and post-arrest diversion programs that focus on suspects with mental illness and drug addiction issues who are accused of low-level crimes.

- For example, opioid users in Miami-Dade County are eligible for a pre-arrest diversion program in which the justice system has teamed up with Jackson Memorial Hospital, which provides a range of treatment services.
- Similarly, Harris County has an extensive diversion program for people who are intoxicated or show signs of mental illness or drug addiction.

Other jurisdictions are using similar approaches for suspects accused of more serious offenses.

- For example, the Baltimore State’s Attorney’s Office has begun seeking diversion for some first-time felony defendants charged with intent to distribute marijuana.
- Harris County is using Texas’s deferred adjudication program for some first-time offenders involved in serious crimes such as robbery.³ In these cases, the defendant pleads guilty, but the judge suspends the conviction and sets conditions on the offender, similar to probation. If the conditions are met, the conviction is not entered and the person can petition to have their court record sealed. If the conditions are not met, the defendant is adjudicated and sentenced.
- In Philadelphia, the District Attorney’s Office is using Pennsylvania’s Accelerated Rehabilitative Disposition program (ARD) for an expanding list of offenses, including some gun-possession cases. ARD is for first-time offenders with no prior criminal convictions or ARD dispositions who are amenable to treatment and rehabilitation.⁴ Defendants are generally placed on supervision and given a set of conditions they must follow. People who successfully complete the program can have their records expunged.

Prosecutors are focusing their resources on serious and violent crimes, while pursuing alternatives for lower-level crimes.

Prosecutors’ offices have limited resources. Several prosecutors at the PERF meeting noted that their offices have traditionally devoted substantial personnel to prosecuting misdemeanors and low-level felonies, sometimes at the expense of being able to fully investigate and prosecute more serious violent crimes.

Several of them spoke about “right-sizing” their agencies by reducing the number of misdemeanor cases they handle and the number of prosecutors devoted to those cases. For example, the Manhattan District Attorney’s Office reduced the number of misdemeanor cases it handled from 86,000 in 2012 to 45,000 in 2018. In Los Angeles County, the misdemeanor caseload has been cut nearly in half, from approximately 230,000 cases in 2000 to 120,000 today.

In turn, prosecutors are shifting those resources to prosecution of more serious crimes. “I prioritized violent crimes, which meant I necessarily deprioritized low-level, nonviolent crimes,” said Harris County District Attorney Kim Ogg. “Let’s stop prosecuting 10,000 marijuana offenders at a cost of about \$28 million a year, and let’s use those resources to prosecute sexual assaults.”

3. Texas Code of Criminal Procedure. Chapter 42A: Community Supervision. <https://statutes.capitol.texas.gov/Docs/CR/htm/CR.42A.htm>

4. See <https://www.phila.gov/districtattorney/diversion/Pages/default.aspx> for more information.

Prosecutors are advocating reduced reliance on cash bail.

Although the setting of bail is ultimately a judge's decision, many prosecutors are declining to seek cash bail in certain types of mostly low-level cases where defendants cannot afford to pay even modest bail amounts. For example, the Philadelphia District Attorney's Office is not seeking cash bail for defendants charged with 25 low-level offenses. District Attorney Lawrence Krasner said he prefers that defendants be able to keep working and supporting their families even as they are being processed by the justice system.

Similarly, the Cook County State's Attorney's Office is no longer opposing the granting of individual recognizance bonds (so-called "I-bonds") to defendants charged with nonviolent crimes who cannot afford to pay even small amounts less than \$1,000. In addition to not wanting to punish people who are poor, State's Attorney Kim Foxx noted that cash bail does not guarantee that violent offenders are kept off the streets. Under the cash bail system, defendants at high risk of committing new crimes or failing to appear in court can be released, as long as they have the means to pay their bail amount.

It is this type of situation that prompted some states to enact new laws eliminating or severely restricting the use of cash bail in most cases. In New Jersey, for example, the 2017 Criminal Justice Reform Act eliminated cash bail for most defendants and instituted a presumption of pretrial release, unless a judge determines that defendants pose too much of a

risk to public safety or are unlikely to appear for their assigned court dates. So instead of determining pretrial release based on a defendant's ability to pay a set bail amount, jurisdictions in New Jersey are now using risk assessment tools that can help predict which defendants are likely to re-offend or not appear in court if they are released, and what level of supervision they will need in the community.⁵

New York State has taken this approach a step further with a 2020 law that eliminates cash bail in most misdemeanor and nonviolent felony cases, and severely restricts judicial discretion in setting bail. The New York law also eliminates straight pretrial detention ("remand") in all mis-

demeanor cases, and it requires judges to consider the defendant's ability to pay when monetary release conditions are imposed for more serious crimes. Current New York City Police Commissioner Dermot Shea and other law enforcement leaders in the state have expressed concern that the new law may negatively impact public safety because it takes away judicial discretion and automatically releases suspects accused of certain

I supported cash bail reform, but not the notion of letting violent offenders out on low bonds. Our judges did that. They conflated misdemeanor bail reform with felony bail reform, and the horse was out of the barn.

And I have taken the brunt of the blame, not the judges, even though bail is 100% a judicial function.

— Kim Ogg, Harris County District Attorney

5. For background on the New Jersey law and initial impact, see *2018 Report to the Governor and the Legislature: Criminal Justice Reform*. New Jersey Judiciary. Pp. 7, 36. April 2019. <https://university.pretial.org/viewdocument/new-jersey-courts-2018-report-to-th>



New Jersey is a state that has successfully implemented bail reform. When bail reform first was instituted about a couple of years ago, there was a reflexive negative response from a lot of law enforcement leaders. They attributed bail reform as the reason crime was up in their community without evidence to support this notion. Conversely, crime was down in Camden, a community that was a lot more challenged than nearly all the other communities.

Were there incidents where a person was arrested, released, and went out and did something bad afterwards? Yes. But this wasn't new, as there were more situations in the past than I could count where someone posted a bond, was released and seriously re-offended. So, when I looked at the bigger picture of the system that we had in place before bail reform, I realized that my county jail was a debtors' prison. By and large, it housed people who couldn't afford to pay their fines for minor offenses, most which were traffic fines. The savvy criminals, including some violent ones, somehow had the resources to make a million-dollar cash bail, and they would get back out and create a lot more problems for me and my community.

So I was not a fan or better off under the old cash bail system. I found that under a reformed bail system, we could finally start to keep the most dangerous rather than the poorest people in jail.

— **J. Scott Thomson, Camden County, NJ Police Chief**

serious crimes, such as burglary and stalking, regardless of their criminal histories.⁶

While prosecutors at the PERF meeting were generally in favor of bail reform measures, some expressed concern that legislators had gone too far in taking away needed discretion. "I was in favor of ending cash bail, but I don't support denying judges the ability to hold someone who the judge determines is an ongoing risk to the community," said Manhattan District Attorney Cyrus Vance Jr.

The impact of bail reform on crime and public safety is not fully known, and more research and analysis are needed. However, bail reform in New Jersey did not result in an increase in crime, as some had feared.

Some prosecutors are rethinking their sentencing recommendations.

In some jurisdictions, prosecutors are moving away from seeking the highest possible sentence upon conviction for some offenders. For example, the Philadelphia District Attorney's Office is starting many plea negotiations at the lower end of the sentencing guidelines, and is among those advocating changes in the practice of mandatory minimum sentences. District Attorney Lawrence Krasner now requires prosecutors to research and report the cost of incarceration before recommending sentencing, and to explain why the cost is justified in each case.



Dallas County, TX District Attorney John Creuzot

6. McKinley, Jesse, Alan Feuer, and Luis Ferre-Sadurni. "Why Abolishing Bail for Some Crimes Has Law Enforcement on Edge." The New York Times. Dec. 31, 2019. <https://www.nytimes.com/2019/12/31/nyregion/cash-bail-reform-new-york.html>

See also New York City Police Commissioner Dermot Shea, "New York's New Bail Laws Harm Public Safety." The New York Times, Jan. 23, 2020. <https://www.nytimes.com/2020/01/23/opinion/shea-nypd-bail-reform.html>

Dallas County District Attorney John Creuzot said that new approaches to sentencing in his county and others in Texas have produced changes. “In the state of Texas, from 2007 until today, we reduced the prison population from 150,000 prison beds to 141,000 prison beds. We did this, in part, by focusing on criminogenic risk/needs assessment prior to case disposition, increasing drug treatment assessment and appropriate placement, increased mental health assessment and services, increased early termination from community supervision, and increased parole eligibility for non-violent offenders,” he said.

Prosecutors are helping people to expunge or seal their criminal records.

In keeping with other reform measures such as diversion and deferred adjudication, more prosecutors’ officers are helping eligible people with sealing or expunging their criminal records. For example, Los Angeles County teamed up with Code for America⁷ to develop an algorithm that can identify people who qualify for expungements. The program is intended to help people who have been involved with the criminal justice system to return to productive lives without being held back by a court record or conviction.

Prosecutors are creating or expanding conviction integrity units.

More than 50 jurisdictions nationally now have specialized units focused on revisiting criminal convictions that may have involved faulty evidence, flawed forensic science, or police or prosecutorial misconduct. Combined, these units have helped to bring about exonerations in close to 350 cases through 2018, according to the National Registry of Exonerations.⁸

The Cook County State’s Attorney’s Conviction Integrity Unit has vacated more than 80 convictions under State’s Attorney Kim Foxx. Sixty of those cases involved one Chicago police officer who was found to be planting evidence. In Philadelphia, the integrity unit recently helped to secure the release of 10 men who had been convicted of murder. In the wake of questions on how some Baltimore Police officers were handling evidence, Baltimore created a collaborative team—consisting of representatives of the Police Department, the State’s Attorney’s Office, the Maryland State Police, and the Civilian Review Board—to investigate possible police misconduct that may have resulted in wrongful convictions. Harris County has focused on convictions resulting from the use of drug-testing systems that were flawed.

Increased transparency is a priority in many prosecutors’ offices.

In an effort to build trust with the community and document the results of their reform efforts, many prosecutors are making detailed data about caseloads and case outcomes available to the public. Cook County,⁹ Phil-



Cook County, IL State's Attorney Kimberly Foxx

7. “About Us.” Code for America. <https://www.codeforamerica.org/about-us>

8. Jackman, Tom. “As prosecutors take larger role in reversing wrongful convictions, Philadelphia DA exonerates 10 men wrongly imprisoned for murder.” *The Washington Post*. November 12, 2019. <https://www.washingtonpost.com/crime-law/2019/11/12/prosecutors-take-larger-role-reversing-wrongful-convictions-philadelphia-da-exonerates-men-wrongly-imprisoned-murder/>

9. “The Data-Driven Cook County State’s Attorney’s Office.” <https://www.cookcountystatesattorney.org/data>



My state's attorney and I do not disagree, conceptually and fundamentally, on the issues of dealing with low-level offenses. The issue I have is the distinction between the offender and the offense. Simple possession of marijuana may very well be a nonviolent offense, but that does not mean the person is necessarily a nonviolent offender. When a person with a history of violent crimes commits a nonviolent offense, we shouldn't be lenient the way we would for a first-time low-level offender.

As long as we agree not to do that, I'm okay with not spending our resources on nonviolent offenses like simple possession of marijuana.

— Michael Harrison, Baltimore Police Commissioner

Philadelphia,¹⁰ and Dallas County¹¹ are among the pioneers in this area. "We were the first prosecutor's office in the country to put every piece of case-level data on an open data portal," said Cook County State's Attorney Kim Foxx.

Police Chiefs' Perspectives: How Reform Measures Affect Policing

In some jurisdictions, shifts in prosecutorial policies and practices have disrupted long-standing relationships between local prosecutors and police executives. The impact these changes are having on crime and public safety remains an open question, as more research and experience are needed. Many of these changes have not been in effect for very long.

Many police chiefs support much of what their local prosecutors are doing. For example, every chief at the PERF meeting expressed support for diversion programs that keep low-level offenders, especially those with mental health and addiction problems, out of jail and direct them to treatment instead. And they agree with prosecutors about putting an increased focus on serious, violent crimes. Many chiefs also agree with risk-based bail reform measures that help ensure that poor people are not penalized for their inability to pay small monetary bail amounts, while potentially dangerous, high-risk suspects are released because they have the means to post bail.

But other reforms, such as decisions not to prosecute certain crimes or vigorously enforce some quality-of-life laws, have put the police in a difficult position. They are caught between the policy decisions of prosecutors and some community members' desire that something be done about issues such as people congregating on corners or smoking marijuana in public.

Police chiefs at the PERF meeting identified a number of key challenges that criminal justice reform has created for their agencies.

10. "Philadelphia District Attorney's Office, Public Data Dashboard." <https://data.philadao.com/>

11. "Dallas County, Case Status Reports." <https://www.dallascounty.org/government/district-attorney/case-status.php>

Holding repeat offenders accountable

Police chiefs at the PERF meeting endorsed initiatives that provide alternatives to arrest and incarceration for first-time, low-level offenders. However, applying a blanket “no prosecution” policy to specific sets of crimes, as some prosecutors have done, means that some career criminals may get repeated passes from the criminal justice system.



The issues that people bring up to us most often are quality-of-life issues, even in the toughest neighborhoods. They talk about the kids smoking dope, about loud music, about traffic, about nuisances.

— **Art Acevedo, Houston Police Chief**

Chiefs argued that instead of focusing solely on the crime that was committed, prosecutors should also pay attention to the *individuals* being accused of those crimes. Many first-time defendants are good candidates for diversion and treatment. But chiefs believe that some career criminals accused of relatively minor crimes should be prosecuted more vigorously.

Other chiefs expressed concern that not prosecuting certain crimes will send the message to some criminals that they can get away with committing a wider range of offenses. “When you make blanket statements that you’re not going to prosecute these crimes, then there’s a perception that people can do what they want,” said Boston Police Commissioner William Gross.

Addressing quality-of-life issues

Almost every police chief at the PERF meeting discussed how some reform measures, such as not prosecuting certain low-level crimes, are making it difficult for the police to address quality-of-life concerns of their communities. Several chiefs, including NYPD Commissioner James O’Neill and Chicago Police Superintendent Eddie Johnson, said that even in high-crime neighborhoods, residents attending community meetings bring up quality-of-life concerns—people congregating in front of stores or playing loud music—more frequently than they do shootings, robberies, and other serious, violent offenses.



You go into a community that is plagued with violent crime—maybe they had five or six shootings the weekend before—and you’re prepared to talk about these shootings. But you know what they start talking about? Almost exclusively concerns about maintaining order. They connect the disorderly behavior on the corners to the violence that’s occurring, and it scares them.

When seniors are afraid to leave their home to go to the neighborhood pharmacy, to me that’s something we have to address.

— **Peter Newsham, Washington, DC Metropolitan Police Chief**



Being able to address quality-of-life issues is important for building trust in the community and wanting to show the community that you're sincere in wanting to succeed and do a better job.

Part of that trust-building comes from taking appropriate enforcement actions, so the community can see that you do care. Those things go hand in hand.

— **Jorge Colina, City of Miami Police Chief**

And while not every quality-of-life problem is a police concern, residents routinely call the police when they have a complaint, and they expect the police to do something about it. Police chiefs at the PERF meeting were especially concerned that if police departments have fewer options for addressing quality-of-life concerns—including prosecution, in some cases—public trust and support of the police will diminish. This, in turn, will make it more difficult for police agencies to enlist the public's help in addressing more serious crime problems. Baltimore Police Commissioner Michael Harrison summed up the prevailing attitude among members of the community: "If you can't fix the little problem I'm calling about, how can we expect you to solve a murder?"

Dealing with marijuana-related crime and violence

Chiefs at the PERF meeting said that, even as marijuana use is decriminalized or legalized in some jurisdictions, illegal sales of the drug (outside the limits of the legal structures for producing and selling the drug that some laws have created) continue to flourish, and this activity is driving much of the violence in their cities. They fear that when marijuana possession and distribution crimes are not taken seriously by prosecutors, the violence associated with marijuana (and other drugs) will continue to grow.



You come out of your house and there are 20 people smoking marijuana and blasting music. Somebody calls the cops, but they don't come, or if they do come, they don't take any action to address the complaint.

Building trust with the community is not selective. We have to build relationships with people, and that means responding to jobs like that. The response could be a warning, it may be a ticket. But for building trust, it is essential that we take community concerns seriously.

— **Dermot Shea, NYPD Chief of Detectives
(now Police Commissioner)**



In Chicago, marijuana still is the drug of choice. The difference between now and 10 years ago is that marijuana really wasn't the catalyst for violence back then. Now, marijuana is by far the number one reason we have violent crime in our black and Hispanic neighborhoods.

If you control a marijuana spot in Chicago, it's the most lucrative spot you can get in terms of drugs sales. Heroin, opioids, cocaine—those drugs pale in comparison.

— **Eddie Johnson, Chicago Police Superintendent**

Ensuring that the needs of victims of crime are met

Several police chiefs noted that discussions of criminal justice reform typically focus on defendants and how they should be treated. According to several chiefs, the needs and concerns of victims of crime are sometimes neglected in these discussions.

Washington, DC Metropolitan Police Chief Peter Newsham said that victims need to be listened to when reform measures are considered and implemented. “When people talk about fairness in the justice system, I think it’s important to ask, fairness to whom?” he said. “I think people often talk about fairness to criminal defendants, but they forget about fairness to crime victims. I believe that victims do not have a voice in a lot of the decisions that are being made in the criminal justice system.”

Prosecutors noted that criminal justice reform is not an either-or choice between defendants and victims, and agreed that the concerns of victims needed to be considered throughout the justice system.

Negative impact on officers’ resolve

Some chiefs expressed concern that decisions not to prosecute certain categories of crime were undercutting police officers’ resolve. “It is frustrating for the average police officer to lock people up and then see them back on the street, often engaging in the same type of behavior that got them locked up in the first place,” said Chicago Police Superintendent Eddie Johnson. “Officers feel they are unnecessarily putting themselves in danger because of a revolving door in the justice system,” added Houston Police Chief Art Acevedo.

Some chiefs said they feared that this type of frustration will reduce productivity among officers, which in turn could damage community support and trust. “My police officers are still making arrests and using our discretion. I’m fighting hard to educate the community that we are still making arrests,” said Boston Police Commissioner William Gross.

The Handling of Gun Possession Cases Remains a Major Issue for Police and Prosecutors

A major topic of discussion—and, at times, disagreement—at the PERF meeting was about how gun possession cases are being handled. For many years, police chiefs in several major cities have pointed to the lack of consequences for people caught illegally possessing a gun as a major contributor to gun violence. Chiefs in Baltimore, Chicago, and Washington, DC have said that it can take multiple gun possession charges before an offender faces meaningful consequences, and by then the offender may have been involved in a shooting or other serious, violent crime.¹²

These chiefs contrast their experience with New York City’s, where strict state laws against gun possession typically result in even first-time offenders receiving some type of significant consequence upon conviction.

Prosecutors at the PERF meeting disputed that overall characterization. Many said that by shifting their focus away from lower-level offenses, they have been able to prosecute more gun cases.

Philadelphia District Attorney Lawrence Krasner said his office is prosecuting gun possession cases at a higher rate than his predecessors did, and that opponents of his reform efforts are spreading misinformation about his office’s record.

Cook County State’s Attorney Kim Foxx said that data show her office is prosecuting “close to 100 percent of gun cases.” In the past, when cases went to trial, the conviction rate was around 33 percent. Her office began working with the Chicago Police Department and other agencies in Cook County on how to build successful gun cases, and the conviction rate has begun to increase, she said.

Other prosecutors say they are working on ways to address the underlying issues associated with gun violence, such as carrying weapons for protection, because of gang affiliation or the “glamorization” of weapons. “We’re exploring interventions to not only prosecute these cases but also to attack the underlying issues as to why these young people adorn themselves with guns in the first place,” said District of Columbia Attorney General Karl Racine.

Prosecutors and police chiefs agreed that other parts of the justice system—including lawmakers and judges—need to support appropriate consequences for persons convicted of gun crimes. “Our issue is with the judicial system,” said Chicago Police Superintendent Eddie Johnson. “There is no accountability for judges in terms of what they do with violent offenders.”

Washington, DC Metropolitan Police Chief Peter Newsham described a unique challenge he is facing: a recent reduction in sentences for felons in possession of a firearm.

“Our data show that felons in possession of a firearm are responsible for 25 percent of all of DC’s homicides,” Chief Newsham said. “Yet last July, in the throes of a sharp increase in homicides, the District of Columbia Sentencing Commission decided to amend its guidelines and lessen the penalty for felons in possession of a firearm. They subsequently did a study and determined that these gun offenders are now getting *five months less* on their sentences than they were prior to the change. We already have a problem in our community where everybody feels there are absolutely no consequences for carrying a firearm in the District of Columbia. This is only making that problem worse,” Newsham said.



District of Columbia
Attorney General
Karl Racine

12. *Reducing Gun Violence: What Works, and What Can Be Done Now*. Police Executive Research Forum, March 2019. <https://www.policeforum.org/assets/reducinggunviolence.pdf>

Structural Issues Further Complicate Police-Prosecutor Relationships

For many of the prosecutors who attended the PERF meeting, implementing reforms is not simply a matter of working with one local police agency. They serve many different police departments and sheriffs' offices—urban, suburban, and ex-urban. For example, there are 48 law enforcement agencies in Los Angeles County whose criminal cases are handled by the District Attorney's Office. In Miami-Dade County, there are approximately three dozen agencies served by the State's Attorney's Office.



Miami-Dade County
State's Attorney
Katherine Fernandez
Rundle

Different police departments and communities view reform measures differently. For example, State's Attorney Katherine Fernandez Rundle said most communities in Miami-Dade County support the issuance of civil citations for marijuana possession, but the City of Miami Beach, with its large numbers of tourists, does not agree with that approach.

Achieving consensus on how to handle certain types of cases and implement policy changes can be difficult. Police departments need to represent the specific needs and wants of the individual communities they serve. In serving multiple communities, prosecutors need to ensure that they treat all of them equally and are fair and consistent in the administration of justice. Prosecutors at the PERF meeting said they are trying to balance those interests while carrying out reform programs that they think are the best and fairest course of action for all communities.

"As Miami-Dade County's State Attorney, I regularly work with 35 local police departments and numerous state and federal agencies," said State Attorney Katherine Fernandez Rundle. "The various entities have different needs, protocols, philosophies, and priorities, which sometimes makes it challenging to address all of their concerns. However, by building strong relationships and working together, we have been able to implement numerous innovative programs for many years. These programs have provided offenders with real alternative pathways and opportunities to obtain services and change their behavior. This approach allows us to focus on career and dangerous criminals, reduce our reliance on incarceration, save tax dollars, and drive down the crime rate."

Statement of Key Principles: A Foundation for Moving Forward

There will always be some level of disagreement between police chiefs and prosecutors, because they have different roles in the criminal justice process. While police and prosecutors must cooperate in investigating crime, holding offenders accountable, and securing justice, their approaches and priorities necessarily differ at times.

Police are focused on solving crimes and addressing the quality-of-life concerns of community members, with whom they interact daily. Clearing cases traditionally has been one important measure of police effectiveness, even though some cases never are prosecuted or convictions are not made.

Prosecutors, meanwhile, need to focus on the quality of criminal investigations, the prioritization of cases, the reliability of evidence, and the presentation of cases to the courts. Achieving convictions, not just trying cases, is one important way in which prosecutors are evaluated.

Thus, police and prosecutors sometimes differ on whether the evidence in a case is strong enough to justify a prosecution, or even an arrest. Police sometimes are frustrated when prosecutors decline to take a case to court, while prosecutors are sometimes concerned about losing a case because the evidence isn't strong enough to convince a judge or jury of the defendant's guilt.

The uneasy relationship between prosecutors and police departments in some jurisdictions has been further disrupted by the recent election of reform-minded prosecutors in many large jurisdictions. These prosecutors have challenged the status quo and have worked to implement new approaches to holding offenders accountable and ensuring fairness and equity in the justice system, with an eye toward racial and economic justice.

Sorting out these differing perspectives and seeking common ground among police chiefs and prosecutors was the goal of the meeting that PERF organized in June 2019. The end result was a Statement of Key Principles that the group discussed and debated at the meeting, and then reviewed and agreed upon. These 12 principles do not cover every aspect of the relationship between police and prosecutors, and there are certainly areas of disagreement that remain.

The crime prevention plan I created included things like expanding the Police Athletic League, introducing tutoring in the parks after school, and other programs for kids, so that hopefully we will not have to deal with these young people in a negative way later on.

Unfortunately, I never asked the State’s Attorney’s Office for help in these programs. It just occurred to me, listening to everyone today, that we really need to work together on more than just criminal cases. I’m certainly trying to promote programs in the Police Department that I think everyone agrees are effective. I should be reaching out to the State’s Attorney and saying, “Can you help me expand the PAL program, or increase the number of tutors we have?”

Everyone can benefit from these types of partnerships.

— **Jorge Colina, City of Miami Police Chief**

But the 12 principles represent a considerable level of understanding and common ground among prosecutors and police chiefs. They address many of the critical issues that police executives and prosecutors are facing as they work to protect communities and ensure a fair, equitable justice system.

Principle 1: The prevention of crime should be the central focus of both police chiefs and prosecutors.

Regardless of any differences they may have in how to achieve the goal, police chiefs and prosecutors at the PERF meeting unanimously agreed that crime prevention is central to their missions.

Harris County District Attorney Kim Ogg made the point clearly and forcefully: “My goal is to make Houston the safest city in the country, and Harris County the safest county in America, working alongside my partner, Chief Art Acevedo, and the other 84 law enforcement agencies we work with.”

In designing their crime prevention strategies and programs, police chiefs and prosecutors agreed that they need to do a better job of collaborating with each other. Working together results in more efficient and effective use of personnel and other resources, and cooperation shows the community a united front for crime prevention.

Principle 2: The disparate racial impact resulting from justice system policies and practices is a long-standing concern that needs to be acknowledged and addressed.

Several of the prosecutors at the PERF meeting emphasized that African-American, Latinx, and other people of color have long been over-represented in the criminal justice system, for a wide variety of reasons.¹³ In

13. See, for example, *Minorities, Crime, and Criminal Justice in the United States*. (From “Minorities, Migrants, and Crime: Diversity and Similarity Across Europe and the United States, pp. 1-35, Ineke Haan Marshall, ed.). Sage Publications: Thousand Oaks, CA. 1997. Abstract available at: <https://www.ncjrs.gov/App/Publications/abstract.aspx?ID=171073>.

I think everyone in this room, regardless of whether they wear a badge or carry a briefcase, would agree that we are all part of a system in which it is far better to be rich and guilty than innocent and poor. That is what we all face on a daily basis. Unfortunately, as police, we are the face of that disparity.

— **J. Scott Thomson, Camden County (NJ) Police Chief**



Suffolk County, MA
First Assistant District
Attorney Daniel Mulhern

the past, this over-representation may have been the result of overt racism on the part of some police officers, prosecutors, and other criminal justice officials. Today, however, it may result more from policies and practices that have a disparate impact on poor people and people of color. The prosecutors cited as examples the use of monetary bail for suspects accused of low-level crimes, crackdowns on quality-of-life offenses, and the lack of alternatives to arrest and incarceration for defendants who could be better served by community-based alternatives.

“The first thing we have done is focus on disparity,” said Manhattan District Attorney Cyrus Vance Jr. “We conducted a racial disparity analysis of our charging, bail, and sentencing recommendations. As the district attorney, I’m looking at the issue of who we’re bringing into our justice system for many low-level offenses, and I see red flags when they’re primarily men and women of color.”

The prosecutors and police chiefs at the PERF meeting noted that racial and ethnic disparities undermine public confidence and trust in the entire justice system. That, in turn, can impede public cooperation with police and prosecutors, resulting in more crimes being committed and going unsolved.

“What District Attorney Rachael Rollins saw and heard when she ran for office is that people in our communities just don’t feel like they’re getting a fair shot from the criminal justice system,” said Daniel Mulhern, Suffolk County (MA) First Assistant District Attorney. “They don’t trust our police department, and they don’t trust prosecutors. And that is despite the best efforts of our police department and our prosecutors to build that trust.”

Creating a more fair and equitable justice system will require changes in policies and practices that have contributed to disparities.

Principle 3: Police and prosecutors should collaborate in advance of enacting criminal justice reforms to ensure a smooth implementation and give agencies the opportunity to update policies, procedures and training, as needed.

While they may disagree with some of the specific changes that prosecutors have made or legislators have enacted, police chiefs at the PERF meeting acknowledged that lawmakers and prosecutors have the authority to make those decisions. Sometimes, however, prosecutors have adopted reforms without first consulting with, or even advising, police chiefs whose agencies are impacted by those changes. Several chiefs noted that this can create difficulties for agencies that have to quickly adjust without time to educate and train their officers to implement or adjust to the changes.

In Baltimore, for example, the state’s attorney’s decision not to prosecute many marijuana offenses caught the police department a bit

In Los Angeles, we've done criminal justice reform quietly, and collaboratively. I spent a lot of time talking with my police chiefs—calling them on the phone early in the morning, just one-on-one. Often, you get a bit of mileage if you just hear them out and then walk them through why this is the right thing.

— **Jackie Lacey, Los Angeles County District Attorney**

Listening to how Jackie Lacey and police chiefs have been able to go out together and say something collectively, I think that's much better than having the prosecutors make a unilateral decision, without any police input.

— **Peter Newsham, Washington, DC Metropolitan Police Chief**

off-guard. Commissioner Michael Harrison said that having advance notice would have given the Police Department time to develop and disseminate new policies, protocols, and training.

"I said to State's Attorney Mosby, 'Let's collaborate on policy changes you may make that affect us,'" Commissioner Harrison said. "Likewise, on policy changes we make that would affect you, we will do the same."

At the PERF meeting, police chiefs and prosecutors provided examples of working collaboratively to plan, announce, and implement various reforms measures. In Miami-Dade County, for example, State's Attorney Katherine Fernandez Rundle and the county's police chiefs worked together on developing a new civil citation program, in which some misdemeanor offenders who were previously subject to arrest are now handled through a citation and summons process. Both police and prosecutors consider this approach an improvement.

A similar process was used in Harris County when it rolled out its program to divert more marijuana possession cases out of the justice system and into community-based alternatives. "I think the biggest difference in the way we approached this drug policy was to work with the police chiefs in the county and to gain, not just cooperation, but their partnership," said District Attorney Kim Ogg. "They stood with me at the podium when we announced this—[Houston Police Chief] Art Acevedo was there with Sheriff Ed Gonzalez and a number of other law enforcement agencies, along with the mayor and others."

Principle 4: Police and prosecutors' agencies have limited resources. Priority should be placed on the investigation and prosecution of serious, violent crime.

All participants in the meeting agreed on these two points: 1) that police and prosecutors have limited resources, and 2) given these resource limitations, addressing violent crime should be the top priority of both prosecutors and police.

Several prosecutors said that in order to focus more on violent crime, they necessarily had to scale back prosecutions of lower-level offenses and shift their personnel and other resources accordingly.

Manhattan District Attorney Cyrus Vance Jr. spoke of “right-sizing” the resources devoted to misdemeanor prosecutions. He said that his office prosecuted 86,000 misdemeanor cases in 2012 but reduced that to 45,000 in 2018. He said it’s a matter of setting priorities and being realistic about outcomes. “Our court system really isn’t designed to do anything productive with those low-level offenders and low-level offenses,” he said.

In Cook County, the State’s Attorney’s Office has reassigned personnel to focus on serious felony offenses. Approximately 500 assistant state’s attorneys handle about 40,000 felony cases a year, and 50 prosecutors now handle the 250,000 misdemeanors cases the office prosecutes. A recent analysis found that in the past, retail theft had been the second most often prosecuted crime in Cook County, after drug offenses. Today, weapons offenses are the second most prosecuted crime (after drug offenses), representing about one-quarter of the cases pursued by the State’s Attorney’s Office in the first half of 2019. Previously, these offenses accounted for fewer than 15 percent of all prosecutions.¹⁴

A similar realignment of resources is taking place in Suffolk County, Massachusetts. “District Attorney Rollins has made the decision to reinvest the money that was being spent on prosecuting low-level, nonviolent offenses, and to double down on our efforts in the city of Boston, where violent crime is the issue,” said First Assistant District Attorney Daniel Mulhern.

Police chiefs at the PERF meeting generally agreed with this shift in prosecutorial priorities, especially any increased focus on gun-related crime. However, they cautioned that prosecutors still need to focus on some nonviolent crimes, such as burglary and auto theft, that can substantially impact victims who, for example, rely on their vehicles for work.

Principle 5: To have the greatest impact on violent crime, police and prosecutors should strategically target offenders who are responsible for the most serious crime.

Police chiefs and prosecutors at the PERF meeting agreed on the need to be more precise in how they address serious, violent crime.

In the New York City Police Department, this is reflected in the move away from stop-and-frisk tactics to a more exact, data-driven approach to violent crime. Commissioner James O’Neill pointed out that CompStat in the NYPD has evolved and become more sophisticated. Instead of merely identifying crime hot spots at the summary level, CompStat is helping police better pinpoint the specific individuals who are responsible for the most crime.

Commissioner O’Neill also said that police and prosecutors are coming together early in the investigative process, which results in stronger, more coordinated cases. “If we uncover historical issues with violence, we will sit down with the DA and start a case together,” he said. “We don’t work a case for six months and then take it to the DA. We’re in agreement

14. Daniels, Matt. “The Kim Foxx Effect: How Prosecutions Have Changed in Cook County.” *The Marshall Project*. Oct. 24, 2019. <https://www.themarshallproject.org/2019/10/24/the-kim-foxx-effect-how-prosecutions-have-changed-in-cook-county>

In extremely challenged communities, you cannot arrest your way to safer neighborhoods. It has more to do with the “who” than the “what.” In communities that had historically strong feelings against the police, I found that when we would put a laser-like enforcement focus on the one or two individuals who were negatively affecting everybody’s life, people soon came to accept our approach.

We ceased with the broad-brush approach. We could arrest 100 drug dealers and not move Camden’s “gun violence needle” an inch. However, when we did arrest the right person, we would have a significant impact for making that community safer.

— J. Scott Thomson, Chief, Camden County (NJ) Police Department



Philadelphia
District Attorney
Lawrence Krasner

from the start. And I think when you do that, when it comes time to prosecute the case, there are serious consequences for the offenders, especially those involved in gangs and crews, which drive about half of our violent crime.”

As noted in the discussion of Principle 4, several prosecutors are restructuring their offices and reassigning personnel and other resources to focus on serious, violent offenders. And like many of their police counterparts, some prosecutors’ offices are taking a more data-driven approach to prosecutorial decision-making. Cook County,¹⁵ Philadelphia,¹⁶ and Dallas County¹⁷ are among the prosecutors’ offices that are collecting and posting online an array of data about activities and outcomes, both for internal analysis and public consideration.

Some prosecutors’ offices—in Suffolk County and Philadelphia, for example—are hiring data analysts and other specialized personnel to focus on scrutinizing agency activity and measuring outcomes. “We hired criminologists for the first time in the history of the office,” said Philadelphia District Attorney Lawrence Krasner. “We are starting to gather a lot of metrics on what we’re doing and what impact we’re having.”

Principle 6: Violence associated with the distribution of marijuana and other illegal drugs is a major concern in some cities. Police and prosecutors need to analyze this relationship and develop strategies that address this type of violence.

In general, police chiefs attending the PERF meeting support alternatives to arrest and prosecution, such as citation and diversion, for low-level marijuana possession offenses. But several chiefs also pointed out that violence associated with marijuana distribution is a major concern in many neighborhoods. And marijuana dealing and marijuana-related violence are not likely to abate even as more jurisdictions legalize recreational marijuana.

15. “The Data-Driven CCSAO.” Cook County State’s Attorney. <https://www.cookcountystatesattorney.org/data>

16. “Public Data Dashboard,” Philadelphia District Attorney’s Office. <https://data.philadao.com/>

17. “Case Status Reports.” Dallas County, Texas. <https://www.dallascounty.org/government/district-attorney/case-status.php>

New York City Police Commissioner James O'Neill said the NYPD tracks the circumstances of all homicides in the city, and currently, about 25 percent of homicides are connected to drug distribution, with many of those cases involving marijuana.

Police Commissioner Michael Harrison said marijuana-related violence is a major concern in Baltimore as well. "I can't tell you precisely how many of our murders and nonfatal shootings are marijuana-related, but I know that many of them are a result of marijuana drug deals that go bad."

Prosecutors and police chiefs agreed that the relationship between marijuana distribution and violent crime needs to be analyzed more carefully. Based on that analysis, intervention and prosecution strategies need to be developed.

Principle 7: For many offenders accused of nonviolent, low-level crimes, processing them through the criminal justice system is not the most efficient use of limited resources, nor does it consistently produce the desired outcomes of changing behavior. There need to be alternative approaches available for these suspects.

Is the criminal justice system the most effective vehicle for dealing with people accused of low-level, nonviolent crimes? That is a question that a growing number of prosecutors and police chiefs have begun to ask. With their focus on more serious, violent crime, and with the justice system often lacking the resources to provide treatment and other services, police chiefs and prosecutors have begun to question the value of putting many of these suspects through the system in the first place. They argue that better outcomes can be achieved, often at lower costs, through alternatives to arrest and incarceration.

Participants in the PERF meeting provided several examples of alternative approaches that show promise. In Harris County, possession of less than four ounces of marijuana had previously accounted for 10 percent of the criminal caseload in the District Attorney's Office. Now, many of these cases are being diverted at the street level by police officers and sheriffs' deputies. Officials report a 70-percent compliance rate with the conditions of diversion.

Miami-Dade County has also focused on pre-arrest diversion of drug cases, especially among young people, to avoid the "collateral consequences" of having an arrest on their record. "There was absolutely no benefit for arresting young people for marijuana, especially if they're going to get kicked out of college or lose their financial aid," said State's Attorney Katherine Fernandez Rundle. "There's a whole chain of collateral consequences that occur. I've offered a diversion program to all of the universities in my jurisdiction."

Los Angeles County has taken a slightly different approach to diversion for young people. Rather than having the police department or District Attorney decide which juveniles should be diverted, the county has

largely turned that responsibility over to the probation department. As a result, there has been a 70 percent reduction in the juvenile delinquency population, according to District Attorney Jackie Lacey.

Houston Police Chief Art Acevedo said the threat of criminal prosecution can be used as leverage to get drug users into treatment, through programs such as drug courts. And he said that other parts of the justice system, especially parole agencies, need to get more involved in intervening with chronic, low-level offenders. He said parole agencies should help to rehabilitate offenders, and not merely serve an administrative function.

Principle 8: A robust network of supportive community services is needed to keep people from cycling through the criminal justice system repeatedly. These services are especially important for people with mental illness and/or substance abuse issues.

Police chiefs and prosecutors at the PERF meeting said that alternatives to arrest and prosecution for people involved with low-level, nonviolent crimes are only one part of criminal justice reform. In addition, they said, there must be a strong network of services in the community to support persons who are diverted from the justice system because of mental illness, drug abuse, and other conditions.

In some communities, such as Harris County, there is an extensive network of support services provided by public and private agencies. A NeuroPsychiatric Center provides 24-hour crisis intervention and treatment; a mental health diversion center offers short-term stays of up to 14 days; a Sobering Center assists people who are severely intoxicated; and a variety of private and faith-based organizations provide other services.

“We are taking people with mental illness to a brick-and-mortar location that has beds, has resources, has security, and we conduct a thorough mental health assessment,” said Harris County District Attorney Kim Ogg. “These are generally people who are loitering, sleeping in public, or causing a minor disturbance. If they’re in crisis, they go to a



Criminal justice reform in Los Angeles and in California is well-intended and generally supported by law enforcement. We’ve continued to decriminalize chronic offenders’ consequences with the promise that supportive community services will be there.

But the state has not provided those mental health services. They have not provided the supportive services of drug rehabilitation that can help people get out of the cycle of being chronic offenders. The safety net is just not there. The jails continue to serve as a place where someone with mental illness goes to be housed, rather than receiving effective treatment.

— Michel Moore, Los Angeles Police Chief

separate crisis center. We're finding really remarkable results—68 percent have not been back since they first went into the program.”

In Baltimore, a program operated by the State's Attorney's Office called AIM to B'more is providing alternatives to incarceration for low-level felony drug offenders who sell drugs for income.¹⁸ With assistance from two dozen public and private agencies, participants are offered two years of supervised probation that includes 100 hours of community service, career coaching, and a requirement to be employed full-time for one year. Upon successful completion of the program, the state facilitates expungement of the defendant's criminal record. According to State's Attorney Marilyn Mosby, 98 percent of program graduates have full-time employment, and the recidivism rate among program participants (32%) is well below the national average among persons sent to state prisons.¹⁹

However, programs such as these are not typical across the country. Participants at the PERF meeting expressed frustration with the lack of resources to serve populations in need. The gaps are especially acute in areas such as Los Angeles, which has a large homeless population, many of whom are dealing with mental illness and drug abuse. Smaller, more rural areas may not have the same degree of challenges that large cities face with substance abuse, mental illness, and homelessness, but these areas often do not have the resources to address those issues.

Participants in the PERF meeting agreed that prosecutors and police chiefs need to advocate community-based services that serve as a viable alternative to arrest, prosecution, and incarceration for certain low-level offenders.

Principle 9: Quality-of-life issues are a major concern in many communities. Police, prosecutors, other government agencies, and community stakeholders need to work collaboratively to address these concerns through a range of strategies.

One of the most contentious discussions at the PERF meeting was about how to address quality-of-life issues—for example, people loitering on a street corner, drinking alcohol or smoking marijuana, aggressive pan-handling, homeless encampments, traffic issues, etc. Several chiefs said that even in neighborhoods with serious violent crime problems, at community meetings residents often raise concerns about quality-of-life issues, rather than serious crime. And the chiefs expressed frustration at being tasked with solving these issues on their own.

Prosecutors agreed that arresting and prosecuting people for relatively minor quality-of-life offenses was an ineffective response, both

18. See “Aim to B'More,” Office of the State's Attorney for Baltimore City. <https://www.stateattorney.org/community-affairs/crime-control-and-prevention/aim-to-b-more>.

19. Approximately 44% of state prisoners released in 2005 were rearrested at least once during their first year after release, and 83% were rearrested during the nine years after their release, according to the Bureau of Justice Statistics. “2018 Update on Prisoner Recidivism: A 9-Year Follow-up Period (2005-2014).” May 2018. Bureau of Justice Statistics. <https://www.bjs.gov/content/pub/pdf/18upr9yfup0514.pdf>

in the short term (because the offenders will likely be back in the community almost immediately) and the long term (because the underlying conditions are not being addressed).

There was consensus that addressing these matters should not solely be the responsibility of police and prosecutors.

“If you are acting in the true spirit of community policing, quality-of-life crimes should not solely be the responsibility of prosecutors or police,” said Boston Police Commissioner William Gross. “So you have people congregating in front of stores. Are they young? Are they homeless? Are there mental health issues? Are they dependent? If they’re young, we have Youth Service Officers and programs and initiatives in the city. If they’re homeless, we have agencies to help them. You have to take a different approach, and not just rely on the arrest powers of the police or prosecutorial powers of the district attorney,” Commissioner Gross said.

One approach is to use civil citations, which can result in support services being provided to the offender, while also providing some response to the community, so residents will not think that police are simply ignoring their complaints.

“‘Being ‘tough on crime’ makes for a good sound bite, but is an ineffective overall strategy. We simply cannot arrest our way out of crime and research shows mass incarceration doesn’t work,” said Miami-Dade County State Attorney Katherine Fernandez Rundle. “In Miami-Dade, we treat people as individuals and address offenders in a fair, strategic, and efficient manner. As part of our Smart Justice approach, we support Smart Policing and other programs that separate lower-level offenders from career criminals and violent offenders and treat both groups appropriately. For example, having long advocated for the use of civil citations, several local police agencies have established programs allowing their officers to issue civil citations to low-level offenders in lieu of arresting them. Since initiating the civil citations process, officers have cited over 60,000 people, including more than 40,000 adults and 21,000 juveniles, allowing them to obtain services without the stigma and other collateral consequences associated with arrest. If a police department is not utilizing civil citations or does not ‘ticket’ on certain citation-eligible offenses (such as possession of marijuana), we drop the charges. On the other end of the spectrum, we have partnered with local, state, and federal law enforcement agencies and participate on several task forces addressing violent criminals, like our Gang Strike Force and Human Trafficking Task Force. Our approach allows us to reduce crime, better lives, and save tax dollars simultaneously. Though considered ‘progressive’ everywhere else, we and our partners have done this so long that innovation is now an established Miami-Dade County tradition.”

Other cities are using civil nuisance statutes to target underlying conditions that can give rise to quality-of-life crimes—and, at times, more serious offenses. Many community policing strategies have built-in mechanisms for the police or the community to alert local officials to nuisance situations, such as abandoned buildings and vehicles.

“In the District of Columbia, we work with Metropolitan Police Department exceedingly well to bring civil nuisance cases,” said Attorney General Karl Racine. “For example, there may be nuisance properties



Boston Police
Commissioner
William Gross

that don't have fences, lighting, or adequate security. That's a different tool that can increase safety for the residents who are trying to live in that neighborhood."

Principle 10: The voices and concerns of crime victims and survivors should be incorporated into the entire criminal justice process.

A common criticism of criminal justice reform is that it does not adequately support victims of crime. In their efforts to make the system more fair and just for defendants, prosecutors and others are accused of ignoring the concerns of victims.

Prosecutors at the PERF meeting pushed back against that characterization, noting that their agencies all have victim service units that work closely with crime victims on issues such as court advocacy; assistance with victim impact statements; referrals to counseling services; and securing financial assistance for costs related to their victimizations.

Prosecutors and police chiefs agreed that criminal justice reform measures must take into consideration the concerns and needs of crime victims, with approaches such as the following:

- Expanding the rights of victims to be informed throughout the judicial process and to have a greater say in matters such as sentencing recommendations. The recently enacted "Marsy's Law" in California²⁰ and Amendment 6 in Florida²¹ are examples of reforms that were largely supported by police and prosecutors.
- Implementing restorative justice approaches, which give crime victims a greater say in how cases are handled to ensure accountability and make amends. Youth courts in New York City and the Teen Court in Los Angeles are two examples of restorative justice programs targeting young people.
- Supporting victims of property crime, who often feel left out of the process or abandoned by the justice system. "For most of us here, if our car is stolen we can just go get another car," said City of Miami Police Chief Jorge Colina. "That's not how it works for a lot of the people we serve. You steal their car or the tools from the back of their pickup truck, and they can't work. That crime is incredibly important to that person, and we need to provide support for them too."

20. See "Victims' Bill of Rights." California Attorney General's Office. https://oag.ca.gov/victimservices/content/bill_of_rights.

21. See "Amendment 6: Rights of Crime Victims; Judges." The Florida Bar. <https://www.floridabar.org/the-florida-bar-journal/amendment-6-rights-of-crime-victims-judges/>.

Principle 11: Police and prosecutors should work together to train police officers on how to develop stronger, evidence-based cases, especially cases involving the illegal possession of firearms.

While the PERF meeting focused largely on criminal justice reforms, the handling of gun crimes is a major issue in all of the jurisdictions and was the subject of considerable discussion. To address serious, violent crime, police and prosecutors need to ensure that the cases they develop are strong and can withstand the scrutiny of defense attorneys and juries. Greater cooperation between police and prosecutors is especially important for cases involving illegal possession of firearms. Participants also said that detectives and prosecutors should work together on cases early in the process, so they will be on the same page about when the case is strong enough to file charges.

Meeting participants shared strategies to enhance cooperation in gun cases.

For example, the Cook County State's Attorney's Office is embedding assistant state's attorneys in the Chicago police districts with the most violent crime to work on cases from beginning to end. The prosecutors train officers and detectives on the key elements needed to build strong cases and secure convictions. According to State's Attorney Kim Foxx, conviction rates for gun cases rose from 20 percent to 80 percent in those districts with embedded prosecutors.

"When I became superintendent, we looked at our gun prosecution rate, and it was horrible," said Chicago Police Superintendent Eddie Johnson. "We found that the issue wasn't so much with the State's Attorney's Office. As chief, I have to recognize we're not always doing what we're supposed to do, and it was the training that needed improvement. So State's Attorney Foxx agreed to give us a group of assistant state's attorneys who came out and retrained our detectives and patrol officers on how to build strong cases. After that, gun conviction rates skyrocketed," Superintendent Johnson said.

Baltimore Police Commissioner Michael Harrison said he is working with the Baltimore State's Attorney's Office to provide training to officers and detectives that will improve the quality of cases that are brought to trial. The training focuses largely on Fourth Amendment and probable cause issues, and involves reviews of past cases that didn't proceed to trial in order to identify lessons to be learned.

In Harris County, the District Attorney's Office and the Houston Police Department have worked to develop a thorough approval process for proceeding with cases, especially when offering plea deals. "One of the things I worked on with District Attorney Ogg was making sure we have a solid approval process before you cut deals, especially with violent offenders," said Houston Police Chief Art Acevedo. "We now have one process, instead of 200 individual standards that are being applied in these cases."

Principle 12: More research is needed to understand the relationships between low-level crimes, quality-of-life issues, and serious crime.

At the PERF meeting, several police chiefs discussed how, in their experience, low-level, quality-of-life concerns are often tied to more serious crime problems in their cities. Groups congregating on street corners and the public consumption of marijuana were two examples they cited.

Some of the prosecutors at the meeting said that while anecdotal experiences and impressions are valuable, policy decisions on how to address quality-of-life issues should also be based on research. They advocated for additional studies on the relationship between quality-of-life concerns and more serious crimes.

Meeting participants also suggested other areas for additional research. For example, as more jurisdictions follow the lead of New York, New Jersey, and other areas in enacting bail reform, it will be important to track how these new policies impact crime in general and repeat offending specifically. Other areas for research include evaluating best approaches to diversion programs, the impact of swift and certain consequences in gun cases, and the efficacy of restorative justice programs.

Conclusion

At PERF's meeting of leading police chiefs and prosecutors, many participants said it was the first time they had taken part in a frank, honest discussion with their peers and colleagues. It was the first time these two groups had convened since a number of reform-minded prosecutors were elected in several major urban areas. The police chiefs and prosecutors took advantage of the opportunity to have a brisk discussion of criminal justice reform and other issues affecting policing and public safety.

The issues are difficult, and the dialogue was sometimes contentious. What should be done with low-level offenders engaged in quality-of-life crimes? What is the connection between marijuana and violent crime? What is the most effective approach to diversion programming? How do we ensure that the voices of crime victims are considered throughout the criminal justice process?

Bail reform in particular will likely remain a challenging issue for police and prosecutors. In New York State, for example, a new law restricts the use of cash bail for many defendants and severely limits judicial discretion in deciding who qualifies for release pending trial. Even before the rules took effect on January 1, 2020, the New York Times reported that “a backlash has arisen among numerous district attorneys, judges, county legislators, and law enforcement officials, who are sounding alarms and raising the specter of dangerous criminals on the loose.... Under the new law, judges will no longer be able to set bail for a long list of misdemeanors and nonviolent felonies, including stalking, assault without serious injury, burglary, many drug offenses, and even some kinds of arson and robbery. Thousands of people currently in jail awaiting trial across the state will be automatically released....”²²

In New York and other jurisdictions, police chiefs and prosecutors will need to closely monitor and analyze the impact of these reforms, so they will be ready to demonstrate leadership if there are areas where

22. “Why Abolishing Bail for Some Crimes Has Law Enforcement on Edge.” *The New York Times*. December 31, 2019. <https://www.nytimes.com/2019/12/31/nyregion/cash-bail-reform-new-york.html>

Every police leader I know in this room has dedicated their life's work to reduce crime—and to do so with the presence of social justice. I respect the courage of the District Attorneys here who are actively trying to move in that direction. Police chiefs and prosecutors may have some issues to work out, but by talking with each other, we learn that we have a lot more agreement about our mission and priorities than differences.

— J. Scott Thomson, Chief, Camden County (NJ) Police Department

modifications may be needed. Timely and accurate research in this area will be critical.

PERF's meeting also revealed many areas of consensus. Crime prevention must be the top priority of both police and prosecutors. Given that the criminal justice system has limited resources, the focus must be on combating serious, violent crime. Police and prosecutors must acknowledge and address racial inequities in the justice system. For many suspects accused of low-level, nonviolent crimes, there must be alternatives to arrest and prosecution. Diversion, treatment, and service programs must be adequately funded.

The Statement of Key Principles that came out of the meeting illustrates the level of consensus that exists among prosecutors and police chiefs. It also provides a foundation for continuing the discussion by officials across the country who are grappling with similar issues. These discussions will help strengthen the relationship between police and prosecutors, by allowing them to better understand their differences and their areas of agreement.

The PERF meeting provided an opportunity to take the pulse of the relationship between police chiefs and prosecutors at a critical time for the justice system. And they pledged to continue the conversation.

About the Police Executive Research Forum

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about PERF, visit
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The Police Executive Research Forum (PERF) is an independent research organization that focuses on critical issues in policing. Since its founding in 1976, PERF has identified best practices on fundamental issues such as reducing police use of force; developing community policing and problem-oriented policing; using technologies to deliver police services to the community; and developing and assessing crime reduction strategies.

PERF strives to advance professionalism in policing and to improve the delivery of police services through the exercise of strong national leadership; public debate of police and criminal justice issues; and research and policy development.

The nature of PERF's work can be seen in the variety of reports PERF has produced over the years. Recent reports have addressed issues such as the police response to the COVID-19 pandemic, reducing gun violence, officer safety and wellness, officer suicide, sexual assault investigations, officer recruitment and retention, the law enforcement response to homelessness, the opioid epidemic, mass demonstrations, the changing nature of crime and criminal investigations, mobile broadband technologies, and use of force. Nearly all PERF reports are available without charge online at <http://www.policeforum.org/free-online-documents>.

In addition to conducting research and publishing reports on our findings, PERF conducts management studies of individual law enforcement agencies; educates hundreds of police officials each year in the Senior Management Institute for Police, a three-week executive development program; and provides executive search services to governments that wish to conduct national searches for their next police chief.

All of PERF's work benefits from PERF's status as a membership organization of police and sheriffs' officials, who share information and open their agencies to research and study. PERF members also include academics, federal government leaders, and others with an interest in policing and criminal justice.

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PERF is grateful to the Howard G. Buffett Foundation for its support of PERF's research and the production of this report.

