

# Anatomy of Discretion:

## An Analysis of Prosecutorial Decision Making

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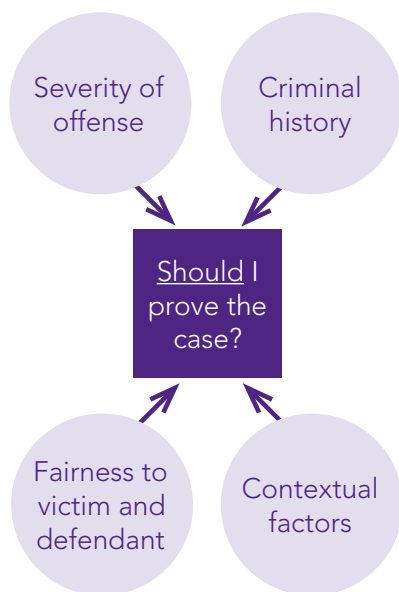
Fact Sheet

### Factors Prosecutors Consider

Evidence is the primary consideration at initial case screening.



As a case progresses, strength of evidence is balanced against other considerations.



### BACKGROUND

Prosecuting attorneys enjoy broader discretion in making decisions that influence criminal case outcomes than any other actors in the U.S. justice system. They make pivotal decisions throughout the life of a case—from determining whether to file charges to crafting plea offers and recommending sentences. That they do so with little public or judicial scrutiny generates questions about the justice and fairness of the process.

Numerous prior studies have sought to identify characteristics of individual cases that have reliable statistical relationships with case outcomes. These studies have found case outcomes to be primarily associated with the strength of evidence, the seriousness of offenses, and the culpability of defendants. However, few studies have examined how and when these factors influence the decision-making process, or how contextual factors such as office policies, resource constraints, and relationships with other justice system actors influence case-level decisions. Finally, there has been little research examining the influence of prosecutors' characteristics or their conceptions of justice and fairness—how much, for example, prosecutors' decisions are influenced by their concerns about the consequences of their decisions for individual victims and defendants.

### COMBINING QUANTITATIVE AND QUALITATIVE METHODS TO EXPLORE THE ANATOMY OF DISCRETION

With support from the National Institute of Justice, the Vera Institute of Justice undertook research to better understand how prosecutors make decisions throughout the processing of a case. Vera researchers examined initial case screening and charging decisions, plea offers, sentence recommendations, and post-filing dismissals for multiple offense types in each of two moderately large prosecutors' offices. They combined statistical analyses of actual case outcomes, responses to a standardized set of hypothetical cases, and responses to a survey of prosecutors' opinions and priorities with qualitative analyses of individual interviews and focus group discussions. Together, these approaches provide mutually reinforcing perspectives on the influence of case and prosecutor characteristics, as well as the effects of contextual factors that could constrain or regulate prosecutors' decision making.

### PRINCIPAL FINDINGS

Prosecutors said they were committed to an overarching philosophy of "doing the right thing," and that two basic questions guided their decisions: "Can I prove the case?" and "Should I prove the case?"

## For More Information

The Vera Institute of Justice is an independent nonprofit organization that combines research, demonstration projects, and technical assistance to help leaders in government and civil society improve the systems people rely on for justice and safety.

For more information on Vera's research and development efforts, visit [www.vera.org](http://www.vera.org) or contact Siobhán Carney, associate research director, at [scarney@vera.org](mailto:scarney@vera.org).

Read the technical and summary reports and watch the podcasts at [www.vera.org/pubs/anatomy-discretion-prosecutorial-decision-making](http://www.vera.org/pubs/anatomy-discretion-prosecutorial-decision-making)

- > Strength of the evidence was the primary consideration at initial case screening, which focused mostly on the question “Can I prove the case?” Other factors became more influential in later decisions, where prosecutors were also considering the question “Should I prove the case?”
- > In addition to considering severity of the offense and criminal history, prosecutors evaluated the personal characteristics and circumstances of victims and defendants to judge whether the potential consequences of their decisions would be fair.
- > Resource constraints, especially shortages of court resources, often forced prosecutors to undercharge, change plea offers, or dismiss cases. Reallocation of police resources resulted in a decline in the quality of cases presented to prosecutors.
- > Prosecutors sometimes tailored their decisions to fit the judge's expectations.
- > District attorneys established very few office-wide policies governing case outcomes. However, prosecution units within offices established policies and norms that limited the exercise of discretion.
- > Fair treatment of the accused was rated by prosecutors as the most important criterion for evaluating their own success. However, some suggested that fair treatment implies similar outcomes for similar cases, whereas others attached greater importance to individualized treatment of defendants.
- > Prosecutors differed with respect to the charging and plea-bargaining strategies they preferred.
- > Statistical analyses of case outcomes found considerable variation in decision making across prosecutors that could not be accounted for by the case characteristics that were available for analysis.

## CONCLUSIONS

There was considerable variation in the decisions reached by different prosecutors in similar cases. They differed in their opinions about how to define fair treatment, they differed with respect to the plea bargaining strategies they preferred, and different prosecutors may have reacted differently to contextual pressures. Whether and how criminal justice policymakers and chief prosecutors should seek to promote consistency in the exercise of prosecutorial discretion remain open questions.

While prosecutorial discretion is generally seen as very broad and unconstrained, prosecutors often rely on a small number of salient case characteristics, and their decision making is further constrained by several contextual factors. These contextual constraints—rules, resources, and relationships—sometimes trump evaluations of the strength of the evidence, the seriousness of the offense, and the defendant's criminal history. Chief prosecutors and criminal justice policymakers should be alert to the potential for contextual factors to influence and possibly distort the exercise of prosecutorial discretion.