

Prosecutor Lobbying in the States, 2015–2018



The Prosecutors
and Politics Project

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About the Prosecutors and Politics Project

The Prosecutors and Politics Project is a research initiative at the University of North Carolina School of Law. Founded in 2018, the Project studies the role of prosecutors in the criminal justice system, focusing on both the political aspects of their selection and their political power. The Project endeavors to bring scholarly attention to the democratic accountability of elected prosecutors, to increase our understanding of the relationship between prosecutors and politics through empirical study, and to publicly share research in order to increase voters' knowledge about their elected prosecutors and broader criminal justice issues.

For more information about the Prosecutors and Politics Project, its mission, and its research, please visit <https://law.unc.edu/academics/centers-and-programs/prosecutors-and-politics-project/>

Questions about this report should be directed to the PPP director, Professor Carissa Byrne Hessick (chessick@email.unc.edu).

Executive Summary

American prosecutors are active lobbyists who routinely support making the criminal law harsher. During the years 2015 to 2018, state and local prosecutors were involved in more than 25% of all criminal-justice-related bills introduced in the 50 state legislatures. Prosecutors were nearly twice as likely to lobby in favor of a law that created a new crime or otherwise increased the scope of criminal law than a law that would create a defense, decriminalize conduct, or otherwise narrow the scope of criminal law. And when state prosecutors lobbied in favor of a bill, it was more than twice as likely to pass than an average bill.

Prosecutors appeared to have more success when they lobbied in favor of a bill than when they opposed a bill. Although bills with prosecutor support were twice as likely to pass, prosecutor opposition to a bill did not reduce its likelihood of passing.

Notably, prosecutors were more successful when they supported criminal justice reform bills than when they supported traditional law-and-order bills. Approximately 60% of bills that narrowed the scope of criminal law and 55% of bills that decreased punishment passed when supported by prosecutors. In contrast, when prosecutors supported bills that increased the scope of criminal law, only 40% of those bills passed; and bills that increased punishments did not fare much better, passing only 42% of the time.

Criminal Justice Bills Introduced

More than 22,000 criminal law and criminal justice bills were introduced in the 50 state legislatures during the four-year period from January 1, 2015 to December 31, 2018. The number of bills introduced varied wildly by state. The most bills (1536) were introduced in New York; the fewest bills (80) were introduced in Alaska. The median state introduced 296 bills.¹

¹ They way that different states grouped their companion bills affected these numbers. For example, if state legislature websites clearly linked companion bills to one another, then the state and house version of the same bill may were sometimes counted as a single bill, while they were

Our researchers coded the bills based on the criminal justice issues that they involved. They identified the following types of criminal justice issues:

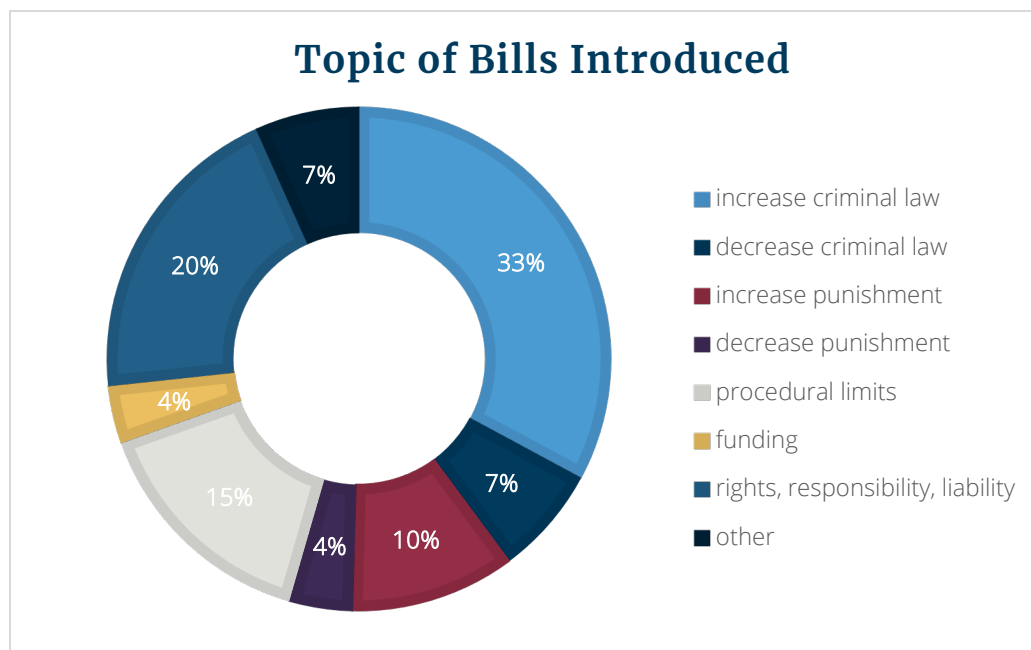
- Bills that increased the scope of criminal law by creating new crimes, broadening definitions, eliminating defenses, or otherwise increasing the coverage of substantive criminal law
- Bills that decreased the scope of criminal law by creating new defenses, narrowing definitions, decriminalizing conduct, or otherwise decreasing the coverage of substantive criminal law
- Bills that increased punishment by raising maximum sentences, instituting or increasing mandatory minimum sentences, increasing the amount of time before defendants are eligible for parole or early release, raising the amount of fines, or otherwise making punishment harsher
- Bills that decreased punishment by reducing maximum sentences, eliminating or decreasing mandatory minimum sentences, decreasing the amount of time before defendants are eligible for parole or early release, lowering the amount of fines, or otherwise making punishment more lenient
- Bills that changed relevant procedural limitations on criminal justice actors, including but not limited to bills that required search warrants for certain law enforcement activities, bills that altered bail and pretrial release procedures, and bills that changed evidentiary requirements.
- Bills that involved either increased or decreased funding for criminal justice activities
- Bills that altered the rights, responsibilities, or liability of criminal justice actors, including but not limited to bills that established or altered criminal-justice-related agencies, bills involving civil asset forfeiture, and bills that changed immunity protections for law enforcement.
- Bills that raised any other issue

When a bill touched on multiple issues, we coded it using multiple issue codes. For example, a bill that both would create a mandatory minimum of 30 days in jail for people convicted of driving while intoxicated and would provide

counted as two separate bills in other states where the legislature did not make the relationship as clear.

additional funding to county jails to offset the cost of increased jail populations received two separate issue codes.

Overall, state lawmakers were more likely to introduce bills that made the criminal justice system harsher than bills that made the law more lenient. More 40% of the bills introduced either increased the scope of criminal law or increased the sentencing range. In contrast, only 11% of bills narrowed the scope of criminal law or decreased punishment. Many criminal justice bills dealt with procedural issues. 35% of bills proposed changes in procedural limits or altered the rights, responsibilities, or liabilities of criminal justice actors. And less than 5% of bills dealt with funding issues.



Many of the bills that proposed changes in procedural limits or altered the rights, responsibilities, or liabilities of criminal justice actors did so in a way that favored prosecutors or law enforcement more generally. However, we did not code bills according to whether they would have helped or hurt law enforcement because such a designation would have required too much state-specific knowledge and because it may have proven to be too subjective of a determination.

Quantifying Prosecutor Lobbying

Overall, prosecutors were involved with 27% of bills that were introduced.² The extent of prosecutor lobbying varied from state to state. Prosecutors in Nebraska and Ohio lobbied on more than 95% of bills, while prosecutors in Maryland and Pennsylvania lobbied on only 7% bills introduced and prosecutors in Oklahoma lobbied on less than 6% of bills. We were unable to determine the full extent of prosecutorial lobbying in 12 states because the relevant legislative records were unavailable.³

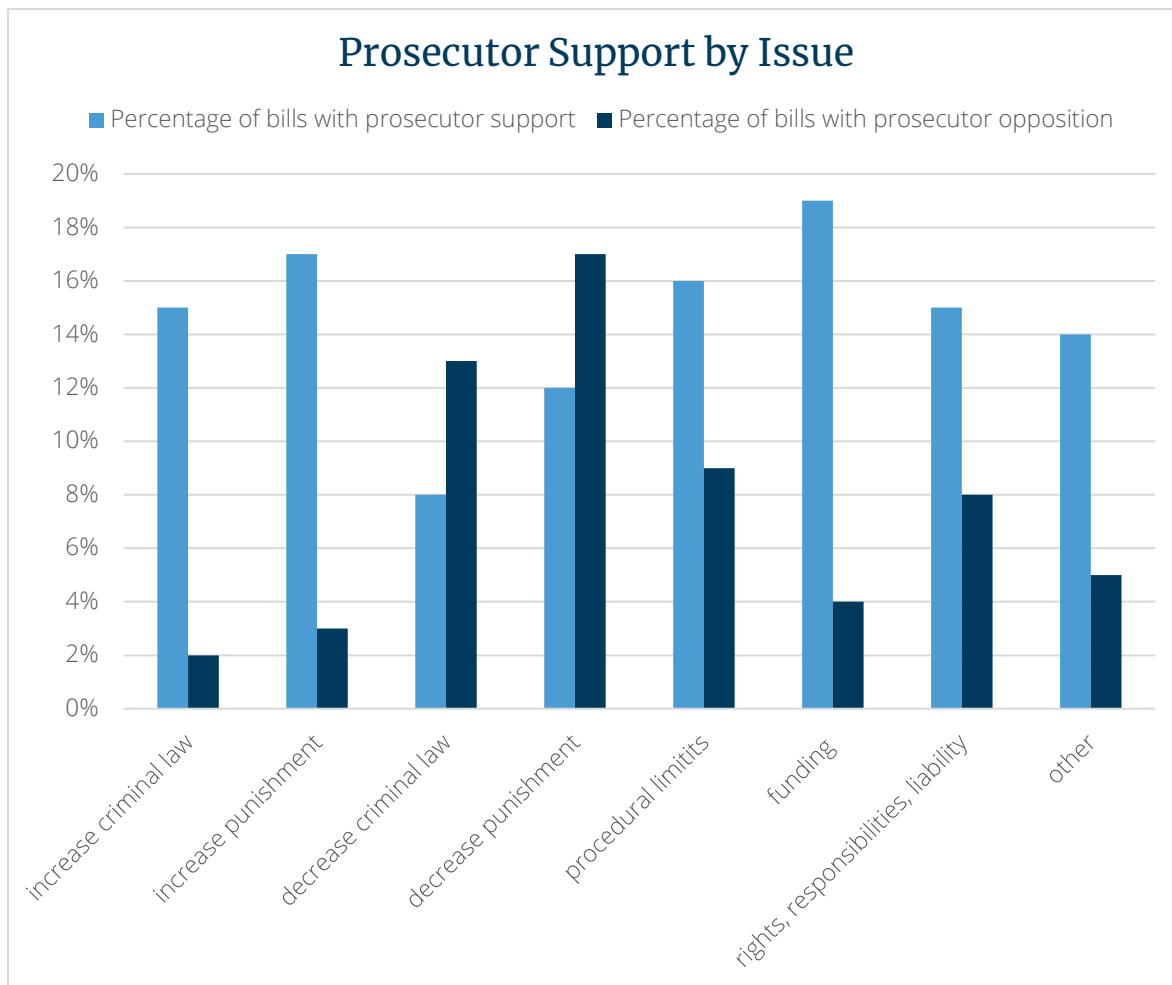
Prosecutors were more likely to lobby on certain legislative issues than others. They were most likely to lobby in favor of bills involving the funding criminal justice activities. They lobbied in support of 19% of all such funding bills that were introduced during the study period.

Overall, prosecutors were more likely to support bills that made criminal law harsher and to oppose laws that made criminal law less harsh. Prosecutors lobbied in favor of 15% of all bills that sought to create new crimes or otherwise expand the scope of criminal law. Similarly, they lobbied in favor of 17% of all bills that sought to increase punishment. Prosecutors opposed 13% of all bills that sought to create defenses, decriminalize conduct, or otherwise narrow the scope of criminal law. And they lobbied against 12% of all bills that sought to decrease punishment. In contrast, prosecutors rarely opposed bills that sought to increase the criminal law or increase punishment—they opposed only 2% and 3% of those bills respectively.

However, prosecutors' lobbying activity was not uniformly in favor of harsher laws and against leniency. They supported 8% of the bills that sought to decrease the scope of criminal law. And they supported 12% of bills that sought to decrease punishment.

² This figure excludes 5,388 of the 22,216 bills for which we were unable to determine whether prosecutors lobbied.

³ Those states are: Alabama, Arkansas, Kentucky, Mississippi, New Jersey, New Mexico, New York, North Carolina, South Carolina, Virginia, West Virginia, and Wyoming.



Quantifying Prosecutor Success

Nationally, prosecutors were most successful when they lobbied in favor of a bill. On average, only 22% of criminal law and criminal justice bills passed. Those bills that prosecutors supported had a 45% pass rate.

Prosecutors were less successful in blocking legislation that they opposed. The pass rate of bills that prosecutors opposed was 23%, which is slightly higher than the average pass rate. Notably, prosecutors were most successful in blocking bills that sought to decrease the scope of criminal law. When prosecutors opposed such bills, they passed only 15% of the time.

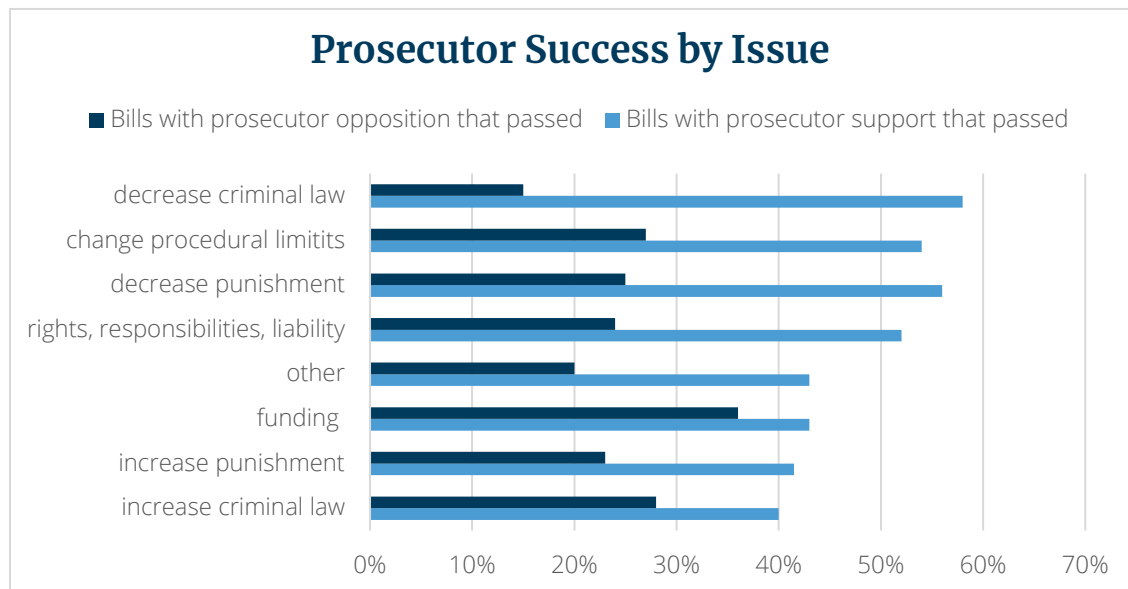
Of course, whether prosecutors lobbied in favor or against a bill does not necessarily mean that their support or opposition caused the bill to pass or to fail. Other groups lobbied as well, and state lawmakers may have made their

voting decisions without listening to lobbyists or interest groups. In other words, while this study measures the *success rate* of prosecutorial lobbying, it cannot offer any conclusions about the *effect* of that lobbying on the legislative process.

As with other issues, the success rate of prosecutor lobbying varied significantly from state to state. In Delaware, for example, every bill that prosecutors supported ultimately passed.⁴ Arizona prosecutors were also very successful lobbyists—none of the bills that they opposed was able to pass.

But prosecutors in other states did not fare as well. Bills supported by Nebraska prosecutors were no more likely to pass than bills they did not support. And bills supported by Missouri prosecutors were actually less likely to pass than the average criminal justice bill. In several states bills that prosecutors opposed were more likely to pass than the average criminal justice bill.

Prosecutor success rates differed by the type of legislation. Prosecutors were most successful when supporting bills that sought to decrease coverage of substantive criminal law. They were also most successful in opposing those types of bills.



⁴ We were unable to collect relevant information for 63 bills introduced in the Delaware legislature during the study period. So it is possible that not every single bill that prosecutors supported actually passed.

Coordinated Prosecutor Lobbying

Some prosecutor lobbying comes from specific prosecutor offices. An individual elected prosecutor or an employee in her office may choose to testify in favor or against a bill. The same is true for state attorneys general—some state AGs were active lobbyists.

But in many states the prosecutor lobbying was more coordinated. Most states have one or more organizations—often called associations or councils—that exist in part to lobby the state legislature. Some of these organizations are private non-profit corporations; others were created by statute. The organizations also serve other, non-lobbying purposes, such as providing training materials to local prosecutor offices or appointing members to serve on statewide commissions.⁵

The existence of these state organizations did not necessarily supplant the lobbying of individual prosecutors or the state AG. And, from time to time, the various prosecutors or their organizations took inconsistent positions on bills. When that occurred, we treated the bill as having both been supported and opposed by prosecutors.

Variation in the States

Prosecutor lobbying is different in different states. For example, even though prosecutors, as a group, were not very successful at blocking legislation, prosecutors in particular states were very successful. Most notably, the Arizona legislature did not pass a single bill that the states' prosecutors opposed. Thus, reports for each state—including both statistics and analyses of a select number of bills—are included in this report. As those reports indicate, prosecutors in different states engage in different amounts of lobbying, and they experience different levels of success when they lobby.

State variation notwithstanding, there are five clear national trends:

- First, prosecutors are heavily involved in the passage of criminal law and criminal justice legislation.

⁵ See generally Tyler Yeagain, *Prosecutorial Disassociation*, 47 AMERICAN JOURNAL OF CRIMINAL LAW 85 (2020) (providing more information about state prosecutor organizations).

- Second, prosecutors are more likely to support legislation that expands criminal law and criminal punishment than legislation that decreases the scope of criminal law or criminal punishment.
- Third, when prosecutors lobby in favor of legislation, it is much more likely to pass.
- Fourth, prosecutors are more successful when they lobby in favor of bills that seek to narrow the scope of criminal law and bills that seek to decrease punishment. Their success rate for these bills is 15% higher than their success rate when they support bills that increase the scope of criminal law or increase punishment. In other words, although they are more likely to support traditional law-and-order legislation, prosecutors are more successful when they support criminal justice reform legislation.
- Fifth, prosecutors are less successful at having legislation that they oppose fail than they are at having legislation that they support pass. The one notable exception to that trend is bills that seek to decrease the scope of criminal laws. When prosecutors oppose those bills, they are highly unlikely to pass.

About the Study

The information in this report was derived from three major sources: a) official legislative documents, b) news media accounts, and c) press releases, newsletters, and similar materials created and maintained by various state prosecutor organizations. The study period includes information from January 1, 2015 through December 31, 2018.

For legislative documents, researchers identified every bill related to the criminal justice system that was introduced in every state legislature during the study period. A separate spreadsheet was created for each state, and each bill was given its own row in the spreadsheet. In most states, bills could be identified by examining the legislature's own website. When a legislature's website proved difficult to navigate, researchers used LegiScan to identify bills instead.

Once all relevant bills were identified, researchers employed content analysis to code the following information for each bill: the nature of legislative actions taken (e.g., committee hearing, committee vote, floor vote, etc.), the topic that the legislation addressed (e.g., to increase the scope of criminal law, to decrease punishment, funding, etc.), and the nature of any involvement by a prosecutor association or an individual prosecutor (e.g., did they lobby in favor or against a bill, speak favorably but not endorse the bill, request amendments to the bill, etc.).

Information about whether a prosecutor lobbied proved the most difficult to locate. Some states had archived committee hearing videos, witness lists, or similar materials that allowed researchers to determine whether prosecutors spoke in favor or against particular bills. But in some states those materials were only sporadically available, and some states did not appear to make such materials available at all—at least, we were unable to locate the materials on the legislature's website. Thus, in order to expand information about prosecutor involvement, we supplemented official legislative materials with news media searches and materials from prosecutor associations.

The news media searches looked for stories that mentioned the state prosecutor organizations and their leadership in the newspapers of their respective states. Searches were conducted in two databases: LexisNexis and

NewsBank's America's News. Researchers also supplemented those two databases with Google News searches.

Researchers created a separate spreadsheet for news media results from each state. Using content analysis, researchers recorded any news story that mentioned the policy positions or lobbying activity of a prosecutor association. Researchers also sought out any information on association support or opposition of particular bills from the associations' website bill trackers, newsletters, press releases, etc. Using this information and the news media spreadsheet, researchers then updated the state spreadsheets of individual bills to include any additional information about prosecutorial involvement.

News media searches sometimes revealed that prosecutors were lobbying behind closed doors. For example, there is no public record of prosecutors testifying against an Arizona bill that would have expanded the state's Criminal Justice Commission. However, news reports make clear that the bill was killed in committee after the Maricopa County prosecutor met privately with the bill's sponsor.⁶ It is doubtful that all such private meetings were reported by the media. Thus, it is likely that our study undercounts the amount of prosecutor lobbying that occurs.

All spreadsheets and the content analysis codebook are publicly available in the UNC Dataverse.⁷

⁶ Megan Cassidy, *Justice Statutes Resistant to Reform; Critics: Prosecutors Thwarting Bipartisan Bills*, THE ARIZONA REPUBLIC, May 9, 2018, at A15.

⁷ <https://dataverse.unc.edu/dataset.xhtml?persistentId=doi:10.15139/S3/BQ2DRT>

State Reports

The following state reports contain three sections. The first section provides a statistical overview of prosecutor lobbying in that state. For those states in which information about prosecutor lobbying was entirely or largely unavailable, statistics are not provided.

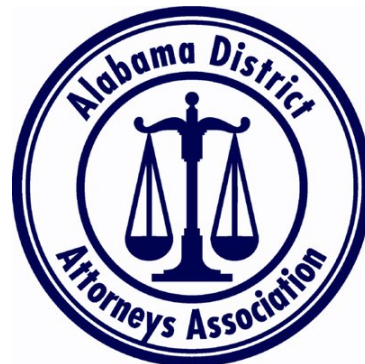
The second section provides information about any state prosecutor organizations. Drawing largely on the organizations' websites, contemporary and historical media accounts, and any relevant statutes, the section provides an overview of each organization's composition and history. When a state contains multiple organizations, the section also provides information (to the extent it is available) about any relationship between the organizations.

The third section of each report provides information about the specific bills on which prosecutors lobbied. Using both official legislative materials and media accounts, the section identifies the major legislative issues during the study period and the position that prosecutors took on those issues. Where available, the section also provides direct quotes from prosecutors or prosecutor organizations explaining their support or opposition for particular bills.

State of Alabama

Alabama District Attorneys Association

It is difficult to assess the lobbying efforts of Alabama prosecutors because so much data was unavailable. We were able to confirm that prosecutors lobbied on at least 20 bills, which constitute 11% of the 188 criminal justice bills introduced during the study period. Given how much information is missing, it is not possible to assess the frequency or success of those lobbying efforts.



Association Composition and History

The Alabama District Attorneys Association (ADAA) is composed of the state's 42 elected district attorneys, one per county.¹ The association has a five-person Executive Committee composed of currently-serving district attorneys.

The ADAA mission statement is largely focused on training and victims' assistance: "The ADAA is committed to creating safe communities, providing assistance to crime victims and advocating for excellence in the legal system. The association provides resources and assistance to district attorneys' offices throughout Alabama, contributing to the fair and efficient administration of justice."²

Barry Matson is the Executive Director of the Alabama District Attorneys Association.³ His current social media accounts list him as the Deputy Director of Prosecutor Services.⁴ There are several lobbyists on the ADAA payroll, but it is not clear what their duties are.⁵

Recent media accounts suggest that the ADAA is an influential lobbying force. For example, one state legislator who was attempting to reduce the penalty for marijuana possession said, "If I don't get the DAs' support, the bill is not going to move forward."⁶

The Association appears to have some sort of authority over criminal prosecutions. In 2018, the ADAA entered into an agreement with Alabama

federal prosecutors to send more cases to the federal courts in order to avoid overcrowding in Alabama prisons.⁷

News accounts suggest that the ADAA may have been in existence since the early 1900s. A 1911 news article discusses the priorities of the Arkansas Prosecuting Attorneys' Association, which is presumably a precursor to the current association. That article indicates that the association was focused on issues like the felony of perjury and whether the death penalty should be abolished.⁸

Analysis

The most significant debate during the study period was a bill that would have limited the use of civil asset forfeiture and required a systemic way of tracking those forfeitures. The ADAA and the state sheriffs strenuously opposed this legislation, which was supported by criminal justice reform groups.⁹ Barry Matson, along with other district attorneys, criticized the bill, calling it “grossly false” and full of “incorrect facts.”¹⁰ The 2018 bill failed to pass although a similar bill did become law in 2019 after the study period ended.

Of the bills where we have relevant data, the ADAA sometimes assisted in the drafting or amending of a bill. For example, the ADAA assisted with the drafting of SB 67, which increased the sentences for several crimes.¹¹ Prosecutors also supported harsher sentencing laws for repeat DUI convictions.¹²

The ADAA opposed legislation that would have created more lenient rules for carrying loaded firearms¹³ and supported adding fentanyl to a list of controlled substances that carried harsh criminal penalties for possession.¹⁴

“No part of me or anybody on the proponents' side wants to put more people in jail. This is about lives. This is such a deadly substance.

Barry Matson, Executive Director of the
Alabama District Attorneys Association¹⁵

The ADAA opposed bills that would limit the use of harsh punishments. One example was prosecutorial opposition to legislation that would have prohibited a judge from overriding a jury verdict for the death penalty and required a unanimous jury to impose the penalty.¹⁶

“Jurors aren’t accustomed to making such decisions and it would be difficult to get unanimous agreements to impose a death penalty.

Barry Matson, Executive Director of the
Alabama District Attorneys Association

Another bill the ADAA opposed would have limited the number of juveniles sent to adult court.¹⁷ Barry Matson, the executive director of the ADAA, argued that this law would place “violent older teens” in the same juvenile facility as “non-violent, property offenders.”¹⁸

Bills that the ADAA supported were related to the sex trafficking of minors. For example, the ADAA supported legislation that excluded exploited juveniles from being charged with criminal prostitution.¹⁹

“As district attorneys, our members see cases of human trafficking firsthand. Their call is not just to prosecute the traffickers, though that is critical, but also to help the victims out of their dire situations. Most often, these are children and women who are controlled by traffickers through coercion, physical force or fraud.

Barry Matson, Executive Director of the
Alabama District Attorneys Association²⁰

¹ <https://alabamadistrictattorney.org/who-we-are/#our-mission>

² *Id.*

³ *Id.*

⁴ See <https://www.linkedin.com/in/barry-matson-162b164a>

⁵ Financial disclosures list Barry Matson, Randall Hillman, Wesley Ryan Welch, and Thomas Coker as lobbyists. Randall Hillman’s social media says he is the executive director of the ADAA. See <https://www.linkedin.com/in/randall-hillman-268189130>. Wesley Ryan Welch is a lobbyist at Forbes Tate Partners in Washington, D.C. and appears to be tied to other Alabama politicians. See <https://forbes-tate.com/> and <https://www.opensecrets.org/federal-lobbying/lobbyists/summary?cycle=2020&id=Y0000025957L>. Thomas Coker is a professional lobbyist in Alabama. See <https://thesoutherngroup.com/team/tom-coker/>.

⁶ Mike Canson, “Lawmakers want to reduce penalty for pot possession,” Birmingham News (Feb. 21, 2018).

⁷ Carol Robinson, “Federal, state prosecutors join forces to keep dangerous criminals behind bars longer,” Birmingham News: Web Edition Articles (Jan. 19, 2018), <https://www.al.com/news/birmingham/2018/01/federal-state-prosecutors-join.html>

⁸ “Robert L. Rogers Heads Prosecutors.” Daily Arkansas Gazette (Jan 1, 1911), Page 7.

⁹ SB 213 (Regular Session 2018). Failed to pass. A similar bill was HB 518 (Regular Session 2018). Failed to pass. See Brian McVeigh & David Sutton, Guest Voices, "Don't gut civil asset forfeiture," The Montgomery Advertiser (Feb. 12, 2018),

https://www.al.com/opinion/2018/02/dont_gut_civil_asset_forfeiture.html

¹⁰ See John Sharp, "Alabama AG Steve Marshall says civil asset forfeiture works fine; GOP opponents disagree," Birmingham News; Web Edition Articles (May 15, 2018). The ADAA argued that the Southern Poverty Law Center and Alabama Appleseed were spreading false information about the use of civil asset forfeiture in the state. In 2019, after the U.S. Supreme Court questioned the constitutionality of excessive civil asset forfeiture in Alabama, the district attorneys implemented a volunteer reporting system for civil asset forfeiture similar to what the bill proposed. See Evan Mealins, "Ivey signs civil asset forfeiture law," Alabama Political Reporter (June 13, 2019), <https://www.alreporter.com/2019/06/13/ivey-signs-civil-asset-forfeiture-law/>. See also John Sharpe, "After Supreme Court ruling, how will Alabama press civil asset forfeiture reform," AL.com ((Feb 28, 2019), <https://www.al.com/news/2019/02/after-supreme-court-ruling-how-will-alabama-reform-civil-asset-forfeiture-reform.html>; Alabama District Attorneys Association, Press Release, "The Alabama Forfeiture Accountability System Created," (Feb. 29, 2019), https://alabamadistrictattorney.org/wp-content/uploads/2019/03/ADAA-Montgomery-Press-Release-2_28_29.pdf. A bill limiting civil asset forfeiture (SB 191) passed in 2019 with lobbying by the ACLU. See <https://www.aclualabama.org/en/legislation/sb191-2019-civil-asset-forfeiture>

¹¹ SB 67. Regular Session 2015. Passed into law.

¹² SB 162. (Regular Session 2015). Failed to pass. Bill was brought on behalf of the ADAA.

¹³ SB 14 (Regular Session 2016). Pending. The opposition came largely from the Alabama Law Enforcement Alliance for Public Safety, a group of sheriffs, police, district attorneys and other public safety officials.

¹⁴ HB 203 (Regular Session 2017). Failed to pass. The ADAA initiated this legislation. SB 29 (Regular Session 2018). Became law on 3/28/18. The ADAA also supported adding other analogues to the prohibited substances list. See SB 226 (Regular Session 2016). Passed 5/4/16.

¹⁵ Testimony in support of SB 29. The ADAA argued that existing laws were insufficient to charge those in possession of fentanyl.

¹⁶ SB 16, Act 2017-131 (Regular Session 2017). Enacted 4/14/17. Alabama was at the time the only state to allow a judge to impose a death sentence over the object of a jury. Another similar bill was SB 67 (Regular Session 2015), which did not pass. See <https://eji.org/reports/judge-override/> (Noting that the 2017 legislation did not apply retroactively.)

¹⁷ HB 64 (Regular Session 2017). Pending.

¹⁸ The student researcher says this came from a news article, but I don't have the original source.

¹⁹ HB 433 (Regular Session 2016). Passed into law.

²⁰ Alabama District Attorneys Association, Press Release, "Human Trafficking Awareness Day," (April 24, 2019), http://alabamadistrictattorney.org/wp-content/uploads/2019/04/ADAA-Human-Trafficking-Awareness-Press-Release-2_28_29.pdf (Note that this is a press release. No official lobbying information.) A similar bill was HB 305 (Regular Session 2018), which increased the penalties for human trafficking. Became law 3/28/18. See also HB 245. (Regular Session 2018). Failed to pass. (Bill would have increased penalties for obstructing human trafficking laws.)

State of Alaska

Alaska State Prosecutors' Association

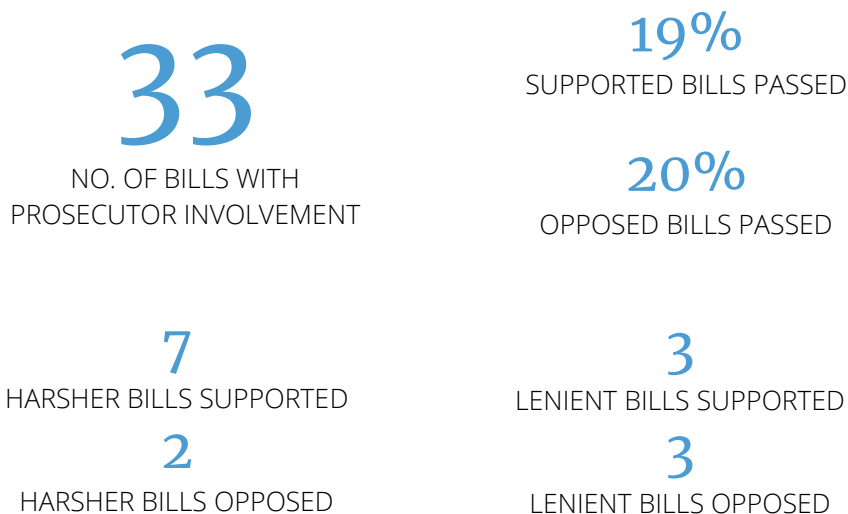
Alaska Department of Law

Alaska prosecutors were active lobbyists; they were involved in approximately 41% of the criminal justice bills introduced in the state legislature during the relevant time period. Alaskan prosecutors, lobbied on 33 out of 80 total bills.¹



When the Alaska prosecutors lobbied, they were only somewhat successful. On average, the legislature only passed 15% of criminal justice bills that were introduced. When prosecutors lobbied in favor of a bill, the bill was just slightly more likely to pass (19% pass rate); when they lobbied against a bill, there was no difference in passage rate (20% pass rate).

Overall, Alaska's prosecutors tended to support more punitive bills. Prosecutors supported 7 bills that would have either expanded the criminal law or increased punishments. However, Alaska's prosecutors' lobbying was not uniformly in favor of more punitive laws. They opposed 2 bills that would have either expanded the criminal law or increased punishments. When it came to bills which would have decreased the scope of criminal law or decreased sentences, the prosecutors supported 3 such bills and opposed 3.



Association Composition and History

Alaska, unlike most states, does not have elected prosecutors. Instead, Alaska operates more like the federal Department of Justice, with a highly centralized statewide office. Most major prosecutions are handled by the state entity, and branch offices are in charge of all other prosecutions.

There is a Department of Law, which is a part of the state's executive branch, and oversees civil and criminal matters. The head of the Department of Law is the Attorney General, who is appointed by the governor. According to the website, Alaska's Attorney General "serves as the legal advisor for the governor and other state officers, prosecutes all violations of state criminal law, and enforces the consumer protection and unfair trade practices laws."² As part of their job, the Attorney General testifies in front of the state legislature with respect to criminal statutes.

The Attorney Generals during the period of time studied were Craig Richards (2014-2016), Jahna Lindemuth (2016-2018) and Kevin Clarkson (2018-2020).³

The Department of Law has a Criminal Division, which is overseen by a Deputy Attorney General and a Director.⁴ Both the Deputy AG and Director of the Criminal Division also testify in front of the legislature with respect to criminal legislation being considered. According to the website, the Criminal Division "prosecutes violations of state criminal law committed by adults and a large portion of the serious crimes committed by juveniles."⁵ The Criminal Division also has an Office of Special Prosecutions that handles "environmental crime, child support enforcement, welfare fraud, PFD and tax fraud, Medicaid provider fraud, cold case prosecutions, selected fish and game prosecutions, white collar crime and other special prosecutions" alongside civil litigation challenging statutes related to criminal justice, for instance sex offender registration, or victims' rights."⁶ The Criminal Division also represents the Department of Corrections and Public Safety and assists with "drafting legislation, regulations, policies, and procedures."⁷

Because Alaska does not have counties, there are Regional Criminal Offices that handle "day-to-day" prosecutions.⁸ There are 13 regional offices, each with a District Attorney.⁹ The only regional office with a website is the Anchorage District Attorney's Office.¹⁰

Analysis

Alaska's Department of Law appears to largely serve as an expert resource for the legislature in terms of drafting and amending legislation. As a result, much of the testimony presented tended to be relatively neutral when compared to other states. This could also be partially a function of the fact that prosecutors in Alaska are not elected and, therefore, are not lobbying in order to persuade an electorate.

The involvement of Alaska's Department of Law largely follows two statewide initiatives. The first occurred in 2016 when the state created the Alaska Criminal Justice Commission Membership and undertook an effort to reduce the size of the criminal justice system to reduce costs and prevent the construction of a new prison.¹¹ The result was two competing packages, House Bill 205¹² and Senate Bill 91,¹³ both of which created a number of different reforms including the restoration of drivers' licenses, more good time credits, and other changes.¹⁴ SB 91, specifically, was opposed by many law enforcement groups in the state.¹⁵ However, SB 91 was generally supported by the Department of Law and the Attorney General, then Jahna Lindemuth, who served on the committee that made the recommendations.

Not only did the Department of Law support SB 91, but the Attorney General also announced in a press release that she thought the changes were productive.

SB 91 was needed because our prior laws were not working as we had hoped. Since 2005, when Alaska adopted "tough on crime" laws, our incarceration rates went through the roof. But increasing prison sentences did not reform criminals or make our communities safer in the long run. In fact, two-thirds of offenders released from jail were back behind bars within three years.

SB 91 offers an entirely new approach to criminal justice. Because substance abuse factors into most crimes and more than 40% of our inmates have mental health issues, a primary goal of SB 91 is to treat addiction and mental illness. SB 91 reduced prison sentences for all but the most serious crimes. We still aggressively prosecute serious crimes like homicides and sexual assaults and we will continue to seek long

prison terms for violent criminals. But the legislature has told our prosecutors to think creatively when pursuing less serious crimes, especially where a substance abuse problem or mental health issue is a factor. Similar reforms in other states show these reforms can work.¹⁶

In 2018, the governor and legislature became more concerned with an increase in felonies and felony prosecutions in 2017. This prompted a series of proposed measures in 2018 that were intended to make the criminal laws more punitive and create more opportunities for rehabilitation, called the “Public Action Plan.”¹⁷ The Attorney General made a specific plea for more resources.¹⁸

“We urge the House to starting hearing and moving the bills in our legislative package so we can...Reduce recidivism by giving prisoners work opportunities and online reentry planning tools.
Jahna Lindemuth, Attorney General¹⁹

Another bill from the 2018 package that the Department of Law supported allowed judges to use out-of-state criminal histories when making pretrial release decisions.²⁰ Robert Henderson, the Deputy Attorney General of the Criminal Division, Office of Special Prosecutions, Department of Law argued in favor of the law even as he expressed some concerns that the look-back period was limited.²¹

Other legislative efforts that the Department of Law favored were expansions of laws that would make the system generally more punitive. Many were related to illegal substances and the prosecution of them. For example, Attorney General Jahna Lindemuth supported a bill that would allow the Attorney General’s office to increase the penalties for drugs without waiting for the legislature to pass a law.²² The Attorney General also wrote a letter in support of HB 24, which added a synthetic opioid to the list of controlled substances.²³

Finally, the Department of Law also weighed in on asset forfeiture statutes. In 2017, the legislature considered HB 42, which would have allowed a court to order the return of seized property with limitations. Jon Skidmore, the Director of Legal Services Section, Criminal Division, Department of Law, offered detailed explanations as to how the statute would work²⁴ and expressed the Department of Law’s general support for the measure, but wanted the Department of Law to provide some feedback and amendments.

¹ The Department of Law often functioned more like an expert witness, providing information on legislation. This number includes only those bills where the Department of Law offered a specific recommendation on whether or not a bill should pass. See Association Composition and History for more details.

² <http://www.law.state.ak.us/departments/about.html>

The duties and powers of the Attorney General are found in AS 44.23.020.

³ http://www.law.state.ak.us/departments/ag_past.html

⁴ http://www.law.state.ak.us/departments/criminal/criminal_div.html#prosecution

⁵ http://www.law.state.ak.us/departments/criminal/criminal_div.html#prosecution

⁶ http://www.law.state.ak.us/departments/criminal/criminal_div.html#prosecution

⁷ http://www.law.state.ak.us/departments/criminal/criminal_div.html#prosecution

⁸ http://www.law.state.ak.us/departments/criminal/criminal_div.html#prosecution

⁹ <http://www.law.state.ak.us/departments/about.html#dao>

¹⁰ <http://www.law.alaska.gov/departments/criminal/adao.html>

¹¹ http://www.akleg.gov/basis/get_documents.asp?session=29&docid=52456

¹² 29th Legislative Session (2015-2016).

¹³ The differences between HB 205 and SB 91 are detailed here.

http://www.akleg.gov/basis/get_documents.asp?session=29&docid=65562

¹⁴ http://www.akleg.gov/basis/Bill/Detail/29?Root=HB%20205#tab5_4

¹⁵ http://www.akleg.gov/basis/get_documents.asp?session=29&docid=66413

¹⁶ <http://law.alaska.gov/press/releases/2016/120816-SB91.html>

The Attorney General also made a plea for more funding.

¹⁷ Part of this backlash was likely a reaction to the passage of SB 91, which continued to attract criticism by law enforcement agencies. See

<https://www.alaskasnewsresource.com/content/news/Polymakers-behind-SB-91-recommend-tougher-penalties-for-various-crimes-412306483.html>

¹⁸ <http://law.alaska.gov/press/releases/2018/081518-PSAP.html>

¹⁹ Jahna Lindemuth, *Let's not play politics with public safety*, Juneau Empire (AK), Apr. 15, 2018. Op-ed.

²⁰ SB 150, 30th Legislative Session. Also part of the Public Action Plan.

²¹ <http://www.akleg.gov/basis/Meeting/Detail?Meeting=SJUD%202018-04-02%2013:30:00>

²² SB 146, 30th Legislative Session.

²³ HB 24, 30th Legislative Session. See letter at

http://www.akleg.gov/basis/get_documents.asp?session=30&docid=686

²⁴ See <http://www.akleg.gov/basis/Meeting/Detail?Meeting=HJUD%202017-03-27%2013:00:00> where Jon Skidmore uses the Millennium Falcon from Star Wars as an example to explain asset forfeiture.

State of Arizona

Arizona Prosecuting Attorneys' Advisory Council

Arizona prosecutors were not particularly active lobbyists; they were involved in approximately 13% of the criminal justice bills introduced in the state legislature during the relevant time period. The legislature considered 136 criminal justice bills. (They lobbied on 18 of 136 total bills.)



When Arizona prosecutors lobbied, they were very often successful. On average, the legislature only passed 29% of criminal justice bills that were introduced. When the APAAC or an individual prosecutor lobbied in favor of a bill, the bill was significantly more likely to pass (69% pass rate); when they lobbied against a bill it did not pass (0% pass rate).

Overall, Arizona prosecutors were somewhat more likely to support more punitive bills. Prosecutors supported 6 bills that would have either expanded the criminal law or increased punishments, and they opposed 0 bills that would have either expanded the criminal law or increased punishments. When it came to bills that would have decreased the scope of criminal law or decreased sentences, prosecutors supported 4 such bills and opposed 2.

18

NO. OF BILLS WITH
PROSECUTOR INVOLVEMENT

69%

SUPPORTED BILLS PASSED

0%

OPPOSED BILLS PASSED

6

HARSHER BILLS SUPPORTED

0

HARSHER BILLS OPPOSED

4

LENIENT BILLS SUPPORTED

2

LENIENT BILLS OPPOSED

Association Composition and History

The Arizona Prosecuting Attorneys' Advisory Council (APAAC) consists of 23 members. The members include the Attorney General, 15 elected County Attorneys (one from each Arizona county), 4 municipal prosecutors, a municipal prosecutor appointed by the Governor, a representative of the Arizona Supreme Court, and the dean of one of the state's law schools. The Council leadership includes a chair and a vice chair. The APAAC also maintains a six-person staff.

The APAAC's mission statement is "[e]mpowering prosecutors through training and advocacy to serve as Ministers of Justice." The APAAC further states that they "strive to build criminal justice bridges with the greater community." The APAAC describes their primary mission as coordinating and providing "training and education to prosecutors throughout Arizona."

The Arizona Prosecuting Attorneys' Advisory Council began in 1973 as the Arizona County Attorneys' Association. The Arizona Legislature subsequently created the APAAC by statute in 1977.

Analysis

Of the results obtained during the test years, it does not appear that Arizona prosecutors or the Arizona Prosecuting Attorneys' Advisory Council were particularly active. However, this seeming inactivity may be deceptive as reports indicate much of the state's prosecutor lobbying occurs behind closed doors.

News accounts suggest that Arizona prosecutors are more active and influential in the legislative process than the study results indicate. According to a 2018 article,¹ prosecutors successfully thwarted bipartisan criminal reform through private, rather than public lobbying. The article specifically mentioned Maricopa County Attorney, Bill Montgomery and Yavapai County Attorney, Shelia Polk. Montgomery was dubbed "one of the most influential" prosecutors. A lobbyist for the Arizona Attorneys for Criminal Justice said, "What is most frustrating is our falling so far behind is not due to lack of support among lawmakers or the general public. The blame lies with a few prosecutors, who work the political system to prevent common-sense and popular reforms from ever receiving a vote." The article did not just report frustration from lobbyists, it also pointed to a specific criminal justice bill sponsored by a Republican legislator that would have expanded the Arizona Criminal Justice Commission; although no prosecutor

lobbyist officially supported or opposed the bill, the bill was dropped from the committee schedule after Montgomery met with the sponsor.

In another example of bills being thwarted by prosecutors before public prosecutor activity, one bill² which would reduce drug penalties, and another bill³ that would reduce possession of a small amount of marijuana from a felony to a misdemeanor, never made it to a hearing. No prosecutor publicly supported or opposed either bill, but Maricopa County Attorney, Montgomery, made public statements to the Arizona Republic that he opposed both bills.⁴

These practices may not only obscure a full understanding of how influential Arizona prosecutors are, but it may also help to explain why our study rarely found prosecutors opposing legislation publicly—the bills prosecutors would have opposed never even made it to a hearing. Specifically, during the test years, the state’s prosecutors only publicly opposed two bills. One such bill was SB 1057, which provided that if a city or town classifies an offense as a misdemeanor and does not also provide a culpable mental state, the culpable mental state that is required is intentional, unless the offense is a drug offense, in which case the culpable mental state is knowing. In other words, the bill provided a mens rea gap filler of knowingly for all non-drug crimes. Kimberly MacEachern of the APAAC, Austin Hoopes of Pinal County Attorney’s Office, and Kathleen Mayer of Pima County Attorney’s Office signed up to speak against the bill in committee hearing.

“ I understand the goal of this . . . is to . . . separate between what should be a civil penalty and what should be a criminal act, but I’m not so sure this [bill] is going to get you there just based on this mens rea idea.

Kimberly MacEachern, APAAC

Similarly, Emily Jurmu of the APAAC signed up to oppose SB 1337, which provided an affirmative defense to prosecution for possession or cultivation of marijuana.

As for bills prosecutors publicly supported, a number made the Arizona’s criminal law more punitive. For example, HB 2053 provided a mandatory minimum sentence for sexual extortion and HB 2241 provided a minimum sentence for possession or use of various illicit substances. Kathleen Mayer of the Pima County Attorney’s Office and Amanda Rusing of the Arizona Attorney General’s Office for HB 2053 signed up to speak on behalf of 2053, but did not end up publicly testifying. Kathleen Mayer and Rebecca Baker of Maricopa County Attorney’s

Office, and Shelia Polk⁵ spoke on behalf of HB 2241. Of the bill, Shelia Polk said, “drug dealers know the law and mandatory minimums are a significant deterrent.”

Prosecutors also involved themselves in other bills that expanded the state’s criminal law. For example, HB 2244 provided that for a dangerous crime against a child, it is not a defense that the minor is a person posing as a minor or is otherwise fictitious if the defendant knew or had reason to know the purported minor was under 15 years old. Other punitive bills included SB 1350, which expanded the actions considered terrorism, while HB 2378 delineated the offense of a police officer committing unlawful sexual conduct. HB 2245 removed the possibility of bail for sexual assault with a minor or molestation of a child. Prosecutors signed up to speak in favor of each of these bills.⁶

Arizona prosecutors also spoke in favor of a number of procedural bills. HB 2383 is one such bill, which provided that in a special action brought for release of any record created or received by or in the possession of law enforcement or prosecuting agency that relates to criminal investigation or prosecution and that visually depicts the image of a witness under 18, the petition shall establish the public interest in disclosure outweighs the witness’ or victims’ right to privacy.

““ The purpose of this legislation is to protect crime victims and crime witnesses. We would like a statute that makes it very clear that if someone is a witness to a crime, their personal information . . . will be redacted before the record is disclosed.

Rebecca Baker, Maricopa County Attorney

Another procedural bill, HB 2312, required a person to apply only to a court instead of a judge, magistrate, etc. to have a judgment of guilt of a criminal offense set aside. While Rebecca Baker and Kathleen Mayer signed up to speak for the bill, neither ended up actually testifying at hearing. HB 2356 provided the procedural process for courts to retain jurisdiction over juveniles. Rebecca Baker and Kathleen Mayer again signed up to speak for HB 2356.

““ The purpose of this legislation is to allow the court . . . to extend their probation supervision and services of adjudicated 17- year-olds up to the age of 19.

Rebecca Baker, Maricopa County Attorney

Another procedural bill, SB 1163, prohibited bail if a person is in custody for a capital offense, sexual assault, sexual conduct or molestation with a minor who is under 15, and a serious felony offense if there is probable cause to believe that the person has entered or remained in the United States legally.⁷

Prosecutors also spoke in favor of HB 2517, which affected their own funding. The bill provided that if unclaimed prize money on winning lottery tickets is less than \$900,000 each fiscal year, the difference between 70% and the amount shall be transferred to the internet crimes against children enforcement fund, administered by the Attorney General. While Kimberly MacEachern of the Arizona Prosecuting Attorneys Advisory Council signed up to speak for the bill, the Attorney General himself spoke on this bill and said,

“There are kids out there that can’t protect themselves . . . we have an obligation to protect them . . . and that is what this bill does. I wanted to let you know how supportive our office is of this bill.

Mark Brnovich, Arizona Attorney General

The bills above represent actions the state’s prosecutors and APAAC itself publicly took positions on. APAAC issued several policy statements during the study years indicating that the organization was supportive of certain criminal justice reforms. For example, in 2015, APAAC published the Deferred Prosecution Guidelines intended to give minimum standards for conducting a Deferred Prosecution Program. The policy statement provided criteria for identifying participants, suggesting program content, providing for courtesy supervision, suspension of prosecution, termination procedures, fees, and mandated reporting. This policy statement may have resulted in HB 2379 and SB 1158 both of which included prosecutor support from the APAAC and individual prosecutors.⁸ HB 2379 provided that a city or town is permitted to establish a prison work, community restitution work, or home detention program for eligible sentenced prisoners, while SB 1158 provided that if a person is convicted of an offense and not granted a period of probation, or when probation is revoked, community restitution or education/treatment may be imposed.

Similarly, in 2017 the APAAC published another policy statement on substance abuse and behavioral health. The statement supported drug intervention options directed to changing substance abuse and behavioral health challenges, which includes residential treatment, therapeutic community treatment, wrap-around services, and court supervised drug monitoring. However, prosecutors did not

participate in any bills related to such policy matters. It is possible that prosecutor activity that more closely aligns with the above policy statements occurred off the record, but publicly available materials do not allow us to draw such a conclusion.

¹ Megan Cassidy, *Justice Statutes Resistant to Reform; Critics: Prosecutors Thwarting Bipartisan Bills*, THE ARIZONA REPUBLIC, May 9, 2018, at A15.

² H.B. 2303, Fifty-third Legislature (2018 Second Regular Session).

³ H.B. 2597, Fifty-third Legislature (2018 Second Regular Session).

⁴ Megan Cassidy, *Justice Statutes Resistant to Reform; Critics: Prosecutors Thwarting Bipartisan Bills*, THE ARIZONA REPUBLIC, May 9, 2018, at A15. Despite the assertions made in this article, there were not many other news reports discussing Arizona prosecutors' activities.

⁵ Shelia Polk is the Yavapai County Attorney but signed up to speak for HB 2241 in her individual capacity.

⁶ Shelia Polk spoke for HB 2244, Paul Aylor (council for the criminal division of the Arizona Attorney General's Office) spoke for SB 1350, Kathleen Mayer spoke for HB 2378, and Rebecca Baker spoke for HB 2245.

⁷ Kathleen Mayer signed up to speak for the bill while Amanda Rusing of Arizona Attorney General's Office signed up to provide neutral testimony on the bill though neither spoke.

⁸ Kimberly MacEachern of APAAC signed up to speak for the HB 2379. Amanda Rusing of the Arizona Attorney General's Office signed up to give neutral testimony for the bill. Liana Garcia and Kathleen Mayer of Pima County Attorney's Office signed up to speak for the bill but did not speak.

State of Arkansas

Arkansas Prosecuting Attorneys Association

Arkansas Prosecution Coordination Commission

It was difficult to assess the lobbying activity of Arkansas's prosecutors because so much data was unavailable.¹ Only 55 out of 424 bills had enough information to evaluate prosecutorial activity. Of those bills, 23 showed lobbying activity by Arkansas's prosecutors. Out of those 23 bills, the prosecutors lobbied in support of one bill and opposed the other 22.



Association Composition and History

Arkansas has two, apparently related, prosecutor organizations. Information about both organizations is limited.

The Arkansas Prosecuting Attorneys Association (APAA) is a “non-profit organization that was incorporated in January 1975” with four main goals:

- To promote the interests of prosecutors and the administration of Justice in Arkansas;
- To foster education, research and cooperation with other professional associations and institutions in enforcing criminal laws and improving the criminal justice system;
- To serve as a conduit for the flow of information to government officials on matters related to the field of prosecution; and
- To encourage the honor, integrity, and expertise of prosecuting attorneys.²

The APAA has an elected board, which includes “seven Elected Prosecuting Attorneys who meet approximately eight times each year. The Board includes a President, Vice-President, Secretary/Treasurer and four at large members who serve one-year terms. Elections are in December for the upcoming year starting in January.”³ Significant portions of the APAA website are password protected.

The second organization, the Prosecutor Organization Commission, was also created in 1975. It was created by statute.⁴ Like the Board of the APAA, it is

comprised of seven members, who are chosen by the state's prosecuting attorneys.⁵ The Commission is statutorily empowered to "[a]dvise the governor and the General Assembly as to the long-range and short-range goals and needs concerning crime rates and the criminal justice system and its impact on the victims of crime."⁶ The Commission has an "Office of the Prosecutor Coordinator,"⁷ which has been led by Bob McMahan since 1997.⁸

Like the APAA, the Commission does not make much information publicly available. The Prosecuting Coordinator has a website, but there is no content on that website other than an address.⁹

There is a 2011-2013 budget document from the Office of the Prosecutor Coordinator available online. It provides a mission and history of the office:

The Office of the Prosecutor Coordinator (PCO) was created in 1975 by Act 925, A.C.A. 16-21-201. The Prosecution Coordination Commission, a seven member board chosen by elected prosecuting attorneys, sets the overall policy of the Coordinator's Office. The office provides a broad range of technical assistance and support services for prosecuting attorneys, their deputies, and support staff. The PCO has the following main program areas: Legal Research, Continuing Legal Education, Lending Library, Publications, Civil Commitments, Victim/Witness, and Computers.¹⁰

The document says the budget for fiscal year 2012 was \$1,064,367 and for fiscal year 2013, \$1,082,039.¹¹ Another document explains the mission statement of the Prosecuting Coordinator thus: "[I]mprove the criminal justice system by promoting professionalism in the offices of Arkansas Prosecuting Attorneys and Victim Service Providers through education, information, liaison, and advocacy."¹²

The relationship between the APAA and the Commission is unclear. The Commission is authorized by statute to "[e]ducate professionals, law enforcement, judges, state agencies, and victim services providers on . . . [t]he role of the Arkansas Prosecuting Attorneys Association."¹³ McMahan, the Assistant Prosecutor Coordinator, Lori Kumpuris, and leadership of the APAA all lobbied the legislature during the study period. It appears that the Prosecuting Coordinator works with the APAA leadership to set policy and legislative priorities, but we were unable to confirm this.

Analysis

It was difficult to locate information about lobbying in Arkansas. Audio files of Senate Committee hearings are only available after 2019, and recordings of House Judiciary Committee meetings are available only on an inconsistent basis.

Because legislative history materials were largely unavailable, we do not have a clear picture of how often prosecutors lobbied the state legislature or what legislative outcomes they lobbied for. We do have some limited information about certain types of legislation Arkansas's prosecutors opposed.

Arkansas prosecutors, for example, strongly opposed legislation involving changes to the state death penalty statute. Media stories suggest that the APAA as a whole was in favor of the death penalty as a punishment¹⁴ although the opinion may not have been unanimous.¹⁵ In 2017, the Arkansas legislature considered a proposal to raise the burden of proof required before a death sentence could be imposed.¹⁶ Bob McMahan, on behalf of the APAA, argued that the proposed measure "creates a difficult, impossible standard that probably cannot be met."¹⁷ The second death penalty bill would have exempted anyone with a mental illness from being eligible.¹⁸ Again, the APAA opposed the bill on the ground that it would effectively end the death penalty in Arkansas.¹⁹

The APAA opposed other bills that sought to eliminate harsh sentences. The Arkansas legislature considered a bill that would have eliminated life-without-parole as a potential sentence for defendants under 18 at the time of the crime.²⁰ Then APAA President Larry Jegley (also the Prosecuting Attorney for Pulaski County) objected to the bill, telling the media that retroactive parole eligibility would hurt the families of victims:

“The victimization is the same regardless of the age of the perpetrator,” said Jegley, adding that his opposition was shared by all 28 prosecuting attorneys in the state. “We’re not locking them up because of their age. We’re locking them up because of what they did.”²¹

Arkansas prosecutors also lobbied against “stand your ground” legislation.²²

In 2016, there was a ballot initiative to legalize medical marijuana.²³ The APAA lobbied against the bill alongside other law enforcement agencies.²⁴ The APAA

suggested to the media at the time that the proposal was a back-door route to legalize marijuana, challenging the notion that anyone was being arrested for medical use:

Talking to reporters Wednesday after a news conference at the state Capitol, Lonoke County Prosecuting Attorney Chuck Graham said police are not breaking down the doors of sick people who use marijuana for their symptoms. “That’s not what the police are doing. They are overwhelmed with just all the other crime that’s out there,” he said. Asked if he would prosecute a cancer patient who used marijuana, Graham said he would if police presented a case to him, but he said he has never seen that happen in 40 years in law enforcement.²⁵

The one bill with evidence of prosecutorial support was legislation that increased fines for crimes that required specific cybercrime resources.²⁶ Bob McMahan testified in favor of the bill, which ultimately passed.

¹ Arkansas did not record and archive Senate Committee until 2019. House Judiciary committee meetings were available on an inconsistent basis. These numbers likely do not reflect the full extent of prosecutor activity.

² APAA website. “About.” <http://www.arkpa.org/about>

³ *Id.*

⁴ Ark. Code Ann. § 16-21-201.

⁵ Ark. Code Ann. § 16-21-202.

⁶ Ark. Code Ann. § 16-21-206(4).

⁷ Ark. Code Ann. § 16-21-204.

⁸ See Mara Leveritt, “Prosecutors have all the power,” *Arkansas Times* (Sept. 14, 2014), available at <https://arktimes.com/news/cover-stories/2014/09/11/prosecutors-have-all-the-power>

⁹ See <https://portal.arkansas.gov/agency/office-of-the-prosecutor-coordinator/>

Bob McMahan is listed as the Prosecutor Coordinator in the Arkansas state government directory.

<https://portal.arkansas.gov/agency/office-of-the-prosecutor-coordinator/employees/bob-mcmahan/>

¹⁰ <https://www.arkleg.state.ar.us/Committees/Document?type=pdf&source=2011%2FAgency+Budget+Summaries%2F2011R&filename=0028>

¹¹ <https://www.arkleg.state.ar.us/Committees/Document?type=pdf&source=2011%2FAgency+Budget+Summaries%2F2011R&filename=0028>

¹² https://www.dfa.arkansas.gov/images/uploads/budgetManuals/0028_prosecutor_coordinator2017.pdf

¹³ Ark. Code Ann. § 16-21-206(2)(A).

¹⁴ In the spring of 2017, the Governor of Arkansas scheduled 8 executions to take place over 11 days due to a limited supply of midazolam. See “The Arkansas Eight Update,” *American Bar Association*, (Dec. 1, 2017), available at https://www.americanbar.org/groups/committees/death_penalty_representation/project_press/2017/year-end/the-arkansas-eight-update-three-stays-remain-in-place/

Bob McMahan issued a statement on behalf of all 28 prosecuting attorneys supporting the executions: “Decades of appeals have confirmed the wisdom and justice of those sentences.” April 20, 2017 memo to media. Available at <https://www.scribd.com/document/345791820/Arkansas-Prosecuting-Attorneys-Association-Statement>.

¹⁵ See, e.g. “Larry Jegley, president of the Arkansas Prosecuting Attorneys Association, said he wasn’t aware of any pending efforts to alter the state’s capital punishment laws. Twenty six of the 28 Arkansas prosecutors said they were against the Senate effort to do away with the death penalty but Jegley said restarting executions isn’t a legislative priority.” Allen Reed, “Whither Arkansas death penalty: Abolition? Add firing squad?” *Associated Press* (March 1, 2015). The Arkansas legislature considered a 2015 bill to abolish the death penalty. SB 298. 90th GA. While this story suggests some dissenting opinions among prosecutors, there were no findings of lobbying by prosecutors on behalf of eliminating capital punishment.

¹⁶ HB 1798. 91st GA. The bill died in committee.

¹⁷ Recorded testimony for HB 1798.

¹⁸ HB 2170, 91st GA. Recommended for study in the Interim by Joint Interim Committee.

¹⁹ Nathan Smith APAA and Scott Ellington (2nd JD) testified in opposition. Unclear from the student notes if Bob McMahan testified.

²⁰ The proposal would have required parole consideration after a minimum of 30 years or 20 years depending on the severity of the crime. HB 1197. 90th GA. Did not pass.

²¹ Andrew DeMillo, “Proposal to end life without parole for juveniles tabled,” *Associated Press* (Feb. 18, 2015). Lori Kumpuris, the Assistant Prosecuting Coordinator, testified against making the bill retroactive. See Claudia Lauer, “Arkansas court to hear case on past juvenile life sentences.” *Associated Press* (April 13, 2015).

²² HB 1240. 90 GA. Larry Jegley, president of the APAA, lobbied against a “stand your ground” proposal, arguing it would create too much confusion. See Reed. Allen. “Arkansas lawmakers mull pro-gun proposals.” *Associated Press*. Feb. 8, 2015.

²³ [https://ballotpedia.org/Arkansas_Medical_Cannabis_Act_Issue_7_\(2016\)](https://ballotpedia.org/Arkansas_Medical_Cannabis_Act_Issue_7_(2016)) and [https://ballotpedia.org/Arkansas_Medical_Marijuana_Amendment_Issue_6_\(2016\)](https://ballotpedia.org/Arkansas_Medical_Marijuana_Amendment_Issue_6_(2016))

²⁴ See “What’s the issue? - For issues 1, 2; against issues 6 and 7,” *Northwest Arkansas Democrat* (Oct. 20, 2016) (“The Arkansas Prosecuting Attorneys Association suggests voters just say no.”).

²⁵ John Lyon, “Election; Law groups oppose medical marijuana,” *Times Record* (Oct. 20, 2016).

²⁶ SB 586. 91st GA. Bill passed into law.

State of California

California District Attorneys Association

California prosecutors were very active lobbyists; they were involved in approximately 56% of the criminal justice bills introduced in the state legislature during the relevant time period. (Prosecutors lobbied on 405 out of 745 total bills for which we had sufficient information to gauge prosecutor involvement. There were an additional 24 criminal justice bills for which sufficient information was not available.)



When California's prosecutors lobbied, they were not particularly successful. On average, the legislature passed 45% of criminal justice bills that were introduced. When the California District Attorneys Association (CDAA) lobbied in favor of a bill, the bill was just slightly more likely to pass (47.4% pass rate); when they lobbied against a bill, there was actually an increased passage rate (52% pass rate).

Overall, California's prosecutors were much more likely to support more punitive bills and to oppose more lenient laws. They supported 127 bills that would have either expanded the criminal law or increased punishments, while they only opposed 7 such bills. When it came to bills would have decreased the scope of criminal law or decreased sentences, the prosecutors supported only 14 such bills and opposed 37.

405
NO. OF BILLS WITH
PROSECUTOR INVOLVEMENT

47.4%
SUPPORTED BILLS PASSED

52%
OPPOSED BILLS PASSED

127
HARSHER BILLS SUPPORTED

7
HARSHER BILLS OPPOSED

14
LENIENT BILLS SUPPORTED

37
LENIENT BILLS OPPOSED

Association Composition and History

The California District Attorneys Association (CDAA) is composed of the elected district attorney from each of California's 58 counties as well as "experienced deputy district attorneys."¹ The CDAA leadership includes Officers, all of whom are all sitting district attorneys, and a Board of Directors, which consists of some elected district attorneys, some chief assistants, and some ex-district attorneys and chief assistants.² The CDAA also has a substantial number of full-time employees.³

According to its website, the CDAA's mission is "to promote justice by enhancing prosecutorial excellence."⁴ The website goes on to explain, "To that end, CDAA is THE source of continuing legal education and legislative advocacy for its membership. In addition to offering seminars, publications, and extensive online tools, CDAA serves as a forum for the exchange of information and innovation in the criminal justice field."⁵ The CDAA also receives "state and federal grants" for special projects, including forensic training, domestic violence, vehicle crimes, high-tech crimes, and environmental crimes.⁶

The website indicates a fairly dedicated amount of time and effort towards tracking legislation and sponsoring legislation related to prosecutorial initiatives.

Contrary to what some members of the Legislature may believe, district attorneys are not monolithic in our response to new criminal justice ideas. For each of the initiatives and laws that have come about, there were district attorneys who supported them and there were those who opposed them. What was uniform, however, was the careful analysis and reasoning each took for his or her position on the propositions and the statutes.

The point to be made here is that district attorneys must study and assess each new proposal in order to take an appropriate position for their offices and for public safety in their communities. CDAA and its Legislative Committee, under the leadership of Ventura County District Attorney Greg Totten and Merced County District Attorney Larry Morse, study each of the new reform ideas and take positions on many proposals. CDAA's legislative staff including director Sean

Hoffman, as well as Marty Vranicar and CEO Mark Zahner, are a ready resource for every prosecutor to take advantage of.

Stephen W. Wagstaffe, San Mateo County District Attorney
and CDAA President for 2016-17⁷

The CDAA is not the only organization that lobbies on behalf of California's prosecutors. In addition, the individual district attorney's offices – especially the larger offices in Los Angeles, San Diego, and Sacramento – also lobby the legislature on behalf of their own offices.⁸ The Los Angeles Deputy District Attorneys also have their own association, called the Association of Deputy District Attorneys (ADDA), which lobbies on behalf of the line prosecutors in the Los Angeles County District Attorney's Office.⁹

The California District Attorney Association was formed in early 1902. According to one news article: "The object of the organization is to bring about an interchange of views and united action for the common good, and to assist the members in the discharge of their official, civil and criminal prosecuting duties."¹⁰ Every district attorney was a member of the association.

The first legislative discussions for the new association included the penalties for larceny versus theft and permitting some felony convictions based on non-unanimous jury verdicts.¹¹ Then San Francisco District Attorney Charles M. Flickert became the first president of the association.¹² A 1911 newspaper article describes the debates as being conducted in "the most learned legal manner."¹³ By the second year of the association's existence, a newspaper described it as "a splendid medium of official and social intercourse and of great public benefit, in that through it legal business can be expedited."¹⁴ "Sad time ahead for criminals," read one headline.¹⁵

Analysis

During the study period, the CDAA largely opposed many reforms intended to reduce sentences and further decrease prison populations throughout the state. For example, the CDAA opposed a bill to release elderly inmates who were over 60 and had served at least 25 years on their sentence.¹⁶

Over the last decade, we've seen a steady erosion of constitutional principles of truth in sentencing, and Marsy's Law, at the expense of

accountability and public safety. AB 1448 continues this troubling trend.

California District Attorney Association¹⁷

Another example of reform legislation California prosecutors opposed was AB 2590, which allowed judges to impose “community-based punishment” for certain misdemeanors. The intended goal of the legislation was to allow for more rehabilitative opportunities.¹⁸

“The language in AB 2590 authorizing a court to sentence a convicted defendant to ‘community-based punishment’ provides no exceptions for individuals convicted of serious or violent felonies, sex offenses, or any other criminal acts. Regardless of whether one believes that allowing a court to essentially make up sentences on a case-by-case basis is a good idea (we happen to think it is not), it defies any public safety interest to extend such latitude to sentences of individuals whose criminal conduct indicates a threat to the community.

California District Attorney Association¹⁹

Similarly, California’s prosecutors opposed a bill that would limit the ability of prosecutors to lengthen sentence lengths by stacking charges.²⁰

“The practical effect of SB 1279 is to give a volume discount to criminals who victimize four or more individuals, or those who would otherwise be subject to a significant enhancement.

California District Attorney Association²¹

Another example of such a bill that the CDAA opposed was AB 1762, which would have allowed prosecutors to dismiss nonviolent criminal charges levied against victims of human trafficking.²² The CDAA submitted a written comment:

“We believe that AB 1762 would promote criminal conduct by creating an incentive for traffickers to enlist their victims to commit crimes, knowing full well that the people they press into service will not be held responsible for their actions. This proposal would allow a defendant whose claim was heard and rejected at trial to return.

California District Attorneys Association²³

The district attorneys in California also vigorously opposed SB 1437, which changed the felony-murder rule to require substantial participation in or knowledge of the murder itself.²⁴

“While we agree that there is room for some measured reform in this area, the complete elimination of murder liability goes too far and draws no distinction between those who participate in dangerous felonies that result in the death of someone and those which do not...We are committed to working to find a reasonable and measured approach to felony murder reform. Unfortunately this bill falls short and creates some potentially disastrous and costly problems that render this bill unworkable.

California District Attorneys Association²⁵

California’s prosecutors also opposed a series of bills designed to reduce the impact of mass incarceration on young people, including the protection of substantive rights, expansion of the definition of youth for the purposes of criminal punishment, and reducing the use of adult court for juveniles. For example, prosecutors opposed a bill that expedited parole hearings for youth under 23.²⁶ The CDAA also opposed a bill that would have given juveniles the right to an attorney before any interrogation by law enforcement.²⁷

“We believe that the procedure sought by this bill would frustrate criminal investigations and cast doubt upon voluntary confessions introduced at trial...SB 1052 would expand those protections even further, by mandating a consultation between a juvenile and an attorney – a consultation that the juvenile is prohibited from waiving. Failure to follow this procedure would result in a host of sanctions designed to undermine the credibility of any statements made by the juvenile, regardless of whether any actual coercion took place...Given the additional protections in place to guard against unlawfully obtained juvenile confessions, we believe this bill creates an unworkable and costly process that would frustrate our criminal justice system.

California District Attorneys Association²⁸

California prosecutors opposed SB 1391, which prevented prosecutors from transferring 14- and 15-year-olds to adult court.²⁹

“ This legislative action is clearly inconsistent with the intent of Prop 57...Voters recognized that some crimes required accountability in adult court.

Michele Hanisee, President, ADDA³⁰

In addition, California’s prosecutors opposed SB 395,³¹ which required children under 15 to consult with an attorney before waiving Miranda rights, SB 394, which eliminated Life Without Parole as a sentence for youth under 18,³² and AB 1308, which expanded the eligibility for youth parole to young people up to 25 years old.³³

“ Given the additional protections in place to guard against unlawfully obtained juvenile confessions, we believe this bill creates an unworkable and costly process that would frustrate our criminal justice system.

California District Attorney Association³⁴

During the study period, there was a debate within legal and political circles and the legislature about prosecutorial misconduct. The CDAA protested that proposed legislative changes were too extreme, while also insisting that concerns about prosecutorial misconduct were unnecessary.³⁵ For example, prosecutors opposed a bill that would have imposed criminal penalties on prosecutors who fail to disclose favorable evidence to defense counsel as required under *Brady v. Maryland*.³⁶

“ Let's make sure the conduct that is proscribed is actually misconduct.

Sean Hoffman, Director of Legislation for CDAA³⁷

California’s prosecutors also strenuously opposed legislation that would reform cash bail systems to prevent the detention of people solely because of an inability to pay.³⁸

“ It would be a horrible mistake if our Legislature decides that we should let loose defendants before trial, and remove an effective way to ensure their return to court to face charges, for a misguided notion that the bail system is unfair.

Marc Debbaudt, President of the ADDA³⁹

California's prosecutors also opposed eliminating asset forfeiture without a conviction.⁴⁰ California law provides that the CDAA receive 1% of forfeited funds within the state.⁴¹

“ [SB 443] would have been changed for the worse and this dangerous piece of legislation would have crippled the ability of law enforcement to forfeit assets from drug dealers, especially now, when current laws make arrest and incarceration an incomplete strategy for combating drug trafficking.

Marc Debbaudt, President of the ADDA⁴²

Another proposal involved removing prosecutions for police shootings from the local district attorney and appointing an independent prosecutor. Prosecutors opposed this legislation.⁴³

“ This bill reflects a fundamental misunderstanding of the role of a prosecutor and the administration of justice. It is bad public policy and, indeed, would undermine the pursuit of justice and threaten the safety of police officers and residents throughout California.

Marc Debbaudt, President of the ADDA⁴⁴

In general, the CDAA was aligned with the victims' rights lobby and supported many provisions that increased victims' rights and related legislation. For example, prosecutors supported a bill that made it easier for victims to claim restitution.⁴⁵

“ The bottom line is that the law needs to be flexible enough to deal with victim restitution in all cases. We need to be able to set the victim restitution amount in the first place, whenever it becomes known, and we need to be able to correct the amount of victim restitution when it is discovered to be incorrect.

California District Attorneys Association⁴⁶

Another major issue California prosecutors supported was the collection of DNA evidence from people arrested and charged with crimes, even when the alleged crime was nonviolent. For example, the CDAA, ADDA, Sacramento District Attorney's Office, San Bernardino District Attorney's Office, and Los Angeles District Attorney's office all supported a law to expand DNA capture for individuals being resentenced under new, more lenient guidelines.⁴⁷

“DNA evidence will help meet Prop 47’s safety goals by keeping neighborhoods safe from dangerous recidivist sex and violent offenders who would otherwise remain undetected for their worst offenses.

Los Angeles District Attorney’s Office⁴⁸

California’s prosecutors also supported many laws that would have made criminal punishments harsher and expanded the definition of certain crimes. For example, they supported SB 676, which would have limited the impact of recent reforms that reduced criminal penalties. They also supported AB 1065, which was a proposal to add “organized retail theft” as a crime, which would allow prosecutors to charge repeat shoplifters with a felony and get a greater sentence.⁴⁹

Prosecutors occasionally supported laws to reduce the severity of criminal punishment. For example, the San Diego District Attorney’s Office did support a bill that gave prosecutors the discretion to charge certain misdemeanors (where the punishment was under 6 months in jail) as either a misdemeanor or an infraction.⁵⁰

“SB 617 will result in steering minor offenders away from the criminal justice system, and from the stigma associated with it. It will allow offenders to be held accountable while avoiding costs associated with protracted court involvement, jury trials, attorney representation, confinement, and probation involvement, all of which are inapplicable to infractions.

San Diego District Attorney’s Office⁵¹

And the Santa Clara District Attorney supported a bill that would allow prosecutors to make a request for the court to recall and resentencing cases.⁵²

“While we prosecute zealously those who commit crimes that harm members of our community, I also recognize that there are some cases where new information casts doubt on the wisdom or justice of the original sentence.... I don’t believe a prosecutor’s job is done after the conviction, but instead the demands of justice continue. When we discover new evidence that points to innocence, we act. When we discovery new evidence that casts real doubts on the justice of a sentence, we need to act as well.”

¹ <https://www.cdaa.org/about-us/join-cdaa>

One article says the membership includes “5,000 nonelected prosecutors.” See Megan Cassidy, “Audit finds state district attorney group misspent millions allocated for environmental cases,” San Francisco Chronicle (Jan. 15, 2021), <https://www.sfchronicle.com/bayarea/article/Audit-finds-state-district-attorney-group-15868701.php>

In 2020, as a response to the election of multiple progressive-minded prosecutors in California and the perceived conservatism of the CDAA, four district attorneys – Chesa Boudin in San Francisco, Tori Salazar in San Joaquin County, Dana Becton in Contra Costa County, and, after his election in 2021, George Gascon in Los Angeles County – formed the Prosecutors Alliance of California. See <https://prosecutorsalliance.org/>

When she quit the CDAA, D.A. Salazar said the group was “out of touch” with criminal justice reforms. See Jay Willis, “A New Association of Progressive D.A.s Could Overhaul California’s Reform Movement,” The Appeal (Sept. 15, 2020), <https://theappeal.org/politicalreport/california-prosecutors-progressive-association/>; Evan Sernoffsky, “Central California DA quits state association over its opposition to criminal justice reforms,” San Francisco Chronicle (Jan. 16, 2020), <https://www.sfchronicle.com/crime/article/Central-California-DA-quits-state-association-14981879.php>

The Prosecutors Alliance describes its mission as “reforming California’s criminal justice system through smart, safe, modern solutions that advance, not just public safety, but human dignity and community well-being.” See <https://prosecutorsalliance.org/>

The CDAA has actually experienced political fissures before. In 2005, Steve Cooley, then the district attorney for Los Angeles County, made it a policy not to prosecute all eligible defendants under California current “three strikes” policy. See Emily Bazelon, “Arguing Three Strikes,” New York Times Magazine (May 21, 2010), <https://www.nytimes.com/2010/05/23/magazine/23strikes-t.html#:~:text=Cooley%20is%20a%20Republican%20career,the%20excesses%20of%20three%20strikes.&text=In%202005%2C%20Cooley%20ordered%20a,deem%20worthy%20of%20second%20looks> This led the CDAA to strip Cooley of all leadership positions within the association. The Los Angeles District Attorney’s office then left the CDAA and did not rejoin until Cooley left office in 2012.

See Kevin Cody, “Cooley’s law: Once elected, Steve Cooley kept politics out of the Los Angeles County District Attorney’s office,” Easy Reader & Peninsula (June 19, 2016), <https://easyreadernews.com/steve-cooley-district-attorney/>

During the study period for this report, 2015-2018, the CDAA included all 58 elected district attorneys.

² A list of current Officers and Directors is available at <https://www.cdaa.org/about-us/board-of-directors>.

³ Those employees include Larry Morse III, the Director of Legislation and Tiffany Matthews, the Legislative Advocate. See <https://www.cdaa.org/about-us/cdaa-staff>

⁴ <https://www.cdaa.org/about-us>

⁵ Id. Emphasis in original.

⁶ <https://www.cdaa.org/about-us>

In 2021, an audit of the CDAA found that the association used some of the money earmarked for specific purposes for its general fund. Megan Cassidy, “Audit finds state district attorney group misspent millions allocated for environmental cases,” San Francisco Chronicle (Jan. 15,

2021), <https://www.sfchronicle.com/bayarea/article/Audit-finds-state-district-attorney-group-15868701.php>

⁷ <https://www.cdaa.org/archives/19213>

The CDAA publishes a number of opinions and short statements about their position on bills via their website.

⁸ Some individual district attorneys' offices appear to have someone who deals with legislation in-office. See, e.g. San Diego District Attorney's Office Organization Chart showing a "special legislative assistant" at <https://www.sdcds.org/content/office/orgchart.pdf>

Some of the individual offices appear to have specific categories of interest. For example, San Diego County and Alameda County often draft and support legislation with respect to sex trafficking. It is not clear if this is because of the political interests of the prosecutor or because of specific circumstances or cases within the office.

⁹ <https://www.laadda.com/legislation/>

The ADDA also has a legislative committee consisting of Scott Dominguez, Eric Siddal, Michele Hanisee and Dan Felizzatto. Overall, the ADDA takes positions that are more anti-reform than the CDAA. <https://www.laadda.com/committees/>

¹⁰ "District Attorneys' State Association," Santa Cruz Sentinel (Mar 7, 1902), pg 1.

¹¹ "Indictments Up in Convention of Officials," Oakland Tribune (Jan. 18, 1911), pg. 7.

¹² *Id.*

¹³ *Id.* See also "Sad Time Ahead for Criminals," Los Angeles Times (Dec. 19, 1908), Page 19.

¹⁴ "Officials Plan Second Meeting," Oakland Tribune (Nov 25, 1911), Page 13.

¹⁵ "Sad Time Ahead for Criminals," Los Angeles Times (Dec. 19, 1908), Page 19.

¹⁶ In California, comments on pending legislation are written. The CDAA, along with other District Attorneys, submit their written comments as a memo on behalf of the Association as a whole. As a result, legislative comments are not attributable to an individual.

¹⁷ AB 1448, CDAA comment. 2016-2017. Passed.

¹⁸ AB 2590. 2015-2015. Passed.

¹⁹ AB 2590 Comment.

²⁰ SB 1279. 2017-2018 Session. Died.

²¹ SB 1279 Comment.

²² 2015-2016 session. Governor vetoed.

²³ AB 1762.

²⁴ SB 1437. 2016-2017. Passed. See also Melody Gutierrez, "California Limits who can be charged with murder," San Francisco Chronicle (Sept. 30, 2018), <https://www.sfchronicle.com/politics/article/California-limits-who-can-be-charged-with-murder-13270802.php> (Noting CDAA opposition.)

²⁵ SB 1437 Comment.

²⁶ SB 261. 2015-2015 Session. Passed.

²⁷ SB 1052. 2015-2016 session. Governor vetoed.

²⁸ SB 1052 Comment.

²⁹ SB 1391. 2017-2018 session. Passed.

³⁰ SB 1391 comment, letter from ADDA.

³¹ 2017-2018 Session. Passed.

³² SB 394. 2017-2018 Session. Passed.

³³ AB 1308. 2017-2018 Session. Passed.

³⁴ SB 395 Comment.

See also Evan Sernoffsky & Joaquin Palomino, "Locked up, left behind," San Francisco Chronicle (Oct. 3, 2019) <https://www.sfchronicle.com/bayarea/article/California-once-sent-thousands-of-juveniles-to-14480958.php>

³⁵ See <https://www.cdaa.org/archives/19217>, arguing that legislation reigning in prosecutorial misconduct was a "cure looking for an epidemic."

³⁶ AB 1909. 2015-2016 Session. Passed.

³⁷ Tony Saavdera, "Prosecutors face stricter standards." OC Register (Oct. 7, 2015).

³⁸ AB 42. 2017-2018 Session. Died.

³⁹ <https://www.laadda.com/the-assault-on-safety-continues-eliminating-bail-is-the-latest-target/>

⁴⁰ SB 443. 2017-2018 Session. Passed.

⁴¹ Cal. Health & Safety Code § 11489(b)(2)(D).

⁴² <https://www.laadda.com/public-safety-community-applauds-the-rejection-sb-443/>

⁴³ AB 86. 2015-2016 Session. Died. SB 227. (Eliminated grand jury for police shooting prosecutions.) 2015-2016 Session. Passed.

⁴⁴ <https://www.laadda.com/legislation-calling-for-independent-police-prosecutor-is-unnecessary/>

⁴⁵ AB 2477. 2015-2016 Session. Died in committee.

⁴⁶ AB 2477. Comment.

⁴⁷ AB 390. 2015-2016 session. Died in committee.

See also SB 1355, which would have required people convicted of certain misdemeanors to submit "buccal swab samples, right thumbprints, and a full palm print impression of each hand, and any blood specimens or other biological samples required for law enforcement identification analysis." 2015-2016 session. Died in committee. Supported by CDAA, San Diego District Attorney's Office, and Sacramento District Attorney's Office.

⁴⁸ AB 390 Comment.

⁴⁹ AB 1065. 2017-2018 Session. Passed. Supported by the District Attorneys of Alameda County, Los Angeles County, San Diego County, San Francisco County, San Mateo County, and Santa Clara County.

⁵⁰ SB 617. 2015-2016 Session. Died in appropriations. The Los Angeles District Attorney's Office opposed parts of this legislation.

⁵¹ SB 617 Comment.

⁵² AB 2942. 2017-208 Session. Passed. Alameda and San Francisco's prosecutors also supported this bill.

⁵³ AB 2942. Comment. It's not clear if this is attributable to the District Attorney himself. The submission was made from the office generally without a specific name attached.

State of Colorado

Colorado District Attorneys' Council

Colorado prosecutors were very active lobbyists; they were involved in approximately half (49.8%) of the criminal justice bills introduced in the state legislature during the relevant time period. They lobbied on 123 of 247 total bills.



When Colorado prosecutors lobbied, they were often successful. On average, the legislature only passed 59.5% of criminal justice bills that were introduced. When prosecutors lobbied in favor of a bill, the bill was significantly more likely to pass (79.7% pass rate); when they lobbied against a bill it was somewhat less likely to pass (48.4% pass rate).

Overall, Colorado prosecutors tended to support more punitive bills. Prosecutors supported 31 bills that would have either expanded the criminal law or increased punishments. However, Colorado prosecutors' lobbying was not uniformly in favor of more punitive laws. They opposed 4 bills that would have either expanded the criminal law or increased punishments. When it came to bills would have decreased the scope of criminal law or decreased sentences, they supported 9 such bills and opposed 15.

123

NO. OF BILLS WITH
PROSECUTOR INVOLVEMENT

79.7%

SUPPORTED BILLS PASSED

48.4%

OPPOSED BILLS PASSED

31

HARsher BILLS SUPPORTED

9

LENIENT BILLS SUPPORTED

4

HARsher BILLS OPPOSED

15

LENIENT BILLS OPPOSED

Association Composition and History

The Colorado District Attorneys' Council (CDAC) is a statewide organization, created by statute.¹ The CDAC consists of 22 prosecuting attorneys from each judicial district and has a large permanent staff.² During the study period, three of those staff members served as the CDAC's main lobbyists: Thomas Raynes, Executive Director; Arnold Hanuman, Deputy Director; and Timothy Lane, Legislative Liaison & Policy Analyst.

CDAC's mission "is to promote, foster and encourage an effective administration of criminal justice in the state." Additionally, "CDAC provides centralized prosecution-related services to the District Attorneys of Colorado including training of personnel, legislative drafting and liaison, legal research, management assistance, case tracking data and safeguarding, dissemination of data to other criminal justice agencies, and other special programs."³

According to its website, CDAC lobbies for the following reason:

The CDAC policy team has over 120 years of prosecution experience and access to the state's foremost experts from every aspect of the criminal justice system. It is CDAC's responsibility to utilize these assets to promote community health and safety in legislative matters and represent the shared interests of the state's district attorneys at the Capitol.⁴

CDAC was formed in 1970.⁵ The Council is primarily funded through district attorney requests to their respective county commissioners. State and federal grants also provide additional funding for specific programming.

There is evidence of another statewide organization, the Colorado District Attorneys Association.⁶ But we were unable to locate a public website for the Association, and it is possible that organization may have dissolved.⁷

Analysis

Prosecutors often supported criminal justice bills which increased coverage of substantive law or changed the relevant procedural limitations on criminal justice actors.⁸ Prosecutors also often opposed bills which decreased the available sentencing range or changed the relevant procedural limitations on criminal

justice actors.⁹ Major issues during the study period included human trafficking, juvenile sexting reform, increasing animal protections, expansion of victim rights, and expanding access to mental health or behavioral treatment for defendants and incarcerated individuals.

In 2015, legislation supported by CDAC created a Human Trafficking Council which was tasked with determining whether new legislation would be effective in preventing sex trafficking of children.¹⁰ In 2017, CDAC successfully lobbied for legislation that created a mandatory minimum prison sentence of eight years for defendants convicted of child sex trafficking.¹¹ The CDAC also successfully supported a measure which created an affirmative defense to prostitution charges for victims of human trafficking.¹²

CDAC successfully lobbied for juvenile sexting reform. The Council supported legislation which created a new juvenile misdemeanor crime for distributing, displaying or publishing a sexually-explicit image of someone aged 14 and up or less than four years younger.¹³ This crime previously could be prosecuted as distribution of child pornography.

“Sexual exploitation of a child is incredibly serious. Juveniles are capable of committing sexual exploitation of a child. . . the problem is if you cut the district attorneys or law enforcement off from the ability to charge sexual exploitation in the cases where it is appropriate then this is going to become a major disaster in getting kids help.

CDAC testimony

CDAC also lobbied for greater protection of animals in various contexts. In 2016, CDAC successfully lobbied for legislation which made cruelty to a certified police working dog a misdemeanor with the ability to file felony charges, assign a fine of at least \$1,000 and mandate anger management treatment for second and subsequent offenses.¹⁴ In 2018, CDAC successfully lobbied to expand this law to also protect working police horses.¹⁵ Additionally, CDAC successfully lobbied to amend a statute to expand the definition of protection orders to include the alleged victim's or witness' pet, prohibiting them from being taken, transferred, concealed, abandoned, threatened or harmed.¹⁶

CDAC often lobbied for legislation which expanded victims' rights. This included expanding the coverage of protective orders, increasing financial support for

victims of crime, increased protections for seniors, increased protections for sexual orientation and disabilities as categories for possible discrimination, and creating procedures to take depositions of at-risk victims in place of in-court testimony. When lobbying for HB 15-1060, for example, CDAC asked legislators to “[c]onsider this in light of the public safety. In light of the comfort it gives victims.”

CDAC also supported expanding mental health and behavioral health services for defendants and incarcerated individuals. For example, in 2018, CDAC supported legislation that established a pilot program in four judicial districts that diverts individuals with a mental health condition who are charged with low-level criminal offenses into community-based treatment programs.¹⁷ Additionally, CDAC supported legislation which established the Jail-Based Behavioral Health Services Program and appropriated funding for behavioral health screenings, psychiatric medication prescriptions, mental health counseling, substance abuse treatment and transitional care coordination.¹⁸ CDAC supported this measure because they believe that “jail based behavioral health services are working . . . [and] law enforcement wants more of it.” Both pieces of legislation became law.

¹ <https://coloradoprosecutors.org/cdac/>

² <https://coloradoprosecutors.org/cdac/who-we-are/>

³ <http://www.cdacweb.com/Home.aspx>

⁴ <https://coloradoprosecutors.org/learn-the-law/faqs/>

⁵ <https://www.linkedin.com/company/colorado-district-attorneys/about/>

⁶ See *McCoy v. People*, 2019 CO 44, ¶ 45, 442 P.3d 379, 390, reh'g denied (June 24, 2019) (making reference to a statement from “of Mike Stern, Colorado District Attorneys Association” during a 1975 legislative hearing); see also Thomas P. Sullivan, *Colorado Enacts Custodial Recording Statute*, 40 CHAMPION 60 (August 2016) (reporting that newly passed legislation “resulted from a collaborative proposal of the Colorado Best Practices Committee, a group led by the Attorney General and the Colorado District Attorneys Association, in partnership with law enforcement and the Colorado Criminal Defense Bar, and consultation with the Innocence Project”); Tyler Yeargain, *Prosecutorial Disassociation*, 47 AM. J. CRIM. L. 85, 91 & n. 26 (2020) (identifying Colorado as one of fourteen states that “have both private prosecutors' associations and state agencies, usually in the form of councils, that are also composed of the state's elected prosecutors” and listing “District Attorneys Association; District Attorneys' Council” as the two organizations in the state).

⁷ Yeargain, *supra* note 5, at 136 appx. (noting that the Association's corporate filings indicate that it dissolved in 1996). Another possibility is that CDAC is sometimes referred to as an association rather than a council. For example, subcommittee meeting minutes from the Colorado Commission on Criminal and Juvenile Justice identify CDAC Executive Director Tom Raynes as representing the “Colorado District Attorneys Association.”

https://cdpsdocs.state.co.us/ccjj/committees/AYCSub/Minutes/2018-09-27_AYCSub-Minutes.pdf

But the statute creating the commission indicates that “the executive director of the Colorado district attorneys’ council” is a member of the commission. Colo. Rev. Stat. Ann. § 16-11.3-102(2)(a)(V.5).

⁸ CDAC supported 25 bills which would increase the coverage of substantive law and 27 bills which would change the relevant procedural limitations on criminal justice actors.

⁹ CDAC opposed 13 bills which would decrease the available sentencing range and 11 bills which would change the relevant procedural limitations on criminal justice actors.

¹⁰ HB 15-1019

¹¹ HB 17-1172

¹² SB 15-030

¹³ HB 17-1302

¹⁴ HB 16-1348

¹⁵ HB 18-1041

¹⁶ SB 18-060

¹⁷ SB 18-249

¹⁸ SB 18-250

State of Connecticut

Division of Criminal Justice

Connecticut's prosecutors were somewhat active lobbyists; they were involved in approximately 15% of the criminal legislative bills introduced in the state legislature during the relevant time period. (They lobbied on 77 out of 518 total bills).



When Connecticut prosecutors lobbied, they were somewhat successful. On average, the legislature passed 22% of criminal justice bills that were introduced. When prosecutors lobbied in favor of a bill, the bill was somewhat more likely to pass, with a 41% pass rate; when they lobbied against a bill it was somewhat more likely to pass than the average criminal justice bill (34% pass rate).

Overall, Connecticut's prosecuting attorneys tended to support more punitive bills, although they also supported some bills that made the laws less punitive. The DCJ supported 13 bills that would have either expanded the criminal law or increased punishments and opposed 4 bills that would have either expanded the criminal law or increased punishments. When it came to bills would have decreased the scope of criminal law or decreased sentences, the DCJ supported 7 such bills and opposed 3.

77
NO. OF BILLS WITH
PROSECUTOR INVOLVEMENT

41%
SUPPORTED BILLS PASSED

13
HARsher BILLS SUPPORTED
4
HARsher BILLS OPPOSED

34%
OPPOSED BILLS PASSED
7
LENIENT BILLS SUPPORTED
3
LENIENT BILLS OPPOSED

Association Composition and History

Unlike most states, Connecticut has a system of appointed, rather than elected, prosecutors. The Division of Criminal Justice (DCJ) is a state agency that represents all of Connecticut's prosecutors in a coordinated fashion; the DCJ also lobbies on behalf of the state's prosecutors.¹ The DCJ is described by its website as "an independent agency of the executive branch of state government, established under the Constitution of the State of Connecticut" which is "responsible for the investigation and prosecution of all criminal matters in the State of Connecticut."² The composition of the DCJ includes "the Office of the Chief State's Attorney, located in Rocky Hill, Connecticut, and the Offices of the State's Attorneys for each of the thirteen Judicial Districts in the State of Connecticut."³ When the DCJ submitted comments to legislation, they were not under the name of any particular individual; instead they were written comments on DCJ letterhead drafted as a legal memo. There were no individuals listed on the DCJ website as leadership nor permanent staff.

There is another organization called the "Connecticut Association of Prosecutors," which is "the bargaining unit representing 248 Deputy Assistant, Assistant, Senior Assistant, and Supervisory Assistant State's Attorneys within the Division of Criminal Justice."⁴ This appears to be more of a union in the purest sense, representing the line prosecutors in areas like hours, pay and work conditions. There was no legislative lobbying activity by this group.

Analysis

While the Division of Criminal Justice (DCJ) tended to support more punitive policies and oppose less punitive ones, the DCJ also supported a number of measures that made the laws less punitive. For example, the DCJ supported legislation that would have expanded the use of split sentences to those convicted of sexual assault and other serious crimes.⁵ They also supported changes to a "sexting" law such that younger children would not be charged with an automatic felony⁶ as well as a law that would reduce the number of "dual arrests" in domestic violence cases.⁷

The DCJ also supported legislation that created a working group to address racial equity in the criminal justice system for the state,⁸ explaining in its written testimony: "The Commission [on Racial and Ethnic Disparity in the Criminal

Justice System] provides a vital opportunity for state agencies and members of the public the to meet and discuss the important issue of racial and ethnic disparity in the criminal justice system.”⁹

On the other hand, the DCJ supported legislation that made it easier to prosecute certain types of crimes. For example, Connecticut’s prosecutors supported a bill that increased criminal penalties for mandatory reporting agencies for failure to report potential child abuse.¹⁰ The DCJ also supported a bill that required the timely processing of rape kits.¹¹ The State’s Attorneys also supported a bill that would have made DNA collection mandatory for suspects arrested for murder or rape¹² as well as a bill that allowed for the easy collection of geo-location data by law enforcement.¹³ Other examples include legislation to improve prosecutors’ abilities to investigate and prove economic fraud¹⁴ and legislation to extradite of individuals who abscond while out on bond.¹⁵

Similarly, the DCJ also supported several bills that either increased the penalty for existing crimes or created new crimes.¹⁶ In particular, Connecticut’s prosecutors supported many bills that expanded provisions intended to assist victims of domestic abuse. The prosecutors also supported a bill that increased the scope of restraining orders for victims, saying, “These bills take important steps forward to protecting public safety and preventing a tragedy.”¹⁷ The DCJ supported a bill that expands privacy protections to victims testifying in sexual assault cases.¹⁸

One issue that generated some controversy was bail reform. In 2015, the legislature considered a series of bills intended to reduce the pretrial incarceration and sentences of misdemeanor defendants. The DCJ argued that requiring a \$500 or lower bail amount “represents an unjustified and unwise intrusion into the well-established procedures employed for determining conditions of release in a criminal case, including the setting of bail. It is also an affront to the Judicial Branch and the judges who give much thought and consideration in the setting of bail and certainly do not take those matters lightly.”¹⁹ In 2017, the DCJ supported a limited bill for bail reform.²⁰ In their written comments, the DCJ warned against “further changes to current practices,” and cited some cases that had been publicized in the press, arguing that the people being held in detention on bond “present a risk of non-appearance, have committed multiple crimes, or present a risk to public safety.”²¹

In terms of bills opposed, the DCJ did oppose some bills that would have created new crimes, such as a 2015 proposal to add a new child endangerment crime to the driving while intoxicated statute,²² a 2016 bill that would have created a new domestic violence sentencing enhancement,²³ and bill that would have made it a crime to assault an undercover officer.²⁴

The DCJ opposed some bills that, they argued, would make it harder to prosecute. For example, the DCJ opposed a bill that would have required arresting agencies to release a broad range of information to the public when an individual was arrested.²⁵ In their letter, the DCJ argued that this would be “corrupting influence” and provide a manner for defendants to challenge their convictions based on a tainted jury pool. The DCJ testimony also explains that disclosure of evidence upon arrest might also endanger witnesses, which would make it more difficult for prosecutors to pursue their case.²⁶ The DCJ also opposed a bill that would consider changes to the sex offender registry and related laws.²⁷ Connecticut prosecutors also vehemently objected to a proposal for open file discovery:²⁸

“This bill would further expand discovery in favor of the defense while providing for no reciprocal abilities to the prosecution.
DCJ testimony²⁹

Connecticut’s prosecutors opposed a few bills related to reducing sentences or increasing leniency for defendants. For example, they opposed legislation that would allow defendants to submit a statement about the impact of their incarceration on their family.³⁰ The DCJ similarly opposed legislation decreasing the available sentencing range of misdemeanor offenses,³¹ which would, according to the DCJ, “seriously undermine the work of the Sentencing Commission on the classification of offenses.”³²

Connecticut’s prosecutors also opposed bills that would require more oversight of law enforcement. For example, the DCJ opposed legislation that would have required use-of-force incidents to be investigated by a special prosecutor, not the local prosecutor.³³ The DCJ, while it agreed that all State’s Attorneys could appoint special prosecutors at their own discretion, argued that the addition requirements would hinder investigations:

“To require a special prosecutor in all cases raises practical problems, such as who would respond to the immediate crime

scene and address immediate needs... It is also inconceivable that a special prosecutor would be appointed with the immediacy needed at the scene of the incident, which must be treated and processed as a crime scene. As a result, the net impact of this change would seriously hinder law enforcement efforts during the crucial, initial stages of these investigations and constitute a major step backward for Connecticut.

DCJ testimony³⁴

Another such bill the DCJ opposed was legislation that limited asset seizure only to individuals charged with a crime.³⁵

One issue that came up repeatedly were proposed legislation that would make the criminal process more lenient on juveniles, which the DCJ tended to oppose.³⁶ The DCJ requested substantial amendments to a bill that limited the transfer of juveniles to adult court, disallowed the use of restraints in court for juveniles, and would require the presence of an adult for interrogations of young people under 18.³⁷ At the same time, Connecticut's prosecutors supported a 2018 proposal to rollback some reforms and shift some felonies to adult court when the defendant was 14 or older.³⁸ The DCJ also opposed a bill intended to reduce sentences for juvenile defendants to improve rehabilitative options.³⁹ Connecticut's prosecutors also opposed legislation that would have, in part, exempted young people under 18 from being prosecuted for prostitution.⁴⁰

⚡ These young victims are among the most likely to refuse to cooperate with the authorities... Police must have the ability to arrest such a 16- or 17-year-old for the child's own good and to get to the real criminals.

DCJ testimony⁴¹

¹ Because Connecticut has a system of appointed prosecutors, the DCJ operates more like the Department of Justice to coordinate prosecutorial activity throughout the state.

² <https://portal.ct.gov/DCJ/About-Us/About-Us/About-Us>

³ <https://portal.ct.gov/DCJ/About-Us/About-Us/About-Us>

⁴ This group did not have a particular website, but there are documents indicating its existence and purpose. See Testimony of the Connecticut Association of Prosecutors, Appointment of Chief State's Attorney, October 11, 2019 at <https://business.ct.gov/-/media/DCJ/Criminal-Justice-Commission/John-Doyle-Connecticut-Association-of-Prosecutors.pdf>.

⁵ HB 6939. 2015 Session. Did not pass. This bill sets some mandatory minimums while also enabling more judicial discretion in certain specific instances, namely the ability to give people split sentences.

⁶ HB 6002. 2017 Session.

⁷ RSB 466. 2018 Session. The bill was intended to prevent the arrest of the victim when police arrive at the scene of a domestic violence call. This is meaningful because Connecticut used to charge such arrestees immediately (called “mandatory arrest” or “dual arrest”), so there would be a criminal case created even if the prosecution dropped the case. The new law was intended to allow law enforcement to arrest the “dominant aggressor” only. See <https://yaledailynews.com/blog/2019/01/25/state-law-changes-address-domestic-violence-dual-arrests/>

⁸ SB 1114. 2015 Session.

⁹ DCJ Testimony at <https://www.cga.ct.gov/2015/JUDdata/Tmy/2015SB-01114-R000323-Division%20of%20Criminal%20Justice%20-%20State%20of%20Connecticut-TMY.PDF>

¹⁰ HB 6186. 2015 session. According to the DCJ testimony, the bill was inspired, at least in part, by ongoing concerns related to a specific case. See DCJ Testimony at <https://www.cga.ct.gov/2015/JUDdata/Tmy/2015HB-06186-R000304-State%20of%20CT%20-%20Division%20of%20Criminal%20Justice-TMY.PDF>

¹¹ HB 6498. 2015 Session.

¹² HB 7013. 2015 Session. Did not pass. In 2016, the legislature considered another expansion of DNA collection from suspects. RHB 5474. 2016 Session. Did not pass.

¹³ HB 5640. 2016 Session.

¹⁴ RHB 5473. 2016 Session

¹⁵ The proposal was funded by the bail bond industry as part of a task force that involved Chief State’s Attorney Kevin Kane and members of the bail bonds industry. RHB 5632. 2016 Session. See DCJ Testimony at <https://www.cga.ct.gov/2016/JUDdata/Tmy/2016HB-05634-R000323-Division%20of%20Criminal%20Justice,%20State%20of%20Connecticut-TMY.PDF>.

¹⁶ See, for example, SB 1105. 2015 Session; HB 6921. 2015 Session.

¹⁷ SB 650. 2015 Session.

See DCJ Testimony at <https://www.cga.ct.gov/2015/JUDdata/Tmy/2015SB-00650-R000311-Division%20Of%20The%20Division%20Of%20Criminal%20Justice%20-%20State%20of%20Connecticut-TMY.PDF>

¹⁸ HB 6923. 2015 Session. Did not pass.

¹⁹ SB 1030. 2015 Session. Bill did not pass. DCJ Testimony at <https://www.cga.ct.gov/2015/JUDdata/Tmy/2015SB-01031-R000313-State%20of%20Connecticut%20-Division%20Of%20Criminal%20Justice-TMY.PDF>
See also <https://www.acluct.org/en/press-releases/bail-reform-justice-deferred-while-legislature-played-politics>

²⁰ RHB 7287. 2017 Session. Did not pass. There was a 2017 report prepared by the Connecticut Sentencing Commission on the pretrial release system. Kevin Kane, the Chief State’ Attorney, was a member of the commission. See Report to the Governor and General Assembly on Pretrial Release and Detention in Connecticut. Connecticut Sentencing Commission. February 2017. Available at http://ctsentencingcommission.org/wp-content/uploads/2018/04/Pretrial_Release_and_Detention_in_CT_2.14.2017.pdf

²¹ See DCJ Testimony at <https://www.cga.ct.gov/2017/JUDdata/Tmy/2017HB-07287-R000320-State%20of%20CT%20Division%20of%20Criminal%20Justice-TMY.PDF>

The DCJ expressly said it opposed HB 7044, which was a different proposal for bail reform.

²² HB 7025. 2015 Session. Did not pass.

²³ RSB 444. 2016 session. Did not pass. The DCJ called it “confusing and the phrasing awkward.”

See DCJ Testimony at <https://www.cga.ct.gov/2016/JUDdata/Tmy/2016SB-00444-R000314-State%20of%20Connecticut,%20Division%20of%20Criminal%20Justice-TMY.PDF>

²⁴ RHB 5273. 2016 Session. The DCJ called it “unnecessary and confusing.” See DCJ testimony at <https://www.cga.ct.gov/2016/PSdata/Tmy/2016HB-05273-R000301-CT%20Division%20of%20Criminal%20Justice-TMY.PDF>

²⁵ HB 6750. 2015 Session. See DCJ Testimony.

²⁶ See DCJ Testimony at <https://www.cga.ct.gov/2015/GAEdata/Tmy/2015HB-06750-R000213-Kane,%20Kevin%20Chief%20States%20Atty%20DCJ-TMY.PDF>

²⁷ SB 1087. 2015 Session. “[T]he change as proposed will wreak havoc with the prosecution of these cases.” See DCJ Testimony at <https://www.cga.ct.gov/2015/JUDdata/Tmy/2015SB-01087-R000316-The%20Division%20of%20Criminal%20Justice,%20State%20of%20Connecticut-TMY.PDF>

²⁸ RSB 519. 2018 Session. Did not pass.

²⁹ See DCJ Testimony at <https://www.cga.ct.gov/2018/JUDdata/Tmy/2018SB-00519-R000326-Division%20of%20Criminal%20Justice,%20State%20of%20Connecticut-TMY.PDF>

³⁰ RHB 7216. 2017 Session. Bill did not pass.

³¹ SB 1117. 2015 Session. Bill did not pass.

³² It appears that the intent behind the sentencing reduction was to prevent people convicted of misdemeanors from being deported. The DCJ questioned the efficacy of this change because, they said, it might make judges more punitive and increase deportations. No data was presented to support this. See DCJ Testimony

<https://www.cga.ct.gov/2015/JUDdata/Tmy/2015SB-01117-R000330-Division%20of%20Criminal%20Justice%20-%20State%20of%20Connecticut-TMY.PDF>.

³³ SB 652,. 2015 Session. The bill did not pass.

³⁴ See DCJ Testimony at <https://www.cga.ct.gov/2015/JUDdata/Tmy/2015SB-00652-R000320-The%20Division%20Of%20Criminal%20Justice%20-%20State%20of%20Connecticut-TMY.PDF>

³⁵ SRHB 7146. 2017 Session. Signed into law. A similar bill came up in 2018 to limit asset seizures by law enforcement, which DCJ also opposed. RHB 5398. 2018 Session. Did not pass.

³⁶ For example, the DCJ opposed 2016’s RSB 427, which would have allowed juveniles sent to the custody of the Department of Children and Families to receive credit for any pending criminal sentence imposed. See also HB 5041 (2018 Session. Passed.) and HB 5042 (2018 session. Did not pass.). Both of these were also “raise the age” bills.

³⁷ HB 7050. 2015 Session. The DCJ opposed a 2018 bill that would have required an adult at the interrogation of 17 and 18-year olds as well. SRHB 5238. 2018 session. Did not pass.

³⁸ RSB 187. 2018 Session. Did not pass.

³⁹ RHB 5642, 2016 Session. Bill passed. The DJC argued the bill would allow young adults to “avoid meaningful consequences” and added that “not every case handled in the juvenile court involves a misguided child who simply needs ‘redirection’...many of the cases involve individuals...from whom the public needs to be protected.”

<https://www.cga.ct.gov/2016/JUDdata/Tmy/2016HB-05642-R000323-Division%20of%20Criminial%20Justice,%20State%20of%20Connecticut-TMY.PDF>

⁴⁰ HB 5621, 2016 Session. The DCJ did support other parts of the legislation.

⁴¹ <https://www.cga.ct.gov/2016/JUDdata/Tmy/2016HB-05621-R000314-Division%20of%20Criminal%20Justice,%20State%20of%20Connecticut-TMY.PDF>

State of Delaware

Delaware prosecutors were not particularly active lobbyists; they were involved in approximately 17.4% of the criminal justice bills introduced in the state legislature during the relevant time period. (They lobbied on 11 of 83 total bills for which we had sufficient information for us to gauge prosecutor involvement. There were an additional 63 criminal justice bills for which sufficient information was not available.).

When Delaware prosecutors lobbied, they were very successful. On average, the legislature only passed 56% of criminal justice bills that were introduced. However, when Delaware prosecutors lobbied in favor of a bill, the bill was significantly more likely to pass (100% pass rate). Delaware prosecutors did not oppose any criminal justice legislation.

Overall, Delaware prosecuting attorneys did not have a tendency to support more punitive bills. Delaware prosecutors only supported one of the 21 bills that would have either expanded the criminal law or increased punishments. When it came to bills would have decreased the scope of criminal law or decreased sentences, Delaware prosecutors supported 2 such bills and opposed 0.

11

NO. OF BILLS WITH
PROSECUTOR INVOLVEMENT

100%

SUPPORTED BILLS PASSED

0

OPPOSED BILLS PASSED

1

HARSHER BILLS SUPPORTED

0

HARSHER BILLS OPPOSED

2

LENIENT BILLS SUPPORTED

0

LENIENT BILLS OPPOSED

Delaware Prosecutors

While many states boast associations of prosecutors that lobby on criminal justice legislation, Delaware does not have an association of prosecutors. In fact, Delaware is one of a few states that does not have locally elected prosecutors. Instead, the Attorney General appoints the state's prosecutors. As a result, all lobbying that occurred during the study period came from the Delaware's Attorney General's office. (The Attorney General of Delaware during the study period was Matthew Denn.)

Analysis

Information about prosecutor activity in Delaware was limited. We were able to locate some instances of prosecutor activity in committee meeting notes. But notes for all committees were not available, and we were unable to supplement official legislative materials with news media sources.¹

Prosecutors lobbied on a number of issues, including changes to the bail/pretrial process, drug crime classification, sexual assault training for police officers, subjecting certain records to FOIA, creating criminal penalties for sharing specified personal information on the internet, and controlled substances bill.

Delaware prosecutors were most involved in bills related to children. Possibly surprisingly, Delaware prosecutors did not always support legislation that would have increased punishment for crimes against children. For example, on HB 417, which would raise third degree child abuse to second degree child abuse for people previously convicted for abusing or neglecting a child, Deputy Attorney General, Danielle Berman, said the Department took "no position" on the bill.² Nor did they support HB 141, which would require that any person arrested for sexual offenses, or offenses relating to children and incompetents will now be subject to DNA testing. Rather than supporting the bill, Deputy Attorney General, Steve Wood introduced an amendment making technical changes to the bill's language to ensure constitutional validity.³ Similarly, Deputy Attorney General, Patricia Dailey Lewis, provided testimony that clarified judicial authority provided in HB 132, which allows a child to file a petition for protection from abuse against their parents, but did not take a position on the legislation.⁴

The one bill related to children supported by Delaware prosecutors was HB 126, which adopts the ABA standard for juvenile delinquency by establishing 10 years

old as minimum age of responsibility in juvenile prosecutions.⁵ Patricia Lewis expressed the Department of Justice's support testifying that the Department coordinates with other state agencies to provide appropriate interventions to young offenders.

¹ Such sources were not available because Delaware does not have a prosecutors' association. It was not feasible to search media sources for every mention of the Attorney General or the state Department of Justice.

² H.B. 417, 148th Leg., 2015-2016 Reg. Sess. (Del. 2016)

³ H.B. 141, 148th Leg., 2015-2016 Reg. Sess. (Del. 2016)

⁴ H.B. 132, 148th Leg., 2015-2016 Reg. Sess. (Del. 2016)

⁵ H.B. 126, 148th Leg., 2015-2016 Reg. Sess. (Del. 2016)

State of Florida

Florida Prosecuting Attorneys Association

Florida prosecutors were somewhat active lobbyists; they were involved in approximately 21% of the criminal justice bills introduced in the state legislature during the relevant time period. (They lobbied on 104 of 495 total bills for which we had sufficient information for us to gauge prosecutor involvement. There was one criminal justice bill for which sufficient information was not available.).



When Florida prosecutors lobbied, they were successful. On average, the legislature only passed 17% of criminal justice bills that were introduced. When prosecutors lobbied in favor of a bill, the bill was significantly more likely to pass (46.4% pass rate); when they lobbied against a bill it was actually more likely to pass (23.5% pass rate).

Overall, Florida prosecutors tended to support more punitive bills. Florida prosecutors supported 25 bills that would have either expanded the criminal law or increased punishments. However, prosecutors' lobbying was not uniformly in favor of more punitive laws. They opposed 6 bills that would have either expanded the criminal law or increased punishments. When it came to bills would have decreased the scope of criminal law or decreased sentences, prosecutors supported 16 such bills and opposed 8.

104

NO. OF BILLS WITH
PROSECUTOR INVOLVEMENT

46.4%

SUPPORTED BILLS PASSED

23.5%

OPPOSED BILLS PASSED

25

HARSHER BILLS SUPPORTED

6

HARSHER BILLS OPPOSED

16

LENIENT BILLS SUPPORTED

8

LENIENT BILLS OPPOSED

Association Composition and History

The Florida Prosecuting Attorneys Association (FPAA) is a nonprofit corporation. Its members include the 20 elected State Attorneys and the more than 2,000 Assistant State Attorneys in Florida. Although Assistant State Attorneys can be members, the FPAA is governed by the 20 elected prosecutors, who make up the Association's Board.

According to the Association's website:

The FPAA was created to serve the needs of prosecutors. The primary functions of the Association are the education of prosecutors through training seminars and conferences, publications and technical support.¹

The FPAA website states that it employs three staff members—an executive director, an administrative assistant and a grant coordinator. But media accounts indicate that the FPAA also retained a general counsel and lobbyist named Buddy Jacobs during the study period.² Jacobs has worked for FPAA for decades, ensuring that the Association's "voice is particularly strong in the state capital as it advises the legislature on criminal justice issues."³

Analysis

In addition to the ordinary process of introducing, amending, and voting on bills, the Florida legislature also uses "workshops" to consider legislation. These workshops are tied to a particular topic, rather than a particular piece of legislation. For example, in January 2016, the Senate Criminal Justice Committee held a workshop to discuss and hear testimony "on ideas for draft proposals related to sentencing."⁴ Prosecutors sometimes testified and recommended legislation at those workshops.⁵ Where the workshops ultimately resulted in proposed legislation, we sought to record the prosecutors' testimony as part of their lobbying efforts on those bills. Those that did not directly relate to bills introduced during the study period are recorded in an addendum at the end of this state report.

One topic that came up repeatedly during the study period involved criminal justice reform for juvenile offenders. The legislature introduced several bills

aimed at ensuring that juveniles stayed out of the adult criminal justice system. For example, one bill would have relaxed the requirements for when judges must transfer certain juveniles to adult facilities.⁶ Buddy Jacobs, speaking on behalf of the FPAA opposed the bill, stating that the current system “is not broken, its worked very well. The state attorney’s done a good job of handling it.”

A related bill, HB 783 (2015-2016 Session) sought to limit the types of crimes for which prosecutors can unilaterally charge juveniles as adults, and it would prohibit children under the age of 13 from ever being charged in adult court. Prosecutors opposed this bill on similar grounds—namely that the existing system gave prosecutors the discretion to decide when to send juvenile offenders to adult court, and that prosecutors did not want to relinquish that power.

“ I represent 20 state attorneys, 1,800 assistant state attorneys, and the juvenile prosecutors of Florida, and there are some dedicated people making a difference...The state attorneys do care about the young people...we are here to work with you...we don’t want children’s lives ruined and our people are dedicated in making that happen. But we have to protect the public as well. There is a balance here, we are not in favor of really any changes to the laws. This is a situation where we have worked hard to reduce the impact of direct filing on young people - and something has been working.”

Buddy Jacobs, on behalf of the FPAA

On multiple occasions, legislators sought to create a civil citation system or similar diversion program to keep juvenile offenders out of the criminal justice system. At times, Florida prosecutors appeared to favor such a program.⁷ But they sought to ensure that prosecutors had discretion about whether to issue a citation or whether to charge the juvenile with a misdemeanor.⁸

“ I think this bill is very well motivated, speaking for the FPAA, and I hope to work with Rep. Clarke-Reed on this because I think the better way to do this is to allow us to have the option to make civil citations available on a second or third try. Right now...civil citations are only available for one time....We as attorneys do not have the option of doing it a second or third time. If you want to make it optional for us, we are willing to work with you. I think that is a promising idea. The problem with this bill though, is that it takes away any discretion, makes it mandatory, it forces us to give a civil

citation in every misdemeanor...There is no restitution for victims when you issue a civil citation."

Dave Aronberg on behalf of the FPAA

It appeared that the legislation might pass in 2017, but according to news accounts "the legislation died in the final days of the annual session amid fierce opposition from the Florida Sheriffs Association and the Florida Prosecuting Attorneys Association, which don't want law enforcement's hands tied with a mandatory law."⁹

The juvenile citation legislation was not the only time that Florida prosecutors publicly announced their active collaboration with legislators to change bills to conform to their policy objectives. For example, when speaking about HB 571 (2015-2016 Session), a bill that would have created various protections for digital data that would have affected law enforcement, an FPAA representative testified that the organization opposed the bill "as presently written," but that they are "working [with] the sponsor and staff" to make changes. Similarly, when testifying about SB 1316 (2015-2016 Session), which would have made certain juvenile information exempt from public records searches, an FPAA lobbyist stated: "We have talked with Senator Soto about the bill and we are working with him. We are not quite there yet but we are working with him."

Juvenile justice is not the only issue to receive sustained legislative attention during the study period. Multiple bills were also introduced to change the state's death penalty process.¹⁰ Prosecutors initially opposed a reform bill that would have required juror unanimity about every aggravating factor.¹¹ That bill died in the Senate. But when the U.S. Supreme Court subsequently ruled that some aspects of the state's death penalty scheme were unconstitutional in *Hurst v. Florida*,¹² prosecutors reversed course. They supported a subsequent reform proposal,¹³ which would have required prosecutor to give notice within a certain timeframe if they intend to seek the death penalty and which required jury unanimity for aggravating factors in death penalty cases.

💡 To think we can sit here today and presume to understand what the Supreme Court will do in 10, 15, 20 years into the future is honestly a pipe dream. What I know is the prosecution of capital cases. This bill...is an excellent evaluation of the framework that the Supreme Court has come to in evaluating constitutional claims of the death penalty....This bill goes well beyond the minimum dictation of *Hurst*.

It requires the jury to determine each aggravating circumstance unanimously, and only those aggravating circumstances can be used by the judge."

Brad Kind, on behalf of the FPAA

That proposal passed and was signed into law.

Prosecutors opposed sentencing reform for drug crimes. SB 1436 (2017-2018) and its companion HB 731 (2017-2018) would have reduced mandatory minimum sentences for certain drug trafficking offenses and increased the amount of drugs needed to trigger those mandatory minimum sentences. The bills did not pass.

☞ It's easy to forget, but back in the late '80s when crime was running rampant, you had the cocaine cowboys in Miami and South Florida, you had armed thugs committing horrendous crimes against tourists in Central Florida."

Phil Archer, on behalf of the FPAA

Prosecutors also testified before the legislature on bills involving budgetary issues. For example, when the state budget bill was introduced in 2017,¹⁴ an FPAA representative, Bill Cervone, appeared to favor a raise for all state employees, but also spoke against a raise specifically directed at public defenders.

Cervone: "I am here for all 20 state attorneys...We appreciate the \$1,000 raise for all state employees. That has been our position from day one. We have a problem with the 6% additional raise for assistant public defenders. There appears to be some misinformation that public defenders are underfunded vis-a-vis state attorneys...."

Chairman Bradley: "Is there an amendment on this?"

Cervone: "No sir but we are hoping there will be."

Chairman Bradley: "So you want us to vote against the budget because it has the public defenders pay raise on it?"

Cervone: "No, we -"

Chairman Bradley: "So what would be the purpose of your testimony?"

Cervone: "In the hopes that there will be more discussion."

Budget issues also prompted a split in the prosecutor's community. The FPAA spoke in favor of Amendment 995011—an amendment to the 2017 budget bill that affected the reassignment of certain death penalty cases in the state. State's Attorney Kamilah Perry lobbied against that same budget amendment, specifically contradicting Cervone's testimony.¹⁵

* * * * *

Addendum on workshops that did not directly relate to bills introduced during the study period

Workshop on Issues Related to the Mentally Ill in Florida's Criminal Justice System

The House Judiciary Committee met on February 18, 2015, to “Workshop on Issues Related to the Mentally Ill in Florida's Criminal Justice System.”¹⁶ RJ Larizza, the 7th Circuit State Attorney, spoke about the difficulties surrounding mental health in the criminal justice system:

Our front end...is once someone has been arrested. It is our job at that point to figure out what to do with the case. Sometimes it may be clear that somebody may be suffering from potentially a mental illness - sometimes it is not. Our prosecutors first and foremost mission is public safety.... we try to decide if there is potentially some mitigation...prosecutors do not normally decide if there is legal sufficiency for a charge...but we may decide based on the facts and circumstances that someone should not be charged with three or four crimes....depending on our concern about public safety. Prosecutors have to decide if this person poses a threat to the community as well.

What we do...when we determine someone is suffering from a mental illness...do we commit this person...for treatment or not? I bring [treatment] up because that is another big problem here - how do you treat these folks and how do you get them into treatment...It is better if you identify [people with mental illness] on the front end and they do not get to our office. Or if they do [come into our office] for a decision, we know there is an issue that needs to be addressed, and then we have an option. If a defendant does not want treatment, sometimes we have to force them to...I have been working with a lot of organizations that want to help. But part of the problem is money. This is an expensive proposition...to do it

from training and law enforcement all the way to the back end. But we have to have confidence that [people truly have mental health issues and can get treatment] - as one of your elected state attorneys, it is paramount that public safety take the driver seat...I say that with all sympathy and compassion for folks who need help, we want to get them help. But I do not know how in the world you are going to create a system without a total comprehensive review of what is available.

Discussion Related to Processing of Sexual Assault Kits

The Senate Appropriations Subcommittee on Criminal and Civil Justice met on November 3, 2015, to have a "Discussion Related to Processing of Sexual Assault Kits."¹⁷ The chairman of the committee, Senator Joe Negron, set up questions to begin the meeting:

I would ask those who we asked to be here today, if you would please address your comments...to these questions: Is this a funding issue? Describe please, what you view the issue to be – is it an issue...that local law enforcement is not necessary or not appropriate to forward the kits to FDLE or somewhere for further investigation. Or is this an issue that we do not have enough staff to complete these in a reasonable manner?

Rob Johnson, representing the Attorney General's office, came forward to speak on the topic: "there is going to be an influx of kits. Our first priority is protecting these victims and making sure that FDLE and law enforcement community has what they need to get these kits tested." Rob Johnson and Senator Soto had a dialog regarding the Attorney General's policy position:

Senator Soto: What are the Attorney General's position on having a mandate on testing all these kits, providing there was consent, and creating a data base?

Rob Johnson: I want to make sure I can reflect the Attorney General's exact remark on this, but I think she is in the posture in giving the victims deference right now. But we would welcome discussion on this going forward to make sure [the victims] voices are heard.

Senator Soto: Only if there is consent, she would support putting them in the database? And does she support having that mandate otherwise to build up the database?

Rob Johnson: I would like to continue that conversation with you – I would have to mischaracterize anything that she would be doing. We always defer

to the victim....it warrants the question of what kits should be tested. Maybe the answer is all kits – I do not know the answer to that. But today, I will default to the victim.

Workshop on the death penalty to discuss legislative remedies to address Florida's capital sentencing process in response to the recent U.S. Supreme Court decision in *Hurst v. Florida*.

The Senate Committee on Criminal Justice met on January 27, 2016, to “Workshop on the death penalty to discuss legislative remedies to address Florida's capital sentencing process in response to the recent U.S. Supreme Court decision in *Hurst v. Florida*.” Brad King's comments, representing FPAA, are recorded along with the respective legislation. Senator Evers, the committee chairman, closed the meeting with the below statement:¹⁸

I want you to take an opportunity to work together and one up with a definite recommendation if you would...if not, my committee will come up with a recommendation, and I would like it to [work with] both sides - whether its prosecution, whether its defense, whether its judicial...my committee will sit down...we will ask staff to draw up based on the recommendations that we heard today, the direction that the state of Florida.

Introduction of Agency Heads/Commissioners and Brief Discussion of Priority Initiatives.

The Senate Appropriations Subcommittee on Criminal and Civil Justice met on January 25, 2017, to discuss the “Introduction of Agency Heads/Commissioners and Brief Discussion of Priority Initiatives.”¹⁹ Attorney General, Pam Bondi, discussed the office's financial needs:

We handle every criminal appeal in the state of Florida. On average, 20,000 a year....we have been trying to fund [attorneys' offices] little by little, and we are asking for only 10 positions this year. My state wide prosecutors – they are fighting crime – we are doing an incredible job....we are asking for, what I think is a conservative amount, 343,000 dollars, because we are trying more cases.

Also, any legislation...that even does not have to do with my office, because we defend your laws, please bring them to us. Let us look at it - you know

- for constitutionality issues, and just to make sure it is solid. We would love to help you with that.

Bill Cervone, representing the Florida Prosecuting Attorneys Association, discussed the FPAA's financial needs:

Every one of the cases that General Bondi talked about handling in appeals, came from one of our assistant state attorneys...you are going to hear from the public defenders, Capital Collateral Counsel, a variety of other groups - every one of their cases came through us. Each of those other entities might handle a segment of [criminal cases], but none of them handle all of it.

Presentation on Governor's Fiscal Year 2017-2018 Budget Recommendations

The Senate Appropriations Subcommittee on Criminal and Civil Justice met on February 15, 2017, to discuss the "Presentation on Governor's Fiscal Year 2017-2018 Budget Recommendations."²⁰ Bill Cervone, representing the Florida Prosecuting Attorneys Association, discussed the FPAA's financial needs:

First, we are very grateful to the governor's staff and him for the recommendations he made for the 2.3 million and 45 FTE that would help us deal with body cam[eras] and public records resources...it is very heartening to hear the governor's recognition that we do not stop the things that we have done that has enabled us to bring the crime rate down just because they are down...we hope the legislature will take recognition of that as well.

Second, body cameras will follow the same course...even if you have maybe a 5-minute instance that is recorded, you are probably not just dealing with 5 minutes of video you have to look at. You may be dealing with multiple officers...and having to look at a lot of time before and after the critical 5 minutes.

Third, there are additional resources that we see coming on the horizon...the first is capital litigation...[next] is juvenile sentencing...there is always potential new workload with other things that the legislature may do, and there are things under considerations moving towards the floor that would impact our workload in handling certain types of hearing...bottom line, our collective request is for additional funding of seven million dollars to handle all of those issues.

¹ <https://yourfpaa.org/about-us/>

² Ron Sullivan, *The Most Powerful Lawyer In Florida Is Keeping Criminal Justice Reform At Bay*, Huffington Post (May 3, 2017), https://www.huffpost.com/entry/the-most-powerful-lawyer-in-florida-is-keeping-criminal-justice-reform-at-bay_b_5909f430e4b0bb2d087409df

³ *Id.*

⁴ https://flsenate.gov/Committees/Show/CJ/MeetingPacket/3335/4661_MeetingPacket_3335.pdf (document)

https://flsenate.gov/media/videoplayer?EventID=2443575804_2016011191&Redirect=true (video).

⁵ Senate Criminal Justice Subcommittee Meeting 1/27/2016 at pp 148 - 151
https://flsenate.gov/Committees/Show/CJ/MeetingPacket/3383/4791_MeetingPacket_3383.pdf.

⁶ SB 1082 (2015-2016 Session).

⁷ *E.g.*, Editorial, *Pursue citations for young offenders*, Daytona Beach News-Journal (May 3, 2018) ("State Attorney R.J. Larizza [was] among criminal justice leaders speaking positively in favor of a less punitive 'civil citation' system for most young offenders.").

⁸ SB 378; HB 99 (2015-2016 Session).

⁹ *Miami leads in diverting kids from jail, but most of Florida fails*, Miami Herald (Oct. 23, 2017).

¹⁰ *See, e.g.*, SB 1322 (2015-2016 Session); HB 4003 (2015-2016 Session); SB 664 (2015-2016 Session); HB 139 (2015-2016 Session); SB 7068 (2015-2016 Session); HB 7101 (2015-2016 Session); SB 1178 (2015-2016 Session); HB 4015 (2015-2016 Session); SB 330 (2015-2016 Session); HB 157 (2015-2016 Session); SB 280 (2017-2018 Session); HB 527 (2017-2018 Session); HB 6045 (2017-2018 Session); SB 1416 (2017-2018 Session); HB 6031 (2017-2018 Session).

¹¹ "The legislature should not tamper with existing law when we know that law will be in front of the Supreme Court. It would be impossible if not reckless to suggest that any of us know what the Supreme Court will do...If you make this kind of change you will invite almost endless litigation...by those who had they sentence prior to this change... Additionally, I would ask for your careful consideration on the distinction between unanimity on death recommendation and unanimity on each individual aggravating circumstance...The current verdict form...is that the jury advises and recommends. The judge...has the final say. It is for that reason that we think the law should not be tampered with." – Bill Cervone on behalf of FPAA (testifying about SB 664).

¹² *Hurst v. Florida*, 577 U.S. 92 (2016).

¹³ SB 7068 (2015-2016 Session); HB 7101 (2015-2016 Session).

¹⁴ SB 2500 would have provided moneys for the annual period beginning July 1, 2017, and ending June 30, 2018, and supplemental appropriations for the period ending June 30, 2017

¹⁵ "Mr. Cervone... has not reviewed the executive orders that were sent and he has not acutely aware of the conversations that have occurred between the state attorney and Brad King. Of the 21 cases that the Governor has reassigned, only 6 of them are open. The rest... are not going to incur the costs that a full blown death penalty trial would incur. Mr. Cervone's argument is that (the bill) does not include salaries. I think that it could in circumstances like this. If it does not, the state attorneys are already paid for....I can not imagine that this cut is going to effect what you think its going to effect. What it is really going to effect is Human Trafficking." Kamilah Perry, testifying against 995011 amendment to SB 2500.

¹⁶<https://myfloridahouse.gov/Sections/Documents/loadaddoc.aspx?PublicationType=Committees&CommitteeId=2826&Session=2015&DocumentType=Meeting%20Packets&FileName=jdc%202-18-15.pdf> (document)

<https://myfloridahouse.gov/Sections/Committees/committeesdetail.aspx?CommitteeId=2826> (video).

¹⁷ https://flsenate.gov/media/videoplayer?EventID=2443575804_2015111024&Redirect=true (video)

https://flsenate.gov/Committees/Show/ACJ/MeetingPacket/3231/4429_MeetingPacket_3231.pdf (document)

¹⁸ https://flsenate.gov/media/videoplayer?EventID=2443575804_2016011388&Redirect=true (video)

https://flsenate.gov/Committees/Show/CJ/MeetingPacket/3383/4791_MeetingPacket_3383.pdf (document)

¹⁹

https://flsenate.gov/Committees/Show/ACJ/MeetingPacket/3588/5255_MeetingPacket_3588.pdf (document)

https://flsenate.gov/media/videoplayer?EventID=2443575804_2017011163&Redirect=true (video)

²⁰

https://flsenate.gov/Committees/Show/ACJ/MeetingPacket/3641/5355_MeetingPacket_3641.pdf (document)

https://flsenate.gov/media/videoplayer?EventID=2443575804_2017021179&Redirect=true (video)

State of Georgia

Prosecuting Attorneys' Council of Georgia

It is difficult to fully assess the lobbying efforts of Georgia prosecutors because only limited data was available. During the relevant time period, 139 criminal justice bills were introduced into the state legislature. For 43 of those bills, sufficient information was not available to determine whether prosecutors lobbied lawmakers. For the remaining 96 bills, Georgia prosecutors appear to be active lobbyists; they lobbied on a third of the criminal justice bills for which we had sufficient information to gauge prosecutor involvement (32 of 96 total bills).



When Georgia prosecutors lobbied in favor of a bill, they were somewhat successful. On average, the legislature only passed 38.5% of criminal justice bills that were introduced. When prosecutors supported bills, those bills somewhat more likely to pass (46% pass rate). But when Georgia prosecutors opposed bills, the bills were significantly more likely to pass (67% pass rate).

Overall, Georgia prosecutors supported both punitive and more lenient bills. Prosecutors supported 14 bills that would have either expanded the criminal law or increased punishments, and they opposed only one such bill. When it came to bills that would have decreased the scope of criminal law or decreased sentences, PACG supported 5 such bills and opposed 1.

32

NO. OF BILLS WITH
PROSECUTOR INVOLVEMENT

46%

SUPPORTED BILLS PASSED

67%

OPPOSED BILLS PASSED

14
HARSHER BILLS SUPPORTED
1
HARSHER BILLS OPPOSED

5
LENIENT BILLS SUPPORTED
1
LENIENT BILLS OPPOSED

Association Composition and History

The Prosecuting Attorneys' Council of Georgia (PACG) consists of nine members—six district attorneys and three solicitor-generals.¹ District attorneys and solicitor generals are both elected prosecutors. District attorneys prosecute felony cases and are elected in each of the state's 49 judicial circuits; solicitor-generals prosecute misdemeanors and are elected on a county-by-county basis.² Leadership roles within the PACG include a Chair, a Vice Chair, and a Secretary. Members of the PACG serve four-year terms, and they elect new members to take the place of members whose terms are expiring.³

The PACG also employs a large staff. In addition to a General Counsel, the PACG has an Administrative-Executive Office with five employees, a State Prosecution Support Office with thirteen employees, and an Administrative Staff with one employee.⁴ The PACG also maintains a Human Resources Office with four employees, a Fiscal Services Office with six employees, and an Information Technology Office with seven employees and a Training Services Office with six employees.⁵

During the study period, Charles "Chuck" Spahos was most often quoted in the media as a representative of the PACG. During that time, Spahos served as the executive director of the Prosecuting Attorneys' Council of Georgia.⁶ Before his work with the PACG, Spahos spent ten years as the elected solicitor-general of Henry County, Georgia.⁷

The Prosecuting Attorneys' Council of Georgia was established by statute in 1975.⁸ The PACG was created in order to "assist the prosecuting attorneys throughout the state in their efforts against criminal activity in the state."⁹

Analysis

It was difficult to conduct a systematic study of prosecutor lobbying in Georgia because the state legislature does not maintain a comprehensive archive of

legislative history materials. Many, but not all, hearings were recorded and uploaded to YouTube. However, the videos were disorganized and thus it was not possible to discover whether prosecutors were involved in all criminal justice bills. As a result, we are able to provide only a partial picture of Georgia's prosecutors' lobbying efforts and the positions they took on specific bills. Much of the information we have identified regarding Georgia's prosecutor involvement comes from media reports, which could not always be corroborated by official legislative materials. With these limitations in mind, it appears that prosecutors took an active role in lobbying about legislation dealing with the legalization of marijuana, issues with pardons or parole, and criminal procedures.

The legalization of marijuana and marijuana-related products was one of the most high-profile issues during the study period on which prosecutors publicly commented. In 2015, news accounts indicated that law enforcement was hesitant to allow legal growth of marijuana.¹⁰ In response to a push from Rep. Allen Peake for in-state growth of specially bred cannabis, PACG director Chuck Spahos did not outright oppose, but raised concerns about driving under the influence of THC and how THC levels could be tested roadside.¹¹ News accounts revisited the conversation about marijuana and THC legalization in 2016 by discussing HB 722.¹² This time, Chuck Spahos more explicitly opposed the marijuana legalization than in 2015 and "outlined ways he thinks House Bill 722 could set up new opportunities for law-breaking and marijuana abuse."¹³ HB 722 would have made it legal for a manufacturer of low THC oil, the chemical responsible for most of marijuana's psychological effects, to ship that oil to a person registered with the Department of Public Health.¹⁴ Spahos was opposed to the bill based on concerns about the regulation and abuse of THC substances.¹⁵ Chairman of the PACG, Danny Porter, was also quoted in news accounts opposing marijuana legalization claiming "the medical marijuana debate is a Trojan Horse where lobbyists are using images of kids in wheelchairs to further their cause, which is a for-profit pot dispensary at a corner near you."¹⁶ Porter asserted prosecutors support THC-free oil for kids with seizures, but oppose cultivation and manufacture of medicinal pot.¹⁷ A few months later, Spahos advocated that the federal government should be the entity to schedule marijuana, like all other drugs used for medical purposes, rather than the state of Georgia.¹⁸

Also related to THC oil, HB 1 would have made it lawful for any person to possess, or have under their control, 20 fluid ounces or less of THC oil under certain conditions.¹⁹ If those conditions are not met, then possession would have been treated as a misdemeanor.²⁰ Chuck Spahos spoke against HB 1.²¹

“ [The PACG does] not support the expansion of medical marijuana in [Georgia]. Whether you call it cannabis oil or smokable marijuana, we believe that this increase in the THC level is essentially the bottom of the slippery slope – that this bill as written will legalize liquid marijuana in the state.

Chuck Spahos, Executive Director, Prosecuting
Attorneys’ Council of Georgia.²²

Prosecutors also took an active interest in legislation related to pardons and parole boards. News accounts reported a meeting between Chuck Spahos of the PACG, Savannah District Attorney, Meg Heap, and the Board of Pardons and Paroles Chairman, Terry Barnard, which led to an agreement that required a 60-day notice for the release of violent criminals.²³ Heap said that the notice increase would give her office “time to find victims and their families; research and review case files; and write thoughtful responses to the board—hopefully reducing the number of violent parolees who are released.”²⁴ This agreement, of which Spahos was a part of, caused Rep. Jesse Petrea to abandon HB 724, which would have required earlier notice of violent prisoner release.²⁵ Spahos credited Petrea “for pushing the issue to trigger discussion that led to the [agreement].”²⁶

Also related to pardons, news accounts indicate that the PACG, Heap, and Chatham County Chief Assistant District Attorney Greg McConnell collaborated on HB 71, which would require the parole board to give victims and prosecutors the right to be heard on pending pardons.²⁷ Specifically, the bill would have required the State Board of Pardons and Parole to notify victims of potential releases of perpetrators and provide for the victim’s ability to respond to such considerations.²⁸ The bill also required a written decision relating to a pardon for a serious offense or commutation of a death sentence that includes the board’s findings and make such a finding available to the public.²⁹ Another bill, HB 34, would have also impose responsibilities on the State Board of Pardons and Paroles to increase transparency by declaring reports, files, records, and other information related to the supervision of probationers and parolees to be public records, but the bill died at the House’s Second Read.³⁰

Prosecutors were also involved with bills dealing with police procedures. For example, HB 430 updated the law and procedures on searches and seizures for intangible property.³¹ Gwinnet County District Attorney, Danny Porter, testified in favor of the bill.

“Given the events in Ferguson and across the county . . . there is a growing sense that video body cams on police are a good thing. However, in order for them to serve the societal interest they have to be recording and implicit in a consent analysis is the ability to deny that consent . . . We recommend if you’re going to have body cams you do it by creating the law enforcement exception that as long as the officer is in the lawful discharge of his duties, he is authorized to record the activities within the range of camera.”

Danny Porter, Gwinnet County District Attorney

Also related to police procedures, prosecutors opposed HB 182, which provided that, regardless of refusal, evidence such as a chemical test may be gathered from a person driving or in actual physical control of a moving vehicle involved in a traffic accident which resulted in serious injuries or fatalities.³²

¹ Ga. Code Ann., § 15-18-41(a).

² *About PACG*, PACG, <https://pacga.org/about-pacga/> (last visited Mar. 30, 2021). Only 66 of the 159 counties in Georgia have a solicitor-general. In those areas without a solicitor-general, misdemeanors are prosecuted by the district attorney. *Id.*

³ Ga. Code Ann., § 15-18-41(c).

⁴ *Staff*, PACG, <https://pacga.org/staff/> (last visited Mar. 30, 2021).

⁵ *Id.*

⁶ The Executive Director heads the Administration-Executive Office.

⁷ *People*, JUSTICE CENTER: THE COUNCIL OF STATE GOVERNMENT, <https://csgjusticecenter.org/people/charles-spahos/> (last visited Mar. 30, 2021).

⁸ Ga. Code Ann., § 15-18-40.

⁹ Ga. Code Ann., § 15-18-40(b). According to the statute, the “assistance” that the PACG is to provide “may include:

- (1) The obtaining, preparation, supplementation, and dissemination of indexes to and digests of the decisions of the Supreme Court and the Court of Appeals of Georgia and other courts, statutes, and legal authorities relating to criminal matters;
- (2) The preparation and distribution of a basic prosecutor’s manual and other educational materials;
- (3) The preparation and distribution of model indictments, search warrants, interrogation devices, and other common and appropriate documents employed in the administration of criminal justice at the trial level;
- (4) The promotion of and assistance in the training of prosecuting attorneys;
- (5) The provision of legal research assistance to prosecuting attorneys;
- (6) The provision of such assistance to law enforcement agencies as may be lawful; and
- (7) The provision of such other assistance to prosecuting attorneys as may be authorized by law.

Ga. Code Ann., § 15-18-40(b).

¹⁰ Maggie Lee, *Ga. law enforcement hesitant over medical marijuana growth*, THE MACON TELEGRAPH (Oct. 28, 2015).

¹¹ *Id.* The article does not mention a specific bill that Chuck Spahos opposed. However, HB 1, discussed further below, was introduced in 2015 and could potentially be the bill Spahos opposed.

¹² Maggie Lee, *Georgia medical cannabis bill finds more critics*, THE MACON TELEGRAPH (Feb. 12, 2016).

¹³ *Id.*; H.B. 722, 153rd Gen. Assemb., Reg. Sess. (Ga. 2016). Among other things, H.B. 722 makes, designates tetrahydrocannabinol, tetrahydrocannabinolic acid, or a combination of tetrahydrocannabinol and tetrahydrocannabinolic acid which does not contain plant material exhibiting the external morphological features of the plant of the genus *Cannabis* as a Schedule I controlled substance, and adds various conditions to the definition of conditions related to those that can register on the Low THC Oil Patient Registry.

¹⁴ H.B. 722, 153rd Gen. Assemb., Reg. Sess. (Ga. 2016).

¹⁵ Lee, *supra* note 10.

¹⁶ Bill Torpy, *Georgia blowing smoke on pot laws*, ATLANTA JOURNAL-CONSTITUTION (Jan. 22, 2015).

¹⁷ *Id.*

¹⁸ Kristina Torres, *Obstacles remain for medical marijuana – While usage is legal in some cases, it still can't be grown in the state*, ATLANTA JOURNAL-CONSTITUTION (July 14, 2016).

¹⁹ H.B. 1, 153rd Gen. Assemb., Reg. Sess. (Ga. 2016). If a person possesses more than 20 fluid ounces but less than 160, the person shall be guilty of a felony. If a person has more than 160 ounces, they shall be guilty of the felony offense of trafficking in low THC oil. Provides a registry to keep track of individuals and caregivers who have been issued registration cards and are allowed to possess THC oil.

²⁰ *Id.*

²¹ Sarah F. Campbell, *Rally, hearing held for House Bill 1*, THE NEWNAN TIMES-HERALD (Feb. 4, 2015).

²² *Id.*

²³ Walter C. Jones, *Parole Board to Give Notice Earlier*, THE AUGUSTA CHRONICAL (Feb. 17, 2016), <http://gm5-gaweb.newscyclecloud.com/mobile/2016-02-16/georgia-parole-board-agrees-earlier-notice>.

²⁴ *Id.*

²⁵ *Id.*; H.B. 724, 154th Gen. Assemb., Reg. Sess. (Ga. 2017). H.B. 724 required the parole board to give at least 30 days advance notification (increased from 72 hours) to the district attorney, presiding judge, and a number of different parties whenever the board considers making a final decision to grant parole or place an inmate into transitional housing. Moreover, the bill provides that at least 30 days prior to the parole date of an inmate or date of entry into transitional housing, the board shall publish in each county in which the inmate was tried, convicted, and sentenced a notice of the parole date of such inmate or date of entry of such inmate into transitional housing.

²⁶ Jones, *supra* note 23.

²⁷ Jan Skutch, *Judge Denies Pardoned Criminal: Former Savannah Resident Must Register as Sex Offender Here Even After Being 'Rehabilitated'*, SAVANNAH MORNING NEWS (Jan. 21, 2016).

²⁸ H.B. 71, 153rd Gen. Assemb., Reg. Sess. (Ga. 2016).

²⁹ *Id.*

³⁰ H.B. 34, 154th Gen. Assemb., Reg. Sess. (Ga. 2017).

³¹ H.B. 430, 153rd Gen. Assemb., Reg. Sess. (Ga. 2016). H.B. 430 is an extensive bill that updates definitions, clarifies wording, and ultimately updates the warrant procedure to make warrants easier to obtain.

³² H.B. 182, 153rd Gen. Assemb., Reg. Sess. (Ga. 2016).

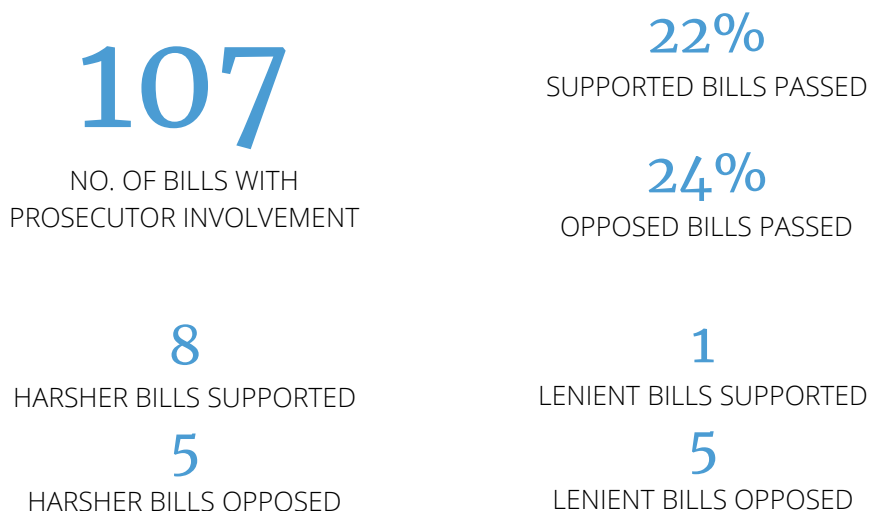
State of Hawaii

Hawaii Prosecuting Attorney's Association

Hawaii prosecutors were active lobbyists; they were involved in approximately 36% of the criminal justice bills introduced in the state legislature during the relevant time period. (They lobbied on 107 of 300 total bills.)

When the Hawaii prosecutors lobbied, they were somewhat successful. On average, the legislature only passed 12% of criminal justice bills that were introduced. When prosecutors lobbied in favor of a bill, the bill was more likely to pass (22% pass rate); but when they lobbied against a bill, it was even more likely to pass (24% pass rate).

Overall, Hawaii prosecuting attorneys were more likely to support punitive bills. They supported 8 bills that would have either expanded the criminal law or increased punishments. However, Hawaii prosecutors' lobbying was not uniformly in favor of more punitive laws. They opposed 5 bills that would have either expanded the criminal law or increased punishments. When it came to bills that would have decreased the scope of criminal law or decreased sentences, they supported one such bill and opposed 5.



Association Composition

Very little public information is available about the Hawaii Prosecuting Attorney's Association. The Association does not appear to have a website, and news accounts give only limited information about the organization.

News accounts suggest that the Association's membership includes the elected prosecuting attorneys from Hawaii County, Honolulu County, and Kauai County, the appointed prosecuting attorney from Maui County, the Attorney General, and the United States Attorney for the district of Hawaii.¹ The Chair of the association rotates between the Honolulu County, Maui County, Kauai County and Attorney General's offices.²

Most of the lobbying we recorded was performed by the members themselves, rather than by the Association. For example, the Honolulu prosecuting attorney submits a legislative package to the legislature, consisting of various bills.³ Nonetheless, the Association appears to facilitate discussions between the prosecutors about legislation and legislative goals.⁴

Analysis

A surprising number of the criminal justice bills during the study period involved appropriating money to the criminal justice system. Of the 300 bills that the legislature considered, more than 70 involved funding issues, and many of those bills involved direct appropriations to one or more prosecuting attorney's offices. Unsurprisingly, the prosecuting attorneys supported bills that would result in more money for their offices. Bills that involved only a question of funding accounted for nearly 30% of the legislation that Hawaii prosecutors supported.

In comparison, Hawaii prosecutors were relatively uninvolved in legislation that touched on other issues. While prosecutors lobbied in favor of nearly two-thirds of all pure funding bills, they lobbied in favor of less than 10% of the bills that had a sole purpose of either creating new crimes or otherwise expanding the scope of substantive criminal law.

Indeed, Hawaii prosecutors opposed some bills that would have expanded the criminal law. The Honolulu prosecuting attorney opposed a bill that would have

extended the definition of first-degree murder on the theory that existing law was sufficient.⁵

“Although the Department does appreciate the intent of H.B. 1726, to review the scope of Hawaii’s murder laws and sentencing provisions, we do not believe that the current proposal in H.B. 1726 would bring any needed benefit to the offense of Murder in the first degree, and may actually expand this offense—and its automatic sentence of lifetime imprisonment without possibility of parole—in a way that the Legislature does not truly desire.

Keith M. Kaneshiro, Prosecuting Attorney,
City and County of Honolulu

The Honolulu prosecuting attorney also opposed a bill that would have expanded gambling laws to cover fantasy sports leagues on similar grounds.⁶

“To create the proposed addition of Promoting Fantasy Competition would only create a new statute that currently is covered under exiting gambling laws. The Department strongly believes that Hawaii’s current gambling laws provide a good balance between protecting the interests and safety of the public, while at the same time providing reasonable and sufficient exceptions. The gambling laws do not require any further amendments or additions.

Keith M. Kaneshiro, Prosecuting Attorney,
City and County of Honolulu

Although they opposed some expansions to substantive laws, Hawaii prosecutors also supported some increases to the criminal code. For example, the Maui prosecuting attorney supported a bill that would have created a new felony “resisting an order to stop a motor vehicle.”⁷

Hawaii prosecutors opposed several reform measures during the study period. For example, they opposed SB 2179,⁸ which would have reduced certain charges associated with drug paraphernalia from felonies to misdemeanors. The bill had been introduced to reduce the prison population and redirect money that would have been spent on prisons to community-based programs. The theory behind the legislation was that these programs would be more effective at treating drug addiction than would a prison sentence. The Honolulu

prosecuting attorney opposed the bill on the grounds that they ordinarily brought these charges only in connection with other drug offenses and for people who had previously been offered community-based help.

The Honolulu prosecuting attorney also opposed HB 1326, which would have increased the threshold for felony theft charges from \$300 to \$750, and it would have increased the threshold amount by 2% every subsequent year to account for inflation. The increase had been recommended by the Council on State Governments Justice Center in 2012. The \$300 threshold for felony theft was one of the lowest in the nation and had not been adjusted for thirty years.⁹ The Kauai prosecuting attorney also testified against the bill.

“ If this bill passes, more offenders will steal more—up to \$750 in value and 2% more every year thereafter knowing that they will only be charged a misdemeanor. Such a policy will not help our goals in preventing theft, but instead will hurt families and businesses.

Keith M. Kaneshiro, Prosecuting Attorney,
City and County of Honolulu¹⁰

“ Theft of property from visitors and kamaʻāina is rampant in our community. Offenders often steal products or services just under the felony threshold value so they can remain subject to only misdemeanor penalties if arrested and charged. Passing this bill would not reduce crime or further any cognizable public policy purpose.

Justin Kollar, Prosecuting Attorney, County of Kauai¹¹

In sum, much of the lobbying by Hawaii prosecutors concerned appropriations and other funding matters. However, they also weighed in on substantive issues affecting the criminal justice system.

¹ Jenna Carpenter, *Kauai prosecuting attorney named chair of Hawaii Prosecuting Attorney's Association*, The Garden Island (Jan. 5, 2017). Hawaii has five counties, three of which elect their prosecutors. Maui County appoints its prosecutor. Kalawao County, which has a population of 88, does not have a local prosecutor. Carissa Byrne Hessick & Michael Morse, *Picking Prosecutors*, 105 Iowa Law Review 1537, 1551 n.67 (2020).

² Carpenter, *supra* note 1.

³ These bills bear the designation “CCH Prosecutor” on the legislature’s website. See, e.g., HB 303, 2018 Session, https://www.capitol.hawaii.gov/Archives/measure_indiv_Archives.aspx?billtype=HB&billnumber=303&year=2018

⁴ Carpenter, *supra* note 1 (discussing the “legislative goals” of the association); Transcript of Kauai City Council Meeting, April 12, 2013 (statement of Prosecuting Attorney Justin Kollar), available at http://kauai.granicus.com/TranscriptViewer.php?view_id=2&clip_id=957 (discussing collaboration with other prosecuting attorneys, describing Honolulu and Maui prosecutors as being particularly active in the legislature, and describing the Association as an opportunity to “talk” and when they agree “to let our legislators know, because they do respond to, pressure, let’s say, and that helps our community”).

⁵ HB 1726, 2016 Regular Session.

⁶ SB 2429, 2016 Regular Session.

⁷ SB 2453, 2018 Regular Session.

⁸ SB 2179, 2016 Regular Session.

⁹ HB 1326, Regular Session 2015, section 1.

¹⁰ HB 1326, Regular Session 2015 testimony.

¹¹ HB 1326, Regular Session 2015 testimony.

State of Idaho

Idaho Prosecuting Attorneys Association

Idaho prosecutors were somewhat active lobbyist; they were involved in approximately 12.2% of the criminal justice bills introduced in the state legislature during the relevant time period. (They lobbied on 14 of 115 total bills).



When Idaho prosecutors lobbied, they were often successful. On average, the legislature passed 58.3% of criminal justice bills that were introduced. When Idaho prosecutors lobbied in favor of a bill, the bill was somewhat more likely to pass (66.7% pass rate); when they lobbied against a bill it was significantly less likely to pass (25% pass rate).

Overall, Idaho prosecutors tended to support more punitive bills. Prosecutors supported 3 bills that would have either expanded the criminal law or increased punishments. They did not oppose any of the bills that would have either expanded the criminal law or increased punishments. When it came to bills that would have decreased the scope of the criminal law or decreased sentences, they supported 1 such bill and opposed 2.

14

NO. OF BILLS WITH
PROSECUTOR INVOLVEMENT

66.7%

SUPPORTED BILLS PASSED

25%

OPPOSED BILLS PASSED

3

HARSHER BILLS SUPPORTED

0

HARSHER BILLS OPPOSED

1

LENIENT BILLS SUPPORTED

2

LENIENT BILLS OPPOSED

Association Composition

The Idaho Prosecuting Attorneys Association (IPAA) is comprised of the state's elected County Prosecutors, more than 200 Deputy Prosecutors, and associate members, which include Municipal Attorneys, Idaho Attorneys General, U.S. Attorneys, and Tribal Attorneys.¹ The IPAA has three permanent staff members – Executive Director, Legislative Counsel, and DUI Resource Prosecutor – who facilitate the operations of the Association.² Additionally, the IPAA is led by a Board that consists of 7 elected County Prosecutors (one from each of the 7 Judicial Districts in Idaho).³

The IPAA's main purpose is to provide educational support to the state's prosecutors.⁴ However, the Association also aims "to advance the professional development of its members, enhance the cooperation and communication among its members and the large criminal legal community in Idaho, and represent the interests of its members both to the state's legislative bodies and to the general public."⁵

To meet the Association's goal of representing the state prosecutors' interests through legislative initiatives, the Executive Director and Legislative Counsel serve as paid lobbyists for the Association. During the time period relevant to this study, those individuals were Sandee Meyer, the Executive Director, and Holly Koole, the Legislative Counsel.⁶

Analysis

We were able to identify prosecutor lobbying by examining recordings of hearings held by the Senate Judiciary and Rules Committee and House Judiciary, Rules and Administration Committee. Recordings of those hearings are made available on the legislature's website. In addition to IPAA lobbying by Executive Director Sandee Meyer and Legislative Counsel Holly Koole, the recordings revealed lobbying by other Idaho prosecutors appearing as representatives of their offices.

One major legislative measure that the Idaho General Assembly considered during the 2018 Regular Session was House Bill 581, which sought to amend the mandatory minimum sentencing provision for drug trafficking. In particular, House Bill 581 would have eliminated the mandatory minimum sentences for trafficking marijuana, trafficking cocaine, and trafficking methamphetamine or amphetamine. The Representatives that presented the bill stated it was

necessary to address the state's extreme overcrowding of prisons and to better equalize the power between prosecutors and the judiciary.⁷ Bonneville County Prosecuting Attorney, Daniel Clark, testified against the bill.⁸

“ I have sworn to uphold the Constitution and the laws of our state. I have also sworn to protect the citizens of my community . . . I am here to urge you today to vote against this bill because, in sum, this bill will make our communities less safe.”

Daniel Clark, Bonneville County Prosecuting Attorney⁹

Clark went on to explain that his main concern is how the bill would treat trafficking cases.¹⁰ He stated that “this bill, although it is dressed up differently . . . it is a repeal of our mandatory minimum trafficking statute.” He testified that he believed crime in the state would increase without the minimum sentences in place.¹¹ Ultimately, the bill died in committee.

The IPAA's position on Senate Bill 1103 of the 2015 Regular Session was more complicated. The bill proposed a method for victims of human trafficking to vacate convictions and expunge criminal records for victims of trafficking.¹² Although the IPAA said it took no position on the bill, it expressed numerous reservations about the language and effects of the legislation.^{13 14}

“ The first concern that the IPAA has is that this bill seeks to expunge all non-violent crimes . . . that were committed during a period of time when the person was a victim. So, the language of this bill does not require that the non-violent crime was committed by force or inducement . . . This could be abused in court given the broad language.”

Holly Koole, Legislative Counsel of the IPAA¹⁵

Koole also highlighted a second concern related to the bill's failure to specify a time restriction for victims to bring an action.¹⁶ She explained that these concerns the IPAA are raising—limiting the scope of expungable crimes and time restrictions—have been addressed in other states and urged the Committee to seek guidance from the legislation of those states.¹⁷

“ We are not here today to testify that these victims shouldn't get a second chance, that they shouldn't have a process to go through in the court system. Again, we are just here to bring to attention how

this is going to work out practically in a court room. . . and trying to make sure the right thing is done in these cases.”

Holly Koole, Legislative Counsel of the IPAA¹⁸

The IPAA opposed House Bill 530 of the 2018 Regular Session on the grounds that it might negatively affect crime victims. The bill sought to modify the disbursement schedule for when defendants pay fines or restitution to the courts. The IPAA opposed the measure because it lowered the victim’s priority in restitution and allowed other programs to receive the money first.¹⁹

“Our concern is in removing the language [of Idaho Code §19-5302] . . . that states that victims shall get priority of payment when it comes to restitution. . . . Victims do not choose to be part of the criminal justice system, they are put there by the defendant’s actions. And so, it’s just the prosecutors’ belief that they should be made whole before other programs are funded.”

Holly Koole, Legislative Counsel of the IPAA²⁰

¹ *About*, IDAHO PROSECUTING ATTORNEYS ASSOCIATION, <http://ipaa-prosecutors.org/about/> (last accessed April 27, 2021).

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Idaho Prosecuting Attorneys Association*, BAR ASSOCIATION DIRECTORY, <https://www.barassociationdirectory.com/id/idaho-prosecuting-attorneys-association/> (last accessed April 27, 2021).

⁶ The Idaho Secretary of State’s Annual Employer Expense Reports identify the lobbyist for the Idaho Prosecuting Attorneys Association. The 2018 report can be found here: <https://archive.sos.idaho.gov/ELECT/lobbyist/2018/Employer-Expenses-Annual-2018.pdf>. The 2017 report can be found here: <https://archive.sos.idaho.gov/ELECT/lobbyist/2017/AnnualEmployerExpenses.pdf>. The 2016 report can be found here: https://archive.sos.idaho.gov/ELECT/lobbyist/2016/2016_empexp.pdf. The 2015 report can be found here: https://archive.sos.idaho.gov/ELECT/lobbyist/2015/2015_empexp.pdf.

⁷ Presented by Representative Rubel and Representative Perry in the House Judiciary, Rules & Administration Committee. Minutes – House Judiciary, Rules & Administration Committee, March 5, 2018: https://legislature.idaho.gov/wp-content/uploads/sessioninfo/2018/standingcommittees/180305_hjud_other_meet_time-Minutes.pdf.

⁸ *Id.*

⁹ The audio and video of Daniel Clark’s testimony on March 5, 2018 can be downloaded from the House Judiciary, Rules & Administration Committee meeting archives:

<https://legislature.idaho.gov/sessioninfo/2018/standingcommittees/HJUD/>.

¹⁰ *Id.*

¹¹ *Id.*

¹² The audio and video of Holy Koole’s testimony on March 4, 2015 can be downloaded from the 2015 Senate Judiciary & Rules Committee meeting archives:

<https://legislature.idaho.gov/sessioninfo/2015/standingcommittees/SJR/>

¹³ *Id.*

¹⁴ Minutes – Senate Judiciary & Rules Committee, March 4, 2015:

https://legislature.idaho.gov/wp-content/uploads/sessioninfo/2015/standingcommittees/150304_sj&r_0130PM-Minutes.pdf.

¹⁵ The audio and video of Holy Koole’s testimony on March 4, 2015 can be downloaded from the 2015 Senate Judiciary & Rules meeting archives:

<https://legislature.idaho.gov/sessioninfo/2015/standingcommittees/SJR/>

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Minutes – House Judiciary, Rules & Administration, February 27, 2018:

https://legislature.idaho.gov/wp-content/uploads/sessioninfo/2018/standingcommittees/180227_hjud_0130PM-Minutes.pdf.

²⁰ The audio and video of Holly Koole’s testimony on February 27, 2018 can be downloaded from the 2018 House Judiciary Rules & Administration meeting archives:

<https://legislature.idaho.gov/sessioninfo/2018/standingcommittees/HJUD/>.

State of Illinois

Illinois State's Attorneys Association & Illinois Office of the State's Attorneys Appellate Prosecutor

Illinois prosecutors were somewhat active lobbyists; they were involved in approximately 8.5% of the criminal justice bills introduced in the state legislature during the relevant time period. (They lobbied on 71 of 831 total bills).



When Illinois prosecutors lobbied, they were successful. On average, the legislature only passed 10% of criminal justice bills that were introduced. However, when prosecutors lobbied in favor of a bill, the bill was significantly more likely to pass (40% pass rate). Although prosecutors were quite successful when supporting a bill, they were far less successful when they opposed a bill. When they lobbied against a bill it was somewhat more likely to pass than when they were not involved at all (23% pass rate).

Overall, Illinois prosecutors tended to support more punitive bills. Prosecutors supported 17 bills that would have either expanded the criminal law or increased punishments. However, the lobbying done by Illinois prosecutors was not uniformly in favor of more punitive laws. They opposed 6 bills that would have either expanded the criminal law or increased punishments. When it came to bills that would have decreased the scope of criminal law or decreased sentences, Illinois prosecutors supported 5 such bills and opposed 5.

71
NO. OF BILLS WITH
PROSECUTOR INVOLVEMENT

40%
SUPPORTED BILLS PASSED

23%
OPPOSED BILLS PASSED

17
HARsher BILLS SUPPORTED
6
HARsher BILLS OPPOSED

5
LENIENT BILLS SUPPORTED
5
LENIENT BILLS OPPOSED

Association Composition and History

There are two distinct, but apparently related, prosecutor organizations in Illinois. The first organization, the Illinois State's Attorneys Association consists of 102 members from each county, who seek to uphold the Association's purpose of "promot[ing] the orderly administration of justice and the enforcement of the law."¹ The Association is led by an elected president, who is chosen by his or her fellow state attorneys. In December of 2020, James Glasgow, who is also the Will County State's Attorney, was elected for a one-year term as Association President.²

Each year, the Illinois State's Attorneys Association holds a convention to discuss leading issues among the profession and vote for the coming year's Association President. This yearly tradition dates back to 1896, when the Association held their inaugural convention.³

The second organization, the Illinois Office of the State's Attorneys Appellate (ILSAAP) is led by the Director and the Director's Office, which is "responsible for all Agency administrative and managerial functions, legal policy and other extraordinary legal concerns, budgetary and legislative matters, and Agency publications."⁴ Currently, the Director of the ILSAAP is Patrick Delfino, who has held the position since his appointment in December of 2008.⁵ Mr. Delfino is also currently the Executive Director of the Illinois State's Attorneys Association,⁶ which suggests that the two organizations are not completely separate from one another.

Additionally, the ILSAAP has a Board of Governors, which consists of "ten State's Attorneys who govern the Agency's functions."⁷ Of the ten attorneys on the Board, eight are elected, one (the Cook County State's Attorney) is statutorily required to serve, and then one State's Attorney is appointed by the other nine members.⁸ The ten attorneys on the Board represent different judicial districts of which there are five.⁹

Analysis

During the time period of this study, Illinois legislators drafted and considered a large number of criminal justice related bills. As leaders in the community, Illinois prosecutors—on behalf of their county, the Illinois State’s Attorneys Association, or ILSAAP—provided input and assistance for some of those bills.

The Illinois General Assembly records the positions of their witnesses for a bill through the use of witness slips, which indicates whether individuals are “proponents”, “opponents”, or have “no position” on the bill. The Illinois prosecutors were recorded witnesses for various legislation and, at times, they would provide written testimony to expand on their position.

One major piece of legislation for which the Illinois prosecutors provided written testimony was HB 1468¹⁰ (of the 100th General Assembly). As originally written, HB 1468 created a waiting period for certain gun sales. That bill was significantly altered when Governor Bruce Rauner used an amendatory veto¹¹ which would have, among other changes, reinstated the death penalty in Illinois.¹² The state had abolished the death penalty in 2011.¹³ Importantly, Governor Rauner’s amendment would not have fully reinstated the death penalty; instead it would only have been available for “mass murderers” or defendants who killed a law enforcement officer. The amendment also would have required a higher burden of proof for imposition of the death penalty — “beyond all doubt” rather than beyond a reasonable doubt.

Illinois prosecutors opposed HB 1468 as amended by Governor Rauner’s veto, but the reasons for that opposition were complex. Some members of the Illinois State’s Attorneys Association apparently do not support the reinstatement of the death penalty.

“Although there is no consensus of opinion on support of the death penalty among our members, we as individuals and as a collective body recognize the gravity of this issue . . . We believe that any process by which the government would end a human life should be deliberate and thoughtful, with appropriate safeguards in place, and that the death penalty should be reserved for the most serious offenses and offenders.

John Milhiser, on behalf of the

Illinois State's Attorneys Association¹⁴

However, the Association was in unanimous opposition to the Governor's decision to require a higher standard of proof in order to sentence a defendant to death.

“[The death penalty] would only apply in cases where a jury finds guilt beyond all doubt – not just 'reasonable doubt,' as is the current criminal standard. . . . There's no legal precedence for that in all American legal history The Illinois State's Attorneys Association is opposed to the standard, and again, there's no history of such a burden of proof.

Jay Scott, Macon County's State Attorney¹⁵

Furthermore, the former President of the Illinois State's Attorneys Association wrote a letter to the House Judiciary-Criminal Committee, which explained the Association's opposition to the bill.

“The proposed standard of beyond all doubt, however, is unprecedented and untested in American jurisprudence [C]hanging the burden of proof to a 'beyond all doubt' standard is complex and involves constitutional and legal concerns that cannot be evaluated in the brief time thus far allotted.

John Milhiser, Former President of the
Illinois State's Attorneys Association¹⁶

Ultimately, this bill died in the House after no positive action was taken on the bill.

A second piece of legislation with which Illinois prosecutors were heavily involved was HB 218 (of the 99th General Assembly), which aimed to decrease the penalty for the possession of low amounts of cannabis.

The Associate Director of ILSAAP Matt Jones, stated that the group was in support of the bill because it represented “a fair and balanced approach to all of the interested parties.”¹⁷ Furthermore, Mr. Jones, explained that “opposing decriminalization [would] send[] a mixed message if the state wants to reduce the prison population.”¹⁸ Prosecutors not only expressed their opinion on the bill but also helped draft the legislative language:

66 In helping to craft the bill's approach to DUI charges, the association beat back an effort during the legislative session to replace zero tolerance with language that would have required authorities to prove 'actual impairment' before gaining a conviction for marijuana-related impairment.

Matt Jones, Associate Director of ILSAAP¹⁹

Illinois prosecutors have also supported legislation that aims to raise the penalties or punishments for certain crimes. For example, Illinois prosecutors supported, HB 352 (of the 100th General Assembly), which aimed to raise the mandatory minimum for certain amounts of heroin possession. Additionally, prosecutors supported HB 6071 (of the 99th General Assembly), which aimed to increase the penalty for endangering the life or health of a child. While testimony was not recorded to explain the prosecutor's positions, their support was recorded through the General Assembly's witness slips.

In sum, Illinois prosecutors supported, opposed, and provided recommendations for a variety of criminal justice related legislation. With their influence and expertise, Illinois prosecutors were able to advocate for the criminal justice reform they found appropriate for the state of Illinois.

¹ *Will County State's Attorney James Glasgow Elected President of Illinois State's Attorneys Association in 2021*, JAMES W. GLASGOW WILL COUNTY STATE'S ATTORNEY (Jan. 15, 2021)

<https://willcountysao.com/2021/01/will-county-states-attorney-james-glasgow-elected-president-of-illinois-states-attorneys-association/>.

² *Id.*

³ *Annual Convention of the Illinois State's Attorney's Association*, THE TIMES (June 29, 1899) ("The third annual convention of the Illinois States' Attorneys' Association, is now in session in Ottawa, with nearly fifty members of the association present.").

⁴ *The Director's Office*, THE ILLINOIS OFFICE OF THE STATE'S ATTORNEYS APPELLATE PROSECUTOR, https://www.ilsaap.org/directors_office.htm (last accessed Jan. 31, 2021).

⁵ *Id.*

⁶ *Id.*

⁷ *The Board of Governors*, THE ILLINOIS OFFICE OF THE STATE'S ATTORNEYS APPELLATE PROSECUTOR, https://www.ilsaap.org/board_of_governors.htm (last accessed Jan. 31, 2021).

⁸ *Id.*

⁹ *Id.*

¹⁰ This bill with the amendatory veto sought to reinstate the death penalty when a defendant, who is eighteen years or older, is guilty of murdering two or more people.

¹¹ Illinois allows governors to not only veto legislation with which they do not agree, but also to propose changes to legislation with an amendatory veto. The legislature has the power to override an amendatory veto (in which case the legislation as originally passed becomes law), adopt the changes from the amendatory veto (in which case the bill as amended by the

governor becomes law), or do nothing (in which case the legislation is considered dead).

<https://www.illinoispolicy.org/illinois-gubernatorial-veto-procedure/>

¹² For Governor Rauner's amendatory veto statement, in which he explains the various changes he sought, see <https://www.youtube.com/watch?v=D4tPlPjtREA>

¹³ *How the Death Penalty Was Abolished in Illinois*, THE CHICAGO TRIBUNE, (May 15, 2018)

<https://www.chicagotribune.com/news/ct-met-illinois-death-penalty-timeline-gfx-20180514-htmlstory.html>.

¹⁴ Written testimony by Illinois State's Attorneys Association President John Milhiser for HB 1486: http://files.sj-r.com/media/news/20180525_milhiserletter.pdf.

¹⁵ John O'Connor, *The Death Penalty Draws Criticism*, THE PANTAGRAPH (BLOOMINGTON, ILLINOIS), (May 22, 2018)

<https://plus.lexis.com/document/?pddocfullpath=%2Fshared%2Fdocument%2Fnews%2Furn%3AcontentItem%3A5SD5-JJ41-DY7J-F3F5-00000-00&pddocid=urn%3AcontentItem%3A5SD5-JJ41-DY7J-F3F5-00000-00&pdcontentcomponentid=156859&pdteaserkey=sr43&pdtab=allpods&ecom=1f4Lk&earg=sr43&cbc=0&pdmfid=1530671&crid=874cadca-6716-410c-b7e3-94f3f61ec294>.

¹⁶ Written testimony by Illinois State's Attorneys Association President John Milhiser for HB 1486: http://files.sj-r.com/media/news/20180525_milhiserletter.pdf

¹⁷ Matt Buedel & Dean Olsen, *Bill would establish nation's highest pot-impaired driving threshold*, THE STATE JOURNAL-REGISTER (SPRINGFIELD, IL), (June 27, 2015) <https://unc.live/3jfRpHJ>.

¹⁸ *Decision to Decriminalize Pot in Illinois in Rauner's Hands*, ASSOCIATED PRESS STATE WIRE: ILLINOIS (IL), (June 3, 2015) <https://unc.live/3cwaNyO>.

¹⁹ Matt Buedel & Dean Olsen, *Bill would establish nation's highest pot-impaired driving threshold*, THE STATE JOURNAL-REGISTER (SPRINGFIELD, IL), (June 27, 2015) <https://unc.live/3jfRpHJ>.

State of Indiana

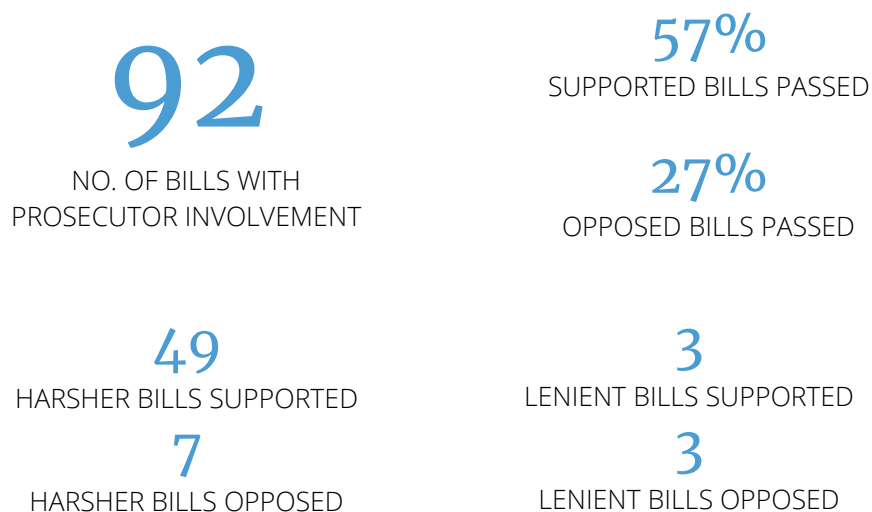
Indiana Prosecuting Attorneys Council Association of Indiana Prosecuting Attorneys

It is difficult to fully assess the lobbying efforts of Indiana prosecutors because only limited data was available. During the relevant time period, 364 criminal justice bills were introduced into the state legislature. For 215 of those bills, sufficient information was not available to determine whether prosecutors lobbied lawmakers. For the remaining 149 of bills, Indiana prosecutors were very active lobbyists; they were involved in approximately 62% of the criminal legislative bills introduced in the state legislature during the relevant time period. (They were lobbied on 92 of the 149 total bills for which sufficient information was available).



When Indiana prosecutors lobbied, they were only somewhat successful. On average, the legislature passed 63% of criminal justice bills that were introduced. When prosecutors lobbied in favor of a bill, the bill was actually somewhat less likely to pass (57% pass rate). However, when they lobbied against a bill it was significantly less likely to pass (27% pass rate).

Overall, Indiana prosecutors tended to support more punitive bills. They supported 49 bills that would have either expanded the criminal law or increased punishments. However, Indiana prosecutors' lobbying was not uniformly in favor of more punitive laws. They opposed 7 bills that would have either expanded the criminal law or increased punishments. When it came to bills would have decreased the scope of criminal law or decreased sentences, they supported 3 such bills and opposed 3.



Associations Composition and History

The Indiana Prosecuting Attorneys Council (IPAC) is a state agency that was created by statute in 1973.¹ It is made up of Indiana's elected prosecuting attorneys and their chief deputies, and it is governed by a 10-member Board of Directors who are elected from among the state's prosecuting attorneys.² The organization employs a staff, including an executive director.³

According to its website: "The IPAC assists prosecuting attorneys by preparing manuals, providing legal research, and conducting training seminars. It serves as a liaison to local, state, and federal agencies, study commissions, and community groups in an effort to support law enforcement and promote the fair administration of justice."⁴ The Council's statutory duties include assisting in the coordination of duties of the prosecuting attorneys of the state and their staffs, conducting research and studies that would be of interest and value to all prosecuting attorneys and their staffs, compiling and forfeiture data into an annual report, and administering the state's drug prosecution fund.⁵

IPAC is not the only prosecutor association in the state. There is a second organization, the Association of Indiana Prosecuting Attorneys, which appears to be affiliated with IPAC. The precise relationship between the Association of Indiana Prosecuting Attorneys and IPAC is unclear. Press releases about and position statements from the Association can be found on the Council's website, and the press contact information for the Association lists a person who is employed by the Council.⁶

A slide presentation from the IPAC Assistant Executive Director, which is available online, confirms that the two organizations are related.⁷ The slide presentation indicates that the Association is a 501(c)(6) organization with a separate board of directors that engages in legislative activities.⁸ Information about the Association was difficult to find because it does not appear to have its own website. However, some press releases about the Association's legislative goals can be found by searching the IPAC website.⁹

Analysis

We were able to obtain only a partial picture of when Indiana's prosecutors lobby the legislature and what positions they take on specific bills. Some committee hearings for criminal justice bills are archived on the state legislature's website, but the videos are not clearly linked to specific bills, and some videos appear to be missing.

For example, the *Indiana Prosecutor Newsletter* indicates that prosecutors testified in support of four bills at a committee hearing in 2015.¹⁰ But our examination of the legislature's website did not discover any record of that testimony. Those bills were: 1) SB 92, which added crimes for which sentencing for use of a deadly weapon in the commission of an offense may be enhanced between five and 20 years and provides a fix to the habitual offender statute; 2) SB 164, which provided that a person convicted of two or more offenses involving the unlawful possession or use of a deadly weapon may not have the person's conviction expunged; 3) SB 551, which established a crime fighting pilot project in Marion, Lake and Allen counties to pay overtime for officers assigned to high crime districts; and 4) SB 559, which added unlawful possession of a firearm by a serious violent felon to the definition of "crimes of violence," added a 20-year sentencing enhancement for a person who points or discharges a firearm at a law enforcement officer, and provided a technical fix for consecutive sentencing for multiple offenses committed during a single episode of criminal conduct. All four bills were favorably voted out of the committee, but only SB 559 was passed and signed into law.

It also appears that testifying in front of legislative committees was not the only method of communication that prosecutors used to convey their support or opposition to pieces of legislation to lawmakers. We discovered two separate instances of lawmakers referencing communications with prosecutors about

specific bills during committee hearings;¹¹ we do not know whether there were other communications that remained undisclosed.

Some prosecutor lobbying during the study period grew out of a criminal code reform law that took effect in 2014. The code reform law, House Enrolled Act 1006, was the product of a multi-year review of the state's criminal code by the Criminal Code Evaluation Commission, which was appointed in 2010.¹² The bill not only proposed technical fixes, but also resulted in "sweeping changes" meant to reduce recidivism and change the state's sentencing structure in order avoid increases in prison population that would have required building a new prison.¹³ Several bills that prosecutors supported during the study period involved what they characterized as "cleanup" from that criminal code reform.¹⁴

☞ [HB] 1105 is really a fix...There's no statute of limitation on an old A felony nor a current level 1 or 2. So this applied to level 3, which was the old B felony rape. So what this legislation does, it simply applies the same rule to the B felony rapes that apply to the level 3. So it just adds them to the list for old crimes that come forward...So it doesn't really change anything, it's really more of a cleanup and it allows those victims prior to 1006 to have the same statute of limitations as those after 1006. Which I think is what everyone wanted to begin with."

David Powell, Indiana Prosecuting Attorney's Council

In addition to proposing changes to account for the 2014 criminal code reform, prosecutors spend much of their time lobbying about bills related to drugs and to sex crimes.

When it came to drugs, Indiana prosecutors supported a number of bills that were designed to address drug crimes and decrease the supply of illegal drugs in the state.¹⁵ For example, the Attorney General's Office supported SB 174 (2016), which would have created the offense of dealing in a controlled substance by a practitioner, and enhance the offense if the offenses causes the death of another person. That bill was passed and signed into law.

☞ In 2014, 1,152 individuals overdosed and died from the result of prescription drugs...So I know that the leg and a lot of boards...have been doing a lot of things to try to cut into these death numbers,

but we are still seeing an increase. And that is one reason why we are approving this bill."

Matthew Whitmire, Attorney General's Office

The Association of Indiana Prosecuting Attorneys supported SB 207 (2016) as one of its legislative goals for the year.¹⁶ That bill would have allowed a person who possessed more than 10 grams of cocaine or methamphetamine to be convicted of possession with intent to deliver a controlled substance without additional evidence of intent. It also would have made dealing in cocaine a Level 2 felony under certain circumstances, increased the penalty for manufacturing methamphetamine if the manufacture results in serious bodily injury to another person, and makes the sentences for certain drug crimes ineligible for suspension if the person has a prior felony conviction. The bill died in committee.

“It is no secret that drug trafficking and drug dealing are driving much of the violent crime in our state, including homicides which are occurring at a record pace. What we aim to target with this legislation are criminal organizations which distribute drugs in our communities, often employing violence as a means to further their criminal business interests. Creating a new level of crime for aggravated drug dealing would allow courts to levy more serious penalties, giving prosecutors and law enforcement an additional tool to use in dismantling these criminal operations.”

Terry Curry, Marion County Prosecuting Attorney
on behalf of Association of Indiana Prosecuting Attorneys

Prosecutors also supported SB 536 (2015), which would have required courts and police officers to report drug related felonies to the online compliance system that tracks over-the-counter sales of medications that contain pseudoephedrine in order to prevent sales to those with felony drug convictions.

“We need to stop meth labs. We need to stop children from growing up with meth. We need to stop people renting buildings and people renting apartments to people that then have meth labs explode and they are left with the cost. We need to stop people’s addiction. That’s the goal of the people that have favored this (Senate Bill 536) and there’s a couple of states that have done this and they’ve seen their labs drop.”

Nick Hermann, Vanderburgh County Prosecuting Attorney¹⁷

When it came to legalization or decriminalization of marijuana or marijuana-related products, Indiana prosecutors were generally opposed. Two years before the study period, in 2013, IPAC released a "Position Statement on Marijuana" that stated "The Association of Indiana Prosecuting Attorney's, Inc. is opposed to the legalization and decriminalization of marijuana; and The Association of Indiana Prosecuting Attorney's, Inc. is opposed to the reduction of penalties for marijuana crimes." That opposition continued into the study period. In 2017, David Powell, the Executive Secretary for IPAC, wrote a letter to the state Commission to Combat Drug Abuse on the subject of medical marijuana. His letter stated, "[W]e respectfully ask the Commission to formally oppose the legalization of marijuana in any form, for any purpose...Marijuana is not medicine. Information purporting that marijuana is medicine is based on half-truths and anecdotal evidence...For all of these reasons, we strongly believe both medicinal and recreational marijuana legalization are wrong for Indiana. We urge you to take a stand against these policies that would cause further harm to communities already suffering from the devastating effects of drug abuse." When a bill to create a medical marijuana scheme was introduced that same year, it died in committee.¹⁸

Prosecutor opposition to marijuana extended beyond legalization and decriminalization of the drug itself to include marijuana-related products. For example, IPAC opposed HB 1228 (2016), which would have allowed a state agency to implement rules concerning industrial hemp and encouraged the state medical school to research the use of CBD to treat epilepsy. Prosecutors also opposed HB 1387 (2015), which would have exempted individuals from criminal penalties for possession or use of cannabis oil under certain circumstances. Neither bill passed. When bills were introduced in 2017 to allow CBD oil—which is derived from the marijuana plant—to be used in the treatment of epilepsy,¹⁹ prosecutors were actively involved in crafting the language of the bill.

“We're hopeful that there can be relief provided to children and that there's not a medical marijuana loophole created as a result of this...We as prosecutors...cannot support openly any legislation that would be in violation of federal law. We're trying to find a place where we can be neutral and take no position. Candidly, the language that you just received...we worked a lot with. That language we can stand neutral on...That language does provide relief to children and does not create loopholes.”

David Powell, Indiana Prosecuting Attorney Council

Prosecutors initially remained neutral on the legislation.²⁰ But they ultimately supported it, and it was passed and signed into law.²¹

Prosecutors were active lobbyists on bills that involved sex offenses.²² For example, prosecutors supported SB 14 (2016), which sought to increase the penalties associated with child exploitation and child pornography. The bill was passed and signed into law.

“We are seeing younger and younger children being victimized... so we think these penalty increases are appropriate. . . . We do support the bill with the amendments, and we do hope you'll pass it.”
Suzanne O'Malley, Indiana Prosecuting Attorney's Council

Prosecutors also supported SB 94 (2015), which sought to increase the statute of limitations for rape. That bill was also passed and signed into law.

¹ Ind. St. § 33-39-8-2; <https://www.in.gov/ipac/>

² Ind. St. §§ 33-39-8-2, § 33-39-8-3; <https://www.in.gov/ipac/>

³ Ind. St. § 33-39-8-4; <https://www.in.gov/ipac/2741.htm>

⁴ <https://www.in.gov/ipac/>

⁵ Ind. St. § 33-39-8-5 (listing duties); Ind. St. § 33-39-8-6 (establishing drug prosecution fund).

⁶ See, e.g., https://www.in.gov/ipac/files/2015_association_election_jason_mount.pdf;

https://www.in.gov/ipac/files/2016_Association_Legislative_rollout_PR.pdf;

[https://www.in.gov/ipac/files/AIPA_Position_Statement\(1\).pdf](https://www.in.gov/ipac/files/AIPA_Position_Statement(1).pdf)

⁷ <https://slideplayer.com/slide/3492343/> Slide 2 lists the Association of Indiana Prosecuting Attorneys, Inc. in a list labeled “IPAC Overview & Resources.”

⁸ <https://slideplayer.com/slide/3492343/> See slide 25

⁹ See, e.g., Press Release announcing 2016 legislative goals (Dec. 9, 2015), available at https://www.in.gov/ipac/files/2016_Association_Legislative_rollout_PR.pdf

¹⁰ *Prosecutors Support Bills Addressing Violent Crime and Deadly Weapons*, The Indiana Prosecutor,

1st Quarter, 2015, <https://www.in.gov/ipac/files/The Indiana Prosecutor 2015 1st Qtr2.pdf>

(“Seven Indiana prosecuting attorneys testified in support of four bills that give Indiana prosecutors additional legal tools to protect Indiana citizens from violent crime. Certain aspects of the bills, which were heard at a meeting of the Indiana Senate Corrections and Criminal Law Committee, also provide technical fixes to sentencing provisions that were impacted by the criminal code reform bill of 2014 (HEA 1006).”).

¹¹ SB 70 (2016) (Senator Zakas distributed a letter from Ken Cotter, St. Joseph County Prosecutor, in support of the bill to the Committee on Corrections & Criminal Law); SB 431 (2018) (Greg Steuerwald, Chair of House Judiciary Committee, informed his fellow lawmakers: “I did get an email from the prosecutors saying they did support this idea.”)

¹² Sagamore Institute, *reforming Criminal Justice in Indiana*,

<https://sagamoreinstitute.org/reforming-criminal-justice-in-indiana/>

¹³ *Id.*; Madeline Buckley & Kristine Guerra, *Can Indiana trade overcrowded jails for treatment reform?*, Indianapolis Star (July 10, 2016).

¹⁴ SB 174 (2015); HB 1105 (2016); HB 1064 (2017); HB 1033 (2018); *see also Prosecutors Support Bills Addressing Violent Crime and Deadly Weapons*, The Indiana Prosecutor, 1st Quarter, 2015, https://www.in.gov/ipac/files/The_Indiana_Prosecutor_2015_1st_Qtr2.pdf (stating the prosecutors had testified in support of four bills that “provide technical fixes to sentencing provisions that were impacted by the criminal code reform bill of 2014 (HEA 1006).”).

¹⁵ HB 1602 (2015); HB 1157 (2016); HB 1211 (2016); HB 1235 (2016); SB 324 (2017); HB 1019 (2017)

¹⁶ *Prosecutors push for legislative action to curb drug crime*, Greensburg Daily News (Dec. 11, 2015), https://www.greensburgdailynews.com/news/local_news/prosecutors-push-for-legislative-action-to-curb-drug-crime/article_eaa1a3a7-72e4-55b8-8c33-5658c981dc09.html (describing the contents of a press release from the Association of Indiana Prosecuting Attorneys announcing the Associations 2016 legislative goals)

¹⁷ <http://www.14news.com/story/28076539/indiana-bill-aims-to-curb-meth-production>

¹⁸ HB 1303 (2017).

¹⁹ SB 15 (2017); HB 1148 (2017)

²⁰ “We are not opposing or supporting the bill at this point. I will say we are not opposed to CBD...The issue, I think, for us...is that if we're gonna have [CBD] we need to make sure it's the right stuff and it's regulated properly and it's safe.” – David Powell, Indiana Prosecuting Attorney's Council speaking about SB 15 (2017)

²¹ “We do support the legislation...Obviously we are opposed to medical marijuana and the legalization of marijuana, but this bill does not do that.” -- David Powell, Indiana Prosecuting Attorney Council speaking about HB 1148 (2017)

²² SB 313 (2015); SB 314 (2015); SB 522 (2015)

State of Iowa

Iowa County Attorneys Association

Iowa prosecutors were very active lobbyists; they were involved in approximately 44% of the criminal legislative bills introduced in the state legislature during the relevant time period. (They lobbied on 371 of the 843 total bills for which sufficient information was available. There were an additional 2 bills for which sufficient information was not available.).



When Iowa prosecutors lobbied, they were somewhat successful. On average, the legislature only passed 9% of criminal justice bills that were introduced. When the ICAA lobbied in favor of a bill, the bill was somewhat more likely to pass (17% pass rate); when they lobbied against a bill it was slightly less likely to pass (8.8% pass rate).

Overall, Iowa prosecuting attorneys were more likely to support punitive bills, but they also supported bills that would have made the law less punitive. The ICAA supported 64 bills that would have either expanded the criminal law or increased punishments, and they opposed 16 such bills. When it came to bills that would have decreased the scope of criminal law or decreased sentences, the ICAA supported 12 such bills and opposed 9.

371

NO. OF BILLS WITH
PROSECUTOR INVOLVEMENT

17%

SUPPORTED BILLS PASSED

8.8%

OPPOSED BILLS PASSED

64

HARsher BILLS SUPPORTED

16

HARsher BILLS OPPOSED

12

LENIENT BILLS SUPPORTED

9

LENIENT BILLS OPPOSED

Association Composition and History

The Iowa County Attorneys Association (ICAA) consists of 99 attorneys—one prosecuting attorney from each county. They have a board of directors¹ as well as six different committees.² The ICAA website indicates that the association employs five full-time ICAA employees, three from the Prosecuting Attorneys Training Coordinator (PATC), one ICAA staff, and one ICAA/PATC support staff.³ The ICAA also retains outside lobbyists. Lon Anderson, Susan Cameron Daeman, and Kelly Meyers appeared as lobbyists for the ICAA during both legislative sessions of the study period.⁴

The ICAA mission is “[t]o assist Iowa county attorneys by promoting the just and effective prosecution of civil and criminal law through advocacy, education and professional interaction and integrity.”⁵ According to its website, the ICAA’s primary purposes are to “encourage and maintain close coordination among county attorneys and to promote the uniform and efficient administration of the criminal justice system” in the state.⁶ It accomplished these purposes “through cooperation with law enforcement agencies, monitoring of legislation and the provision of continuing legal education for prosecutors.”⁷

The ICAA traces its founding to the mid-1920’s, when prosecutors first joined together to form an organization called the County Attorneys of Iowa.⁸ That organization held its first annual conference in 1927.⁹ The organization changed its name to the Iowa County Attorneys Association in 1964, and it was incorporated as a nonprofit corporation in 1976.¹⁰ It appears to have engaged in lobbying efforts for decades. For example, in 1975, the Association “worked hard for passage of legislation” to create the Office of the Prosecuting Attorneys Training Coordinator and the Prosecuting Attorneys Council to assist the Association and Attorney General in training and offering support services for prosecutors.¹¹

Analysis

Publicly available materials provide information about whether Iowa prosecutors lobbied in favor, against, or remained neutral toward bills. However, information regarding what they said or to what extent they lobbied was not publicly available. As a result, while we know what position the ICAA took on particular pieces of legislation, we often do not know why they favored or opposed a bill, nor are we

able to determine their level of involvement for each bill on which they lobbied, such as whether they helped draft bills or offered amendments.

During the study period, there were signs of a broader movement towards criminal justice reform. For example, in 2015, a Governor's Working Group on Criminal Justice Policy Reform was created. The main purpose of this group was to focus on "mental health and drug court diversionary programs; minority representation in jury pools; confidentiality issues related to juvenile court records; and cost of phone calls in the state's prisons and county jails. . ."¹² Two years later, in 2017, then-Governor Terry Branstad signed the second sentencing reform bill in two years into law. The Attorney General's Office supported the sentencing reform bill, while the ICAA remained neutral.¹³ Many of the bills the ICAA supported during the study period involved enhancing penalties or expanding laws for crimes committed against juveniles as well as crimes about distracted or impaired driving.¹⁴

Juveniles were a frequent topic of legislation during the study period. This topic included bills about child abuse, sex offenders, and crimes committed by juveniles. Multiple pieces of legislation were introduced to address child abuse. These included bills urging stricter mandatory reporting requirements,¹⁵ expansion on child endangerment and abuse laws,¹⁶ and harsher standards for substance use as it relates to child abuse and children in need of assistance.¹⁷ The ICAA remained neutral on many of these bills, however, they generally supported bills that created harsher sentencing for sex offenders and those who commit sex crimes involving a minor. For example, prosecutors lobbied in favor of House File 69, which would have restricted the ability to receive earned time for a person who kidnaps a minor and is required to register as a sex offender.¹⁸ They also lobbied in favor of Senate Study Bill 3045, which raised the criminal penalty from an aggravated misdemeanor to a class D felony for an agent of a juvenile placement facility who engages in a sex act with a juvenile placed at the facility.¹⁹ The ICAA's positions for or against these positions remained consistent as multiple related bills made their way through the process.

Additionally, prosecutors generally lobbied in favor of bills that would make laws involving texting while driving or driving while under the influence harsher. The ICAA consistently, and unsuccessfully, lobbied for bills that made texting while driving a primary offense.²⁰ (Police are permitted to stop and issue a citation to a driver for a primary offense; they do not have such authority for secondary offenses.²¹)

When it came to drug crimes, the ICAA did not take a particularly punitive stance. On one occasion the ICAA successfully lobbied against passing a bill that decreased the punishment for possession of marijuana.²² After lobbying against the 2015 bill, the ICAA refrained from lobbying or remained neutral regarding other bills related to marijuana.²³ The ICAA even supported bills that decreased punishment relating to use of harder drugs.²⁴

¹ 2020 ICAA Board of Directors, <https://iowa-icaa.com/About/2020%20ICAA%20Board%20of%20Directors.pdf> (consisting of six positions filled by different county attorneys or assistant county attorneys).

² ICAA 2020 Committees - 1, <https://iowa-icaa.com/Committees/Committees%202020%20-%201.pdf> (consisting of six committees, each of which is comprised of a chairperson and multiple committee members).

³ Iowa County Attorneys Association, CA Roster, <https://iowa-icaa.com/Roster/@Roster%20of%20CA%20&%20ACAs.pdf>.

⁴ The two legislative sessions in the study period were the 86th General Assembly (2015-2016) and the 87th General Assembly (2017-2018). Lobbyist Information can be found here: <https://www.legis.iowa.gov/lobbyist/reports/client?clientID=352&ga=87&session=1>.

⁵ Iowa County Attorneys Association, Mission, <https://iowa-icaa.com/mission/>.

⁶ Iowa County Attorneys Association, Home Page, <https://iowa-icaa.com/>.

⁷ Iowa County Attorneys Association, Home Page, <https://iowa-icaa.com/>.

⁸ Iowa County Attorneys Association, History, <https://iowa-icaa.com/history/>.

⁹ Iowa County Attorneys Association, History, <https://iowa-icaa.com/history/>.

¹⁰ *Id.*

¹¹ *Id.*

¹² Kathy A. Bolten, "New group to review Iowa's criminal justice policies," Des Moines Register, (Aug. 28, 2015), <https://www.desmoinesregister.com/story/news/2015/08/28/branstad-criminal-justice-reforms-naacp/71304060/>.

¹³ See SF 445 (2017) (eliminating the mandatory minimum sentences for the lowest level, Class C drug felonies, making about 200 current prisoners serving Class C drug sentences eligible for parole, increasing crack cocaine amount thresholds, and allowing judges to reconsider and adjust sentences for any Class C or D felony within a person's first year in prison, among other things) (signed into law and supported by the attorney general's office).

¹⁴ See e.g., SSB 3026 (2018) (increasing coverage of law for kidnapping in the second degree) (died in chamber but supported by ICAA); HF 424 (2015) (making text-messaging while driving a primary offense) (died in committee but supported by ICAA).

¹⁵ See e.g., SF 2141 (2016) (expands age requirement in reporting of child abuse for mandatory reporters) (died in chamber and no prosecutor activity); SF 2238 (2016) (requiring mandatory reporters report instances of child abuse regardless of child's age and criminally penalizes failure to report) (died in committee and no prosecutor activity).

¹⁶ See e.g., HF 543 (2017) (amending definitions of "child in need of assistance," "child abuse," "in the presence of a child," and "dangerous substance" as they relate to "drug-endangered"

children to increase coverage of the substantive law) (signed into law and supported by the ICAA); HSB 626 (2018) (expanding definition of "child abuse" relating to acts or omissions of person responsible for the care of the child) (died in chamber and ICAA undecided).

¹⁷ See e.g., HF 209 (2017) (expanding definition of dangerous substance for purpose of child in need of assistance and child abuse to include cocaine, heroin, opium, and opiates) (died in committee and ICAA undecided); SF 208 (2017) (expanding provision regarding dangerous substances relating to child abuse) (died in committee but supported by ICAA).

¹⁸ HF 69 (2015) (died in committee).

¹⁹ SSB 3045 (2018) (died in chamber).

²⁰ See HF 424 (2015) (died in committee); SF 391 (2015) (died in chamber); SSB 1079 (2017) (died in chamber); SF 407 (2018) (died in committee).

²¹ *2020 Iowa Legislature: Regulations for drivers chief among potential hot-button topics*, The Gazette (Cedar Rapids) (Jan 6, 2020), at <https://www.thegazette.com/subject/news/government/iowa-legislature-2020-hot-button-issues-driver-regulations-20200106>

²² HF 60 (2015) (died in committee) (decreasing the punishment for possession or distribution of marijuana).

²³ See SSB 1005 (2015) (died in committee) (decreasing marijuana from schedule I to schedule II and reducing penalty level for first offense possession); SF 280 (2017) (died in chamber) (decreasing punishment by providing that a person who possesses five grams or less of marijuana commits a simple misdemeanor for first offense).

²⁴ See e.g., SF 445 (2017) (signed into law) (establishes law enforcement privilege in testifying; increasing crack cocaine amount thresholds; eliminating requirement to serve minimum term for some drug offenses).

State of Kansas

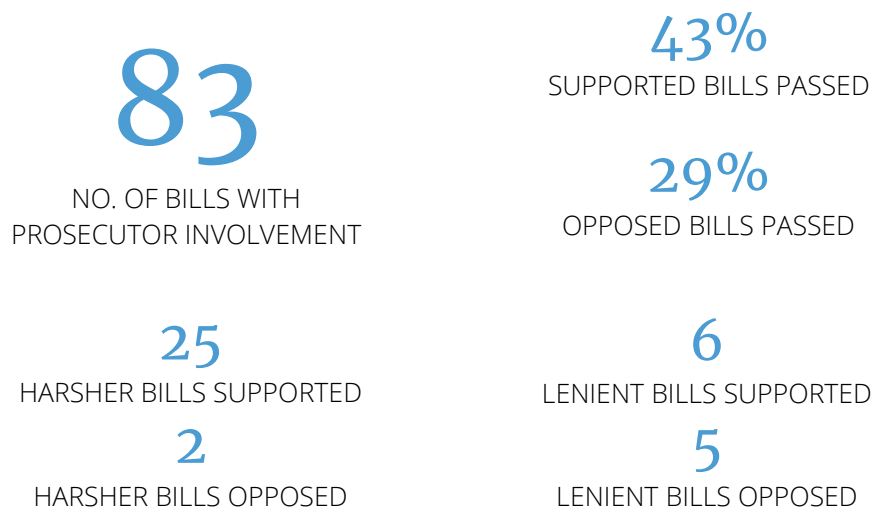
Kansas County & District Attorneys Association

Kansas prosecutors were active lobbyists; they were involved in approximately 34% of the criminal justice bills introduced in the state legislature during the relevant time period. (They lobbied on 83 of 243 total bills for which we had sufficient information to gauge prosecutor involvement. There were an additional 3 criminal justice bills for which sufficient information was not available.)



When the prosecutors lobbied, they were successful. On average, the legislature only passed 23% of criminal justice bills that were introduced. When prosecutors lobbied in favor of a bill, the bill was significantly more likely to pass (43% pass rate); when they lobbied against a bill it was somewhat more likely to pass (29% pass rate).

Overall, Kansas prosecutors tended to support more punitive bills. They supported 25 bills that would have either expanded the criminal law or increased punishments. However, prosecutor lobbying was not uniformly in favor of more punitive laws. They opposed 2 bills that would have either expanded the criminal law or increased punishments. When it came to bills which would have decreased the scope of criminal law or decreased sentences, they supported 6 such bills and opposed 5.



Association Composition and History

The Kansas County & District Attorneys Association (KCDAA) is comprised of the District Attorneys, Assistant District Attorneys, Deputy District Attorneys, County Attorneys, Assistant County Attorneys, and Deputy County Attorneys in the State of Kansas.¹ Their Board of Directors includes a president, vice president, secretary/treasurer, and four other directors.² They also employ an Executive Director, Steve Kearney.³ Per their website, “[t]he purpose of the Association is to promote, improve, and facilitate the administration of justice in the State of Kansas.”⁴

Public reports available on the Secretary of State’s website list the following registered lobbyists for the KCDAA during the study period: Steve Kearney (2015-2018); Kari L. Presley (2015-2018);⁵ Patrick Vogelsberg (2015-2016); and Kim Parker (2018).⁶ The KCDAA hired Parker, the former Deputy District Attorney from Sedgwick County, to act as Prosecutor Coordinator in order to strengthen the lobbying capacity of the KCDAA and “be an expert resource to the legislature.”⁷ The KCDAA also utilized prosecutors across Kansas for lobbying activities⁸ and formally solicited their members for legislative proposals to craft into selected initiatives.⁹

The association has pursued lobbying efforts since its formation in 1892.¹⁰ In an address to county prosecutors in advance of their first annual convention, chairman pro tem Sam Kimble stated that “attention will be given to suggested and proposed legislation” and emphasized that attendance at the convention was a mandatory duty – “Take an active part. Let your voice be heard.”¹¹

Analysis

The Kansas Legislature’s website provides links to the testimony of and positions taken by lobbyists in committee hearings before the Senate and House of Representatives. While informative, the KCDAA appears to play a larger role in lobbying than such testimony suggests. For example, for one substantial reform effort, SB 367, described below, the KCDAA engaged in personal meetings with House and Senate leaders to discuss the bill prior to and during the relevant legislative session and they offered opposition testimony and amendments in committees. After the bill was enacted, they continued to engage in lobbying efforts to mitigate the effects of the bill via other legislation.¹²

In her first six months as Prosecutor Coordinator, Kim Parker was “available to testify and educate policymakers on the impact of the more than 100 bills [the KCDA was] following.”¹³ The KCDA also indicates that their members work out of session with law enforcement, the Kansas Attorney General, the Kansas Judicial Council, and the Kansas Sentencing Commission¹⁴ – this level of lobbying was not captured by publicly available legislative materials, and is therefore not reflected in our data.

The KCDA opposed SB 367, a 2016 juvenile sentencing reform effort. The focus of SB 367 was to divert juvenile offenders away from detention and into community-based treatment.¹⁵ Although the KCDA stated, “[W]e believe the goal of the State of Kansas should be the [sic] improve rates of recidivism for juvenile offenders and decrease out-of-home placement through the promulgation of community-based alternatives,” they argued that the reforms suggested by SB 367 could not be effective because over the previous 16 years, new juvenile admissions had already decreased so greatly that remaining admissions represented a group of children facing systemic problems in their homes and communities – problems that could not be addressed by the legislation alone.¹⁶

☞ Sadly, the population of kids removed from the home and placed into state’s custody regularly face issues in their homes and neighborhoods (substance abuse, addiction, unemployment, incarceration, domestic violence and, too often, sexual violence) that simply do not lend themselves to simple or inexpensive fixes.

Marc Bennett, District Attorney Eighteenth Judicial District
on behalf of the KCDA¹⁷

In addition, the association argued, SB 367 failed to identify a goal or have a sustainable source of funding.¹⁸ The opposition to SB 367 was not uniform throughout Kansas. Prosecutors in Norton County and Henderson County testified in support of the legislation.¹⁹ The bill passed with strong bipartisan support.²⁰

The KCDA supported several bills that would increase punishments for certain crimes. One such bill was 2017-2018 HB 2581, which provided for enhanced penalties related to the act of “swatting,” a term used to describe making false reports to emergency responders. Under one enhancement, if a death resulted from swatting, the offense category was elevated from a misdemeanor to a level

1 person felony, a punishment equivalent to intentional second-degree murder.²¹

☞ While prank calls are usually funny and benign, these calls can cause chaos, danger, and even death. Bomb threats can be disruptive to commerce and education when called in to our workplaces and schools, and they can present an entire host of threats to innocent bystanders. Fake threats divert emergency resources from the real emergencies.

Kim Parker, KCDA²²

The bill passed. The KCDA also had success with bills creating the crime of counterfeiting currency²³ and creating an aggravated offense level for criminal damage to property.²⁴ Such measures passed with KCDA support.²⁵

Not all efforts were successful. The KCDA introduced SB 20, increasing the penalties for burglary, as part of their 2015-2016 legislative initiatives.²⁶ The measure failed but the KCDA lobbied on the issue again during the subsequent legislative session; in hearings on SB 113, the KCDA described burglars as “[s]ome of Kansas’s most notorious and dangerous criminals[.]”²⁷ SB 113 also failed.

Several bills proposed by the Kansas Legislature in the 2017-2018 legislative session related to the Kansas Standard Asset Seizure and Forfeiture Act (SASFA).²⁸ HB 2018 would have required a conviction related to the offense before a forfeiture could occur. The KCDA opposed the bill, arguing that a civil burden of proof was the norm throughout the nation and requiring a conviction would be “unworkable.”²⁹ The bill failed.

HB 2116 also would have barred forfeiture absent conviction of certain offenses, and would have instituted additional procedural protections. It too failed. Notably, HB 2116 would have redirected funding from the sale of seized property away from the coffers of law enforcement and other criminal justice organizations and given it to K-12 education instead.³⁰ The KCDA opposed the bill, highlighting the protections already afforded to those contesting forfeiture proceedings and arguing that in the majority of cases in one county, seized assets were profits from drug sales or drugs and therefore, had no innocent owner. They did not address the changes to state funding.³¹

HB 2003, another forfeiture bill, would have prohibited prosecutors from personally benefiting from forfeiture proceedings through representation of law enforcement as a private attorney or through referrals to private firms with which they were affiliated. In her written testimony before the House Judiciary Committee, Kim Parker explained that the KCDAAs supported that outcome. According to Parker, the referral to outside counsel “make[s] sense.”³²

HB 2003 failed but the prohibition on financial benefits was included in a series of procedural changes eventually enacted as part of HB 2459. Among the other amendments to SASFA, HB 2459 required the Kansas Bureau of Investigation to establish a repository and public website for data on Kansas forfeitures and to ensure that law enforcement agencies were properly accounting for the proceeds of forfeited property. KCDAAs supported the bill.

“While this legislation may reflect some compromise it nevertheless, clearly steps up legal protections for property owners and pro se litigants, clarifies the accounting and appropriate use of forfeiture proceeds, and provides judicial review in the initiation of forfeiture action by affidavit.”³³

Kim Parker, KCDAAs

¹ The following professionals are also qualified to become associate members of the KCDAAs: United States Attorney for the District of Kansas and their assistants or Deputies; Attorney General of Kansas; Deputy Attorney General of Kansas; Assistant Attorney General of Kansas; County Counselor; Deputy County Counselor; Assistant County Counselor; Police or Sheriff's Department Legal Advisor; City Prosecutor; and Other attorneys employed by the State whose principal duties are prosecution of violations of state laws. <http://www.kcdaa.org/about>

² <http://www.kcdaa.org/contact/>

³ *Id.* For more on Steve Kearney, see <https://kearneyandassociates.com/>.

⁴ <http://www.kcdaa.org/about>

⁵ Kearney and Presley worked at the lobbying firm Kearney & Associates, Inc. and engaged in “daily” lobbying activities for the KCDAAs. Stephen M. Howe, *Higher Legislative Involvement*, The Kansas Prosecutor (Fall/Winter 2016), <http://www.kcdaa.org/resources/Documents/KSPProsecutorMagazine/KSPProsecutor-Winter%202016.pdf>.

⁶ https://www.kssos.org/elections/elections_lobbyists.html

⁷ Howe, *supra* note 5.

⁸ *Id.*

⁹ See 2018 KCDAAs Legislative Request for Proposals, The Kansas Prosecutor (Spring/Summer 2017), <http://www.kcdaa.org/resources/Documents/KSPProsecutorMagazine/KSPProsecutor-SpringSummer%202017.pdf>.

¹⁰ The National Field, Jan. 8, 1892, at 3.

¹¹ *The Prosecutors – Annual Convention of the County Attorneys’ Association*, The Topeka Daily Capital, Dec. 23, 1892, at 5.

¹² Marc Bennett, *2016 Legislative Session & Your Involvement*, The Kansas Prosecutor (Spring 2016), <http://www.kcdaa.org/resources/Documents/KSProsecutorMagazine/KSProsecutor-Spring%202016.pdf> (see also, *Hearing on SB42 Before the S. Comm. on Judiciary*, Feb. 2, 2017 (testimony of Kim Parker in support of SB 42 (increasing limits on juvenile sentencing and amending probation conditions)).

¹³ Steve Kearney, *Taking KCDAA to the Next Level!*, The Kansas Prosecutor (Spring/Summer 2017), <http://www.kcdaa.org/resources/Documents/KSProsecutorMagazine/KSProsecutor-SpringSummer%202017.pdf>.

¹⁴ Steve Kearney, *KCDAA in Action!*, The Kansas Prosecutor (Spring/Summer 2018), <http://www.kcdaa.org/resources/Documents/KSProsecutorMagazine/KSProsecutor%20Spring%202018.pdf>.

¹⁵ 2016 SB 367

¹⁶ See *Hearing on SB 367 Before the H. Corrections and Juv. Justice Comm.*, Mar. 10, 2016 (written testimony of Marc Bennett, District Attorney Eighteenth Judicial District on behalf of the KCDAA). The argument that the “Kansas juvenile system is not broken” was also reinforced in the House hearings by Stephen Howe, Johnson County District Attorney and KDCAA board member. *Hearing on SB 367 Before the H. Corrections and Juv. Justice Comm.*, Mar. 10, 2016, (written testimony of Stephen Howe).

¹⁷ Testimony of Bennet, *supra* note 16.

¹⁸ *Id.* The KCDAA offered several amendments to address the bill’s perceived shortcomings including: having each judicial district identify existing programs in need of improvements; analyzing data in jurisdictions of varying populations to determine treatment needs; extending case length limits for high-risk offenders; removing the requirement that a multidisciplinary team intervene when offenders fail to comply substantially with court-ordered intervention plans; removing the establishment of an oversight committee comprised of juvenile justice stakeholders in light of the workload for committee members; locking in funds for the purposes described in the bill; deleting a provision proving juveniles with the right to a speedy trial and a preliminary hearing; including a provision preventing an offender from remaining in their home if there is probable cause to believe the offender committed a sex offense and the victim remains in the offender’s home; and including a provision allowing a court to detain a juvenile in a detention facility pending trial if it finds the juvenile is dangerous to their self or others. *Id.*

¹⁹ *Hearing on SB 367 Before the H. Corrections and Juv. Justice Comm.*, Mar. 7, 2016 (written testimony of Karen Griffiths, County Attorney for Norton County and member of the Kansas Juvenile Justice Workgroup) (Ms. Griffiths shared areas of concern along with her support for SB 367) and *Hearing on SB 367 Before the H. Corrections and Juv. Justice Comm.*, Mar. 7, 2016 (written testimony of Steven R. Gold, Henderson County Attorney).

²⁰ http://www.kslegislature.org/li/2016/b2015_16/measures/sb367/

²¹ KS Stat § 21-5403 (2017)

²² *Hearing on HB 2581 Before the S. Judiciary Comm.*, Mar. 13, 2018 (written testimony of Kim Parker, KCDAA). See also, Jonathan Shorman, *Wichita swatting victim’s mother wants tougher penalties: “Passing this bill will save lives”*, The Witchita Eagle, Feb. 13, 2018 (providing background on the impetus for the bill).

²³ 2017-2018 HB2458

²⁴ 2015-2016 HB 2048

²⁵ See *Hearing on HB 2458 Before the S. Judiciary Comm.*, Mar. 7, 2018 (written testimony of Kim Parker, KCDA) and *Hearing on HB 2048 Before the H. Comm. on Corrections and Juv. Justice*, Jan. 26, 2015 (written testimony of Stephen M. Howe, KCDA).

²⁶ See *Hearing Before the S. Comm. on Corrections and Juv. Justice*, Jan. 27, 2015 (written testimony of Todd Thompson, Leavenworth Co. Attorney on behalf of the KCDA).

²⁷ *Hearing Before the S. Comm. on Judiciary*, Feb. 8, 2017 (written testimony of Kim Parker, KCDA).

²⁸ KS Stat § 60-4101 (2017); but see Patsy Terrill, *Lawmakers have a chance to right the wrong of civil forfeitures*, The Hutchinson News, Jan. 29, 2017, at 6 (Kansas Representative Terrill describes the dubious role of civil asset forfeiture in Kansas).

²⁹ *Hearing on HB 2018 Before the H. Comm. on Judiciary*, Jan. 24, 2017 (written testimony of Kim Parker, KCDA illustrating some law enforcement hypotheticals in which HB 2018 would create untenable results).

³⁰ HB 2116 (2017-2018)

³¹ *Hearing on HB 2116 Before the H. Comm. on Judiciary*, Jan. 24, 2017 (written testimony of Kim Parker, KCDA).

³² *Hearing on HB 2003 Before the H. Comm. on Judiciary*, Jan. 23, 2017 (written testimony of Kim Parker, KCDA).

³³ *Hearing on HB 2459 Before the H. Comm. on Judiciary*, Mar. 14, 2018 (written testimony of Kim Parker, KCDA).

State of Kentucky

Kentucky Commonwealth's Attorneys' Association

It is difficult to assess the lobbying efforts of Kentucky prosecutors because so much data was unavailable. News accounts, press releases, and testimony from legislative committee hearings confirm that the Kentucky prosecutors lobbied the legislature on at least 17 bills. But it is not possible to assess the frequency or success of those efforts.



Association Composition and History

The Kentucky Commonwealth's Attorneys' Association (KCAA) consists of the 57 elected prosecutors from each judicial circuit who are responsible for prosecuting felonies in the state.¹ The Association is governed by a Constitution, which was adopted in 2017.² The KCAA Constitution sets out the organization's objectives, which include to: "secure closer official cooperation" among the prosecutors; "secure proper legislation"; "promote the independence and discretion of prosecutors"; "disseminate information on methods and procedures"; and "foster high professional standards of conduct for all prosecutors".³

The KCAA is led by the Board of Directors which consists of seven positions (President, Vice President, Treasurer, Secretary, two Legislative Co-Chairs, and the Immediate Past President).⁴ Each of these positions is filled by an elected prosecutor from one of the circuits.

The two Legislative Co-Chairs positions are currently filled by Rob Sanders of the 16th Judicial Circuit and Chris Cohron of the 8th Judicial Circuit.⁵ The Legislative Co-Chairs promote the KCAA Constitution objective of obtaining "proper legislation".⁶ For that reason, the KCAA Constitution orders that the "co-chairpersons shall not have the same political party registration."⁷

Analysis

Using only publicly available materials, it is very difficult to determine when Kentucky's prosecutors lobby the legislature and what positions they take on specific bills. In particular, the state's legislative journals were not accessible, which prevented us from conducting a systematic review of prosecutor involvement in the legislative process. News articles, press releases, and a small number of recordings from legislative committee hearings⁸ present a small glimpse into the KCAA's activities.

One major legislative issue during the study period was the opioid crisis impacting the state.⁹ During this time period, the Kentucky legislature considered over a dozen opioid-related bills.

Among other initiatives, Kentucky legislators sought to increase sentencing for certain drug offenses. One of those bills, SB 115 of the 2016 Regular Session, created a Class C felony for trafficking fentanyl or heroin. The KCAA supported the bill's increased penalties. Rob Sanders, a Commonwealth Attorney and former President of the KCAA, lobbied in favor of the bill.

“People who are dealing death deserve to go to prison . . . [we] need to slow down the spread of heroin by locking up anyone who is dealing any quantity.

Rob Sanders, on behalf of the KCAA¹⁰

Additionally, the KCAA opposed a piece of legislation that would have reduced criminal liability in specific circumstances related to opioid use. The bill, HB 213 of the 2015 Regular Session, provided criminal immunity for individuals who were seeking medical care for themselves or another person for a drug overdose. The KCAA did not support this bill, saying that it would inhibit prosecution.

“The House bill would allow someone using heroin to wave off an approaching police officer by crying out, ‘help officer, my buddy is overdosing,’ regardless of whether it’s true . . . Then prosecutors would have to prove the heroin user did not know his friend was overdosing or else drop all charges.

Rob Sanders, on behalf of the KCAA¹¹

The KCAA also supported increasing coverage of substantive criminal law for non-drug activity. For example, they supported HB 71 from the 2018 Regular Session, which created the offense of sharing sexually explicit images of a person without consent (commonly referred to as the “Revenge Porn Law”).

Rob Sanders, on behalf of the KCAA, testified in support of the bill at the House Judiciary Committee hearing on January 24, 2018 and the Senate Judiciary Committee hearing on March 1, 2018. He stated that the prosecutors support this bill because “this should not be a situation where we are shaming the victims for having taken the photograph” and instead we should be protecting them.¹²

Furthermore, Sanders stated that, “[t]his bill comes out of frustration as a commonwealth attorney” because it has continuously not been passed in the state.¹³ For multiple years in a row, the KCAA supported bills similar to this one. For example, in 2016 prosecutors supported HB 110, which also aimed to criminalize the offense of distributing sexually explicit images without consent.

“Criminalizing the practice is necessary. . . [there] might be other criminal charges that will fit . . . but if the materials are just simply distributed and that’s all, the current state of the criminal law does not cover that. So, there’s a gap in the law that HB 110 would fill, and I think it’s needed.”

Jeffrey Metzmeier, Jefferson County Prosecutor¹⁴

In addition to supporting various measures aimed at increasing the scope and severity of the criminal law, the KCAA also supported a legislative initiative to expand the rights of crime victims. The KCAA supported SB 175 of the 2016 Regular Session, which proposed to amend the Constitution of Kentucky to create a victims’ bill of rights.

“The Commonwealth attorneys . . . that are already doing their job and doing it right are taking care of a lot of these things. However, I can only reiterate what has already been said by Senator Westerfield that this puts crime victims on equal footing as defendants when it comes to going into the courtroom. . . Our organization is behind this effort.”

Rob Sanders, Commonwealth Attorney
and former KCAA President¹⁵

In conclusion, our limited sample of bills for which we were able to document KCAA involvement suggest that the organization generally supports more punitive bills. However, the 17 bills for which we have information may not be representative of the association's general lobbying activity, thus we cannot say for certain how the KCAA's activities support or oppose various criminal justice objectives.

¹ *Members by Circuit*, KENTUCKY COMMONWEALTH'S ATTORNEYS' ASSOCIATION, <http://www.kycommonwealthattorneys.org/members.php> (last accessed Feb. 11, 2021).

² *KCAA Constitution*, KENTUCKY COMMONWEALTH'S ATTORNEYS' ASSOCIATION, <http://www.kycommonwealthattorneys.org/constitution.php> (last accessed Feb. 11, 2021).

³ *Id.*

⁴ *Board of Directors*, KENTUCKY COMMONWEALTH'S ATTORNEYS' ASSOCIATION, <http://www.kycommonwealthattorneys.org/board.php> (last accessed Feb. 11, 2021).

⁵ *Id.*

⁶ *KCAA Constitution*, KENTUCKY COMMONWEALTH'S ATTORNEYS' ASSOCIATION, <http://www.kycommonwealthattorneys.org/constitution.php> (last accessed Feb. 11, 2021).

⁷ *Id.*

⁸ A limited amount of archived legislative materials can be found on the Kentucky Educational Television (KET) website:
<https://www.ket.org/legislature/archives/?nola=WGAOS+022083&stream=aHR0cHM6Ly81ODc4ZmQxZWQ1NDIyLnN0cmVhbWxvY2submV0L3dvcmRwcmVzcy9fZGVmaW5zdF8vbXA0OndnYW9zL3dnYW9zXzAyMjA4My5tcDQvcGxheWxpc3QubTN1OA%3D%3D>

⁹ See John C. Tilley & Van Ingram, *2016 Overdose Fatality Report*, COMMONWEALTH OF KENTUCKY JUSTICE & PUBLIC SAFETY CABINET – KENTUCKY OFFICE OF DRUG CONTROL POLICY, <https://odcp.ky.gov/Documents/2016%20ODCP%20Overdose%20Fatality%20Report%20Final.pdf> (last accessed Feb. 12, 2021) (“Overdose deaths of Kentucky residents . . . numbered 1,404 as reported to the Office of Vital Statistics in June 2017, compared to 1,248 overdose deaths counted in the 2015 report.”); *Kentucky: Opioid Involved Deaths and Related Harms*, National Institute on Drug Abuse, <https://www.drugabuse.gov/drug-topics/opioids/opioid-summaries-by-state/kentucky-opioid-involved-deaths-related-harms> (last accessed Feb. 12, 2021).

¹⁰ Testimony from the Senate Judiciary Committee hearing on February 18, 2016.

¹¹ Testimony from the Senate Judiciary Committee on February 25, 2015.

¹² Testimony from the House Judiciary Committee hearing on January 24, 2018.

¹³ Testimony from the Senate Judiciary Committee hearing on March 1, 2018.

¹⁴ Kentucky General Assembly, Press Release on February 10, 2016; see also testimony from the House Judiciary Committee Hearing on February 10, 2016.

¹⁵ Testimony from the Senate Judiciary Committee hearing on February 18, 2016.

State of Louisiana

Louisiana District Attorneys Association

Louisiana's prosecutors were active lobbyists; they were involved in approximately 36% of the criminal justice bills introduced in the state legislature during the relevant time period. (They lobbied on 147 of 412 total bills). They were especially active in many major criminal justice reform initiatives, providing amendments and suggestions.

When Louisiana prosecutors lobbied, they were very often successful. On average, the legislature passed 53% of criminal justice bills that were introduced. When prosecutors lobbied in favor of a bill, the bill was significantly more likely to pass (70% pass rate); when they lobbied against a bill it was significantly less likely to pass (26% pass rate).

Overall, Louisiana's district attorneys tended to support more punitive bills. Prosecutors supported 25 bills that would have either expanded the criminal law or increased punishments. (They opposed only 3 bills that would have either expanded the criminal law or increased punishments.) When it came to bills would have decreased the scope of criminal law or decreased sentences, they opposed 18 and supported 17 such bills, though some only after heavy amendments, as discussed below.

147

NO. OF BILLS WITH
PROSECUTOR INVOLVEMENT

70%

SUPPORTED BILLS PASSED

26%

OPPOSED BILLS PASSED

25

HARSHER BILLS SUPPORTED

3

HARSHER BILLS OPPOSED

17

LENIENT BILLS SUPPORTED

18

LENIENT BILLS OPPOSED

Association Composition and History

The Louisiana District Attorney Association (LDAA) consists of the elected district attorney from each of the 42 judicial districts.¹ Their leadership includes a president, vice-president, and a board of directors who are all elected district attorneys.² The LDAA also has several permanent employees, many of whom have worked as prosecutors in the past. During the study period, the Executive Director was E. Pete Adams, who served in the role for 40 years.³ Pete Adams was the usual representative of the LDAA to testify in the legislature.⁴ The LDAA hosts a yearly retreat for members, which includes training sessions and discussion of legislative issues.⁵

According to its website, the LDAA's mission is "[t]o improve Louisiana's justice system and the office of District Attorney by enhancing the effectiveness and professionalism of Louisiana's District Attorneys and their staffs through education, legislative involvement, liaison, and information sharing."⁶ In another official report, the LDAA framed its mission thus:

We believe that the Louisiana Constitution requires, and Louisiana citizens favor, locally elected, independent prosecutors. We believe that prosecutor discretion must be protected from interference through manipulative funding or legislative restrictions. Finally, we believe that prosecutors are the best and most trustworthy resource for legislative improvements to the criminal justice system.⁷

At the opening of the 2016 session, Pete Adams gave a PowerPoint presentation on the role of the LDAA during which he said that the LDAA "[doesn't] exist just to make things better for DAs." He also said that the LDAA rules by consensus: "We take action only upon a consensus of prosecutors."⁸

Louisiana's prosecutors first organized in 1925, when the elected district attorneys from across the state formed a professional organization they named the Louisiana District Attorneys Association (LDAA).⁹ This new organization "should demand more than a passing public notice," one op-ed read at the time, because "maudlin sentiment" was causing juries and judges to punish criminal defendants too lightly.¹⁰ From the beginning, then, the LDAA was formed to ensure that criminal defendants did not get off easily, "[f]or it is society which suffers when crime runs rampant."¹¹

The initial goals of the LDAA were two-fold. First, prosecutors agreed they needed a “wider scope in the investigations of crimes, instead of leaving this entirely to grand juries.”¹² Second, prosecutors believed that penal farms – places where people served their sentence and worked as farm labor – should be regional because, as the then-president of the association pointed out, “[T]he present system of locking offenders in jail and condemning them to a life of idleness cannot be to their best interests. Instead of improving the prisoner, usually a defective, he broods and plans more mischief.”¹³ Finally, the LDAA vowed to “examine proposed laws” such that “the enactment of defective legislation, especially that with reference to criminal and penal matters, may be reduced to a minimum.”¹⁴

The first LDAA president was district attorney John J. Robira, elected unanimously.¹⁵ Indeed, one of the first bills backed by the LDAA as an organization was legislation (Senate Bill 100) that would make it easier for parishes to open their own “penal farms” for people convicted of misdemeanors (who were typically held in local jails), modeled on one in Caddo Parish that Robira toured.¹⁶ Early on, the LDAA arranged 2-day long annual gatherings. An early meeting, held in 1931, featured expert speakers on criminal justice topics as well as a “dinner at the Central Louisiana Hospital for the Insane.”¹⁷

Analysis

Throughout 2017 and 2018, the Louisiana legislature considered the Justice Reinvestment package—a series of proposed bills designed to reduce the prison population and alleviate the costs of incarceration throughout the state.¹⁸ The Pew Charitable Trusts provided much of the underlying research and initial policy proposals for these measures. As a result there were special legislative committee hearings throughout 2016-2017 in which general proposals and ideas were discussed, though those discussions were not necessarily attached to a specific bill. LDAA representatives (usually E. Pete Adams) were present at many meetings, but did not speak at every one.

“The DAs of 2016 are not the DAs of the 80s...We are open to suggestions. We will support reasonable reforms.”
Pete Adams, LDAA¹⁹

The history of the Justice Reinvestment package suggests that the LDAA is quite influential. By the spring of 2017, the state legislature was in the process of considering many of Pew's proposed initiatives, which included measures to eliminate life-without-parole sentences for juveniles, the release of elderly inmates, and a reduction in mandatory minimums for non-violent crimes.²⁰ But, in April of 2017, the LDAA issued a pamphlet in which the prosecutors argued against many of the proposals recommended by the Task Force, suggesting that the Justice Reinvestment Task Force had given way to "mission creep."²¹ Of particular concern to the LDAA was the reduction in prison sentences for those convicted of violent crimes.

“We're opposed to provisions that would trigger early release or early parole or even shorten substantially sentences for violent offenders. This is an example of one of those things in the package that would do that.”

Pete Adams, LDAA²²

As a result, the legislative sessions included a great deal of back-and-forth with the LDAA to amend many of the bills to satisfy their concerns.²³ It was clear that, unless the LDAA approved of the measure, the bill would not pass. For example, SB 139, which extended parole eligibility to some people serving long prisons sentences, including those with medical issue or who were elderly, faced push-back from the LDAA. Pete Adams testified to the Judiciary Committee that the LDAA would only support the bill “if it excludes violent offenders.”²⁴ A committee member emphasize to his colleagues that the LDAA support was essential: “If the DAs withdraw their support of the bill, this bill will not pass.”²⁵

Another example was SB 16, which limited juvenile life-without-parole (LWOP) sentences to only first-degree murder charges and only with notice from the prosecutor's office.²⁶ The LDAA had blocked any attempts to outlaw LWOP sentences for juveniles under 18 and had approved SB 16 only with that stipulation. Pete Adams testified that, in his view, no legislation was even necessary, and added, “There are people who are among the worst of the worst and you can tell at sentencing.”²⁷ The LDAA also initially opposed HB 249, which reduced financial obligations for those convicted of crimes.²⁸ The LDAA, represented by the 11th Judicial Circuit District Attorney John Burkett, only agreed to the legislation with amendments after testifying, “We will offer amendments to assure that the presumption of financial hardship does not become a loophole for many who can afford to pay.”²⁹

Indeed, throughout the study period, the LDAA generally resisted calls to moderate Louisiana's sentencing scheme, which allowed for so-called "repeat offenders" to receive life sentences even if they were convicted of non-violent crimes.

“You get a fellow who is known gang leader.... and maybe we got him for felon in possession of a firearm he ends up serving possession of a schedule 1 drug. That guy is gonna get substantial time. It looks like that guy is a possession only drug offense that is getting 5 years.

Pete Adams, LDAA³⁰

Another major issue throughout the study period of the LDAA was the funding of public defenders. In Louisiana, public defenders' offices are funded largely from the collection of fines and fees. Throughout the study period, the public defenders had such a severe lack of funding that they were sometimes unable to take cases. "That was a theft of our portion of the fines and forfeitures," E. Pete Adams, executive director of the Louisiana District Attorneys Association, said. "We let them steal less money than they were gonna steal from us."

Often, the discussion of public defender funding turned to the high costs of death penalty trials. For example, in discussing HB 818, which would reduce public defender funding, both Pete Adams and Hugo Holland, an assistant district attorney who focused on prosecuting capital cases, testified.³¹ Holland called nonprofits who handle capital defense "boutique law firms," trying to "price [capital punishment] out of existence." Pete Adams told the legislators that the district attorneys felt "personally attacked."³² Another similar bill was HB 605, which also sought to reduce funding for capital defense.³³ Pete Adams argued that the public defenders were spreading false information about their lack of funding and framed the problem as mismanagement.³⁴

“We think in capital cases, somebody has to have an objective view. Their performance is clear that they are not spending taxpayer money well.

Pete Adams, LDAA

The Louisiana legislature considered some bills to end the death penalty. In 2017, Hugo Holland testified on behalf of the LDAA against a bill that would end

the death penalty entirely: "The death penalty keeps people from seeking their own retribution...Life in prison sometimes just doesn't do it."³⁵

The LDAA also opposed legislation to compensate the wrongly convicted. During the 2016 session, legislators considered HB 1116, which changed the definition of "innocent" for the purposes of compensation.³⁶ Pete Adams, along with multiple other district attorneys, appeared to argue against the bill. Adams argued that wrongful convictions were largely "mistakes." The bill did not pass.

“There are lots of reversals, cases are overturned for lots of reasons. Most of them, the vast majority, all except a very, very, very few, have nothing to do with actual innocence...Glenn Ford did not have clean hands. That's it."

Pete Adams, LDAA

One well-publicized debate in the legislature was the elimination of non-unanimous juries, which was considered in 2018.³⁷ While the LDAA did not take an official position, Pete Adams argued that there was no evidence to show that non-unanimous juries were less reliable. District Attorney for the 14th Judicial District John DeRosier discussed the racist origins of non-unanimous juries and said, "It is what it is."³⁸

Another interesting bill was SB 54, which the legislature considered in 2016. The bill would have allowed the installation of license plate readers that would automatically issue tickets for people who were driving without valid licenses. 30% of the proceeds would go to prosecutors; 70% to sheriffs. The LDAA supported this bill as a means to make more money for their office without going to the state.³⁹

Finally, in 2018, the legislature considered creating a "prosecutorial oversight commission" that would be responsible for reviewing the conduct of elected prosecutors in the state.⁴⁰ Every single elected prosecutor in the state appeared before the legislature to speak against the bill with the exception of one.⁴¹ The objects were manifold. Pete Adams called the legislation "a hammer in search of a nail." He called the problem "misnaming prosecutorial misconduct," and said most are "mischaracterization of prosecutor error." "We are constantly looking to improve," Adams concluded. The legislation never made it out of committee.

¹ Louisiana divides the state into parishes. There are 42 judicial districts composed of one or more parishes. See https://www.ladaa.org/main/da_roster

² https://www.ladaa.org/main/ladaa_board

³ E Pete Adams filed registration as a lobbyist every year between 2009 and 2019. <http://ethics.la.gov/LobbyistData/LobbyistDetail.aspx>. Adams retired in 2019.

⁴ Occasionally other district attorneys would testify, including Hillar Moore, the district attorney for East Baton Rouge Parish, who was the LDAA president until 2017, and Ricky Babin, the District Attorney for the 23rd Judicial District, who was elected LDAA president in July of 2017. See <https://23rdda.org/district-attorney-ricky-babin-to-serve-as-president-of-ladaa-2/>

⁵ See, e.g., https://www.ladaa.org/uploads/File/AnnualConf/AC_2015_Brochure.pdf

⁶ <https://www.ladaa.org/main/mission>

⁷ LDAA Legislative Report. Vol. 43, No. 6. April 4, 2017.

⁸ https://house.louisiana.gov/H_Video/VideoArchivePlayer?v=house/2016/mar/0316_16_CJ

⁹ "An Important Movement," The Times (Jan. 4, 1926), page 6.

¹⁰ *Id.*

¹¹ *Id.*

¹² "Prosecutors are Seeking Better Effective Laws," Teche News (St. Martinville, Louisiana) (Jan. 2, 1926), Page 1.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ The Times (Shreveport, Louisiana) (June 4, 1926), Page 14.

¹⁷ "James U. Galloway to Attend Annual Prosecutors Meet," The Shreveport Journal, (July 23, 1931), Page 7.

¹⁸ According to a 2019 report, ten bills were passed as part of the Justice Reinvestment. The Justice Reinvestment Initiative was "a national project sponsored by the Bureau of Justice Assistance (BJA) and The Pew Charitable Trusts. It seeks to assist states in adopting data-driven approaches to improve public safety, examine corrections and related criminal justice spending, manage criminal justice populations in a more cost-effective manner, and reinvest savings in strategies that can hold offenders accountable, decrease crime, and strengthen neighborhoods." <https://gov.louisiana.gov/assets/docs/CJR/2019-JRI-Performance-Annual-Report-Final.pdf>

¹⁹ 2016 Legislative Session, Justice Reinvestment Task Force.

²⁰ The recommendations of the Justice Reinvestment Task Force were issued in March of 2017. See https://www.lasc.org/documents/LA_Task_Force_Report_2017_FINAL.pdf There was one prosecutor on the Justice Reinvestment task Force, District Attorney Bo Duhe of the 16th Judicial Circuit.

²¹ LDAA Legislative Report. Vol. 43, No. 6. April 4, 2017.

²² Rebekah Allen. "This controversial, outdated law could be revived under Gov. John Bel Edwards' prison reform package," The Advocate (April 25, 2017). Adams is referring here to SB 139, which is referenced below.

²³ Ultimately, 10 bills were signed by Louisiana Governor John Bel Edwards as part of Justice Reinvestment. See Rebekah Allen, "Gov. Edwards signs criminal justice overhaul into law, in what some laud as historic achievement," The Advocate (June 15, 2017), https://www.theadvocate.com/baton_rouge/news/politics/legislature/article_168c6d6e-5089-11e7-a0d6-7f67135f59a4.html

²⁴ SB 139, 2017 Regular Session.

²⁵ *Id.*

²⁶ SB 16, 2017 Regular Session.

²⁷ SB 16, 2017 Regular Session. See also LDAA Legislative Report. Vol. 43, No. 6. April 4, 2017, opposing the elimination of life-without-parole sentences for juveniles by saying it would “violate the promises made to victims.”

²⁸ HB 249, 2017 Regular Session.

²⁹ *Id.* See also <http://www.ciclt.net/ul/ldaa/LegReptJRTF4417.pdf>

³⁰ 2016 Justice Reinvestment Special Session.

³¹ Hugo Holland has had a career marked by scandal. He was also responsible for several capital convictions that were later overturned. See Radley Balko, Opinion, “How a fired prosecutor became the most powerful law enforcement official in Louisiana,” Washington Post (Nov. 2, 2017), <https://www.washingtonpost.com/news/the-watch/wp/2017/11/02/how-a-fired-prosecutor-became-the-most-powerful-law-enforcement-official-in-louisiana/>

³² Testimony for HB 818. 2016 Regular session.

³³ 2015 Regular session. Referred to committee.

³⁴ The LDAA claim that public defenders were mismanaging money came up a few times. See also HB 689, 2016 regular session.

³⁵ Testimony for HB101. 2017 Regular Session. Voluntarily Deferred. The LDAA also opposed a similar bill in the 2018 session, HB 162.

³⁶ The impetus for the case was Glenn Ford, who was exonerated in 2014 and died shortly after his release. Ford was denied compensation for his wrongful conviction because the law excluded Ford so long as prosecutors argued he was involved in the crime. Andrew Cohen, “Exonerated, Dead and Still on Trial,” The Marshall Project (May 3, 2016), <https://www.themarshallproject.org/2016/05/03/exonerated-dead-and-still-on-trial#.yEzCNjxgH>

³⁷ SB 243. Signed into law.

³⁸ It appears that the LDAA could not agree on a position for the bill. De Rosier opposed it.

³⁹ The bill was deferred.

⁴⁰ HB 709.

⁴¹ James Stewart, the only Black elected prosecutor and the district attorney for Caddo Parish, did not appear that day, saying he had a family matter.

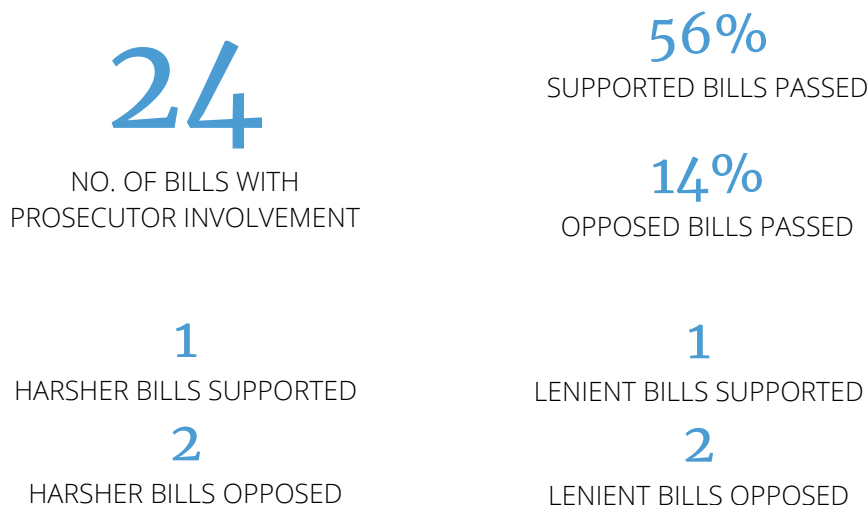
State of Maine

Maine Prosecutors' Association

Prosecutors in Maine were somewhat active lobbyists; they were involved in 19% of criminal justice bills introduced during the study period. The state had only 131 criminal justice bills during the four year period, 128 of which had sufficient information for us to gauge prosecutor involvement. (Prosecutors lobbied on 24 of those 128 bills.)

When Maine prosecutors lobbied, they were often successful. On average, the legislature passed 45% of criminal justice bills that were introduced. When prosecutors lobbied in favor of a bill, the bill was more likely to pass (56% pass rate). Bills that prosecutors opposed were significantly less likely to pass (14% pass rate).

Overall, Maine prosecutors tended to support more punitive bills. Of the 90 bills that would have either expanded the criminal law or increased punishments, prosecutors supported 11 bills. However, Maine prosecutors' lobbying was not uniformly in favor of more punitive laws. They opposed 2 bills that would have either expanded the criminal law or increased punishments. And of the 19 bills that would have decreased the scope of criminal law or decreased sentences, they supported 1 such bills and opposed 2.



Association Composition and History

The Maine Prosecutors' Association (MPA) consists of the eight locally elected district attorneys¹ as well as the state Attorney General. The local prosecutors are responsible for all criminal cases,² except homicides, which are prosecuted by the Attorney General,³ who is elected by the state legislature.⁴ The Association meets monthly "to discuss civil and criminal concerns."⁵ Meaghan Maloney, the prosecutor for Kennebec and Somerset Counties, was the Legislative Liaison for the association during the study period.⁶

Unlike most states, the MPA does not maintain a website.⁷ Thus information about the association is sparse.

Media reports indicate that the MPA was in existence at least by the 1970s, when the association fought for more funding, particularly as a way to equalize pay across offices and improve hiring.⁸ Maine has undergone several changes in its court system within recent years and has struggled with adequate funding and attorneys for both defense and prosecution.⁹

Analysis

Prosecutors in Maine focused their lobbying efforts on legislation related to drug prosecutions, bail, and victims' rights.

In some cases, Maine prosecutors objected to legislation that would have provided assistance to criminal defendants. One ongoing issue in Maine was the consideration of legislation that would make it easier for people who were wrongly convicted to get their case back before a judge. In 2017, the legislature considered one such bill, which would have allowed for post-conviction review of new evidence even if the defendant had already exhausted their appeals. The bill was strongly opposed by the Attorney General and the Maine Prosecutor Association.¹⁰ During consideration of the 2017 bill, Criminal Division Chief Lisa Marchese of the OAG argued that the current laws were working, pointing to the case of Anthony Sanbourn, a man who spent 27 years in prison based on faulty eyewitness testimony.¹¹ Marchese argued that Sanbourn's exoneration was evidence that the process was working as intended. The bill did not pass.

Maine's prosecutors also opposed LD 962, which would have required the Attorney General to investigate all in-custody deaths.¹²

“What this bill is intended to accomplish, we believe, is already covered by state law.

Janet T. Mills, Maine Attorney General¹³

Maine prosecutors opposed legislation that would have eliminated or greatly reduced the state's reliance on cash bail. In 2015, the Maine legislature introduced LD 1113, which would replace the state's cash bail system with a risk assessment and pretrial release.¹⁴ The bill did not pass.¹⁵

“Nobody is sitting in jail because they can't afford bail. If someone should legitimately be out, their bail gets lowered. I don't understand what the problem is.

Stephanie Anderson, Cumberland County District Attorney¹⁶

Maine's prosecutors also opposed legislation intended to reduce the harshness of drug laws, including a measure that would have reduced most drug possession cases from a felony to a misdemeanor.¹⁷

“The bill would critically undermine the State's ability to prosecute individuals who are involved in the importation, transportation, and distribution of serious, highly-addictive drugs ...LD 113 would eliminate the biggest disincentive [out-of-state drug dealers] have which is prison time. Ironically, this bill would make it more difficult for law enforcement and prosecutors to hold accountable those who are most culpable and responsible. ”

Janet T. Mills, Maine Attorney General¹⁸

In contrast, prosecutors supported bills which made it easier to harshly punish drug-related crimes. Prosecutors largely praised a bill imposing harsher penalties for trafficking fentanyl.¹⁹ A bill that authorized harsher penalties for opioid possession and distribution drew split support from prosecutors. While the MPA Legislative Liaison provided neutral testimony that emphasized the value of drug courts, the Attorney General supported the bill.²⁰

“[W]e need to restore to the criminal justice system the tools to prevent people from killing themselves, from committing other crimes, from hurting their families and hurting others.”

Janet T. Mills, Maine Attorney General²¹

Maine's prosecutors opposed legislation that would have prevented prosecutors from charging the young victims of sex trafficking with prostitution. They argued that prostitution charges allowed them to intervene with those victims.²²

“ [P]reventing juveniles from being charged with engaging in prostitution may unintentionally have the opposite effect by eliminating any meaningful opportunity for intervention.”

Christine Thibeault, Assistant DA, Cumberland County
on behalf of Maine Prosecutors Association ²³

Maine's prosecutors testified in support of several bills that expanded laws designed to make it easier to prosecute crimes committed against young people. For example, one piece of legislation would have eliminated age cutoffs for the prosecution of teachers for sexually assaulting students.²⁴ Another allowed for prosecution for female genital mutilation.²⁵ And Meaghan Maloney, as the Legislative Liaison for the Maine Prosecutors' Association supported legislation that makes it easier for women who are victims of stalking or other similar crimes to seek additional state services.²⁶

¹ Maine has 16 counties. Each of Maine's eight district attorneys represent a Unified Criminal Docket, which merges the criminal dockets from the state's superior and district courts.

<https://www.themainemonitor.org/talking-justice-with-maines-district-attorneys/>

² <https://www.themainemonitor.org/talking-justice-with-maines-district-attorneys/>

³ According to the state's website, the Criminal Division of the Office of the Attorney General prosecutes all homicides in the state with the exception of vehicular homicides. The Attorney General's job includes “representing the State and its agencies in civil actions; prosecuting claims to recover money for the State; investigating and prosecuting homicides and other crimes; consulting with and advising the district attorneys; enforcing proper application of funds given to public charities in the State; and giving written opinions upon questions of law submitted by the Governor, Legislature, or state agencies.” Maine Revised Statutes Annotated, Title 5, sections 191 – 205 (emphasis added). The OAG also handles all issues of compensation and benefits for elected prosecutors. https://www.maine.gov/ag/about/office_organization.html

⁴ The Attorney General, who is the designated chief law enforcement officer of the state, is elected via secret ballot by legislators and holds a two-year term with a four-term maximum. Maine is the only state where the AG is elected via secret ballot.

https://ballotpedia.org/Attorney_General_of_Maine

⁵ <https://www.themainemonitor.org/talking-justice-with-maines-district-attorneys/>

⁶ She self-identifies herself as such. See

<http://www.mainelegislature.org/legis/bills/getTestimonyDoc.asp?id=84632>

⁷ The association is briefly mentioned on the Attorney General's website.

https://www.maine.gov/ag/about/office_organization.html (“The Maine Prosecutors' Association meets monthly at the Augusta Office of the Attorney General, providing an opportunity for the

attorney general and his staff to meet with the district attorneys and discuss issues of mutual concern. The Administrative Division of the OAG handles the payroll, benefits and other human resource matters for all the district attorneys and assistant district attorneys. Other staff in the district attorneys' offices are county employees.")

The association dates back to at least 1973. See "Hancock Attorney Elected," *Bangor Daily News*, (Mar 14, 1973), p 18.

⁸ See Clayton Beal, "Low funding hurts prosecutorial district," *Bangor Daily News*, (Sept. 25, 1978), page 12. Compare to comment by Andrew Robinson, president of the Maine Prosecutors Association, and DA for Androscoggin, Franklin and Oxford counties: "The criminal justice system is in desperate need of more resources...Across the state of Maine, each prosecutor carries a caseload that far exceeds the maximum amount any prosecutor should be required to oversee by any objective standard." <https://www.themainemonitor.org/due-process-in-review/>

⁹ Maine uses a UCD, or unified criminal docket, which merges misdemeanors and felonies, alongside some civil cases, into one docket. See

https://www.maine.gov/ag/about/office_organization.html

Maine's prosecutors have argued that they have caseloads three times the ABA recommendation. In addition there are serious concerns about Maine's underfunded public defender system, which relies wholly on private counsel. *Id.*

¹⁰ http://www.mainelegislature.org/legis/bills/bills_128th/billtexts/HP046801.asp

A similar bill was considered in 2020, and the prosecutors did not object. LD 302, <http://legislature.maine.gov/doc/4403> See also <https://www.themainemonitor.org/legislative-committee-passes-bill-helping-convicted-people-introduce-new-evidence-but-arguments-persist-on-both-sides/>

¹¹ <https://www.themainemonitor.org/a-chance-to-prove-actual-innocence-in-maine/>

Mr. Sanbourn argued that Ms. Marchese had misrepresented important aspects of his case. <https://www.pressherald.com/2018/06/27/letter-to-the-editor-janet-mills-too-ethically-shaky-to-lead-state-as-governor/>

¹² <http://www.mainelegislature.org/legis/bills/getTestimonyDoc.asp?id=34378>; LD 962 127th Leg 1st session, did not pass.

¹³ *Id.* Janet Mills is currently the Governor of Maine.

¹⁴ <https://www.mainelegislature.org/legis/bills/getPDF.asp?paper=SP0385&item=1&snum=127>

LD 1113 127th Leg, 1st session. Did not pass.

¹⁵ Note, I could not tell from the information whether the entire Association opposed the bill as a whole or whether this was individual DAs.

¹⁶ Eric Russell, "Legislation seeks to eliminate setting of bail for Maine Defendants," *Portland Press Herald* (Feb. 9, 2015).

¹⁷ LD 113 127th session. The bill passed.

¹⁸ <http://legislature.maine.gov/backend/app/services/getDocument.aspx?doctype=test&documentid=31468>

Testimony in opposition to LD113

¹⁹ LD 1783, The Maine Prosecutors Association suggested an amendment to the bill. 128th session. Bill did not pass.

<http://www.mainelegislature.org/legis/bills/getTestimonyDoc.asp?id=84632>

²⁰ LD 1554. 127th Leg, 2nd session. The bill passed.

<http://www.mainelegislature.org/legis/bills/getTestimonyDoc.asp?id=36192> Maloney wrote separately to provide information on LD 1554 and praised the work of alternative courts in this

area. "These struggles are real and gut wrenching. But I firmly believe people can become a member of our community again when we are willing to work with them and show them that they have the strength to survive."

²¹ <http://www.mainelegislature.org/legis/bills/getTestimonyDoc.asp?id=36192>

²² LD 512 128th session. Governor vetoed.

²³ <http://www.mainelegislature.org/legis/bills/getTestimonyDoc.asp?id=46277>

This appears to be on behalf of the entire association seeing as it is written on association letterhead.

²⁴ LD 1540 127th leg 2nd session. Vetoed by governor but overridden by the legislature.

²⁵ LD 745. 128th session. Bill did not pass.

www.mainelegislature.org/legis/bills/getTestimonyDoc.asp?id=76801

²⁶ LD 1788, 128th special session. Governor veto overridden.

<http://www.mainelegislature.org/legis/bills/getTestimonyDoc.asp?id=84970>

State of Maryland

Maryland State's Attorneys' Association

Maryland's prosecutors were not particularly active lobbyists; they were involved in only 7% of the criminal justice bills introduced in the state legislature during the relevant time period. (They lobbied on 30 of the 407 total bills for which we had sufficient information for us to gauge prosecutor involvement. There were an additional 12 criminal justice bills for which sufficient information was not available.).



When Maryland prosecutors lobbied, they were somewhat successful. On average, the legislature only passed 21% of criminal justice bills that were introduced. When prosecutors lobbied in favor of a bill, the bill was somewhat more likely to pass (24% pass rate); when they lobbied against a bill it was actually somewhat more likely to pass (33% pass rate).

Overall, Maryland prosecutors tended to support more punitive bills. The MSAA supported 12 bills that would have either expanded the criminal law or increased punishments. However, Maryland's prosecutors' lobbying was not uniformly in favor of more punitive laws. They opposed 1 bill that would have either expanded the criminal law or increased punishments. When it came to bills would have decreased the scope of criminal law or decreased sentences, they supported 4 such bills and opposed 2.

30
NO. OF BILLS WITH
PROSECUTOR INVOLVEMENT

24%
SUPPORTED BILLS PASSED
33%
OPPOSED BILLS PASSED

12
HARSHER BILLS SUPPORTED
1
HARSHER BILLS OPPOSED

4
LENIENT BILLS SUPPORTED
2
LENIENT BILLS OPPOSED

Association Composition and History

The Maryland State's Attorneys' Association (MSAA) consists of the 23 elected state's attorneys.¹ The MSAA has three permanent staff members. Steve Kroll, the Maryland State's Attorneys' Coordinator (which leads the MSAA), served as an assistant state's attorney for Baltimore County for over 26 years before taking the position.² The MSAA also lists officers who are current state's attorneys. It is not clear how the officers are selected. During the study time period, the President was Scott Shellenburger, State's Attorney of Baltimore County.³ There are also various committees, which use closed Facebook groups for communication.⁴

The website for the MSAA does not provide information about the mission or purpose of the organization. The Facebook page no longer exists, and the Twitter feed is not regularly updated.⁵

The first meeting of the association occurred in May of 1932.⁶ The goals, according to The Baltimore Sun, were to "make the first complete crime survey by Maryland's prosecuting authorities ever attempted in the State." Additional goals were to "make proposals for the general betterment of crime conditions not only in [the prosecutors'] respective counties but in the State as a whole" and to consider legislative bills "for improvement in prosecuting criminal cases," especially concerning "expedit[ing] the movement of cases in the courts."⁷

Analysis

Maryland's prosecutors lobbied on several topics, including drugs and sentence lengths.

One drug-related topic involved the prosecution of overdose deaths as homicides against the individual who sold the drugs in question to the victim. For example, SB 303 (Regular Session 2015) was a bill that would have increased penalties for people accused of selling illegal drugs and would have provided so-called "Good Samaritan" immunities for those who sought medical assistance.⁸ The State's Attorney from Carroll County testified in favor of the bill: "I am asking you for a favorable report on [this bill]."

Another drug-related bill from 2015 would have allowed judges to depart from mandatory sentencing schemes for drug offenders. The MSAA opposed the bill, testifying:

“Mandatory minimum sentences do not attack the addict, they attack the dealer...To call this a nonviolent criminal penalty overlooks what's going on in our streets...To eliminate these penalties would eliminate a very effective tool for prosecutors to keep the streets safe.”⁹

When it came to sentencing for other crimes, Maryland prosecutors often supported increasing the available sentencing ranges, particularly for domestic violence and crimes against children. For example, prosecutors testified in favor of SB 159 (Regular Session 2016), which increased the sentencing range for second degree murder from 30 to 40 years.

“[W]e see this crime most often committed in domestic violence cases.... We believe the families in these cases go home without justice. We believe that it is the only just thing to do to increase the penalty in these cases to give judges the opportunity to consider the facts and to give a more appropriate sentence.... The 40 years would aid our judges and make our community safer.”¹⁰

Angela Alsobrooks, State's Attorney for Prince George's County

Another bill, HB 757 (Regular Session 2016), would have made it more difficult to impose life-without-parole sentences by requiring a jury verdict and direct evidence.¹¹ MSAA opposed this bill, emphasizing that Maryland had already eliminated the death penalty and that public defenders were focusing on the harshest penalty:

“[I told you in hearings against the death penalty that] as soon as the death penalty's gone, they're coming after life without parole. ... For the past 29 years, the legislature has never put a requirement on sentencing for life without parole. And you know who never asked? The public defenders. ... Other than the abolishment of the death penalty, there is no other reason why our judges are no longer competent or have guidelines to sentence to life without parole - what is the reason for the bill? ...Where did those three limiting and arbitrary guidelines [components of bill] come from?”

Scott Shellenburger, State's Attorney for Baltimore County
and President of MSAA

Similarly, in 2018, the legislature considered a bill that would increase the amount of time people sentenced to life would need to serve before being considered for parole.¹² Scott Schellenberger testified in favor of the measure:

“[W]e need to focus on...violent offenders and we need to call them out and start treating them the way they need to be treated. It's a simple fact, you get a life sentence...when you have a 15-year parole eligibility date plus DIM credits, victim's families are getting called at 11 and 11.5 years to go to a parole hearing...only 11.5 years after a life sentence. What's more, you get a parole hearing sooner than you would in 2nd degree murder. It makes no sense.”¹³

The same year, the state's attorney for Hartford County supported legislation to reinstate the death penalty, arguing, “Abolishing the death penalty is legalizing some forms of murder.”¹⁴

¹ <https://www.mdsaa.org/maryland-states-attorneys>

The website is not clear on who exactly are the members of the MSAA and whether other prosecutors, like deputies, are also members.

² <https://www.mdsaa.org/about-us>

There is also an administrative assistant and a “Traffic Safety Resource Prosecutor.”

³ <https://www.mdsaa.org/msaa-officers>

Officers include President, Vice-Presidents in Legislation, Scholarships and Training, Secretary, Treasurer, a State Director and “Associate Members.” The Associate Members appear to be Chief Deputies, not elected prosecutors, although the website does not clarify their role in the organization. Of note, there is a separate State's Attorney for Baltimore County and Baltimore City.

⁴ <https://www.mdsaa.org/committees>

Since the Facebook groups are closed, the members are not available for viewing.

⁵ <https://twitter.com/MDSAAssociation>

The information that is available points to training sessions for prosecutors, but little else.

⁶ *County Crime Conditions to be Aired at Meeting*, BALTIMORE SUN (May 16, 1832) Page 10.

⁷ *Id.*

⁸ Bill was withdrawn.

⁹ HB 121 testimony. The identity of who testified is not entirely clear. Enacted May 28, 2015.

¹⁰ From video judicial proceedings. Alsobrooks used examples of cases in her county where the accused had received 30 years, which she said was too low for intentional murder.

¹¹ Maryland outlawed the death penalty in 2013. See

<https://www.cnn.com/2013/03/15/justice/maryland-death-penalty-ban/index.html>

¹² SB 199. Hearing in Senate.

¹³ <http://mgahouse.maryland.gov/mga/play/2627c2d0-9193-4b30-bb1c-3b9d5159e8b9/?catalog/03e481c7-8a42-4438-a7da-93ff74bdaa4c&playfrom=1543000>

¹⁴ SB 346. Regular Session 2018. Did not pass.

State of Massachusetts

Massachusetts District Attorneys Association

It is difficult to assess the lobbying efforts of Massachusetts prosecutors because so much data was unavailable. Of the more than 700 bills that were introduced in the



legislature during the study period, we only had the necessary information to assess prosecutor lobbying efforts for 100 bills. Legislative materials confirm that prosecutors were involved in at least 43 pieces of legislation. But it is not possible to assess the frequency or success of those efforts.

Association Composition and History

The Massachusetts District Attorneys Association (MDAA) consists of eleven full-time employees, including an executive director.¹ Massachusetts' eleven elected district attorneys are empowered by statute to appoint the executive director of the MDAA.² That same statute empowers the executive director to expend funds appropriated by the state and derived from other sources, and it directs the executive director to make annual reports to the legislature about child abuse and neglect cases that have been referred for criminal prosecution.³ Throughout the study period, Tara McGuire served as the executive director of the MDAA.⁴

The eleven district attorneys appoint one of themselves each year to serve as the president of the organization. The mission of the MDAA is "to support the eleven elected Massachusetts District Attorneys and their staff, including approximately 785 prosecutors and 260 victim-witness advocates."⁵ Under the "Who We Serve" section of the MDAA's website, the MDAA states:

MDAA supports the District Attorneys by managing statewide business technology services and administering grants in the area of Violence Against Women and Motor Vehicle Crimes. MDAA also produces publications for prosecutors and victim-witness advocates, hosts dozens of prosecutor trainings annually, and

provides information on budgetary, criminal justice, and public safety issues to the executive and legislative branches.⁶

The state of Massachusetts appropriated \$3,433,000 in fiscal year 2015, \$3,133,000 in fiscal year 2016, and \$3,721,000 in fiscal year 2017 to the MDAA.⁷

We were unable to determine when, precisely, the association was founded. The statute empowering elected prosecutors to appoint an executive director of MDAA dates to the early 1990s.⁸ However, a news article from 1968 indicates that MDAA had already been in existence for some time.⁹

Analysis

Using only publicly available materials, it is very difficult to determine when Massachusetts's prosecutors lobby the legislature and what positions they take on specific bills. Witness testimony occurs during joint committee hearings. The legislature's website archives only a few of the videos of hearings from the study period.¹⁰ When archived videos existed, we were able to determine whether prosecutors testified at the hearings and what position they took if they did testify. But for many criminal justice bills, no archived videos were available. For those bills, we were unable to determine whether no hearings were held, or whether hearings were held but not archived.

How the legislature advanced bills created another difficulty in the data collection process. Specific criminal justice issues were often introduced initially as discrete bills. Those bills that legislators decided to advance to a floor vote were often consolidated into omnibus bills. However, during that consolidation process, the smaller bills were sometimes substantially amended or even dropped from the omnibus bill as it advanced. This consolidation process made it difficult to determine and categorize the ultimate fate of the smaller, specific criminal justice bills. We dealt with the issue by comparing the language of any omnibus bill that passed with the smaller, specific bills and then treating the passage or defeat of the omnibus bill as the passage or defeat of the smaller, specific bills so long as those bills largely survived the consolidation process.

For example, many criminal justice reform efforts were consolidated into an omnibus bill¹¹ that was publicly touted as an important legislative compromise on public safety.¹² The bill, S. 2371 (2017-2018 Session), made reforms to the bail system, repealed some mandatory minimum sentences for certain drug

offenses, required the creation of new diversion programs, and made some crimes committed by young offenders eligible for expungement. Governor Charlie Baker indicated that had reservations about the bill.¹³ After the legislature passed the bill and before it went to Baker, prosecutors made it known that they were not opposed to the bill.¹⁴ Governor Baker ultimately signed the legislation.

During the study period, prosecutors were staunchly opposed to efforts aimed at eliminating mandatory minimum penalties associated with drug offenses. When the Joint Committee on the Judiciary considered a series of bills in the 2017-2018 session which proposed such elimination,¹⁵ five elected district attorneys appeared before the committee to oppose the elimination. Their opposition appears to have been a coordinated effort, as four of the district attorneys who appeared ceded their time to Suffolk County District Attorney, Daniel Conley, who testified against the bills.

“Eliminating mandatory minimum sentences would take a critically important tool for police and prosecutors out of their hands and put it into the hands of judges who don't have as deep or full of an understanding about the communities we serve with respect to who is driving the violence.”

Daniel Conley, Suffolk County District Attorney

A number of district attorneys also appeared at a hearing before the same committee in 2015 to oppose legislation aimed at eliminating mandatory minimums for drug crimes.¹⁶ Although they opposed eliminating mandatory minimum penalties, the prosecutors were willing to support other drug reform efforts.

“I support lifting the RMV penalties for low level drug offenders who have served their sentences because I believe we should be making it easier, not harder, for them to go to work and school. I am opposed and we are opposed to the elimination of mandatory minimum drug laws because it is not a new idea for the future but it is a return to a failed policy of the past. I oppose their elimination because the arguments we have heard for so many years to justify it do not withstand careful scrutiny or the facts. Mandatory minimums are also vital tools in our tool box. We don't use them

often, but when we do their impact should not be downplayed or denied."

Daniel Conley, Suffolk County District Attorney¹⁷

Drug penalties were not the only issue that drew prosecutor lobbying. Prosecutors testified in favor of H. 1244 (2015-16 Session), which required persons arrested for a felony to submit a DNA sample. The bill also created a new crime punishable by a fine of up to \$1,000 and up to six months of jail for those who failed to provide such a sample.

“ This particular issue will give MA prosecutors another important tool that will help us solve violent crime and also help us prevent it. I urge you all to look favorably on this bill and modernize MA crime fighting by bringing it into the 21st century."

Daniel Conley, Suffolk County District Attorney¹⁸

The Attorney General also lobbied during the study period. For example, the Attorney General testified in favor of S. 883 and H. 1487 (2015-2016 Session) which proposed modifications to the state's wiretap laws.

“ I support thoughtful and necessary updates to our wiretap law. Our team at the Attorney General's office looks forward to working with you as you consider a commonsense, in my view, update to an outdated law. I urge you to report these bills out favorably."

Maura Healey, Attorney General

Both the Attorney General and elected district attorneys testified in support of bills to add gender identity to the state's nondiscrimination laws.¹⁹

“ I am here today to provide support for legislation to protect transgender people in places of public accommodation. If we don't grant these protections to transgender people I believe we are sending a message that we as a state don't fully accept them. That is the wrong message to send. I ask you to give these bills a favorable recommendation."

Maura Healey, Attorney General

“ I am here today to support H.1577 and S.735 for all the reasons stated by the Attorney General. The level of violence and hatred is

often severe. Our laws need to reflect that discrimination for any reason is wrong and start honoring the differences that make our community stronger."

Daniel Conley, Suffolk County District Attorney

¹ <https://www.mass.gov/info-details/overview-of-the-massachusetts-district-attorney-association>

² Mass. Gen. Laws Ann. ch. 12, § 20D ("The district attorneys may appoint a suitable person to serve as executive director to the Massachusetts District Attorneys Association for the purpose of promoting prosecutorial resources and improving prosecutorial functions through the coordination and standardization of services and programs, together with providing information, technical assistance and educational services to ensure standardization in organization, goals, operations and procedures.").

³ *Id.*

⁴ <https://www.linkedin.com/in/tara-maguire-b225915>

⁵ <https://www.mass.gov/orgs/massachusetts-district-attorney-association>

⁶ *Id.*

⁷ <https://www.mass.gov/info-details/overview-of-the-massachusetts-district-attorney-association>

⁸ Mass. Gen. Laws Ann. ch. 12, § 20D was added by St.1991, c. 138, § 100.

⁹ *Tamburello Heads Study Of Capital Punishment*, The Berkshire Eagle, Jan. 9, 1968, at pg. 1.

¹⁰ <https://malegislature.gov/Events/Hearings/Joint/List/1-1-2015/12-31-2018/>

¹¹ See, e.g., S. 837 (2017-2018 Session); S. 858 (2017-2018 Session); S. 873 (2017-2018 Session); S. 876 (2017-2018 Session); S. 878 (2017-2018 Session).

¹² *More details about Beacon Hill's criminal justice bill; State Sen. Cynthia Creem: 'Other bills made small dents. This makes a big bang'*, Sunday Telegram (March 25, 2018).

¹³ Katie Lannan, *Baker signs criminal justice bill; Governor OKs legislation despite 'serious concerns'*, Medfield Press (April 19, 2018)

¹⁴ *DAs signal lack of opposition to criminal justice bill*, Boston Globe (April 3, 2018).

¹⁵ S. 819, H. 741, H. 820 (2017-2018 Session)

¹⁶ S. 64, S. 786, H. 1620 (2015-2016 Session).

¹⁷ Other District Attorneys joined Conley's testimony: David Capeless, Berkshire County; Anthony Gulluni, Hampden County; Jonathan Blodgett, Essex County; Tim Cruz, Plymouth County; Michael O'Keefe, The Cape and Islands.

¹⁸ Joe Early (Worcester County DA), Michael O'Keefe (the Cape and Islands DA), and Tim Cruz (Plymouth County DA) all supported the bill as well.

¹⁹ S. 735, H.1577 (2015-2016 Session).

State of Michigan

Prosecuting Attorneys Association of Michigan

Michigan Prosecuting Attorneys Coordinating Council

Michigan prosecutors were active lobbyists; they were involved in approximately 31.9% of the criminal justice bills introduced in the state legislature during the relevant time period. They lobbied on 288 of 904 total criminal justice bills.



When prosecutors lobbied, they were often successful. On average, the legislature only passed 23.6% of criminal justice bills that were introduced. When they lobbied in favor of a bill, the bill was significantly more likely to pass (46.5% pass rate). However, when prosecutors lobbied against a bill it was significantly less likely to pass (7.6% pass rate).

Overall, Michigan prosecuting attorneys tended to support more punitive bills. They supported 88 of the 382 bills that would have either expanded the criminal law or increased punishments. Michigan prosecutors' lobbying was uniformly in favor of more punitive laws—they opposed 0 bills that would have either expanded the criminal law or increased punishments. When it came to bills would have decreased the scope of criminal law or decreased sentences, they supported 26 such bills and opposed 27.

288

NO. OF BILLS WITH
PROSECUTOR INVOLVEMENT

46.5%

SUPPORTED BILLS PASSED

7.6%

OPPOSED BILLS PASSED

88

HARSHER BILLS SUPPORTED

0

HARSHER BILLS OPPOSED

26

LENIENT BILLS SUPPORTED

27

LENIENT BILLS OPPOSED

Association Composition and History

The Prosecuting Attorneys Association of Michigan (PAAM) consists of 83 of county prosecutors, the Attorney General, and the U.S. Attorneys serving in Michigan.¹ The PAAM is a tax-exempt, non-profit Michigan Corporation.² A board of directors consisting of 5 officers (President, President-Elect, Vice President, Secretary-Treasurer, and Immediate Past President), 14 elected directors, active past presidents, and the Attorney General govern the organization.³

The Prosecuting Attorneys Association of Michigan was formed by statute in 1929.⁴ Michigan Compiled Law Section 49.62 provides “it shall be the duty of the prosecuting attorneys’ association to keep the prosecuting attorneys of the state informed of all changes in legislation, law, and matters pertaining to their office through the department of attorney general of the state of Michigan, to the end that a uniform system of conduct, duty and procedure be established in each county of the state.”⁵ The statute also provides there is to be an annual meeting of the PAAM called by the president before the first day of December each year.⁶

While the main prosecutor association is the Prosecuting Attorneys Association of Michigan, there are some additional organizations that seems to be associated with PAAM, such as the Michigan Prosecuting Attorneys Coordinating Council (“PACC”). The PAAC was also created by statute, the Prosecuting Attorneys Coordinating Office Act, and it is an autonomous entity within the Department of Attorney General.⁷ The Prosecuting Attorneys Coordinating Council is governed by members consisting of the Attorney General of Michigan and four Prosecuting Attorneys.⁸ The Council appoints the CEO of the Office and the CEO functions as the executive secretary but performs the functions and duties assigned by the council.⁹ Members are to vacate their appointment upon termination of their official position as a prosecuting attorney or attorney general.¹⁰

As defined by the statute, the PACC’s duties are to “keep the prosecuting attorneys and assistant prosecuting attorneys of the state informed of all changes in legislation, law and matters pertaining to their office, to the end that a uniform system of conduct, duty and procedure is established in each county of the state.”¹¹ The PACC provides services to Michigan’s Prosecuting Attorneys such as developing and conducting continuing professional education, publishing a monthly newsletter, providing legal research assistance, installing and maintaining automated work-management systems in Michigan’s prosecutor’s offices, supervising and administering grant-funded services, and coordinating

statewide prosecutor activities.¹² The PACC is also statutorily required to meet four times a year and hold special meetings when so called.¹³ The statute also provides powers to the PACC and allows the council to “(a) [e]nter into agreements with other public or private agencies or organizations to implement the intent of this act[;] (b) [c]ooperate with and assist other public or private agencies or organizations to implement the intent of this act[; and] (c) [m]ake recommendations to the legislature on matters pertaining to its responsibilities under this act.”¹⁴

Analysis

Michigan prosecutors were involved in many bills during the study period. Much of that involvement revolved around protecting victims of sexual abuse—children in particular. Prosecutors supported a package of bills that were introduced in the wake of the Larry Nassar sexual abuse scandal. Nassar was a doctor for USA Gymnastics who was convicted of sexually abusing multiple young women under the guise of medical treatment.¹⁵ Prosecutors actively supported the bills,¹⁶ including by speaking at a press conference that was called to announce the legislative package. The bills were designed to accomplish a number of goals, including eliminating the statute of limitations for certain sexual assault crimes against minors,¹⁷ extending reporting requirements,¹⁸ and increasing penalties for certain child pornography crimes.¹⁹

“The leadership, courage, determination of the survivors of Nassar is remarkable, and the legislation introduced today was written with their guidance and voices. I encourage our Representatives and Senators to pass legislation that will protect survivors of sexual abuse and deter those who may become abusers. . . . The words of the young women assaulted by Nassar have changed the world, the most important focus must be the survivors, and how to prevent sexual abuse in the future.”

Bill Schuette, Attorney General

Michigan prosecutors supported other laws aimed at sex offenses as well. For example, they supported a bill to create an exception to evidentiary law for sexual assault cases and allow the introduction of evidence from more than 10 years before the charged offense,²⁰ as well as laws designed to increase punishment for child pornography offenses based on the number of images or the child depicted.²¹

“We are wholeheartedly in support of what this bill does; which is, providing increase penalties for those who engage in the most severe and disturbing aspects of distribution, procession, and manufacturing child pornography. As well as providing increase penalty for those who persist in the actions regarding, what we call, child pornography. ... I do have concerns about some of the specifics around implementation of the bills. We are working with the staff of the committee to address some of those issues to ensure that we have the most effective and pragmatically applicable measures to ensure that we are meeting the effects and the needs of the bill itself.”

Kelly Carter, Department of Attorney General

Michigan prosecutors were also heavily involved in several bills dealing with drunk driving.²² For example, Mike Penty of PAMM supported S.B. 153, which would allow urine samples to be taken instead of blood for DUI offenses.²³ Several members of the PAAM supported S.B. 207,²⁴ which would have made a number of changes, including allowing a peace officer to make a warrantless arrest based off of the outcome of a saliva test of a driver suspected of driving drugged, making refusal of a saliva test a civil infraction, and making refusal by a commercial driver to submit to a saliva test a misdemeanor.²⁵ The same PAAM members also supported S.B. 434, which allowed the Michigan State Police to establish a one-year pilot program under which a saliva test could be given in a similar manner as a breathalyzer test for alcohol to detect if a driver was under the influence of a controlled substance.²⁶

There were other bills that dealt with drunk driving issues beyond testing. For example, Emily Corwin of the Wayne County Prosecutors Office supported S.B. 5024, which would create the “Impaired Driving Safety Commission Act” and a fund to be used for the commission.²⁷ PAAM member K.C. Steckelberg also supported H.B. 5742, which would permanently make 0.08 BAC the per se level for drunk driving.²⁸ H.B. 5742 did not pass, and the following year, PAAM member Mark Reese also supported H.B. 4548, which would delay the increase in BAC level for DUIs until 2021.²⁹ The one DUI bill Michigan Prosecutors opposed was H.B. 4212, which would prohibit administration of a chemical breath analysis test without a court order if the driver does not consent to the test.³⁰

Michigan prosecutors lobbied on six bills dealing with an “Address Confidentiality Program.” The Address Confidentiality Program “allow[s] victims of crimes and their children to apply for identification numbers and substitute addresses with assigned post office boxes to allow their personal information to remain confidential.”³¹ In 2017, Michigan prosecutors were supportive advocates of the Program. Alan Cropsey of the Attorney General’s office spoke for S.B. 655, which would create the Address Confidentiality Program.³²

S.B. 656 would allow some in the Address Confidentiality Program to use their “safe” address to register to vote.³³ S.B. 657 would allow participants in the program to be excused from jury duty while participating and specified that assistance provided to an applicant to the program would not be considered the unauthorized practice of law.³⁴ S.B. 954 would have added the address of an individual enrolled in the Address Confidentiality Program to the category of “highly restricted personal information”³⁵ while S.B. 955 requires the Attorney General Office to issue state personal identification cards to those enrolled in the program.³⁶ While lobbying efforts occurred during the test years, the supported bills failed during the test years. The Address Confidentiality Program eventually passed and was signed by the Governor in late December of 2020.³⁷

¹ *About Us*, PROSECUTING ATTORNEYS ASSOCIATION OF MICHIGAN, <https://www.michiganprosecutor.org/about-us-menu/paam> (last visited May 10, 2021).

² *Id.*

³ *Id.*

⁴ MICH. COMP. LAWS § 49.62.

⁵ MICH. COMP. LAWS § 49.62.

⁶ MICH. COMP. LAWS § 49.61.

⁷ MICH. COMP. LAWS § 49.103.

⁸ PACC/PAAM CRIMINAL HISTORY GUIDE/HANDBOOK 2, https://www.michigan.gov/documents/msp/Prosecuting_Attorney_Handbook_363001_7.pdf.

⁹ MICH. COMP. LAWS § 49.103 (1972).

¹⁰ MICH. COMP. LAWS § 49.104 (1972).

¹¹ MICH. COMP. LAWS § 49.109 (1972).

¹² *About Us*, PROSECUTING ATTORNEYS ASSOCIATION OF MICHIGAN, <https://www.michiganprosecutor.org/about-us-menu/paam> (last visited May 10, 2021).

¹³ MICH. COMP. LAWS § 49.106 (1972).

¹⁴ MICH. COMP. LAWS § 49.110 (1972).

¹⁵ Dwight Adams, *Victims share what Larry Nassar did to them under the guise of medical treatment*, INDIANAPOLIS STAR (Jan. 28, 2018).

¹⁶ HB 871-880 (2018)

¹⁷ SB 871 (2018)

¹⁸ SB 873 (2018)

¹⁹ SB 878 (2018).

²⁰ HB 5658 (2018).

²¹ HB 5660 (2018); HB 5794 (2018).

²² E.g., S.B. 80 (2017), H.B. 4547 (2017); H.B. 5743, 2015-2016 Leg. Sess. (Mich. 2016).

²³ S.B. 153, 2015-2016 Leg. Sess. (Mich. 2015).

²⁴ K.C. Steckelberg, Bill Vaillencourt, and Ken Steckler.

²⁵ S.B. 207, 2015-2016 Leg. Sess. (Mich. 2015).

²⁶ S.B. 434, 2015-2016 Leg. Sess. (Mich. 2015).

²⁷ S.B. 5024, 2015-2016 Leg. Sess. (Mich. 2015).

²⁸ H.B. 5742, 2015-2016 Leg. Sess. (Mich. 2016).

²⁹ H.B. 4548, 2017-2018 Leg. Sess. (Mich. 2017).

³⁰ H.B. 4212, 2017-2018 Leg. Sess. (Mich. 2017). Chris Anderson of the Eaton County Prosecutor's Office submitted a card in opposition of the bill.

³¹ *AG's Office Begins Development of Address Confidentiality Program for Survivors of Crimes*, MICHIGAN.GOV (Jan. 7, 2021), <https://www.michigan.gov/som/0,4669,7-192-26847-549013--,00.html#:~:text=The%20new%20program%2C%20which%20was,personal%20information%20to%20remain%20confidential>.

³² S.B. 655, 2017-2018 Leg. Sess. (Mich. 2017). Cropsey also spoke in favor of S.B. 656, S.B. 657, S.B. 954, S.B. 955, and S.B. 956.

³³ S.B. 656, 2017-2018 Leg. Sess. (Mich. 2017).

³⁴ S.B. 657, 2017-2018 Leg. Sess. (Mich. 2017).

³⁵ S.B. 954, 2017-2018 Leg. Sess. (Mich. 2017).

³⁶ S.B. 955, 2017-2018 Leg. Sess. (Mich. 2017). S.B. 956, 2017-2018 Leg. Sess. (Mich. 2017) is similar to S.B. 955 and requires protected drivers licenses to be provided to people who are in the Address Confidentiality Program.

³⁷ *AG's Office Begins Development of Address Confidentiality Program for Survivors of Crimes*, MICHIGAN.GOV (Jan. 7, 2021), <https://www.michigan.gov/som/0,4669,7-192-26847-549013--,00.html#:~:text=The%20new%20program%2C%20which%20was,personal%20information%20to%20remain%20confidential>.

State of Minnesota

Minnesota County Attorneys Association

Minnesota Association of City Attorneys

Minnesota prosecutors were somewhat active lobbyists; they were involved in approximately 24% of the criminal justice bills introduced in the state legislature during the relevant time period. (They lobbied on 47 of 194 total bills for which we had sufficient information to gauge prosecutor involvement. There were an additional 11 criminal justice bills for which sufficient information was not available.)



When the prosecutors lobbied, they were very often successful. On average, the legislature only passed 19% of criminal justice bills that were introduced. When prosecutors lobbied in favor of a bill, the bill was more likely to pass (36% pass rate); when they lobbied against a bill it did not pass (0% pass rate).

Overall, Minnesota prosecutors tended to support more punitive bills. They supported 15 bills that would have either expanded the criminal law or increased punishments. However, prosecutor lobbying was not uniformly in favor of more punitive laws. They opposed 1 bill that would have either expanded the criminal law or increased punishments. When it came to bills would have decreased the scope of criminal law or decreased sentences, they supported 2 such bills and opposed 4.

47
NO. OF BILLS WITH
PROSECUTOR INVOLVEMENT

15
HARSHER BILLS SUPPORTED

1
HARSHER BILLS OPPOSED

36%
SUPPORTED BILLS PASSED
0%
OPPOSED BILLS PASSED

2
LENIENT BILLS SUPPORTED

4
LENIENT BILLS OPPOSED

Association Composition and History

The Minnesota County Attorneys Association (MCAA) is comprised of those who hold the office of County Attorney or Assistant County Attorney.¹ The MCAA is governed by a Board of Directors of no less than seventeen (17) people including, the five officers of the organization: the President; the President-Elect; the Secretary; the Treasurer; and the Immediate Past-President.² It also employs a staff of seven, including an Executive Director, Robert Small.³ Per the website, the MCAA's mission is to "improve the quality of justice" and:

- To provide leadership on legal and public policy issues related to the duties of county attorneys;
- To enhance communication and cooperation between county attorneys and the judiciary, county government, the bar, and other public and private organizations concerned with the administration of justice;
- To foster professionalism and competency by providing training, education, and support to county attorneys, assistant county attorneys and other key constituencies in the justice system; and
- To enhance mutual cooperation and support among county attorney offices.⁴

Public reports available on the Minnesota Campaign Finance Board website list the following registered lobbyists for the MCAA during the study period: Robert M. Small (2015-2018); Nancy A. Haas (2015-2018); and Erin Campbell (2015; terminated June 10, 2015).⁵ The MCAA disclosed yearly spending of \$42,500 on lobbying efforts, for a total of \$170,000 over the four-year study period.⁶

The relationship between the MCAA and other state organizations is unclear. The MCAA is a nonprofit corporation and began filing as such with the Secretary of State in 1977.⁷ Prior to that filing, in 1973, the Minnesota Legislature created a County Attorneys Council by statute, comprised of the county attorney of every county and the attorney general. The statute also provides for a governing body composed of five positions mirroring those of the officers of the MCAA⁸ and enumerating the duties of the council.⁹ In addition, the statute requires the council to employ an executive director for a six-year term.¹⁰ There is no existing website for a County Attorneys Council but the County Attorneys Council and the MCAA may have merged over time as, by one account, the two organizations "met at the same time and had the same officers, but kept separate minutes."¹¹

Pursuant to the Bylaws, the MCAA also has an affiliation with the Minnesota City Attorneys Association (MACA).¹² The MACA does not maintain its own website but shares information about its activities on the website of the League of Minnesota Cities.¹³ MACA did not appear in any legislative materials or media reports during the study period.

Minnesota prosecutors began discussing criminal justice policy as an organized body as early as 1912. One newspaper account describes a movement in advance of a meeting of the “Minnesota County Attorneys’ association” to reinstate the death penalty in murder cases and give juries discretion to impose the death penalty or a life sentence. One county attorney indicated his support for reinstatement: “In my opinion it is the only just treatment. If a man or woman with malice aforethought murders another, he or she should be compelled to suffer as the victim. It is claimed by some criminologists that persons do not consider the penalty before committing a murder. I do not agree with them.”¹⁴

Analysis

During the study period, Minnesota prosecutors were particularly concerned with increasing criminal penalties or opposing the reduction of criminal penalties. They also exerted their influence in the area of asset forfeiture. While they supported some reform measures in the form of compromises, their voices were often pulling such reforms in a more punitive or less lenient direction.

In late 2015, the Minnesota Sentencing Guidelines Commission (SGC) adopted a set of proposals repealing mandatory minimums for drug offenses in response to the failure of the Legislature to act on drug reform during the 2015 session.¹⁵ The proposal removed fifth degree possession as a prior for the purpose of triggering mandatory minimums, reduced the possession of trace amounts of a controlled substance from a felony to a gross misdemeanor, and enhanced possession of a controlled substance based on the weight of the substance.¹⁶ During a public hearing on the proposal, Robert Small, Executive Director of the MCAA, testified in opposition to such changes.¹⁷ According to Small, “At a time when the heroin trade is thriving in our communities, it is just not right to be reducing the sentence for anyone in the distribution chain and who is bringing this poison into our communities.”¹⁸

Absent action during the 2016 legislative session, the SGC proposal would have been effective August 1, 2016.¹⁹ However, the legislature did act to reject the SGC's proposal in HF 2888 and was supported by Small on behalf of the MCAA: "I am here to speak favorably of the bill" because if this goes into effect and "nothing is done, it will result in the biggest prison discount for drugs in years."²⁰ The bill failed but later that session, the MCAA reached a legislative compromise on drug reform—the MCAA's "top legislative priority" according to Mark Ostrem, MCAA president²¹—with support for SF 3481.²² SF 3481, among other changes, eliminated mandatory minimums for certain lower level drug crimes, created new crimes and aggravating factors targeting drug dealers and drug violence, and both lowered and increased drug thresholds depending on the type of drug and whether the crime related to sales or possession. SF 3481 was enacted and became effective in August 2016.

Prosecutors successfully lobbied in several other bills seeking to increase penalties or expand the criminal law, including penalties for fourth-degree assault on employees working with mentally ill or dangerous patients.²³ Prosecutors helped increase the criminal penalty for interfering with a body or scene of death from a gross misdemeanor, punishable by up to \$3,000,²⁴ to up to three years imprisonment and a fine of up to \$5,000 in Laura's Law.²⁵ Laura's Law was named after a woman whose body had been abandoned by her companion, the defendant, after the two had used methamphetamines and Laura had succumbed to an overdose. Fearing legal repercussions, the defendant hid the details of Laura's death from law enforcement and relatives. Arguing that the bill will have a deterrent effect and that a more severe punishment fits the crime, Chad Larson, Douglas County Attorney stated, "I think that callously dumping a human body in a cornfield for selfish purposes is the same as if someone dismembers a body and conceals it."²⁶

Prosecutors supported three different legislative proposals to criminalize sexual relationships between teens and adults. 2018 HF 3203 created two new felonies: the first penalized sexual penetration between a teacher and high school student with up to 15 years imprisonment and the second penalized sexual contact in such cases with up to 10 years imprisonment.²⁷ A second bill, 2015 SF 1137, attempted to expand the criminalization of sexual contact by an adult "in a position of authority" over a 16 or 17 year old by including adults who had been in a position of authority over the child within the past 12 months.²⁸ Ramsey County Attorney, Kaarin Long, explained that in cases involving teenagers, "that imbalance of power and that vulnerability doesn't evaporate simply the day that

a particular employment contract ends...the teenager is still dealing with someone at least four years older, often much older and has been in a position of authority [over the teenager]."²⁹ 2018 SF 2864 created an expansion similar to SF 1137 but limited the lookback period to 120 days.³⁰ All three bills failed.

Prosecutors stymied one effort at juvenile justice reform in 2015 SF 994. SF 994 included a prohibition on the use of restraints on a child in court unless the judge ordered otherwise. It also allowed for a reduction in the sentences of offenders who were children at the time of the offense and were sentenced to life without release or to terms of imprisonment with mandatory minimums of 30 years; such offenders would be eligible for release after a minimum term of imprisonment of 20 years under SF 994.

In hearings on the matter, the bill's sponsor, Senator Latz, explained that "[t]he advocates of the bill and I have been working very hard to try to find a compromise with the County Attorney's Association and the Sheriff's Association in order to move this overall policy forward. As of today we have not achieved that compromise."³¹ Robert Small testified in response:

“ There are two portions of the bill which we do not support, that I will address. The first is with respect to the mandatory minimums that are part of the bill.... The County Attorneys Association believes that the mandatory minimums that would apply are appropriate. And it is for those reasons that we oppose that portion of the bill. The second portion of the bill that we oppose is the minimum term of imprisonment. As I mentioned, Senator Latz has been unbelievably responsive to the Country Attorneys' concerns. Senator Latz came and visited with our association's executive directors and heard directly from the county attorneys, some of whom prosecuted the cases that are currently involving juveniles serving life terms. He heard about why our association believes it should be thirty years and not twenty years. And it's for those reasons that we oppose that portion of the bill as well.”³²

When asked about the MCAA's position on the prohibition on courtroom restraints, Small said:

“ I was really hoping no one would ask me about that.... There is currently a court rule that gives judges the opportunity to deal with

restraints in the courtroom. As a matter of principle, our association is of the view that when the legislature supersedes a court rule, there might be some separation of powers issues. And so we would opposed it on those grounds, and only those grounds.³³

The bill failed.

Another recurring issue in the legislature was asset forfeiture. Law enforcement's use of asset forfeiture came under fire in Minnesota following reports in the mid-2000s of unethical conduct by a law enforcement group called The Metro Gang Strike Force.³⁴ Following the controversy, Minnesota legislators proposed a series of changes to asset forfeiture, including several bills during the study period.

In the 2015 session, SF 385 sought to amend civil asset forfeiture by 1) adding an accounting and reporting requirement and 2) prohibiting the proceeds of forfeitures to fund various law enforcement uses, including to pay salary and overtime pay.³⁵ The MCAA opposed the restriction on the use of proceeds: "several areas of the bill reiterate how forfeited funds may be used - to the extent they are duplicative, we don't think they are necessary as the current law currently exists to designate and restrict the allowable uses under current law and to that extent that it further restricts, it's duplicative and we oppose that language."³⁶ A couple weeks later, during a hearing before the Senate Judiciary Committee, the sponsor of SF 385, Sen. Newman, offered the A1 amendment which, among other provisions, removed the restriction on the use of funds:

Sen. Newman: The A1 amendment "eliminates the restriction of law enforcement to use forfeited funds for purposes of salary...[.]"

Chair Latz: What's the purpose of that change, Senator Newman?

Sen. Newman: Law enforcement was not in support of that provision and we have worked with law enforcement and also with the county attorney's association and we're trying to have a bill that is as non-controversial as possible. I will tell you personally Mr. Chairman and members that I've always thought that is maybe not all that good of an idea to allow any state agency to acquire funds...and then be able to put it into their own budget...however for the purposes of this bill, we have agreed to remove that prohibition..."

Chair Latz: Sen. Newman, did law enforcement then as a collective entity agree to support the bill or remain neutral on the bill in return for your removing this provision that was obnoxious to them?

Sen. Newman: My understanding, Mr. Chairman, is that the county attorney's association...is in support of the bill, [if amended], and that would include law enforcement.³⁷

The restriction on use of funds, eventually, remained in the bill and the MCAA continued to oppose the bill.³⁸

A second asset forfeiture bill was opposed by the MCAA in 2015. Termed the Innocent Owner Claimant Bill, SF 384, among other procedural changes, allowed a co-owner to recover seized property after a hearing shifting the burden to the prosecutor to prove that the claimant was not innocent in the matter leading to the seizure.³⁹

There are many, many specific reasons why we are in opposition to this very complicated bill that would dramatically change the current law, would make forfeitures so onerous to both law enforcement and to criminal prosecutors that it would result in not being able to utilize this effective tool to keep the instruments and proceeds of crime out of the hands of convicted offenders.

Robert Small, Executive Director, MCAA⁴⁰

As the session drew to a close, Small expressed the opposition of the MCAA on the proposed changes to forfeiture laws in an op-ed.⁴¹ Both SF 385 and SF 384 failed to pass after being considered for inclusion in omnibus legislation.⁴²

Prosecutors also supported funding for the expansion of specialty courts, including diversionary courts.⁴³ Kim Bigham, Assistant Ramsey County Attorney, explained that such courts made sense: "Seventy-five percent of drug court graduates remain arrest free for two years after the program; for every \$1 spent on drug courts, taxpayers save \$2.36."⁴⁴ The measure failed.

The MCAA was unsuccessful in their support for a bill restoring voting rights for convicted felons upon their release from prison⁴⁵ but they were able to compromise on legislation seeking to provide compensation for certain

exonerated defendants.⁴⁶ According to Small, "We were able to come to an agreement and the association supports this bill."⁴⁷ That measure was successful.

¹ Such office holders are deemed regular members. If nominated by their County Attorney, one chief of staff or head administrator may also be a regular member of the MCAA. The Attorney General, Solicitor General, Deputy Attorney General, Assistant Attorney General, Special Assistant Attorney General, and United State Attorney General are eligible to be associate members. https://cdn.ymaws.com/mcaa-mn.org/resource/resmgr/Files/Foundation/By-laws_October_2012.pdf

² https://cdn.ymaws.com/mcaa-mn.org/resource/resmgr/Files/Foundation/By-laws_October_2012.pdf

³ <https://mcaa-mn.org/page/staff>

⁴ <https://mcaa-mn.org/page/overview>

⁵ <https://cfb.mn.gov/reports-and-data/viewers/lobbying/lobbying-organizations/501/2015.1/>

⁶ *Id.*

⁷ <https://mblsportal.sos.state.mn.us/Business/SearchDetails?filingGuid=c070a7f3-a5d4-e011-a886-001ec94ffe7f>

⁸ Minn. Stat. § 388.19 (2020)

⁹ "The council shall perform such functions as in its opinion shall strengthen the criminal justice system and strengthen and increase efficiency in county government in Minnesota, including but not limited to the following: (a) Provide training and continuing education for county attorneys and assistants. (b) Gather and disseminate information to county attorneys including changes in the law by rule, case decisions, and legislative enactment. (c) Coordinate with law enforcement, courts, and corrections providing interdisciplinary seminars to augment effectiveness of the system. *Id.*

¹⁰ Minn. Stat. § 388.20 (2020)

¹¹ William, Jeronimus, *Evolution of the Minnesota County Attorney's Association (MCAA)*, available at: <https://www.yumpu.com/en/document/read/35380709/evolution-of-the-minnesota-county-attorneys-association-mcaa>

¹² https://cdn.ymaws.com/mcaa-mn.org/resource/resmgr/Files/Foundation/By-laws_October_2012.pdf

¹³ <https://www.lmc.org/learning-events/events/non-league-events/>

¹⁴ *Death Penalty Favored*, Star Tribune Sun, Jan. 7, 1912 at 8.

¹⁵ See https://mn.gov/sentencing-guidelines/assets/MSGC_Public_Hearing_Summary_Dec_23_2015_tcm30-90828.pdf and 2015 HF 2107, 2015 SF 773, and 2015 SF 1382.

¹⁶ https://mn.gov/sentencing-guidelines/assets/Impact%20of%20Possible%20Recommendations_tcm30-115361.pdf

¹⁷ https://mn.gov/sentencing-guidelines/assets/MSGC_Public_Hearing_Summary_Dec_23_2015_tcm30-90828.pdf

¹⁸ Abby Simons, *Weighing drug sentencing rules*, Star Tribune, Dec. 24, 2015 at 1B. See also, Laurel Beager, *Kooch attorney, MCAA oppose sentence reductions*, The Journal (International Fall, Minnesota), Dec. 15, 2015.

¹⁹ *Id.*

²⁰ *Hearing on HF2888 Before the H. Public Safety and Crime Prevention Policy and Finance Comm.*, Mar. 15, 2016 (testimony of Robert Small, Executive Director, MCAA).

²¹ The Minnesota County Attorneys Association, *Historic agreement reached on Minnesota drug sentencing reform; Law enforcement, criminal defense attorneys propose new laws for drug crimes*, Sleepy Eye Herald Dispatch, May 5, 2016, at 4.

²² *See Hearing on SF 3481 Before S. Judiciary Comm.*, Apr. 8, 2016 (testimony of Jim Backstrom, Board Member, MCAA, Dakota Co. Attorney: describing how the MCAA worked with many partners and made compromises on the bill; "Let's be tough on the really serious people and let's treat the nonviolent chemically addicted offenders in a way that we can address them through intensive, focus treatment programs like drug court...[.]").

²³ 2015 SF 1120; *see Hearing on SF 1120 Before the S. Comm. on Judiciary*, Mar. 24, 2015 (testimony of Sen. O'Neill).

²⁴ Minn. Stat. § 609.02 (2015)

²⁵ 2016 HF 3469.

²⁶ *Hearing on HF3469 Before the H. Comm. on Public Safety and Crime Prevention Policy and Finance*, Mar. 30, 2016 (testimony of Chad Larson, Douglas County Attorney).

²⁷ 2018 HF 3203; *see Hearing on HF3203 Before the H. Comm. on Education Innovative Policy*, Mar. 6, 2018 (testimony of James Backstrom, Dakota County Attorney, MCAA).

²⁸ 2015 SF 1137; *see Hearing on SF1137 Before the S. Comm. on Judiciary*, Mar. 27, 2015 (testimony of Kaarin Long, Assistant Ramsey Co. Attorney).

²⁹ *Hearing on SF1137 Before the S. Comm. on Judiciary*, Mar. 27, 2015 (testimony of Kaarin Long, Assistant Ramsey Co. Attorney).

³⁰ 2018 SF 2864; *see Hearing on SF2864 Before the S. Comm. on Judiciary and Public Safety Finance and Policy*, Mar. 27, 2018 (testimony of Stacey St. George, Assistant Anoka County Attorney).

³¹ *Hearing on SF 994 Before the S. Judiciary Comm.*, March 31, 2016 (testimony of Sen. Latz).

³² *Hearing on SF 994 Before the S. Judiciary Comm.*, March 31, 2016 (testimony of Robert Small, Exec. Director, MCAA).

³³ *Id.*

³⁴ *See Report of the Metro Gang Strike Force Review Panel*, August 20, 2009

³⁵ In a recent year, law enforcement seized assets totaling \$9 million, \$7 million of which was returned to them. *Hearing on SF 385 Before the S. Judiciary Comm.*, Mar. 3, 2015 (testimony of Lee McGrath, Institute for Justice's Minnesota Chapter).

³⁶ *Hearing on HF 415 Before the H. Comm. on Civil Law and Data Practices*, Feb. 24, 2015 (2015 HF 415 was the companion bill of 2015 SF 385).

³⁷ *Hearing on SF 385 Before the S. Judiciary Comm.*, Mar. 3, 2015; *see also, Id.* (testimony of Robert Small, Executive Director of the MCAA, expressing support for SF 385 with the A1 amendment).

³⁸ *Hearing on SF 385 Before the S. Judiciary Comm.*, Mar. 19, 2015 (testimony of Robert Small, Executive Director of the MCAA).

³⁹ 2015 SF 384 (the bill applied to cases involving DWIs, prostitution, drive-by-shootings, drugs, or fleeing a police officer).

⁴⁰ *Hearing on HF456 Before the H. Comm. on Civil Law and Data Practices*, Feb. 24, 2015 (testimony of Robert Small). *See also*, *Hearing on SF 384 Before the S. Comm. on Judiciary*, Feb. 26, 2015 (testimony of Robert Small, MCAA).

⁴¹ Robert Small, *Forfeiture laws protect the public*, Pioneer Press, Apr. 6, 2015. Op. Ed.

⁴² *See* 2015 SF 878.

⁴³ 2015 HF1180.

⁴⁴ *Hearing on HF1180 Before the H. Comm. on Public Safety and Crime Prevention Policy and Finance*, Mar. 10, 2015 (testimony of Kim Bigham, Assistant Ramsey County Attorney).

⁴⁵ *Hearing on SF355 Before the S. Judiciary Comm.*, Feb. 19, 2015 (testimony of Mike Freeman, Hennepin County Attorney).

⁴⁶ 2018 HF 3677.

⁴⁷ *Hearing on HF 3677 Before the H. Comm. on Public Safety and Security Policy and Finance*, Apr. 12, 2018 (testimony of Robert Small, Exec. Director, MCAA).

State of Mississippi

Mississippi Prosecutors Association

It is difficult to assess the lobbying efforts of Mississippi prosecutors because so much data was unavailable. News accounts confirm that the Mississippi Prosecutors Association (MPA) supported at least 10 pieces of legislation during the study period. However, Lobbyist's Registration Forms and Annual Reports show that the MPA hired M.J. Trey Bobinger, III to lobby for the Association at the state legislature. These reports disclose that the MPA paid Mr. Bobinger a \$30,000 fee per year for his lobbying services, suggesting that the Association lobbied on more than 10 bills over a four-year period. But it is not possible to assess the frequency or success of those efforts.



Association Composition and History

The Mississippi Prosecutors Association is a non-profit organization which provides support to prosecuting attorneys in the state.¹ The MPA Board of Directors and committees provide leadership and guidance for training, legislative, and other criminal justice initiatives in Mississippi.

The Mississippi Prosecutors Association consists of prosecuting attorneys from across the state. MPA membership is open to both elected prosecutors and assistant prosecutors.² The MPA is governed by Officers and a Board of Directors. The MPA also includes representatives from the Mississippi Attorney General's Office and United States Attorney's Office. Additionally, members may participate on one of the MPA's various committees. These committees include the: County, Municipal, and Youth Court Prosecutor's Committee; Legislative Committee; Legislative Task Force; Asset Forfeiture Sub-Committee; Curriculum Committee; Nominating Committee; and Awards Committee.

News accounts indicate that the association dates to at least the 1950s. A news article from 1959 indicates that the Association was recommending changes to the law of rape. In particular, they recommended that the death penalty for rape should not be mandatory because "many times it is impossible to obtain a conviction because the juries weighing the case think the penalty too severe. . . .

[I]f life imprisonment or even an extended period of time in the state penitentiary were optional, it would be much harder for rapists to escape justice.”³

Analysis

Using only publicly available materials, it is very difficult to determine when Mississippi’s prosecutors lobby the legislature and what positions they take on specific bills. The Mississippi legislature does not appear to make archived recordings or detailed summaries of legislative hearings publicly available. The House makes some limited summaries of legislative activities available — summaries that indicate proponents and opponents of legislation are heard; but those summaries do not identify proponents and opponents by name, making it impossible to determine when Mississippi prosecutors are engaged in lobbying. However, news accounts indicate that such lobbying took place.

News accounts indicate that the MPA lobbied for bills that increased the coverage of substantive criminal law and increased the available sentencing range.⁴ There are no news accounts of MPA opposing any bills.

News accounts show that the MPA supported bills that aimed to curb gang activity and increase penalties for related activities. In 2017 for example, SB 2027 called for “longer prison terms and higher fines for crimes committed as part of gang activities. It also specified criteria already being used to identify gang members and called for tougher penalties for gang activities behind bars.”⁵ The interest in curbing gang activity was heightened following the 2015 murder of a transgender teenager by a gang member.⁶ This was the United States’ first federal hate crime prosecution for the killing of a transgender person.⁷ The same bills were introduced multiple years, however none managed to become law.⁸

Mississippi prosecutors also supported the creation of a Witness Protection Board. The 2015 Mississippi Prosecutors Association President, Patricia Burchell, explained that threats against witnesses are rare, but do occur, and often involve gang members.⁹ HB 601 would have established a witness protection board to oversee a newly created witness protection program. This bill died in committee.

Prosecutors also successfully supported a bill that would make the killing of three or more individuals capital murder and thus eligible for the death penalty.¹⁰ Prosecutors lobbied for this as a response to the rise in mass shootings.¹¹ A past president of the MPA, Ricky Smith, said, “[r]ight now in Mississippi, that would not

be a death penalty eligible case.” The Governor signed the bill into law on April 20, 2015.

Lastly, news reports show that the MPA has been involved in reform of civil asset forfeiture laws. This is a very contentious issue in Mississippi as there is a low bar for forfeiture of property and no conviction is required.¹² The President of the MPA, Hal Kittrell, indicated that the creation of a tracking system of asset forfeitures, steeper warrant requirements, and requirements about who may prosecute a case would be fair compromises.¹³

¹ <https://www.ago.state.ms.us/divisions/prosecutor-and-law-enforcement-training/>

² <https://www.ago.state.ms.us/wp-content/uploads/2020/11/MPA-2019-20-Board-Appointments-002.pdf>

³ *Prosecuting Attorneys Seek Changes in Rape Statute*, ENTERPRISE JOURNAL (June 26, 1959)

⁴ The MPA supported 3 bills that would increase the coverage of the substantive criminal law and 3 that would increase the available sentencing range.

⁵ Robin Fitzgerald, *They wanted tougher penalties for gang crimes. The bill failed, but they won't give up*, SUNHERALD (June 2, 2017, 9:08 PM), <https://www.sunherald.com/news/local/crime/article154177484.html>.

⁶ *Id.*

⁷ *Id.*

⁸ SB 2579 (2015); HB 1378 (2016); SB 2206 (2016); HB 240 (2017); SB 2792 (2017); HB 475 (2018); SB 2389 (2018); SB 2868 (2018); SB 2027 (2018).

⁹ Jimmie E. Gates, *Do we need another board?*, CLARION LEDGER (Feb. 1, 2015), <https://plus.lexis.com/api/permalink/23e30bf6-24b5-403c-8c8d-29557fa9eabf/?context=1530671>.

¹⁰ HB 1052 (2015).

¹¹ *Prosecutors' wish list seeks to broaden death penalty*, ASSOCIATED PRESS (Jan. 6, 2015), https://infoweb-newsbank-com.libproxy.lib.unc.edu/apps/news/document-view?p=WORLDNEWS&t=country%3AUSA%21USA/state%3AMS%21USA%2B-%2BMississippi&sort=YMD_date%3AD&page=2&maxresults=20&f=advanced&val-base-0=%22mississippi%20prosecutors%20association%22%20OR%20%22MPA%22%20OR%20%28Cammie%20NEAR%20Wyatt%29&fld-base-0=alltext&fld-nav-0=YMD_date&val-nav-0=01/01/2015%20-%2012/31/2018&docref=news/152AF09E1E21DA18.

¹² Jimmie E. Gates, *Seized assets in Mississippi: Who should get funds?*, CLARION LEDGER (Jan. 3, 2017, 8:11 AM), <https://www.clarionledger.com/story/news/2017/01/02/mississippi-forfeited-funds/95994268/>.

¹³ *Id.*

State of Missouri

Missouri Association of Prosecuting Attorneys

It is difficult to fully assess the lobbying efforts of Missouri prosecutors because only limited data was available. During the relevant time period, 343 criminal justice bills were introduced into the state legislature. For 205 of those bills, sufficient information was not available to determine whether prosecutors lobbied lawmakers. For the remaining bills, Missouri prosecutors were active lobbyists; they were involved in approximately 29.7% of the criminal legislative bills introduced in the state legislature during the relevant time period. (They were lobbied on 41 of the 138 total bills for which sufficient information was available).



When Missouri prosecutors lobbied, they were rarely successful. On average, the legislature only passed 9.4% of criminal justice bills that were introduced. When prosecutors lobbied in favor of a bill, the bill was significantly less likely to pass (5.5% pass rate); when they lobbied against a bill it was more likely to pass than when they lobbied in favor or did not take a position (14.3% pass rate).

Overall, Missouri prosecutors tended to support more punitive bills. Prosecutors supported 7 bills that would have either expanded the criminal law or increased punishments, and they opposed no such bills. When it came to bills that would have decreased the scope of criminal law or decreased sentences, they supported 3 such bills and opposed 5 such bills.

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NO. OF BILLS WITH
PROSECUTOR INVOLVEMENT

5.5%

SUPPORTED BILLS PASSED

14.3%

OPPOSED BILLS PASSED

7
HARsher BILLS SUPPORTED
0
HARsher BILLS OPPOSED

3
LENIENT BILLS SUPPORTED
5
LENIENT BILLS OPPOSED

Association Composition and History

The Missouri Association of Prosecuting Attorneys (MAPA) was formed in 1969 with the purpose of “provid[ing] uniformity in the discharge of duties to Missouri’s 115 elected prosecuting and circuit attorneys.”¹ According to its website, MAPA “works with the development of legislation and policy that protects the public, improves Missouri’s criminal justice system and enhances the profession of prosecution.”²

According to its website, MAPA membership consists of “115 elected prosecuting and circuit attorneys, and approximately 400 assistant prosecuting and circuit attorneys and investigators” from “each of the 114 counties and the City of St. Louis.”³ The MAPA distinguishes between members who are chief prosecutors and those who are not; the former are classified as “active members,” and the latter are classified as “associate members.”⁴ The Board of Directors for MAPA has five officers: President, President-Elect, Secretary, Treasurer, and Immediate Past-President.⁵ The Board of Directors also has positions for the five previous Past-Presidents.⁶ The final two positions on the Board of Directors includes the Part-Time Prosecutor Representative and the Executive Director.⁷

The MAPA by-laws state that the Executive Director “shall perform duties as directed by the Board.”⁸ It appears that some of those duties include lobbying the state legislature. Public records indicate that, while Jason Lamb was serving as Executive Director,⁹ he was also the designated lobbyist for MAPA from 2016 to 2017. According to public lobbying expenditure reports, during 2016, Jason Lamb, on behalf of MAPA, spent \$26.48 on Senator Bob Dixon for lunch expenses and \$1,753.75 on the entire General Assembly for purposes of a reception. In 2017, he spent \$51.00 on Senator Bob Dixon for lunch expenses and \$1,772.22 on the entire General Assembly for purposes of a reception.

MAPA also, at least sometimes, hires external lobbyists to lobby on its behalf. Expenditure records for 2018 shows Ward W. Cook as the lobbyist on behalf of MAPA. Cook is not a prosecutor; rather, he is a lobbyist employed by Cozad

Company Government Relationships. Public lobbying expenditure reports indicate that Cook, on behalf of MAPA, spent \$31.92 on Senator Bob Dixon for lunch expenses.

There is a separate, but related prosecutor organization in the state—the Missouri Office of Prosecution Services (MOPS). MOPS was created in 1981 as a collaboration between MAPA and the State of Missouri with the purpose of “assist[ing] prosecuting attorneys in their efforts against criminal activity within the state.”¹⁰ The MOPS and its programs are featured on the MAPA website.¹¹ The MAPA website also includes a link to the MOPA by-laws.¹² Although the MAPA website claims that MOPS is “an autonomous entity governed by the Prosecutors Coordinators Training Council,”¹³ there is great structural overlap between the two organizations. The Prosecutors Coordinators Training Council, which governs the MOPS, is made up of the MAPA officers and a designee from the state Attorney General.¹⁴ The Council also appoints the MOPS Executive Director, who serves on the Board of the MAPA. In other words, the organizations do not appear to be autonomous.

Analysis

Publicly available materials provide only a partial picture of when Missouri’s prosecutors lobby the legislature and what positions they take on specific bills. Less than half of the criminal justice bills introduced during the study period had sufficient publicly available information that allowed us to determine whether MAPA or prosecuting attorneys played any role in lobbying for or against a bill. For more than 200 bills, the state legislature’s website provided the text of the bill and information about its progress, but did not include any committee materials or other information that would allow us to assess prosecutorial involvement.

For those bills for which information about prosecutor involvement was available, it varied in its usefulness. There are multiple committee hearing summaries for bills stating that that MAPA or individual prosecutors “supported” or “opposed” a bill and testified to such opinion, but the summary fails to provide direct quotes or language from MAPA or the prosecutor. As a result, while we know what ultimate opinion prosecutors took on the bill, we do not know why.

Prosecutors testified in support of several bills that would have expanded the scope of criminal law. For example, MAPA testified in favor of HB 1858 (2016) and HB 303 (2017), which would have created the offense of false filing/recording of

deeds. Prosecutors testified in support of HB 178 (2017), which would have created a “new penalty for persons who leave the scene of an accident when a death has occurred,”¹⁵ making it a “class D felony if a death occurs as a result of the accident.”¹⁶ Prosecutors testified in support of both HB 415 (2017) and HB 2042 (2018), which would have expanded the law on “predatory and persistent sexual offenders,” defining a “predatory sexual offender” and making such offender mandatorily “sentenced to life without eligibility for probation or parole.”¹⁷ And prosecutors testified in support of HB 1254 (2018), which would have expanded criminal law by adding fentanyl to the offense of trafficking drugs. Notably, none of these bills passed.

Prosecutors supported HB 519 (2017), which would have expanded the statute of limitations to “any time” (and therefore, really no statute of limitations) for a prosecutor to bring commence an action for child abuse. Although this bill would not have expanded the substantive scope of the criminal law, it would have expanded the ability to enforce the law. The bill did not pass.

Prosecutors also testified against several bills that would have made the criminal law less harsh, particularly laws about hemp production and marijuana use. They testified against HB 2038 (2016), which allowed certain individuals to grow industrial hemp.¹⁸ They also testified against HB 437 (2017) and HB 1554 (2018), both of which attempted to allow people “with certain serious medical conditions to use medical cannabis.”¹⁹ Ultimately, none of these bills passed.

Prosecutors testified about several bills that would have affected law enforcement. They testified in favor of HB 358 (2015), which would have modified provisions relating to controlled substances and requires probation and parole officers to arrest people suspected of violating their conditions of release.” And they testified against HB 1945 (2016) and HB 275 (2017), both of which attempted to prohibit police departments from using an “automated traffic system.”²⁰ All of these bills failed to pass.

Prosecutors also opposed reform bills aimed at juveniles. For example, they opposed HB 1995 (2016), which would have repealed a mandatory life sentence for anyone under 18, and it would have given an opportunity to those sentenced to life without parole under 18 “to petition the court for a review of his or her sentence.”²¹ They also opposed HB 274 (2016), which would have made it harder to prosecute juveniles in adult court. Specifically, it would have “[r]equire[d] children under the age of 18 to be prosecuted for most criminal offenses in

juvenile courts unless the child is certified as an adult.”²² Neither of these bills passed.

However, prosecutors supported other reform bills aimed at juvenile sentencing. For example, they supported HB 2084 (2016), which was introduced to repeal “the mandatory life sentence found to be unconstitutional in the United States Supreme Court case *Miller v. Alabama*.”²³ HB 2084 would have repealed a mandatory life sentence for anyone under 18 who has been convicted of first-degree murder and allow individuals to “file a motion with the sentencing court for a review of [their] sentence” if they fall within this category.²⁴ HB 2084 would have also changed the mandatory life sentence for anyone under 16, mandating that they may only be “sentenced to imprisonment for at least 30 years or life without parole.”²⁵ They also supported SB 200 (2015), which was introduced to (1) make Missouri statutorily comply with *Miller v. Alabama* by removing the mandatory life sentence without parole for juvenile criminal offenders, and (2) to allow for “a person sentenced to more than 40 years for an offense committed before the person turned 18 years of age . . . [to be] eligible for release on parole.”²⁶ Neither of these bills were passed.

¹ MO. ASS’N PROSECUTING ATT’YS, *About Us*, <https://www.prosecutors.mo.gov/mapa> (last visited Mar. 21, 2021) [hereinafter MO. ASS’N PROSECUTING ATT’YS, *About Us*].

² *Id.*

³ MO. ASS’N PROSECUTING ATT’YS, *About Us: Missouri Association of Prosecuting Attorneys*, <https://www.prosecutors.mo.gov/mapa> (last visited Mar. 19, 2021) [hereinafter MAPA, *Missouri Association of Prosecuting Attorneys*]; MO. ASS’N PROSECUTING ATT’YS, *About Us: Elected Prosecutors*, <https://www.prosecutors.mo.gov/content.asp?contentid=178> (last visited Mar. 19, 2021).

⁴ <https://www.prosecutors.mo.gov/membership>

⁵ MAPA, *Missouri Association of Prosecuting Attorneys*, *supra* note 1.

⁶ *Id.*

⁷ *Id.*

⁸ MAPA By-Laws: <https://www.prosecutors.mo.gov/Files/MAPA%20Docs/MAPA%20By-Laws.pdf>.

⁹ See <https://pceinc.org/wp-content/uploads/2019/11/Crime-Victim-Grant.pdf>, https://www.stltoday.com/news/local/crime-and-courts/sweeping-changes-to-missouri-s-criminal-code-take-effect-sunday/article_b802765c-b6d1-5806-a2dd-b9ba36f1eb60.html, https://www.abajournal.com/news/article/justice_department_creates_team_to_monitor_accuracy_of_forensic_testimony, https://csgjusticecenter.org/wp-content/uploads/2020/01/JR_MO_Policy-Framework.pdf, (showing Lamb’s title as “Executive Director” of MAPA).

¹⁰ MO. ASS’N PROSECUTING ATT’YS, *About Us*, *supra* note 6. “MOPS is an autonomous entity governed by the Prosecutors Coordinators Training Council, and is staffed by a team of career prosecutors and dedicated professionals who proudly stand with Missouri’s prosecutors in protecting our communities.” *Id.*

¹¹ According to the website, MOPS “provides centralized and coordinated technical assistance and services for Missouri’s prosecuting attorneys. Generally, these responsibilities include providing research and trial assistance to prosecutors; reference and educational publications; developing and maintaining an automated case management and criminal history reporting system; providing direct services for crime victims and coordination of prosecutor-based victim advocates; acting as a liaison to agencies, offices and associations on behalf of prosecutors; and providing other necessary assistance. The Office serves as the principal source of continuing legal education for prosecuting attorneys and training for support staff, providing specialized training in traffic safety, domestic and sexual violence, trial skills, case management and criminal history reporting. Additional special statutory responsibilities are also placed upon the Office.”

<https://www.prosecutors.mo.gov/programs>

¹² BY-LAWS OF THE MISSOURI ASSOCIATION OF PROSECUTING ATTORNEYS, <https://www.prosecutors.mo.gov/Files/MAPA%20Docs/MAPA%20By-Laws.pdf> (last updated Sept. 2, 2015).

¹³ <https://www.prosecutors.mo.gov/about>

¹⁴ <https://www.prosecutors.mo.gov/council>

¹⁵ <https://house.mo.gov/Bill.aspx?bill=HB178&year=2017&code=R>

¹⁶ <https://house.mo.gov/billtracking/bills171/sumpdf/HB0178C.pdf>

¹⁷ <https://house.mo.gov/Bill.aspx?bill=HB415&year=2017&code=R>;

<https://house.mo.gov/billtracking/bills171/sumpdf/HB0415C.pdf>

¹⁸ <https://house.mo.gov/Bill.aspx?bill=HB2038&year=2016&code=R>

¹⁹ <https://house.mo.gov/Bill.aspx?bill=HB437&year=2017&code=R>

²⁰ <https://house.mo.gov/billtracking/bills161/sumpdf/HB1945C.pdf>

²¹ <https://house.mo.gov/billtracking/bills161/sumpdf/HB1995I.pdf>

²² <https://house.mo.gov/Bill.aspx?bill=HB274&year=2017&code=R>

²³ <https://house.mo.gov/billtracking/bills161/sumpdf/HB2084I.pdf>

²⁴ *Id.*

²⁵ *Id.*

²⁶ https://www.senate.mo.gov/15info/BTS_Web/Bill.aspx?SessionType=R&BillID=869240

State of Montana

Montana County Attorneys' Association

Montana prosecutors were very active lobbyists; they were involved in approximately 69% of the criminal justice bills introduced in the state legislature during the relevant time period. (They lobbied on 152 of 220 total bills).

When Montana prosecutors lobbied, they were often successful. On average, the legislature only passed 44% of criminal justice bills that were introduced. When they lobbied in favor of a bill, the bill was more likely to pass (61% pass rate); when they lobbied against a bill it was less likely to pass (29% pass rate).

Overall, Montana prosecutors tended to support more punitive bills. They supported 22 bills that would have either expanded the criminal law or increased punishments. However, Montana's prosecutors' lobbying was not uniformly in favor of more punitive laws. They opposed 5 bills that would have either expanded the criminal law or increased punishments. When it came to bills that would have decreased the scope of criminal law or decreased sentences, they supported 8 such bills and opposed 18.

152

NO. OF BILLS WITH
PROSECUTOR INVOLVEMENT

61%

SUPPORTED BILLS PASSED

29%

OPPOSED BILLS PASSED

22

HARsher BILLS SUPPORTED

5

HARsher BILLS OPPOSED

8

LENIENT BILLS SUPPORTED

18

LENIENT BILLS OPPOSED

Association Composition and History

Membership in the Montana County Attorneys' Association (MCAA) is reserved for the 54 elected county attorneys in the state.¹ According to its website, the MCAA's mission is "to provide education and training to our members and provide county attorneys the ability to collectively voice their concerns about public policy issues affecting their offices, the criminal justice system in Montana, and public safety."² The Association is a non-profit organization that provides education, training, and events for the state's prosecutors and their staff. Its online services include legislative updates and sample legal briefs.³

Various state boards and commissions reserve seats for MCAA representatives, including the Attorney General's Law Enforcement Advisory Committee, the Montana Board of Crime Control, the Gaming Advisory Council, the Crime Lab Advisory Council, and the Montana Association of Counties.⁴

The MCAA website lists two staff members: an executive director and government relations/lobbyist. Based on their email addresses, both of these staff members appear to be employed by Smith and McGowan, Inc. Smith and McGowan is a strategy company, which lists the MCAA as a client on its website.⁵ It is not clear whether these two staff members are separately employed by the MCAA and Smith and McGowan, or whether they fill these roles in the association because MCAA is a client of Smith and McGowan.⁶

The MCAA was first organized in 1916 and held its first meeting in 1917.⁷ The association has been involved in lawmaking since its inception. A news account from December 1918 reported that the association was planning to meet the following month, where they intended to discuss "[m]any matters of much interest to members of the association, including recommendations for changes in the statutes and new legislation to be presented to the state lawmaking body at the coming session."⁸

Analysis

The state of Montana maintains an online database which allows the public to easily search and discover who is lobbying in support or opposition of various pending legislation.⁹ The MCAA appears in this database as a principal, allowing us to easily discern when the Association supported or opposed a bill.¹⁰ However, the database did not record information beyond the MCAA's position,

and the legislature's website did not appear to include committee recordings or other materials that captured the reasons for the MCAA's positions.

Some of the MCAA's lobbying activity involved bills that did not touch on the criminal justice system.¹¹ The MCAA was presumably interested in these other bills because Montana's County Attorneys not only prosecute crimes in their jurisdictions, but also defend or bring all civil claims for or against their county. However, most of the MCAA lobbying involved criminal justice issues.

The MCAA supported more than two dozen bills that would have expanded the scope of the criminal law or created new crimes. For example, they supported the creation of new crimes associated with harming police horses,¹² unmanned model aerial vehicles,¹³ and nonconsensual pornography distribution.¹⁴ None of those bills passed. They also supported expanding the crime of sexual abuse of children¹⁵ and creating a new crime of strangulation of a partner or family member.¹⁶ Both of those bills passed.

The MCAA also supported bills that would have increased punishments for certain crimes. For example, they supported a bill to increase the maximum sentence for defendants convicted of drunk driving,¹⁷ as well as a bill to increase the penalties associated with identity theft.¹⁸ Both of those bills passed. The MCAA also supported a bill to increase the penalty for failing to comply with the state's seatbelt law,¹⁹ a bill to increase the penalties for domestic violence offenders,²⁰ and a bill to revise the mandatory minimum punishments for certain sex offenses.²¹ But none of those bills passed.

When it came to laws that narrowed criminal laws, rather than expanding them, the MCAA was far more likely to oppose than support those bills. The Association supported one bill that would have narrowed the crime of incest,²² while opposing bills that would have expanded the defense of mental incapacitation,²³ narrowed the crime of possessing an open container,²⁴ created exceptions to certain firearms crimes,²⁵ and created a defense to minor in possession laws for defendants who seek medical care. Only the bill narrowing the crime of incest and the bill creating a defense to minor in possession laws passed.

For laws that changed procedural limitations within the criminal justice system, the MCAA generally opposed bills that would have required law enforcement to seek search warrants before obtaining information.²⁶ The bills on these issues

did not pass during the 2015 legislative session; however, a couple of the bills were reintroduced in the 2017 session and passed at that time.²⁷

Sometimes the MCAA changed its position over time. On at least one occasion, the MCAA began monitoring a bill,²⁸ and then later supported it bill.²⁹ And for SB 230 (2017), the Association initially supported the bill, but a month later began to oppose the bill. The bill did not ultimately pass.

¹ <https://www.mtcoattorneysassn.org/> ("Membership is only open to the elected County Attorney. However, by virtue of the County Attorney being an MCAA member, all member benefits are applied to his/her Deputy County Attorneys."). Montana elects 54 of its 56 county attorneys; the county attorneys in Carter County and Petroleum County are appointed. Prosecutors and Politics Project, National Study of Prosecutor Elections 183 (2020), <https://law.unc.edu/wp-content/uploads/2020/01/National-Study-Prosecutor-Elections-2020.pdf>

² <https://www.mtcoattorneysassn.org/>

³ <https://www.mtcoattorneysassn.org/>

⁴ <https://www.mtcoattorneysassn.org/about/#1576621083560-e7961ce0-475f>

⁵ <https://smithandmcgowan.com/clients/>

⁶ Smith and McGowan's website lists "Association Management" as one category of services that it provides. <https://smithandmcgowan.com/services/>

⁷ *Prosecutors of Montana Convened Today in Falls*, Great Falls Tribune (July 12, 1919) ("The association was organized three years ago, the first session being held at Missoula in 1917.").

⁸ *County Attorneys of State to Meet Here*, The Independent Record (Dec. 17, 1918).

⁹ <https://lobbyist-ext.mt.gov/LobbyistRegistration/>

¹⁰ In addition, the lobbying system sometimes captured the MCAA's involvement as "monitoring" a specific bill. We interpreted that to mean that the Association neither supported nor opposed the legislation.

¹¹ See, e.g., HB 400 (2015) (providing disabled voters greater ballot access); HB 515 (2015) (revising laws about guardianship and the commitment of incapacitated persons); HB 601 (revising term limits for legislators); SB 58 (2015) (revising public notice for certain water rights); SB 210 (2015) (including mountain lions in livestock loss program); SB 416 (creating infrastructure fund)

¹² HB 106 (2015).

¹³ HB 593 (2015).

¹⁴ HB 129 (2017).

¹⁵ HB 247 (2017).

¹⁶ SB 153 (2017).

¹⁷ HB 111 (2015).

¹⁸ HB 232 (2015).

¹⁹ SB 165 (2015).

²⁰ SB 227 (2015).

²¹ HB 535 (2015).

²² HB 482 (2017).

²³ SB 122 (2017).

²⁴ HB 206 (2017).

²⁵ HB 246 (2017); HB 262 (2017).

²⁶ HB 344 (2015); HB 444 (2015); HB 445 (2015); HB 147 (2017); HB 149 (2017).

²⁷ HB 147 (2017); HB 149 (2017).

²⁸ *See supra* note 10.

²⁹ E.g., HB 89 (2017).

State of Nebraska

Nebraska County Attorneys Association

Nebraska prosecutors were very active lobbyists; they were involved in approximately 95.3% of the criminal justice bills introduced in the state legislature during the relevant time period. (They lobbied on 161 of 169 total bills).

NECAA

When Nebraska prosecutors lobbied, they were only somewhat successful. On average, the legislature passed 18.3% of criminal justice bills that were introduced. When prosecutors lobbied in favor of a bill, the bill was just as likely to pass (18.2% pass rate); when they lobbied against a bill it was somewhat less likely to pass (13% pass rate).

Overall, Nebraska prosecutors tended to support more punitive bills. Prosecutors supported 33 bills that would have either expanded the criminal law or increased punishments. However, Nebraska prosecutors' lobbying was not uniformly in favor of more punitive laws. They opposed 17 bills that would have either expanded the criminal law or increased punishments. When it came to bills that would have decreased the scope of criminal law or decreased sentences, they supported three such bills and opposed 12.

161

NO. OF BILLS WITH
PROSECUTOR INVOLVEMENT

18.2%

SUPPORTED BILLS PASSED

13%

OPPOSED BILLS PASSED

33

HARSHER BILLS SUPPORTED

17

HARSHER BILLS OPPOSED

3

LENIENT BILLS SUPPORTED

12

LENIENT BILLS OPPOSED

Association Composition and History

The Nebraska County Attorneys Association (NECAA) is composed of 93 county attorneys, one from each county, as well as 18 chief deputy county attorneys from various counties. The NECAA has a board of directors and officers, comprised of county attorneys, deputy county attorneys, attorneys from the office of the attorney general, and the Association's Executive Director.¹ The Executive Director lobbies on behalf of NECAA. In addition, the association retains independent lobbyists. Between 2015 and 2018, six different lobbyists represented the NECAA before the legislature.² Additionally, both county attorneys and deputy county attorneys frequently spoke on behalf of the association during the study period.

According to its website, the NECAA "is dedicated to helping Nebraska's County Attorney's provide the best possible public service in their dual role of prosecutor and civil attorney for each of Nebraska's 93 Counties." To that end, the Association "advocates for public policies that strengthen county attorneys' ability to secure justice for crime victims and serve as legal counsel to their county."³ The NECAA also "provides continuing legal education programs, service, support and resources to the county attorneys."⁴

The NECAA was organized in 1926,⁵ and it received 501(c)(6) nonprofit status in 1982.⁶ It holds an annual conference each year in October.⁷

Analysis

During the study period, the Nebraska legislature considered many bills related to firearms, drugs, and the elimination or modification of mandatory minimum sentencing. Nebraska has a unicameral legislature.

When it came to bills related to firearms, the NECAA often opposed bills that would expand the coverage of gun control laws⁸ but favored bills that increased punishment for crimes involving use of a firearm.⁹ The Association took no position on LB 68, one of the most controversial bills that came before the legislature during the study period. That bill would have prohibited municipalities and counties from passing restrictions on guns that are stricter than those required by Nebraska state law.¹⁰ The bill was introduced shortly after more conservative members took over committee leadership roles. The bill quickly gained support from groups, such as the NRA, who claimed the bill

would prevent a patchwork of inconsistent local laws.¹¹ On the other hand, opponents said it would preempt local ordinances and would be especially problematic in cities like Lincoln. Opponents also stated that gang problems in the bigger cities made stricter gun laws more important.¹²

Like associations in several other states, the NECAA often lobbied on bills related to drugs. For example, the Association opposed LB 447, which would have decreased the sentences for certain drug-related offenses. The NECAA and the Nebraska Attorney General's office were the only opponents of this bill.¹³ The Association did not always support harsher drug laws. For example, the NECAA opposed LB 970, which would have increased penalties for the possession of more than one ounce of marijuana.¹⁴ Similarly, the NECAA opposed LB 971, which would have expanded the crime of controlled substance use. Corey O'Brien, representing the Nebraska Attorney General's Office and the NECAA, spoke in opposition to the bill at a judiciary committee. Kay, Nowka, and Edwards spoke in opposition on behalf of the NECAA as well.¹⁵

On the issue of medicinal marijuana, the Association took seemingly inconsistent positions. For example, when LB 643, which would have allowed the use of cannabis for medical purposes, came before the legislature, the NECAA lobbied against it.¹⁶ However, the Association lobbied in favor of LB 167, which would have classified cannabidiol in a category of controlled substances.¹⁷

The Association consistently lobbied against bills that would have eliminated, reduced, or created exceptions to mandatory minimum sentences.¹⁸ For example, the NECAA opposed LB 781, which would have allowed for juvenile offenders to be exempt from certain crimes' mandatory minimum sentences.¹⁹ The NECAA said it opposed this bill because it would not treat all felony offenders the same. Along the same lines, the Association either remained neutral or supported bills that created mandatory minimum sentences. For example, LB 984 would have created mandatory minimum sentences for certain crimes, such as the death penalty for a Class I felony and life imprisonment for a Class IA felony, as well as the classification of habitual criminals.²⁰ Jim Masteller, deputy Douglas County attorney and board member for NECAA, opposed this bill only in regard to the classifications of habitual criminals, stating "I'm going to focus most of my comments regarding the proposed changes to the habitual criminal statute."²¹

¹ Board of Directors & Officers, Nebraska County Attorneys Association, <https://necaa.org/board-of-directors/> (consisting of a President, President-Elect, Secretary/Treasurer, three directors and three at-large directors representing Nebraska Congressional Districts).

² Lobbyists, The Nebraska Legislature, https://nebraskalegislature.gov/lobbyist/view.php?link=view_principal&id=1665 (2015-2018) (Jacqueline McCullough and Nowka & Edwards lobbied for the association between 2015 and 2017, and Sara Kay, Nowka & Edwards, and Zulkoski Weber LLC lobbied for the association in 2018).

³ Nebraska County Attorneys Association, <https://necaa.org>.

⁴ *Id.*

⁵ Nebraska County Attorneys Association, Nebraska Association of County Officials, <https://nacone.org/webpages/affiliates/attorney.html>.

⁶ About, Nebraska County Attorneys Association, <https://necaa.org/about/>; Nebraska County Attorneys Association, Cause IQ, <https://www.causeiq.com/organizations/nebraska-county-attorneys-association.470542909/>.

⁷ Training, <https://necaa.org/training-meetings/>.

⁸ See e.g., LB 520 (2017) (indefinitely postponed) (requiring notification when persons prohibited by state or federal obtain a handgun or concealed carry permit).

⁹ See e.g., LB 556 (2018) (indefinitely postponed) (creating the offenses of use of a facsimile or nonfunctioning firearm to commit a felony and possession of a firearm by a prohibited juvenile offender); see also LB 14 (2015) (died in chamber) (Creating the offense of use a fake firearm during the commission of a crime).

¹⁰ (2018) (indefinitely postponed).

¹¹ Fred Knapp, "Pro-Gun Gets Boost In Nebraska Legislature," NET, <http://netnebraska.org/article/news/1058925/pro-gun-bill-gets-boost-nebraska-legislature> (Jan. 13, 2017).

¹² *Id.* (Lincoln Sen. Adam Morfeld stated, "In the city of Lincoln alone, in my district that has gang problems, this bill would eliminate eleven laws regarding guns," Morfeld said).

¹³ LB 447 (2018) (died in chamber).

¹⁴ LB 970 (2018) (died in chamber).

¹⁵ LB 971 (2018) (died in chamber).

¹⁶ LB 643 (2016) (died in chamber) (allowing cannabis use for medical purposes).

¹⁷ LB 167 (2017) (died in chamber).

¹⁸ See e.g., LB 172 (2016) (indefinitely postponed) (eliminating certain mandatory minimum penalties); see also LB 173 (2016) (indefinitely postponed) (eliminating certain mandatory minimum penalties).

¹⁹ LB 781 (2018) (died in chamber).

²⁰ LB 984 (2016) (died in chamber).

²¹ *Id.* (stating, "I'm going to focus most of my comments regarding the proposed changes to the habitual criminal statute").

State of Nevada

Nevada District Attorneys Association

Nevada's prosecutors were active lobbyists; they were involved in approximately 50% of the criminal justice bills introduced in the state legislature during the relevant time period. They lobbied on 94 of 188 total bills.



When Nevada's prosecutors lobbied, they were often successful. On average, the legislature only passed 55% of criminal justice bills that were introduced. When the state's prosecutors lobbied in favor of a bill, the bill was significantly more likely to pass (75.8% pass rate); when they lobbied against a bill it was significantly less likely to pass (38% pass rate).

Overall, Nevada's prosecutors tended to support more punitive bills. They supported 23 bills that would have either expanded the criminal law or increased punishments. However, Nevada's prosecutors' lobbying was not uniformly in favor of more punitive laws. They opposed 2 bills that would have either expanded the criminal law or increased punishments. When it came to bills that would have decreased the scope of criminal law or decreased sentences, Nevada's prosecutors supported 9 such bills and opposed 8.

94
NO. OF BILLS WITH
PROSECUTOR INVOLVEMENT

75.8%
SUPPORTED BILLS PASSED

38%
OPPOSED BILLS PASSED

23
HARsher BILLS SUPPORTED

2
HARsher BILLS OPPOSED

9
LENIENT BILLS SUPPORTED

8
LENIENT BILLS OPPOSED

Association Composition and History

The Nevada District Attorneys Association (NDAA) is the main lobbying entity for Nevada's elected district attorneys and is composed of all 17 of Nevada's elected prosecutors.¹ John Jones, Chief Deputy in the Clark County District Attorney's Office, serves as the main lobbyist for the NDAA and testifies often on their behalf in the legislature. Other paid lobbyists include Jennifer Noble and Kristin Erickson, who were both prosecutors in the Washoe County District Attorney's Office.²

There is also an entity called the Nevada Advisory Council for Prosecuting Attorneys, which is a state entity that includes the Attorney General and elected district attorneys.³ This entity does not appear to conduct lobbying in the legislature. According to the website, "The Advisory Council provides technical assistance and resources to Nevada's prosecutors to improve the effective administration of justice, promote open government, and protect the public."⁴ In Nevada, the Attorney General has concurrent jurisdiction with the county prosecutors and exclusive jurisdiction for certain types of crimes.⁵

Newspaper articles indicate that Nevada's prosecutors started to organize in the 1930s. A newspaper story from 1933 describes prosecutors meeting to discuss "law problems" which largely focused on prosecuting tax evasion cases.⁶ In 1935, a local newspaper reported that prosecutors were meeting to "draft some legislation."⁷

Analysis

Overall, Nevada's prosecutors supported many bills that would make it easier to prosecute crimes, especially bills that made criminal procedure more favorable for district attorneys. Prosecutors in the state tended to support bills related to sex trafficking and legislation to give more support and rights to victims, especially victims of sex trafficking. They were similarly in favor of tougher laws for those on sex offender registries. Legislative testimony indicates that prosecutors often worked with defense lobbyists to compromise on some reform-minded bills, and many reform-oriented bills achieved NDAA support only after the NDAA offered amendments.

One of the more contentious bills introduced in the legislature during the study period was AB 193.⁸ Twelve district attorneys appeared before the legislature to

testify in favor of the bill, and the District Attorney for Clark County, Steven Wolfson, presented the bill, calling it “the single most important bill for Nevada's criminal justice system in the last 20 years.”⁹ The bill would allow for a law enforcement witness to testify in the preliminary hearing in lieu of the complaining witness. In essence the bill allowed hearsay testimony pretrial, which would permit prosecutors to bring more charges in cases where the victim was from out-of-state.

“This is a victims' rights bill. In many ways, the criminal justice system discriminates against victims. One way it does that is by requiring them to relive this traumatic event multiple times. I cannot emphasize how traumatic it can be for victims of any crime, especially one of a violent nature, as we witnessed this morning by the testimony of a victim on the previous bill.

Steven Wolfson, District Attorney for Clark County¹⁰

During the 2015 session, Nevada's legislators considered a bill that would amend the Nevada constitution to provide more right to victims, commonly known as “Marcy's Law.”¹¹ John Jones spoke favorably about the ideas behind the bill on behalf of the NDAA, but he also expressed some concerns about the language.¹² The same issue came up in the next legislative session.¹³

“It's important to discuss victims' rights in the Legislature and equally important to get the language right. Proponents of the bill have worked readily with the Nevada District Attorneys Association, law enforcement and others to make sure the language is right.

John Jones, Chief Deputy in the Clark County
District Attorney's Office, on behalf of the NDAA¹⁴

Nevada's prosecutors were involved in many bills related to changes to criminal procedure, largely to make it easier to prosecute criminal defendants. One bill prosecutors supported was legislation that would require individuals serving prison time to go through an administrative process before filing habeas petitions with the state.¹⁵ For example, John Jones testified for the NDAA against a bill that was intended to allow defendants to restore competency for trial in local jails.¹⁶ Under the proposed legislation, which was also opposed by public defenders, defendants who were deemed incompetent for trial would be treated in the county jail in lieu of being transferred to another facility. Another

such bill was SB 52, which allowed for electronic search warrants. It was supported by the Attorney General's office as well as the NDAA.¹⁷ Prosecutors lobbied in favor of a bill allowing for the use of biometrics, including facial recognition technology, to identify suspects.¹⁸ John Jones of the NDAA also testified in support of a bill that would have made it easier to prosecute defendants for conspiracy charges.¹⁹

“ This bill does not make it easier per se for the prosecutors, because we still have to prove that element beyond a reasonable doubt. What it does is put people who engage in a criminal enterprise on notice that they are going to be held liable for any natural and probable consequence of a conspiracy.

John Jones, Chief Deputy in the Clark County
District Attorney's Office, on behalf of the NDAA²⁰

Nevada's prosecutors supported a number of bills that both made it easier to prosecute sex crimes and that increased the rights of sex crime and domestic violence victims.²¹ The most important bill in this category was AB 212, which would have eliminated the statute of limitations for sexual assault.²² The NDAA supported the bill:

“ There are a couple of points I would like to make. One is that victims do not always act in the same way with respect to traumatic events such as these. Oftentimes we have cases reported after victims find out they are not alone. My second point is that the prosecutors have to prove these cases beyond a reasonable doubt in court. Just because you remove the statute of limitations, it does not mean we will automatically obtain a conviction. The defendant would have every other trial right available to them.

John Jones, Chief Deputy in the Clark County
District Attorney's Office, on behalf of the NDAA²³

Other bills in this category that prosecutors supported included a bill to make it easier to remove firearms from those convicted of domestic violence crimes,²⁴ increased penalties for certain sex crimes against youth,²⁵ and a bill that provided for harsher penalties for those convicted of domestic violence.²⁶

“What I have noticed is that domestic violence is not a problem; it is an epidemic. We cannot prevent domestic violence; therefore, we have to punish it. There are so many repeat domestic violence offenders.

Lisa Luzaich, Chief Deputy District Attorney, Clark County²⁷

In addition, the NDAA supported a bill intended to help victims of sex trafficking under 18 avoid criminal detention.²⁸ Both the Attorney General's office and the NDAA supported legislation that would make so-called “revenge pornography” illegal, and made it easier to prosecute certain sex crimes committed against youth under 14.²⁹

“I recognize that it is important to protect the rights of defendants; however, it seems we are forgetting to protect the victims of these sex offenses, especially the children. The children who are victims of sex offenses are the ones who are the most vulnerable in society and need the most protection.

Lisa Luzaich, Chief Deputy District Attorney, Clark County³⁰

The prosecutors also supported a bill that increased penalties for those who purchase sex work.³¹ Jennifer Nobles testified for the NDAA, describing the legislation as an “effort to address a critical but often overlooked party to this exploitative process—the customer or the john.”³²

The NDAA also supported bills providing enhanced sentences, like AB 223, which expands elder abuse prosecutions, specifically crimes related to abuse by legal guardians.³³ Kristin Erickson testified in support of the bill on behalf of the NDAA: “This bill gives the prosecutor more tools and makes it more effective in protecting our senior citizen community.”³⁴ The NDAA also supported a bill that would make it a crime to use a counterfeit medical marijuana card.³⁵ Additionally, prosecutors supported a series of bills that added sentencing enhancement for crimes committed against certain categories of people, like government employees³⁶ and first responders.³⁷

Nevada's prosecutors did support some reform-oriented legislation, including bills that would keep people out of jails and utilize diversion programs. For example, the prosecutors expressed support for A.B. 12, which allowed people who violated their probation terms to continue in treatment in lieu of returning to jail.³⁸ The NDAA also supported legislation to allow for GPS tracking of some

people placed on supervision³⁹ as well as a bill that allowed for residential or other alternative confinements for elderly individuals convicted of a crime in lieu of prison.⁴⁰

The prosecutors in Nevada also supported some bills that reduced criminal consequences. For example, district attorneys supported raising the age of criminal culpability from 8 to 10.⁴¹ The NDAA also supported a bill that eliminated life-without-parole sentences for people under 18 and gave parole consideration to those already sentenced,⁴² as well as legislation to allow reductions in juvenile sentences.⁴³ Additionally, the NDAA supported a bill to restore voting rights to people who had completed their incarceration terms and sealed some criminal records.⁴⁴

The NDAA remained neutral on SB 186, a bill intended to allow criminal defendants to recover costs for malicious prosecution.⁴⁵

“While it is hard for me to believe that a prosecutor would act vexatiously, frivolously or in bad faith, it is also hard for me to say that someone is not entitled to recover costs when a prosecutor does so.

John Jones, Chief Deputy in the Clark County
District Attorney's Office, on behalf of the NDAA⁴⁶

The NDAA largely opposed laws that were intended to alleviate criminal consequences and expand defendants' rights. For example, the NDAA testified against a bill that would have lowered the criminal penalties for juveniles accused of attacking their abuser in self-defense.⁴⁷ They also opposed a bill that would require children to have counsel present for interrogations.⁴⁸ Prosecutors opposed legislation that would reduce the penalties for possessing various controlled substances.⁴⁹ And finally, Nevada's prosecutors opposed a bill that would allow defendants to withdraw their plea if they could show ineffective assistance of counsel on the grounds that it would reopen too many cases.⁵⁰

“There are a number of problems with this bill. Basically, it is not needed, and it would work great mischief if it were passed... I am opposed to the bill because it is unnecessary and does not do what it purports to do. It is contrary to society's interest in the finality of judgments.

Terry McCarthy, Washoe County District Attorney's Office

on behalf of NDAA⁵¹

The NDAA opposed legislation that would have allowed criminal defendants to pay for their own DNA testing if they met certain requirements to show their innocence. The opposition was grounded on concerns about capacity in the testing labs.⁵²

“We object to this because it removes all of the discretion from the judge and the court. It does not let us respond in any way before this is granted. What is going to happen is there will be a flood of these orders to test DNA, they are going to hit our crime labs ...innocent people awaiting trial who could be exonerated by DNA or would have us drop the charges are going to have to wait because a defendant who is sentenced to life in prison, whose guilt was proven by DNA evidence, wants some random piece of evidence, out of the hundreds of pieces of evidence that are collected at many crime scenes, tested. Now we have people who are potentially innocent who will have to wait longer.

Jennifer Noble, Chief Deputy District Attorney of
Washoe County on behalf of the NDAA⁵³

Nevada's prosecutors opposed legislation to eliminate the death penalty, which was up for debate in 2017.⁵⁴ A number of district attorneys presented testimony on behalf of the NDAA.⁵⁵

“You cannot place a price on a victim's life or the justice that they deserve. Victims and their family members cannot be overlooked in debating this bill... As President of the Nevada District Attorneys Association and the elected District Attorney for Washoe County, I strongly oppose this bill. It does not take into account the will of the people of Nevada, and it argues for placing a price on justice for victims

Christopher Hicks, District Attorney for
Washoe County, President of the NDAA⁵⁶

Prosecutors in Nevada also opposed many bills to reform the sex offender registry and related collateral consequences. For example, the NDAA opposed SB 474, which would have repealed some of the more onerous

provisions of the sex offender registry, called the Adam Walsh Act in Nevada.⁵⁷

Nevada's prosecutors also lobbied against a bill that would have funded indigent defense throughout the state through a state defender's office.⁵⁸ The argument from the NDAA centered on the idea that the bill created an unfunded mandate for counties by eliminating flat-fee contracts.⁵⁹

“ Requiring the use of a statewide public defender's office unless a county provides its own county public defender's office would deprive the counties the ability to decide how to deal with indigent defense.

Mark Jackson, Douglas County District Attorney
on behalf of the NDAA.⁶⁰

The NDAA lobbied against legislation to require the electronic recording of interrogations.⁶¹ Additionally, Nevada's district attorneys opposed two bills that would have made prosecutorial compliance with *Brady v. Maryland* stricter by eliminating the relevance requirement.⁶²

“ Prosecutors are not ordinary lawyers. We are called to a higher level of public service...This solemn obligation is not one taken lightly by Nevada prosecutors. It is a responsibility we celebrate, that we train on, and that we indoctrinate into new members of our ranks. Yet in order that we are allowed to fully embrace the responsibilities with which we have been charged, it is important that policy makers do not unduly and unreasonably burden prosecutors to the point where they become overwhelmed.

Christopher Lalli, Assistant District Attorney
Clark County, on behalf of NDAA⁶³

In certain instances, prosecutors and public defenders worked together to submit a bill both agreed upon. For example, the NDAA and public defenders worked together on AB 67.⁶⁴

“ Assembly Bill 67 is a collaboration reached by prosecutors throughout the state in terms of how to respond to the U.S. Supreme Court's concerns in *Missouri v. McNeely* and bring our law into compliance.

Cheryl Wilson, Deputy District Attorney in
Washoe County, on behalf of the NDAA⁶⁵

There were also some instances where prosecutors opposed a bill initially, then agreed after some amendments, indicating that Nevada's prosecutors were influential in the drafting and amendment process. For example, the NDAA initially opposed SB 54, which related to civil commitment procedures; later the NDAA supported the bill after amendments were made.⁶⁶

“ I do want to thank Dr. Green and Dr. Neighbors for working with our organization on coming up with this compromise. I would like to say that the procedures outlined in this bill are used sparingly by the district attorneys' office. When they are used, it is because the person poses a threat due to a mental illness. It is an important statute that we rarely use, but when we do, it is because it is important.

John Jones for the NDAA⁶⁷

Another example was a bill that created changes to the sex offender registry for juveniles.⁶⁸ Initially, Nevada's prosecutors strongly opposed the bill, but legislative testimony indicates that both the Attorney General's office and the NDAA made substantial amendments, which ultimately resulted in their support.⁶⁹ The NDAA also initially opposed a bill to reduce prison sentences and penalties for drug possession; they later supported the bill after an amendment.⁷⁰

In another instance, the NDAA was initially opposed to the creation of a pre-prosecution diversion program; later, John Jones testified for the NDA saying he felt “neutral.”⁷¹

“ This bill is not only fraught with problems, it is simply not necessary.
Kristin Erickson on behalf of the NDAA⁷²

“ Criminal cases are not fine wine; they do not get better with age, especially in a transient town like Las Vegas.

John Jones, Chief Deputy in the Clark County
District Attorney's Office, on behalf of the NDAA⁷³

¹ There is no website for the NDAA. See testimony of John Jones <https://www.leg.state.nv.us/Session/78th2015/Minutes/Assembly/JUD/Final/36.pdf>

² See <https://www.leg.state.nv.us/Session/79th2017/Exhibits/Senate/JUD/SJUD437E.pdf>; <https://www.washoecounty.us/da/files/Fall%202017%20Newsletter%20FINAL.pdf>

³ https://ag.nv.gov/Hot_Topics/Prosecuting_Attorneys_Council/

⁴ *Id.* The Advisory Council was established by Nevada statute. <https://www.leg.state.nv.us/NRS/NRS-241A.html>

⁵ “That includes workers' compensation fraud, insurance fraud, and Medicaid fraud. We are the exclusive agency for investigating and prosecuting those types of fraud.” See <https://www.leg.state.nv.us/Session/79th2017/Minutes/Assembly/JUD/Final/64.pdf>

⁶ Nevada State Journal Mon. Jul. 31, 1933. pg8

⁷ Nevada State Journal. Wed. Jan. 30, 1935. pg2.

⁸ 78th Session. <https://www.leg.state.nv.us/Session/78th2015/Reports/history.cfm?ID=438>

⁹ <https://www.leg.state.nv.us/Session/78th2015/Minutes/Assembly/JUD/Final/441.pdf>
See also <https://www.leg.state.nv.us/Session/78th2015/Exhibits/Assembly/JUD/AJUD441J.pdf>

¹⁰ <https://www.leg.state.nv.us/Session/78th2015/Minutes/Assembly/JUD/Final/441.pdf>

¹¹ SJR 17. 78th Leg.

¹² <https://www.leg.state.nv.us/Session/78th2015/Minutes/Senate/JUD/Final/793.pdf>

¹³ SJR 17. 79th Leg. <https://www.leg.state.nv.us/Session/79th2017/Reports/history.cfm?ID=180>
It appears that this is the same resolution from the 78th Session. John Jones again expressed his support. <https://www.leg.state.nv.us/Session/79th2017/Minutes/Senate/JUD/Final/229.pdf>

¹⁴ <https://www.leg.state.nv.us/Session/78th2015/Minutes/Senate/JUD/Final/793.pdf>

¹⁵ SB 11. 79th Leg. <https://www.leg.state.nv.us/Session/79th2017/Reports/history.cfm?ID=15> See <https://www.leg.state.nv.us/Session/79th2017/Minutes/Senate/JUD/Final/227.pdf>

¹⁶ SB 10. 78th Leg. Worth noting that the public defenders also opposed this bill. Part of the NDAA's disagreement was on fiscal grounds as counties would incur some of the costs. <https://www.leg.state.nv.us/Session/78th2015/Minutes/Senate/JUD/Final/110.pdf>

¹⁷ SB 64. 78th Leg. <https://www.leg.state.nv.us/Session/78th2015/Minutes/Senate/JUD/Final/109.pdf>

¹⁸ AB 224. 78th Leg. Testimony by Kristin Erickson. <https://www.leg.state.nv.us/Session/78th2015/Minutes/Assembly/JUD/Final/517.pdf>

¹⁹ AB 296. 78th Leg. <https://www.leg.state.nv.us/Session/78th2015/Reports/history.cfm?ID=640>

²⁰ <https://www.leg.state.nv.us/Session/78th2015/Minutes/Assembly/JUD/Final/613.pdf>

²¹ See, e.g., AB 45, 78th Leg. (Allows for changes to the use of assessment for individuals convicted of sex offenses.) Supported by the Attorney General's Office. <https://www.leg.state.nv.us/Session/78th2015/Exhibits/Assembly/JUD/AJUD55D.pdf>; SB 108, 78th Leg, allowing the review and dismissal of convictions for victims of sex trafficking. Supported by NDAA. <https://www.leg.state.nv.us/Session/78th2015/Minutes/Assembly/JUD/Final/96.pdf>; SB 454, 78th Leg. Supported by the Attorney General's Office, the bill would have collected funds from those convicted of certain crimes and used them to fund a study of pretrial risk assessment; AB 55, 79th Leg. (Bill to ensure the testing of rape kits; supported by the Attorney General's Office and the NDAA) <https://www.leg.state.nv.us/Session/79th2017/Minutes/Assembly/JUD/Final/776.pdf>

<https://www.leg.state.nv.us/Session/78th2015/Exhibits/Senate/JUD/SJUD812T.pdf>; SB 214, 79th Leg. <https://www.leg.state.nv.us/Session/79th2017/Minutes/Senate/JUD/Final/438.pdf>

²² 78th Leg. <https://www.leg.state.nv.us/Session/78th2015/Reports/history.cfm?ID=470>

Attorney Gloria Allred testified in favor of this bill. See <https://www.leg.state.nv.us/Session/78th2015/Exhibits/Assembly/JUD/AJUD441E.pdf>

See also AB 145, 79th Leg. considering extension of statute of limitations for sex crimes committed against youth under 18. Jennifer Noble testified in support for the NDAA. See <https://www.leg.state.nv.us/Session/79th2017/Minutes/Assembly/JUD/Final/289.pdf>

²³ <https://www.leg.state.nv.us/Session/78th2015/Minutes/Assembly/JUD/Final/441.pdf>

²⁴ SB 124, 79th Leg. Lisa Luziach from the Clark County Da's Office testified in favor. <https://www.leg.state.nv.us/Session/79th2017/Minutes/Senate/JUD/Final/794.pdf>

²⁵ SB 169, 79th Leg. The bill would have also criminalized sex between teachers and students. John Jones testified in support for the NDAA and offered some amendments. See <https://www.leg.state.nv.us/Session/79th2017/Exhibits/Senate/JUD/SJUD438E.pdf>

²⁶ SB 361, 79th Leg.

²⁷ <https://www.leg.state.nv.us/Session/79th2017/Minutes/Senate/JUD/Final/730.pdf>

²⁸ AB 153. 78th Leg. <https://www.leg.state.nv.us/Session/78th2015/Minutes/Assembly/JUD/Final/328.pdf>

Jones's testimony indicates that he worked with the sponsors to resolve some "issues" with the bill.

See also SB 488, 79th Leg. <https://www.leg.state.nv.us/Session/79th2017/Minutes/Assembly/JUD/Final/1245.pdf> John Jones, for the LDAA, testified in support of a bill that would strengthen laws against those convicted of sex trafficking young people.

²⁹ AB 49. 78th Leg. <https://www.leg.state.nv.us/Session/78th2015/Minutes/Assembly/JUD/Final/99.pdf>

Many prosecutors testified, including members of the AG's office, John Jones for the NDAA, and Lisa Luzaich and Jacqueline Bluth, both with the Clark County District Attorney's Office. See also <https://www.leg.state.nv.us/Session/78th2015/Exhibits/Assembly/JUD/AJUD99K.pdf>

³⁰ <https://www.leg.state.nv.us/Session/78th2015/Minutes/Assembly/JUD/Final/99.pdf>

³¹ AB 260, 79th Leg. <https://www.leg.state.nv.us/Session/79th2017/Minutes/Assembly/JUD/Final/523.pdf>

³² *Id.*

³³ 78th Leg. <https://www.leg.state.nv.us/Session/78th2015/Reports/history.cfm?ID=495>

³⁴ <https://www.leg.state.nv.us/Session/78th2015/Minutes/Assembly/JUD/Final/517.pdf>

³⁵ SB 447. 78th Leg. <https://www.leg.state.nv.us/Session/78th2015/Reports/history.cfm?ID=973>

The Attorney Generals' Office pointed out that the bill was largely brought at the request of law enforcement. <https://www.leg.state.nv.us/Session/78th2015/Minutes/Assembly/JUD/Final/1130.pdf>

³⁶ AB 143, 79th Leg. Jennifer Noble testified in support for the NDAA. <https://www.leg.state.nv.us/Session/79th2017/Minutes/Assembly/JUD/Final/523.pdf>

³⁷ SB 541 79th Leg. <https://www.leg.state.nv.us/Session/79th2017/Minutes/Senate/JUD/Final/1246.pdf>

³⁸ AB 12. 78th Leg. <https://www.leg.state.nv.us/Session/78th2015/Minutes/Assembly/JUD/Final/36.pdf>

³⁹ Kristin Erickson testified for the NDAA: “This upgrade will enable then judge to grant probation and still ensure community protection.” SB 37. 78th Leg.

<https://www.leg.state.nv.us/Session/78th2015/Minutes/Senate/JUD/Final/251.pdf>

⁴⁰ SB 140 79th Leg. The NDAA sought the specific exclusion of those convicted of sex offender from this bill because “Unlike many other violent offenses, individuals who have committed sex offenses may continue to prey upon children even if they are infirm to some degree.” Jennifer Noble testified for the NDAA.

<https://www.leg.state.nv.us/Session/79th2017/Minutes/Senate/JUD/Final/329.pdf>

⁴¹ AB 124. 78th Leg. <https://www.leg.state.nv.us/Session/78th2015/Reports/history.cfm?ID=290>

The NDAA asked for and received an amendment excluding murder and sexual offenses from this bill. <https://www.leg.state.nv.us/Session/78th2015/Exhibits/Assembly/JUD/AJUD228G.pdf>

⁴² AB 267. 78th Leg. John Jones for the NDAA said he was working on some amendments for the retroactivity portion of the legislation, but had no objections to the bill.

<https://www.leg.state.nv.us/Session/78th2015/Minutes/Assembly/JUD/Final/566.pdf>

⁴³ AB 218, 79th Leg. John Jones testified for the NDAA and offered amendments. See

<https://www.leg.state.nv.us/Session/79th2017/Exhibits/Assembly/JUD/AJUD245C.pdf>

⁴⁴ SB 125, 79th Leg. Jennifer Noble testified on behalf of the NDAA. The NDAA submitted amendments to sealing court records, seeking longer times for certain felonies but did not oppose the voting rights restoration.

<https://www.leg.state.nv.us/Session/79th2017/Minutes/Senate/JUD/Final/437.pdf> See also

<https://www.leg.state.nv.us/Session/79th2017/Exhibits/Senate/JUD/SJUD437E.pdf>

AB 181, 79th Leg. Similarly sought to restore voting rights to those who had completed their sentence. John Jones testified in support for the NDAA.

<https://www.leg.state.nv.us/Session/79th2017/Minutes/Assembly/CPP/Final/368.pdf>

⁴⁵ <https://www.leg.state.nv.us/Session/78th2015/Reports/history.cfm?ID=426>

⁴⁶ <https://www.leg.state.nv.us/Session/78th2015/Minutes/Senate/JUD/Final/491.pdf>

⁴⁷ AB 216, 79th Def. Brigid J. Duffy, Director, Juvenile Division, Clark County District Attorney's Office, and John Jones testified against the bill for the NDAA.

<https://www.leg.state.nv.us/Session/79th2017/Minutes/Assembly/JUD/Final/367.pdf>

⁴⁸ AB 341, 79th Leg.

<https://www.leg.state.nv.us/Session/79th2017/Minutes/Assembly/JUD/Final/622.pdf>

⁴⁹ SB 367. 78th Leg.

<https://www.leg.state.nv.us/Session/78th2015/Minutes/Senate/HHS/Final/762.pdf>

⁵⁰ AB 262. 78th Leg. <https://www.leg.state.nv.us/Session/78th2015/Reports/history.cfm?ID=573>

Next session, Jennifer Noble testified on behalf of the NDAA in favor of a similar bill that shifted to burden to the defendant. See AB 184, 79th Leg.

<https://www.leg.state.nv.us/Session/79th2017/Minutes/Assembly/JUD/Final/234.pdf>

⁵¹ <https://www.leg.state.nv.us/Session/78th2015/Minutes/Assembly/JUD/Final/565.pdf>

⁵² AB 268, 79th Leg.

<https://www.leg.state.nv.us/Session/79th2017/Minutes/Assembly/JUD/Final/402.pdf>

⁵³ Id. The NDAA requested an amendment to change the required standard.

<https://www.leg.state.nv.us/Session/79th2017/Exhibits/Assembly/JUD/AJUD402M.pdf>

⁵⁴ AB 237, 79th Leg. <https://www.leg.state.nv.us/Session/79th2017/Reports/history.cfm?ID=498>

⁵⁵ They included Christopher Hicks, DA for Washoe County and Steven Wolfson, DA for Clark County. The Attorney General's Office also testified against the bill. See

<https://www.leg.state.nv.us/Session/79th2017/Minutes/Assembly/JUD/Final/526.pdf>

⁵⁶ <https://www.leg.state.nv.us/Session/79th2017/Minutes/Assembly/JUD/Final/526.pdf>

⁵⁷ 79th Leg. <https://www.leg.state.nv.us/Session/79th2017/Minutes/Senate/JUD/Final/1120.pdf>

The intent was to bring the bill in line with recent court decisions.

⁵⁸ SB 451. 78th Leg. <https://www.leg.state.nv.us/Session/78th2015/Reports/history.cfm?ID=978>

The idea behind the bill was to rectify the problem of a lack of indigent defense attorneys in rural counties.

⁵⁹ The NDAA also opposed a bill to create an indigent defense committee. SB 377, 79th Leg.

<https://www.leg.state.nv.us/Session/79th2017/Minutes/Senate/JUD/Final/729.pdf>

⁶⁰ <https://www.leg.state.nv.us/Session/78th2015/Minutes/Senate/JUD/Final/812.pdf>

⁶¹ AB 414. 79th Leg.

<https://www.leg.state.nv.us/Session/79th2017/Minutes/Assembly/JUD/Final/776.pdf>

⁶² AB 356 and AB 376, 79th Leg. The two bills were discussed together.

<https://www.leg.state.nv.us/Session/79th2017/Minutes/Assembly/JUD/Final/709.pdf>

⁶³ <https://www.leg.state.nv.us/Session/79th2017/Minutes/Assembly/JUD/Final/709.pdf>

⁶⁴ AB 67. 78th Leg. <https://www.leg.state.nv.us/Session/78th2015/Reports/history.cfm?ID=158>

⁶⁵ <https://www.leg.state.nv.us/Session/78th2015/Minutes/Assembly/JUD/Final/55.pdf>

⁶⁶ SB 54. 78th Leg. <https://www.leg.state.nv.us/Session/78th2015/Reports/history.cfm?ID=89>

⁶⁷ <https://www.leg.state.nv.us/Session/78th2015/Minutes/Assembly/JUD/Final/986.pdf>

⁶⁸ SB 99. 78th Leg. <https://www.leg.state.nv.us/Session/78th2015/Reports/history.cfm?ID=214>

Note that the NDAA opposed changes to the sex offender registry more generally, and only agreed to support this bill with the provision that some crimes would still qualify juveniles to be on the registry.

⁶⁹ See e.g. Brigit Duffy (Clark County DA's Office) testifying against SB 99 on March 19, 2015: "This bill allows for community notification prior to termination and probation, but the State would like it to allow postadjudication registration for the most heinous and egregious offenders. We do have heinous and egregious juvenile sex offenses."

<https://www.leg.state.nv.us/Session/78th2015/Minutes/Senate/JUD/Final/557.pdf>

Compare to John Jones (NDAA) on May 15, 2015: "That is why S.B. 99 (R2) is important from the juvenile point of view. We want to keep those kids who do not necessarily belong on a community notification website from having to put their information on there."

A legislator commented during the session that the bill text was completely different.

<https://www.leg.state.nv.us/Session/78th2015/Minutes/Assembly/JUD/Final/1424.pdf>

⁷⁰ AB 438, 79th Leg. Compare Kristin Erickson's testimony at

<https://www.leg.state.nv.us/Session/79th2017/Minutes/Assembly/JUD/Final/775.pdf> ("This is a radical departure from existing law, and I am not sure it accomplishes what it sets out to do.")

with John Jones at

<https://www.leg.state.nv.us/Session/79th2017/Minutes/Senate/HHS/Final/1059.pdf> ("Prosecutors take their jobs very seriously in terms of cutting people a break who deserve a break.")

⁷¹ AB 470, 79th Leg.

<https://www.leg.state.nv.us/Session/79th2017/Minutes/Senate/JUD/Final/1054.pdf>

⁷² <https://www.leg.state.nv.us/Session/79th2017/Minutes/Assembly/JUD/Final/776.pdf>

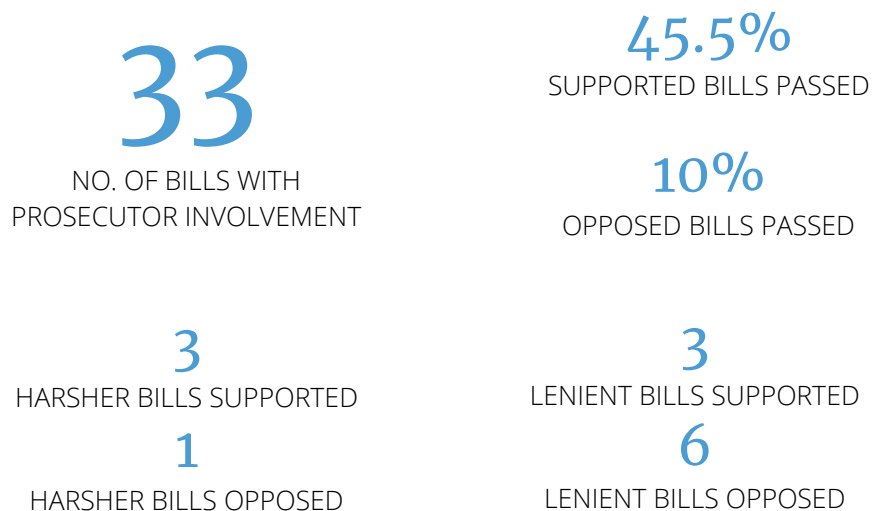
⁷³ <https://www.leg.state.nv.us/Session/79th2017/Minutes/Senate/JUD/Final/1054.pdf>

State of New Hampshire

New Hampshire prosecutors were somewhat active lobbyists; they were involved in approximately 15% of the criminal justice bills introduced in the state legislature during the relevant time period. (They lobbied on 33 of the 212 total bills.)

When the New Hampshire prosecutors lobbied, they were often successful. On average, the legislature only passed 26.3% of criminal justice bills that were introduced. When the New Hampshire prosecutors lobbied in favor of a bill, the bill was significantly more likely to pass (45.5% pass rate); when they lobbied against a bill it was significantly less likely to pass (10% pass rate).

Overall, New Hampshire prosecutors tended to support more punitive bills. They supported 3 bills that would have either expanded the criminal law or increased punishments. However, New Hampshire prosecutors' lobbying was not uniformly in favor of more punitive laws. They opposed 1 bill that would have either expanded the criminal law or increased punishments. When it came to bills that would have decreased the scope of criminal law or decreased sentences, New Hampshire prosecutors supported 3 such bills and opposed 6.



Background

New Hampshire, like most states, elects its local prosecutors. (Each of the state's ten counties elects a county attorney.¹) We were unable to locate a prosecutors association or council in New Hampshire. However, one recent New Hampshire news article² and news article from the 1960s³ allude to such an organization. The fact that individual county attorneys and the attorney general's office did most of the lobbying during the study period suggests, to the extent the New Hampshire prosecutors may have a statewide organization, it is not a particularly active lobbyist.

The office of the county attorney is statutorily created in New Hampshire law.⁴ The county offices consist of the county attorney and assistant county attorneys, with the county attorney being elected every 2 years. Each county attorney and his/her assistants work under the attorney general to prosecute felony cases in their respective counties.⁵ However, first- and second-degree homicide cases are handled by the New Hampshire Attorney General.⁶ County attorneys can assist police departments, like the State Police, in prosecuting cases in lower district and municipal courts.⁷ In addition, the county attorney's office handles misdemeanor and juvenile appeals to the county superior court and also runs grand jury proceedings in the county.⁸

In addition to their role as criminal prosecutors, New Hampshire County Attorneys also act as legal counsel to the county on civil matters.⁹ Furthermore, under the direction of the County Commissioners, the county attorney prosecutes and defends the county in any civil lawsuit which the county is involved.¹⁰

The County Attorney's mission statement was stated on Belknap County's site as: "The mission of the county attorneys' offices is to see that justice is delivered in a fair, impartial, and evenhanded manner and to preserve and protect the integrity of the criminal justice system, and to uphold the laws and constitution of the State of New Hampshire and the United States. The prosecutor represents the interests of the community as a whole and seeks justice for all under the law."¹¹

Analysis

Throughout the study period, the attorney general's office sent attorneys to staff various county attorney's offices due to unusually high turnover and misconduct in the county attorney's offices.¹² It appears that a few bills introduced in the legislature were an attempt to address some of that misconduct.¹³ For example, one bill attempted to establish a criminal penalty for prosecutorial misconduct.¹⁴ Another bill would have permitted audio recording of a public servant performing a public function.¹⁵ Ann Rice, from the Attorney General's Office, told the legislature to not pass the bill saying the "language causes problems; do not pass this bill as it is too broad."¹⁶

One major issue during the study period was New Hampshire's incarceration rates. Legislators and prosecutors focused on reducing the state's incarceration rate through "Felonies First" and the Criminal Justice Reform and Economic Fairness Act of 2018. In 2015, the state passed a bill coined "Felonies First," which required a defendant arrested for a felony to be arraigned in superior court, as opposed to in district court.¹⁷ Stratford and Cheshire—and later Belknap—counties implemented pilot programs to test Felonies First.¹⁸ The NH Judicial Council Report highlighted some of Cheshire County Attorney's, Christopher McLaughlin, opinions of the program. Specifically, the report noted that: "Attorney McLaughlin reported the number of people held pretrial has decreased, but he believes this is unrelated to Felonies First."¹⁹ However, Thomas Velardi, Stafford County Attorney, had a more positive experience with the pilot program. The report noted: "Attorney Velardi observed that intra-office case flow has been streamlined as a result of Felonies First. He also noted that communication with victims occurs faster and with more robust input."²⁰ Similarly, Belknap County Attorney Melissa Guldbrandsen reported to the NH Judicial Council that: "The biggest efficiency that this CAO's office has seen is that, as a result of being informed by the police departments about cases more quickly, prosecutors are made aware sooner rather than later when one defendant 'racks up' multiple different charges. This is more efficient for global resolutions."²¹

While prosecutors were active participants in implementing "Felonies First," they did not appear to be as cooperative about or supportive of the Criminal Justice Reform and Economic Fairness Act of 2018.²² The bill focused on bail reform by allowing defendants to be released on personal recognizance, unless a judge determined the defendant to be a danger to himself or the community.²³ Defendants accused of class B misdemeanors are guaranteed a no-cash, no-

condition bail by this legislation—except if the judge determines the defendant to be a danger.²⁴ The *Concord Monitor* reported that the ten county attorneys resisted the legislation due to safety concerns and “pointed to a lack of statewide pretrial resources to handle the expected increase in releases if the bill becomes law.”²⁵

The issue of reducing the state’s incarceration rates was complicated by the state’s opioid crisis during the study period. One report noted that it was difficult to determine the efficacy of programs like Felony First at reducing incarceration rates because the opioid epidemic simultaneously increased incarceration rates. The New Hampshire legislature worked on over ten bills throughout the study period regarding the opioid epidemic.²⁶ During the special session in 2015, the legislature passed House Concurrent Resolution 1, which established a joint task force for the response to the heroin and opioid epidemic in the state.²⁷ In addition, in 2016, the legislature attempted to take a rehabilitative approach by introducing a bill that would have allowed the county convention in each county to establish heroin use prevention and treatment programs.²⁸ Some of the bills reduced criminal liability by allowing a witness or a victim of a drug overdose to request medical assistance without fear of being arrested or prosecuted.²⁹ Prosecutors expressed concerns with these bills.

“The problem with the bill is that it attempts to provide immunity to the truly innocent who, under the law, are not prosecutable.”³⁰
Elizabeth Woodcock, Assistant Attorney General

Another bill attempted to reduce criminal penalties from a Class A felony to a Class A misdemeanor for possession, transportation, or use of schedule I, II, III, or IV controlled substances or their analogs.³¹ That bill failed in the House.

Not all bills took a treatment-based approach to opioids; other bills sought to enhance criminal liability relating to opioid use. For example, one bill attempted to add fentanyl to the list of controlled drugs and controlled drugs analogs, but failed to pass.³² In 2017, HB153 established a criminal penalty for causing the death of another by providing heroin or fentanyl to such person, requiring a manslaughter charge. The bill failed. Interestingly, one newspaper noted that prosecutors in New Hampshire argued for life in prison for those who supply a fatal dose of heroin, fentanyl, and similar drugs.³³ Attorney General Joe Foster stated: “I’m particularly focused on and hope to get the folks who make it their

business to sell... We want to send the message that if you come to New Hampshire and sell drugs, you will be held accountable."³⁴

Another major issue throughout the study period was the legalization of marijuana. The legislature introduced at least nine bills throughout the study period, of which all but one decriminalized or provided more lenient penalties for possession of marijuana.³⁵ Elizabeth Woodcock, the Assistant Attorney General, stated that the office of the attorney general opposed legislation that would have allowed a person 21 years of age or older to possess up to 2 ounces of marijuana and to cultivate up to 6 marijuana plants with no penalty.³⁶ The bill failed to pass. Similarly, James Vara from the Attorney General's Office, expressed opposition to legislation that would reduce the penalty from a misdemeanor to a mere violation for possession of one ounce or less of marijuana.³⁷ James Vara explained that the "Colorado Attorney General has cautioned others that marijuana is not worth it and to not buy the argument that legal[ization] gets rid of criminal actions."³⁸ That bill also failed to pass.

One issue about which prosecutors in New Hampshire were particularly active was domestic violence. For example, one bill attempted to define "probable cause" or "reasonable ground" as "a peace officer either has personal knowledge or knowledge supplied by another peace officer, that a violation or a crime is being committed or has been committed, or that the peace officer has personal knowledge, or knowledge supplied by another peace officer, or is in possession of a sworn statement from at least 2 witnesses, that the person has committed or is about to commit a violation or a crime."³⁹ Prosecutors opposed the bill.

“This proposal takes us backwards, not forward, in our efforts to combat domestic violence. It brings us back to the days when police officers had to get a warrant before arresting a person for a domestic violence assault, even when it was obvious that a crime had been committed...I urge you to vote against this bill.”⁴⁰

Patricia LaFrance, Hillsborough County Attorney

The bill failed to pass. Another piece of legislation attempted to require a restraining order to contain language that restricts or prohibits contact between the parties.⁴¹ As Rockingham Deputy County Attorney, Patricia LaFrance spoke out against the bill, saying: "If this language is added, it would set us back decades in terms of progress we have made in understanding and addressing domestic violence."⁴² The bill failed to pass.

¹ Paul Cuno-Booth, *NH elects its prosecutors, but most run unopposed*, Keene Sentinel (Aug. 31, 2020), https://www.sentinel-source.com/news/local/nh-elects-its-prosecutors-but-most-run-unopposed/article_9601ffe8-d09c-57ad-8f5d-95212ef8aa11.html

² *Id.* (referring to Strafford County Attorney Tom Velardi as “president of a statewide county prosecutors’ group”).

³ *Attorney Spanos Defies Directive*, The Nashua Telegraph, Sep. 18, 1969 (referring to Sullivan County Attorney Charles Spanos as “head of the New Hampshire County Attorneys Association”).

⁴ NH RSA §7:33 (<http://www.gencourt.state.nh.us/rsa/html/i/7/7-mrg.htm>)

⁵ <https://www.co.cheshire.nh.us/departments/county-attorney/>

⁶ *Id.*

⁷ *Id.*

⁸ <https://www.belknapcounty.org/county-attorney>

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² <https://www.nhbr.com/the-ailing-state-of-government-lawyering-in-nh/> ; <https://www.seacoastonline.com/news/20160714/deputy-rockingham-county-attorney-sanctioned-for-misconduct> ; <https://www.wmur.com/article/county-attorneys-office-seeks-creative-solutions-to-fill-prosecutor-position/26105018>

¹³ HB1543 (2016), HB1546 (2016), HB 345 (2017), SB193 (2016)

¹⁴ HB1543 (2016)

¹⁵ HB1546 (2016)

¹⁶ HB1546 (2016)

¹⁷ SB124 (2015)

¹⁸ <https://www.nhpr.org/post/year-after-it-began-check-nhs-felonies-first-program#stream/0>

¹⁹ <https://www.nh.gov/judicialcouncil/documents/felonies-first-10-16-17.pdf>

²⁰ *Id.*

²¹ *Id.*

²² SB556 (2018)

²³ <https://www.concordmonitor.com/New-Hampshire-bail-reform-bill-passes-Legislature-over-concerns-from-county-attorneys-17712982>

²⁴ *Id.*

²⁵ *Id.*

²⁶ HB 270 (2015); HB1603 (2016); SB106 (2015); SSHCR1(2015); SB147 (2016); HB1562 (2016); HB153 (2017); HB1792 (2018); SB540 (2016); SB576 (2016); HB1678 (2018); HB1634 (2016)

²⁷ <https://bills.nhliberty.org/bills/2015/SSHCR1>

²⁸ HB1562 (2016)

²⁹ HB270 (2015); SB147 (2016)

³⁰ HB270 (2015)

³¹ HB1792 (2018)

³² HB1634 (2016)

³³ Alyssa Dandrea, *New Hampshire’s prosecutors vow to hold dealers accountable in overdose deaths*, Sep. 11, 2016, <https://www.concordmonitor.com/Law-enforcement-officials-discuss-inherent-challenges-in-prosecuting-drug-overdose-deaths-4469515>

³⁴ *Id.*

³⁵ HB1610 (2016); HB150 (2015); HB618 (2015); HB 1694 (2016); SB391 (2016); HB640 (2017); SB498 (2016); HB1477 (2018); HB1815 (2018)

³⁶ HB1610 (2016)

³⁷ HB618 (2015)

³⁸ HB618 (2015)

³⁹ HB207 (2015)

⁴⁰ HB207 (205)

⁴¹ HB1448 (2016)

⁴² HB1448 (2016)

State of New Jersey

During the study period the New Jersey legislature considered 1,219 criminal justice bills. But it is difficult to know the extent to which New Jersey prosecutors lobbied on those bills because so much data was unavailable. The New Jersey legislature does not make legislative history materials available on its website.

It is possible that New Jersey prosecutors do not lobby the legislature. The state does not elect its local prosecutors. County prosecutors are appointed by the governor with the advice and consent of the state senate.¹ The attorney general is appointed and confirmed in the same manner.² And county prosecutors do not appear to have a statewide association.

Municipal prosecutors,³ who appear in municipal courts, have formed the New Jersey State Municipal Prosecutors Association. Municipal courts are “courts of limited jurisdiction, having responsibility for motor vehicle and parking tickets, minor criminal-type offenses (for example, simple assault and bad checks), municipal ordinance offenses (such as dog barking or building code violations) and other offenses, such as fish and game violations.”⁴ The website for that organization indicates that it has “testified before the state legislature in Trenton on bills affecting municipal court practice.”⁵ But because legislative history materials are not publicly available, it is not possible assess the frequency or success of those efforts.

¹ N.J.STAT.ANN. § 2A:158-1 (“There shall be appointed, for each county, by the governor with the advice and consent of the senate . . . some fit person . . . who shall be known as the county prosecutor . . .”).

² N.J. Const. art. V, sec. IV(3) (“The Secretary of State and the Attorney General shall be nominated and appointed by the Governor with the advice and consent of the Senate to serve during the term of office of the Governor.”).

³ NJ Rev Stat § 2B:25-5.

⁴ “The Municipal Courts of New Jersey,” New Jersey Courts, <https://njcourts.gov/courts/mcs.html?lang=eng> (last visited May 4, 2021).

⁵ “A Message from the President,” New Jersey State Municipal Prosecutors' Association, <http://njsmtpa.homestead.com/> (last visited May 4, 2021).

State of New Mexico

New Mexico District Attorney Association

Administrative Office of the District Attorneys

According to news accounts, the New Mexico prosecutors actively lobby the legislature in support of punitive laws.¹ But it is not possible assess the frequency or success of those lobbying efforts because the available legislative history materials do not capture witness testimony or other lobbying activity.



Association Composition and History

There are two prosecutor organizations in the state of New Mexico. The New Mexico District Attorney Association (NMDAA) is “organized to support and promote the work of all of New Mexico’s District Attorneys.”² According to its webpage, the support that the NMDAA provides includes support for “legislative matters pertinent to prosecution.”³ The webpage identifies current leadership—all of whom are currently serving as the chief prosecutor in one of the state’s districts—but it does not discuss the membership or composition of the association other than to say it is “a professional organization.”

News reports confirm that the NMDAA lobbies the legislature—supporting, opposing, and helping to amend particular bills.⁴ Reports also indicate that the NMDAA membership is comprised of the chief prosecutors in each of the state’s districts.⁵

Notably, the NMDAA does not have its own website; instead it has a page on the site of another prosecutor organization—the Administrative Office of the District Attorneys’ (AODA). The AODA is a state agency that was created by statute in 1984.⁶ The AODA provides services to the state’s district attorneys, including technical and administrative support.⁷ But it also appears to be involved in legislative matters. Like the NMDAA, the AODA says that it “supports and aids prosecutors in . . . legislative matters pertinent to prosecution.”⁸

The AODA also appears to provide analysis of some legislative bills.⁹ However, those analyses do not appear to indicate support or opposition for bills. Nor do the analyses appear to be made part of the legislative history materials that are publicly available on the state legislature's website.

It is not entirely clear what the relationship is between the NMDAA and the AODA. In addition to the overlap of their websites mentioned above, media accounts suggest that leadership of the NMDAA is involved in the day-to-day administration of the AODA.¹⁰ However, the AODA also has its own Executive Director and staff.¹¹

Analysis

Using only publicly available materials, it is very difficult to determine when New Mexico's prosecutors lobby the legislature and what positions they take on specific bills. The legislature collects legislative history materials on its website, including committee reports. However, those reports do not contain substantive information—such as who testified in support or opposition to a bill—beyond the committee vote.¹²

For example, we know from news accounts that prosecutors supported a bill in 2015 to increase penalties for DWI offenses.¹³ The president of the NMDAA gave an interview in which he said the “bill has the support of the district attorneys and law enforcement agencies.”¹⁴ But the committee report does not reflect this support. It merely states that the bill passed the public safety committee 7 to 0 and was being referred to the judiciary committee.¹⁵ In other words, we know that New Mexico prosecutors lobbied in favor of this bill, but that support isn't reflected in the legislative record.

“Representative Montoya took a very bold and refreshing stance on DWI, especially in circumstances of repeat DWI offenders. I am pleased to stay that I stood with him in this effort. . . . For the safety of our community, it is imperative that we be able to address and remove these repeat offenders from the streets.”

Rick Tedrow, President NMDAA and District Attorney
of the 11th Judicial District¹⁶

In that same interview, the president of the NMDAA said that the organization was watching 208 bills that legislative session, and that he personally spent

anywhere from four to seven days a week in the capital when the legislature was in session. Thus, we know that the association is very active, but we cannot quantify their lobbying activities.

News accounts give some insight into the major criminal justice issues that arose during the study period and the positions that New Mexico prosecutors took.

One issue that received a lot of news coverage was bail reform. In 2016 election, the New Mexico legislature voted to put a constitutional amendment regarding bail on the November ballot. New Mexico voters voted in favor of the amendment changing the conditions under which a defendant can be denied bail.¹⁷ Before the amendment passed, bail could be denied under only limited circumstances. The amendment broadened the circumstances under which bail could be denied - in any felony if the defendant poses a threat to the public - while also ensuring that no defendant was incarcerated pretrial merely because she did not have the financial resources to post bail.¹⁸

The legislative process surrounding the bail amendment proved contentious. While the amendment initially had the support of a diverse coalition of groups, including the NMDAA and the ACLU, after the bail bond industry succeeded in pushing through a change to the amendment that placed the burden of proof on defendants to show that they lacked financial resources. The change led the ACLU and other defense groups to withdraw their support.¹⁹

Although the NMDAA supported the amendment, they soon soured on the new bail system. Several individual prosecutors gave public statements agitating for change.²⁰ And eight elected DAs sent proposed changes to the state supreme court, asking the court to modify pretrial release rules that it had promulgated in the wake of the bail amendment.²¹ The NMDAA president spoke positively about these changes,²² and the association may have ultimately supported the changes as well.²³

News media accounts of the NMDAA's legislative involvement paints a picture of an organization that opposes reform and supports punitive measures. When civil asset forfeiture reform passed both houses in the legislature, the NMDAA president announced that he would lobby the governor to veto the legislation.²⁴ In contrast, bills to increase sentences for vehicular homicide, increase child

abuse laws, and change the definition in child pornography laws to support multiple charges more easily, all had the support of the NMDAA.²⁵

¹ Steve Garrison, *San Juan County DA Rick Tedrow talks about his work this legislative session*, Farmington Daily Times (March 14, 2015).

² <https://www.nmdas.com/nmdaa/>

³ <https://www.nmdas.com/nmdaa/>

⁴ A media profile of the NMDAA president described his role as “represent[ing] the association during the legislative session, testifying before committees and advocating for bills supported by the association” and “lobbying state lawmakers for an increased budget for his office.” Steve Garrison, *San Juan County DA Rick Tedrow talks about his work this legislative session*, Farmington Daily Times (March 14, 2015).

⁵ “NMDAA is an association of all elected and appointed District Attorneys in New Mexico which consists of 14 elected district attorneys.” *Id.*

⁶ <https://www.nmdas.com/about-us/> (citing 36-1-25 NMSA).

⁷ <https://www.nmdas.com/> (listing services).

⁸ <https://www.nmdas.com/about-us/>

⁹ <https://www.nmdas.com/2020-legislative-bill-analysis/>

¹⁰ In a 2015 interview, the president of the New Mexico District Attorney's Association was asked to describe his “responsibilities.” Among other duties, he stated: “I am responsible for overseeing the daily operations of the Administrative of District Attorneys (AODA), which is the supportive agency to all District Attorneys at a statewide level.” Steve Garrison, *San Juan County DA Rick Tedrow talks about his work this legislative session*, Farmington Daily Times (March 14, 2015).

¹¹ <https://www.nmdas.com/staff/>

¹² <https://www.nmlegis.gov/Legislation/Legislation?chamber=H&legType=B&legNo=33&year=18>

¹³ 2015 HB 355

¹⁴ Steve Garrison, *San Juan County DA Rick Tedrow talks about his work this legislative session*, Farmington Daily Times (March 14, 2015).

¹⁵ <https://www.nmlegis.gov/Sessions/15%20Regular/bills/house/HB0355SC1.pdf>

¹⁶ Steve Garrison, *San Juan County DA Rick Tedrow talks about his work this legislative session*, Farmington Daily Times (March 14, 2015).

¹⁷ Jeff Proctor, *Bail amendment passes convincingly*, The Gallup Independent (Nov. 15, 2016).

¹⁸

https://www.nmlegis.gov/Publications/New_Mexico_State_Government/Constitutional_Amendments/Constitutional_Amendments_2016.pdf

¹⁹ Jeff Proctor, *Bail amendment passes convincingly*, The Gallup Independent (Nov. 15, 2016).

²⁰ Dianne L. Stallings, *Prosecutor urges public to demand changes to bail rules*, Farmington Daily Times (Oct. 17, 2018) (quoting John Sugg, district attorney for the 12th Judicial District as saying “‘The courts have failed to act and it’s time for the people to step up and demand change,’ he said. ‘It is time to amend the amendment’ to the state constitution passed in 2016 by voters.”); Susan Montoya Bryan, *New Mexico district attorneys push for changes to bail rules*, Associated Press (Sept. 28, 2017) (quoting multiple DAs).

²¹ *DA proposals middle ground on bail rules*, Albuquerque Journal (Oct. 8, 2017).

²² *Id.* (quoting the NMDAA president as calling the proposal “even-handed and conservative”).

²³ Dianne L. Stallings, *Prosecutor urges public to demand changes to bail rules*, Farmington Daily Times (Oct. 17, 2018) (“A year ago, the NMDAA sent a letter to Chief Justice Judith Nakamura asking the state Supreme Court to review the pretrial release rules.”).

²⁴ Ryan Boetel & Dan Boyd, *Measure would kill 'policing for profit'-law enforcement seeks veto of legislation ending civil asset forfeiture*, Albuquerque Journal (March 28, 2015).

²⁵ Steve Garrison, *San Juan County DA Rick Tedrow talks about his work this legislative session*, Farmington Daily Times (March 14, 2015).

State of New York

District Attorneys Association of the State of New York

It is difficult to assess the lobbying efforts of New York prosecutors because so much data was unavailable. News accounts, position statements, testimony from public hearings, and letters written to legislators confirm that prosecutors lobbied the legislature on at least 35 of the 1536 criminal justice bills introduced during the study period. But it is not possible to assess the frequency or success of prosecutorial lobbying efforts on the many hundreds of other criminal justice bills that were introduced during the study period.



Association Composition and History

The District Attorneys Association of the State of New York (DAASNY) allows all individuals from the “New York State District Attorneys, the New York State Attorney General, U.S. Attorneys in New York State, and their legal and non-legal staffs” to join the association as members.¹ The goals of the DAASNY include to: (1) promote “closer personal acquaintance among prosecuting officials”; (2) “make possible the exchange of information and views” of the offices in order to achieve greater efficiency; (3) “provide for the training of prosecutors, investigators, and law enforcement support personnel”; and (4) acquire resources and equipment for the organization.²

The DAASNY is led by the Board of Directors, which include the President, President-Elect, First Vice-President, Second Vice-President, and Third Vice-President.³ The DAASNY consists of three executive committees, the Governmental Affairs Committee, the Public Affairs Committee, and the Finance Committee.⁴ The DAASNY has various other committees and subcommittees focused on specific missions for the Association.⁵

Significantly, the DAASNY has a Legislative Committee, which is responsible for: (1) advising the President and Board on all legislative matters that affect the purposes of the Association; (2) acting, in the name of the Association, “upon all legislative matters affecting the purposes” of the Association that had not yet

been determined by the Association or Board of Directors at a prior meeting; and (3) performing any other duties that the President or the Legislative Secretary or Secretaries requests.⁶ Additionally, the Legislative Committee has eight subcommittees that focus on specialized areas of legislation.⁷

The DAASNY was formed in 1909 with the purpose of providing an organization for New York prosecutors to “exchange [] information and views with respect to the conduct of their offices, the New York State criminal justice system and the criminal law operation.”⁸ Today, the Association carries the same goal of “encourag[ing] and foster[ing] communication, cooperation, training and consultation among and on behalf of the district attorneys and their staffs for matters concerning the prosecution of crime in New York State and improving the legal system.”⁹

Analysis

It is very difficult to obtain a complete picture about when New York’s prosecutors lobby the legislature and what positions they take on specific bills. News accounts, DAASNY position statements, testimony from public hearings, and letters written to legislators provide a partial picture of the DAASNY’s positions and activity related to legislation.¹⁰ But we have reason to believe these sources were incomplete. For example, we discovered the DAASNY’s position on 8 pieces of legislation because of position statements located on the Association’s website.¹¹ Position statements were not available for two of the four-year study period. In addition, some prosecutorial lobbying efforts were disclosed only in news media accounts and were not reflected in the testimony from public hearings or in the communications with the New York State Assembly.¹² We simply cannot be confident that the news media reported on all such lobbying efforts.

Most importantly, the numbers involved suggest that more lobbying occurred. During the time of this study, the state of New York considered 1,536 criminal justice related bills. We were only able to identify prosecutorial lobbying for 35 of those bills—less than three percent of the total bills. Given that the DAASNY has eight subcommittees devoted to legislative matters, it seems unlikely that the Association did so little.

One major legislative issue on which the DAASNY did lobby was whether to raise the age of criminal responsibility from sixteen to eighteen years old. This measure

was introduced in both the House and the Senate during the 2015-2016 General Assembly¹³ and the 2017-2018 General Assembly.¹⁴

During a public hearing on March 11, 2015, former President of the DAASNY Frank Sedita, spoke against enacting a bill that would raise the age of criminal liability.

“[S]ome of the most dangerous and sociopathic criminals we prosecute are under the age of 18... The complex legislation proposed not only seeks to fix a problem that doesn’t really exist, it also relies upon esoteric ideas that will have very non-esoteric and practical effects, like overwhelming an already overwhelmed — overburdened family court system, dramatically reducing offender accountability, and endangering public safety.

Frank Sedita, former President of the DAASNY¹⁵

News accounts state that the DAASNY found the legislation “frightening” and that the Association “lobbied the Legislature to delay the measure to thoroughly examine its merits.”¹⁶ Other District Attorneys also publicly voiced their opposition to the bill.

“I am completely against Raise the Age . . . I don’t think the state has a system in place to handle these cases. In Family Court, you lose a lot of tools.

Donald O’Geen, Wyoming County District Attorney¹⁷

District Attorney O’Geen went on to explain how these cases may falter in Family Court. For example, he explained that there is a restitution cap of \$1,500 in Family Court, so when a teen engages in criminal mischief-type cases, victims may not be able to recover on their high awards of restitution.¹⁸

At the time the legislation was proposed in 2015, New York and North Carolina were the only two states that still criminally prosecuted those 16 and 17 years old in adult criminal court.¹⁹ Ultimately, in April of 2017, New York state passed legislation that raised the age of criminal responsibility to 18 years old.²⁰

Another major legislative measure on which the DAASNY actively lobbied was Senate Bill S02412 and House Bill A05285, during the 2017-2018 General Assembly. That legislation sought to create a commission to regulate

prosecutorial conduct. The proposed commission was set to consist of 11 members – appointed by the governor – who would “probe misconduct claims against New York district attorneys and their assistants.”²¹

News accounts documented DAASNY’s strong opposition throughout every stage of the legislative process.²² From the start, prosecutors argued that the legislation was “unconstitutional.”²³

The legislation ultimately passed in August of 2018, despite the DAASNY’s opposition. However, in December of 2018, the DAASNY was able to halt the implementation of the commission through a legal agreement with Governor Andrew Cuomo, which was meant to “freeze” the implementation until some mutually agreed upon terms were met.²⁴

⚖ In lay terms the legislation is frozen in place and will not take effect January 1[, 2019] pending action of the legislature and the governor . . . Should the Legislature and the governor not act, or again enact an unconstitutional statute, the litigation will proceed.

David Soares, former DAASNY President and
Albany County District Attorney²⁵

This dispute over the commission continued even after amendments were made to the legislation.²⁶ Ultimately, the DAASNY filed a lawsuit that claimed that the “measure violated the separation of powers and gave state law makers too much oversight over independent district attorney’s offices.”²⁷ On January 28, 2020, Justice David A. Weinstein, ruled in favor of the prosecutors, and found that “Article 15-a of the New York Judiciary Law, which created the Commission on Prosecutorial Conduct, [was] in violation of the state constitution.”²⁸

New York prosecutors supported legislation aimed at expanding the use of “problem solving courts” that are designed to be less punitive and focused on reducing the rate of recidivism.²⁹ The bill would have allowed for cases to be removed from a local criminal court to a “problem solving court” specializes in certain legal areas.³⁰ For example, a “drug court, domestic violence court, youth court, mental health court, and veterans court.”³¹

In a letter dated March 1, 2016, District Attorney Thomas P. Zugibe, on behalf of the Association, wrote to Temporary President John Flanagan and Speaker Carl Heastie, explaining the DAASNY’s support of the bill.³²

“ It is expected that, as with drug court, these other problem solving courts will help reduce recidivism and increase public safety. I ... urge that this bill be passed as soon as possible so we can begin to create these important and progressive courts for our residents.

Thomas P. Zugibe, the District Attorney of Rockland County,
on behalf of the DAASNY³³

In conclusion, the limited sample of bills for which we were able to document DAASNY involvement inhibits our ability to report any trends of prosecutor activity. However, it is clear that the DAASNY is involved in legislation that relates to its purposes as an organization and has created mechanisms within its organization, such as the Legislative Committee, to address these legislative concerns.

¹ *Become a Member*, D.A.A.S.N.Y – District Attorneys Association of the State of New York, http://www.daasny.com/?page_id=182

² DAASNY's By-Laws, Article 1 Goals - Section 1: Goals, *available at* http://www.daasny.com/?page_id=50

³ *Board of Directors*, D.A.A.S.N.Y – District Attorneys Association of the State of New York, http://www.daasny.com/?page_id=188

⁴ *Executive Committee*, D.A.A.S.N.Y – District Attorneys Association of the State of New York, http://www.daasny.com/?page_id=287

⁵ *DAASNY Committees and Subcommittees*, D.A.A.S.N.Y – District Attorneys Association of the State of New York, http://www.daasny.com/?page_id=190

⁶ DAASNY By-Laws, Article V Committees - Section 3: Legislative Committee, B. Duties of the Legislative Committee, *available at* http://www.daasny.com/?page_id=50

⁷ *Id.* The subcommittees are as follows: Sexual Assault and Family Violence Subcommittee; Mental Health Subcommittee; Vehicular Crimes Subcommittee; Elder Abuse Subcommittee; Computer Crimes Subcommittee; FLAG (Forfeiture Law Advisory Group); Appellate Subcommittee; and Environmental Crimes Subcommittee.

⁸ Morgan Bitton, *DAASNY 2020 Summer Conference*, D.A.A.S.N.Y. – District Attorneys Association of the State of New York (Apr. 2, 2019) <http://www.daasny.com/?p=1126>

⁹ *Id.*

¹⁰ After the study was concluded, the following YouTube channel containing partial videos of NY Senate hearings was found: <https://www.youtube.com/user/NYSenate/videos>. Information from this source is not included in our analysis.

¹¹ D.A.A.S.N.Y. – District Attorneys Association of the State of New York website link: <http://www.daasny.com/>

¹² For example, a news story stated that Manhattan District Attorney Cyrus R. Vance Jr. “on June 6 urged the New York State Assembly to pass legislation to combat identity theft-related offenses.” (39). However, we do not have access to this testimony from the resources provided on the New York State Assembly Website.

¹³ During the 2015-2016 General Assembly, the House Bill was A02774 and the Senate Bill was S01019.

¹⁴ During the 2017-2018 General Assembly, the House Bill was A04935 and the Senate Bill was S04121.

¹⁵ Frank Sedita's statements are recorded in the transcript of the "Public Hearing: Examining Police Safety and Public Protection In New York City", on March 11, 2015, which is available at <https://www.nysenate.gov/transcripts/public-hearing-03-11-15-nys-law-enforcement-joint-hearing-finaltxt>

¹⁶ Dartunorro Clark, *Lawmakers Urged to 'Raise the Age'*, THE TIMES UNION (June 2, 2015) <https://www.timesunion.com/news/article/Lawmakers-urged-to-raise-the-age-6303180.php>

¹⁷ Scott Desmit, *'Age raise' is sparking opposition*, THE DAILY NEWS (Feb. 18, 2016) https://www.thedailynewsonline.com/news/age-raise-is-sparking-opposition/article_f25adae5-3f0b-5aa0-937b-e6af335a9094.html

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Raise the Age Program*, NYC MAYOR'S OFFICE OF CRIMINAL JUSTICE, <https://criminaljustice.cityofnewyork.us/programs/raise-the-age/> (last accessed March 24, 2021).

²¹ Ryan Tarinelli, *New York Judge Strikes Down Prosecutor Misconduct Commission*, NBC NEW YORK (Jan. 29, 2020) <https://www.nbcnewyork.com/news/local/new-york-judge-strikes-down-prosecutor-misconduct-commission/2271937/>

²² Abraham Kenmore, *Prosecutor panel plan halted*, NNY360 (Dec. 11, 2018) https://www.nny360.com/news/prosecutor-panel-plan-halted/article_6fde8824-74e4-50b1-816f-c3dc48c0da65.html ("Prosecutors have opposed the bill as it moved through the legislative process.").

²³ *Id.*

²⁴ Abraham Kenmore, *Prosecutor panel plan halted*, NNY360 (Dec. 11, 2018) https://www.nny360.com/news/prosecutor-panel-plan-halted/article_6fde8824-74e4-50b1-816f-c3dc48c0da65.html

²⁵ *Id.*

²⁶ Dan Clark, *Albany Judge Strikes Down Prosecutorial Watchdog Commission*, NEW YORK NOW – WMHT (Jan. 28, 2020) <https://nynow.wmht.org/blogs/politics/albany-judge-strikes-down-prosecutorial-watchdog-commission/> ("[T]hose changes weren't enough to satisfy local district attorneys that the law could pass constitutional muster. The District Attorneys Association of the State of New York sued over the measure[.]").

²⁷ Ryan Tarinelli, *New York Judge Strikes Down Prosecutor Misconduct Commission*, NBC NEW YORK (Jan. 29, 2020) <https://www.nbcnewyork.com/news/local/new-york-judge-strikes-down-prosecutor-misconduct-commission/2271937/>

²⁸ *Albany Judge Strikes Down Prosecutorial Watchdog as Unconstitutional*, NEW YORK LAW JOURNAL (ONLINE) (Jan. 28, 2020) <https://plus.lexis.com/search?pdsearchterms=LNSDUID-ALM-NYLAWJ-20200128ALBANYJUDGESTRIKESDOWNPROSECUTORIALWATCHDOGASUNCONSTITUTIONAL&pdbyasscitatordocs=False&pdsourcегroupingtype=&pdisurlapi=true&pdmfid=1530671&crd=d58c1b82-d4b2-4bc7-b595-c671d7a731c3>

²⁹ Senate Bill S06595 of the 2015-2016 General Assembly

³⁰ *Id.*

³¹ *Id.*

³² Thomas P. Zugibe's letter, on behalf of the DAASNY, is available at:
<http://www.daasny.com/wp-content/uploads/2016/03/DAASNY-Letter-of-Support-for-S-6595-Carlucci-Specialty-Court-Jurisdiction.pdf>

³³ *Id.*

State of North Carolina

The North Carolina Conference of District Attorneys

It is difficult to assess the lobbying efforts of North Carolina prosecutors because so much data was unavailable. News accounts confirm that North Carolina prosecutors were involved with at least 11 pieces of legislation, which constitute 7.4% of the 149 total criminal justice bills introduced during the study periods. But it is not possible to assess the frequency or success of their lobbying efforts given how much data is not available.



Association Composition and History

The North Carolina Conference of District Attorneys supports the 42 elected District Attorneys and their staff, which includes 594 prosecutors and 480 support staff.¹ The Conference employs fourteen staff members who manage the various functions of the group. The Conference is led by the Director, who is tasked with overseeing Conference activities, developing programs, and monitoring legislation.²

The Conference also consists of an Executive Committee which includes ten district attorneys, who are elected by the general membership of the Conference.³ Within the Committee, there are four designated positions – the President, President Elect, Vice President, and Past President.⁴ The elected officials on the Executive Committee serve a one-year term, creating policy positions and working in conjunction with the Conference staff.⁵

The Conference was established as a state agency in 1983. At its establishment, the Conference codified its goals under North Carolina General Statute §7A-411 stating, "to assist in improving the administration of justice in North Carolina by coordinating the prosecution efforts of the various district attorneys, by assisting them in the administration of their offices[.]"⁶ Today, those goals remain the same as the Conference expands its work to not only support the state's prosecutors, but also promote executive development, research timely issues, and facilitate public outreach.⁷

Analysis

Using only publicly available materials, it is very difficult to determine when North Carolina's prosecutors lobby the legislature and what positions they take on specific bills. The state's committee hearings and records of public comments on bills are not available on the legislature's website. News accounts provide a glimpse into the North Carolina prosecutors' lobbying activity, but it is unclear whether all such lobbying efforts were the subject of media reporting.

One major legislative measure proposed during the 2017-2018 General Assembly was a bill to raise the age of criminal liability from 16 years to 18 years of age.⁸ News accounts did not capture whether the North Carolina Conference of District Attorneys' took an official position on the bill. However, members of the Conference expressed various concerns and suggested potential points of modification for the bill.

“As prosecutors, our primary concern is public safety and holding criminals accountable for their conduct . . . Our concerns with raising the juvenile age have always been about maintaining our authority to prosecute violent juveniles and serious felonies in regular adult court and having additional prosecutors in juvenile court to handle the increased case load.

Scott Thomas, District Attorney and
Former President of the Conference

This piece of legislation failed to pass the North Carolina General Assembly. At that time, North Carolina and New York were the only two states in the country to prosecute those 16 and 17 years old in adult court.⁹ However, the North Carolina General Assembly later raised the age through provisions in the final state budget of the 2017 session.¹⁰ The age raise went into effect on December 1, 2019.¹¹

Another major legislative issue during the 2017-2018 legislative session involved sexual assault. The North Carolina General Assembly considered a bill to create more effective procedures for collecting and testing sexual assault kits.¹² This legislation was in response to criticisms surrounding the state Attorney General's announcement of more than 15,000 untested rape kits in the state.¹³

The Conference expressed their support for the legislation for reasons related to victims' rights and for ensuring criminal convictions of the defendants.¹⁴ The Pitt County district attorney and former president of the Conference, Kimberly Robb, highlighted the importance of collecting and testing kits as a means of closure for victims who "never, ever thought they'd have closure."¹⁵ She went on to explain that this testing is important to ensure convictions because juries now expect this level of scientific evidence.¹⁶ Robb stated, "it's no longer enough to say we don't have it . . . They watch 'CSI.' They watch 'NCIS.'"¹⁷ Ultimately, the bill was passed into law.¹⁸

The Conference supported another bill during the 2015-2016 General Assembly, HB792, which aimed to expand victim rights and protections.¹⁹ This piece of legislation created the criminal offense of revenge porn, which made it a felony to knowingly disclose nude photos of an individual without their consent.²⁰ On behalf of the Conference, Amber Lueken Barwick, expressed support of the bill for its ability to help more victims than established criminal statutes permitted.²¹ For example, unlike the pre-existing statutory crimes, the criminal offense of revenge porn does not require the victim and defendant be in a relationship during the commission of the offense.²²

In conclusion, media accounts confirm that the North Carolina Conference of District Attorneys' lobbied during the study period. But the unavailability of official legislative records does not allow us to comprehensively document prosecutor activity before the legislature.

¹ *About the Conference*, NORTH CAROLINA CONFERENCE OF DISTRICT ATTORNEYS, <http://www.ncdistrictattorney.org/about.html> (last accessed April 18, 2021).

² *Conference Staff*, NORTH CAROLINA CONFERENCE OF DISTRICT ATTORNEYS, <http://www.ncdistrictattorney.org/staff.html> (last accessed April 18, 2021).

³ Executive Committee, North Carolina Conference of District Attorneys, <http://www.ncdistrictattorney.org/executivecommittee.html> (last accessed April 18, 2021).

⁴ *Id.*

⁵ *Id.*

⁶ N.C.G.S. §7A-411.

⁷ *About the Conference*, NORTH CAROLINA CONFERENCE OF DISTRICT ATTORNEYS, <http://www.ncdistrictattorney.org/about.html> (last accessed April 18, 2021).

⁸ From the 2017-2018 General Assembly, HB280.

⁹ Bill Hand, N.C. House Bill looks to re-classify juvenile offenders, Sun Journal (March 9, 2017) <https://www.newbernsj.com/news/20170309/nc-house-bill-looks-to-re-classify-juvenile-offenders>.

¹⁰ The Juvenile Justice Reinvestment Act, SB257. *See N.C. Legislators Agree to No Longer Charge All 16 & 17-Year-Olds As Adults*, ACLU (June 19, 2017) <https://www.acluofnorthcarolina.org/en/press->

[releases/nc-legislators-agree-no-longer-charge-all-16-17-year-olds-adults](#) ("As part of the state budget, North Carolina will raise the age of juvenile jurisdiction to 18 for those charged with misdemeanors and some low-level felonies.").

¹¹ *Id.*

¹² From the 2017-2018 General Assembly, SB727 and HB945.

¹³ Lauren Horsch, *A count turned up more than 15,000 untested rape kits in NC. Here's what might be next*, THE NEWS & OBSERVER (Feb. 28, 2018)

<https://www.newsobserver.com/news/local/crime/article202727479.html>.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ HB945 was enacted into law as of June 25, 2018.

¹⁹ From the 2015-2016 General Assembly, HB792. The bill was enacted into law as of September 25, 2015.

²⁰ Christina Sandidge, *Bill to expand North Carolina's 'revenge porn' law advances*, ASSOCIATED PRESS STATE WIRE: NORTH CAROLINA (May 31, 2017) https://infoweb-newsbank-com.libproxy.lib.unc.edu/apps/news/openurl?ctx_ver=z39.88-2004&rft_id=info%3Asid/infoweb.newsbank.com&svc_dat=WORLDNEWS&req_dat=0FF0DDC272369ADF&rft_val_format=info%3Aofi/fmt%3Akev%3Amtx%3Actx&rft_dat=document_id%3Anews%252F164BCBCFAD0D91C0.

²¹ *Id.*

²² *Id.*

State of North Dakota

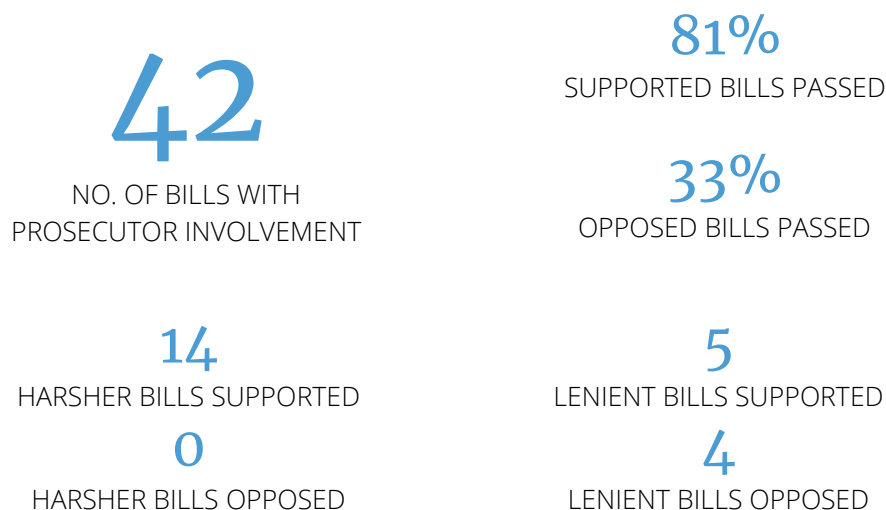
North Dakota State's Attorneys' Association

North Dakota's prosecutors were somewhat active lobbyists; they were involved in approximately 26% of the criminal justice bills introduced in the state legislature during the relevant time period. (They lobbied on 42 of 164 total bills.)



When prosecutors lobbied, they were successful. On average, the legislature passed 73% of criminal justice bills that were introduced. When prosecutors lobbied in favor of a bill, the bill was somewhat more likely to pass (81% pass rate); when they lobbied against a bill it was significantly less likely to pass (33% pass rate).

Overall, North Dakota's prosecutors tended to support more punitive bills. The prosecutors supported 14 bills that would have either expanded the criminal law or increased punishments; they opposed none of the laws that made the system more punitive. However, North Dakota's prosecutors' lobbying was not uniformly in favor of more punitive laws. When it came to bills which would have decreased the scope of criminal law or decreased sentences, they supported 5 such bills and opposed 4.



Association Composition and History

The North Dakota State's Attorneys' Association (NDSAA) consists of the 53 of State's Attorneys, one from each county, as well as the Assistant State's Attorneys.¹ Each year, the members of the association elect a Board of Directors, who each serve a one-year term.² There is also an Executive Director, Aaron Birst, who serves as the state's legal counsel for the North Dakota Association of Counties.³

According to the NDSAA website, state's attorneys are the "legal counsel and advisor to the county" in addition to acting "as prosecutor, representing the state in criminal cases."⁴ The NDSAA website does not provide a mission for the organization, and most of the material is password protected.⁵ They hold at least one conference per year.⁶

Newspaper articles show that North Dakota's prosecutors first assembled in 1903, and decided to make the association permanent.⁷ Their first legislative priority was "curative tax legislation which shall avoid the technical evasion of payment of taxes."⁸ It is clear that the association, from the beginning, was intended to make "recommendations to the legislature on certain laws."⁹

Analysis

Many of the bills on which North Dakota prosecutors lobbied centered on laws related to sex trafficking and marijuana. One exception to this trend was a bill that appropriated money to the Department of Corrections on a county-by-county basis based on incarceration rates. Prosecutors vigorously opposed this bill.¹⁰ This legislation generated a great deal of controversy in the legislature based on budgetary concerns. The NDSAA's expressed concerns about creating financial motives in sentencing because parts of the bill would have asked counties who send more people to prison to provide more funding to prisons:

“The primary crux of why this is offensive, is because you're injecting a financial motive into what should be a judge determination of what is the right sentence and what is the wrong sentence.”¹¹

Aaron Birst, Executive Director, NDSAA

While there were a variety of objections, the prosecutors particularly opposed financial incentives to incarcerate fewer people, arguing it would interfere with their ability to do their job.

“ I would remind you of the Gold Rush days. Where there is opportunity and good fortune, there are also people that will move to take advantage of the other illegal opportunities, the quicker dollar. North Dakota is experiencing extraordinary times. That is those that want to take what others have earned, sell their illegal products, worse yet, traffic human beings. To require the Counties to pick up the tab, or incarcerate locally will not take them off the streets, and provide safety for our communities, it will simply keep them local and given them opportunity to commit more crimes. Should the bottom fall out of our good fortune, I do not anticipate a decrease in crime. As we have learned from history desperate times leads to more crimes.

Rozanna Larson, State’s Attorney for Ward County¹²

Prosecutors also expressed opposition to marijuana legalization and related legislation. For example, prosecutors opposed legislation to legalize medical marijuana in 2015.¹³ The Attorney General testified, “There will be more marijuana use, more impaired driving on the highway, and more people claiming they need this kind of relief than you can ever imagine.”¹⁴ In the 2017-2018 session, medical marijuana again came up for debate in SB 2344.¹⁵ That time, the measure passed but was in conflict with a voter initiative that fully legalized marijuana.

The NDSAA also opposed legislation that would eliminate life without parole sentences for people convicted as juveniles.¹⁶

“ I agree this should be the rarest of circumstances, but I don't think we should get rid of it altogether. I am opposed to you passing this bill.

Birch Burdick, State’s Attorney for Cass County¹⁷

The state’s prosecutors also opposed a bill that would allow the use of deadly force against trespassers by the resident of the property.¹⁸

“ I can see where the sponsor of this bill is coming from, but we are talking about using deadly force for stolen property. I ask that you

give this a Do Not Pass. This bill does not put limits on just homes, it makes it a free for all for anybody running away from a store, or a shop, or whatever. This is a deadly force bill and we do not think it is safe. I just don't want to see people dead from a burglary. We shouldn't end up with more victims.

Rosa Larsen, NDSAA¹⁹

North Dakota prosecutors generally, and the Attorney General in particular, supported creating a commission to study human trafficking as well as other human trafficking-related legislation.²⁰ The Attorney General supported several bills creating stricter statutes to punish and making it easier to prosecute cases of human trafficking.²¹ For example, the Attorney General's office testified in support of HB 1347, which would allow parents to obtain restraining orders against suspected human traffickers.²² North Dakota's prosecutors, and the Attorney General in particular, supported other measures intended to make it easier to prosecute sex trafficking and protect victims.²³

The NDSAA also supported a bill that would require the registration of homeless individuals who are also designated sex offenders.²⁴ Ryan Younggren, the State's Attorney for Cass County, testified that the provision, which requires homeless individuals to re-register every three days, was intended to prevent sex offender registrants from evading their registration requirements: "This measure enables law enforcement to do their job of monitoring such individuals and informs the public of such person's presence in their jurisdiction."²⁵

North Dakota's prosecutors supported some laws that did decrease incarceration like HB 1401, which intended to address justice reinvestment. The text of the bill proposed changes in funding to various programs for those incarcerated as well as good-time credits to reduce prison sentences.²⁶ The Attorney General, testified that the bill was vital to prevent exploding prison populations:

“[Y]ou can use that same funding in doing the right thing for the tax payer but also for these people who are addicted because if you adequately treat who have those addictions the likelihood that you're going to see them back into the criminal justice system, back in jail or back in prison, is greatly reduced.

Wayne Stenehjem, Attorney General²⁷

¹ <http://www.ndsaa.org/about-us/>

² The positions include a president, vice-president, secretary, treasurer, two at-large members, and an NDAA (National District Attorney Association) Representative. See <http://www.ndsaa.org/about-us/>

³ See <http://www.ndsaa.org/about-us/> and <https://www.ndaco.org/about-ndaco/staff/7/>
The NDACo, according to their website, “represent[s] the needs of county government in legislative matters and act[s] as a liaison between counties.” <https://www.ndaco.org/about-ndaco/>

In some legislative testimony, it’s unclear if Aaron Birst is speaking on behalf of the NDSAA, the NDACo or both. Most of the time, he seems to speak for both (and both seem to agree), except where noted.

⁴ State’s Attorneys in North Dakota appear to serve as legal advisors to the county, according to the NDSAA website: “State’s Attorneys provide guidance to county commissioners and officials in interpreting the meaning of the N.D. Century Code and legislation.” See <http://www.ndsaa.org/about-us/>

⁵ The password-protected links appear to be document databases and training materials. There is a page of “Resource Materials,” most of which appear to be anti-marijuana and other news links. <http://www.ndsaa.org/miscellaneous/>

⁶ <http://www.ndsaa.org/conferences/>

⁷ The Bismarck Tribune. Sun. Feb. 22, 1903. pg3

⁸ *Id.*

⁹ Grand Forks Herald. Wed. Jan. 30, 1907. pg8.

¹⁰ HB 1015. 2015-2016 Regular session. <https://www.legis.nd.gov/files/resource/64-2015/library/hb1015.pdf>

¹¹ <https://www.legis.nd.gov/files/resource/64-2015/library/hb1015.pdf>
page 48

¹² <https://www.legis.nd.gov/files/resource/64-2015/library/hb1015.pdf>

Written testimony on pg. 568.

¹³ HB 1430. General Session 2015-2016. The bill failed to pass.

¹⁴ HB 1430. General Session 2015-2016. <https://www.legis.nd.gov/files/resource/64-2015/library/hb1430.pdf>

Prosecutors also opposed HB 1340 (2017-2018 Session) which would have made marijuana possession an infraction, rather than a misdemeanor.

<https://www.legis.nd.gov/files/resource/65-2017/library/hb1340.pdf>

¹⁵ SB 2344 passed and became law in April of 2017. There was some confusion because voters in North Dakota passed Measure 5 in 2016, which legalized medical marijuana. SB 2344 appears to roll back some of Measure 5. See

[https://ballotpedia.org/North_Dakota_Medical_Marijuana_Legalization,_Initiated_Statutory_Measure_5_\(2016\)](https://ballotpedia.org/North_Dakota_Medical_Marijuana_Legalization,_Initiated_Statutory_Measure_5_(2016)) and <https://www.grandforksherald.com/news/4211057-medical-marijuana-supporters-nd-officials-odds>

¹⁶ HB 1195. 2017-2018 Session.

¹⁷ <https://www.legis.nd.gov/files/resource/65-2017/library/hb1195.pdf>

¹⁸ SB 2315 (2017-2018 Session)

¹⁹ <https://www.legis.nd.gov/files/resource/65-2017/library/sb2315.pdf>

Aaron Birst also testified in opposition to the bill.

²⁰ The Attorney General testified in favor. SB 2219, Regular Session 2015-2016.

<https://www.legis.nd.gov/files/resource/64-2015/library/sb2219.pdf>

Another similar bill was HB 1338, which allowed the release of certain documents related to domestic violence fatalities. The Attorney General's office testified in support. See

<https://www.legis.nd.gov/files/resource/64-2015/library/hb1338.pdf>

²¹ See, e.g., SB 2250. Regular Session 2015-2016. Attorney General's office supported a bill to increase penalties for "human traffickers."

<https://www.legis.nd.gov/files/resource/64-2015/library/sb2250.pdf>

²² HB 1347 Testimony. Feb. 3, 2015. <https://www.legis.nd.gov/files/resource/64-2015/library/hb1347.pdf>

2015-2016 Regular Session.

²³ See e.g. HB 1194 (2017-2018 Session). Various prosecutors noted their support for a bill that gave victims more rights, particularly various revisions to "Marcy's Law."

<https://www.legis.nd.gov/files/resource/65-2017/library/hb1194.pdf>

HB 1236 (2017-2018 Session). Attorney General supported a bill to extend the Statute of Limitations for prosecuting sex crimes. [https://www.legis.nd.gov/files/resource/65-](https://www.legis.nd.gov/files/resource/65-2017/library/hb1236.pdf)

[2017/library/hb1236.pdf](https://www.legis.nd.gov/files/resource/65-2017/library/hb1236.pdf)

²⁴ HB 1407. 2015-2016 Regular Session.

SB 2290 (2017-2018 Session).

²⁵ Testimony at page 43 <https://www.legis.nd.gov/files/resource/64-2015/library/hb1407.pdf>

²⁶ See <https://www.legis.nd.gov/files/resource/65-2017/library/hb1041.pdf>

²⁷ *Id.* at page 109. Birst notes in his testimony that prosecutors "10%" object to some measures of the bill. *Id.* at page 142.

State of Ohio

Ohio Prosecuting Attorneys Association

Ohio prosecutors were very active lobbyists; they were involved in approximately 95.9% of the criminal justice bills introduced in the state legislature during the relevant time period. (They lobbied on 256 of the 267 total bills.)



When prosecutors lobbied, they were successful. On average, the legislature only passed 17% of criminal justice bills that were introduced. When prosecutors lobbied in favor of a bill, the bill was somewhat more likely to pass (25% pass rate); when they lobbied against a bill it was somewhat less likely to pass (11% pass rate).

Overall, Ohio prosecutors tended to support more punitive bills. They supported 60 bills that would have either expanded the criminal law or increased punishments. However, Ohio prosecutors' lobbying was not uniformly in favor of more punitive laws. They opposed 26 bills that would have either expanded the criminal law or increased punishments. When it came to bills that would have decreased the scope of criminal law or decreased sentences, prosecutors supported 16 such bills and opposed 23.

256

NO. OF BILLS WITH
PROSECUTOR INVOLVEMENT

25%

SUPPORTED BILLS PASSED

11%

OPPOSED BILLS PASSED

60

HARSHER BILLS SUPPORTED

26

HARSHER BILLS OPPOSED

16

LENIENT BILLS SUPPORTED

23

LENIENT BILLS OPPOSED

Association Composition and History

Founded in 1937, the Ohio Prosecuting Attorneys Association (OPAA) “is a private, non-profit trade organization,” consisting of the 88 prosecuting attorneys from each county in Ohio.¹ The organization employs an Executive Director, Assistant Director, Legal Research and Staff Counsel, Office Manager, and Administrative Assistant.² The elected prosecutors serve as officers of the organization, including President, President-Elect, Vice President, Treasurer, and Secretary.³ There are also “Members-at-Large” positions⁴ and “Alternate Executive Committee members” positions which are also filled by prosecutors.⁵

According to its website, OPAA has the following Mission Statement:

The Ohio Prosecuting Attorneys Association assists county prosecuting attorneys to pursue truth and justice as well as promote public safety. The Association advocates for public policies that strengthen prosecuting attorneys’ ability to secure justice for crime victims and serve as legal counsel to county and township authorities. Further, the Association sponsors continuing legal education programs and facilitates access to best practices in law enforcement and community safety. The Association also offers information to the public about the role of prosecutors in the justice system.⁶

Analysis

OPAA lobbied in favor of several bills that sought to expand the scope of the criminal law. For example, they supported SB 244 (2017–2018), which would have expanded the circumstances for which the crime of promoting prostitution qualified as a third-degree felony. It also would have created a new, aggravated version of the crime classified as a second-degree felony for recidivists. Despite OPAA support, the bill did not pass.

“Like the bill sponsors, we believe that the offenses of human trafficking and promoting prostitution can be curtailed by imposing stiffer penalties on those who commit these crimes. By providing for graduated penalties, Senate Bill 244 will help deter these crimes and ensure that individuals who continue to victimize the vulnerable spend more time in prison.”

Louis Tobin, Executive Director, OPAA

Prosecutors also supported HB 360 (2017–2018), which would have broadened the definition of and increased the penalties for bullying and hazing. This bill also did not pass.

“Our Association is generally supportive of House Bill 360. We feel that the legislation provides a much needed update to the definition of hazing and to the prohibition on recklessly permitting hazing in Revised Code section 2903.31.”

OPAA statement

Prosecutors were more successful in their support for SB 214 (2017–2018), which prohibited female genital mutilation on women and children. Prosecutors speaking on behalf of OPAA supported SB 214, saying the bill “would give our state prosecutors some additional clarity in prosecuting these cases under state law. Most importantly, the bill would prevent offenders from defending their actions based on the consent of the minor, parent, or guardian, or cultural or ritual necessity, arguments that currently present hurdles to successful prosecutions.” The bill was passed and signed into law.

Notably, prosecutors did not support expansion of the criminal law in the area of sexual assault. During the study period, the Ohio Legislature attempted to pass multiple bills eliminating the spousal exception for sexual offenses.⁷ HB 561 (2017–2018), for example, would have “eliminate[d] the spousal exemptions for offenses of rape, sexual battery, unlawful sexual conduct with a minor, gross sexual imposition, sexual imposition, and importuning.”⁸ Media coverage of the bill noted that OPAA “expressed concern that removing the exemption could open the door to false claims made in an attempt to gain leverage in custody and divorce cases.”⁹ None of these bills ultimately passed.

OPAA also supported multiple bills that sought to increase judicial discretion in sentencing. For example, HB 57 (2015–2016) sought to increase the sentencing options for aggravated murder. OPAA explicitly supported HB 57: “Our association supports HB-57 ... With the bill, the judge can set a more appropriate sentence without going all the way to life without parole.” However, it is important to note that HB 57 would have also allowed for harsher sentences. Similarly, prosecutors supported HB 365 (2017–2018), which created indeterminate prison terms. Neither of these bills passed.

“Ohio's prosecutors are supportive of indefinite sentencing. We do have a couple of areas of concern that I will discuss momentarily but overall we believe that indefinite sentencing gives prosecutors, judges, and the Ohio Department of Rehabilitation and Correction an appropriate tool to effect the two overriding purposes of felony sentencing in Ohio—to protect the public from future crime by the offender and others and to punish the offender.”

OPAA statement

OPAA also supported SB 146 (2015–2016), which increased the penalty for distracted driving. OPAA “believe[d] this bill [would] encourage Ohio drivers to be cautious while behind the wheel and think of their safety, and the safety of others.” This bill also did not pass.

When it came to firearms regulations, OPAA maintained inconsistent positions. For example, OPAA supported, SB 208 (2017–2018), which would have allowed police, whether on duty or not, to carry a weapon in any public place. OPAA generally supported “allowing off-duty law enforcement officers to carry concealed weapons under the[s]e circumstances,” though the organization argued in favor of amending the bill. However, OPAA noted that “two changes” to SB 208 were “necessary in order to ensure the safety of these off-duty officers and to protect their employing law enforcement agency.” SB 208 did not pass.

Although prosecutors supported giving police more freedom to carry firearms, they opposed SB 199 (2015–2016), which would have permitted members of the military to carry a firearm without a license. Unlike SB 208, SB 199 was ultimately enacted.

¹ <http://www.ohiopa.org/about.html>

² <http://www.ohiopa.org/about.html>

³ <http://www.ohiopa.org/about.html>

⁴ <http://www.ohiopa.org/about.html>

⁵ <http://www.ohiopa.org/about.html>

⁶ <http://www.ohiopa.org/about.html>

⁷ HB 97 (2017–2018 Session); HB 561 (2017–2018 Session); HB 793 (2017–2018 Session).

⁸ <https://www.beaconjournal.com/article/20180322/NEWS/303229743>;

<https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-561>

⁹ <https://www.beaconjournal.com/article/20180322/NEWS/303229743>

State of Oklahoma

Oklahoma District Attorneys Council

Oklahoma District Attorneys Association

Oklahoma prosecutors were not particularly active lobbyists; they were involved in approximately 5.7% of the criminal justice bills introduced in the state legislature during the relevant time period. (They lobbied on 47 of the 820 total bills.)



When Oklahoma prosecutors lobbied, they were very often successful. On average, the legislature only passed 23% of criminal justice bills that were introduced. When prosecutors lobbied in favor of a bill, the bill was significantly more likely to pass (59.4% pass rate); when they lobbied against a bill it did not pass (0% pass rate).



Overall, Oklahoma prosecutors tended to support more punitive bills. Prosecutors supported 12 bills that would have either expanded the criminal law or increased punishments. They opposed 0 bills that would have either expanded the criminal law or increased punishments. However, Oklahoma prosecutors' lobbying was not uniformly in favor of more punitive laws. When it came to bills that would have decreased the scope of criminal law or decreased sentences, they supported 9 such bills and opposed 3.

47

NO. OF BILLS WITH
PROSECUTOR INVOLVEMENT

59.4%

SUPPORTED BILLS PASSED

0%

OPPOSED BILLS PASSED

12
HARSHER BILLS SUPPORTED
0
HARSHER BILLS OPPOSED

9
LENIENT BILLS SUPPORTED
3
LENIENT BILLS OPPOSED

Association Composition and History

The Oklahoma District Attorney's Council (DAC) is a statutorily created state agency.¹ It is governed by a five-member board: the Oklahoma Attorney General (or a designee), the president of the Oklahoma District Attorneys Association, the president-elect of the Oklahoma District Attorneys Association, a district attorney selected by the Oklahoma Bar Association, and a district attorney selected by the Oklahoma Court of Criminal Appeals.² The primary goal of the DAC is to provide education, training, and coordination of technical efforts to all the DA's in the state.³ The agency's mission statement is: "To protect the citizens of Oklahoma through effective and efficient administration of justice."⁴ The Council appoints and supervises an Executive Coordinator, who manages the daily operations of the DAC.⁵ The DAC is made up of five departments: Executive, Finance, Federal Grants, Victims Services, and Information Technology.⁶ Not only does the DAC assist local DA's by providing financial, personnel, and administrative support, but it is also the administrative agency for the Crime Victims Compensation Board and the state administrative agency for several federal grants (i.e., the Justice Assistance Grant and the Victims of Crime Act from the DOJ).⁷

The Council was formed in 1976 by the Oklahoma Legislature, and it was originally named The District Attorneys Training and Coordination Council. Its primary role was training but it was also formed to strengthen the criminal justice system, "to provide a professional organization for the coordination of technical efforts of all state prosecutors, and to maintain and improve prosecutor efficiency and effectiveness in enforcing the laws..."⁸ In 1982, the Council started to manage financial, personnel, and other administrative issues because the general operations of the district attorney system became state funded.⁹ The Council adopted its current name in 1988.

There is a separate, but closely related, prosecutor organization in the state, the Oklahoma District Attorneys Association (OKDAA).¹⁰ The OKDAA is a nonprofit, private organization that lobbies the legislature. One stated purpose of the Association is "to strengthen the criminal justice system in Oklahoma."¹¹

The Council and the Association share a business address, meet right after one another in the same room with many of the same people, and share leadership (the Council's Executive Coordinator is the Association's Executive Director; the Council's chairman is the Association's president; the Council's vice chairman is the Association's president-elect).¹² The Council is statutorily required to report to the president of the Association, among others, regarding the efforts to implement the purposes of the council.¹³ The Oklahoma Ethics Commission lists the DAC as a lobbyist principal and the District Attorneys Association as an affiliate principal entity, which both have the "legislature/governor and staff" listed as the agencies to be lobbied.¹⁴ In addition, the Oklahoma Secretary of State and the Oklahoma Ethics Commission lists Oklahoma District Attorneys Association, Inc. as another affiliate principal entity.¹⁵

Although the two organizations overlap to a great extent, there are certain things that prosecutors can more easily accomplish through the private Association than the public Council. For example, the Council must hold meetings publicly because it is a state agency; but because the Association is a private organization, its meetings need not be open to the public.¹⁶ As a result, the Council will hold a public meeting publicly, and then many of the same people will meet privately as the Association to discuss the same matters.¹⁷ Another difference is that, although both organizations are able to lobby, the Association can spend unlimited amounts of money on lobbying because of its nonprofit classification in the tax code.¹⁸ Notably, the Ethics Commission's records only reflect the OKDAA, and not the DAC, as having lobbying expenditures throughout the study period.¹⁹

The Oklahoma Ethics Commission reported lobbyist principal expenditures for the years in the study period. Both the Oklahoma District Attorneys Association and Oklahoma District Attorneys Council are lobbyist principals throughout the study period.

Analysis

One recurring issue during the study period was Oklahoma's high incarceration rate. At the beginning of the study period, Oklahoma ranked second in the United States for highest incarceration rate, and by the end of the study period in 2018, Oklahoma was ranked first.²⁰ The DAC provided input on certain legislation specifically aimed at reducing the prison population, including reducing enhanced

sentencing, changing punishments for drug distribution versus drug possession with intent to distribute, and graduating penalties for property crimes based on the value of the property.²¹ However, even if all of those bills passed, the state's prison population was still expected to increase by 14%.²² If the bills did not pass, the prison population was expected to increase 32%.²³ Despite the recognition of the need to reduce incarceration rate, multiple bills were introduced during the study period that increased certain crimes' classification from misdemeanors to felonies²⁴—in other words, they would have further increased the state's population rate.

Another major issue during the study period was capital punishment. The legislature introduced several bills that were intended to reform the death penalty.²⁵ Oklahoma had put executions on hold following mishandled lethal injection executions in 2014 and 2015.²⁶ In April of 2015, the legislature and governor approved an alternative execution method — nitrogen gas inhalation.²⁷ Political division on the matter was readily apparent during floor debates. Republicans supported and sponsored the bills that provided the additional method of execution, whereas Democrats raised concerns regarding the ethics of the new method proposed. Most of the death penalty related bills were authored by Republican senators or representatives.²⁸ Three bills sponsored by Democratic representatives and senators in 2016 attempted to increase the defendant's rights and provide more accountability in response to the botched executions in 2015. For example, individuals who are not directly related to the defendant but serve in a close supporting or professional role to the defendant would be admitted to witness the execution. The bills also removed the requirement that the persons who supplied the drugs, medical supplies or equipment for the execution identities remain confidential and removed the exception that the purchase of the drugs, supplies, and equipment necessary to carry out the execution not be subject to the Oklahoma Central Purchasing Act. In addition, the bills attempted to transfer authority over executions from the Director of the Department of Corrections to the Commissioner of Public Safety.

By the end of the study period, the state of the death penalty in Oklahoma was reflected in HB 1679 of 2017. The bill stipulates that lethal injection will be the primary means of execution in the state and if it is found to be unconstitutional or is unavailable, then nitrogen hypoxia will be the method of execution (then electrocution if nitrogen hypoxia is unavailable or unconstitutional). Furthermore, the legislation decided that the Uniformed Controlled Substances Act does not

apply to anyone carrying out, administering, or participating in executions. The legislature ultimately passed this bill.

The DAC was involved in death penalty legislation throughout the study period. An opinion piece written in 2017 for The Tulsa World by Oklahoma's Governor Brad Henry and attorney Andy Lester — co-chairmen of the Oklahoma Death Penalty Review Commission — highlighted the DAC's commitment and involvement in death penalty reform.²⁹ The Commission worked closely with all players of the judicial system involved in the execution of death penalty legislation and specifically noted that the DAC was a "major stakeholder" and took up recommendations while committing to reforms.³⁰ Specifically, the DAC "provided training on common causes of wrongful convictions" and considered "the formations of a best practices committee."³¹ Finally, the article stressed that "the actions taken by the . . . DAC are essential steps toward reforming Oklahoma's death penalty system."³²

Child and elder abuse were the subject of more than 20 bills throughout the study period. Prosecutors commented on or were involved in several of these bills.³³ One of the bills proposed in 2016 would have created an affirmative defense to enabling child abuse, neglect, and exploitation if the parent or other person had a reasonable apprehension that any action to stop the child abuse would result in substantial bodily harm to the parent, other person, or child.³⁴ When discussing the bill on the floor, Representative Virgin recounted that the "DAC has concerns about the bill." The bill died in committee.

Some prosecutor lobbying on these matters centered around prosecutors' workload. For example, a prosecutor from Tulsa county stated that the DA's office felt "overburdened" by unsubstantiated reports of vulnerable adult abuse, so the legislature passed a bill that prohibits unsubstantiated findings of abuse or exploitation of a vulnerable adult and findings of self-neglect from being forwarded to the district attorney's office.³⁵ Similarly, the DAC worked with Representative Wright in 2018 to ensure that the Department of Human Services and law enforcement conducted joint investigations after receiving a report of alleged abuse, neglect, or exploitation of a vulnerable adult, in order to reduce duplicative efforts.³⁶

The DAC played a pivotal role in the introduction of a bill that would have allowed statements alleging neglect to be admissible as evidence in criminal or juvenile proceedings when the statement is made by a child under the age of 13, a

disabled child older than 13, or an incapacitated person.³⁷ That legislation would have increased the scope of admissible evidence because the law before the proposed legislation only permitted statements of abuse from such victims, not also neglect.³⁸ One of the authors of the bill, Rep. Bush, said: “This is a request bill from the District Attorneys Council.” The bill passed the House but stalled in the Senate.³⁹

Marijuana was another important legislative issue during the study period. Representative Peterson stated that the DAC endorsed his 2016 bill that would modify the punishment for a conviction or subsequent possession of marijuana (and other substances) from not less than 2 years nor more than 10 years to a sentence of not less than 1 year nor more than 5 years.⁴⁰ However, in 2018, the DAC expressed opposition to a change to an ordinance on the penalty for marijuana possession in Oklahoma City because the new process did not address addiction to marijuana.

“When the district attorney’s offices were handling these cases, requirements were placed on defendants to receive counseling for their drug use. The ticketing of these crimes or the requirement of only paying fines does not provide any ability to make sure the person gets off the drugs if they’re on them.

Brian Hermanson, Chair of District Attorneys Council⁴¹

Oklahoma prosecutors were also involved in legislation aimed at reform and reducing the prison population. One bill in 2015, coined the Justice Safety Valve, authorized courts to depart from the mandatory minimum sentencing requirements under certain circumstances.⁴² One of the bill’s authors, Representative Peterson, said he met with the district attorneys and that they “had some concerns” regarding the list of allowable departures from the mandatory minimum.⁴³ The version of the bill before Representative Peterson’s meeting with the DAs did not make an exception for 85% crimes and crimes listed in Title 57.⁴⁴ However, the bill as passed excluded 85% crimes and the violent crimes listed in Title 57 from the list of permissible deviations from mandatory sentencing due to the DAs input.⁴⁵ In other words, it appears that the bill was amended to address prosecutors’ concerns.

In addition, Trent Baggot from DAC spoke favorably about a bill in 2016 that would give prosecutors discretion to file a charge as a misdemeanor instead of a felony.⁴⁶ He said the DAC had yet to discuss the bill but that he thought it was

“generally positive” and that there were “some minor things to work out on it in terms of what you call it.”⁴⁷

In addition to reform legislation, the legislature also passed many bills that either created more felonies or increased existing misdemeanor crimes to felonies. In addition, in 2016, the legislature redefined “prior pattern of physical abuse” for domestic violence and child abuse crimes, which made defendants eligible for a felony conviction with two, instead of three, separate incidents of prior abuse.⁴⁸ One of the authors of the bill, Representative Biggs, said that “AG and former prosecutor, Leslie March, likes this bill,” indicating a level of prosecutorial activity on the legislation.⁴⁹

Finally, throughout the study period, the DAC not only involved itself with traditional legislation, but also lobbied for laws that the legislature placed on the ballot for a popular vote.⁵⁰ Several news accounts record the DAC as supporting and advocating for Marsy’s Law.⁵¹ Marsy’s Law provided more constitutional rights for victims of crimes. Such rights included the right to be notified about criminal proceedings of their case, the right to receive full restitution, and the right to communicate with the prosecutor on their case.⁵² While explaining the effects of Marsy’s Law, Mike Fields, Garfield District Attorney and the chairman of the DAC at the time, voiced the council’s support for the proposed law. He noted: “It raises the stakes for all of us,” he said. “It sends the messages loudly and clearly that we need to do the very best job we actually can to make sure that we’re living up to our requirements under statute.”⁵³ Notably, Stillwater News Press reported on its opinion of Marsy’s Law and highlighted that the “offices facing the most strain from passage of Marsy’s Law belong to district attorneys, and the Oklahoma District Attorneys Council supports the measure.”⁵⁴ The total state communication expenditure on this specific State Question totaled \$492,360.57.⁵⁵

¹ 19 Okla. Stat. § 215.28

² [https://www.ok.gov/dac/About the DAC/Inside the Office/History of the DAC.html](https://www.ok.gov/dac/About%20the%20DAC/Inside%20the%20Office/History%20of%20the%20DAC.html)

³ *Id.*

⁴https://oksenate.gov/sites/default/files/agencies_documents/FY16_DAC_M%26G.pdf

⁵ *Id.*

⁶ *Id.*

⁷ [https://www.ok.gov/dac/About the DAC/index.html](https://www.ok.gov/dac/About%20the%20DAC/index.html)

⁸[https://www.ok.gov/dac/About the DAC/Inside the Office/index.html#:~:text=The%20District%20Attorneys%20Training%20and,prosecutors%2C%20and%20to%20maintain%20and](https://www.ok.gov/dac/About%20the%20DAC/Inside%20the%20Office/index.html#:~:text=The%20District%20Attorneys%20Training%20and,prosecutors%2C%20and%20to%20maintain%20and)

⁹ *Id.*

¹⁰ <https://nondoc.com/2019/07/19/district-attorneys-use-twin-groups-to-push-criminal-justice-policies/>

¹¹ *Id.*

¹² *Id.*

¹³ <http://ok.elaws.us/os/19-215.28>

¹⁴<https://guardian.ok.gov/PublicSite/SearchPages/LobbyDetail.aspx?OrganizationID=7199>

¹⁵ *Id.*

¹⁶ <https://nondoc.com/2019/07/19/district-attorneys-use-twin-groups-to-push-criminal-justice-policies/>

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹<https://guardian.ok.gov/PublicSite/SearchPages/ConfigurableDetail.aspx?CodeHook=CF167B20-C51C-497D-8FE7-A0ADC9489032> In the years 2015-2017, Patrick McFerron was documented as the lobbyist for OKDAA and spent \$1,986, \$2,490, and \$2,780 in the respective year on lobbying. In 2018, Julia Jernigan lobbied for the OKDAA, spending \$2,123.02.

²⁰ <https://www.vera.org/downloads/pdffdownloads/state-incarceration-trends-oklahoma.pdf>

²¹ SB 649; SB 793, HB 2281

²²<https://plus.lexis.com/document/?pddocfullpath=%2Fshared%2Fdocument%2Fnews%2Furn%3AcontentItem%3A5S5F-R9H1-JBCN-42DV-00000-00&pddocid=urn%3AcontentItem%3A5S5F-R9H1-JBCN-42DV-00000-00&pdcontentcomponentid=401975&pdteaserkey=sr2&pditab=allpods&ecomp=1yrLk&earg=sr2&cbc=0&pdmfid=1530671&crd=5242594a-cb1f-4e0d-97ab-083a215b87f1> (OK049 from news database)

²³ *Id.*

²⁴ A few examples: SB 626, HB 1318(2015); SB 1141 (2016); HB 1469 (2017);

²⁵ SB 655; SJR 31; HB 1879 (passed)

²⁶ In 2014, a phlebotomist misplaced the IV in inmate Clayton Lockett, causing him to have a heart attack. Then in January 2015, corrections officers used the wrong drug to execute inmate Charles Warner. <https://www.npr.org/sections/thetwo-way/2015/10/08/446862121/oklahoma-used-the-wrong-drug-to-execute-charles-warner>

²⁷ HB 1879 (2015 session)

²⁸ 2015à HB 1879(R); SJR 31 (R); SB 794(R); 2016à HB 2958(D); HB 3042(R); HB 2750(D); SB 1559(D); 2017à HB 1679(R); HB 1986(R)

²⁹ Brad Henry and Andy Lester, *OBA and DAC Lead the Way on the Death Penalty*, Dec. 7, 2017, https://tulsaworld.com/opinion/gov-brad-henry-and-andy-lester-oba-and-dac-lead/article_b6971bce-538e-5aaf-ab96-f15497e0ba71.html

³⁰ *Id.*

³¹ *Id.*

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- ³² *Id.* While this article stressed DAC's involvement with the issue, it was not particularly clear about the specific positions that the organization took.
- ³³ HB 2719 (2016); SB 1287 (2016); HB 1922 (2017); SB 993 (2018)
- ³⁴ HB 2719 (2016)
- ³⁵ http://webserver1.lsb.state.ok.us/cf_pdf/2015-16%20SUPPORT%20DOCUMENTS/BILLSUM/House/SB1287%20ENGR%20BILLSUM.PDF
- ³⁶ http://webserver1.lsb.state.ok.us/cf_pdf/2017-18%20ENR/SB/SB993%20ENR.PDF
- ³⁷ HB 1922 (2017)
- ³⁸ http://webserver1.lsb.state.ok.us/cf_pdf/2017-18%20INT/hB/HB1922%20INT.PDF
- ³⁹ <http://www.oklegislature.gov/BillInfo.aspx?Bill=hb1922&Session=1700>
- ⁴⁰ HB 2881
- ⁴¹ OK001à <https://kfor.com/news/council-members-set-to-vote-on-changing-penalty-for-marijuana-possession-in-oklahoma-city/>
- ⁴² HB 1518 (2015)
- ⁴³ From legislative spreadsheet on HB 1518 (2015)
- ⁴⁴ http://webserver1.lsb.state.ok.us/cf_pdf/2015-16%20INT/hB/HB1518%20INT.PDF (bill as introduced)
- ⁴⁵ http://webserver1.lsb.state.ok.us/cf_pdf/2015-16%20ENR/hB/HB1518%20ENR.PDF (bill as enrolled)
- ⁴⁶ HB 2472 (2016)
- ⁴⁷ Quote from legislative spreadsheet on HB 2472 (2016)
- ⁴⁸ SB 1491 (2016).
- ⁴⁹ Quote from legislative spreadsheet on HB 1491 (2016)
- ⁵⁰ These initiatives are referred to as Legislative Referendum State Questions.
- ⁵¹ SQ 794 (2018)
- ⁵² <https://okpolicy.org/state-question-794-marsys-law-crime-victim-rights-amendment/>
- ⁵³ https://www.enidnews.com/news/state/laws-protect-victims-but-not-the-constitution/article_167af669-1c05-5db5-a4c4-87ab21602774.html (OK030)
- ⁵⁴ https://www.stwnewspress.com/opinion/our-view-yes-on-state-question/article_3d3c9cf4-dca1-11e8-9ba6-dfe5ad9dc3b1.html (OK056)
- ⁵⁵ <https://guardian.ok.gov/PublicSite/SearchPages/ConfigurableDetail.aspx?CodeHook=21BF1A19-E9BF-4949-9D56-62EA052FEE47>

State of Oregon

Oregon District Attorneys Association

Oregon prosecutors were active lobbyists; they were involved in approximately 45.4% of the criminal justice bills introduced in the state legislature during the relevant time period. They lobbied on 88 of 194 total bills for which we had sufficient information for us to gauge prosecutor involvement. There were an additional 151 criminal justice bills for which sufficient information was not available.



When Oregon prosecutors lobbied, they were only somewhat successful. On average, the legislature only passed 52.6% of criminal justice bills that were introduced. When prosecutors lobbied in favor of a bill, the bill was just as likely to pass (53.4% pass rate). However, when they lobbied against a bill it was less likely to pass (30.8% pass rate).

Overall, Oregon prosecutors tended to support more punitive bills. They supported 20 bills that would have either expanded the criminal law or increased punishments. However, Oregon prosecutors' lobbying was not uniformly in favor of more punitive laws. They opposed 4 bills that would have either expanded the criminal law or increased punishments. When it came to bills would have decreased the scope of criminal law or decreased sentences, they supported 6 such bills and opposed 7.

88

NO. OF BILLS WITH
PROSECUTOR INVOLVEMENT

53.4%

SUPPORTED BILLS PASSED

30.8%

OPPOSED BILLS PASSED

20

HARsher BILLS SUPPORTED

6

LENIENT BILLS SUPPORTED

4

HARsher BILLS OPPOSED

7

LENIENT BILLS OPPOSED

Association Composition and History

The Oregon District Attorneys Association (ODAA) is a non-profit corporation, supported by members' dues. It is comprised of the state's 36 elected district attorneys, deputy district attorneys, and the U.S. Attorneys serving in Oregon.¹ The ODAA is one of the smallest prosecutor associations in the nation.² A Board of Directors governs the ODAA.³ The Board of Directors includes a President, Vice President, Secretary/Treasurer, and seven Directors.⁴

Founded in 1952, the mission statement of the Oregon District Attorneys Association is "[t]he pursuit of justice through education and advocacy."⁵ In addition to a mission statement, the ODAA also has a value statement, which highlights that "Justice, Public Safety and Public Confidence in the Criminal Justice System Requires: Holding offenders accountable through truth and transparency in sentencing with appropriate sanctions [;] [t]he protection of and advocacy for crime victims and their rights [;] [a] balanced approach to criminal justice, including adequate incarceration, proven treatment programs and crime reduction strategies [;] [c]ollaboration with community and public safety partners for a system-wide approach to safety and strong support for public safety infrastructure [;] [t]he promotion of equitable access to justice and equal treatment under the law."

Analysis

Oregon prosecutors were involved in a wide array of legislation during the study period. Both the ODAA and individual Oregon prosecutors lobbied in favor and against various pieces of legislation. Major issues during the study period included the regulation and reform of police officers, the creation or expansion of crimes, the increase and decrease of criminal penalties, sex crimes, and domestic violence.

Prosecutors in Oregon were involved in ten bills that dealt with police regulation and reform. Oregon prosecutors opposed seven bills that would have regulated police or created measures that would make law enforcement officers more accountable. For example, Alex Gardner from the Lane County DA's office spoke against SB 871A.⁶ SB 871A would require law enforcement agencies to investigate into the use of deadly physical force by agency police officers be led by a person not employed by the agency, and it required incidents of deadly physical force be presented to a grand jury. He also spoke against SB 910,⁷ which directed law

enforcement agencies to notify the Attorney General's office when police officer's use of deadly physical force caused the death of a person.

Oregon prosecutors also opposed bills that would increase transparency in police interviews and recordings. For example, Kurt Miller of the ODAA spoke against HB 3242⁸ and HB 3244.⁹ HB 3242 would require peace officers to electronically record custodial interviews with people under 18 when investigating a felony or allegations that a person under 18 committed an act that if committed by an adult would constitute a crime. HB 3244 would prohibit police from using deceit or trickery during an interview with youth concerning an act that, if committed by an adult, would constitute a crime. In a related vein, Oregon prosecutors opposed HB 2704¹⁰ which would create an exemption to the prohibition on recording a police officer performing their official duties when the person recording is in a place where the person may lawfully be.

The ODAA also opposed SB 391¹¹ and SB 575.¹² SB 391 prohibited seizure of property deposited to obtain security release in criminal case by law enforcement agency without a search warrant or court order. SB 575 would require police officers to inform persons stopped for traffic violations or upon suspicion of criminal activity that they have a right to refuse a request to search. This opposition was only sometimes successful—three of the law enforcement reform bills prosecutors opposed passed while four of the bills failed.¹³

When Oregon prosecutors spoke in favor of two bills related to law enforcement, those bills granted law enforcement more independence or privileges. Specifically, Rachel Sowray of the ODAA spoke in favor of HB 2776,¹⁴ which would authorize peace officers to apply for and circuit court to enter ex parte emergency protective order when the court finds probable cause that the person was the victim of domestic disturbance or abuse and the protective order is necessary to prevent abuse. Rod Underhill, Multnomah County District Attorney, spoke in favor of HB 2901,¹⁵ which authorized law enforcement agencies to install pen registers or trap and trace devices without a warrant or court order in certain circumstances. Despite prosecutor support, the bills both failed.

Oregon prosecutors lobbied on nine bills that created new crimes or expanded existing crimes – each time they supported the legislation. For example, the ODAA supported the creation of the crime of threatening a mass injury event,¹⁶ the crime of animal abuse in the third degree,¹⁷ and the crime of unlawful dissemination of intimate image.¹⁸ Oregon prosecutors also supported legislation

that expanded existing criminal laws. For example, the ODAA supported a bill that expanded the crime of assault in the fourth degree,¹⁹ a new way to commit the crime of coercion.²⁰ The Multnomah County District Attorney's Office also supported a bill that creates a new manner of committing the crime of assault in the third degree.²¹

When it came to sentencing, prosecutors lobbying on bills that dealt with maximum sentencing or increased criminal penalties was mixed. The ODAA supported a bill²² that would increase penalties for the crime of harassment if the offense consists of subjecting another person to offensive physical contact, is committed against family or household member and is committed in immediate presence of or witnessed by a minor child in specified circumstances. They also supported a bill²³ which increased the penalty for the crime of strangulation when committed knowing the victim was pregnant. But the ODAA opposed a bill²⁴ that would have authorized the court to order people convicted of felony DUI to wear a continuous alcohol monitoring device in lieu of mandatory minimum sentence of 90 days' incarceration. Notably, Oregon prosecutors did not always agree on these bills. For example, the ODAA opposed a bill²⁵ that required certain defendants to be given credit for each day in jail when calculating the maximum period of commitment for a defendant lacking fitness to proceed. However, the Marion County District Attorney, Walt Beglau spoke against the legislation.

Oregon prosecutors were also involved in a number of bills that decreased criminal penalties or made the way they were calculated more lenient. The ODAA supported one such bill,²⁶ which clarified crime classification categories that may be expunged if certain requirements are met. However, the ODAA opposed a number of other bills that would reduce criminal penalties. Specifically, the ODAA opposed a bill²⁷ that would reduce the penalty of theft committed by returning stolen merchandise if the value of the merchandise was under \$1,000. The ODAA also opposed HB 2698,²⁸ which would allow a person with convictions within the previous 10 years to file a motion to set aside the conviction after three years from the date of judgment if other convictions were part of the same criminal episode as the conviction that is the subject of motion.

Finally, Oregon prosecutors took a particular interest in bills related to sex crimes and domestic violence. Indeed, these categories seemed to garner the most prosecutor lobbying. The ODAA supported a bill that authorized prosecution of first-degree sex crimes any time after the commission of the crime if a prosecuting attorney obtains corroborating evidence of a crime²⁹ and a bill that

created the affirmative defense to the crime of prostitution if, at the time of the alleged offense, the defendant was the victim of certain trafficking crimes.³⁰ Similarly, the ODAA supported a bill that established procedures for persons to file a motion to vacate a judgment of conviction for prostitution if the defendant was the victim of sex trafficking at or around the time of the offense.³¹ The ODAA opposed a bill that would eliminate automatic reporting of persons found to have committed an act that would constitute a felony sex crime if committed by an adult.³²

However, Oregon prosecutor lobbying on these issues was not always consistent. For example, the ODAA supported a bill that provided release decisions for defendants charged with sex crimes or crimes constituting domestic violence must include an order prohibiting direct or third-party contact with the victim while the defendant is in custody,³³ but opposed a bill that established automatic restraining orders against a petitioner in a Family Abuse Act proceeding that restrains the petitioner from directly or indirectly causing the respondent to violate certain terms of the Family Abuse Prevention Act order.³⁴

¹ *Welcome to the Oregon District Attorneys Association*, OREGON DISTRICT ATTORNEYS ASSOCIATION, <https://www.oregonda.org/> (last visited Apr. 23, 2021); Tim Colahan, *Oregon District Attorneys*, OREGON DISTRICT ATTORNEYS ASSOCIATION, <https://olis.leg.state.or.us/liz/2017R1/Downloads/CommitteeMeetingDocument/97015> (last visited April 28, 2021).

² Colahan, *supra* note 2.

³ *Welcome to the Oregon District Attorneys Association*, *supra* note 1.

⁴ *Mission*, OREGON DISTRICT ATTORNEYS ASSOCIATION, <https://www.oregonda.org/copy-of-about-us> (last visited Apr. 23, 2021).

⁵ *Welcome to the Oregon District Attorneys Association*, *supra* note 1.

⁶ S.B. 871A, 78th Leg., 2015 Regular Sess. (Or. 2015).

⁷ S.B. 910, 78th Leg., 2015 Regular Sess. (Or. 2015).

⁸ H.B. 3242, 79th Leg., 2017 Regular Sess. (Or. 2017).

⁹ H.B. 3244, 79th Leg., 2017 Regular Sess. (Or. 2017).

¹⁰ H.B. 2704, 78th Leg., 2015 Regular Sess. (Or. 2015).

¹¹ H.B. 391, 78th Leg., 2015 Regular Sess. (Or. 2015).

¹² S.B. 575, 78th Leg., 2015 Regular Sess. (Or. 2015).

¹³ SB 391, HB 2704, HB 3242 passed while SB 871A, SB 910, SB 575, HB 3244 failed.

¹⁴ H.B. 2776, 78th Leg., 2015 Regular Sess. (Or. 2015).

¹⁵ H.B. 2901, 78th Leg., 2015 Regular Sess. (Or. 2015).

¹⁶ H.B. 2380, 79th Leg., 2017 Regular Sess. (Or. 2017).

¹⁷ H.B. 2637, 79th Leg., 2017 Regular Sess. (Or. 2017).

¹⁸ S.B. 188, 78th Leg., 2015 Regular Sess. (Or. 2015).

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- ¹⁹ S.B. 493, 79th Leg., 2017 Regular Sess. (Or. 2017).
- ²⁰ H.B. 3468, 78th Leg., 2015 Regular Sess. (Or. 2015).
- ²¹ S.B. 525, 78th Leg., 2015 Regular Sess. (Or. 2015).
- ²² H.B. 2988, 79th Leg., 2017 Regular Sess. (Or. 2017).
- ²³ S.B. 526, 78th Leg., 2015 Regular Sess. (Or. 2015).
- ²⁴ S.B. 357, 79th Leg., 2017 Regular Sess. (Or. 2017). S.B. 356 was identical and had identical opposition.
- ²⁵ H.B. 2308, 79th Leg., 2017 Regular Sess. (Or. 2017).
- ²⁶ S.B. 507, 79th Leg., 2017 Regular Sess. (Or. 2017).
- ²⁷ S.B. 2615, 79th Leg., 2017 Regular Sess. (Or. 2017).
- ²⁸ 79th Leg., 2017 Regular Sess. (Or. 2017).
- ²⁹ H.B. 1600, 78th Leg., 2016 Regular Sess. (Or. 2016).
- ³⁰ S.B. 250, 79th Leg., 2017 Regular Sess. (Or. 2017).
- ³¹ S.B. 249, 79th Leg., 2017 Regular Sess. (Or. 2017).
- ³² H.B. 2902, 78th Leg., 2015 Regular Sess. (Or. 2015).
- ³³ H.B. 3466, 78th Leg., 2015 Regular Sess. (Or. 2015).
- ³⁴ S.B. 652, 79th Leg., 2017 Regular Sess. (Or. 2017).

State of Pennsylvania

Pennsylvania District Attorneys Association

Pennsylvania's prosecutors were not particularly active lobbyists; they were involved in approximately 8% of the criminal justice bills introduced in the state legislature during the relevant time period. (They lobbied on 47 of 607 total bills.)



When Pennsylvania's prosecutors lobbied, they were very often successful. On average, the legislature only passed 6.8% of criminal justice bills that were introduced. When prosecutors lobbied in favor of a bill, the bill was significantly more likely to pass (52.6% pass rate); when they lobbied against a bill—something that they did quite infrequently—none of the bills passed (0% pass rate).

Overall, Pennsylvania's prosecutors tended to support more punitive bills. They supported 22 bills that would have either expanded the criminal law or increased punishments. (They opposed no such bills.) When it came to bills would have decreased the scope of criminal law or decreased sentences, prosecutors supported one such bill and opposed one such bill.

47
NO. OF BILLS WITH
PROSECUTOR INVOLVEMENT

52.6%
SUPPORTED BILLS PASSED
0%
OPPOSED BILLS PASSED

22
HARsher BILLS SUPPORTED
0
HARsher BILLS OPPOSED

1
LENIENT BILLS SUPPORTED
1
LENIENT BILLS OPPOSED

Association Composition and History

For most of the study period, the Pennsylvania District Attorneys Association (PDAA) consisted of the 67 of elected district attorneys from each circuit as well as “1,000 members which primarily include current District Attorneys and their assistants; former District Attorneys and assistant district attorneys; deputy attorneys general; Assistant US Attorneys; and police chiefs.”¹ After he assumed office in 2018, Philadelphia District Attorney Larry Krasner, who had actively opposed many of the lobbying activities of the PDAA during his campaign, withdrew from the association.² The other 66 elected district attorney members have remained.

The PDAA elects an executive committee every year from the currently serving district attorneys.³ Some of the permanent staff members include Greg Rowe, the Executive Director⁴ and Allison Hrestak, the Director of Training and Membership Services.⁵

The PDAA holds two conferences every year that include training seminars and other networking sessions.⁶ The PDAA is also very involved in proposed legislation: “The Association informs membership notice of recently enacted or moving legislation of importance to District Attorneys.”⁷ Involvement in both federal and state legislative efforts appear to be vital to the mission of the PDAA’s members; the website states PDAA members “actively participate in legislative efforts which will impact on the prosecution of criminal cases, victim rights and public safety. Periodic trips have been made to Harrisburg to meet with Pennsylvania senators and representatives to address State legislative issues, and also to Washington, D.C. to address relevant federal issues.”⁸

The PDAA states its missions as follows:

- Assist the membership in the pursuit of justice and in all matters relating to the execution of their duties.
- Advocate the position of the Association to the government and citizens of Pennsylvania.
- Coordinate with other agencies on matters of mutual concern.
- Communicate the Association’s position to its membership and the public on criminal justice matters.⁹

One section of the PDAA is the “Best Practices Committee,” which issues legal guidance and model policies for a variety of law enforcement and criminal law

topics.¹⁰ The PDAA says it addresses topics such as “eyewitness identifications, officer-involved shootings, and internal office policies. PDAA’s “Best Practices” have been presented at national conferences and in other states, resulting in model reforms for practices throughout the United States.”¹¹

The PDAA also runs a site called “MyDistrictAttorneyPS.com,” which has information about the role of prosecutors as well as explanatory videos and other information about the role of prosecutors in the state.¹²

The PDAA was initially established in 1912 “for the purpose of providing uniformity and efficiency in the discharge of duties and functions of Pennsylvania’s 67 District Attorneys and their assistants.”¹³

Analysis

Overall, the available information showed that Pennsylvania’s legislators were not very active lobbyists. When they did lobby, they tended to support harsher penalties; they were not very involved in bills intended to make the criminal laws less harsh.

The vast majority of the bills that the PDAA supported were bills to increase penalties for existing crimes or to create new crimes to allow for sentencing enhancements. For example, the PDAA supported a bill that restored mandatory minimum sentences for violent crimes.¹⁴

“Mandatory minimum sentences work to improve public safety: they help to keep the most dangerous offenders off our streets. They also ensure that defendants who commit similar crimes with similar records receive the same sentences... Should a person who rapes a child get a short sentence in state prison? Should a person who breaks into a private residence and terrorizes the people inside with a firearm get a county prison sentence? Should a person selling meth while in possession of a firearm receive a short sentence in county prison? Should an individual trafficking heroin in our neighborhoods walk away with mere probation? Until HB 741 is enacted, they all can receive—and some have received—generously light sentences.

David J. Arnold, Jr., Lebanon County District Attorney
and PDAA President¹⁵

Many of the bills supported by Pennsylvania's prosecutors were related to expanding the rights of victims and making it easier to prosecute certain types of crimes, like rape, domestic violence, and sex trafficking. For example, the PDAA supported SB 1011, commonly known as "Marsy's Law," which would enshrine certain victims' rights in the state Constitution.¹⁶

“Victims of crime are real people with real families who suffer real harm. They did not deserve what happened to them. But what they do deserve is to be safe, to be treated with fairness and dignity, and to be made whole. They deserve to be heard.

David J. Arnold, Jr., Lebanon County District Attorney
and PDAA President¹⁷

The PDAA also supported legislation that would expand rights for victims of sex trafficking and make it easier to prosecute such cases. For example, one series of bills would have allowed the admission of more hearsay statements and limit the impeachment of witnesses who had prior histories of being trafficked or assaulted.¹⁸ The PDAA issued a statement that said, in part, "These bills address these very real situations so that reliable evidence from these vulnerable victims can be introduced at trial."¹⁹ The PDAA also supported increased penalties for domestic violence crimes.²⁰

The PDAA also supported a bill that brought Pennsylvania's sex offender registry within constitutional limits; it was called "Meagan's Law." State courts had held that portions of the state's sex offender registration and notification laws were unconstitutional as applied to some previously convicted sex offenders.²¹

“It is absolutely necessary that the full House quickly approves this legislation and that the Senate takes it up soon thereafter. Sex offenders pose a real danger to Pennsylvanians and HB 1952 will help ensure that the public knows who these offenders are.

John Adams, Berks County District Attorney
and PDAA President²²

Pennsylvania's District Attorneys Association largely opposed legislative efforts to make it more difficult for prosecutors to prove their case. For example, the PDAA opposed a law to protect juvenile victims of sex trafficking and prostitution from prosecution.

“ [T]hese girls and boys need the involvement of the juvenile court system in appropriate cases. Not because we want to lock them up or treat them like criminals, but because we want to see them get better. That is and has always been our reasoning: we want them to heal. So many of the victims who have engaged in prostitution and related crimes have been broken by their perpetrators. They cannot make appropriate decisions on their own; that is among the reasons why they need the types of programming available through or facilitated by the juvenile court system. ...The leverage that the juvenile justice system provides is crucial to the healing process, and we cannot just remove it. It is needed to keep the girls and boys in programming and away from their pimp or other bad influences. Without it, there will be no single existing entity or system to help these girls and boys.

Jack Whelan, Delaware County District Attorney²³

The PDAA also opposed legislation that was intended to limit the use of asset forfeiture.

“ This bill should be referred to as, ‘The Pennsylvania Drug Dealer Bill of Rights’... When more people are dying from drug overdoses than ever before, now is not the time to give a break to drug dealers. This bill will allow drug dealers to traffic more drugs, make more money and thrive.

Risa Ferman, Montgomery County District Attorney
and PDAA President²⁴

¹ <https://www.pdaa.org/history/>

² Krasner described the PDAA as “the voice of the past.” See <https://www.inquirer.com/philly/news/crime/philadelphia-da-district-attorney-larry-krasner-withdraws-pdaa-20181116.html>

³ See <https://www.pdaa.org/executive-committee/>

⁴ Rowe previously served as the Director of Legislation and Policy. That position no longer appears on the website. See <https://www.pdaa.org/staff/>

⁵ <https://www.pdaa.org/staff/>

⁶ <https://www.pdaa.org/history/>

⁷ <https://www.pdaa.org/history/>

⁸ <https://www.pdaa.org/history/>

⁹ <https://www.pdaa.org/mission/>

¹⁰ For example, the Best Practice Committee released a model policy on body cameras. See <https://www.pdaa.org/pennsylvania-district-attorneys-issue-best-practices-on-body-worn-cameras/>

Another publication addressed police shooting investigations. See <https://www.pdaa.org/pa-district-attorneys-recommend-independent-investigations-of-officer-involved-shootings-pdaa-issues-first-in-the-nation-best-practices-guidelines-for-police-shootings/>

¹¹ *Id.* There are also a variety of other committees in the PDAA. See <https://www.pdaa.org/committee-listings/>

¹² <https://mydistrictattorneypa.com/>

¹³ <https://www.pdaa.org/history/>

¹⁴ HB 741. 2017 Session. See <https://www.pdaa.org/mandatory-minimum-sentences-must-be-restored-to-keep-violent-criminals-off-the-streets/>

¹⁵ <https://www.pdaa.org/pdaa-support-for-hb-741/>

David Arnold was the president for the 2016-2017 legislative session. <https://www.pdaa.org/lebanon-co-da-david-arnold-takes-over-as-pdaa-president/>

¹⁶ <https://www.pdaa.org/pdaa-support-for-marsys-law-s-b-1011/>

¹⁷ <https://www.pdaa.org/pdaa-support-for-marsys-law-s-b-1011/>

¹⁸ See <https://www.pdaa.org/pdaa-support-letter-for-hb-2321-2324-and-2325/>

¹⁹ *Id.*

²⁰ <https://www.pdaa.org/pdaa-support-for-s-b-501/>

²¹ See *Commonwealth v. Muniz*, 164 A.3d 1189 (Pa. 2017).

²² <https://www.pdaa.org/pdaa-issues-statement-on-fixes-to-pa-megans-law/>

²³ <https://www.pdaa.org/testimony-of-the-honorable-jack-whelan-district-attorney-delaware-county-before-the-senate-judiciary-committee-regarding-senate-bill-851/>

²⁴ <https://www.pdaa.org/civil-forfeiture-changes-will-create-drug-dealers-bill-of-rights/>

State of Rhode Island

Office of the Attorney General

Rhode Island District Court Prosecutors Association

Rhode Island prosecutors were very active lobbyists; they were involved in approximately 46% of the criminal justice bills introduced in the state legislature during the relevant time period. (They lobbied on 389 of 849 total bills for which we had sufficient information to gauge prosecutor involvement. There were an additional 56 criminal justice bills for which sufficient information was not available.)



When the prosecutors lobbied, they were somewhat successful. On average, the legislature only passed 18% of criminal justice bills that were introduced. When prosecutors lobbied in favor of a bill, the bill was somewhat more likely to pass (28% pass rate); when they lobbied against a bill it was just as likely to pass (18% pass rate).

Overall, Rhode Island prosecutors tended to support more punitive bills. They supported 157 bills that would have either expanded the criminal law or increased punishments. However, prosecutor lobbying was not uniformly in favor of more punitive laws. They opposed 16 bills that would have either expanded the criminal law or increased punishments. When it came to bills that would have decreased the scope of criminal law or decreased sentences, they supported 11 such bills and opposed 45.

389

NO. OF BILLS WITH
PROSECUTOR INVOLVEMENT

28%

SUPPORTED BILLS PASSED

18%

OPPOSED BILLS PASSED

157

HARSHER BILLS SUPPORTED

16

HARSHER BILLS OPPOSED

11

LENIENT BILLS SUPPORTED

45

LENIENT BILLS OPPOSED

Association Composition and History

It appears that Rhode Island only recently established a prosecutor association. The Rhode Island District Court Prosecutors Association filed as a lobbying entity with the Rhode Island Secretary of State in 2019¹ but did not appear in any legislative materials or media reports during the study period.

During the study period, all prosecutor lobbying was conducted by the Office of the Attorney General (AG). Rhode Island does not elect local prosecutors. Instead, voters elect an Attorney General, who is the central prosecutor in the state and head of the Office of the Attorney General, with the authority to prosecute “all felony criminal cases and misdemeanor appeals” and “misdemeanor cases brought by state law enforcement agencies.”² The AG is divided into the Criminal Division, Bureau of Criminal Identification (BCI), Consumer Protection, Civil Rights, Civil Division, and Investigations and Reports.³ According to the website, the AG “fights to enhance the economic security of Rhode Island, protect the public safety of our communities and restore the public trust in state government by fighting corruption.”⁴

During the study period, Peter Kilmartin served as the Attorney General of Rhode Island following elections in 2010 and 2014.⁵ Prior to his election as Attorney General, Kilmartin served in the Rhode Island House of Representatives for eighteen cumulative years.⁶

Public reports available on the Secretary of State’s website list the following registered lobbyists for the Rhode Island Department of Attorney General during the study period: Joe Lindbeck (2015-2018); Matt Lenz (2015-2017); and Ernest Carlucci (2015).⁷ Other representatives from the Rhode Island Department of Attorney General also appear before the State of Rhode Island General Assembly as lobbyists on criminal justice legislation.⁸

Analysis

The Office of the Attorney General routinely lobbied and maintained consistent positions on several issues throughout the study period. They supported bills making criminal procedure more favorable for law enforcement and criminalizing or enhancing the penalties for human trafficking, DUI, animal cruelty, and cybercrimes. They opposed bills that would have legalized

marijuana or expanded existing medical marijuana laws. They also opposed bills promoting leniency with respect to juveniles charged with serious crimes.

The policy debate over how to treat juveniles who commit serious crimes occurs in the shadow of the Craig Price case. Decades ago, Price, a boy in his early teens, was convicted of brutally murdering four neighbors. At the time, Rhode Island did not have a mechanism for trying juveniles as adults and as a consequence, Price was eligible for release from prison at the age of 21 – leading to years of efforts by the AG to keep Price imprisoned.⁹ Rhode Island eventually passed legislation allowing juveniles to be tried as adults, but the Price case continues shape the AG's punitive position on issues relating to juveniles charged with serious crimes.¹⁰

One such issue, proposed in several bills during the study period,¹¹ provided that prisoners sentenced as adults for offenses committed before the age of eighteen would be eligible for parole after fifteen years. The AG opposed these bills, arguing that the procedural mechanisms provided by *Miller v. Alabama*¹² in the charging and sentencing phases of a case are sufficient protections for juveniles.¹³ Expanding their argument to one of public safety, it stated:

“...[T]hese statutes, the mandatory waiver and the discretionary waiver, were put on the books when the Craig Price incident happened, it was about a foreseeable defendant and a court system not having a way to deal with them...we think that repealing acts like this would just be waiting for the next horrific act to happen...we know the juvenile court is evolving...but that's not in the best interest of public safety....”¹⁴

Joe Lindbeck, Special Assistant Attorney General

Likewise, AG Kilmartin wrote to Senators on the issue:

“My point is that juvenile offenders who find themselves facing lengthy sentences are truly the most dangerous in our society: those who murder and sexually assault their victims in the most callous and heinous ways.”¹⁵

The AG lobbied heavily on the issue of firearms. They supported 33 bills favoring firearm restrictions or creating new criminal offenses related to firearms and opposed 10 bills favoring leniency or deregulation of firearms. Only two of these

bills passed; both imposed new criminal penalties on bump stocks, binary triggers, and trigger cranks and their use with semi-automatic weapons.¹⁶

Several firearms bills were sponsored on the AG's behalf. One such bill was 2018 S2274, criminalizing the possession of a rifle or shotgun, with exceptions. In advocating for the bill, Joe Lindbeck stated:

“...we call that the Omar exception in the Wire; where someone can walk down the streets...with a loaded long gun or shotgun...we think that it is very dangerous that people can be walking around our state with a loaded shotgun.”¹⁷

The AG also drafted and lobbied in favor of bills favoring law enforcement investigations. For example, bills in 2016 and 2017, S2713 and S656/H5469 respectively, proposed that information contained in Rhode Island's prescription drug monitoring database could be disclosed to certain law enforcement officers without a search warrant. Matt Lenz, arguing in support of the issue on behalf of the AG, stated, “What this bill does is trying to stop pill mills and stop doctor shoppers from taking these pills and killing people on the streets.”¹⁸ The 2017 legislation was enacted.

In 2015, the Comprehensive Community-Police Relation Act was proposed, targeting reforms to police investigations in an attempt to alleviate racial profiling.¹⁹ Although Attorney General Kilmartin informed media outlets that he was generally in favor of the purpose of the bill,²⁰ the AG opposed the bill in the legislature, indicating that its primary objection was the bill's ban on juvenile and pedestrian consent searches.²¹ The reform passed.

In 2017, Rhode Island's General Assembly enacted a package of bills as a result of efforts begun in 2015 in collaboration with The Pew Charitable Trusts, the U.S. Department of Justice's Bureau of Justice Assistance, and the Council of State Governments (CGS) Justice Center seeking a justice reinvestment approach to criminal justice.²² A 27-member working group called The Justice Reinvestment Working Group formed, including Attorney General Kilmartin, to work on this effort.²³ The resulting Justice Reinvestment Initiative²⁴ aimed “to improve Rhode Island's criminal justice system while reducing costs by promoting rehabilitation and informed decision-making in sentencing, probation and parole.”²⁵

Early in the drafting process, Joe Lindbeck expressed reservations in House and Senate Judiciary Committee hearings on justice reinvestment bills²⁶ but shortly before passage of the package, Attorney General Kilmartin shared strong criticism in a press release:

“Calling the so-called package of “justice reinvestment” bills a result of a sham commission controlled by the Governor with a pre-determined outcome and whose members were never given an opportunity to vote on final package, Attorney General Kilmartin is warning legislators and the Governor that passage of the bills would have devastating consequences on the criminal justice system, would fail to protect victims, and would fail to “reinvest” in justice.

Press Release, Office of the Attorney General²⁷

Despite the opposition to the process of passing the justice reinvestment package, legislative testimony indicates that the AG worked extensively with legislators, the governor’s office, and defense lobbyists by offering amendments to legislation and making some compromises.²⁸

¹ <https://apps.sos.ri.gov/lobbytracker/profiles/view/1981>

² The Office of the Attorney General derives its power from Article IX, Section 12 of the Constitution of the State of Rhode Island (beginning in 1842) and Rhode Island General Laws Chapter 9 of Title 42. <http://www.riag.ri.gov/home/OurOffice.php>

³ <http://www.riag.ri.gov/home/OurOffice.php>

⁴ <http://www.riag.ri.gov/home/OurOffice.php>

⁵ <https://www.naag.org/attorneys-general/past-attorneys-general/rhode-island-former-attorneys-general/>

⁶ https://en.wikipedia.org/wiki/Peter_Kilmartin

⁷ <https://lobbytracker2016.sos.ri.gov/Public/LobbyingReports.aspx>;
<https://apps.sos.ri.gov/lobbytracker/profiles/view/45>;

⁸ Data on prosecutor activity and lobbyists was found in videos of house and senate committee hearings on the General Assembly’s website: <http://ritv.devosvideo.com/Show-Access-Points>. Throughout these hearings, committee members reference written testimony filed by witnesses. Such written testimony is not publicly available and was not included in the study data.

⁹ [https://en.wikipedia.org/wiki/Craig_Price_\(murderer\)](https://en.wikipedia.org/wiki/Craig_Price_(murderer))

¹⁰ Arguing for public policy, the AG opposed 2018 H7503. The bill amended the definition of “adult” to persons 18 years of age and older – thereby eliminating a statutory waiver allowing persons 17 years of age and charged with certain serious felonies to be considered “adults”; the bill was enacted. *Hearing on H7503 Before the H. Comm. on Judiciary*, 2018 Leg., Feb. 27, 2018 (statement of Joe Lindbeck, Assistant Attorney General, at 2:18:50). They also opposed 2015 S389 and 2015 H5650, prohibiting life without parole to persons who committed an offense

under the age of eighteen, testifying that sentencing discretion should stay with the court and current sentencing schemes offered juveniles sufficient protections; the bills failed. *Hearing on S389 Before the S. Comm. on Judiciary*, 2015 Leg., Mar. 31, 2015 (statement of Matt Lenz, Senior Policy Advisor, The Office of the Attorney General); *Hearing on H5650 Before the H. Comm. on Judiciary*, 2015 Leg., Mar. 11, 2015 (statement of Joe Lindbeck, Assistant Attorney General, at 1:58:00). The AG also argued in favor of retaining judicial discretion when opposing 2015 S563 and 2015 H5652, which limited the detention of children twelve years of age or younger to situations in which the juvenile was charged with or found delinquent of offenses involving murder; the bills failed. *Hearing on S563 Before the S. Comm. on Judiciary*, 2015 Leg., Apr. 7, 2015 (statement of Joe Lindbeck, Assistant Attorney General, at 1:52:40); *Hearing on H5652 Before the H. Comm. on Judiciary*, 2015 Leg., Mar. 31, 2015 (statement of Joe Lindbeck, Assistant Attorney General, at 1:09:30).

¹¹ 2017 H5183, 2017 S237, 2018 S2272, and 2018 H7596.

¹² 567 U.S. 460 (2012)

¹³ See *Hearing on S2272 Before the S. Comm. on Judiciary*, 2018 Leg., Feb. 13, 2018 (statement of Joe Lindbeck, Assistant Attorney General, at 46:25) (available at <http://ritv.devosvideo.com/show?video=56823e6b5a31&apg=234d9d19>).

¹⁴ *Hearing on H7596 Before the H. Comm. on Judiciary*, 2018 Leg., Mar. 27, 2018 (statement of Joe Lindbeck, Assistant Attorney General, at 2:18:16)

¹⁵ Katie Mulvaney, *Bill Seeks to End Life-without-parole Sentences For Minors; Attorney General Opposes Measure, Citing The Case Of Teenage Murderer Craig Price*, Providence Journal, June 13, 2017, at A1.

¹⁶ 2018 S2292 and 2018 H7075

¹⁷ *Hearing on S2274 Before the S. Comm. on Judiciary, Part 1 of 4*, 2018 Leg., Mar. 6, 2018 (statement of Joe Lindbeck, Assistant Attorney General, at 1:22:46).

¹⁸ *Hearing on S656 Before the S. Comm. on Judiciary, Part 2*, 2017 Leg., Apr. 27, 2017 (statement of Matt Lenz, Senior Policy Advisor, The Office of the Attorney General, at 26:13).

¹⁹ 2015 SB669

²⁰ G. Wayne Miller, *Ag Kilmartin Says He Strives to Ensure Justice is Color Blind; But He Is Asked About Lack of Diversity Among Prosecutors, His Opposition to Racial Profiling Law*, Providence Journal, November 2, 2015, at A1.

²¹ *Hearing on S669 Before the S. Comm. on Judiciary*, 2015 Leg., May 7, 2015 (statement of Joe Lindbeck, Assistant Attorney General, at 16:09).

²² <https://csgjusticecenter.org/wp-content/uploads/2020/01/RhodeIslandOverview.pdf>

²³ https://csgjusticecenter.org/wp-content/uploads/2020/01/JusticeReinvestment_RhodeIsland.pdf;
<https://csgjusticecenter.org/wp-content/uploads/2020/10/RIWG1handout.pdf>

²⁴ The Justice Reinvestment Initiative was comprised of the following bills: S6/H5065 (creates a batterers intervention program and adopts evidence-based probation and parole supervision systems); S7/H5063 (expands definition of pecuniary losses for crime victims and amends criteria for eligibility for the Crime Victims Compensation Fund); S8/H5117 (expands the judiciary's procedural powers relating to execution of sentences and creates conditions of criminal probation); S9/H5128 (expands power of parole board to award credit toward the original sentence for time spent on parole in the event of parole revocation and expands eligibility for medical parole, and community confinement); S10/H5064 (creates Superior Court diversion program for mental health and substance abuse and imposes certain service and

screening conditions on defendants in return for exoneration of charges); S11/H5115 (clarifies what constitutes a felony, misdemeanor, and petty misdemeanor and amends the penalties for certain criminal offenses involving assault and larceny, based on the value of property stolen); and S605/H5717 (allows individuals with prior convictions for possession with intent to deliver or crimes of violence to be eligible for the drug court program).

<https://www.ri.gov/press/view/31595>

²⁵ <https://www.ri.gov/press/view/31595>

²⁶ See *Hearing on Justice Reinvestment Before the S. Comm. on Judiciary*, 2017 Leg., Jan. 19, 2017 (statement of Joe Lindbeck, Assistant Attorney General) and *Hearing on Justice Reinvestment Before the H. Comm. on Judiciary, Part 1*, 2017 Leg., Jan. 31, 2017 (statement of Joe Lindbeck, Assistant Attorney General).

²⁷ Press Release, RI.gov, Attorney General Kilmartin Calls Out So-Called “Justice Reinvestment Bills” as “Feel Good Legislation” that Accomplishes Little, Injures Victims, and Risks Public Safety (Sept. 18, 2017) (available at <https://www.ri.gov/press/view/31456>).

²⁸ See Joe Lindbeck’s testimony on 2018 S2581 (enacted), criminalizing “revenge porn”: “...[W]e think that this bill will provide a new great protection for victims...we’re very happy to work with Governor Raimondo and her staff and happy to be here in support of S2581...[.]” *Hearing on H2581 Before the S. Comm. on Judiciary*, 2018 Leg., Mar. 27, 2018 (statement of Joe Lindbeck, Assistant Attorney General, at 2:08). Attorney General Kilmartin also expressed support for 2016 S2002 (enacted), The Good Samaritan Overdose Protection Act, after years of failed compromises on the issue. Lynn Ardit, *Good Samaritan Drug Overdose Bill Passes; Expands Legal Protection For Those Who Help Overdose Victims*, Providence Journal, Jan. 27, 2016, at A6.

State of South Carolina

South Carolina Commission on Prosecution Coordination

It is difficult to assess the lobbying efforts of South Carolina's prosecutors because so much data was unavailable. The legislature's website contained legislative history materials for less than a third of the criminal justice bills introduced, and none of the available materials revealed any lobbying by prosecutors. Very little information on prosecutorial lobbying was available from news sources. As a result, it is not possible to assess the frequency or success of prosecutors' lobbying efforts.



Association Composition and History

The South Carolina Commission on Prosecution Coordination (SCCPC), according to the organization's website, is "a South Carolina state agency and criminal justice partner that serves the State's 16 Circuit Solicitors and their offices."¹ (South Carolina's elected prosecutors are called "Circuit Solicitors."²) The website describes the SCCPC as a "stage agency" governed by "Sections 1-7-910 through 1-7-1000 of the South Carolina Code of Laws."³

According to the website, the SCCPC's mission is as follows:

The SCCPC provides South Carolina's Circuit Solicitors and their staff with legal education, and with technical, administrative and legal assistance. The SCCPC works with state, local and federal agencies involved in the criminal justice system, and is a resource for the General Assembly on a range of criminal justice issues.⁴

The mission includes the following specific action items:

[I]mprove South Carolina's Criminal Justice System and enhance the professionalism, effectiveness and efficiency of South Carolina's Circuit Solicitors and their staff by providing training, continuing education programs, administrative and programmatic support, and technical legal assistance for the Offices of Solicitor; by

collecting, analyzing and distributing meaningful criminal justice data; and by collaborating with and assisting the General Assembly as well as federal, state and local criminal justice partners.⁵

It's unclear if this includes lobbying, although the SCCPC does act as "a resource for the General Assembly on a range of issues"⁶ and [m]onitor, review, and analyze legislation, changes to state court rules, and state and federal court decisions."⁷

The SCCPC publishes a number of public reports on topics like fines and fees collection, expenditures, and domestic violence prosecutions.⁸

The membership of the SCCPC includes "the Chairmen of the Senate and House Judiciary Committees or their legislative designees, the Chief of the South Carolina Law Enforcement Division, the Director of the Department of Public Safety, a director of a Judicial Circuit Pretrial Intervention Program (PTI), a Judicial Circuit Victim-Witness Assistance Advocate and five Judicial Circuit Solicitors appointed by the Governor."⁹ The specific members of the Commission include a Chairman and Vice-Chairman as well as the other members.¹⁰

The Commission employs an Executive Director, Lisa H. Catalanotto, as well as other full-time staff.¹¹

Analysis

Using only publicly available materials, it is very difficult to determine when South Carolina's prosecutors lobby the legislature and what positions they take on specific bills. Public legislative materials were available for only 67 of the 206 criminal justice bills introduced in the legislature during the study period. None of those materials recorded any lobbying by prosecutors.

The few media stories discussing the SCCPC provides little insight into their lobbying activities.

There are a few news stories that provide insight into the types of issues where South Carolina's prosecutors get involved. One story explains that the SCCPC "requested \$7.8 million to fund hiring more prosecutors for general sessions court."¹²

In a few news stories, South Carolina prosecutors discuss the difficulty of obtaining DUI convictions because of current laws. 13th Judicial Circuit Solicitor Walt Wilkins told one reporter that the state's "dash cam arrest statutes" make it hard to win DUI cases.¹³ Multiple prosecutors comment that "closing the DUI loophole" is an important legislative goal.¹⁴

“The public has got to understand that we are going to continue to be among the highest states in the country (with fatal DUI crashes) as long as we have this DUI law.

Barry Barnette, 7th Circuit Solicitor¹⁵

These stories suggest that South Carolina prosecutors may be lobbying the state legislature. But they do not confirm any lobbying, and they do not allow us to assess the frequency or success of any lobbying efforts.

¹ <https://scprosecutors.com/>

South Carolina prosecutors represent "judicial circuits," which usually consists of 2 to 5 counties. There are 46 counties in total.

² See <https://scprosecutors.com/solicitors/>

³ <https://scprosecutors.com/about/>

⁴ <https://scprosecutors.com/>

⁵ <https://scprosecutors.com/about/>

⁶ <https://scprosecutors.com/about/>

⁷ <https://scprosecutors.com/what-we-do/>

⁸ <https://scprosecutors.com/reports/>

⁹ <https://scprosecutors.com/about/>

¹⁰ <https://scprosecutors.com/about/commission-members/>

¹¹ <https://scprosecutors.com/about/our-team/>

¹² <https://www.wspa.com/news/rare-sc-court-rule-leaves-many-victims-without-a-prosecutor/>

In South Carolina, law enforcement officials prosecute cases without attorneys in certain situations.

¹³ <https://www.greenvilleonline.com/story/news/2017/09/03/madd-south-carolina-greenville-sc/616207001/>

¹⁴ The prosecutors do not discuss specific bills. See <https://www.wbtw.com/news/police-prosecutors-call-for-closing-sc-dui-loophole/> and <https://www.heraldonline.com/news/state/south-carolina/article19917861.html>

¹⁵ <https://www.thestate.com/news/local/crime/article216727400.html>

State of South Dakota

South Dakota State's Attorneys Association

South Dakota prosecutors were active lobbyists; they were involved in approximately 49% of the criminal justice bills introduced in the state legislature during the relevant time period. (They lobbied on 107 of the 218 total bills).



When South Dakota prosecutors lobbied, they were often successful. On average, the legislature only passed 55% of criminal justice bills that were introduced. When prosecutors lobbied in favor of a bill, it was much more likely to pass (79% pass rate); when they lobbied against a bill it was much less likely to pass (27% pass rate).

Overall, South Dakota prosecutors consistently supported more punitive bills and opposed more lenient bills. Of the 92 bills that would have either expanded the criminal law or increased punishments, prosecutors supported 37 bills and opposed only 2. And of the 50 bills that would have decreased the scope of criminal law or decreased sentences, they opposed 20 bills and supported only 4.

107
NO. OF BILLS WITH
PROSECUTOR INVOLVEMENT

79%
SUPPORTED BILLS PASSED
27%
OPPOSED BILLS PASSED

37
HARSHER BILLS SUPPORTED
2
HARSHER BILLS OPPOSED

4
LENIENT BILLS SUPPORTED
20
LENIENT BILLS OPPOSED

Association Composition

The South Dakota State's Attorneys Association (SDSAA) is composed of the 66 elected state's attorneys, each of whom represents one county. The

Association's website states that "Deputy State's Attorneys, the Attorney General and Assistant Attorneys General, the United States Attorney, Assistant United States Attorneys, Tribal Prosecutors or other prosecutors" are also invited to become members.¹ Paul Bachand, a private attorney, lobbied on behalf of the SDSAA at many of the legislative hearings.²

History

Media accounts suggest that the SDSAA was formed at the instigation of the Attorney General who, in 1925, proposed the formation of a group of prosecutors who would meet yearly "to further greater co-operation in the legal business."³

According to the Association's website, SDSAA "provides South Dakota prosecutors with continued education and training, and unifies the voice of prosecutors on local, state and national legal policy."⁴ The list of officers and directors changes every year.⁵

Analysis

During the study period, there was a push within the state to pass criminal justice reform in order to reduce incarceration and shrink corrections budgets. But the SDSAA routinely opposed measures that would have reduced sentences,⁶ especially sentences for drug-related crimes. At the same time, the SDSAA supported measures that increased penalties for drug-related crimes and other repeat-offender laws. There were multiple bills during the study period about the death penalty and a variety of bills related to firearm possession. The SDSAA consistently opposed efforts to reduce or eliminate the death penalty as a sentencing option. On the firearms bills, the SDSAA largely limited itself to opposing the restoration of firearms to people with felony convictions, as is consistent with their general push for harsher penalties.⁷

As a general rule, the SDSAA supported a number of measures that increased the sentencing range available to prosecutors and judges. Some of these laws were for drug-related crimes.⁸ For example, SB 63 increased penalties for methamphetamines,⁹ which the SDSAA and the Attorney General argued was necessary to force people into drug court or prison. Similarly, the SDSAA testified in favor of SB 65, which enabled prosecutors to charge drug dealers with homicide.¹⁰

“ The folks on the ground know what they need to fight this battle. And what we need is to leverage some cooperation from drug dealers in order to work up the chain.

Paul Bachand, SDSAA¹¹

The SDSAA not only lobbied for harsher drug laws, but they opposed bills that would have reformed drug offenses. For example, they consistently intervened to object to bills that would legalize medical marijuana.¹²

“ If this bill passes, you can come back and have your marijuana ... and that doesn't make any sense. I worked for DOJ for about 2 and-a-half years under the John Ashcroft era where the direction as it related to marijuana was clear. That has, as a prior speaker informed you today, been cloudy under the last administration. I think the veil of cloudiness is gonna evaporate now and you'll see enforcement of and different approaches to those states that have passed marijuana laws. And folks are violating the federal controlled substance act, and I think we need to be cautious with that.

Paul Bachand, SDSAA¹³

The SDSAA also consistently opposed legislation that would have encouraged people to call for medical assistance or otherwise reduce overdose deaths by changing criminal penalties. For example in 2016, the South Dakota legislature considered two bills that would have prevented the prosecution of bystanders who called emergency services if they observed an accidental overdose.¹⁴

“ Your friend is in trouble. Do you call or do you need a law that tells you that you need immunity to call and the response is you call? You do what's right because it's what's right. So I politely disagree with the thought of the concerns. This makes no sense as public policy for this state. There is not a problem that needs to be fixed. We urge you to defeat this bill.

Paul Bachand, SDSAA¹⁵

In addition to their support of increased penalties for drug offenses, the SDSAA supported increased sentences and additional enhancements for repeat assaults,¹⁶ vehicular homicide,¹⁷ and defendants involved in gangs.¹⁸ The bill involving gangs received negative media attention for its wide scope, including

allegations that it could sweep up benign organizations, such as the Boy Scouts. The SDSAA pushed back against these concerns.

“ The first thing I think you need to consider is it does not criminalize otherwise lawful activity. So when I heard from certain news organizations that the Boy Scouts were concerned about this. This doesn't criminalize the Boy Scouts perhaps unless they're slinging meth. And the Boy Scouts don't do that.

Paul Bachand, SDSAA¹⁹

The SDAA lobbied on several bills that would have changed the elements of specific crimes. For example, the SDSAA, in addition to the Attorney General's office, supported HB 1118, which made it easier to prosecute defendants for the trafficking of minors.²⁰

“ This is as much a policy question for you to pass in the protection of minors who are subject to human trafficking. You can imagine the criminal element that is out there that is attempting to get typically young women to engage in human trafficking. It does so with the plan that those minors will be too fearful to testify, will never testify, or run away so they can't testify. And that is an absolute crucial item for the prosecutions for seeing that individuals who victimize minors go to prison, frankly folks. By fixing this bill in front of you today that frankly takes away from the perpetrator and the ability to see that he is not going to be held accountable, that will allow us the additional tool to prosecute these cases.

Paul Bachand, SDSAA²¹

One particularly interesting piece of legislation was SB 182, which would have changed the elements prosecutors needed to prove to establish the crime of rape.²² During their lobbying on this bill, prosecutors made clear that they were willing to alter long-established criminal common law if it would make their burden in criminal cases easier to satisfy.

“ We look at the victim. If the victim was intoxicated to that extent, she is incapable of giving consent, and if that's the case, then that's rape. ... These are tough cases to start with. It's tough to the extent that victims don't come forward all of the time, and this isn't the

situation, and you may hear today but I hope not, of a couple out at the bar having a few beers going to have sexual relations and then the young woman says that was wrong I shouldn't have done it so I'm screaming rape. I would suggest that doesn't happen. For the victim to come in and have to go through a rape exam and go to the police, to go to the prosecutors office and to then sit through a jury trial. Might that happen? Yes. Is that the case? No. So we look at the nature of how we are going to focus on this with the victim. The state still has to prove that beyond a reasonable doubt. But then what we don't have to prove is demonstrating what's in the bad guys mind.

Paul Bachand, SDSAA²³

The SDSAA supported several bills that appeared to favor law enforcement, like one bill that made fleeing the police subject to criminal penalties.²⁴ The prosecutors also supported a bill that allowed law enforcement to issue citations not signed under oath.²⁵ The SDSAA also opposed a bill designed to make it easier for people to reenter society by expunging arrest records.²⁶

During the study period, the South Dakota legislature considered a number of bills that would reduce the use of the death penalty, particularly for people with diagnosed mental health conditions. The SDSAA consistently and strenuously opposed all of these bills. For example, one bill would have outlawed the death penalty as a sentencing option for people with mental health conditions.²⁷

“We use [the death penalty] sparingly, appropriately, and for the worst of the worst cases. I would encourage this committee to think of the victims who have had their lives destroyed by these evil defendants. If you look at Minnehaha County, they sought the death penalty one time and that was a case where the defendant dismembered the victim with a chainsaw in the basement.

Aaron McGowen, States Attorney Minnehaha County²⁸

In 2015, the South Dakota legislature considered a bill that would have allowed victims to object to the imposition of the death penalty.²⁹ The SDSAA opposed this bill as well.

“The Supreme Court has never said, and specifically declined to say, that it is relevant what those victim's opinions are. I urge you to

oppose this and leave the focus of death penalty decisions on the nature of the offense and the history and characteristics of the defendant.

Paul Bachand, SDSAA³⁰

The SDSAA also opposed legislation to eliminate the use of life-without-parole sentences for crimes committed by juveniles.³¹

“It is clear from the U.S. Supreme Court cases that a life sentence without parole for a juvenile is not necessarily unconstitutional. You can have that in the rarest of cases, and what we are asking is to permit that possibility to occur and trust your sentencing judges in those cases to impose life sentence without parole.

Paul Bachand, SDSAA³²

¹ <https://sdstatesattorneys.org/>

² Paul Bachand is not listed on the SDSAA website. He appears to be a partner at a private law firm and was previous a deputy state's attorney and worked in the Attorney General's office. We were unable to locate financial information to indicate how much the Association paid Bachand for his service. <https://pirlaw.com/our-attorneys/>

³ State's Attorneys to meet. Sioux City Journal. Mon April 6, 1925, pg 2.

⁴ <https://sdstatesattorneys.org/>

⁵ <https://sdstatesattorneys.org/about-sdsaa/>

No historical information on officers or directors is available on the website.

⁶ See, e.g., opposition to HB 1109, which would have increased parole eligibility. 2018 Session. Signed into law. Paul Bachand: “So my concern is you're opening up individuals to commit a federal crime. I don't like that.”

⁷ See. E.g., opposition to HB 1124. 2018 session. Died in committee.

⁸ See. E.g., SB 61. 2015 Session. Signed into law. SB 81. 2017 Session. Signed into law.

⁹ 2018 Session, Signed into law.

¹⁰ SB 65. 2018 session. Signed into law.

¹¹ SB 63 testimony, in favor of increasing penalties for meth distribution.

¹² SB 171, 2016 Session, died in session, and SB 157, 2017 Session, died in Judiciary Committee. The SDSAA even opposed a provision that would have authorized the production of industrial hemp. HB 1054. 2016 Session. Died in committee. (See, e.g. “We don't think it sends the right message when we are dealing with any form of marijuana seed or the like.” Paul Bachand on behalf of SDSAA.)

¹³ Testimony for SB 157. SB 157 would have prevented the prosecution of an individual for possessing medical marijuana with a valid medical marijuana license from another state.

¹⁴ HB 1077, died in committee. HB 1078, signed into law.

¹⁵ HB 1078 testimony.

¹⁶ HB 1141. 2015 Session. Died in committee.

¹⁷ HB 1142. 2017 Session. Died in Senate. The prosecutors also supported SB 44, 2016 Session, reported adopted by Senate, which sought to make vehicular homicide a crime of violence.

¹⁸ HB 1111. 2018 Session. Died in Senate committee.

¹⁹ SB 1111 testimony. In favor of gang enhancements.

²⁰ HB 1118. 2017 session. Signed into law. Another similar bill is HB 1143. 2015 Session. Signed into law.

²¹ HB 1118 testimony.

²² SB 182. 2018 session. Died in legislature. A similar bill was introduced in the 2017 legislature. SB 91. Died in legislature. In 2011 the SD Supreme Court held that prosecutors needed to prove that a rape victim was not just intoxicated, but was also incapable of consent. The SDSAA's position was that legislation was needed to rectify the ruling. See *South Dakota v. Jones*. SD Supreme Court. 2011 SD 60. ("Because mere silence by the Legislature on whether knowledge is a necessary element of an offense will not always negate a knowledge requirement, especially for crimes with potentially severe punishments, we conclude that the Legislature intended that a rape conviction under SDCL 22-22-1(4) requires proof that the defendant knew or reasonably should have known that the victim's intoxicated condition rendered her incapable of consenting.")

²³ SB 182

²⁴ SB 154. 2016 Session. Died in House Judiciary Committee.

²⁵ HB 1056. 2017 Session. Signed into law.

²⁶ HB 1134. 2015 Regular Session. Signed into law.

²⁷ HB 1099. 2017 Session. Died in House Affairs Committee. A similar bill, HB 1123, was also raised in the 2018 session and died in committee. In testimony for HB 1123, Paul Bachand argued that anorexia and bulimia would qualify as mental illnesses and disqualify someone for the death penalty.

Other bills related to the death penalty include HB 1159, which would have permit citizens to express disagreement with the death penalty when applying for identification. HB 1159. 2015 session. Died in House Judiciary committee.

²⁸ HB1099 Testimony.

²⁹ HB 1158. 2015 session. Died in committee.

³⁰ HB 1158 testimony. Unsurprisingly, the SDSAA also opposed legislation that sought to eliminate the death penalty altogether. SB 121. 2015 Session. Died in House committee. Marty Jackley, SD AG testified in opposition, "These individuals that are on death row are extremely dangerous. They are extremely vile. And the death penalty in very limited circumstances is really the only appropriate choice." SB 94. 2016 session. Died in committee.

³¹ SB 140. 2016 session Signed into law.

³² Testimony for SB 140. Bachand cited the Columbine shootings and Lee Boyd Malvo as two examples of juveniles who should receive life-without-parole sentences; neither committed their crimes in South Dakota.

State of Tennessee

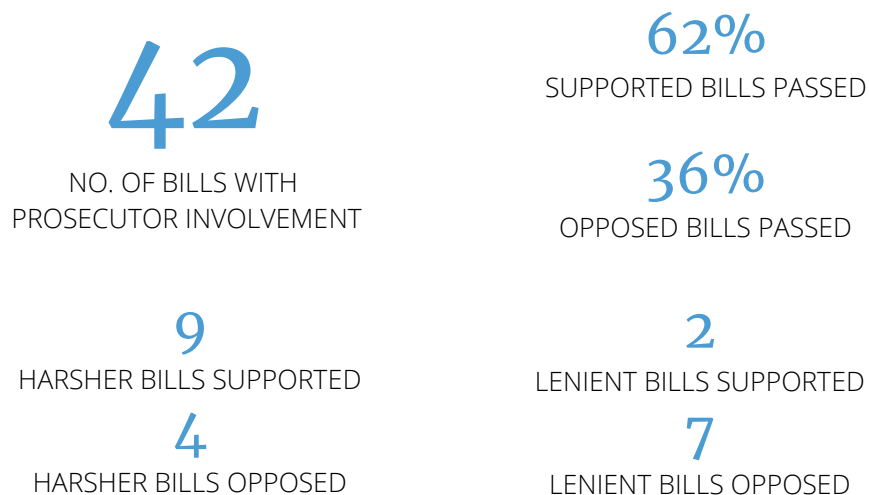
Tennessee District Attorneys General Conference

Tennessee prosecutors were not particularly active lobbyists; they were involved in approximately 7% of the criminal justice bills introduced in the state legislature during the relevant time period. (They lobbied on 42 of 593 total bills, though for nearly a quarter of those bills, they told the legislature that they were taking no position.)



When Tennessee prosecutors lobbied, they were often successful. On average, the legislature only passed 41% of criminal justice bills that were introduced. When prosecutors lobbied in favor of a bill, the bill was more likely to pass (62% pass rate); when they lobbied against a bill it was slightly less likely to pass (36% pass rate).

Overall, Tennessee prosecutors tended to support more punitive bills. They supported 9 bills that would have either expanded the criminal law or increased punishments. However, Tennessee prosecutors' lobbying was not uniformly in favor of more punitive laws. They opposed 4 bills that would have either expanded the criminal law or increased punishments. When it came to bills would have decreased the scope of criminal law or decreased sentences, they supported 2 such bills and opposed 7.



Association Composition and History

The Tennessee District Attorneys General Conference (TDAGC) was created by the state legislature in 1961.¹ Each of the state's 31 elected local prosecutors are members; the state attorney general and the director of the state bureau of investigation are both ex officio members.² The TDAGC has an executive director, who is responsible for supporting and coordinating the efforts of the members, maintaining relationships with other institutions, and administering the organization itself.³ The executive director is elected by the members DAs and serves a four-year term.⁴

The goal of the TDAGC is to allow “the consideration of any and all matters pertaining to the discharge of the official duties and obligations” of the members in order to ensure “a more prompt and efficient administration of justice in the courts of this state.”⁵ The state laws creating the TDAGC explicitly contemplate that the organization propose new laws to the state legislature.⁶

Analysis

During the study period, much of the TDAGC's lobbying efforts centered around drugs. The organization supported harsher drug laws and staunchly opposed efforts to legalize marijuana. For example, the TDAGC strongly supported HB 2190, a bill that would have classified a death caused by the unlawful distribution of fentanyl as second degree murder. The bill passed and was signed into law.⁷

“This bill is something that is desperately needed across the state.”
Charme Allen, District Attorney for Knox County

At the same time that they supported harsher drug laws, the TDAGC opposed reforms that would have either lessened the penalties associated with marijuana crimes or would have legalized the drug. For example, the Conference opposed SB 265, which would have reduced the charges for possessing very small amounts of marijuana from a class A misdemeanor to a class C misdemeanor.⁸ They explained their opposition in terms of how the bill would have limited prosecutors' discretion to decide how to treat drug offenders.

“ The District Attorney's Conference, when they looked at this, determined that they were opposed to the legislation. And primarily because it is limited in the discretion, for judges and DAs, to fit and tailor a punishment for what that individual may need.

Jerry Estes, Executive Director of
TN District Attorney General's Conference

The opposition to SB 265 was part of the TDAGC's more general opposition to efforts aimed at legalizing marijuana.⁹ When the legislature attempted to pass legislation that would have permitted medical marijuana use,¹⁰ the organization's opposition was quite strong.

“ The Tennessee District Attorney General's Conference, as a whole, is strongly opposed to this bill. Personally, I am strongly opposed to this bill.

Jimmy Dunn, District Attorney for 4th District

Another area where the TDAGC was particularly active was legislation aimed at vulnerable victims, such as children or the elderly. The organization clearly prioritizes the protection of these vulnerable victims.

“ We are in full support of this bill. All this bill does is protect children from further exploitation...It's simply a common sense bill."

Chad Butler, Assistant DA for Davidson County
(speaking about HB 1158; SB 0931, 2017-2018).

The TDAGC supported legislation aimed at protecting elderly victims,¹¹ as well as legislation to make defendants charges with child abuse and child neglect ineligible for suspended probation.¹² It opposed legislation that would have removed enhancements for violations of drug free school zones when school was not in session.¹³

“ This [the Elderly and Vulnerable Adult Protection Act] is a good bill. This is probably the best thing I've ever worked on as a DA."

Lisa Zavogiannis, District Attorney for the 31st District

Even when the TDAGC officially took no position on a bill, they sometimes communicated positive or negative messages about the legislation being considered.¹⁴ For example, although they did not take a formal position on the

bill, the TDAGC spoke against legislation that was primarily aimed at making technical revisions to the state's drug scheduling laws because the legislation also included a 60-day credit to prisoners who successfully completed a nine-month intensive substance abuse program.¹⁵ According to the TDAGC, the technical revisions were "absolutely necessary," but they would not support the bill because of their "extreme concerns" about the 60-day credit.¹⁶

Given how infrequently the TDAGC lobbied, it is notable that, twice during the study period, the TDAGC took strong stances on pending legislation based on what appear to be their own economic interests. First, the organization lobbied in support of a bill that would have repealed an existing law that requires counties to give public defenders at least 75 percent as much funding as the amount they give to prosecutors.¹⁷ Indeed, the TDAGC not only supported the legislation, but they specifically requested that the sponsor of the legislation introduce the bill.¹⁸ When speaking in favor of the legislation, the TDAGC said that the existing rule was a burden on their member DAs because county officials were less likely to grant their requests for new funding if they had to come up with additional funding for public defenders.

“It's a burden, a great burden, and it's very difficult for the District Attorney to go in and make a case for needing additional resources only to be told we're gonna have to pony up twice as much money.

Guy Jones, on behalf of TN District Attorneys Conference

Financial concerns also appear to have played a role in the organization's decision to oppose legislation that would have reduced the areas covered by the state's drug free school zone. According to news accounts,¹⁹ the bill had bipartisan support because it not only ensnared people who had no idea that they were selling drugs near a school, but also because reducing the number of defendants subject to the school zone mandatory minimum penalties would have saved the state millions of dollars. Initial versions of the legislation would have been redirected the money saved to pay for additional employees in district attorneys offices and public defenders offices. "The bill went through criminal justice committees in both chambers without opposition. But that changed after a Senate finance committee removed paralegal positions for prosecutors from the bill. By the time the House Finance, Ways and Means Committee took up the bill . . . the DAs conference had moved from being neutral on the bill to being strongly opposed."²⁰ The TDAGC didn't say that their

opposition was based on the loss of the additional employees; instead they “cast the legislation as a gift to drug dealers.”²¹ However, their sudden change in position led lawmakers to question the credibility and veracity of the TDAGC.²² But once the TDAGC opposed it, the bill died.

¹ <https://www.tndagc.org/about.html>

² TN Stat. § 8-7-301.

³ TN Stat. § 8-7-307, TN Stat. § 8-7-309; <https://www.tndagc.org/about.html>

⁴ TN Stat. § 8-7-308.

⁵ TN Stat. § 8-7-302.

⁶ “It is the duty of the conference to give consideration to the enactment of such laws and rules of procedure as in its judgment may be necessary to suppress crime more effectively, and thus promote peace and good order in the state. To this end, a committee of its members shall be appointed to draft suitable legislation and submit its recommendations to the general assembly.” TN Stat. § 8-7-303.

⁷ HB 2190; SB 1787 2017-2018.

⁸ HB 0297; SB 0265, 2017-2018.

⁹ Dave Boucher, *Haslam: Medical marijuana bill unlikely in 2016*, The Tennessean (Dec. 2, 2015) (noting that the TDAGC “said they opposed any additional legalization”).

¹⁰ HB 1749; SB 1710, 2017-2018.

¹¹ HB 0810; SB 1230, 2017-2018

¹² HB 1528; SB 1564 2015-2016

¹³ HB 2141; SB 1925, 2016-2016.

¹⁴ “Our conference does not have an official position on this but we are certainly supportive of this legislation from a personal standpoint.” -- Craig Northcott, District Attorney for the 14th District (speaking about SB 0120, AN ACT to amend Tennessee Code Annotated, Title 39, Chapter 14, Part 1, relative to the Organized Retail Crime Prevention Act); “There was significant concern in our Conference with certain parts of the bill...We are neutral on the bill as a Conference. We have not taken a position because we think there are many things that we think are helpful ...However, our Conference could not support it because of the graduated sanctions issue...We remain neutral on the bill as a whole.” -- Stephen Crump, TN District Attorney for 10th Judicial District (speaking about SB 2567 AN ACT to amend Tennessee Code Annotated, Title 36, Chapter 3, Part 6; Title 39, Chapter 13, Part 1; Title 39, Chapter 14, Part 1; Title 40, Chapter 28; Title 40, Chapter 35 and Title 41, Chapter 1, Part 4, relative to public safety).

¹⁵ HB 1832; SB 2258, 2017-2018

¹⁶ “We are neutral on this bill...While we believe that the first sections are absolutely necessary...We have extreme concerns about the 60-day credit that is envisioned by the second portion of this bill.” -- Stephen Crump, DA for 10th District and on behalf of the DA's Conference [on SB 2258]

¹⁷ HB 0241; SB 1324, 2015-2016.

¹⁸ Samantha Bryson, *State Funding for public defenders could be cut*, Knoxville News-Sentinel (Feb 22, 2015) (“House Bill 241, which would repeal the existing law behind the “75 Percent Rule,” was introduced in early February by state Rep. Curry Todd, who said he sponsored the bill at the request of the Tennessee District Attorneys General Conference.”)

¹⁹ Steven Hale, *How District Attorneys Killed Drug-Free School Zone Reform; A bill with bipartisan support died in committee after prosecutors lost paralegal positions*, Nashville Scene (May 1, 2018).

²⁰ *Id.*

²¹ *Id.*

²² Republican Rep. Gerald McCormick challenged Crump about why the DAs conference was neutral on the bill if prosecutors have "always been opposed" to shrinking drug-free school zones. House Minority Leader Craig Fitzhugh was similarly dubious.

"General, I'm concerned about the credibility of the DA generals," Fitzhugh said. "I don't know that you oughta lay your credibility on the line for this one."

Republican Rep. Ryan Williams said he agreed with Fitzhugh.

"The timing's really bad," Williams said. "It kind of points in a different direction, that you're mainly frustrated that you lost the 18 positions, that you were for it before you were against it, and that kind of bothers me, really. Especially when you sit up here and say that this committee, if they vote for this, is soft on crime."

Id.

State of Texas

Texas District & County Attorneys Association

Texas prosecutors were active lobbyists; they were involved in approximately 30% of the criminal legislative bills introduced in the state legislature during the relevant time period. (They lobbied on 258 of 846 total bills.)



When Texas prosecutors lobbied, they were often successful. On average, the legislature only passed 26.4% of criminal justice bills that were introduced. When prosecutors lobbied in favor of a bill, the bill was significantly more likely to pass (42.4% pass rate); when they lobbied against a bill it was significantly less likely to pass (15.5% pass rate).

Overall, Texas’s prosecutors tended to support more punitive bills. They supported 57 bills that would have either expanded the criminal law or increased punishments. However, Texas’s prosecutors’ lobbying was not uniformly in favor of more punitive laws. They opposed 3 bills that would have either expanded the criminal law or increased punishments. When it came to bills would have decreased the scope of criminal law or decreased sentences, prosecutors supported 4 such bills and opposed 18.

258
NO. OF BILLS WITH
PROSECUTOR INVOLVEMENT

42.4%
SUPPORTED BILLS PASSED
15.5%
OPPOSED BILLS PASSED

57
HARSHER BILLS SUPPORTED
3
HARSHER BILLS OPPOSED

4
LENIENT BILLS SUPPORTED
18
LENIENT BILLS OPPOSED

Association Composition and History

The Texas District & County Attorneys Association (TDCAA) is a “non-profit organization dedicated to serving Texas prosecutors and their staffs, as well as attorneys in government representation.”¹ Its members seem to include all of the prosecutors in Texas, although this is not directly stated on the website.² Prosecutors are divided into seven regions, which each have a representative in the TDCAA.³

The TDCAA is led by a Board of Directors, consisting of district attorneys and some assistant district attorneys.⁴ Shannon Edmonds is the Director of Governmental Relations and maintains legislative updates on the TDCAA website.⁵

The TDCAA’s mission includes the following:

- Producing comprehensive continuing legal education courses for prosecutors, their investigators and key personnel;
- Providing technical assistance to the prosecution community and related criminal justice agencies; and
- Serving as a liaison between prosecutors and other organizations involved in the administration of criminal justice.⁶

During the study period, the TDCAA director, Shannon Edmonds, frequently testified in front of the legislature. But the TDCAA was not the only source of prosecutors lobbying. Individual elected district attorneys also appeared to testify for and against legislation, as did other attorneys from those offices.⁷

The TDCAA was formed in 1891. A media account of the Association’s first annual conference reported that “[t]he object of this convention is to discuss necessary revisions of the laws whereby the prosecuting attorney will have his hands strengthened and thus be the better enabled to secure convictions and a more thorough and satisfactory enforcement of the laws.”⁸

Analysis

Overall, Texas prosecutors generally supported bills that enhanced sentences or created new crimes with harsher sentences. For example, the TDCAA supported several bills that increased criminal penalties, including a bill that increased sentences for the possession of child pornography.⁹ The TDCAA also testified in

support of HB 673, which enhanced penalties for repeat DUI convictions¹⁰ and for individuals accused of participating in “pill mills.”¹¹ Texas prosecutors also testified in favor of increasing the criminal penalties of indecent exposure.¹²

“It is truly a public safety concern...This bill brings [the law] in line with many other misdemeanor offenses that the legislature has deemed appropriate to be enhanced, whether that be family violence, theft, or prostitution.

Justin Wood, Harris County District Attorney's Office¹³

Texas prosecutors also supported legislation creating new crimes for cyberbullying and “revenge porn.”¹⁴

“There's no greater frustration as a prosecutor...than to have someone information you of something so atrocious, that has violated their privacy, that has violated their body, and have to tell them, I am so sorry, but there's nothing I can do.

Jennifer Tharpe, Criminal District Attorney for Comal County¹⁵

Other examples of new crime legislation that the TDCAA supported include creating the crime of “cargo theft,”¹⁶ sentencing enhancements on crimes related to prostitution and sex trafficking,¹⁷ creating a new offence for “indecent assault,”¹⁸ expanding the definition of “female genital mutilation,”¹⁹ and broadening the definition of “hazing.”²⁰

“In the process of trying to prosecute [hazing] crimes, we ran into serious problems under the statute...primarily in regard to the hazing definition in particular.

Dan Hamre, Travis County District Attorney's Office²¹

Texas prosecutors also supported legislation that created new crimes and enhanced manslaughter sentences for driving while using a cell phone for texting, music, reading, or other activities.²²

“Whenever an offense has actually been codified, we find that juries are much more willing to be able to convict somebody of a higher offense when the circumstances are grave, causing the death of an individual, when the act is based on a codified statute. And so we

believe that this is a necessary tool that we need in our prosecutor's toolbelt to effectively prosecute offenses where a death results.

Laura Nodolf, Midland County District Attorney²³

Texas prosecutors supported some legislative efforts that made it easier for prosecutors to either meet their burden of proof or generate plea deals. For example, one bill that the TDCAA supported allowed prosecutors to compel a victim of sex trafficking to testify in court for the prosecution in exchange for immunity.²⁴ Another bill prosecutors supported was legislation that made it easier to admit prior convictions without witness testimony, which, a prosecutor testified would "streamline the authentication process" in rural jurisdiction that lack resources.²⁵ District attorneys also supported a variety of bills related to requiring arrestees to submit to DNA collection.²⁶

Texas prosecutors did support a few reform measures, like SB 390, which guaranteed speed trials for defendants under the age of 14.²⁷ They also supported HB 3881, which was intended to prevent crime victims from being held as material witnesses.²⁸

“It was a rare instance where the accused received more due process...than the victim did... I feel it is important to assure victims, whether they are called by the prosecution or defense, that they will not be jailed.

Kim Ogg, Harris County District Attorney²⁹

Texas prosecutors tended to testify in numbers against certain types of bills, in particular legislation that might impact the funding of district attorneys' offices or that reduced the harshest penalties.

One ongoing issue in Texas was repeat efforts to reform civil asset forfeiture laws. The TDCAA opposed asset forfeiture reform, which came up in multiple ways during the legislative sessions reviewed. One 2015 bill, HB 2116, required a specific accounting of asset forfeiture funds and would have limited how such funds were used.³⁰ Multiple prosecutors testified against this bill.

“I'm just concerned that law enforcement agencies and administrators' hands will be tied in coming up with novel but proper and legitimate expenditures.

William Hon, Polk County Criminal District Attorney³¹

Members of the TDCAA opposed several measures that would have decreased the harshness of criminal punishment on young people, including SB 888, which would have allowed juveniles to challenge a judicial decision to move a case to adult court before reaching final judgment.³²

Texas prosecutors also opposed the decriminalization of marijuana³³ as well as HB 192, which would have limited the use of prior DUI convictions as penalty enhancements.³⁴

Another topic that Texas district attorneys opposed as a group was a series of legislative efforts to limit the use of the death penalty.³⁵

“There are a lot of monsters who never get their hands dirty. Who purposely direct and solicit others to do the dirty work.”
Justin Wood, Travis County District Attorney's Office³⁶

“Contrary to what you have heard, [the specifics are] what makes our law constitutional.”
Shannon Edmonds, TDCAA³⁷

While opposing these death penalty reform efforts, Texas prosecutors also supported SB 1697, which would have made information about executions confidential.³⁸

There were also legislative attempts to reform grand jury proceedings in Texas that prosecutors opposed. Multiple prosecutors testified in opposition to HB 1424, which attempted to reform the grand jury system in the state – including allowing defendants to have counsel during grand jury proceedings and requiring prosecutors to disclose certain types of exculpatory evidence.³⁹ HB 1424 went through revisions and did not pass.

“[This bill] is pretty much every criminal defense lawyer's Christmas list delivered early.”
Shannon Edmonds, TDCAA⁴⁰

“Sometimes [cold cases] take many grand juries before we can get probable cause...At the end of the day we want the right person for the right offense and the right evidence...I think that the public policy

balance against that type of event that would occur and my trying to explain to victims what happened in the process is really very unfair balanced against really what is the right thing to do in certain instances.

Henry Garza, Bell County District Attorney⁴¹

“ I believe that this turns a process that has been used for a number of years in the state of Texas into an adversarial system, and when I say adversarial, I mean two attorneys arguing their point with no one in control.

Julie Renken, 21st Judicial District Attorney's Office⁴²

Texas district attorneys also opposed legislation to require the recording of a grand jury proceeding when the defendant is a police officer who was on duty at the time of the theoretical crime.⁴³

“ I think it's just an awkward bill. I think the basis for grand jury secrecy applies just as much to a police officer or law enforcement officer as it does to any other person.

William Squires, Bexar County District Attorney⁴⁴

¹ <https://www.tdcaa.com/about/>

² Texas has 254 counties, but some rural counties share a district attorney or have a part-time district attorney.

³ <https://www.tdcaa.com/wp-content/uploads/TDCAA-regional-map-1.jpg>

⁴ <https://www.tdcaa.com/about/>

The TDCAA's website is not clear on who its members are. There is an application for people to join, which appears to allow any member of the public to apply.

<https://www.tdcaa.com/membership/application/>

⁵ <https://www.tdcaa.com/legislative/> Edwards is a full-time employee of the TDCAA.

⁶ *Id.*

⁷ Individuals testifying in front of the legislature can speak in favor or against; witness can also offer clarifying testimony that is neutral and vote in favor or against a bill without testifying. In many instances where Texas prosecutors supported a bill, they did not testify in favor. It was more common to find spoken testimony against bills.

⁸ “Revising the Laws.” Fort Worth Daily Gazette Sat. Jul. 18, 1891.

⁹ HB 1123, Regular Session 2015. Jennifer Tharpe supported the bill but did not testify. Shannon Edmonds of the TDCAA testified as a resource witness.

<https://capitol.texas.gov/tlodocs/84R/witlistmtg/pdf/C2202015031110301.PDF>

See also SB 1322 Regular Session 2017.

<https://capitol.texas.gov/tlodocs/85R/witlistbill/pdf/SB01322S.pdf#navpanes=0>

¹⁰ HB 673, Regular Session 2015. TDCAA supported but did not testify.

<https://capitol.texas.gov/tlodocs/84R/witlistmtg/pdf/C2202015040810301.PDF>

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- ¹¹ SB 1235. Regular Session 2015. Prosecutors registered their support but did not testify.
<https://capitol.texas.gov/tlodocs/84R/witlistbill/pdf/SB01235S.pdf#navpanes=0>
- ¹² HB 777. Regular Session 2015. The bill was brought by request of the Harris County District Attorney's Office. <https://capitol.texas.gov/tlodocs/84R/witlistmtg/pdf/C2202015042014001.PDF>
- ¹³ HB 777. Criminal Jurisprudence Committee, April 20, 2015.
- ¹⁴ HB 496 / SB 1135, Regular Session 2015. Died in committee. Called "The Relationship Privacy Act." It creates criminal penalties for those who disclose images.
<https://capitol.texas.gov/tlodocs/84R/witlistmtg/pdf/C2202015031110301.PDF>
- ¹⁵ March 11, 2015. <https://house.texas.gov/video-audio/committee-broadcasts/84/>
- ¹⁶ HB 102 / SB 1828, Regular Session 2015.
- ¹⁷ HB 29. Regular Session 2017.
<https://capitol.texas.gov/tlodocs/85R/witlistbill/pdf/HB00029S.pdf#navpanes=0>
Krista Melton from the AG's office testified to answer technical questions.
- ¹⁸ HB 309. Regular Session 2017.
<https://capitol.texas.gov/tlodocs/85R/witlistmtg/pdf/C2202017072613001.PDF>
- ¹⁹ SB 323. Regular Session 2017.
<https://capitol.texas.gov/tlodocs/85R/witlistbill/pdf/SB00323S.pdf#navpanes=0>
- ²⁰ SB 33. Regular Session 2015.
<https://capitol.texas.gov/tlodocs/84R/witlistbill/pdf/SB00033S.pdf#navpanes=0>
- ²¹ https://tlcsenate.granicus.com/MediaPlayer.php?view_id=30&clip_id=9596
- ²² HB 62/ HB 160 / SB 31. Regular Session 2017. Passed into law.
<https://capitol.texas.gov/tlodocs/85R/witlistbill/pdf/HB00062S.pdf#navpanes=0>
- ²³ https://tlcsenate.granicus.com/MediaPlayer.php?view_id=42&clip_id=12514
- ²⁴ HB 10, Regular Session 2015. Part of a series of border legislation that addressed certain border-related issues. Prosecutors specifically asked for this provision.
<https://house.texas.gov/video-audio/committee-broadcasts/84/>
Shannon Edmonds was present in support but did not testify.
- ²⁵ HB 1820. General Session 2017. Multiple prosecutors supported but did not testify.
<https://capitol.texas.gov/tlodocs/85R/witlistmtg/pdf/C2202017041714001.PDF>
- ²⁶ E.g. SB 725. Regular Session 2015.
<https://capitol.texas.gov/tlodocs/84R/witlistbill/pdf/SB00725S.pdf#navpanes=0> (Creating a DNA database for people charged with certain enumerated felonies.; HB 2185. Regular Session 2015.
<https://capitol.texas.gov/tlodocs/84R/witlistmtg/pdf/C2202015032510301.PDF>
- ²⁷ SB 390. Regular Session 2015. Prosecutors expressed support but did not testify.
<https://capitol.texas.gov/tlodocs/84R/witlistbill/pdf/SB00725S.pdf#navpanes=0>
- ²⁸ General Session 2017.
<https://capitol.texas.gov/tlodocs/85R/witlistmtg/pdf/C2202017041714001.PDF>
This was legislation inspired by "Jenny," a rape victim held in jail. (The law is often called "Jenny's Law.")
- ²⁹ April 17, 2017 Criminal Justice Committee.
<https://capitol.texas.gov/tlodocs/85R/witlistmtg/pdf/C2202017041714001.PDF>
- ³⁰ HB 2116. Regular Session 2015. This bill was inspired by misuse of asset forfeiture funds in the Dallas District Attorney's Office. Part of the bill would disallow the use of asset forfeiture funds to benefits any specific people and required quarterly reporting. See <https://www.texastribune.org/2018/12/07/texas-civil-asset-forfeiture-legislature/>
The list of prosecutors opposing the bill: Eric Carcerano (Chambers County District Attorney's Office); Nicole Czajkoski (Montgomery County District Attorney's Office); Henry Garza (Bell

County District Attorney's office); William Hon (Polk County Criminal District Attorney); Karen Morris (Harris County District Attorney); Ross Kurtz (Wharton County District Attorney's office); William Squires (Bexar County District Attorney) On: Edmonds, Shannon (Texas District and County Attorneys Association)

³¹ HB 2116. Criminal Jurisprudence Committee, April 20, 2015.

Other asset forfeiture reform bills prosecutors opposed include HB 155. General Session 2017. <https://capitol.texas.gov/tlodocs/85R/witlistmtg/pdf/C2202017032910301.PDF>; HB 344. General Session 2017. <https://capitol.texas.gov/tlodocs/85R/witlistmtg/pdf/C2202017032910301.PDF>; HB 835. General Session 2017.

<https://capitol.texas.gov/tlodocs/85R/witlistmtg/pdf/C2202017032910301.PDF>; HB 1364.

General Session 2017; and HB 472. General Session 2015.

<https://capitol.texas.gov/tlodocs/84R/witlistmtg/pdf/C2202015042014001.PDF>

³² SB 888. General Session 2015.

<https://capitol.texas.gov/tlodocs/84R/witlistbill/pdf/SB00888S.pdf#navpanes=0>

³³ HB 507. General Session 2015. The proposal did not legalize marijuana, but instead decriminalized small amounts. See also HB 2165. Regular Session 2015. This proposal legalized small amount of marijuana. The following prosecutors registered but did not testify for both bills: Will Ramsay (8th Judicial District Attorney's Office); William Squires (Bexar County District Attorney); Jennifer Tharp (Comal County Criminal District Attorney); Justin Wood (Harris County District Attorney's Office)

<https://capitol.texas.gov/tlodocs/84R/witlistmtg/pdf/C2202015040810301.PDF>

³⁴ HB 192. Regular Session 2015.

<https://capitol.texas.gov/tlodocs/84R/witlistbill/pdf/HB00192H.pdf#navpanes=0>

³⁵ E.g. HB 64, Regular Session 2017 (Would abolish death penalty for all capital felonies); HB 3080. Regular Session 2017. (Would abolish death penalty for individuals with mental illness); HB 1537. Regular Session 2017 (Would have abolished death penalty entirely); HB 147. Regular Session 2017. (Prohibits death penalty for "felony murder" or "law of parties").

³⁶ Wood is testifying against HB 147.

<https://capitol.texas.gov/tlodocs/85R/witlistmtg/pdf/C2202017041714001.PDF>

³⁷ *Id.* Edmonds usually testifies as "on," rather than "for" or "against" a proposed law. He did so here.

³⁸ SB 1697 and HB 3846. Regular Session 2015

<https://capitol.texas.gov/tlodocs/84R/witlistbill/pdf/SB01697S.pdf#navpanes=0>

³⁹ HB 1424. General Session 2017.

<https://capitol.texas.gov/tlodocs/85R/billtext/pdf/SB01424I.pdf#navpanes=0>

https://tlcsenate.granicus.com/MediaPlayer.php?view_id=42&clip_id=12459

See also HB 2640. Regular Session 2017.

<https://capitol.texas.gov/tlodocs/85R/witlistmtg/pdf/C2202017041714001.PDF>

⁴⁰ <https://www.texastribune.org/2017/03/15/texas-proposal-would-limit-prosecutors-grand-jury-proceedings/>

⁴¹ https://tlcsenate.granicus.com/MediaPlayer.php?view_id=42&clip_id=12459

Garza is specifically talking about the bill's restriction on bringing multiple grand juries for the same case ("grand jury shopping").

⁴² HB 2640. <https://capitol.texas.gov/tlodocs/85R/witlistmtg/pdf/C2202017041714001.PDF>

⁴³ HB 865. Regular session 2015.

<https://capitol.texas.gov/tlodocs/84R/witlistmtg/pdf/C2202015042014001.PDF>

⁴⁴ Criminal Jurisprudence Committee, April 20, 2015.

State of Utah

Utah Prosecution Council

Utah Statewide Association of Prosecutors & Public Attorneys Utah County and District Attorneys Association

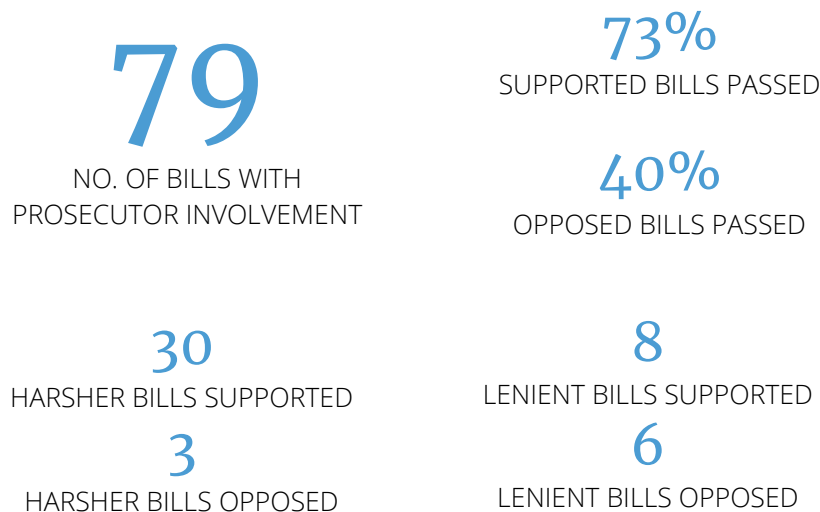
Utah prosecutors were somewhat active lobbyists. They were involved in approximately 26.5% of the criminal legislative bills introduced in the state legislature during the relevant time period. (They lobbied on 79 of the 298 total bills for which we had sufficient information for us to gauge prosecutor involvement. There were an additional 9 criminal justice bills for which sufficient information was not available.)



When the prosecutors lobbied, they were often successful. On average, the legislature only passed 60% of criminal justice bills that were introduced. When the prosecutors lobbied in favor of a bill, the bill was significantly more likely to pass (73% pass rate); when they lobbied against a bill it was somewhat less likely to pass (40% pass rate).



Overall, Utah prosecuting attorneys tended to support more punitive bills. Prosecutors supported 30 bills that would have either expanded the criminal law or increased punishments. However, Utah prosecutors' lobbying was not uniformly in favor of more punitive laws. They opposed 3 bills that would have either expanded the criminal law or increased punishments. When it came to bills that would have decreased the scope of criminal law or decreased sentences, prosecutors supported 8 such bills and opposed 6.



Association Composition and History

Utah has three separate statewide organizations of prosecutors: The Utah Prosecution Council (UPC); the Utah Statewide Association of Prosecutors & Public Attorneys (SWAP); and the Utah County and District Attorneys Association (UCDAA).¹

The Utah Prosecution Council, founded in 1991, was created by statute “within the Office of the Attorney General”² and is comprised of the attorney general or a designee, the commissioner of public safety or a designee, four currently serving county or district attorneys, four city prosecutors, the chair of the Board of Directors of the Statewide Association of Prosecutors and Public Attorneys of Utah, and the chair of the governing board of the Utah Prosecutorial Assistants Association.³ The UPC’s duties include providing the following: “training and continuing legal education for state and local prosecutors”; “assistance to local prosecutors”; “reimbursement for unusual expenses related to prosecution for violations of state laws”; and “training and assistance to law enforcement officers.”⁴

According to its website, the UPC’s mission is “to provide quality training for state and local prosecutors as well as law enforcement officers through an exchange of information and experience to ensure the administration of justice reflecting the highest ethical and professional standards.”⁵ Supporting these efforts are several staff members, including a director, training coordinator, sexual assault/domestic violence resource prosecutor, traffic safety resource

prosecutor, and technology manager.⁶ The UPC provides trainings, articles, and other resources to the state's prosecutors.

SWAP is a 501(c)(4) organization, and its membership includes the Utah Attorney General's Office, all Utah county attorney's offices, and most Utah city attorney's offices.⁷ The organization also has an executive director.⁸ According to its website, the mission behind SWAP is to: effectively and accurately advocate the policy and procedure interests of prosecutors and public attorneys in Utah; provide leadership on legal and public policy issues related to the ethical and fair administration of justice and the effective administration of government; and to enhance communication and cooperation among public attorneys and the judiciary, law enforcement, state and local government, the bar, and other public and private organizations concerned with the administration of justice and the administration of government.⁹

The SWAP website includes a bill tracker, which documents the organization's support for or opposition to various bills pending before the state legislature.¹⁰ Lobbying by SWAP representatives accounts for the majority of the prosecutor activity data during the study period.

Information on the third organization, the UCDA, is limited. The UCDA does not appear to have a website or a significant online presence.¹¹ However, the UCDA and SWAP created a joint committee in 2019 "to study prosecution policies and practices and to develop best practices or standards of excellence." The committee is intended to "function as a think tank for prosecutors to stay informed of key issues, developing legal trends, and technology advances."¹² The UPC is also closely associated with SWAP. The chair of SWAP is a member of the UPC, as a matter of statute.¹³ The Utah Attorney General's website indicates that UPC and SWAP share a mission statement and have adopted joint goals,¹⁴ including the following:

- Actively pursue the legislative aims of the members; regularly meet with regional representatives chosen by members in the various regions of the state; disseminate position papers to other agencies, the press and the public; poll members from time to time to accurately determine their positions on various topics (consensus)
- Meet regularly with other law enforcement organizations; be proactive relative to other organizations – actively approaching

- them for purposes of establishing common grounds; join and associate with other organizations and groups
- Sponsor an annual legislative forum where public attorneys and associated public agencies can formulate a coordinated legislative strategy¹⁵

Analysis

During the study period, the Utah legislature considered several bills on the topic of human trafficking and sex crimes, enhancing law enforcement officers' safety, and protecting children.

From 2015 to 2018, the Utah legislature introduced over thirty bills¹⁶ regarding human trafficking and sex crimes, most of which related to minors.¹⁷ Most of these bills called for increased punishments for persons convicted of human trafficking or crimes of a sexual nature. For example, one bill modified the Utah Criminal Code to provide that a criminal homicide caused by the commission of the offense of human trafficking, human trafficking of a child, or aggravated human trafficking is aggravated murder and may be charged as a capital felony.¹⁸ Many of the bills were passed into law. Utah prosecutors lobbied in favor of several bills proposing harsher punishments for persons convicted of human trafficking and sex crimes.¹⁹ For example, prosecutors supported a bill that increased the penalty for sexual exploitation of a minor under certain circumstances.²⁰

“ This bill is targeted toward the worst of the worst-- child exploitation offenders. This bill enhances to a first-degree felony if the person is within a special relationship of trust, so if the person is a family member, or school teacher.

Shelley Coudreaut, Assistant Attorney General,
Utah Attorney General's Office²¹

Utah prosecutors' concerns with the sexual abuse of minors led them to oppose a bill that would have created a new crime of unlawful sexual activity between minors. The original version of the bill required proof that the defendant used “manipulation, coercion, or deceit” to secure sexual activity.²²

“ We remain opposed to this bill. Fundamentally, we do not believe the state of the law would be improved by bringing the question of

consent, which is a concept heavily litigated in adult rape trials, into the criminal system when addressing matters of sex with someone as young as 12.

Spencer Walsh, Chief Prosecutor Cache County Attorney's Office²³

The bill was subsequently amended to remove that requirement.²⁴ The amended bill was eventually passed and signed into law.

The Utah State Legislature also considered multiple bills that supported law enforcement officers. One such bill modified the offense against peace officers to include a "threat of violence," as opposed to requiring an assault, while another bill created a specific penalty for targeting a law enforcement officer.²⁵ The legislature created a Law Enforcement Peer Counseling program to further support law enforcement.²⁶ And the Utah legislature passed a bill that made it a second degree felony to intentionally or knowingly cause death to a police service canine and made it a third degree felony to intentionally or knowingly injure a police service canine.²⁷ Utah prosecutors supported several of these efforts. For example, William Carlson, the Deputy District Attorney of Salt Lake County, commented on the wording of the bill protecting police canine: "When the result of a criminal's actions is clearly the death of the animal, whether that's knowingly causing the death or intentionally causing the death, the result is the same."²⁸

The legislature took up a significant number of bills about the protection of children, including the bills related to human trafficking of children and sexual abuse of children discussed above. The legislature also considered bills to protect children unrelated to trafficking and sex crimes.²⁹ For example, one bill attempted to create the new criminal offense of parental kidnapping by defining the offense as one parent withholding a child from the other parent or guardian in such a way that the parent or guardian cannot exercise certain civil remedies.³⁰ Prosecutors expressed opposition to the bill.

“ This bill does not include order of custody of visitation, and we know from experience that the custodial interference statute is often exploited by parents when one parent is five minutes late from bringing the kids back. To allow for those claims to occur will only distract law enforcement from policing in the public.”³¹

Will Carlson, Statewide Association of Prosecutors

The bill failed to pass. One bill that did pass directed the Child Welfare Legislative Oversight Panel to study reporting of child abuse and neglect.³² Another bill required school boards to report on bullying and hazing policies and requires the training of school employees on bullying and hazing.³³ Utah prosecutors supported a bill that addressed treatment of minors who commit offense of truancy.

“We applaud Rep. Snow in this legislation. Sometimes overexposure of the justice system does more harm than good and it's important that the right people are in court and the wrong people are not pulled into court.

William Carlson, Deputy District Attorney, Salt Lake County³⁴

The bill passed.

Utah prosecutors also lobbied on bills about crime victims. For example, the legislature passed a bill with the support of prosecutors to create a task force to study when and how communication or information provided to an individual who advocates for victims should be kept confidential.³⁵ Craig Johnson, from the Utah County Attorney's Office, commented on the bill: “We feel this is an important issue. . . .”³⁶ However, Utah prosecutors opposed a bill that would have allowed victims to request that a criminal investigation be reopened.³⁷

“I am sympathetic to victims of violent crime when their cases have gone cold... having said that, I have serious concerns about this substitute and don't believe the committee should recommend this bill. One of those issues is that this bill doesn't just reopen cold cases for victims of violent crimes. There's no way to know which cases to reopen.

William Carlson, Salt Lake County District Attorney's Office

¹ There is a fourth, related organization, the Utah Prosecutorial Assistants Association. That organization is “sponsored by” the UPC. “Its purpose is to enhance the quality of prosecution in the state by providing advice, resources and training for prosecution office support staff.”

<https://upc.utah.gov/upaa/upaa.html>

² Utah Stat. § 67-5a-1(1)

³ Utah Stat. § 67-5a-1(3)

⁴ Utah Stat. § 67-5a-1(2)

⁵ <https://upc.utah.gov/>

⁶ <https://upc.utah.gov/contacts-upc.php>

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- ⁷ <https://www.swap-ut.org/>
- ⁸ <https://www.swap-ut.org/index.php>
- ⁹ <https://www.swap-ut.org/index.php>
- ¹⁰ <https://www.swap-ut.org/billtracker.php> Unfortunately, the bill tracker does not include information about past legislative sessions.
- ¹¹ See, e.g., <https://www.webercountyutah.gov/Attorney/> (stating that the Weber County Attorney, Christopher F. Allred, “was chosen by his fellow county attorneys to serve as the President of the Utah County and District Attorneys Association (UCDAA), and he was recently elected to serve as the President of the Statewide Association of Prosecutors & Public Attorneys (SWAP)”).
- ¹² <https://www.swap-ut.org/best-practices.php>
- ¹³ Utah Stat. § 67-5a-1(3)(e).
- ¹⁴ <https://attorneygeneral.utah.gov/utah-prosecution-council-2/> (“The purpose of the organization [Utah Prosecution Council and the Statewide Association of Public Attorneys using their combined efforts] is to effectively and accurately represent and advocate the interests of public attorneys . . .”).
- ¹⁵ <https://attorneygeneral.utah.gov/utah-prosecution-council-2/>
- ¹⁶ Bills re: human trafficking and sex crimes NOT specifically about children H.B. 136 (2016); S.B. 232 (2017); H.B. 254 (2018); H.B. 369 (2017); H.B. 74 (2015); H.B. 274 (2017); H.B. 326 (2017); S.B. 232 (2017); H.B. 77 (2018); H.B. 215 (2015); H.B. 426 (2016); H.B. 139 (2017); H.B. 176 (2017)
- ¹⁷ Bills re: human trafficking and sex crimes specifically pertaining to minors: H.B. 252 (2015); H.B.105 (2016); H.B. 206 (2016); H.B. 407 (2016); S.B. 113 (2016); H.B. 366 (2015); H.B. 260 (2016); H.B. 16 (2016); H.B. 179 (2016); H.B. 439 (2018); H.B. 476 (2018); H.B. 279 (2016); H.B. 222 (2017); H.B. 228 (2018); H.B. 123 (2017); H.B. 334 (2018); H.B. 176 (2017); H.B. 417 (2015); H.B. 149 (2017); H.B. 155 (2016); H.B. 17 (2017); H.B. 158 (2016); H.B. 99 (2017); H.B. 222 (2017)
- ¹⁸ H.B. 176 (2017)
- ¹⁹ H.B. 252 (G.S. 2015), H.B. 274 (G.S. 2017), H.B. 334 (G.S. 2018), H.B. 476 (G.S. 2018)
- ²⁰ H.B. 476 (2018)
- ²¹ Quote from legislative spreadsheet on H.B.476 (2018)
- ²² H.B. 123 (2017).
- ²³ Quote from legislative spreadsheet on H.B. 123 (2017)
- ²⁴ https://le.utah.gov/~2017/bills/hbillint/HB0123S01_ComparedWith_HB0123.pdf
- ²⁵ S.B. 235 (2017); H.B. 433 (2017)
- ²⁶ S.B. 200 (2017)
- ²⁷ S.B. 57 (2018) and
- ²⁸ Quote from legislative spreadsheet S.B. 57 (2018)
- ²⁹ H.B. 214 (2016); S.B. 90 (2016); H.B. 75 (2018); H.B. 130 (2015); H.B. 131 (2015); H.B. 176 (2015); H.B. 419 (2017)
- ³⁰ H.B. 173 (2017)
- ³¹ Quote from legislative spreadsheet for H.B. 173 (2017)
- ³² S.B. 103 (2015)
- ³³ S.B. 161 (2017)
- ³⁴ H.B. 132 (2018)
- ³⁵ H.B. 298 (2018)
- ³⁶ Quote from legislative spreadsheet for H.B. 298 (2018)
- ³⁷ H.B. 449 (G.S. 2018)

State of Vermont

Vermont Department of State's Attorneys and Sheriffs

Vermont prosecutors were active lobbyists; they were involved in approximately 32% of the criminal justice bills introduced in the state legislature during the relevant time period. (They lobbied on 58 of 181 total bills for which we had sufficient information for us to gauge prosecutor involvement. There were an additional 14 criminal justice bills for which sufficient information was not available.).



When Vermont prosecutors lobbied, they were somewhat successful. On average, the legislature only passed 23% of criminal justice bills that were introduced. When prosecutors lobbied in favor of a bill, the bill was significantly more likely to pass (52.4% pass rate); when they lobbied against a bill it was somewhat less likely to pass (43% pass rate) than when they lobbied in favor of the bill.

Overall, Vermont prosecutors tended to support more punitive bills. SAS supported 15 bills that would have either expanded the criminal law or increased punishments. However, Vermont prosecutors' lobbying was not uniformly in favor of more punitive laws. They opposed 2 bills that would have either expanded the criminal law or increased punishments. When it came to bills would have decreased the scope of criminal law or decreased sentences, they supported 10 such bills and opposed 3.

58

NO. OF BILLS WITH
PROSECUTOR INVOLVEMENT

52.4%

SUPPORTED BILLS PASSED

43%

OPPOSED BILLS PASSED

15

HARsher BILLS SUPPORTED

10

LENIENT BILLS SUPPORTED

2

HARsher BILLS OPPOSED

3

LENIENT BILLS OPPOSED

Association Composition

The Vermont Department of State's Attorneys and Sheriffs (SAS) is a statutorily created department that consists of 14 prosecuting attorneys—the State's Attorney from each county—and 14 sheriffs.¹ The State's Attorneys elect an Executive Committee that consists of 5 of the 14 State's Attorneys.² The members of the Executive Committee serve for a term of two years. The Vermont Sheriffs Association also has an Executive Committee; the two Executive Committees appoint an Executive Director that serves both committees.³ The Executive Director is authorized to hire clerical staff to carry out the functions of SAS.⁴ The Executive Director provides centralized support services such as budgetary planning, training, office management, and other duties that the Executive Committee may direct.⁵ The department's goal is to seek justice and its core function is to protect and promote public safety, while ensuring that every region of the state is served by a Special Investigation Unit.⁶

Analysis

Throughout the study period, the legislature considered several topics of reform that benefited defendants. For example, the legislature took up the topic of marijuana legalization in both legislative sessions. It also considered bail reform, expungement, youth sentencing, and pre-trial services. Vermont prosecutors did not reflexively oppose these legislative efforts at reform. Instead, their approach seemed to be cautiously collaborative, supporting some reform efforts and arguing for modification and moderation of others. For example, when a bill was introduced in 2015 that aimed to reduce the prison population⁷ David Cahill, the Executive Director of SAS, said: "This is a lengthy bill with many different sections that range from constructive to well-intended but misguided" and that they looked forward to vetting the bill with the House Judiciary Committee.⁸

Marijuana was an important legislative issue during the study period was the topic of. The legislature considered four bills during each of the legislative sessions that we studied.⁹ Most of those eight bills focused on removing civil and criminal penalties associated with possession or cultivation by those who are over 21 years old. One bill attempted to raise the felony threshold for selling and dispensing marijuana and hashish.¹⁰ In addition to decriminalizing or reducing penalties, these bills also sought to protect minors; some created criminal

penalties for unauthorized distribution or sale in general and for furnishment or sale to those under 21 years old.

On the topic of reforming marijuana laws, Vermont prosecutors were mixed. Greg Nagurney, a representative of the SAS, testified about the wide range of opinions within SAS on the matter saying, "We have one of everybody on the spectrum. But if you are looking to divide the input of overall where the states attorneys are is that they are pretty much at a status quo going forward, maybe even a few more than not are opposed to increasing the decriminalized amount that this bill represents. Lukewarm to a little bit less..."¹¹

David Cahill, Executive Director of SAS, was involved with the drafting of one marijuana-related bill in the 2015-2016 session. He expressed concern about the supply side and the impact on driving under the influence but seemed confident that both issues could be dealt with within the legislature.

“The momentum in this country and the state strongly suggests that you will legalize marijuana at some point. I think the focus should be on doing the work to get it right. I think that legalization was a foregone conclusion the moment we decided to go with the decriminalization because once the supply or the consumption is semi-legitimate, we know that there is going to be a supply chain... The focus of my presentation today is going to be on highway safety... We have for better or worse an existing culture of cannabis use and an existing culture of drug use...There are DUI drug cases being generated by the police and generally we are not well equipped to deal with them...The highway safety problem is solvable....

David Cahill, Executive Director of SAS¹²

David Cahill continued to vocalize his concerns on such bills. He testified as follows about another a reform bill during the 2017-2018 session:

“From my prospective as a prosecutor, this really isn't a high stakes bill for how we go about our jobs... day in and day out we simply aren't dealing with marijuana cases...My concern is particularly the high THC product and the emerging science suggest when youths consume the high THC products...that there is a potential for long term effects, particularly mental health problems...The point that I

am making here is that when we legalize we need to be mindful of the supply chain and what products in the supply chain are particularly harmful. If you are going to do it, I see why this bill is structured the way it is because it is politically achievable perhaps right now, but I think you will have to come back and deal with a regulated market..."¹³

The marijuana bills were not solely focused on reform. One bill included funding for criminal justice programs, substance abuse treatments services, and law enforcement; the funding would have been generated from the taxes on marijuana.

Prosecutors repeatedly expressed concern for children and drugged driving, which sometimes led them to push back on these bills. Indeed, the governor expressed the same concerns (as well as others) when vetoing a decriminalization bill in 2017.¹⁴ A similar bill was later passed into law in 2018.¹⁵ The only marijuana reform legislation that SAS fully supported aimed to expunge misdemeanor convictions after the defendant's completion of a sentence or supervision.¹⁶

Closely related to the marijuana reform issue was the issue of driving under the influence. The concerns expressed by prosecutors and the governor about drugged driving during the marijuana reform debates appear to have led to legislative attempts to improve the ability to accurately detect drugged driving. A few bills proposed to add saliva testing to the roadside tests that may be conducted on operators of motor vehicles who are reasonably suspected to be drug impaired.¹⁷ Procedurally, the roadside saliva tests would operate similarly to the roadside breath test.¹⁸ Prosecutorial involvement on these bills ranged from requesting amendments to vocalizing support. Greg Nagurney suggested that the 2015-2016 legislatures add a polysubstance provision to the language.¹⁹ Heather Brochu, speaking on behalf of SAS, testified that the legislation provided another "tool in the toolkit."²⁰ In addition, Bram Kranichfeld, Chief of the Criminal Division of the Attorney General's Office, testified that: "We are strongly committed to ensuring the safety of our roadways and addressing impaired driving, and we feel that this bill is a step in the right direction...."²¹ Another bill sought to make DUI laws more harsh by decreasing the acceptable BAC level for drivers with any detectable amounts of the psychoactive constituent of cannabis in the body.²² The SAS remained neutral on this bill, testifying only to explain how the new law could work.²³ Overall, most of the DUI related legislation increased criminal

penalties; except for one bill which would have allowed a DUI first offender to petition for expungement.²⁴

Pretrial services was another major legislative issue during the study period. Both legislative sessions involved several bills regarding pretrial services and almost all of the bills revolved around procedural changes to pretrial services.²⁵ Some of those bills referred specifically to pretrial home detention and continued an electronic monitoring pilot program that allowed courts to impose electronic monitoring as a condition of a defendant's release after consideration of the nature of the offense defendant was charged with, risk to the community, and defendant's prior convictions, mental health, flight risk, and supervision history.²⁶ In addition, other pretrial service bills referred to defendants' eligibility to participate in diversion programs.²⁷ One bill expanded defendant's eligibility (regardless of the person's criminal history), while another allowed state's attorneys to dismiss the citation upon the defendant's agreement to participate in the diversion program. A bill was also introduced to allow the court to order participation in a domestic violence prevention program or order that the defendant not possess a gun until trial.²⁸

Vermont prosecutors were not entirely on board with all of the suggested changes. David Cahill, the Executive Director of SAS, suggested that one bill was not yet geared toward grasping the "low hanging fruit" of the home detention issue and he recommended changing it. By that he meant that pretrial home detention should be reserved for habitual misdemeanants, instead of for felons.²⁹

Prosecutors were also quite involved on bills regarding bail reform. For example, David Cahill referred to the "low hanging fruit" population again when testifying on H.503. The bill states that bail cannot be imposed if the defendant was cited for a misdemeanor and eases requirements for requesting home detention in lieu of incarceration pending trial. David Cahill testified about which defendants should receive real time GPS monitoring: "Now there is another population of your pretrial detainees that are held on X amount of dollars of bail for whatever reason, if you are looking to cut the population, I would submit to you that those are the people who are the low hanging fruit...who are just sitting in prison because they can't post...."³⁰ Overall, the state's attorneys, SAS, and the legislature seemed to be focused on reducing the prison population and decreasing recidivism with the reform minded legislation on pretrial services.

Finally, it is interesting to note the legislative and prosecutorial focus on criminal reform for the youth population. For example, bills range from prohibiting life without parole for a person who was under the age of eighteen at the time of the offense³¹ to appointing public defenders to those accused under the age of twenty-five³² to automatically expunging criminal records of qualifying crime for those who were 18-21 at the time of the crime.³³

“It is important for there to be the resources that we will be able to confirm what is happening in the kids family life, what is happening at school, is the drug issues or mental health issues that might be there have they been fully explored...The crime itself that you might be charged with does not really tell the whole story...There is often so much more to the story...You hit the nail on the head there, that if we are really serious about this, we have to be proactive in our viewing and investigating what is really making this kid or young adult act the way that they are. The other thing, which I have always said... we as legislature sort of fell down in to making sure there are enough resources out there in the community... The State’s Attorneys are very happy with you all...”

John Treadwell, the Executive Director of SAS, testifying on H.234

¹ <https://legislature.vermont.gov/statutes/section/24/005/00367> (24 V.S.A § 367)

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ <https://prosecutors.vermont.gov/about/>

⁷ H.221 from 2015-2016 legislative session

⁸ VT016; https://infoweb-newsbank-com.libproxy.lib.unc.edu/apps/news/document-view?p=WORLDNEWS&t=country%3AUSA%21USA/state%3AVT%21USA%2B-%2BVermont&sort=YMD_date%3AD&maxresults=20&f=advanced&val-base-0=%22Vermont%20Department%20of%20States%20Attorneys%20and%20Sheriffs%22%20OR%20%22Department%20of%20State%27s%20Attorneys%20and%20Sheriffs%22&fld-base-0=alltext&bln-base-1=and&val-base-1=01/01/2015%20-%2012/31/2018&fld-base-1=YMD_date&docref=news/153AC7A0921C5E28

⁹ (S.95; S.137; S.241; H.429) (S.22; H.170; H.511; H.865)

¹⁰ S.137 2015-2016

¹¹ *Id.*

¹² S.241; 2015-2016

¹³ H.170; 2017-2018

¹⁴ <https://legislature.vermont.gov/Documents/2018/Docs/JOURNAL/sj170621.pdf#page=1>

¹⁵ H.511

¹⁶ H.865 (2017-2018)

¹⁷ H.228 (2015-2016); H.237 (2017-2018)

¹⁸ <https://legislature.vermont.gov/Documents/2016/Docs/BILLS/H-0228/H-0228%20As%20Introduced.pdf>

¹⁹ H.228 (2015-2016)

²⁰ H.237 (2017-2018)

²¹ *Id.*

²² H.24 (2017-2018)

²³ H.24 (2017-2018)

²⁴ H.468 (2015-2016)

²⁵ S.171, S.212, H.270, H.534 (2015-2016); H.675, S.134, H.503, H. 728 (2017-2018)

²⁶ S.212 (2015-2016)

²⁷ H.270 (2015-16); H.675, S.134 (2017-2018)

²⁸ H.675 (2017-2018)

²⁹ "We are not really looking at the low hanging fruit when it comes to the home detention population. We need to shift home detention towards your habitual misdemeanants who rack up charges and then get held on bail, get held on 500 bucks, on 2000 bucks. Because those people generally speaking don't pose a public safety risk, don't pose a risk to any particular victim, there aren't people scared to death of them...And that is the population I would commend to you, in addition to the content of this bill...." -David Cahill on S.212

³⁰ H. 504 (2017-2018)

³¹ H.62 (2015-2016)

³² H.55 (2017-2018)

³³ H.234 (2017-2018)

State of Virginia

Virginia Association of Commonwealth's Attorneys Commonwealth's Attorneys' Services Council

It is difficult to assess the lobbying efforts of Virginia prosecutors because so much data was unavailable. Virginia does not have publicly accessible recordings of legislative committee meetings or records of what witnesses speak at those meetings. News accounts confirm that the Virginia Association of Commonwealth's Attorneys (VACA) regularly supports and opposes legislation. But the lack of publicly available information makes it impossible to assess the frequency or success of those efforts.



Association Composition and History

Virginia has two related state-wide prosecutor organizations. The first, the Virginia Association of Commonwealth's Attorneys, is a private organization that is permitted to lobby the state legislature. The second organization, the Commonwealth's Attorneys' Services Council, is a state agency that provides services to the state's prosecutors.

The Virginia Association of Commonwealth's Attorneys (VACA) consists of 120 elected Commonwealth's Attorneys from across the state, who represent their respective county or city. VACA has both a Board of Officers and Board of Representatives that are elected for two-year terms.

According to its website, VACA's mission is:

to foster a closer relationship among fellow prosecutors, law enforcement and the public; to promote uniformity in the fair, effective and efficient administration of the law; to provide input on legislation that advances public safety for all in the Commonwealth; and to educate citizens of all aspects of the criminal justice system.¹

News reports revealed that VACA was involved with lobbying on issues regarding marijuana legalization/decriminalization, funding for prosecutor positions,

criminal discovery reform, good Samaritan drug overdose laws, and civil asset forfeiture.

The Commonwealth's Attorneys' Services Council (CASC) "is the Virginia state agency responsible for providing training, education and services for Virginia's prosecutors."² The Council was created by statute in 1978, and its membership is comprised of the Board Officers of VACA.³ CASC was established as a supervisory council in the executive branch of the state government. Its offices are located at William and Mary Law School. CASC also has a permanent staff of eight employees, including a director and five several staff attorneys.

Analysis

The Virginia legislature was incredibly active during the study period. It introduced more than 1,200 criminal justice bills. Using only publicly available materials, it is very difficult to determine when Virginia's prosecutors lobby the legislature and what positions they take on specific bills. News accounts confirm that Virginia prosecutors lobbied in favor and against legislation. Those sources indicated that prosecutors supported at least 27 pieces of legislation and opposed 17. But because that state does not make legislative committee meeting records available, it is not possible to determine the full extent of prosecutors' involvement.

News reports suggest that VACA has consistently opposed legislation that would decriminalize or legalize simple possession of marijuana. In 2016, the President of VACA, Eric Olsen, said "if marijuana were legalized, there would be many other ramifications — such as more people driving while high."⁴ Speaking on behalf of VACA in 2018, David Ledbetter, Waynesboro Commonwealth's Attorney "said decriminalization would lead to more people driving while impaired by marijuana, would lead to increased use by adolescents and an increase of ingestion by toddlers."⁵

Additionally, VACA has persistently lobbied for funding for additional prosecutor positions. It has argued such position are necessary because of the increased workload of reviewing police body camera footage. VACA supported a proposal "which would require any locality buying body cameras for patrol officers to hire one additional entry-level assistant commonwealth's attorney for every 50 body cameras deployed."⁶ Chesterfield Commonwealth's Attorney William Davenport explained "that the hours of footage his staff is now required to watch has

exceeded capacity. That workload, he said, caused him to recently curtail the number of misdemeanors his office prosecutes.”⁷

¹ <https://www.vaprosecutors.org/>

² <https://www.cas.state.va.us/agency/>

³ VA. CODE ANN. § 2.2-2617.

⁴ Peter Dujardin, *Enforcement up in smoke? Marijuana arrests down sharply across state, region*, DAILY PRESS (Dec. 3, 2016), <https://www.dailypress.com/news/newport-news/dp-nws-marijuana-arrests-20161126-story.html>.

⁵ Patrick Wilson, *Virginia Senate Republicans kill bill to decriminalize small amounts of marijuana*, RICHMOND TIMES-DISPATCH (Jan. 29, 2018), https://richmond.com/news/virginia/government-politics/general-assembly/virginia-senate-republicans-kill-bill-to-decriminalize-small-amounts-of/article_93739abe-14ba-5cdb-a291-bd9f22f03957.html; SB 954 (2018).

⁶ Vanessa Remmers, *State pauses mandate tied to police body-worn cameras; working group to study issue more*, RICHMOND TIMES-DISPATCH (Jun. 4, 2018), https://richmond.com/news/state-pauses-mandate-tied-to-police-body-worn-cameras-working/article_f88eddbb-ae1a-5de0-bc25-deb736fe3eec.html.

⁷ *Id.*

State of Washington

Washington Association of Prosecuting Attorneys

Washington prosecutors were active lobbyists; they were involved in approximately 44% of the criminal justice bills introduced in the state legislature during the relevant time period. (The legislature considered 406 criminal justice bills. Of the 308 bills for which sufficient information was available, prosecutors lobbied on 137 bills. There were an additional 98 criminal justice bills for which sufficient information was not available).



When Washington prosecutors lobbied, they were relatively successful. On average, the legislature only passed 28% of criminal justice bills that were introduced. When prosecutors lobbied in favor of a bill, the bill was more likely to pass (36% pass rate); when they lobbied against a bill it was somewhat less likely to pass (20% pass rate).

Overall, Washington prosecuting attorneys tended to support more punitive bills. Of the 129 bills that would have either expanded the criminal law or increased punishments, WAPA supported 60 bills. However, Washington prosecutors' lobbying was not uniformly in favor of more punitive laws. They opposed 3 bills that would have either expanded the criminal law or increased punishments. And of the 37 bills that would have decreased the scope of criminal law or decreased sentences, they supported 8 such bills and opposed 7.

137

NO. OF BILLS WITH
PROSECUTOR INVOLVEMENT

36%

SUPPORTED BILLS PASSED

20%

OPPOSED BILLS PASSED

60

HARSHER BILLS SUPPORTED

8

LENIENT BILLS SUPPORTED

3

HARSHER BILLS OPPOSED

7

LENIENT BILLS OPPOSED

Association Composition

The Washington Association of Prosecuting Attorneys (WAPA) is composed of the 39 elected Prosecuting Attorneys, one from each county. The WAPA also employs staff, including a staff attorney, Pamela Loginsky, who is a registered lobbyist and who sometimes speaks on behalf of the WAPA in front of the legislature.¹ Individual prosecutors also sometimes speak for the association. The WAPA only makes a recommendation when the elected prosecutors agree. (It is not entirely clear whether “agreement” is decided by a majority vote or whether it requires complete consensus by all prosecuting attorney members.)

History

The Washington Association of Prosecuting Attorneys website states that the organization was founded in 1976. But as early as 1915, a group of prosecuting attorneys in the state met regularly to discuss pending legislation and policies that might impact the ability of elected prosecutors to pursue and win their cases in court. News accounts referred to this group as “the Washington State Association of Prosecuting Attorneys.”²

The website describes the mission of the organization as follows: “WAPA serves as a voice for county prosecutors at the state and national levels, and acts as a liaison between counties and other levels of government through research, training, and lobbying.”³ The WAPA website also features a video describing how prosecutors have changed their approach in recent years to now present a balanced approach to prosecution. It describes the organization’s purpose as “Three Ps”: prosecute, prevent, and protect and support victims of crime. “Our goal is always fair and equal justice for everyone,” the video summarizes.⁴

Analysis

During the time period of this study, the Washington legislature considered a series of criminal system reforms intended to reduce Washington’s incarceration rates and increase rehabilitation. Within the state, King County (which includes Seattle) was growing rapidly and passing more reform-oriented laws. At the same time, many of Washington’s counties were (and continue to be) much more rural and opposed to reform. Because each county’s Prosecuting Attorney receives one vote in the WAPA, and because the Prosecuting Attorneys have different

approaches to criminal justice reform issues, the WAPA sometimes declines to take positions when the organization cannot reach an agreement.

One major legislative issue during the study period involved a bill that would make it easier to prosecute police misconduct. The bill was inspired by highly publicized police shootings and beatings. Prosecutors had brought charges in those cases, but were unable to persuade a jury to convict.⁵ King County Prosecuting Attorney Dan Satterberg, and others, came out in support of the bill, which he said would make it easier to prosecute police shootings without proof of malicious intent.⁶ At the same time, other prosecutors and the WAPA as a whole made it clear that there needed to be some wording in the statute to ensure that officers who fired “in good faith” would not be prosecuted.

“It’s difficult to prosecute a police officer, and it should be, but today it’s impossible. That’s been the result of our legal analysis in every police shooting we’ve ever had.

Dan Satterberg, King County Prosecuting Attorney⁷

[H]appy to support the bill whole heartedly...What’s in [police officers’] head and in their heart must matter.

Mark Roe, Snohomish County Prosecuting Attorney⁸

[W]e have come to the conclusion that is exactly what is reflected in this bill and that is that the word malice should be removed as part of good public policy...[W]e feel very, very strongly that the good faith phrase must remain.

Jon Tunheim, Thurston County Prosecuting Attorney,
speaking on behalf of WAPA⁹

The WAPA took positions on legislation that would have affected evidentiary issues at trial. For example, the WAPA opposed legislation that would have required a judge to hold a hearing to determine the reliability of any informant or jailhouse snitch.

We do oppose House Bill 2654...We oppose this bill because our belief is this is new, this is different, this is relevant evidence, constitutionally obtained being kept potentially from the jury.

Tom McBride, WAPA¹⁰

Like associations in several other states, the WAPA often involved itself in bills about domestic violence. The legislation that WAPA supported on this issue included bills that would have made some misdemeanors into felonies, increased sentences, and provided more discretion for judges and prosecutors to impose no-contact orders and create other restrictions during pretrial release.

“ These are repeatedly violent individuals and they deserve felony attention.

David Martin, Office of the King County Prosecuting Attorney,
speaking on behalf of WAPA ¹¹

“ [M]y experience has shown me that there are too many repeat offenders and we do not have proper laws to address those offenders to reduce recidivism...It is time for us to pass this law, it's absolutely appropriate and necessary at this time.

Andrew Howell, Office of the Benton County Prosecuting Attorney¹²

The WAPA supported some bills that reduced criminal liability. For example, they supported SB 6566, a bill that ensured minors charged with child pornography would be convicted only of a misdemeanor, and not of a felony. WAPA members also supported bills that made it easier for those released from jail or prison to rehabilitate and integrate into their communities.

“ Washington Association of Prosecuting Attorneys is in strong support of [SB 6566]. This is a bill that is about 10 years overdue...We need to deal with this in an appropriate manner.

Todd Dowell, Kitsap County Prosecutor's Office,
speaking on behalf of WAPA¹³

“ Fundamentally, it is not the goal of the criminal justice system to impose lifelong penalties on people who run afoul of the law...it should be our social mission to make sure they don't come back and commit new crimes.

Dan Satterberg, King County Prosecuting Attorney,
speaking on behalf of WAPA¹⁴

“ We are very interested in this vision...The truth is, Washington has a recidivism problem...This would be a promising population to begin

with because if we don't address these young offenders, they're going to continue to cycle through the prison system.

Dan Satterberg, King County Prosecuting Attorney,
speaking on behalf of WAPA¹⁵

One of the major criminal justice questions during the study period was whether to eliminate the death penalty. In 2015, Governor Jay Inslee placed a moratorium on the death penalty. The Washington Supreme Court also took up the constitutionality of the state's death penalty statute, ultimately finding that it was being imposed in an arbitrary and racially biased manner and thus violated the state constitution.¹⁶ Multiple death penalty bills were introduced during the study period.¹⁷ According to news articles, prosecutors across the state were split on the issue, so the WAPA initially did not take an official position.¹⁸ Eventually, the WAPA supported putting the issue on the ballot as a referendum, allowing voters to decide. But some individual attorneys, most notably King County Prosecuting Attorney Dan Satterberg, were opposed to the death penalty and sought to end it.

“To us this is a perfect thing for people to vote on. It's a profound moral question. It's something that an informed campaign could really help people understand, the pros and the cons of having a death penalty. And we ought to have a vote.

Dan Satterberg, King County Prosecuting Attorney¹⁹

“There are people who will make moral objections and religious objections to the death penalty. Mine is really based on having had to implement it for the last 28 years. I believe it is unworkable, I believe it is unnecessary and it doesn't serve the interest of victims. ...By any measure, this is a failed program.

Dan Satterberg, King County Prosecuting Attorney²⁰

“It is my duty to report that the death penalty law in our state is broken and cannot be fixed. It no longer serves the interests of public safety, criminal justice, or the needs of victims...The truth is that smaller counties are not able to pursue the death penalty even if they wanted to.

Dan Satterberg, King County Prosecuting Attorney²¹

In sum, the WAPA was most likely to support punitive legislation, but it also sometimes supported reform legislation. And certain members within the association appear willing to do even more in the name of criminal justice reform.

¹ <https://countyofficials.org/216/Prosecuting-Attorneys>

² "Gose of Pomeroy is Chosen President by Washington Lawyers," The Oregon Daily Journal, August 23, 1915.

³ <http://waprosecutors.org/>

⁴ *Id.*

⁵ Steve Miletich et al., The Seattle Times, "Analysis: Restrictive law shields police from prosecution," Washington Times, (Sept. 27, 2015)

⁶ A news report called the old statute the "most restrictive" in the country. The WAPA wanted the removal of a malice requirement but would keep a "good faith" for police shootings. King County prosecutor backs law change to make it easier to charge police over deadly force – "Dan Satterberg said he will urge the state Legislature to remove malice wording that has made it almost impossible to bring criminal charges against police officers over the use of deadly force. Steve Miletich, "King County prosecutor backs law change to make it easier to charge police over deadly force," Seattle Times, (Jan, 19, 2017). The bill died in committee. Amelia Dickson, "Panel kills bill to change statute on deadly force," The Olympian (Feb. 6, 2016).

⁷ HB3003

⁸ SB5073 testimony, which did not proceed to a vote.

⁹ *Id.*

¹⁰ HB 2654 testimony

¹¹ HB 1163

¹² HB 1163

¹³ SB 6566 testimony.

¹⁴ HB 1553 testimony.

¹⁵ SB 5613 testimony.

¹⁶ Washington v. Gregory, 427 P.3d 621 (Wash. 2018). The decision was based in large part on a study that found race disparities in capital punishment. See Katherine Beckett & Heather Evans, The Role of Race in Washington State Capital Sentencing, 1981-2012 (Jan. 27, 2014), cited in Washington v. Gregory.

¹⁷ The bills include SB 5639 in 2015, HB 1935 and SB 5354 in 2017, and SB 6052 in 2018. None passed.

¹⁸ Rachel La Corte, "House committee weighs bill to abolish death," Associated Press State Wire: Washington (Feb. 18, 2016); Kristin M. Kraemer, "Franklin County Prosecutor favors asking voters about death penalty," Tri-City Herald (Nov. 16, 2015) (expressing conflicting views of some Washington prosecutors who favored having the death penalty).

¹⁹ HB 5639 testimony. 2015 session.

²⁰ SB 6052. 2018 session.

²¹ SB 6052. 2018 session. Notably, the death penalty legislation was framed as a cost-saving measure.

State of West Virginia

West Virginia Prosecuting Attorneys Institute

It is difficult to assess the lobbying efforts of West Virginia prosecutors because so much data was unavailable. The West Virginia Prosecuting Attorneys Institute (WVPAI) has a statutory duty to provide the legislature with “suggestions for legislative action.”¹ News accounts confirm that the WVPAI support for at least one specific piece of legislation. But it is not possible to assess the frequency or success of those efforts.



Association Composition and History

The West Virginia Prosecuting Attorneys Institute was created by statute in 1995.² The Institute is comprised of the fifty-five elected county prosecuting attorneys in the state.³ The Institute has an Executive Council, which is made up of seven prosecuting attorneys elected by the membership at their annual meeting and “and two persons appointed annually by the county commissioner's association of West Virginia.”⁴ The Institute employs an Executive Director, who is answerable to the Executive Council.⁵ The Institute's website identifies three additional employees.⁶

According to the Institute's website, the “fundamentals” of the organization's “mission” are:

- Provide Special Prosecutors where Elected Prosecutors of West Virginia are unable to serve
- Provide training, service, support and resources to the prosecutors and staff to enhance and improve the quality of all prosecution throughout the State
- To educate law enforcement regarding the ever changing face of the law
- To expand the public's knowledge of the criminal justice system⁷

The statute that created the Institute states that “The institute shall annually, by the first day of the regular Legislative session, provide the Joint Committee on Government and Finance with a report setting forth the activities of the institute and suggestions for legislative action.”⁸

There appears to be a second prosecutor organization in the state, the West Virginia Prosecuting Attorneys' Association. We were unable to discover much information about the association, which does not appear to have a website. There are contemporary media reports making reference to the existence of the association, but those reports give almost no information about its composition. From those contemporary accounts, we can infer that the association consists of multiple members,⁹ and that legislation plays some role in the mission of the association.¹⁰ It is possible that these news references are anachronistic references to the West Virginia Prosecuting Attorneys Institute.

News accounts indicate that prosecutors have been organizing in the state since the early 1920s. There is a report of a meeting of "the West Virginia state prosecuting attorney's association" in 1922 at which prosecutors elected officers and adopted both a constitution and bylaws.¹¹ That report indicates that there was a "temporary organization of the prosecutors association organized during the last session of the legislature."¹² The report indicated that the association met with federal officials "to discuss law enforcement and cooperation between the state and federal government." That meeting reportedly took place at the suggestions of U.S. Attorney General Harry Daugherty.¹³

The association organized in the 1920s appears not to have endured. There is a news report that a subsequent "West Virginia Prosecuting Attorneys association" was organized in 1937 in order to "afford an opportunity for the exchange of ideas and the discussion of possible legislative proposals designed to improve the state's legal workings."¹⁴ The organizing meeting included "[p]rosecutors from most of the state's 55 counties."¹⁵

Analysis

Unlike other states, West Virginia does not appear to make its legislative history materials easily available online. There are audio recordings of various proceedings available online,¹⁶ but those files appear to be organized only by date with no identifying information about which bills were considered in which recording.¹⁷

Because we were unable to obtain legislative history materials, we do not have a clear picture of how often prosecutors lobbied the state legislature or what legislative outcomes they lobbied for. News media accounts give us a very

limited view into the thinking of those prosecutors who happened to speak to the media during the study period. For example, in January 2016, The Exponent Telegram, the daily newspaper serving Clarksburg and the surrounding community, interviewed several prosecuting attorneys about “which issues state lawmakers should address during the current session.”¹⁸ The prosecutors interviewed appeared to be speaking about their own views, rather than the views of any association, and not all prosecutors that the reporter contacted responded.

The news accounts suggest that individual prosecutors supported some measures to make criminal law more punitive, and that the West Virginia Prosecuting Attorneys Institute sometimes formally supports such bills. For example, in 2016, the WVPAl supported a bill that made “non-consensual strangling” a felony.¹⁹ A similar bill had been vetoed the previous year by the Governor, who had said that the bill “duplicated existing law on domestic battery and malicious assault.”²⁰ News accounts indicate that an employee of WVPAl attended the Senate Judiciary Committee meeting in support of the bill. The employee also spoke to the press in support of the bill, saying that it did not duplicate existing crimes.

“Some people see it as a duplication and it's not a duplication because when you have someone who's been strangled, when you look at them, they can look perfectly normal to you and that's not the truth at all. When you go deeper, there's wounds that can't be seen from the outside and that's what can lead to death.

Sherry Eling, West Virginia Prosecuting Attorneys Institute
Violence Against Women resource prosecutor²¹

News accounts indicate that individual prosecutors sometimes took positions on legislation. For example, some prosecutors wanted to put “more teeth into sentencing for out-of-state drug dealers.” It is unclear, however, whether these sentiments were officially conveyed to lawmakers or whether they were simply offered in response to reporter questions.

“Why wouldn't someone from Detroit want to come to the state of West Virginia to sell drugs, where the minimum is one year?”

Rachel Romano, Harrison County Prosecuting Attorney²²

News accounts indicate that prosecutors did not always see expanding the criminal code or increasing sentences as the best way to address crime—especially crime associated with opioids and other drugs. Prosecutors sometimes spoke in favor of drug treatment and other alternatives to punishment. But they also expressed frustration that those alternative methods might not be working.²³

“ I don't think anyone in law enforcement has a solution. Is putting everyone in the penitentiary the solution? Probably not. . . . We will continue doing what we're doing in my office. I can tell you that right now. We're not backing off one iota.”

John Bord, Taylor County Prosecuting Attorney²⁴

Drug crime was not the only crime where prosecutors expressed doubts about an incarceration-centered approach to crime. For example, Harrison Prosecuting Attorney, Rachel Romano, indicated that the mandatory sentencing laws for shoplifting are too harsh.²⁵ The following year, a bill was introduced that would have made those shoplifting penalties even more harsh.²⁶

¹ West Virginia Stat. § 7-4-6(i).

² 1995 West Virginia Laws Ch. 197 (S.B. 25)

³ West Virginia Stat. § 7-4-6(a).

⁴ West Virginia Stat. § 7-4-6(b).

⁵ West Virginia Stat. § 7-4-6(c).

⁶ <https://pai.wv.gov/aboutus/Pages/default.aspx>

⁷ <https://pai.wv.gov/aboutus/Pages/default.aspx>

⁸ West Virginia Stat. § 7-4-6(i).

⁹ And newspaper coverage of grants to modify or build new courthouses report that the board of the Courthouse Facilities Improvement Authority includes two members from each of several organizations, including the West Virginia Prosecuting Attorneys' Association. Michael Hupp, County gets grant for courthouse fixes, *The Herald-Dispatch* (March 7, 2018).

¹⁰ A January 2017 news article reporting the selection of the new president of the West Virginia Association of Counties included the fact that the president also served as “vice-president and legislative chair for the West Virginia Prosecuting Attorneys Association.” Rusty Marks, Prosecutor named president of West Virginia Association of Counties, *The State Journal* (January 27, 2017).

¹¹ *Prosecutors Organize on Law Enforcement*, *The Charleston Daily Mail* (March 30, 1922).

¹² *Id.*

¹³ *Id.*

¹⁴ *Prosecutors Organize*, *Bluefield Daily Telegraph* (Dec 5, 1937).

¹⁵ *Id.*

¹⁶ <https://sg001-harmony.sliq.net/00289/Harmony/en/View/Calendar/20200915/-1>

¹⁷ Resource constraints prevented us from listening to four entire years of audio recordings to identify prosecutor lobbying activity.

¹⁸ Matt Harvey, Area prosecutors, attorneys share ideas for lawmakers, Exponent Telegram (January 18, 2016).

¹⁹ 2016 W.V. HB4362

²⁰ David Beard, Domestic violence bill gets unanimous approval, The Dominion Post (March 3, 2016).

²¹ David Beard, Domestic violence bill gets unanimous approval, The Dominion Post (March 3, 2016).

²² Matt Harvey, Area prosecutors, attorneys share ideas for lawmakers, Exponent Telegram (January 18, 2016).

²³ Mike Valente, WV Fights Back: Taylor County crime fueled by drugs, WDTV (March 30, 2018)

²⁴ Mike Valente, WV Fights Back: Taylor County crime fueled by drugs, WDTV (March 30, 2018)

²⁵ Matt Harvey, Area prosecutors, attorneys share ideas for lawmakers, Exponent Telegram (January 18, 2016).

²⁶ 2017 W.V. SB194

State of Wisconsin

Wisconsin District Attorneys Association

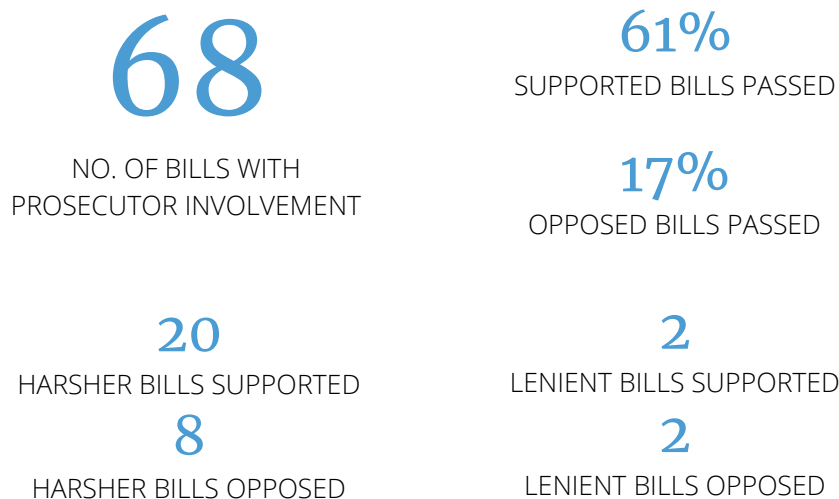
Wisconsin Association of State Prosecutors

Wisconsin prosecutors were somewhat active lobbyists; they were involved in approximately 23% of the criminal justice bills introduced in the state legislature during the relevant time period. (They lobbied on 68 of 291 total bills.)



When Wisconsin prosecutors lobbied, they were often successful. On average, the legislature only passed 39% of criminal justice bills that were introduced. When prosecutors lobbied in favor of a bill, the bill was significantly more likely to pass (61% pass rate); when they lobbied against a bill it was significantly less likely to pass (17% pass rate).

Overall, Wisconsin prosecutors tended to support more punitive bills. They supported 20 bills that would have either expanded the criminal law or increased punishments. However, Wisconsin prosecutors' lobbying was not uniformly in favor of more punitive laws. They opposed 8 bills that would have either expanded the criminal law or increased punishments. When it came to bills would have decreased the scope of criminal law or decreased sentences, prosecutors supported 2 such bills and opposed 2.



Associations Composition and History

Wisconsin has two prosecutors' associations, the Wisconsin District Attorneys Association (WDAA) and the Wisconsin Association of State Prosecutors (WASP). Both associations engage in lobbying before the state legislature. Generally, the WASP only weighs in on bills that are procedural and/or uncontroversial.¹ It appears the WDAA is the more political association of the two.

The Wisconsin District Attorneys Association is officially a volunteer organization.² The WDAA consists of every prosecutor, including assistant district attorneys, in Wisconsin; however, not every member is a paid member. Publicly available information about the WDAA is difficult to locate; although the organization has a website,³ most of the webpages within the website are blank.⁴ According to the current president of the WDAA, Kurt Klumberg, he and the other board members interface with the legislature the most. During the 2015-2016 legislative session, the WDAA employed three authorized lobbyists: Louis J. Molepske, Micha Schwab, and Greta Mattison.⁵ During the 2017-2018 legislative session, they employed two authorized lobbyists, Ryan Trimmer and Natalie Zibolski.⁶

The WDAA was formed in March of 1905 by Gerhard M. Dahl, the-then district attorney for Portage County.⁷ Dahl served as the association's first president.⁸ The main item of discussion at the first meeting in Milwaukee was to have the legislature pass a bill that allowed county boards to set aside a fund to be used by district attorneys in order to secure evidence in state cases.⁹ In September of 1909, the Green Bay Press Gazette reported that the association favored lengthening the terms of district attorneys from two to four years.¹⁰ The association believed this would insulate the office from politics.¹¹

The Wisconsin Association of State Prosecutors does not have a website. Limited information about the organization was available through the Wisconsin Ethics Commission.¹² WASP's membership consists of approximately one quarter of the 400 assistant district attorneys in the state. The association's main goal is to advocate for assistant district attorneys as a labor union.¹³

During the 2015-2016 legislative session, David Feiss served as the president of the association and the association employed two authorized lobbyists, Jordan Lamb and Ronald Kuehn.¹⁴ In total during the 2015-2016 legislative session, the association spent \$52,632.00 on lobbying.¹⁵ During the 2017-2018 legislative session, Michael Thurston served as president of the association and the

association employed three authorized lobbyists: Jordan Lamb, Ronald Kuehn, and John Webendorfer.¹⁶ During the 2017-2018 legislative session, the association spent \$34,093.50 on lobbying.¹⁷ The Wisconsin Ethics Commission recorded WASP's lobbying interests as "legislation and administrative rules relating to Wisconsin's criminal code and affecting Assistant District Attorneys."¹⁸

Analysis

During the study period, the prosecutors' associations mostly focused on criminal procedural reform enhancing victims' rights and increasing defendant's post-conviction responsibilities. In addition, news reports highlight tension between the legislature and the prosecutors' associations regarding funding for prosecutorial offices.¹⁹ Notably, most of the written testimony posted with the bills came from the attorney general, rather than from the prosecutors' associations.

Prosecutors supported several bills during the study period that would have protected victims' rights. For example, both the WASP and Attorney General Brad Schimel supported bills to regulate the ability to obtain a crime victim's mental health treatment records.²⁰ Schimel said that the bills do "not infringe upon a defendant's right to a fair trial. It just sets clear standards that restore some degree of dignity to victims."²¹ He further testified that they "must raise the threshold for access to private mental health records to prevent any intrusion into, or chilling effect on the therapist/patient relationship" and that these bills go "a long way to achieving those ends and protecting victims."²² Not all Wisconsin prosecutors supported these bills. Ozaukee County District Attorney, Adam Gerol, opposed one of the bills, testifying that "while I respect those who have offered their support for this bill, myself and other prosecutors have profound reservations," due to a provision that allowed the defense to comment on if a victim has not given permission for a trial court to examine their confidential counseling records.²³ Neither bill passed.

The Attorney General also supported two bills proposing constitutional amendments to provide more rights to victims of crime.²⁴

“The constitutional rights of the accused are clear, but the rights of victims need clarification and strengthening. It is time to place victims on equal footing. The rights captured in this amendment are basic and important. . . . At DOJ we believe that justice isn't served

until crime victims are. This amendment ensures that victims are served.²⁵

Brad Schimel, Wisconsin Attorney General

Wisconsin prosecutors also focused on child abuse and neglect during the study period.²⁶ During the 2015-2016 legislative session, Wisconsin prosecutors helped to draft and lobby for the “Justice for Children” legislative package, which consisted of several bills.²⁷ One—or both—of the prosecutorial associations supported each of those child abuse and neglect bills. The Wisconsin Department of Justice, state prosecutors who specialize in child abuse and neglect prosecutions, organizations’ representatives, and Attorney General Brad Schimel were heavily involved in the drafting and lobbying for these bills. Schimel testified that he was “confident that the ‘Justice for Children’ package of laws will be a great asset to prosecutors statewide and hold offenders more accountable than current law allows.”²⁸ None of the “Justice for Children” bills were passed. However, SB 325, which created the crime of engaging in repeated acts of abuse of the same child, and which the attorney general also helped to draft, was passed and signed into law in 2016.²⁹

The “Justice for Children” package was not the only legislation aimed at protecting children, “Alicia’s Law” allowed for administrative subpoenas to investigate Internet crimes against children, created an Internet crimes against children surcharge, and made an appropriation.³⁰ And AB 429 and its companion bill SB 326 would have required referral of cases of suspected or threatened child abuse or neglect to the sheriff or police department, coordination of those cases, and referral of those cases to the district attorney for criminal prosecution. These bills were supported by the attorney general and state prosecutors.

“[T]his piece of legislation will make a serious impact on the number of Internet predators being caught and the number of potential victims being spared the dehumanization of these appalling and disgusting crimes.

Brad Schimel, Attorney General, referring to Alicia’s Law³¹

Some unsuccessful bills from the “Justice for Children” package, which was in the 2015-2016 legislative session, were later passed in slightly different form. For example, AB 355, which was passed in the 2017-2018 legislative session,³² removed the burden from the prosecution to prove “intent to neglect” and allowed them instead to prove “negligently failing to act.” The bill also facilitated

prosecution when the victim is a young or nonverbal child that cannot recall dates or specific instances by creating a crime of repeated acts of neglect of the same child. Attorney General Brad Schimel supported the bill.

“ This legislation aims to clarify our child neglect statutes, as well as provide for stricter enforcement of penalties...This proposed legislation would allow prosecutors to rigorously prosecute crimes of severe neglect and allows for softer punishment on less severe neglect.

Brad Schimel, Attorney General³³

Also during the 2017-2018 session, the legislature passed AB 486 which increased the penalty for patronizing a prostitute from a Class A misdemeanor to a Class I felony if the person is under the age of 18. A state senator pointed out in his written testimony that the local Sheboygan County District Attorney urged legislatures to “avoid using the term ‘underage prostitute’” in the bill.³⁴

During the study period, the legislature considered sweeping criminal procedural changes that had been in the works for over twenty years.³⁵ These bills aimed to make criminal procedure more “user friendly,” and both the WDAA and WASP opposed them. ³⁶ In August of 2015, David O’Leary, the president of the WDAA, wrote a letter to both the Committee on Judiciary (House) and the Committee on Judiciary and Public Safety (Senate) expressing the association’s opposition. O’Leary explained that bill contained too many provisions that representatives of the WDAA Board and the Department of Justice oppose and points out that the provisions were passed by “simple majority vote when [WDAA] representatives were unable to attend the meetings or were simply outnumbered by the members of the Public Defender’s office in attendance at every meeting.” O’Leary added that the “bill currently fails to fulfill its intended purpose” given the development of the law—in areas such as bail, jury trials, competency, and discovery—since the start of the reform 20 years ago that has not been incorporated into the bill. Mostly, the bill fails to recognize both Wisconsin and United States Supreme Court precedent and electronic production and storage of information. Finally, O’Leary complains that the bill does not “acknowledge certain routine and accepted practices,” like “Alford” pleas, and demands that the bill “MUST” state that any criminal procedure not addressed in the bill would not change the current law and practices. Both failed to pass.

The Wisconsin Association of State Prosecutors did indicate their opposition to some bills that would have made the criminal law more punitive. Specifically, the WASP consistently opposed bills that increased penalties for intoxicated driving crimes.³⁷ For example, AB 353 and AB 446 from the 2015-2016 legislative session created a mandatory minimum for causing bodily harm or homicide to another while driving intoxicated and the Wisconsin Ethics Commission registered the WASP's dissent to the bill. Again, in the 2017-2018 legislative session, the WASP lobbied against SB 73 and AB 97 that attempted to do the same thing as AB 353 and AB 466. In addition, the WASP also lobbied against AB 99 and its companion bill SB 72, which both attempt to increase the mandatory minimum for fifth and sixth offenses of operating a motor vehicle while intoxicated. All of these bills failed to pass.

¹ From conversation had with the current president of WASP.

² From conversation had with current president of WDAA

³ <https://thewdaa.org/about/>

⁴ Limited information was available through the Wisconsin Ethics Commission. That information was supplemented with information provided by the current president of the WDAA, Kurt Klumberg.

⁵ <https://lobbying.wi.gov/Who/PrincipalInformation/2015REG/Information/6893?tab=Profile>

⁶ <https://lobbying.wi.gov/Who/PrincipalInformation/2017REG/Information/7658?tab=Profile>

⁷ *Dahl Elected President*, Wood County Reporter, March 14, 1905.

⁸ Joseph E. Davis of Jefferson County served as the first vice president, and A.L. Hougan of Manitowoc County served as the association's first secretary. *Id.*

⁹ *Id.*

¹⁰ *Longer Terms Wanted by District Attorneys*, Green Bay Press Gazette, September 1, 1909.

¹¹ *Id.*

¹² That limited information was supplemented by a conversation with the current president of the association, Jim Kraus.

¹³ The Wisconsin Ethics Commission recorded the association's business description as an "association representing the interests of Wisconsin Assistant District Attorneys."

<https://lobbying.wi.gov/Who/PrincipalInformation/2015REG/Information/6284?tab=Interests>

¹⁴ <https://lobbying.wi.gov/Who/PrincipalInformation/2015REG/Information/6284?tab=Interests>

¹⁵ *Id.*

¹⁶ <https://lobbying.wi.gov/Who/PrincipalInformation/2017REG/Information/7071?tab=Profile>

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ A lack of funding caused seasoned assistant district attorneys to quit and for district attorneys to run un-opposed due to the lack of monetary incentive to run for district attorney positions. There are many articles from the WI News-story-spreadsheet that touch on prosecutors quitting due to a lack of funding: WI001; WI007; WI008; WI010; WI014; WI022; WI024; WI 052; WI059; WI060; WI096. (There are more, but these are just examples.) This is an article that touches on DA's running unopposed due to the pay cut an ADA would take to do so: <https://urbanmilwaukee.com/2020/07/27/most-district-attorneys-running-unopposed/>

²⁰ AB 570, SB 492, Assembly Joint Resolution 47, Senate Joint Resolution 53 (2017-2018 legislative session);

<https://lobbying.wi.gov/Who/PrincipalInformation/2017REG/Information/7071?tab=Interests>

²¹https://docs.legis.wisconsin.gov/misc/lc/hearing_testimony_and_materials/2017/ab570/ab0570_2017_12_21.pdf AND

https://docs.legis.wisconsin.gov/misc/lc/hearing_testimony_and_materials/2017/sb492/sb0492_2018_01_04.pdf

²² *Id.*

²³https://docs.legis.wisconsin.gov/misc/lc/hearing_testimony_and_materials/2017/ab570/ab0570_2017_12_21.pdf

²⁴ Senate Joint Resolution 53, Assembly Joint Resolution 47.

²⁵https://docs.legis.wisconsin.gov/misc/lc/hearing_testimony_and_materials/2017/sjr53/sjr0053_2017_06_15.pdf

²⁶ It appears Wisconsin prosecutors and legislators had been directing resources toward fighting child neglect and abuse even before the study period as well. For example, in 2010, District Attorney Brian Blanchard wrote Representative Berceau before departing from office to address a set of issues regarding child protection with a set of proposals. In addition, in 2013, the Dane County District Attorney's Office initiated a pilot program—The Deferred Prosecution Child Abuse Initiative—that allowed defendants facing charges related to their use of excessive corporal punishment to enter into a deferred prosecution upon agreement of completing the program to address corporal punishment and the impact on racial disparities in Wisconsin.

https://docs.legis.wisconsin.gov/misc/lc/hearing_testimony_and_materials/2015/ab429/ab0429_2015_11_05.pdf

²⁷ That package contained Assembly Bills 428, 429, 430, and 431 and their companion Senate Bills 324, 325, and 326.

²⁸https://docs.legis.wisconsin.gov/misc/lc/hearing_testimony_and_materials/2015/ab428/ab0428_2015_11_05.pdf

²⁹https://docs.legis.wisconsin.gov/misc/lc/hearing_testimony_and_materials/2015/sb325/sb0325_2015_10_22.pdf

³⁰ Assembly Bill 666; Senate Bill 546,

³¹https://docs.legis.wisconsin.gov/misc/lc/hearing_testimony_and_materials/2015/ab666/ab0666_2016_01_13.pdf

³² AB 355 also had a companion bill, SB 280.

³³

https://docs.legis.wisconsin.gov/misc/lc/hearing_testimony_and_materials/2017/sb280/sb0280_2017_08_23.pdf

³⁴https://docs.legis.wisconsin.gov/misc/lc/hearing_testimony_and_materials/2017/ab486/ab0486_2017_09_07.pdf

³⁵ Senate Bill 82; Assembly Bill 90, 2015-2016 Legislative Session

³⁶<https://lobbying.wi.gov/Who/PrincipalInformation/2015REG/Information/6893?tab=Profile> AND <https://lobbying.wi.gov/Who/PrincipalInformation/2015REG/Information/6284?tab=Profile>

³⁷<https://lobbying.wi.gov/Who/PrincipalInformation/2017REG/Information/7071?tab=Interests> AND <https://lobbying.wi.gov/Who/PrincipalInformation/2015REG/Information/6284?tab=Profile>

State of Wyoming

Wyoming County and Prosecuting Attorneys Association

It is difficult to assess the lobbying efforts of Wyoming prosecutors because so much data was unavailable. We were able to confirm that Wyoming prosecutors were involved with at least 33 bills, which constitute 31% of the 107 criminal justice bills introduced during the study period. Given how much information is missing, it is not possible to assess the frequency or success of those lobbying efforts.

Association Composition and History

Very little public information is available about the Wyoming County and Prosecuting Attorneys Association (WCPAA). Internet searches reveal that the association is a 501(c)(6) organization headquartered in Sundance, Wyoming.¹ But the association itself does not appear to have a website, and so we were unable to discover either the association's stated mission or what formal role the state's 23 elected local prosecutors play in the organization.

Efforts to uncover the association's history were also unavailing. One news account makes clear that the association dates to at least the 1960s.² But we were unable to discover when the association was first founded or the reasons it was created.

Analysis

Publicly available materials provide only a partial picture of when Wyoming's prosecutors lobby the legislature and what positions they take on specific bills. Legislative history materials from some committees, but not others, were available online. As a result, we were able to determine prosecutors' involvement in only the bills that went through certain committees.

For those bills for which information about prosecutor involvement was available, we saw that Wyoming lawmakers could be quite responsive to prosecutors' lobbying. One notable example involves HB 94,³ a bill that was "was designed to divert minor offenders and parolees from Wyoming's crowded penitentiary system, and offer early parole and release options for incarcerated non-violent

offenders who show signs of rehabilitation.”⁴ News accounts indicate that the bill had “broad, bipartisan support.”⁵ But when prosecutors and the governor’s office notified the chairmen of the House and Senate judiciary committees that they had concerns, lawmakers abruptly cancelled a hearing on the bill that was scheduled for the next day.⁶ Prosecutors expressed concerns that the bill “bill did not include sufficient funding to maintain supervision programs for those diverted from the penitentiary system.”⁷ They also complained that the bill took discretion away from prosecutors.⁸ Prosecutors did not raise these concerns until after lawmakers had spent more than a year and a half on the bill, including holding at least three committee meetings.⁹ The bill was eventually passed by the House, but died in the Senate.¹⁰

“If we’re not going to do as much incarceration, we need to be sure that we’re keeping a close eye on folks.

Mike Blonigen, Natrona County District Attorney

A similar dynamic occurred when the lawmakers considered a bill about juvenile sex offender risk assessments.¹¹ Park County and Prosecuting Attorney Bryan Skoric testified before the Joint Judiciary Committee on behalf of the WCPAA. He informed the committee that the association opposed the bill because it included a subsection that would have prevented juveniles sex offenders from being subject to registration, notification, and disclosure requirements once they reach the age of majority. If the section were removed, Skoric informed the committee, then the association would support the bill.¹² The committee voted to remove the subsection, and the bill was subsequently passed and signed into law.

Sometimes, lobbying by the association took time. When the state overhauled its domestic violence statutes in 2014, the new statutes did not include strangulation and some other forms of unlawful contact to the list of domestic violence crimes that could lead to enhanced penalties. Although prosecutors disapproved of this omission and characterized the decision as a “loophole” in the legislation,¹³ a 2016 bill aimed at changing the law did not succeed.¹⁴ But a bill introduced in 2018 passed and was signed into law.¹⁵

The WCPAA supported two bills that made criminal law less harsh. Both of which were very modest reforms. One created a defense for medical personnel and first responders who prescribe opiate receptor antagonists, such as naloxone, to people who are experiencing an overdose.¹⁶ The other implemented a new sobriety program for DUI offenders, which the WCPAA supported extending to

smaller counties.¹⁷ Notably, although the bill made some portions of the DUI laws less harsh, it also created new misdemeanor crimes for those who failed to comply with the new program.

At the close of our study period, the legislature began work on a justice reinvestment initiative.¹⁸ But the legislation that grew out of that initiative was not introduced until after our study period ended, and thus we did not measure how the WCPAA responded to such a concerted effort towards criminal justice reform.

¹ <https://www.charitynavigator.org/ein/830294409>

² See page 11 of the Park Records, Thursday June 4, 1970 (recounting that an individual served as the president of the Wyoming County and Prosecuting Attorneys Association in 1961).

³ 2017 HB 94

⁴ Andrew Graham, *Prosecutors, Mead block sentencing reform*, WyoFile: People, places & policy (Jan. 17, 2017)

⁵ Andrew Graham, *Prosecutors, Mead block sentencing reform*, WyoFile: People, places & policy (Jan. 17, 2017)

⁶ Andrew Graham, *Prosecutors, Mead block sentencing reform*, WyoFile: People, places & policy (Jan. 17, 2017)

⁷ Andrew Graham, *Prosecutors, Mead block sentencing reform*, WyoFile: People, places & policy (Jan. 17, 2017)

⁸ Iain Woessner, *Rerucha: Prosecution won't end Wyoming's crises*, Rawlins Daily Times (March 4, 2017).

⁹ Andrew Graham, *Prosecutors, Mead block sentencing reform*, WyoFile: People, places & policy (Jan. 17, 2017)

¹⁰ Kerry Drake, *Private prisons don't belong in Wyoming's penal system*, Wyoming Tribune-Eagle (May 12, 2017).

¹¹ 16LSO-0109.4.

¹² <https://wyoleg.gov/InterimCommittee/2015/01MIN1103.pdf> (pages 4-5)

¹³ Katie Kull, *Lawmakers discuss changes to domestic violence statutes*, Laramie Boomerang (Nov. 18, 2017).

¹⁴ 2016 HB 132

¹⁵ 2018 SF 19

¹⁶ 2017 SF 42

¹⁷ 2018 SF 86; see also <https://wyoleg.gov/InterimCommittee/2018/01-20180507MeetingMinutes.pdf> (at page 3)

¹⁸ <https://wyoleg.gov/InterimCommittee/2018/01-201809202-01WYJCSlidesFinalSept20-LSOcorrected.pdf>

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