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No Such Thing as "Progressive Prosecutors"

Prosecutors have a lot of power in the criminal punishment system. Because of this, many have organized to elect so-called "progressive prosecutors." This strategy changes who is in power, but does not change the power structure itself.

In fact, while in office, these prosecutors have enlarged the resources, size, scope, and legitimacy of their offices. Prosecutors are also only one component of a system designed to punish. Instead, we can organize to shrink the power of the entire criminal punishment system. This will move us closer to a future without prosecution and without prosecutors.

Prosecutors have a lot of power in the criminal punishment system. For this reason, over the past decade in particular, advocates, organizers, journalists, funders and more have pointed to the prosecuting office as a primary site to push for decarceration. Many who approach the criminal punishment system as something that is broken and therefore can be fixed (let's call them "reformists"), have taken up a candidate-focused electoral strategy that seeks to elect so-called "progressive prosecutors," candidates who promise to implement a series of decarceral reforms once in office. We put the term "progressive prosecutors" in quotation marks because, as abolitionists, we understand prosecution to be a systemic component of the criminal punishment system [<https://www.communityjusticeexchange.org/en/abolitionist-principles>], a death-making system of racialized social control that cannot be progressive, no matter the personal politics of the individual person in office.

Besides being an oxymoron, law professor Benjamin Levin has written [https://minnesotalawreview.org/wp-content/uploads/2021/02/Levin_MLR.pdf] about how the term "progressive prosecutor" is a category that has no meaning, a term that "means many different things to many different people." We agree, and yet there are several prosecutors who have been elected in the last five years who have been nationally recognized by media [<https://www.theguardian.com/us-news/2019/jul/23/us-justice-system-progressive-prosecutors-mass-incarceration-death-penalty>], non-profits [<https://www.vera.org/events/reimagining-prosecution-progress-and-resistance>], journalists [<https://emilybazelon.com/books/>], funders [<https://bluetent.us/articles/campaigns-elections/who/>], voters [<https://theconversation.com/progressive-prosecutors-scored-big-wins-in-2020-elections-boosting-a-nationwide-trend-149322>], and *especially* themselves [<https://law.stanford.edu/publications/holding-prosecutor-offices-accountable-the-suffolk-county-district-attorneys-offices-approach-to-progressive-prosecution/>] as "progressive," "reform-minded," or "decarceral" prosecutors. These prosecutors include, but are not limited to,

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Philadelphia District Attorney (DA) Larry Krasner, Chicago State's Attorney Kim Foxx, Brooklyn DA Eric Gonzalez, Baltimore State's Attorney Marilyn Mosby, Boston DA Rachael Rollins, and San Francisco DA Chesa Boudin. All of these individuals are members of the non-profit organization and prosecutor network: "Fair and Just Prosecution [<https://fairandjustprosecution.org/meet-the-movement/>]."

The "progressive prosecutor" strategy seeks to change the person who is in power, but does not seek to upend the power structure itself. In this piece, we will provide examples of how the individual prosecutors who were elected under this mantle of reform have, in fact, further solidified the power structure of the criminal punishment system by expanding the resources, size, scope, and legitimacy of the prosecuting office. We argue that this is the very point of the reforms: to further entrench the prosecuting office, not destroy it. This piece is an invitation to pursue other organizing strategies that get us closer to our goal of a world without prosecution and therefore without prosecutors.

Admittedly, some of these prosecutors have instituted policies around charging or bail requests that may have contributed to decarceration in their jurisdictions. Fewer people in cages is an important step on the road to an abolitionist future with no people in cages or under any form of carceral control. However, decarceration is not consistently tracked by these offices and in many places, the release of some people (often people charged with less serious charges) allows for the doubling down on the detention of others. For example in Boston [<https://www.bostonglobe.com/2020/08/25/metro/suffolk-da-rollins-moving-away-high-cash-bail-hold-potentially-dangerous-defendants/>] and Philadelphia [<https://www.inquirer.com/news/larry-krasner-homicide-police-department-district-attorney--20210112.html>], there have been increases in prosecutor requests for exorbitantly high bail or pretrial detention without the possibility of release, particularly for gun-related offenses, often cementing the racial disparities these prosecutors campaigned against. During the early height of the COVID-19 pandemic, despite making performative pledges to reduce pretrial incarceration, the head prosecutors in Philadelphia, Baltimore, and Chicago [<https://www.nytimes.com/2021/02/04/opinion/prosecutors-bail-reform.html>] continued to request high money bail, to request people be jailed without option for release, and to contest money bail reductions. And regardless, decarceration is not the only metric. By design, the strategy of electing prosecutors with different ideological views does not diminish prosecutorial power over people, even if individual prosecutors choose not to use their power to charge or jail someone. Their successor, after all, could make the opposite choice.

Expanding Size & Resources of Prosecuting Office

One way to measure power is money. Prosecuting offices, like all aspects of law enforcement, are exorbitantly funded. This remains true for all prosecuting offices, regardless of who is at the head of the office. No prosecutor who ran a campaign on the promise to be less carceral has requested a reduction in their budget. In most cases, their budgets have increased (and in the rare cases when they did remain constant or decreased, it was due to overall city or state budget constraints, most recently due to the COVID pandemic). For example, in his proposed 2021 budget, Philadelphia District Attorney Larry Krasner proposed an over \$43 million budget, up 11% over his 2020 budget, to pay for new positions and initiatives. However, when the Philadelphia Mayor came out with the city budget, it included a reduction in the District Attorney's budget to \$33.3 million (a 14% reduction from 2020), which DA Krasner pleaded with the City Council to reject [<https://www.penncapital-star.com/criminal-justice/krasner-fights-impending-8-7m-budget-cut-to-das-office/#:~:text=Krasner%20pleaded%20with%20members%20of,his%20%244.9%20billion%20spending%20plan>].

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In other cities with prosecutors elected promising reforms, like Brooklyn [<https://council.nyc.gov/budget/wp-content/uploads/sites/54/2020/03/901-906-DA-and-SNP.pdf>] and Boston [<https://budget.digital.mass.gov/summary/fy21/enacted/independents/district-attorneys/suffolk-da?tab=historical-budget>], even with the pandemic, the prosecuting office's funding increased. And in Baltimore, since Marilyn Mosby was elected State's Attorney in 2015, the State's Attorney's Office budget has increased by a whopping 35 percent [<https://www.baltimoresun.com/opinion/op-ed/bs-ed-op-0617-mosby-prosecution-20210616-hxptnsdkfzeargoyx7bdeja-story.html>].

Often the budget increase requests are for hiring more staff, and therefore to increase the size of the prosecuting office, but also somewhat unique to these prosecutors, the increased funding is often also justified in order to institute "reforms." For example, besides hiring new staff, Philadelphia DA Krasner said [<https://www.penncapitalstar.com/criminal-justice/krasner-fights-impending-8-7m-budget-cut-to-das-office/#:~:text=Krasner%20pleaded%20with%20members%20of,his%20%244.9%20billion%20spending%20plan>] increased funding in 2021 was needed to ensure the effectiveness for a new anti-gun violence initiative, as well as to have more resources to investigate "police abuse." In the name of "transparency" and "accountability," DA Krasner's office also received \$4.5 million from private philanthropy foundations [<https://www.arnoldventures.org/newsroom/district-attorney-krasner-announces-dao-transparency-accountability-research-collaboration>] Arnold Ventures and the Chan Zuckerberg Initiative to study "the short- and long-term impacts of prosecutorial decision-making on individuals, families, and communities in Philadelphia." Philanthropic support has become common [<https://chanzuckerberg.com/newsroom/transforming-prosecution/>] over the last few years to both directly fund district attorney offices, as well as organizations that support them, as part of the effort to "transform prosecution [<https://fairandjustprosecution.org/>]." The San Francisco District Attorney office under Chesa Boudin received an increased budget by over \$6 million for 2022 [<https://www.sfweekly.com/news/is-san-francisco-re-funding-the-police/>], and "plans to use resources to reduce racial disparities in prosecution and expand diversionary programs as an alternative to incarceration." These prosecutors do not wish to shrink the office or prosecution, but rather to enlarge their staffing and power in order to implement new programs. Not only do they continue prosecuting people, and by definition ask for them to be put in cages, they also implement other programs and staffing in order to increase the reach of the prosecutor office. These changes are antithetical to abolitionist reform: The measure of abolitionist change is less power and control, not more.

Expanding Scope & Reach of the Prosecuting Office

Establishing and expanding diversion programs are one of the key ways prosecutors not only justify increased budgets, but also expand the scope and reach of the prosecuting office into service-provision, typically the realm of nonprofits, hospitals, and community-based organizations. Prosecutorial diversion often works like this: for certain cases (typically for charges that do not carry long jail sentences), the prosecutor will offer the person facing prosecution the opportunity to complete some kind of program, such as mental health treatment, therapy, drug treatment, or in the case of the Brooklyn DA, an art class [<http://www.brooklynda.org/2019/10/02/brooklyn-district-attorney-eric-gonzalez-announces-project-reset-in-partnership-with-the-center-for-court-innovation-and-the-brooklyn-museum-to-allow-those-arrested-for-certain-minor-offenses-to-avoid/>]. If they are able to complete the program successfully, the prosecutor will dismiss or reduce the charges against them. However, if there are any hiccups in completing the program, the prosecutor and the court retain authority to send the person to jail *not only* for the underlying and still-pending criminal charge(s), but also for breaching their conditions of release. These

programs often happen in partnership with non-profits or community-based groups. For example, sometimes the prosecuting offices are funding the programs at non-profits (like in Philadelphia [<https://medium.com/philadelphia-justice/da-krasner-announces-first-round-of-violence-prevention-grant-awards-to-community-based-groups-ef0e0190e4f9>] and Boston [<https://www.suffolkdistrictattorney.com/community-reinvestment-grant>]), sometimes the services at the community organizations are under the supervision and control of the prosecuting office, or sometimes the services can only be delivered with the permission of the prosecuting office [https://thecrimereport.org/2019/05/01/why-restorative-justice-should-be-on-every-prosecutors-to-do-list/?fbclid=IwAR2cxisU2KYsDRxTqRuhkhPB-DGH_icLzlyl-FrHz3nRbj08SKHltxRADuI]. These programs may seem benign, even positive, especially in cases where people successfully complete the program and avoid prosecution. However, what is also true, and by design in such a system, is that prosecutors, and the criminal punishment system more generally, not only now have power over whether or not someone is charged and prosecuted, but also whether they receive access to services and/or treatment. Further, they retain new power to punish in the absence of perfect compliance, whether "failure" to complete the program is willful or not. In other words, the reach of prosecuting offices also extends into neighborhoods and communities, all under the guise of "care" or "support."

Increasing the Legitimacy of the Prosecuting Office

This proximity to "care," "support," and "services" also increases the legitimacy of the prosecuting office as an institution that can deliver safety and healing, and obscures their core purpose, which is to punish. Another example of this is San Francisco DA Chesa Boudin, whose office partnered with Lyft [<https://sfdistrictattorney.org/press-release/partnership-with-lyft-to-provide-rides-to-victims-of-dv/>] and with AirBnB [<https://sfdistrictattorney.org/press-release/da-boudin-partners-with-newsom-and-airbnb-to-support-dv-survivors/>] to provide transportation and housing for survivors of domestic violence. These initiatives received applause from domestic violence organizations and the public, obscuring the choice the prosecuting office made to support and partner with private companies (who are notoriously anti-labor and contribute to gentrification) rather than advocate for funding to go directly to survivors themselves, to non-carceral anti-violence organizations, to affordable housing or to public transportation. It is a move that undermines public funding and infrastructure, while also cementing the power of the prosecuting office over survivors of domestic violence and strengthening the office's legitimacy as survivor-centered.

Diversion programs and other reforms—whether reducing racial disparities in prosecutions, or diversifying staff of the prosecuting office, or increasing investigations of police officers in individual, sensationalized cases—all contribute to the legitimacy of the prosecuting office. They are public relations strategies aimed at softening the prosecuting office's image, while continuing the machinery of criminal punishment under both new and old structures. They cement the idea that prosecuting offices, with just a few tweaks here and there, are necessary for ensuring justice, fairness, and safety. After the summer 2020 uprisings for Black liberation and against policing, Chesa Boudin, Rachael Rollins, and Larry Krasner (the DAs in San Francisco, Boston, and Philadelphia, respectively) came together with Shaun King's Grassroots Law Project (which is affiliated with a PAC that had supported many of their campaigns) and pledged to start Truth Justice and Reconciliation Commissions [<https://www.tjrc.org>] about police violence in their cities. In a moment of insurgency, as an insidious way to regain legitimacy, power and control, these prosecutors and some of their most prominent funders co-opted the language of movements in order to perpetuate and strengthen the myth that prosecutors can provide safety, justice, or reconciliation [<https://truthout.org/articles/prosecutors-have-no-place-in-truth-justice-and-reconciliation-commissions/>].

Despite co-opting movement language, one of the other ways these prosecutors bolster the legitimacy and necessity of prosecuting offices is by attacking and defacing organizers and movement organizations. Baltimore DA Marilyn Mosby, who has tried to convict Keith Davis Jr. for murder unsuccessfully four different times [<https://www.baltimoremagazine.com/section/historypolitics/the-many-trials-of-keith-davis-jr-remains-incarcerated-wife-fights-for-his-freedom/>] and is currently pursuing charges for a fifth time, was caught on video [<https://twitter.com/50ShadesofKellz/status/1395163868691845121>] giving the middle finger to a bicyclist who rode past her while shouting, "Free Keith Davis Jr.!" On Democracy Now [https://www.democracynow.org/2020/7/23/larry_krasner_philadelphia_protests_federal_agents], Philadelphia District Attorney Larry Krasner used fear-mongering and racist language to claim that by posting bail for people who could not afford it, the Philadelphia Community Bail Fund was allowing harm to happen in the community. Importantly, this stoking of fear also justified his office's practice of setting exorbitant, million dollar money bails. A very similar story [<https://www.suffolkdistrictattorney.com/press-releases/items/bail-fund>] transpired with Suffolk County District Attorney Rachael Rollins and the Massachusetts Bail Fund. Like all prosecutors, the prosecutors elected promising decarceration still believe in and sustain the idea that police and prosecutions are necessary to keep communities safe.

Prosecutors Cannot End "Mass Incarceration." Abolition Now.

One of the ways the "progressive prosecutor" strategy was sold to voters, by the candidates themselves and their supporters, was that by substituting a "tough-on-crime" prosecutor with a "progressive" or "decarceral" prosecutor, we could "end mass incarceration." But that was a lie. Prosecutors *are* key drivers of incarceration, but as individuals they cannot undo decades of hyper-criminalization and incarceration. Across the country, their reforms have been blocked or disrupted by their own staff [<https://www.politico.com/news/2021/01/25/george-gascon-california-social-justice-461667>], judges [<https://www.washingtonpost.com/dc-md-va/2020/08/28/arlington-prosecutor-goes-va-supreme-court-against-judges-who-challenge-her-new-policies/>], legislators [<https://www.themarshallproject.org/2022/02/03/prosecutors-who-want-to-curb-mass-incarceration-hit-a-roadblock-tough-on-crime-lawmakers>], cops [<https://www.nytimes.com/2022/02/04/nyregion/manhattan-da-alvin-bragg-memo-prosecution.html>], governors [<https://www.tampabay.com/florida-politics/buzz/2020/01/31/aramis-ayala-yanked-from-case-by-second-gop-governor-this-time-desantis/>] and all of the above [<https://www.nytimes.com/2020/06/11/opinion/george-floyd-prosecutors.html>]. Now, it seems, we must also elect "progressive" judges [<https://www.theatlantic.com/politics/archive/2019/05/progressive-prosecutors-judges/589222/>] and sheriffs [<https://theintercept.com/2019/10/07/county-sheriff-elections-virginia-louisiana/>] to really "end mass incarceration." Do we though? Or is it more accurate to recognize that "the whole damn system is guilty as hell [<https://www.essence.com/feature/breonna-taylor-justice-abolition/>]" and, no matter who holds the different positions, the structural design to control and punish remains the same.

Prosecution is just one component of a system that is designed to punish; a system that is rooted in and upheld by white supremacy, racial capitalism, and colonial conquest. Prosecution cannot function without policing, without the courts, without the law and procedure - targeting one component without understanding their interconnectedness as part of a racist and violent system leads to a never ending game of trying to whack-a-mole your way to change.

When we look at the above examples of what the elected prosecutors who promised reforms have done while in office, it is clear that they have only found new ways to expand the resources, size, scope, legitimacy, and therefore

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power of their offices. When people running for the office responsible for prosecuting people felt it was politically advantageous to claim they would be more "fair and just," they did so without giving up any power and control over the community. Whether you are "tough on crime" or "progressive" or "community minded" it is largely irrelevant if you seek to prop up the power of the office, expand your power and control over people and communities being prosecuted, and increase staffing and budget.

Fortunately, a candidate-focused electoral strategy is not the only way to target the prosecuting office. There are other organizing strategies that align with abolitionist principles and that do not further entrench the power of the prosecuting office. Whether organizing for the decriminalization of sex work or to defund prosecuting office's budgets, there are tangible steps to take that do shrink the power, size, scope, and resources of the prosecuting office and the entire criminal punishment system. These are the steps we can take as we build the power necessary to make a future without prosecution, policing, and prisons possible.

Source: <https://beyondcourts.org/en/learn/no-such-thing-progressive-prosecutors>

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