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Reshaping Prosecution in St. Louis: Lessons from the Field

Akhi Johnson and Stephen Roberts

Foreword from Circuit Attorney Kimberly Gardner

When I decided to run for Circuit Attorney of the City of St. Louis in 2016, I knew the job wouldn't be easy.

Reforming the criminal legal system, holding police unions accountable, and creating a fairer and more equitable system for all, that includes the most vulnerable among us, was beyond imagination for some in our city, and inconvenient for the entrenched political establishment whose power has long depended on maintaining the status quo.

But in 2016, our communities made clear that they wanted a Circuit Attorney who would address centuries of harm that a punitive and single-minded "tough-on-crime" approach has had on our city, and with my election, I joined a wave of progressive prosecutors across the country committed to reimagining what true justice for historically under-resourced communities can look like.

Though we did take a moment to celebrate the historic nature of the election and the fact that I, a Black woman from one of the most challenged neighborhoods in St. Louis, would be the city's first Black Circuit Attorney, we got straight to work to deliver on the commitment that we made to the people of our city.

This included a commitment to address the underlying causes of crime, like poverty and over-policing; to treat crime as a public health crisis without sacrificing public safety; to build trust with marginalized communities; to hold police officers accountable for their misconduct; and to reserve incarceration for only the most serious offenses.

And no, it hasn't been easy. Throughout my first four years, I've been met with innumerable levels of resistance and attack with the intent of stopping the voters' demands for reform. My prosecutorial discretion has been challenged repeatedly by my state's guardians of the status quo. My office has been inundated with racist threats on my life and misogynistic vitriol. Those responsible for these attacks would like to deter me, steer me off track and get me to throw in the towel, but I am more committed than ever to the people of the City of St. Louis.

St. Louis has long been plagued by racial division, violent crime, and an overreliance on the criminal justice system to combat it. Prior to my administration, we had one of the highest incarceration rates in the country and incarcerated people in our jails at a rate more than twice the national average.

In 2017, I knew addressing an issue of this scale would require a new approach centered on accountability and racial equity. That's why my office partnered with the Vera Institute of Justice's Reshaping Prosecution program to shrink the system and instigate transformational change in St. Louis.

With Vera's assistance, the Circuit Attorney's Office has been able to collect and analyze data in a meaningful way for the first time in the office's history and use those findings to guide the development of policy recommendations.

This support helped my office follow through with the commitments we made on the campaign trail. For starters, since 2017, we've expanded diversion programs, declined to prosecute low level cases, decreased the number of people held on cash bail, and built the capacity to better analyze our progress and shortcomings with data to share with the community.

Although the transformation we've seen across the City of St. Louis has been profound, the same deeply entrenched systemic issues that existed prior to me taking office still exist today. Black people are still disproportionately represented in our legal system

and still prosecuted roughly three times more often than white people.

Though disappointing, I knew that dismantling systems and disrupting the status quo would be difficult. That's why I worked with criminal justice experts from across the country on Motion for Justice, a recently released initiative with tools for prosecutors to tackle systemic racial inequities. Our office has already begun to adopt some of those strategies, and we will continue the fight to remedy harms the system has caused to Black people across our city.

Vera was the first organization I reached out to for assistance in transforming our office with a data-informed approach to justice. I am grateful to Vera for its invaluable support and I look forward to continuing my work as the minister of justice for the people of St. Louis.

A handwritten signature in black ink, appearing to read "Kimberly Gardner". The signature is fluid and cursive, with a large, stylized initial "K" and "G".

Kimberly Gardner
Circuit Attorney
City of St. Louis

Director's note

I was a prosecutor for 12 years and never heard mass incarceration discussed in my office. As shocking as that sounds, it should come as no surprise given the traditional mandate for prosecutors: use your discretion to do justice on a case-by-case basis. That narrow view of justice, however, does not account for the systemic impact of case decisions and how they have contributed to our country becoming the world's leader in incarcerating people. Although that traditional approach has had devastating consequences, it also presents a significant opportunity for change given prosecutors' largely unchecked discretion.

The Vera Institute of Justice (Vera) launched the Reshaping Prosecution program in 2017 to help prosecutors use their discretion to take a systemic approach to pursuing justice. Vera partners with offices to assist with analyzing data to understand the impact of prosecutorial decisions and collaborates with offices to develop and implement new policies. To pursue systemic justice, however, the analysis and policies remain guided by three goals: end mass incarceration, address racial inequity, and make offices more transparent and accountable to the communities they serve.

Each goal represents a core value of our program. To help end mass incarceration, we work with prosecutors'

offices to identify opportunities to reduce their reliance on incarceration and shrink the size of the criminal legal system. To address racial inequity, we help offices analyze data on how their system disproportionately impacts communities of color and pursue policies to reduce disparities. Increasing transparency and accountability requires sharing data so that community members have concrete metrics to evaluate the office and incorporating their feedback to craft policies that meet community needs.

This brief provides an overview of our pilot partnership with Circuit Attorney (CA) Kimberly Gardner and her office in St. Louis City. CA Gardner was elected in 2017 after running on promises to reform the criminal legal system. She prioritized reducing the city's reliance on incarceration, adopting a public health approach to addressing crime, and building trust with marginalized communities. We assisted the Circuit Attorney's Office (CAO) as it adopted a data-driven approach that aligned with CA Gardner's vision. As detailed in this report, the office has made significant strides in its reform efforts.

Yet, despite CAO's progress with reforms efforts, racial disparities have persisted. Coming into this pilot, we believed that general reform efforts would

have an impact on racial disparities. And though some reform efforts might have some impact, it is clear that there will not be a significant decrease unless policies are specifically crafted and targeted to tackle racial disparities.

To address this issue, we launched Motion for Justice in partnership with the Institute for Innovation in Prosecution. Motion for Justice is an online resource with concrete steps prosecutors can take to address racial disparities. It was developed with the input and partnership of legal scholars, advocates who have been directly impacted by the criminal legal system, and prosecutors, including CA Gardner, who are committed to the pursuit of racial justice. The materials are intended to be a tool and a conversation starter for prosecutors and members of the communities they serve who are committed to addressing racial inequity in their local criminal legal systems.

Our program has been fortunate to work with the members of CAO. They have remained committed to reform even in the face of significant opposition. They also demonstrated a unique willingness to offer the office's data for review and an openness to working with our team. Thanks to CAO, our partnership has provided a blueprint for turning reform campaign

promises into action, and our program is now partnering with seven additional offices: Boulder County, Colorado; Contra Costa County, California; DeKalb County, Georgia; Ingham County, Michigan; Ramsey County, Minnesota; Suffolk County, Massachusetts; and Wyandotte County, Kansas.

Although our partnership in St. Louis resulted in positive change, there is still plenty of work to be done, particularly around racial disparities. Now, more than ever, there is urgency to tackle the racial inequities in our criminal legal system. I am excited to see the continued progress of CA Gardner's office as it pursues justice for the St. Louis community. I am also hopeful that our program's work with future sites will contribute to reducing the harms of mass incarceration in communities across the country.



Jamila Hodge
Director, Reshaping Prosecution
Vera Institute of Justice

Contents

1 Introduction

2 Overview of engagement

5 Lessons from the field

5 Taken under advisement

6 Refusal rate

7 Issuing summonses

9 Data analysis capacity

10 Initial outcomes

14 Persisting racial disparities despite reforms

16 Conclusion

Introduction

Prosecutors wield tremendous power. They decide whom to charge—and with what offense—whether to ask for bail, when to provide evidence to the defense, and what plea offer to make. For decades, prosecutors have used their discretion in ways that contributed to mass incarceration and racial disparities in the criminal legal system.¹ Yet, despite their immense power, prosecutors had largely not been the focus of criminal legal system reform efforts until relatively recently.² Starting around 2015, with the help of groups like the American Civil Liberties Union (ACLU) and Color of Change, communities across the nation have begun to demand that their elected prosecutors adopt a new approach that reflects the communities' priorities.³ As a result, a wave of reform prosecutors has won elections, and reelections, throughout the country.⁴

In 2017, the Vera Institute of Justice (Vera) launched the Reshaping Prosecution program to help reform prosecutors transform their campaign promises into data-informed policies and practices.⁵ The program has three goals: (1) to end mass incarceration, (2) to reduce racial disparities in the system, and (3) to help offices be more accountable and transparent to their communities. The program aims to achieve these goals primarily through strategic site engagements during which Vera researchers, former prosecutors, and other programmatic staff assist offices with data analysis, new policy creation, and training on the reforms for line prosecutors. Vera's review relies primarily on data from the office's case management system and focuses on key decision points in the life of a case so that prosecutors can gain insights into how their decisions are contributing to mass incarceration and racial disparities.

This report provides an overview of Vera's pilot engagement with the St. Louis City Circuit Attorney's Office (CAO). It begins by discussing why Vera partnered with CAO and then details the stages of the engagement, initial lessons from the data, and some policy recommendations. The report concludes with some successes and an important lesson learned about the persistence of racial disparities that will inform the program's future work to reshape how prosecutors do justice.

Overview of engagement

St. Louis's criminal justice system relies heavily on incarceration to combat crime. St. Louis has had one of the highest incarceration rates in the country. In 2015, St. Louis sent people to prison at a rate nearly three times higher than the national average and incarcerated people in its jails at a rate more than twice the national average.⁶ The city has also been plagued by violent crime, with the most homicides per capita of any large US city from 2014 to 2017.⁷

In response, community advocates have increasingly called for reforms to the city's criminal legal system. Decarcerate STL, for example, advocates the "dismantling of mass incarceration" and held a 2016 town hall calling for reforms to the municipal court.⁸ Similarly, Arch City Defenders, Action St. Louis, and the Bail Project collaborated to form a campaign called Close the Workhouse, calling on government leaders to close the Medium Security Institution (MSI, also known colloquially as The Workhouse)—one of the city's two jails that has notoriously fallen into disrepair.⁹ These movements exemplified a community seeking new approaches from its government leaders, and the election of Circuit Attorney (CA) Kimberly Gardner demonstrated a step in that direction.

In January 2017, Kimberly Gardner was sworn in as the city's first Black lead prosecutor after securing the election with overwhelming community support.¹⁰ CA Gardner campaigned on bringing to CAO a public health perspective that focused on addressing the underlying drivers of crime and building trust with marginalized communities.¹¹ She advocated for a new approach that considered the "roots" of crime, like "poverty, over-policing, and longstanding imbalances in education and transportation."¹² She also stressed the importance of creating space for communities most impacted by violence to have influence in a "system where they feel like they have no voice."¹³

Vera's partnership with CAO presented a unique opportunity to pursue criminal legal system reform in a city with an acute need. In May 2017, after learning about the potential for reform in St. Louis, Vera staff visited CAO to assess the viability of an engagement. CA Gardner detailed a desire to create and expand formal office diversion programs, increase

transparency with the community, and address racial and ethnic disparities within the system.¹⁴ Her staff similarly shared an interest in reform, with attorneys readily identifying charging, bail, and plea offers as areas ripe for a new approach. Vera researchers also examined the office's electronic case management system, Prosecutor by Karpel (PbK), and worked with the office to ensure a smooth data transfer for review.¹⁵

In September 2017, Vera began a site engagement with CAO to help conduct an assessment of the way cases were handled by CAO, identify policy and practice changes, and implement reforms aligned with community needs. To gain insights into prosecutorial discretion at key decision points—charging, bail, plea offers, and sentencing—Vera gathered and reviewed qualitative and quantitative data from multiple sources:

- › Through PbK, Vera had access to data regarding the demographics of people prosecuted, prosecutorial charging decisions, whether the court issued a summons or warrant, and case resolution information. The database included cases going back to the early 1980s, but researchers focused their data review on the 4,541 cases in the 12-month period ending October 15, 2017.¹⁶ Vera reviewed the demographic breakdown of whom the office prosecuted and further examined each prosecutorial decision point when data was available. For example, Vera studied cases referred to the office by law enforcement and examined how prosecutors exercised their discretion to either refuse, alter, or issue the charges.
- › The St. Louis City Division of Corrections provided a 302-page PDF report that detailed the 1,279 people held pretrial in jail on November 14, 2017, their charges, and the number of days they were held in custody.
- › Vera held multiple conversations and informal listening sessions with CAO prosecutors and support staff of varying seniority. These conversations were primarily in-person during early site visits, but a few were also held over the phone throughout the course of the engagement. Participants discussed how CAO approached each discretion point, reforms they would like to see in that process or policy, necessary steps to create that change, challenges they

anticipated and how to overcome them, and first steps CAO could take to improve that process or policy.

- › Vera also spoke with advocates and other system stakeholders, including defense attorneys and judges, to learn how those outside the office viewed prosecutorial decision making and opportunities for reform.
- › Vera observed arraignment and bail proceedings and shadowed six prosecutors—three attorneys in the charging office and three attorneys in the felony trial section—to see their decision making in real time. For example, Vera observed prosecutors in the Warrant Office, where prosecutors make decisions on whether to charge someone, what crime to charge, and whether to request pretrial detention.

After collecting and analyzing the data, Vera developed policy recommendations in partnership with CAO. In particular, Vera staff shared results of the data review with select groups of prosecutors, seeking input on policy responses or soliciting areas of concern from staff and collaborating on potential solutions. Vera also held discussions on how the office could develop policies responsive to community desires, such as the Close the Workhouse campaign.¹⁷

Lessons from the field

The data review, staff workshop discussions, and reflections on community desires revealed four focus areas for reform: (1) cases left in a “taken under advisement” status, (2) a low refusal rate for referred cases, (3) a low recommendation rate of summonses, and (4) a lack of the ability to analyze data. Although additional reforms were identified, these four were chosen because they focused on the front end of the system and provided the greatest potential for significant impact.

Taken under advisement

For a few years before CA Gardner’s administration, CAO had a practice of placing cases in a “taken under advisement” (TUA) status where cases are neither filed nor refused after they are referred by law enforcement. A TUA status is usually used temporarily while an office assesses the viability of a case based on outstanding evidence, like the potential cooperation of victims or witnesses. CAO, however, infrequently refused TUA cases, even those that were not likely to move forward for any number of reasons, such as having insufficient evidence. As a result, the office had 32,000 cases in a TUA backlog. Further analysis revealed that the office rarely issued a TUA case after three days. From 2012 to 2017, the office issued charges on 41 percent of cases placed in a TUA status within three days. But after three days, the office only issued 5 percent of cases, and most of them were not issued for over a month. The remaining 54 percent of TUA cases had been neither issued nor refused as of the date of Vera’s review, which effectively left them in limbo with no resolution.

The practice of neither issuing nor refusing cases resulted in confusion and injustice for people arrested in St. Louis City. People who had been arrested and booked into the jail were released within 24 hours if the case was not issued. However, because some TUA cases were subsequently issued after their initial release, people could be arrested a second time for the same case without prior notice. Further, for cases that the office did not subsequently issue, the arrested person was left without a decision on

their case. As a result, people who had been arrested would have a final resolution only once the statute of limitations passed and the prosecution was legally prohibited.¹⁸

To remedy this practice, based on Vera's review and recommendations, CAO dismissed approximately 25,000 pending TUA cases and instituted a policy to either issue or refuse all future charges referred by law enforcement unless the case required reasonable additional investigation.

Refusal rate

An office's refusal rate (also known as declination rate) indicates how frequently the office declines to pursue cases referred by law enforcement. Because refusal rates depend on a number of factors—such as whether the office has a policy to refuse or divert certain offenses, the sufficiency of evidence gathered by local police before referring a case, and the office's capacity to handle cases—professional organizations for prosecutors have not established a benchmark refusal rate. But prosecutors have an obligation to carefully scrutinize cases and not serve as a rubber stamp for police arrests.¹⁹ Also, because most prosecutors have absolute discretion over who gets charged, an office's refusal rate can be a key metric for determining whether the office is actively shrinking the criminal legal system's footprint. And so, although comparing refusal rates across offices can be difficult, observing one office's rate over time can provide insights into its use of discretion. For example, a higher refusal rate likely indicates that an office is decreasing the criminal system's reach by limiting the number of cases it prosecutes, whereas a lower rate could mean that an office is not carefully scrutinizing the cases it receives from law enforcement.

From 2016 to 2017, CAO refused 49 percent of felonies and 54 percent of misdemeanors. Yet the office also later dismissed 25 percent of cases that it initially charged, which suggested that CAO could apply greater scrutiny at charging to dismiss cases earlier. Further, when looking at specific charges, the office pursued lower level cases at a high rate. In 2016, for example, CAO charged 77 percent of referred marijuana possession cases, 52 percent of all other drug possession cases, and 60 percent of misdemeanor trespassing cases. These findings suggest that the office could more aggressively decline cases that pose little risk to public safety.

CAO dismissed approximately 25,000 pending TUA cases and instituted a policy to either issue or refuse all future charges referred by law enforcement unless the case required reasonable additional investigation.

To address these issues, based on Vera’s review and recommendations, CAO began monitoring its refusal rate over time and applying a more stringent review of cases at initial charging. Although prosecutors ultimately must prove a case beyond a reasonable doubt to convict someone, they need only probable cause—a substantial basis for concluding that a person committed a crime—to charge them.²⁰ CAO adopted the higher “beyond a reasonable doubt” standard at initial charging to limit the number of nonviable cases entering the system. CAO also began identifying more people with low-level charges that did not impact public safety to refuse or divert.

Issuing summonses

Unlike with charging, prosecutors do not have absolute discretion over who is detained pretrial. Instead, prosecutors can only influence a judge’s decision to set bail. In St. Louis City, prosecutors exercise that influence during charging by requesting a summons or warrant. A summons generally indicates that the prosecutor consents to a person’s release without bail or other release conditions. A warrant, however, generally indicates that bail should be set or that the person should be detained pending trial.

Despite a legal presumption in favor of summonses for misdemeanors, Vera’s review of the data revealed that a summons was requested in only 43 percent of misdemeanor cases that the office charged from October 2016 to October 2017.²¹ As expected, the summons rate for domestic

violence misdemeanors was low—12 percent. But even people with charges posing little to no public safety risk were unlikely to receive a summons. For instance, a summons was requested in only 50 percent of drug possession cases, 50 percent of misdemeanor trespassing cases, and 13 percent of driving with a suspended or revoked license cases.

Based on this data, CAO instituted a policy to presumptively request summonses on all non-domestic violence misdemeanors and many low-level felonies, such as drug possession, property damage, and theft-related offenses.

Training and outreach

Vera staff trained the office’s line prosecutors on the recommended reforms and the data informing them. Several of the recommendations—particularly around charging—had been implemented in some form months before the training, as the office was eager to put new practices in place. Many of the implemented recommendations, however, implicated the day-to-day decisions of only a small number of attorneys, so Vera’s training provided an opportunity to broadly workshop reforms with the remainder of the office.

Before training on the recommendations, CAO leadership and Vera recognized the importance of providing information on the negative impacts of mass incarceration to contextualize why new approaches are necessary. To that end, Vera developed a two-hour multimedia training to make a simple, but essential, argument: mass incarceration is a problem, and prosecutors have the power to change it.

The training begins by introducing mass incarceration as a national phenomenon that operates locally—citing international, national, and local incarceration trends since the 1970s. The training then addresses four critical components of mass incarceration:

- › An over-reliance on incarceration does not make communities safer.
- › Incarceration imposes significant social and financial costs.

- › Crime survivors are not satisfied with the current system.
- › The system is steeped in racial bias and disproportionately affects Black and brown communities.

After the mass incarceration training, Vera held workshop sessions with CAO prosecutors to explore policy recommendations. Each session focused on a key decision point, with Vera presenting national and local data on each topic. Vera then facilitated discussions around potential policies and also used examples of case fact patterns to discuss how the policies would apply in practice.

In addition to these more formal trainings, Vera and CAO facilitated a panel discussion for judges, public defenders, and line prosecutors to explore new approaches to violent crime. The goal of the discussion was to help stakeholders reflect on the limits of incarceration in reducing violence in their community. The panel was composed of community members who had been both survivors and perpetrators of violence. Each participant spoke about unresolved trauma from being a victim of violence, the factors that led them to commit a violent crime, and why they believed incarceration was an inadequate response. After each participant spoke, the panel engaged in a discussion with the audience on how to adopt community-based responses to violence.

Data analysis capacity

Vera's research found that the office was not satisfied with its current ability to analyze data. Multiple attorneys complained that PbK did not produce reports that informed their decisions. For example, although they successfully used PbK to track administrative tasks like scheduling of cases, they had not been able to generate substantive information, such as what percentage of the office's cases resulted in probationary sentences. Further, when attorneys tried to generate substantive PbK reports, they did not have confidence the information was accurate because it was frequently displayed in vague or nonspecific terms. CA Gardner echoed these concerns and asked Vera to help create a dashboard that tracked key metrics in real time and provided user friendly insights into the office's data. In addition to dissatisfaction with the current data system, Vera noted that the office did not formally track diversion or plea offer data, which made it more difficult to understand how prosecutors used their discretion to resolve cases.

Vera researchers made a few recommendations to address the office's data analysis issues. First, hire full-time specialists on staff to assist with data analysis. Second, track diversion referrals and plea offers through PbK. Finally, establish a system—such as a dashboard—to regularly report key metrics so that the community can develop a deeper understanding of the office's impact to hold CAO and other government stakeholders accountable.

Initial outcomes

Circuit Attorney Gardner's office has made significant progress over the span of its site engagement with Vera. Notably, CAO hired two data specialists who have helped the office better track and analyze data in a similar fashion to the research provided by Vera. Their contributions have made it possible for CAO leadership to constantly monitor the office's progress. Though CAO relied on Vera's research to craft initial recommendations, it has been able to rely on its own data specialists to track various metrics over time. For example, the data specialists have helped CAO measure its progress in the following reform areas from 2016 to 2019: reducing reliance on TUA status, shrinking the justice system's footprint, decreasing pretrial detention, and improving data collection.

CAO knew its reliance on TUA cases was problematic, but it did not know the scope of the problem until it reviewed Vera's research. Based on the research, CAO was able to conduct an efficient review of the backlog, dismiss more than 25,000 cases, and drastically reduce how frequently it places a person's case in a TUA status. As of April 2020, there were only 963 cases remaining in a TUA status, more than a 95 percent decrease from the original 32,000 TUA cases. Of these, 169 cases were from 2018, 414 cases from 2019, and 380 cases from 2020. It is expected for more cases from recent years to remain under review as CAO continues to gather and review evidence. The number of TUA cases for less recent years, however, should steadily diminish as CAO either issues or, more likely, refuses those cases.

CAO has also taken significant steps to shrink the system's footprint. As depicted in Figures 1 and 2 on page 11, from 2017 to 2019, the office refused a greater share of cases than it issued for both felonies and misdemeanors. For felonies, the office's refusal rate increased from 49 percent in 2016 to 55 percent in 2019. For misdemeanors, CAO transitioned from issuing cases for nearly half of people referred to the office in 2016, to roughly one-third in 2019. The office's efforts have been particularly apparent for lower level offenses, such as drug and trespassing cases. From 2016 to 2019, the office increased its refusal rate for each of those offenses by 12 percent. Indeed, in 2019, the office refused nearly three-quarters of trespassing cases.

Figure 1
Felony case disposition rates, by year

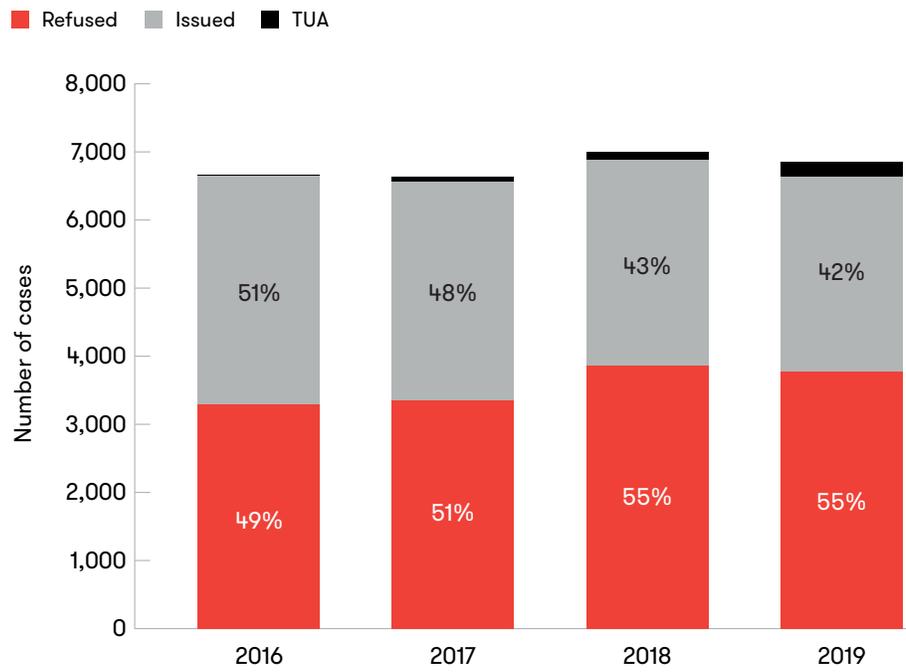
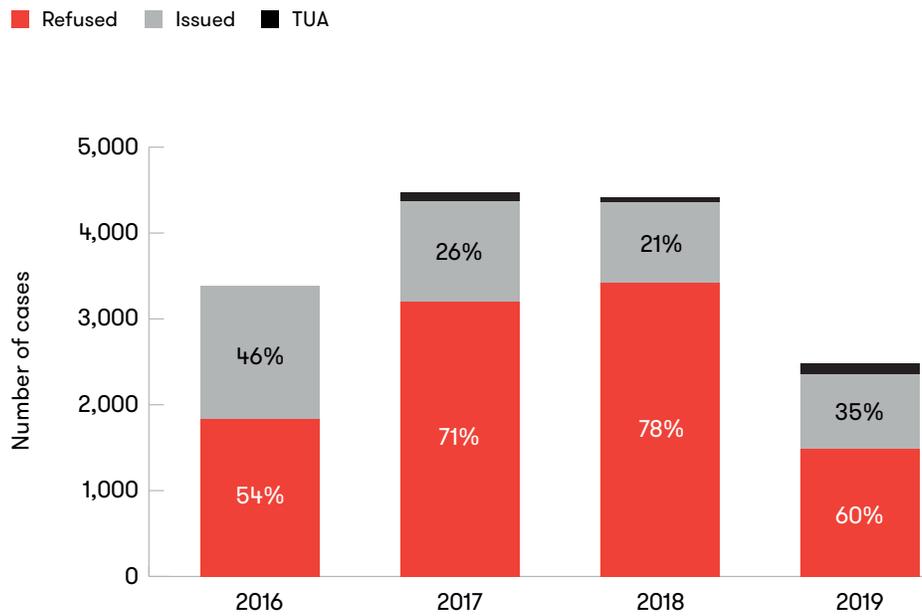


Figure 2
Misdemeanor case disposition rates, by year

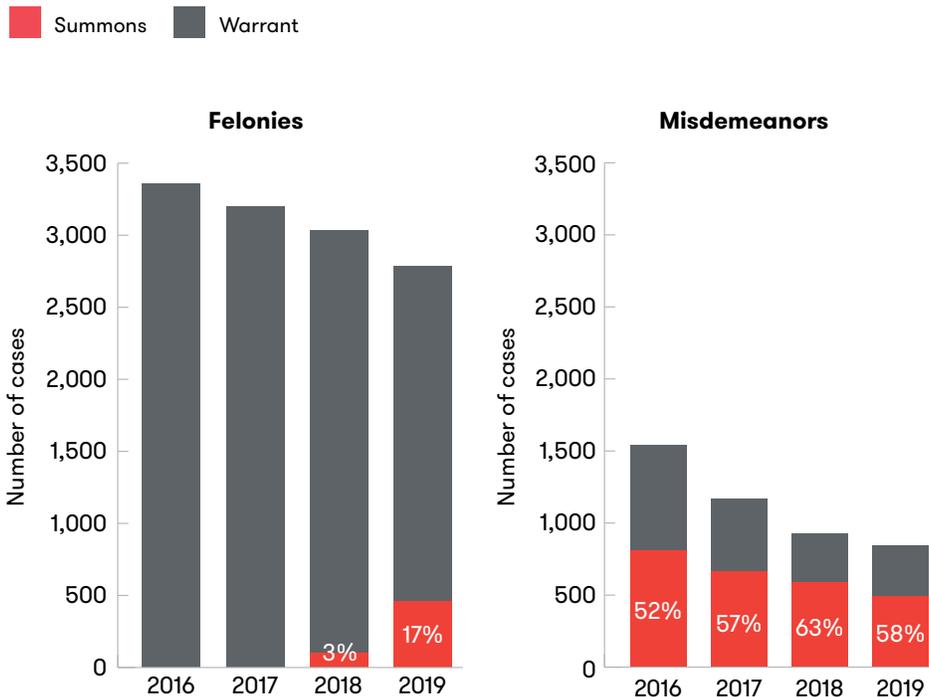


Although CAO does not have exclusive control of pretrial detention decisions, the office's efforts have contributed to an increased reliance on summonses. Felony summonses increased by 17 percentage points from 2016 to 2019. And, as depicted in Figure 3 on page 12, the use of summonses for misdemeanors increased as well.

Beyond these key reforms, the data specialists have also helped the office better track data in other areas. Now the office tracks how frequently it refers people to diversion and how often people successfully complete their programs (see Figure 4 on page 13).²² For instance, CAO now knows that, from 2016 to 2019, it successfully diverted 452 people, with more people completing diversion in each successive year. The office can also easily track other measurements, like how quickly prosecutors turn over evidence to the defense and how frequently cases result in plea or trial.

With an increased ability to review and analyze data, CAO has been able to report data to better inform the community. In January 2019, for instance, the office shared its progress on refusal rates and summons requests to help

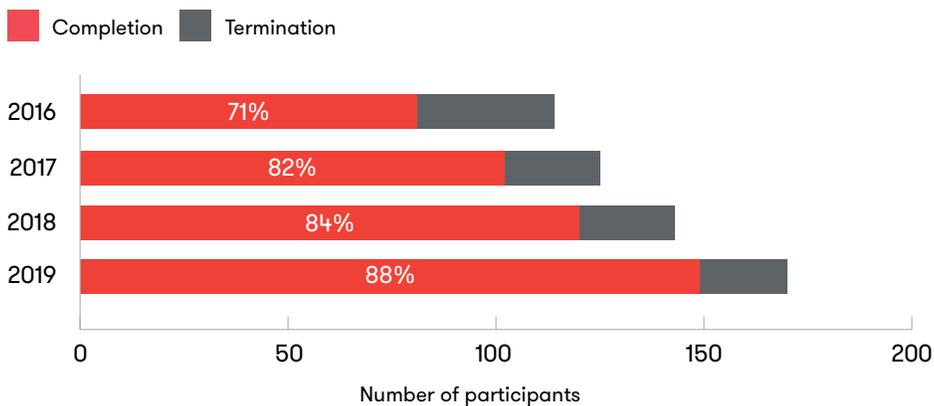
Figure 3
Use of summonses and warrants for charge type, by year



the community understand how CA Gardner was progressing on reform efforts. Similarly, CA Gardner was able to discuss her office's summons request data at a Close the Workhouse event to better explain how her office was contributing to the jail's population. CAO, with Vera's assistance, produced a public service announcement regarding CAO diversion programs with data to illustrate why the programs are preferable to incarceration.²³ Additionally, the office plans to release a public-facing dashboard that increases data transparency and helps community members hold the office accountable. Making the data publicly available provides community members with the ability to track CAO's progress on issues of interest—like the office's use of summonses—and make better informed decisions about whether the office is meeting community needs.

Finally, CAO's efforts to shrink the system by refusing cases, increasing the use of summonses, and emphasizing diversion may have contributed to a decrease in the jail population. From 2016 to 2019, the city's jail population decreased by 26 percent.²⁴ Although prosecutors have influence over the jail population by whom they charge and their detention requests, judges make the ultimate determination on who is detained pretrial and who serves a sentence at the jail. However, the fact that the jail population has significantly decreased over the same period that CAO has more aggressively refused cases, increased its summonses request, and diverted more people may indicate that CAOs efforts are contributing to a reduction in how many people are detained at the jail.

Figure 4
Success of CAO diversion participants, by year



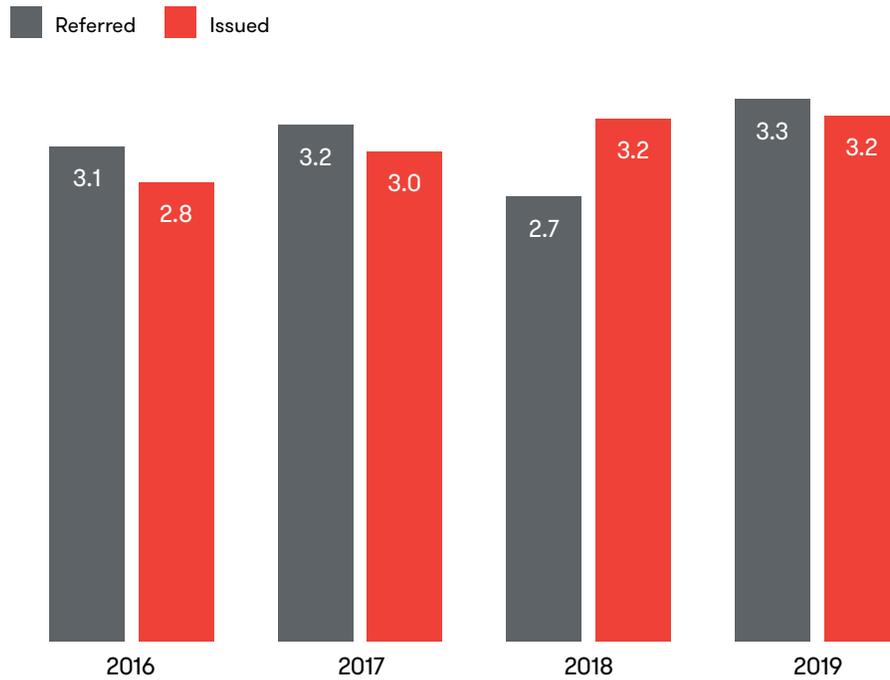
Persisting racial disparities despite reforms

Although CAO has had success, racial disparities have persisted. In the beginning of the engagement, Vera's research revealed that Black people were vastly overrepresented in the criminal justice system. Despite making up 47 percent of the city's population, Black people accounted for 74 percent of people prosecuted by the office.²⁵ This disparity remained after the office implemented reforms. As depicted in Figure 5 on page 15, even though the office has made progress with some reform efforts, Black people are still prosecuted at a rate roughly three times higher than white people. That disparity is heavily influenced by whom the police arrest and present to CAO. It is clear, however, that even though the office prosecutes fewer Black people than it used to, it is still charging Black people at a higher rate than white people.²⁶ Unfortunately, CAO is not alone, as reform efforts across the country have resulted in persisting, and sometimes increasing, racial disparities.²⁷ For example, New York City reduced its jail population by 60 percent from 2015 to 2020, but the city still incarcerates Black people at a rate 8 times higher than white people (compared to 10 times higher in 2015).²⁸ These trends indicate that racial disparities are likely to persist, unless reforms are explicitly designed to address them.

For guidance on steps prosecutors can take to address racial disparities please visit motionforjustice.org, a multimedia platform that Vera launched in partnership with the Institute for Innovation in Prosecution.

Figure 5

Race disparities in referred and issued cases, by year



These bars show how much more likely Black people are to have cases than white people. The gray bar shows referrals from law enforcement to the office, and the red bar shows cases issued by the office. One notable trend here is that the disparity in issued cases appears to be creeping upward. The movement is small, but it indicates that even though CAO is issuing fewer cases overall, the decrease is not having a notable impact on racial disparities.

Conclusion

Circuit Attorney Gardner's office made significant strides during the engagement with Vera by using a data-driven approach to decision making. As one line prosecutor stated during a listening session, this is the "first time we are examining case outcome data in this way." The office is working to decrease the footprint of the criminal justice system, decreasing its reliance on pretrial detention, and tracking its expanded use of diversion programs. Further, because it has an increased ability to analyze data, the office will share data in a meaningful way through its data dashboard, which will allow community members to better hold the office accountable. In short, the St. Louis engagement demonstrates that a data-driven approach can help reform prosecutors turn campaign promises into action.

Endnotes

- 1 John Pfaff, *Locked In: The True Causes of Mass Incarceration and How to Achieve Real Reform* (New York: Basic Books, 2017), 127-161.
- 2 A few scholars and advocates, such as Professor Angela Jordan Davis, have stressed the importance of addressing prosecutors despite the general trend to focus elsewhere. See for example Angela Jordan Davis, "Prosecution and Race: The Power and Privilege of Discretion," *Fordham Law Review* 67, no. 1 (1998), 13-68.
- 3 To learn about the ACLU, visit <https://www.aclu.org/>. For more information on Color of Change, visit <https://colorofchange.org/>.
- 4 For an overview of the reform prosecutor movement, see Josie Duffy Rice and Clint Smith, "Justice in America Episode 7: The New Progressive Prosecutors?," *The Appeal*, September 5, 2018, <https://theappeal.org/justice-in-america-episode-7-the-new-progressive-prosecutors/>.
- 5 Vera previously worked with prosecutors from 2005-2014 through its Prosecution and Racial Justice (PRJ) program. The PRJ program partnered with multiple offices to assist with data gathering and analysis of racial bias in prosecutorial decision making. That work paved the way for the Reshaping Prosecution program by providing a blueprint for how to approach and conduct data analysis in a prosecutor's office.
- 6 Vera Institute of Justice, "Incarceration Trends: St. Louis City, MO," database (New York: Vera Institute of Justice), <http://trends.vera.org/rates/st-louis-city-mo>.
- 7 "Large city" is defined as a city with at least 100,000 residents. John Gramlich and Drew DeSilver, "Despite Recent Violence, Chicago is Far From the U.S. 'Murder Capital,'" Pew Research Center, November 13, 2018, <https://www.pewresearch.org/fact-tank/2018/11/13/despite-recent-violence-chicago-far-from-u-s-murder-capital/>.
- 8 Decarcerate STL does not have a public-facing website, but makes its platform and events visible via its Facebook page, https://www.facebook.com/pg/Decarcerate-STL-1537790673178601/about/?ref=page_internal. See also Staff, "Group seeks to reform St. Louis' municipal court system," KMOV, April 24, 2016, https://www.kmov.com/news/group-seeks-to-reform-st-louis-municipal-court-system/article_009eca55-d63e-5cf0-a337-797316304e57.html.
- 9 Close the Workhouse, "Home," <https://www.closetheworkhouse.org/>.
- 10 Rachel Lippmann, "City's Newest Circuit Attorney Gardner Takes Historic Oath in Historic Courthouse," *St. Louis Public Radio*, January 7, 2017, <https://news.stlpublicradio.org/post/citys-newest-circuit-attorney-gardner-takes-historic-oath-historic-courthouse#stream/0>.
- 11 Ibid.
- 12 Danny Wicentowski, "In Circuit Attorney Race, Four Candidates Vie for St. Louis' Toughest Job," *Riverfront Times*, July 13, 2016, <https://www.riverfronttimes.com/stlouis/in-st-louis-circuit-attorneys-race-four-candidates-are-vying-to-take-on-the-citys-toughest-job/>.
- 13 Ibid.
- 14 Before CA Gardner's election, CAO did not have a formal diversion program or policy. In limited instances, some attorneys informally agreed to dismiss pending cases if the person accused was not re-arrested over a selected period of time. These informal agreements were separate from the jurisdiction's judge-led diversionary drug court.
- 15 CAO transferred data stored in PbK to Vera for off-site review. PbK is created and maintained by the Karpel Foundation, a nonprofit group with the mission to reduce the time and cost of prosecution and to increase transparency and accountability in the criminal justice system. PbK is currently used by "hundreds of offices" throughout the country, including King County (Seattle), Washington, and Tulsa County, Oklahoma. See Prosecutor by Karpel's webpage at <https://www.prosecutorbykarpel.com/why-karpel-solutions/> and Karpel Foundation, "Our Mission Statement," <http://karpelfoundation.com/mission-statement.aspx>.
- 16 Of note, before 2016 CAO did not track diversion referrals in its database. After partnering with Vera, CAO hired data specialists to more effectively track its use of diversion.
- 17 On July 17, 2020, the St. Louis City Board of Aldermen passed legislation to close the Workhouse by the end of the year. See Rebecca Rivas, "St. Louis City Board of Aldermen Vote to Close the Workhouse," *The St. Louis American*, July 17, 2020, http://www.stlamerican.com/news/local_news/st-louis-city-board-of-aldermen-vote-to-close-the-workhouse/article_6ab53558-c87a-11ea-8895-6b86c9aa4e0e.html.
- 18 In Missouri, statutes of limitations range from one year for misdemeanors to life for more serious offenses. See Mo. Rev. Stat. § 556.036 (2019), <https://law.justia.com/codes/missouri/2019/title-xxxviii/chapter-556/section-556-036/>.
- 19 American Bar Association, *Criminal Justice Standards for the Prosecution Function: Fourth Ed.* (Washington, DC: American Bar Association, 2017); "Standard 3-1.2 Functions and Duties of the Prosecutor," https://www.americanbar.org/groups/criminal_justice/standards/ProsecutionFunctionFourthEdition/.
- 20 For a discussion of the probable cause standard, see *Illinois v. Gates*, 462 U.S. 213, 235-237 (1983), <https://supreme.justia.com/cases/federal/us/462/213/>.
- 21 At the time of Vera's initial review, there was a legal presumption in favor of summonses for misdemeanors, but not felonies. Compare Mo. R. Crim. P. 21.03 (2003) with Mo. R. Crim. P. 22.04 (2003). During the engagement, however, the Missouri Supreme Court enacted a new rule that required presumptive summonses for felonies as well. See Mo. R. Crim. P. 22.04 (2019), <https://casetext.com/rule/missouri-court-rules/missouri-rules-of-criminal-procedure/rule-22-procedure-applicable-to-felonies-only/rule-2204-felonies-warrant-of-arrest-when-issued>.

22 CAO has multiple diversion options that offer people accused the opportunity to take advantage of various treatment, educational, and work-related programs in lieu of a conviction or incarceration.

23 To view the public service announcement, visit VeraInstitute, “St. Louis Diversion Program,” YouTube video, 5:49, July 24, 2019, https://www.youtube.com/watch?v=dnBgX342LXY&feature=emb_logo.

24 For the St. Louis City average daily jail population by year, visit <https://www.stlouis-mo.gov/government/departments/public-safety/corrections/corrections-inmate-population-data.cfm>.

25 Demographic information is based on Census estimates of the St. Louis City population. See United States Census Bureau, “Quick Facts: St. Louis City, Missouri (County),” <https://www.census.gov/quickfacts/stlouiscitymissouricounty>. Prosecution information is based on information provided by the CAO to Vera.

Although 4 percent of the city’s population is Latinx, Latinx people made up less than one-tenth of a percent of people prosecuted, according to the office’s data. However, criminal justice data has a tendency to undercount people in Latinx and indigenous communities by failing to accurately capture their identities due to

mischaracterizations and a lack of self-reporting. See Decolonize Justice, “Latino Data Gap,” <https://decolonizejustice.org/videos/film-5-latino-data-gap>.

26 The chart in Figure 5 shows that racial disparities were marginally lower for issued cases than for referred cases in 2016, 2017, and 2019 and marginally higher in 2018, indicating that the office does not appreciably (or always) reduce disparities. One notable trend here is that the disparity in issued cases appears to be creeping upward.

27 Leah Sakala and Nicole D. Porter, “Criminal Justice Reform Doesn’t End System’s Racial Bias,” The Sentencing Project, December 18, 2018, <https://www.sentencingproject.org/news/criminal-justice-reform-doesnt-end-systems-racial-bias/>.

28 For 2015 data, see Vera Institute of Justice, “Incarceration Trends: New York City, NY,” database (New York: Vera Institute of Justice), <http://trends.vera.org/rates/new-york-city-ny>; for 2020 data, see Vera Institute of Justice, “NYC JailViz 2.0 Application: Tracking New York City Jail Population Trends,” database (New York: Vera Institute of Justice), <http://52.71.132.68/nycjail/>.

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Credits

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