

# SMART PROSECUTION

## **Misdemeanor Deferred Prosecution Enhancement Program: Cook County's Smart Prosecution Initiative**

*Crafting sanctions to fit an individual's risk of re-offending*

### **I. Overview**

In the not so distant past, sentencing for misdemeanor offenses was straightforward. Those convicted of low-level crimes were often all treated the same way, either paying a fine or spending a night or two in jail.

More recently, however, police, prosecutors and courts across the U.S. are turning to sentences that are more creative, more individualized—and more effective.

In seeking to divert individuals who have committed low-level offenses from incarceration—and in many instances, from the justice system entirely—local justice systems are exploring a number of options, including requiring these individuals to perform community service or participate in counseling, educational programs, or other social services.

Cook County's Misdemeanor Deferred Prosecution Enhancement Program reflects one prosecutor's office's evolving efforts in this area. The initiative, launched in 2015 and based in a county of 5.2 million people that encompasses both Chicago and a large swathe of suburbs, seeks to divert individuals who have committed low-level non-violent offenses from court by crafting sanctions that are specifically calibrated to their risk of re-offending.

One of the key innovations of the program is its use—and validation—of a new evidence-based risk-assessment tool developed by the Center for Court Innovation. The tool, known as the Criminal Court Assessment Tool, is one of the first developed specifically for individuals who have committed misdemeanor offenses.

What follows is a description of Cook County's program, including an overview of its planning and implementation phases.

### **II. The Problem**

With a population of 5.3 million residents, Cook County, which includes the City of Chicago, is the largest county in Illinois and the second-largest county in the United States. Cook County's jail holds about 9,000 people, making it the largest jail in the United States.

In the not so distant past, a sizeable chunk of the daily population in Cook County Jail were individuals convicted of low-level misdemeanor crimes. Regardless of the risk they posed to the community, these individuals were often all treated the same way, spending a night or two in jail.

### **III. The Cook County Smart Prosecution Initiative**

Like many counties around the United States, Cook County has sought to reduce its jail population. A major component of its approach has involved diverting certain individuals who have committed misdemeanor offenses from jail through the Misdemeanor Deferred Prosecution Enhancement Program.

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As the word *enhancement* suggests, the program builds on an older effort—the Misdemeanor Deferred Prosecution Program—which the Cook County State’s Attorney’s Office launched in 2012.

Both programs operate side by side, with the original program available in three of Cook County’s five district (suburban) courts and three of its five branch (city) courts. The Enhancement Program, which was developed under the U.S. Bureau of Justice Assistance’s Smart Prosecution Initiative, has a narrower reach, operating in one district court and one branch court.

## *Goals*

The programs are similar in that both seek to keep cases out of court, helping alleviate caseloads. Both hold individuals accountable by requiring them to participate in social services. And both conclude with dismissal of charges as long as participants fulfill their mandates; this allows participants in both programs to avoid the collateral damage that a conviction might wreak on their lives.

Ultimately, both programs share a fundamental belief that there are better ways to respond to low-level crime than fines or short jail sentences, which do nothing to address the underlying issues that lead people to commit crimes in the first place.

## *Eligibility*

Eligibility requirements are the same for both programs as well. Only individuals facing a non-violent misdemeanor charge who have never had a felony or violent misdemeanor conviction can participate. And if their current case involves a victim, the victim must consent to the diversion from court.

## *Screening for Risk*

There are two main differences between the original Misdemeanor Deferred Prosecution Program and the Enhancement Program. The first are the screening tools they use. The original program uses a tool that screens for *behavior* (see Box 1). The Enhancement Program uses a tool that screens for *risk*.

The other main difference is that the original Deferred Prosecution Program offers the same response to all who flag for possible substance use disorder (see Box 1) while the enhanced

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initiative calibrates responses to low, medium or high risk, depending on the results of the assessment.

## *Developing the Enhancement Program*

While compliance with the Deferred Prosecution Program is high—over 90 percent—prosecutors in the Cook County State’s Attorney’s Office wondered if they could respond more effectively to individuals’ risk of re-offending.

The U.S. Bureau of Justice Assistance’s Smart Prosecution Initiative supplied the opportunity to explore this idea by providing financial support for the State’s Attorney’s Office to collaborate with the Center for Court Innovation.

## *Assessing Risks and Needs*

The Center for Court Innovation recently designed and tested the Criminal Court Assessment Tool specifically for individuals who have committed misdemeanors. The tool is based on risk-needs-responsivity theory, which posits that for a response to be effective it needs to match the person’s risk of re-offending—thus those at high risk of re-offending should receive a higher intensity intervention while those at low risk should receive a low-level intervention. In addition, the intervention needs to target what are known as the “Central Eight” risk/need factors<sup>1</sup> and employ a cognitive-behavioral approach tailored, if possible, to the specific learning style and attributes of the individual.

“The most important thing for prosecutors to remember regarding risk-needs-responsivity theory is the risk principle,” says Sarah Fritsche, a researcher at the Center for Court Innovation who helped develop the Criminal Court Assessment Tool. In the past, a prosecutor was more likely to craft a response based on the individual’s charge and criminal history. But research has concluded that treatment resources are better spent on those at highest risk of re-offending regardless of charge, while low-risk individuals should be subject to minimal intervention, Fritsche said.

The assessment tool predicts recidivism based on both static factors, like criminal history, and dynamic

## **BOX 1**

### **THE ORIGINAL DEFERRED PROSECUTION PROGRAM**

In Cook County’s original Deferred Prosecution Program, staff assess individuals charged with a crime with a tool called SBIRT, which stands for Screening, Brief Intervention, Referral to Treatment. An evidence-based tool, the assessment was originally developed for health care professionals to screen patients for risky substance use behaviors. “We were one of the few places in the country to use it in a criminal justice setting,” says Mark Kammerer, supervisor of the Alternative Prosecution Unit.

The Deferred Prosecution Program offers the same response to all who flag for possible substance use disorder: referral to a behavioral health provider, who provides a more formal assessment. These individuals are then required to attend a second appointment with the provider, who will make treatment recommendations based on the assessment. (Recommendations are not binding on participants.) Over 90 percent of participants complete the two appointments, Kammerer said.

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factors, like substance use and problems related to employment. The Center for Court Innovation field-tested the Criminal Court Assessment Tool in New York City, validating its effectiveness with over 900 misdemeanor cases.

Center researchers adapted the tool for use in Cook County by, among other things, adding questions about gang involvement. Staffers at Treatment Alternatives for Safe Communities, a case management and referral agency, were trained to administer the tool. Cook County is now validating the tool on its own population.

The assessment tool's 26 questions usually take about 10 to 15 minutes to complete. An additional five minutes are needed to calculate the score, which indicates whether the individual has a low, medium or high risk of recidivism and identifies important criminogenic needs such as substance use disorder or housing instability.

### *Responses for Low-, Medium- and High-Risk Categories*

The tool allows the Cook County State's Attorney's Office to link individuals who have committed low-level crimes to a short social service intervention calibrated to their risk of re-offending. Those found to be low risk receive the same response as those in the original deferred prosecution program: an assessment for social service needs, like housing.

Those who fall into the medium-risk category are assessed for social service needs *and* required to perform 10 hours of community service. And those found to be high-risk, receive the social services assessment *and* a mandate to participate in a 10-hour cognitive behavioral class to address criminogenic thinking.

"Your risk score is based on your needs at that point in time, rather than the offense you were charged with; if you have greater needs, you may have greater risk of getting into more trouble later," said Cassandra Ramdath, a researcher at the Center for Court Innovation. "We want to make sure that people who are low-risk are not getting over-supervised or receiving unnecessary services, and that the people who are high-risk are getting their needs met. This allows for an appropriate allocation of resources towards those who most need it."

In order to be proportionate to the crime, interventions for misdemeanor offenses are necessarily short. Although prosecutors hope these interventions reduce recidivism, they do not expect the interventions to be cure-alls. Instead, "the goal is to get participants exposed to the treatment available," said Mark Kammerer, supervisor of the Alternative Prosecution Unit in the Cook County State's Attorney's Office, noting that even a brief exposure to services is better than a day in jail or a conviction with no intervention. "This way, they're getting an exposure to services, getting someone to probe them a little bit about the behavior that might be contributing to this."

He added that the deferred misdemeanor programs—both the original and enhanced—are win-wins for everyone. Matching individuals with interventions tailored to their risks and needs is a strategy for improving public safety. For the justice system, the programs save resources by moving cases out of the court system. "The prosecution and defense don't have to prepare a case. The time spent before the bench might go from 10 minutes to 30 seconds. My office still has to review files but we don't have to bring police officers or other experts in, which saves time and money," Kammerer said. And those charged with a crime have a chance to avoid a conviction.

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“If you asked a thousand participants why they’re in the program, they’re saying they want to get their charges dropped,” Kammerer said.

## **IV. Challenges**

### *Initial skepticism*

When the original deferral program was first proposed, there was resistance in some quarters. “The general response to the concept was ‘It’s ridiculous; it will never work,’” Kammerer recalled.

Some critics anticipated that many individuals charged with misdemeanors would find traditional sentences—time already served in jail or fines—less onerous than the alternative sentence of an assessment.

But preliminary focus groups conducted as part of an on-going evaluation of the program suggest that many participants are grateful for the program. They believe that it allowed them a second chance by avoiding conviction and the consequences that might follow, such as losing a job or custody of their children.

### *Resources*

The new assessment tool takes longer to administer than the old tool (up to 15 or so minutes for the new Criminal Court Assessment Tool compared to 10 minutes or less for the SBIRT, which is described in Box 1). This means that one case manager from TASC can handle only two courthouses, which has made it difficult, without additional funding, to expand the Enhancement Program beyond one district and one branch court.

### *Big Picture*

The Misdemeanor Deferred Prosecution Enhancement Program is part of a larger effort in the Cook County State’s Attorney’s Office to expand alternatives to conventional prosecution. In the last 15 years, the office has helped launch multiple drug treatment courts, mental health courts, and veteran courts as well as one prostitution (deferred prosecution) treatment court. Over the same time period, the office’s Alternative Prosecution Unit has expanded from one attorney to 17 attorneys managing about 3,500 cases a month and 10,000 new cases a year.

## **V. Evaluation and Methodology**

Researchers from the Center for Court Innovation are conducting a study on the efficacy of the Misdemeanor Deferred Prosecution Enhancement Program. The study examines three statistically similar cohorts: a control group of individuals who committed non-violent misdemeanor offenses—who went through the traditional court process; individuals with behavioral health issues who committed non-violent misdemeanor offenses and who were diverted from court into the original Misdemeanor Deferred Prosecution Program and received an intervention; and individuals who committed non-violent misdemeanor offenses and were diverted from court into the enhanced program—who received an intervention or alternative

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sanction based on the results of their risk assessment. The three cohorts will be compared based on outcomes, including subsequent justice-involvement and compliance with the program.

To document program implementation, researchers interviewed prosecutors, program staff, and other involved stakeholders. They also conducted two focus groups with participants, the first with a cohort of low- and medium-risk individuals and the second with a cohort of high- and medium-risk individuals. The focus groups served to collect information about participants' experiences in the deferred prosecution program and solicit recommendations for improvement.

## VI. Results

Research results are scheduled for release later in 2016. Evaluations of the focus groups are expected to be completed by the summer of 2016 and data analyses of program impact by the fall of 2016.

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<sup>i</sup> According to "Evidence-Based Strategies for Working with Offenders," research indicates that there are a group of eight criminogenic risk/need factors, known as the "Central Eight," which are strongly associated with recidivism. The first four are the most predictive of recidivism. They are (1) a history of criminal behavior, (2) an anti-social personality, (3) criminal thinking patterns, and (4) frequent interaction with anti-social peers. Less important but also influential are the next four factors: (5) unmarried or otherwise experiencing family instability, (6) unemployed/unemployable, (7) not involved in pro-social leisure activities (i.e., prone to "hanging out" or "trouble"), and (8) substance abuse.