

Misdemeanor Deferred Prosecution Enhancement Program (MDPEP)
Cook County Smart Prosecution Initiative
Strategic Plan

I. Targeted Problem

a. Identification and Perception of the Target Problem

Cook County, Illinois is the second most populous county in the United States. The Cook County State’s Attorney’s Office (SAO) is the largest prosecutorial office in Illinois, and the second largest prosecutor’s office in the U.S. In 2013 the SAO responded to 33,188 felony and 165,049 misdemeanor cases.¹ As a result, SAO must grapple with a misdemeanor caseload that is overwhelming the Cook County criminal justice system and having dramatic impacts on the offenders cycling through it.

Once convicted of a misdemeanor offense, individuals face significant collateral consequences impacting their ability to find employment, obtain school loans, secure housing and public benefits, and maintain healthy relationships. Further increasing the significance of a misdemeanor conviction, under Illinois statute many misdemeanor offenses can be enhanced to a felony charge due simply to the existence of a similar, prior misdemeanor conviction. Such consequences occur despite the fact that many misdemeanor crimes fail to pose risks to public safety.² In addition to the court system and SAO recognizing the impact these offenses were having, the community also expressed its dissatisfaction with the high number of individuals facing prosecution for misdemeanor offenses.

To tackle this problem, in 2012 SAO launched the Misdemeanor Deferred Prosecution Program (MDPP), based in part on the SAO’s successful felony diversion program, to process individuals charged with nonviolent misdemeanor offenses efficiently, eliminate collateral consequences, and direct resources toward more serious crime. Unfortunately, this resulted in an inequitable system whereby thousands of potentially eligible, nonviolent individuals are still prosecuted, convicted, and subjected to short term jail sentences and the collateral consequences that follow. However, after its first year of successful operation, MDPP only addressed 1.5% of all misdemeanor cases, as it was only available for

¹ Annual Report of the Illinois Courts Statistical Summary, 2012.

² Robert C. Boruchowitz, Malia N. Brink, Maureen Dimino, “Minor Crimes, Massive Waste: The Terrible Toll of America’s Broken Misdemeanor Courts,” National Association of Criminal Defense Lawyers (April 2009).

veterans and persons with possible behavioral health needs in two geographical areas of Chicago and none in suburban Cook County.

b. Cook County's Role in Solving the Problem (Over the Past 15 Months)

In an effort to expand the scope of MDPP, both in geographical scope and participant eligibility, the SAO identified two additional courts ripe for a diversion-based initiative: in Branch 34, a city court, there were a growing number of misdemeanor cases for 18-25 year old individuals, and in the suburban 6th Municipal District Court in Markham there was a high volume of misdemeanor cases. SAO also refined its objective for the broader swath of individuals charged with misdemeanor offenses eligible for diversion, so that the expanded program would have a reasonable, meaningful intervention meant to provide an impact to participants but not resulting in a free pass dismissal of the charges. This enhanced approach recognized an urgent need to implement evidence-based strategies that reflect risk-needs responsivity principles. Essentially under this approach, those at higher risk of re-offense should receive more intensive treatment, whereas those at low risk should be mandated to less demanding interventions; and the criminogenic needs of each individual should be assessed and treated using proven cognitive-behavioral methods.³ SAO expected that this renewed approach to the prosecution of certain misdemeanor offenses could possibly defer an additional 500 individuals over the initial two-year period and save SAO approximately \$176 per misdemeanor case⁴ processed through the new program. Additionally, all of these cost saving measures were accomplished with no cost whatsoever to any participant in the Program.

³ See Andrews, D.A., and Bonta, J. *The Psychology of Criminal Conduct*, 5th Edition (2012); see also, Lowenkamp, C.T. and Latessa, E.J. "Understanding the Risk Principle: How and Why Correctional Interventions Can Harm Low-Risk Offenders," *Topics in Community Corrections*, Washington, DC: National Institute of Corrections (2004).

⁴ This number stems from an internal review of the cost of personnel to manage a misdemeanor case. As part of CCI's evaluation of the initiative, CCI is collaborating with the RAND Corporation to generate a formal external analysis of the cost savings.

II. Approach

a. Strategic Solutions to the Target Problem

The SAO planned to build upon the success of its MDPP by enhancing that program's features, which aim to reach more nonviolent individuals charged with misdemeanor offenses and reduce strains on the county justice system rates of recidivism, and collateral consequences for these individuals. The new program, the Misdemeanor Deferred Prosecution Enhancement Program, would: (1) expand the eligibility criteria of MDPP to include all individuals who otherwise meet criminal charge and background criteria, including limiting eligibility considerations to the current charge and criminal history of the individual, allowing for the expansion of offenses eligible for program participation; (2) base an individual's involvement level in the program on a formal risk assessment instrument developed by the Center for Court Innovation (CCI); (3) establish three levels of participation (high, medium and low) based on assessed risk level, specifically an interview and assessment with referral to community resources, requiring the performance of community service, and at the highest level requiring participation in cognitive-behavioral groups; (4) involve formal, external evaluation of the program for enhancement and sustainment purposes; and (5) double the number of local courts involved in misdemeanor deferment efforts at that time. The SAO also planned to make all successful program participants eligible for immediate application for expungement.

The enhanced program centers on an assessment and referral to available community resources and services—while not requiring the level of supervision existing in the felony deferred prosecution or treatment court systems. This assessment, the Criminal Court Assessment Tool (CCAT), identifies individual risk level prior to diversion and screens for key criminogenic needs, including criminal thinking, anti-social associates, employment and education deficits and substance abuse. Additionally, CCAT was designed and validated by CCI for misdemeanor populations. The tool accounts for research in misdemeanor populations, which has shown the prevalence of several key criminogenic needs (criminal thinking and anti-social associates, in particular) is somewhat less than has commonly been found in prior research with individuals charged with felony-level offenses. However, the CCAT also

recognizes that criminogenic risk and need factors appear prevalently in the misdemeanor population, including substance abuse, employment and education deficits, and family dysfunction.

The CCAT is then used to facilitate the appropriate level of program participation, sanctions, and services offered. The CCAT scores each individual and uses three categories to classify participants: high, medium, and low. These scores and categories help SAO identify the level of participation and required services for successful program completion for each individual. Shortly after program implementation, SAO and its partners modified the scoring methodology⁵ for MDPEP participants to allow for increased sensitivity in determining the participant pools for the medium and high risk categories. The modification did not affect the impact evaluation or change the researcher's ability to measure outcomes. Consistent with SAO's concerns about not drastically or unfairly changing participant eligibility and participation requirements, the modification aided in reducing disproportionality in the categorization of risk and need when making assessments and referrals.

To ensure that MDPEP continues to enhance the SAO's misdemeanor diversion efforts, the SAO will track and report the efforts of the initiative to monitor the court process, service providers' efforts, participant compliance, completion rates, case numbers and other factors and historical data like recidivism rates and cost savings across the criminal justice system.

b. Collaborations and Partnerships

SAO works closely with two partners to implement and evaluate the program: Treatment Alternatives for Safe Communities (TASC) and CCI. TASC has a longstanding relationship with SAO and the Circuit Court of Cook County, serving as the entity responsible for administering assessments and making referrals to services. TASC will continue to serve those functions as part of MDPEP. CCI functions as the research partner for MDPEP, performing the program evaluation and assisting with CCAT implementation and technical assistance.

⁵ This is also known as a propensity score adjustment technique, which is commonly used with assessment tool implementation and validation efforts.

Other MDPEP partners include the Circuit Court of Cook County, members of the Chicago defense bar who provide program information to potential participants, the community organizations who file expungements for participants upon successful program completion, and various health care, social service, and faith based community organizations. Additionally, TASC and the SAO developed a consortium of service providers, including its current partnerships and newly brokered partnerships with other community organizations to serve as resources for the participants, most of which had a successful history working with the criminal justice population in other Cook County collaborations.

c. Expected Results

In its first year of operation, the SAO was able to effectively defer over 500 individuals through the successful implementation of the SMART Prosecution MDPEP Initiative. At present, the SAO Alternative Prosecution/Sentencing Unit is working closely with CCI in evaluating the impact of the diversion offered through the Program on recidivism. Additionally, the SAO is working with the RAND Corporation in evaluating the financial cost impact of the overall MDPP, including the SMART Prosecution project. Further, it was expected that this project would alleviate court overcrowding and minimize collateral consequences resulting from convictions for low-level, nonviolent offenses, as well as expecting that MDPEP would improve community relations through information sharing and addressing community concerns about the high volume of prosecutions for misdemeanor offenses. The expansion of MDPEP to the Branch 34 and 6th District courts means it is possible to expand the program to other courts in Cook County.

d. Sustainment

To sustain MDPEP, the SAO will collaborate with the community and other agencies having a clear and well-defined interest in moving individuals quickly through the criminal justice system. The SAO will continue to explore local, state, and federal grant opportunities to sustain the initiative and expand the risk needs responsivity model. SAO will work with the Justice Advisory Council of Cook County and other local entities invested in reducing the amount of time nonviolent individuals spend in custody. Additionally, SAO is exploring recapturing expended funds through the Medicaid

Administrative Claiming Program available as part of the Affordable Care Act for potential financial reimbursement from Medicaid when MDPEP links program participants to covered community-based services. If that becomes a reality, it would cover the majority of services necessary to operate this Program.

e. Long Term Vision

MDPEP has continued to build upon the success of the original MDPP as well as its clear success to assist MDPP in expanding to its current countywide coverage of 85%, with working plans in development to make the Program truly countywide. There have been discussions held concerning the feasibility of utilizing the MDPEP model in the remainder of the MDPP outside of the original MDPEP locations. Those discussions have centered around staffing alterations necessary to do so and the costs of such a change. There is support for that concept within the SAO and the discussion is ongoing.

III. Impact Evaluation

The research partner CCI will provide an impact evaluation of MDPEP. CCI will examine three primary questions: (1) how do higher risk participants compare to lower risk participants in terms of successful completion and post completion recidivism; (2) how effective is MDPEP as an enhanced diversion program; and (3) whether increasing court efficiencies jeopardizes public safety or whether recidivism levels stay the same or are reduced by the program enhancements. To answer those questions, CCI will develop and implement a thorough research methodology surrounding the CCAT, MDPEP structure, and the program personnel and participants. First, CCI will use its existing CCAT tool to develop enhanced sanctions for participants in MDPEP. CCI will create a menu of suitable interventions based upon the assessed level of risk as indicated by the CCAT screen. Second, CCI will document, track, and analyze the MDPEP model by collecting case and historical information, making direct observations, and conducting participant focus groups and interviews of court staff, personnel trained to administer the risk assessment, justice stakeholders, SAO MDPEP team members, and community based agencies. Third, CCI will develop a risk needs profile for the MDPEP population, so that SAO can better understand the characteristics of the Cook County population (i.e. prevalent criminogenic and non-

criminogenic needs). Finally, CCI will conduct a quasi-experimental effectiveness study that will compare three groups or conditions: (1) nonviolent individuals charged with misdemeanor offenses arraigned in 2014 receiving no treatment (prior to implementation of MDPP and MDPEP); (2) nonviolent individuals charged with misdemeanor offenses participating in MDPP, which focuses solely on behavioral health and veterans; and (3) nonviolent individuals charged with misdemeanor offenses participating in MDPEP, which uses the risk needs responsivity tool (CCAT) to determine eligibility and services.

The research hypotheses are two-fold: (1) those in the original MDPP model (Group 2, above) will outperform the no-treatment group (Group 1, above) on all study outcomes; and (2) those in the risk needs responsivity model (Group 3, above) will outperform those in both of the other groups on all study outcomes. Building on those hypotheses, the third research question can be answered affirmatively: if Group 3 outperforms Groups 1 and 2, it is also likely that increasing court efficiencies, through the MDPEP model will not have the effect of jeopardizing public safety because recidivism levels will have stayed the same or been reduced in part by the program. Propensity score adjustment techniques will be used to ensure comparable samples across all three study groups, which will carefully match commonly available characteristics including demographics, criminal history, and current charges.

IV. Logic Model (see model)

V. Training and Technical Assistance

The SAO has engaged with the Association of Prosecuting Attorneys (APA) for training and technical assistance regarding SAO obtaining reimbursement under the Medicaid Administrative Claiming program for service linkage and services provided to MDPEP participants. This technical assistance included obtaining legal expertise and resources from the Legal Action Center, engagement with local healthcare and treatment services partners, and later to a peer-to-peer session where SAO used their knowledge, resources, and experience to provide technical assistance on this subject to other Smart

Prosecution sites. As the program progresses, SAO will work with APA to address additional training and site-specific resource and informational needs.