

PROSECUTOR WATCH

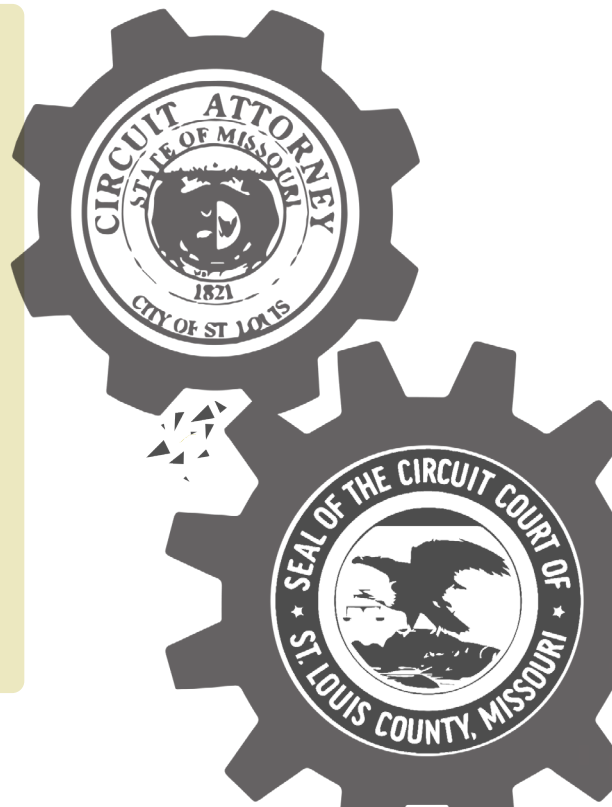
AN INTRODUCTION



PROSECUTOR ORGANIZING TABLE

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INTRODUCTION

The **Prosecutor Organizing Table (Table)** is a coalition of organizations leading decarceration and racial justice efforts in St. Louis, Missouri. The Table consists of Action St. Louis, ArchCity Defenders, Freedom Community Center, Forward through Ferguson, MacArthur Justice Center, and Missourians to Abolish the Death Penalty.¹ Contributors to this publication come from individuals at or affiliated with the Table organizations and include writing, editing, design, and photography.

The Table was formed in 2020 in response to the elections and service of “progressive” prosecutors in St. Louis City and County. By “progressive” we mean – individuals whose campaign platforms acknowledged the racism and punitive nature of their role, and pledged to change course. Since 2020, we have seen a gap between what the candidates promised and what they prioritized. We aim to hold local “progressive” prosecutors accountable to their campaign promises and progressive policies through public education, evaluation, and sustained pressure. Our goal is to provide the public with the tools and

knowledge to demand accountability from our region’s prosecutors to secure real progressive actions rather than empty progressive promises. Much has been studied and written about policing and jailing; however, the same cannot be said for prosecution. **Through this publication, the Table seeks to do three things:**

THREE GOALS OF THE PROSECUTOR ORGANIZING TABLE

1. *Share information about prosecutors and their impact*
2. *Provide metrics for evaluating prosecutors*
3. *Encourage the public to be informed and locally engaged*



“We have seen a gap between what the candidates promised and what they prioritized.”

1. Prosecutor Organizing Table organizations are current with the release of this publication.



WHAT'S AT STAKE?

Prosecutors have immense power within the criminal legal system and too often they wield power by creating long-lasting harm in the lives of people, disproportionately for those who are Black and poor. Whether insisting on pretrial detention for someone legally presumed innocent, coercing guilty pleas from vulnerable people, or advocating for someone to be killed through death penalty requests, prosecutors are state actors with staggering amounts of power to enact violence on our communities.

This violence has devastating consequences that have made shockwaves across the country. **St. Louis has repeatedly made national news for having the worst jail conditions in the country.** Eleven people have died in the St. Louis City Justice Center since April of 2021. All of those people were held pretrial on underlying charges brought by the prosecutor who recommended “no bond.”

Even if prosecutorial violence doesn't lead to death in jail or prison, it directly damages people's lives. A study from 2016 demonstrated that one year in prison takes two years off a person's life expectancy.² Not only does incarceration affect those in jail or prison, but incarceration also takes years off of family member's lives as well. A study from 2021 showed that people who have a family member in prison lose 2.6 years in life expectancy.³ Prosecutors stand at the front door to mass incarceration, and their violence affects all of us.

“Prosecutors are state actors with staggering amounts of power to enact violence on our communities.”



2. Wildeman, Christopher. (2016). Incarceration and Population Health in Wealthy Democracies*: Incarceration and Population Health. *Criminology*. 54. 10.1111/1745-9125.12107.

3. Sundaresh R, Yi Y, Harvey TD, et al. Exposure to Family Member Incarceration and Adult Well-being in the United States. *JAMA Netw Open*. 2021;4(5):e2111821. doi:10.1001/jamanetworkopen.2021.11821

OUR FRAMEWORK

The Table recognizes that some individual prosecutors may try their best to do good or reduce harm; however, we also recognize that popular alternatives to incarceration and prosecution can leave people worse off, such as making freedom contingent on a client's sobriety with limited support to address substance use or through other decisions that further entangle a person within the criminal legal system. We believe that support programs—the wraparound services that address the root causes of crime and promote wellness and public safety—are best delivered outside of the carceral system (police + courts + jails), through social services agencies, nonprofits, and other institutions. The Table recognizes the limitations of the criminal legal system to meet communities' needs.

The Table has adopted the following six abolitionist⁴ principles to provide a foundation for our work and guide our positions, all in pursuit of holding prosecutors' offices accountable, regardless of who holds the office:

SIX ABOLITIONIST PRINCIPLES OF THE PROSECUTOR ORGANIZING TABLE

- 1. Prosecutors are law enforcement: they send people to prison and jail, parole and probation.*
- 2. Prosecution is a systemic and structural component of the criminal legal system.*
- 3. Abolition is opposed to prosecution.*
- 4. Prosecutors are not social workers, therapists, housing advocates, or any other service-oriented role.*
- 5. Prosecuting offices cannot be "co-governed" with/by community organizations.*
- 6. Prosecuting offices must be stripped of power and resources.⁵*

We recognize that individual prosecutors have immense power to reduce harm with the tools of the office. We also recognize that the criminal legal system will never meet communities' needs. For now, the organizations of the Table must navigate the current system to address the immediate needs of St. Louis residents. In the short term, **we aim to identify and reduce prosecutors' power by eliminating some of the most dangerous elements of their discretion and shrinking their office.** Prosecutors are elected by us, and theoretically work for us. Tomorrow, and every day, they'll send a neighbor to jail in a case called "*the public v. ...*". But, we are the public, and we demand something better.

THE PRISON INDUSTRIAL COMPLEX (PIC): The overlapping interests of government and industry that use surveillance, policing, and imprisonment as solutions to economic, social and political problems.

ABOLITION: PIC abolition is a political vision with the goal of eliminating imprisonment, policing, and surveillance and creating lasting alternatives to punishment and imprisonment.

Explainer:

Historically, "abolitionist" comes from those who called for the end of slavery in the 1800's. Abolitionists believed that slavery could not be fixed or reformed. It needed to be abolished.

Fast forward to today.

Have you ever felt that police, courts, and incarceration do more harm than good? You're not alone.

We all want safe communities. The question is how do we build safe communities? Is it by locking up and policing more and more people? Or is it by dealing with the causes of harm in our communities?

Communities where people have housing, food, education and jobs have the lowest crime rates. The best way to reduce harm is by building safe, healthy communities where people have their basic needs met. To us, that is abolitionist.

4. <https://criticalresistance.org/wp-content/uploads/2012/06/What-is-Abolition.pdf>

5. These principles were outlined in Mariame Kaba, et al, *Abolitionist Principles for Prosecutor Organizing: Origins and Next Steps*, 16 STAN. J. C.R. & C.L. 496, 518 (2021).

HOW WE GOT HERE

Seeing the tremendous discretion in these offices, advocates and organizers have pushed for the election of more “progressive” prosecutors. The national movement picked up steam after the Ferguson uprising. In 2016, organizers in St. Louis laid the groundwork for the election of Kim Gardner, the City’s first Black Circuit Attorney. In 2018, many of the same organizers fought to oust the nearly three-decade incumbent Bob McCulloch—his office failed to indict Darren Wilson who killed Michael Brown Jr.—and replace McCulloch with Wesley Bell, the County’s first Black Prosecuting Attorney. These elections were part of, and added momentum to, a national wave of prosecutorial organizing.⁶



Kim Gardner, Wesley Bell, and Gabe Gore

Despite progress, we are witnessing a regression to “law and order” and an increase in the use of punitive measures in policing and prosecution in the City under Gabe Gore and in the County under Wesley Bell. We are at a critical turning point where St. Louis can choose to revert back to policies that we know don’t work or commit fully to reimagining public safety. We have yet to see a progressive prosecutor in St. Louis.

As organizations that work in and around the criminal legal system every day, we have seen the impact that prosecutors have had on hundreds, if not thousands of lives. In the next two sections, we outline the role of the prosecutor and present a set of metrics the public can use to evaluate how progressive a prosecutor is, or isn’t.

“We are at a critical turning point where St. Louis can choose to revert back to policies that we know don’t work or commit fully to reimagining public safety.”

6. <https://law.stanford.edu/publications/beyond-reform-four-virtues-of-a-transformational-prosecutor/>

WHAT IS A PROSECUTOR?

In the most basic sense, prosecutors are lawyers for the government. They represent the state or federal government against individuals accused of a crime. State prosecutors are mostly elected at the county level and are commonly known as District Attorneys, Circuit Attorneys, State's Attorneys, County Attorneys, and/or Commonwealth Attorneys. The terminology may differ based on jurisdiction, but regardless of jurisdiction, prosecutors are elected officials with extraordinarily broad power and discretion at each stage in the criminal legal process.

For example, when presented with the documentation from an arrest made by police, prosecutors choose which charges they will use when prosecuting an individual. In many cases, they will add additional charges (commonly known as charge stacking) so that they will have leverage against the accused during the prosecution process.

Typically, the first court appearance in the process is called the bond hearing. At the person's first court appearance, a prosecutor has a choice about what bond conditions they will argue for. The prosecutor has several options:

PROSECUTORS' OPTIONS

1. Ask the judge to release the person from jail on their own recognizance⁷ for a person's release
2. Ask the judge to keep the person in jail until they can buy their freedom (cash bail or bond)
3. Advocate for a person to stay in jail for the duration of their criminal case, also known as a 'no bond' recommendation

Prosecutors most frequently push for the third option—no bond regardless of the underlying circumstances.



According to Freedom Community Center's 2023 CourtWatch data, prosecutors in St. Louis City ask for no bond more than 85% of the time.

If the accused person, or defendant, remains in jail (which often happens), the prosecutor has additional leverage to push someone to plead guilty. **At each stage, the prosecutor has the power to influence which path the case takes, thereby increasing their leverage for a conviction down the road.** Because their interests are in convictions rather than actually getting to the truth and to healing and reconciliation, prosecutors regularly abuse their power to meet their goals.

"Prosecutors are elected officials with extraordinarily broad power and discretion at each stage in the criminal legal process."

7. A promise to appear in court, no bail money required, but specific court-ordered conditions are imposed

HOW ARE WE EVALUATING OUR PROSECUTORS?

The Table has developed five metrics for evaluating prosecutors: **Transparency, Charging Decisions, Pretrial Detention, Conviction and Sentencing, and Commitment to Community-Based Alternatives.**

These metrics will allow us to evaluate our prosecutors and provide a standard for measuring accountability.

TRANSPARENCY

The public demands and deserves transparency from the prosecutors of St. Louis City and County, so that “every policy and decision can be evaluated by the public, by advocates, and by the prosecutors themselves.”⁸ Historically, these offices have only prioritized transparency when it serves their interests. We aim to take an in-depth look at each prosecutor’s office practices and assess whether communities can readily access information and each office’s willingness to share it. We will do so by seeking answers to the following questions:

QUESTIONS TO DETERMINE PROSECUTOR TRANSPARENCY

- Does each office keep a “Brady List” or an Officer Exclusion list? If so, is the office willing to disclose the names of officers that are on this list? This list indicates that if an officer’s name is listed, any case submitted to the warrants office will not be issued.
- Does each office have a dedicated team responsible for handling Sunshine (records) requests? How often are the offices denying requests and for what reasons are they denying the request? How much do offices charge for requisition material?
- Does each office retain a lobbyist on staff? What have they lobbied for or against on behalf of the respective offices?
- How is data collected? Is there a tracking system for data collected? Is there a public portal or website that makes all this data available to the community? Does the data include various demographics, including race, gender identity, etc.? What data is made available (i.e. Pretrial Incarceration request, Charges Issued, Case Dispositions, Wanted status, etc)?
- Does each office conduct an independent investigation of police use of force, or do they use the involved department? Do they have a standard procedure to investigate police use of force cases or death? If they don’t investigate all use of force cases, how do they determine which to investigate? What percentage of these cases result in charges? Is this information publicly available?

What would it look like for self-described progressive prosecutors to shrink the size of their own office, and grow support for community-based alternatives to incarceration? To reduce pretrial detention and increase reliance on summons in lieu of warrants? What would it look like, in other words, for our prosecutors to follow through on their promises?

8. <https://law.stanford.edu/wp-content/uploads/2021/01/Pendergrass-and-Trivedi-Beyond-Reform.pdf>

CHARGING DECISIONS

Charging decisions lie at the heart of prosecutorial power and discretion. Each time prosecutors charge someone they make a decision about what is considered “criminal activity.” To make these decisions, prosecutors could consider questions like: Do I file charges against a person clearly acting out of poverty, addiction, or mental illness, or do I instead refer them to services? If the evidence gathered was based on illegal police activity, do I move forward with prosecution? Do I even prosecute, knowing that rich white people frequently engage in this activity without criminal consequences? Instead, prosecutors most frequently, regardless of the circumstances, ask themselves what is the most serious charge I can use based on the available evidence? They do this because it sets the negotiating power in a case in their favor. People charged with more serious accusations are more likely to be detained pretrial, giving the prosecutor even more bargaining power to secure a conviction.

When making charging decisions, prosecutors operate without consequences for their decisions. No one is checking their work, evaluating the racial bias that seeps its way into the charging decision process, or examining whether they are using charging decisions to create unjust leverage over the accused.

How our prosecutors wield their charging power and whether it aligns with their stated promises and policy positions can be measured by examining the following:

QUESTIONS TO DETERMINE PROSECUTOR CHARGING POLICY

- What is their case declination rate? Is there racial bias in case declination rate? Since the criminal legal system primarily controls and punishes marginalized populations, the best avenue of reform is simply reducing the number and severity of prosecutions. The declining rate of charges, especially as compared to the prosecutors’ non-reformist predecessors, can therefore serve as a rough gauge of whether they deliver on their promise to reduce net social harm.
- Does the office seek the death penalty? There is overwhelming evidence that the death penalty is fraught with error and is disproportionately used against Black people and largely based on the race & gender of the victim.
- What is the office’s record of prosecuting victimless crimes and crimes of poverty? Historically, prosecutor’s offices have spent a large portion of their resources prosecuting offenses that entail minimal social harm and are victimless- often only harming the defendant. Such charges include possession of a controlled substance, sex work (prostitution), and crimes of poverty like trespassing and shoplifting. Marginalized and poor communities are disproportionately charged with these crimes and prosecuting them only exacerbates economic inequalities.
- What is the office’s record of adding “Armed Criminal Action” charges? Armed Criminal Action (571.015 RSMo) is an unclassified and flexible felony charge carrying substantial punishment (minimum of 3-15 years in prison , no probation or parole allowed) that can readily be applied to many low-level felony cases. In serious cases it is duplicative; in minor felony cases it is used almost exclusively to extort guilty plea agreements from the defendant.
- What is the office’s record of criminalizing protesters? State and municipal prosecutor offices have a history of filing charges against peaceful protesters at the behest of police departments. Charges in this context often provide legal cover for police brutality, impede civil rights lawsuits, and otherwise punish people for exercising their First Amendment rights. Some examples include: ‘failure to disburse,’ ‘failure to comply,’ and/or ‘resisting arrest.’

PRETRIAL DETENTION

In the criminal legal system, pretrial policies and practices dramatically impact people's lives. Whether a person is charged with a crime, loses their job or house due to pretrial incarceration, or is forced to pay thousands of dollars to purchase their pretrial freedom is, in large part, decided by the prosecutor's office. If someone is detained while awaiting their day in court, they are also at risk of enduring significant harm while jailed—inadequate access to food, water, medical care, in addition to violence initiated by guards, excessive macing, and water deprivation. St. Louis has made national news for extremely inhumane conditions—both in the former Workhouse and in the City Justice Center jails. Furthermore, not everyone who is detained pretrial makes it out alive. Between 2009 to 2019 approximately 29 people died while detained in St. Louis County or City jails. And, between 2020 to 2023, approximately 17 people have died in the St. Louis City jail (Justice Center).

Beyond the immediate caging of presumably innocent people and the collateral consequences on their lives and the lives of loved ones, pretrial decisions have dramatic impacts on the ultimate outcomes of cases. Studies have shown that pretrial incarceration makes it four times more likely that someone is sentenced to jail and three times more likely they are sentenced to prison than someone released at some point pending trial.⁹ Being locked up for 2-3 days in pretrial detention increases the likelihood of low-risk detainees' being involved in new "criminal" activity, meaning pretrial incarceration actually makes our community less safe and is destroying lives.¹⁰

Prosecutors are at the front door to mass incarceration. "Progressive prosecutors" have a responsibility to implement policies that reduce the number of people in pretrial detention. Their commitment to reducing pretrial detention can be measured by evaluating the following:

REDUCING PRETRIAL DETENTION MEASURES

- Frequency of "no bond" recommendations: How often does the circuit attorney's office recommend release, no bond, and monetary bond once detained (at initial bail hearings)?
- Frequency of issuing summons vs. warrant: Summons means that people can be free pretrial whereas warrants lead to an arrest and a minimum of 24 hours of incarceration.
- Length of pretrial jail time: How long are people staying in jail pretrial on average? How has that number changed because of prosecutors' practices over the past several years? How are prosecutors' current practices increasing the length of pretrial detention and thereby using that to pressure people to plead guilty?

St. Louis has made national news for extremely inhumane conditions—both in the former Workhouse and in the City Justice Center jails.

9. <https://www.ils.ny.gov/files/Pretrial%20Criminal%20Justice%20Research.pdf>

10. https://craftmediabucket.s3.amazonaws.com/uploads/PDFs/LJAF_Report_hidden-costs_FNL.pdf

CONVICTION & SENTENCING

In an effort to combat biases in sentencing, prosecuting attorneys should track data regarding their charging practices and the sentences they seek—including whether and when they seek consecutive versus concurrent sentences, and when they seek probation as an alternative to incarceration.

A prosecutor's commitment to stated "progressive" policies can be measured by evaluating the following prosecutorial policies and practices:

COMMITMENT TO PROGRESSIVE POLICIES MEASURES

- Use of the death penalty: There is overwhelming evidence that the death penalty is fraught with error, provides no additional public safety benefit over other available sentences, is disproportionately used against Black people, and is biased based on the race and gender of the victim. Is the office requesting the death penalty?
- Frequency of concurrent sentences vs. consecutive: Research shows that increasing the severity of punishment (length of prison term) does little to deter crime. But people continue to be over-punished, especially when sentences are imposed consecutively to one another. Unsurprisingly, there are also racial disparities in sentencing. According to the United States Sentencing Commission, Black men receive sentences on average 19.1% longer than similarly-situated white male defendants. At what rates are offices asking for concurrent and consecutive sentences? Is their racial bias in their use of concurrent and consecutive sentences?
- Use of Conviction Integrity Review Units: Following the passage of Missouri legislation in 2021, a prosecuting or circuit attorney may file a document with the court to signal an individual's previous conviction should be heard by the higher court and removed. This would happen with information that the person was erroneously convicted and/or was innocent.¹¹ What is the office's practice of reviewing relevant information and filing these motions? How many has the office filed within a period of time? What have the outcomes been?
- Severity/length of juvenile sentencing: The United States remains the only country in the world that sentences people to life without parole for crimes they were convicted of when they were under 18. While some states have eliminated such juvenile life without parole sentences, it is still on the books in Missouri. How many juveniles have been prosecuted by the office, and what were their sentences? What is the demographic and charging data?



11. https://www.senate.mo.gov/21info/BTS_Web/Bill.aspx?SessionType=R&BillID=54105455#:~:text=This%20act%20provides%20that%20there,the%20state%20or%20if%20the

COMMITMENT TO COMMUNITY-BASED ALTERNATIVES

Commitment and utilizing community-based alternatives to incarceration and criminal punishment is vital for transformative justice. A prosecutor's commitment to Community-Based Alternatives is measured by evaluating the following:

COMMITMENT TO COMMUNITY-BASED ALTERNATIVES MEASURES

- Community partnership: What are the prosecutor's offices doing to develop relationships with social service organizations? Do they have existing community partnerships that create opportunities to interface and provide services to people? Are they outsourcing services/programs outside of the office?
- Budget allocation: Are the prosecutor's offices committed to making themselves obsolete? In what ways are their offices taking measures to reduce their size? Is there an effort to shift funds towards more diversion/transformative justice programs outside of their offices?
- Commitment to diversion - Is there a commitment by the prosecutor's offices to move toward non-carceral solutions? Have the offices implemented diversion programs? What are the costs of the programs? What is the process for considering and deciding a case whether or not a case is diverted? In what ways are the prosecutors working to replace most prosecution with diversion?

We hope that these benchmarks, as determined by the Prosecutor Organizing Table, will move St. Louis prosecutors to make tangible commitments to change the way they serve St. Louis residents.



CONCLUSION

After years of over-policing, over-incarcerating, and decades of divestment from Black and brown communities, we need repair, healing, and investment, not more prosecution. In place of policing, prosecuting, and jailing, we advocate for community-based systems that respond to harm and make investments in education, jobs, housing, health care, mental health, food security, and more to prevent and address actions stemming from inequality, poverty, scarcity, and desperation.

Prosecutor Watch introduces four things: (1) the Prosecutor Organizing Table, (2) our approach, (3) the role and significant power of prosecutors, and (4) questions raised to invoke transparency and evaluation of prosecutor actions.

If you're reading this and wondering—what now? **We invite you to share this report and stay tuned for upcoming report releases and action steps.** In the coming months, we will be releasing assessments of the current prosecuting attorneys in St. Louis County and St. Louis City using the criteria outlined in this report.

Use the **#prosecutorwatch** to follow this topic. Additional content will be published on social media by the following organizations that are part of the Table:¹²

Organization (websites linked)	Instagram	X (formerly Twitter)
Action St. Louis	actionstl	ActionSTL
ArchCity Defenders	archcitydefenders	ArchCityDefense
Forward Through Ferguson	stlchange	StlChange
Freedom Community Center	fccstlouis	FCCStLouis
MacArthur Justice Center		MacArthrJustice
Missourians to Abolish the Death Penalty	madpmo	MADPMO

“We need repair, healing, and investment, not more prosecution.”

12. Please note, the organizations’ Facebook profiles may be found by searching by the organization’s name. If you are part of a group or organization that is aligned with the framework and criteria described above, we invite you to join the Table! To do so, please contact Marcel Hagens via email at marcel@actionstl.org.