



September 9, 2020

## **Colorado Equitable Prosecution Statement of Principles**

In just four decades, Colorado's prison population exploded by six-fold, a direct consequence of harsh criminal and sentencing laws that too often sought to replace rehabilitation with punitive incarceration. Simultaneously, racial and economic disparities persist at every step of the criminal legal system, including criminal filing decisions, bail and pretrial determinations, plea bargaining, and sentencing. Historically, elected District Attorneys have wielded a tremendous amount of power in nearly all facets of the criminal legal system along with outsized influence on criminal justice policy enacted by state legislators.

The undersigned organizations believe that District Attorneys need to adopt principles and practices to ensure that the criminal legal system better fulfills its important function in a civil society. We believe that the work of Colorado's elected District Attorneys must be more responsive to the community in order to meet the needs of both people who have been harmed and people who have done harm, so that the legal system may more effectively promote healing and prevent crime. District Attorneys should also be more conscientious and limited in their use of incarceration.

Therefore, we call on elected District Attorneys to move past the antiquated and ultimately ineffective "tough on crime" policy frameworks of the past, reset culture within their offices, and work alongside stakeholders to reimagine how the criminal legal system can better fulfill its responsibilities to the community. Furthermore, we believe that elected District Attorneys have a critical role to play in advocating for transformative legislative reform efforts.

To that end, the undersigned offer the following principles as a vision for how elected District Attorneys can rebuild trust in the community to ensure that our criminal legal system is fair, accountable, equitable, effective, and transparent.

### **I. Ensure Office Culture and Practices that Promote Fairness, Accountability, Equity, Effectiveness, and Transparency**

An elected District Attorney must proactively ensure a fair and equitable office culture through the implementation of policies, supervision strategies, criteria for staff advancement, prosecution and investigatory protocols, training, and staff performance measures.

#### **A. Establish appropriate office culture within the first 100 days**

- Clearly establish their philosophy, goals, and priorities, and communicate those to employees and the public. Employee performance reviews should include metrics that align with this direction.
- The District Attorney should undergo an annual, publicly available, and formal performance review that includes input from judges, victims, witnesses, defendants, defense attorneys, law enforcement, and the community.
- Implement comprehensive data collection on race/ethnicity at all points of discretionary prosecutorial decision-making by prosecutors that impact both defendants and victims. Annually, an independent entity should analyze the data and report outcomes in a form that is accessible to the public.

- Adopt internal policies that align with best practices at every decision point in effectively responding to defendants with mental illnesses or substance use disorders, including harm reduction principles and strategies.
- Provide mandatory training by subject matter experts on issues including mental illness, drug and alcohol addiction, traumatic brain injury, brain development of adolescents, trauma-informed practice, vicarious trauma, violence interruption, homelessness, implicit bias, cultural competency, work with non-English speakers, and gaps in community-based services for both defendants and victims.
- Require deputy district attorneys to visit jails and prisons to better understand how incarceration impacts people and their families.

*B. Utilize appropriate and reliable investigatory techniques and methods*

- Thoroughly and independently investigate use of force and officer-involved killings, and, when charges are not filed, make written findings and a rationale for the decision not to prosecute available to the public.
- Institute discovery policies that require disclosure of any evidence that might qualify as being potentially relevant, regardless of whether it is inculpatory or exculpatory.
- Dismiss or decline to file charges in cases where the primary officers involved have a significant history of misconduct or untruthfulness, or where those officers obtained evidence in clear violation of the defendant's constitutional rights.
- Hold deputy district attorneys accountable, including through termination, for deliberate violations of ethical duties, discovery and *Brady* obligations, and office policies.
- Improve screening and investigation prior to filing charges in domestic violence cases to limit the likelihood that a victim of domestic violence may be erroneously identified as the perpetrator.

*C. Ensure fairness in criminal cases, including decisions to file charges, plea bargain offers, and sentence recommendations*

- Evaluate plea dispositions based on individual circumstances, particularly for people with a history of substance use disorder, mental illness, trauma, or traumatic brain injury. This consideration should also include the impact incarceration would have on minor children as well as other collateral consequences of conviction or sentence.
- Implement a formal policy to consider immigration consequences in appropriate cases during plea negotiations, and review requests for U visa certification for immigrant survivors of crime.
- Maintain plea offers where a defendant exercises their right to a preliminary hearing.
- Waive the two prior felony rule to allow judicial discretion for probation eligibility at sentencing.
- Provide a mechanism where defense attorneys can request that a prosecutor's supervisor review charges, a plea bargain, or a sentence recommendation that is believed to be disproportionate, biased, or unfair.
- If a prosecutor declines to file charges, provide information to victims on other options for redress, including community-based alternative to prosecution programs or resources for assistance in pursuing civil claims.

*D. Use community-based opportunities at every stage*

- Increase the use of both pre-filing and pre-plea diversion programs for adults and juveniles, including felony crimes, where there is not a substantial risk to the physical safety of another person.
- Expand the use of restorative justice programs as an alternative to sentencing or conviction where the victim agrees, including in felony cases.
- Support expanded use of graduated sanctions and support services to address technical violations of probation or community corrections, and only seek incarceration if the person presents a substantial risk to the physical safety of another person.

E. Align the prosecution of juveniles with best practices and the research on adolescent brain development

- Decline to prosecute juvenile cases related to typical adolescent behavior – such as fights, disorderly conduct, minor property damage, and alcohol and drug possession. Utilize pre-filing and pre-plea diversion and restorative justice programs.
- End the practice of direct filing except in first degree murder involving extraordinary aggravation, and seek transfer hearings only in cases of first degree murder or violent felony offenses where the accused was over 16 years old on the date of offense.

F. Limit pretrial detention

- Develop a policy that a summons in lieu of arrest is the presumptive standard for both misdemeanor and felony cases, unless there is a significant risk to the physical safety of another person. Encourage law enforcement to adopt this standard.
- Support court setting of bail hearings within 48 hours of arrest.
- Stipulate to personal recognizance bonds or the least restrictive conditions of bond, unless there is a significant risk to the physical safety of another person.
- Allow a short grace period in most misdemeanor and felony cases prior to seeking a warrant for failure to appear, unless there is a significant risk to the physical safety of another person. Develop non-custodial surrender options to clear outstanding warrants.

**II. Support Policy Reform of Unjust Sentencing Laws and Restore Judicial Discretion**

District Attorneys should play a leadership role in legislative reform efforts that proactively seek to remedy disproportionate sentences for communities of color, advance equity, and restore individualized determinations in sentencing.

- Support reform of the habitual criminal and mandatory sentence statutes to narrow the circumstances in which the statutes apply and to increase judicial discretion in sentencing.
- Support repeal of the two prior felony law to increase judicial discretion in sentencing.
- Support reform of the felony murder and extreme indifference statutes to differentiate these crimes, both in crime level and sentencing range, from first-degree murder.
- Support comprehensive sentencing reform with the intention of reducing incarceration rates, remedying racial disparity, and ensuring certainty and fairness in sentencing.
- Support a reduction in unrelated costs that can be levied in criminal cases and support use of waivers or reductions in fines, fees, court costs, and surcharges for indigent defendants.
- Support legislation and/or develop other processes to review existing sentences where changes to the law would render an original sentence unfair or disproportionate, or where that sentence may no longer be appropriate in light of rehabilitation, infirmity, or advanced age.
- Support substantial public investment in community-based safety efforts led by people of color and others directly impacted by the overuse of the criminal justice system.
- Support the re-evaluation of the mandatory arrest law for domestic violence to limit the possibility that a person who is actually the victim of domestic violence is arrested.
- Support requirements to ensure that victim compensation and victim services boards reflect the diversity of the community and that demographic data is collected and included in annual reports on state funds or state-managed federal funds used for victim compensation or victim services.