



Memorandum

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To: Chair Deborah Kafoury, Commissioner Jessica Vega Pederson, Commissioner Lori Stegmann, Commissioner Loretta Smith, and Commissioner Sharon Meieran

Date: 5/11/18

Re: Setting a Higher Bar for the District Attorney Office Budget

Budgets do so much more than determine how and where the County is spending money. Budgets are also a reflection of our values and vision for what kind of outcomes we want to see in our communities. But if budgets are a reflection of our values and vision, most people would come away scratching their heads about what we really want from the District Attorney's (DA's) Office in Multnomah County. Currently, the DA's budget largely measures the total number of criminal cases reviewed, issued, and resolved. Those measures fail to tell us how the DA's office is contributing to building safe and healthy communities.

Multnomah County should set a much higher bar for the kind of framework and metrics that guide the DA's budget. It is not so much about the amount of money being spent (well over \$30 million annually) but the impact that the work of the DA's office can have on our community. The stakes are colossal for how the DA's office impacts county residents. On any given year, well over 10,000 people directly interact with the DA's office in ways that can fundamentally change their lives for the better or worse. The policies, practices, priorities, and structure of the DA's office can be the difference between whether or not crime victims get access to critical services that help them rebuild their lives, whether or not young people are held accountable in a way that protects future life-possibilities, whether people of color are treated fairly, or whether children keep contact and connection with their parents.

This memo outlines why the current framework for the DA budget is a poor reflection of the values and vision we should bring to assessing the impact of the District Attorney's Office on our county and communities. Given the tremendous power and impact of the District Attorney's Office, the county must re-examine the framework for assessing the DA budget. Public safety and health is paramount, and our criminal justice policies and funding should focus on the most effective approaches to achieving that vision.

We are conscious of the fact that we are starting this conversation deep into the process for passing the FY19 County Budget. We are not asking for any changes to the existing structure of what you have before you. What we are asking for is that the county commits to improving over time. We want the County Commission to commit to working with interested community groups and the DA's office to ensure that this time next year there is a set of new metrics for the DAs budget. We need performance measures that begin to better reflect values like equity, inclusion, fairness, harm reduction, and a sharp

focus on public safety outcomes so we can have a legitimate conversation about what we are getting for the tens of millions of dollars spent on the District Attorney's Office. We recognize this work will be a multi-year process and we hope after reading this memo and hearing from community members you will agree that the need for change is real and imperative.

Memo Overview:

This memo is not meant to provide a comprehensive roadmap for what a new budget framework looks like. This memo is designed to identify how the existing DA budget fails to offer county commissioners and the public the kinds of information and measurements that support a necessary conversation and assessment about what the DA's office could do to more effectively deliver the outcomes that best build safe and healthy communities for **all** county residents. This memo identifies current problems, shows how we can do things differently, and provides concrete examples of what better measurements would look like.

First, the memo provides an overview of the growing national movement to re-envision the role of prosecutors and district attorneys. Second, the memo explains why it is problematic that Multnomah County's DA budget focuses largely on outputs rather than meaningful outcomes that describe community impacts. Third, the memo compares and contrasts the DA's budget to another public safety agency's budget to highlight how the DA's budget could immediately adopt new metrics that reflect the county's commitment to equity, inclusion, and cultural competency. Fourth, this memo will provide examples of how the DA budget could be improved in key areas—the Victims' Assistance Program, the Juvenile Court Trial Unit, and staff training and development. Finally, the memo identifies some glaring gaps between the current DA budget framework and important justice system values like reducing recidivism, reducing racial disparity, promoting fairness, and cost-benefit analysis.

The memo will conclude with a vision for next steps. Although the ACLU of Oregon will continue to work with local partners, concerned members and residents, and national experts in this area, we believe the development of a more comprehensive and improved DA budget framework for Multnomah County must come from collaboration, will take significant time, and will require new systems. With that recognition, this memo is meant to start a crucial conversation, but does not attempt to provide a comprehensive guide to how we fix this. We hope after reading this memo and hearing from community members you will agree that the need for change is real and imperative.

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The Growing National Movement to Re-envision the Role of Prosecutors and District Attorneys:

There is a growing national movement to re-envision the role of district attorneys and prosecutors. DAs are arguably the most powerful people in the criminal justice system. Once someone is arrested, it is a prosecutor in a DA's office that is likely to have the most influence over what happens to that person next. And yet, district attorneys, despite their tremendous power, have largely flown under the radar of the public. Both nationally and here in Oregon, the lack of public knowledge about DAs stems from the fact that the overwhelming majority of district attorney elections are uncontested, and therefore voters tune-out^{1 2}.

But given a growing dissatisfaction with the criminal justice system's status quo, voters are beginning to hone their attention on the stakeholders who can have the most impact on change. Communities want something different from our criminal justice system. In many places, our policies and practices have not kept up with the research on what delivers the best public safety outcomes, and patience has run out on a system that continues to treat people of color more harshly.

This national movement is not just rooted in grassroots activism and voter mobilization, but also academic research and effective innovation by reform-minded district attorneys around the country. This work demonstrates that positive change is not only needed but also possible.

A 2014 report by the Brennan Center for Justice, *Federal Prosecution for the 21st Century*, makes a compelling argument for the need for new and different metrics to assess prosecutors³. Historically,

¹ [Who Prosecutes in America](#), a project of the Reflective Democracy Campaign

² ["Roadblocks to Reform: District Attorneys, Elections, and the Criminal Justice Status Quo"](#) ACLU of Oregon Report 2016

³ ["Federal Prosecution for the 21st Century"](#) Brennan Center for Justice, 2014

prosecutors and DAs have largely measured their success by the numbers of cases processed, the number of convictions, and the length of sentences. The report underscores why such historical approaches are useless in measuring progress toward reduced crime and other positive community outcomes. The report highlights the need to develop strategic metrics that focus on reducing violence and recidivism while also measuring increased coordination with community health programs that actually break the cycles of addiction and the incarceration of people with mental illness. We all want to live in safe and healthy communities, and our criminal justice policies should focus on the most effective approaches to achieving that vision⁴. In the past two decades, our society has learned a tremendous amount about what works in addressing crime and public safety. Research from across the country and here in Oregon clearly demonstrates the problems and costs of an over-reliance on incarceration.

- The concept of the ***diminishing returns of incarceration*** and ***declining cost benefit*** is incredibly well documented⁵. This research measures the returns on spending on incarceration against the benefits of reduced crime. The value of a focus on incarceration has been trending down for well over 20 years, and by 2006, Oregon was receiving only 96 cents of public safety benefits for every dollar invested in incarceration⁶. By contrast, according to the Oregon Criminal Justice Commission, for every dollar invested in outpatient drug treatment Oregon receives over \$11 in public safety benefits⁷.

Criminal justice cost benefit analysis has become standardized and demonstrates the tremendous value and impact of investing in approaches best designed to break the cycle of crime and recidivism and help people rebuild their lives. Investing in treatment, community supervision paired with treatment, reentry programs, and victim services have a profound benefit. Unfortunately, the spending on the programs that work has been overshadowed by the growth of spending on incarceration.

Meanwhile, groups like the Vera Institute for Justice have been working with district attorneys around the country to demonstrate that, with focus and commitment, DA offices can reduce racial disparity in prosecution⁸. This is an area where Multnomah County is making an intentional effort but has a long way to go.

This growing movement to re-envision the role and work of district attorneys is exciting. To be clear, we believe that DA Underhill has demonstrated that he is open to change, which is important because we need more of it as this memo will explore. This is a place where Multnomah County could help lead the way.

The Problem with Focusing Mostly on Outputs, and the Need for Better Measurements:

⁴ [“Poll: Oregonians Strongly Support Reducing Drug Sentences”](#) Poll conducted by GBA Strategies, 2017

⁵ [“The Many Causes of America’s Decline in Crime”](#) The Atlantic, 2015

⁶ [“An Introduction to Cost-Benefit Analysis in Justice Policy,”](#) Crime and Justice Institute

⁷ [“Results First: Final Benefit-Cost Analysis Report on Department of Corrections,”](#) Oregon Criminal Justice Commission

⁸ [“A Prosecutor’s Guide for Advancing Racial Equity,”](#) Vera Institute for Justice, 2014

There are two primary performance measurements embedded in county agency budgets: *outputs* and *outcomes*. Here are definitions taken from the County’s budget glossary of terms.

- **Output Measure:** “The most common type of indicator found in most performance measurement systems, reporting the number of units produced or services provided by the program. It describes the activities that a program has completed, but not necessarily their results. Data are typically reported as numbers and not percentages.”⁹”

Put another way, an output is focused on whether an activity occurred and how much of it happened.

- **Outcome Measure (Results):** “Designed to report the results of the service. It can often be described as a short-term (e.g., successful treatment completion), intermediate term (e.g., success by 3 or 6 months), or long-term outcome (e.g., 1 year or more). There should be a logical connection from outputs to meaningful outcomes, with activities supporting the results in a sequential fashion¹⁰.”

Put another way, an outcome is more likely to tell you whether an activity has had a positive impact on the community or an individual.

In some types of work it might be a reasonable step to conclude the potential benefits of either more or less of an output or activity. For example, it is reasonable to conclude that more people housed or more hungry students fed will bring a range of community benefits. But when it comes to the complicated and nuanced work that happens in the criminal justice system and the district attorney’s office, more of something doesn’t necessarily translate into positive outcomes. We should be incredibly wary in making such leaps.

We did a review of the FY18 Multnomah County DA budget and have some related observations.

(Although our review was of the FY18 adopted budgets, we have briefly reviewed the FY19 budget proposals and see little appreciable difference that would impact our insights.)

- **The FY18 DA budget has more *outputs* than *outcomes*.** Most often, the performance measures presented are counts of activities, “cases issued, interviewed, reviewed, or assigned” across the 30 or so program-offers. **Even among the *outcomes* reported by the DA’s budget, about one third are “cases resolved.”**

What exactly does “cases resolved” tell us about how the people involved in those cases will be impacted? What number of those cases were resolved in a way that significantly reduced the likelihood of recidivism? Was the historic racial disparity of the cases in that particular division reduced by the way they were resolved? Is it possible that a significant portion of the cases were resolved in a way that could both increase recidivism and/or racial disparity? How did the outcomes impact the larger goal of creating a safe and healthy community?

⁹ Multnomah County FY 2018 Adopted Budget: [“Glossary of Terms”](#)

¹⁰ Multnomah County FY 2018 Adopted Budget: [“Glossary of Terms”](#)

We recognize that budget measurements are imperfect tools, but a metric like “cases resolved” is insufficient and provides little information about the impact on the community.

- **Some *outcome* measures offered in the DA’s budget look and sound a lot more like *outputs*.**

For example:

- *PO 15103: Child Abuse Unit Prosecution. Outcome: “Child abuse cases filed.”* We understand the importance of filing a case if it results in protecting a young person, but the measure does not show whether the child or family benefited from the process;
- *PO: 15402: Investigations Unit. Outcome: “Subpoenas served 4,516.”* We understand that serving a subpoena might have some value in holding someone accountable, but it does not tell us much about how the process resolved with some individual or community benefit.
- *PO 15203: Neighborhood D.A. Program: Outcome: “Neighborhood DA’s problem solving contacts: citizens, law enforcement, business, and neighborhood associations, 22,081.”* If all of these 20,000+ contacts were an MCDA staff member visiting a neighborhood group, that would be an impressive amount of work. However, this measure does not tell you if the contact was reading an email, and certainly does not tell us the quality of the contact in a way that shows how the contact benefited a neighborhood.

To better understand what a sharper focus on outcomes might look like and the benefit of improved measurements, we decided to do a brief comparison of the FY18 Department of Community Justice Budget and the FY18 District Attorney Budget.

How We Can Infuse Our Values into Budget Frameworks - A Comparison of the Department of Community Justice Budget and the District Attorney Budget:

Caveats: From the outset, we acknowledge that the District Attorney’s Office and the Department of Community Justice are different governmental agencies that are charged by statute to serve different functions. We note that the DCJ’s budget is three times that of DA’s budget, and a quarter of the probation, parole and juvenile services budget of DCJ is contracted out to service providers and community groups.

This is not a perfect apples-to-apples comparison of two agencies, and we are not saying they should be measuring the same things. In fact, we think the DCJ budget could be improved as well. But given that both agencies are rooted in the criminal justice system, have specific roles around accountability, and have a major mission focused on public safety, there is value in making comparisons.

This review is not a critique of our current District Attorney Rod Underhill’s leadership. What this review should do is catalyze a conversation on how criminal justice agencies might demonstrate their outcomes

through performance measures that are better aligned with stated goals, and are offered to the public and elected officials in the most transparent way possible. This review should offer a reasonable framework for thinking about whether what we are paying for reflects community values and vision for the agency.

Broad Agency Budget Comparisons:

- The FY18 DA’s budget provides more outputs than outcomes and many outcomes look more like outputs.
- Inversely, the FY18 DCJ budget provides more outcomes than outputs, and about a third of the outcomes reported are about reducing recidivism.
- DCJ reports a much larger proportion of positive outcome measures, and is more explicit about how work is seeking to address racial and ethnic disparities through its program offers than the DA’s budget.

Equity and Inclusion:

Although the DA’s budget has a short section near the front that talks about its commitment to “Diversity and Equity” it is very difficult to see that commitment in regard to its performance measures in the budget. By contrast, the DCJ Budget is much more concrete.

DCJ is being very intentional in diversifying its workforce. The Human Resources section of the DCJ budget has the following outcome:

- “Percent of people of color applying for open positions”

DCJ lists the demographic baseline for Multnomah County so they can compare the reported diversity of their hiring applicant pool to the county’s general population. What their budget makes clear is that **DCJ is succeeding in recruiting diverse hiring pools**. In fact, in the past two years, their job pools have more than double the percentage of people of color in the general population.

The FY18 DA Budget by contrast has a combined Finance/Human Resources section. It has only one outcome and it is focused entirely on the finance side of the work:

- “Percent of payments to vendors paid within 30 days”

It looks like 90% of the time the DA’s Office pays its bills in a timely way, while we also learn from the narrative portion of this budget section that the DA’s office has moved to 100% recycled paper products. Although those things are admirable, we are much more interested in concrete measurements that demonstrate what the DA is doing to diversify its staff. Although a diverse staff is not a solution in and of itself to reducing devastating racial disparities in prosecution, a more diverse staff could help combat institutional bias. It is a serious problem that the District Attorney’s Office has no meaningful measurement outputs or outcomes focused on equity and inclusion in hiring. And this absence is likely to reinforce skepticism in the community that equity and inclusion is something the DA’s office takes seriously. Inversely if there is concerted effort and progress in this area, it should be reported on and celebrated.

Our read of the DCJ budget showed us at least a half dozen program-offers that explicitly mention that a goal of the work is to provide a culturally competent service, the work is designed to meet the explicit needs of communities of color, or is designed to reduce racial and ethnic disparities.

These DCJ program offers include some specific performance measures to show that the department is trying to reduce racial and ethnic disparities through concrete action. Some program offers provide a count of the percentage of people of color applying for positions, the percent of African American and Latino youth who avoided a new criminal referral because of a particular program, and the number of youth served by specific organizations situated in and run by communities of color, like the Portland Opportunities Industrialization Center (POIC) and the Latino Network. Other DCJ program offers, like the “Adult Gang and African American Program,” explicitly serve African American men leaving prison on post-prison supervision.

In FY18, DCJ offered a pilot program —the Community Healing Program—a collaboration with POIC to engage 17-25 year old African American males under juvenile or adult community supervision. The outcome performance measure for this program is recidivism. As described, the Community Healing Initiative may help deal with the duality that young adults in the communities most impacted by crime can be as much at risk of being harmed by violent crime as causing harm—a dual reality often ignored by our system that often doesn’t recognize particular groups of victims.

By contrast, when we read the FY18 DA budget, we couldn’t identify a single output, outcome or measurement offered that shows how a policy, approach or program may be explicitly impacting racial or ethnicity disparities.

We want to be crystal clear that the challenge of taking concrete steps to reduce racial and ethnic disparities through government practice—and demonstrating that these steps are leading to concrete change—is something that all county departments and agencies need to grapple with. While there may be important efforts happening within the DA’s office on reducing racial and ethnic disparities, we cannot see them in the budget or know that they are a properly resourced priority.

Examples of Where the DA Budget Could Improve Measurements:

This section is mostly designed to demonstrate we can do better with a specific emphasis on measurements that better reflect community values and public safety best practices.

Adding more useful measures for the Victims’ Assistance Program (Program Offer 15401).

The FY18 DA’s budget mentions victims more than three dozen times. We are glad the DA office has a Victims Assistance Program that is using county funds, and federal funds through the Victims of Crime Act to support the needs of people harmed by crime.

A national survey of crime victims (the first of its kind) from April 2016 called *Crime Survivors Speak*, helped highlight a wide range of important issues and needs¹¹.

- Two out three victims surveyed did not receive help following the incident, and those who did were more likely to receive it from family or friends than the criminal justice system
- 8 of 10 victims surveyed experience some symptom of trauma
- Violent crime victims are 4 times as likely to be repeat crime victims of four or more crimes
- Victims of crime are more likely to be low income, young, and people of color

The need for support is very real and can be the difference between whether someone stays safe, can get healthy, and can put their lives back on track.

With the expansion of federal VOCA funding, there has been a renewed push to making sure federal dollars are addressing the needs of underserved communities. People of color are 15% more likely to be victims of crime¹², and African Americans are nearly one-third more likely to have been victims of violent crime.

Under the Victims Assistance Program (Program Offer 15401), the DA's office reported that 1,262 people are being assigned to a victim advocate (the output), and that there were 2,018 court appearances to support the crime victim (the outcome) annually.

We think some measures should be added that help assess whether the work is addressing the county's core values in terms of reducing disparities and promoting fairness in victim services, minimizing trauma and harm experienced by crime victims, and promoting victim and community healing.

Based on our review, we recommend:

- **Include new measures that show the characteristics of crime victims served:** Additional performance measures should be added that can show who is receiving the support of victim advocates in the DA's office. We think that the "who" should include race, ethnicity, geography (e.g. from what neighborhoods in the county were crime survivors served), gender, age, and sexual orientation. The DA office should also be measuring which victims have a conviction history. We know there is a large portion of people harmed by crime who have also been justice system-involved. That particular group can have a harder time receiving necessary services, even though they can be at great risk of being re-victimized. Adding demographic tracking and reporting measures would go a long way to ensure county resources are focused on the most impacted communities and people historically denied access.

¹¹ ["Crime Survivors Speak: The First-ever National Survey of Victims' Views on Safety and Justice,"](#) Alliance for Safety and Justice, 2016

¹² ["Expanding the Reach of Victims Services: Maximizing the Potential of VOCA Funding for Underserved Survivors,"](#) Sered, Danielle and Butler, Bridgette. (New York City: Vera Institute of Justice, 2016).

- **Include measures that show the quality of the services being provided to a crime victim:** Knowing that someone has been assigned a crime victim advocate, and that someone appeared in court to support someone harmed by crime does not tell us much about whether the support met the crime survivor’s needs. While crime victims are not a monolithic group, crime victims often express needs that include things the DA’s office can impact: access to information, a voice in the process, restitution, and access to services that can ensure safety, and help in the healing process. But we should not take for granted that people harmed who receive some “support” actually feel supported. Anecdotally, when talking to community-based victim service providers, victims are often dissatisfied by what the system has to offer.

One useful measure of success would be a survey of the 1,200 people assigned a victim advocate and the 2,000 people that have someone from DA’s office in court advocating on their behalf. We believe the DA office should contract with an outside group that could independently survey crime victims on their level of satisfaction with the processes, and report the level of satisfaction in a performance measure that would help us know more about the outcomes of victim advocacy in the DA office. Such a survey may show that this is an area that needs increased investment or that the DA office needs to offer different kinds of support.

To be clear, this kind of survey is not a cutting-edge idea. For the past 20 years, the U.S. Department of Justice has encouraged police departments around the country to conduct similar community surveys to inform their work and priorities and assess whether they are meeting the community’s needs¹³.

We understand that addressing the needs of crime victims is a shared responsibility across departments (including DCJ, Human Services, and city and state agencies): Perhaps some shared outcomes need to be developed for multiple agencies and budget offers to show how various departments are collaborating to address the needs of victims effectively.

Youth Justice and the DA’s Juvenile Court Trial Unit: (Juvenile Court Trial Unit, Program Offer 15101).

This is the unit description taken directly from the FY18 DA budget:

The Juvenile Court Trial Unit prosecutes juvenile crimes ranging from misdemeanors to homicides. It has three primary functions: 1) delinquency cases (prosecuting juveniles who have committed criminal offenses), 2) dependency cases (litigating child protection cases in Juvenile Court), and 3) termination of parental rights (litigating cases where the abuse or neglect of a child necessitates effort be made to free the child for adoption).

This program offer has no *outcomes* focused on youth delinquency cases and only one *output* in this area: “Number of delinquency cases reviewed” which the DA office projected to be 1,158.

¹³ [“Conducting Community Surveys: A Practical Guide for Law Enforcement Agencies,”](#) Bureau of Justice Statistics, U.S. Department of Justice, 1999

What we know is that on one hand there has been some cutting edge work done in Multnomah County that reflects research and best practices around youth accountability. Multnomah County’s participation in the Juvenile Detention Alternatives Initiative stands out. That said, there are other places where there are critical questions about whether our policies and practices reflect current research on the best approaches to holding young people accountable.

National and state-based research shows that treating youth as adults in the criminal justice system is an ineffective and cruel approach. That’s because young people are not making decisions in the same way that adults are. Their brain structures haven’t fully developed and they “are particularly susceptible to risky behaviors and peer pressure, but also possess a unique capacity for change and growth,” according to a new report by the Oregon Council on Civil Rights¹⁴.

Meanwhile when putting young people in the adult system, we are saddling them with an adult conviction history that limits their future access to employment, housing, and educational opportunities regardless of the hard work they do to turn their lives around. Charging youth as adults does not help keep communities safe, and is out of step with best practices and Oregon values of having a fair and effective criminal justice system.

There is absolutely no way we can look at the DA’s budget and determine whether we are investing in effective youth accountability measures that also reflect our values around fairness and equity.

Based on our review, we recommend:

- **Include measures that document the DA’s use of discretion in handling Measure 11 cases for youth.** Research shows that young people transferred to the adult criminal justice system are more likely to recidivate than youth kept in the juvenile justice system, and adult justice system involvement has all sorts of negative consequences on young people’s futures.¹⁵ In a deep dive, the Partnership for Safety and Justice looked in-depth at the impact of the law on Multnomah County practices, and found how Measure 11 was being used raised county costs, made the county less safe, and had a disproportionate impact on youth of color.¹⁶

While we are glad that under DA Underhill’s leadership, more “second look” opportunities have been offered to youth prosecuted under Measure 11, the county could benefit from knowing more about what is happening around the use of discretion under this law. Additionally, DA Underhill implemented a new policy designed to divert some youth who could be charged with M11 offenses, yet the scale of young people who have accessed this new policy is miniscule compared to the overall number of youth moving through the system – not that we would know that by looking at performance measures.

¹⁴ [“Youth and Measure 11: Impacts of Mandatory Minimums,”](#) Oregon Council on Civil Rights (2018)

¹⁵ [“Effects on Violence of Laws and Policies Facilitating the Transfer of Youth from the Juvenile to the Adult Justice System: A Report on Recommendations of the Task Force on Community Preventive Services,”](#) Centers for Disease Control, Hahn et al., (2007)

¹⁶ [“Misguided Measures: The Outcomes and Impacts of Measure 11 on Oregon's Youth”](#) Partnership for Safety and Justice, and the Campaign for Youth Justice (2012)

We need new performance measures that document how often Measure 11 cases are pursued, how often the cases are resolved with a juvenile disposition, and the nature of the adult disposition (e.g. adult probation, a plea to a certain type of sentence) to better assess the progress the county is making toward practices that better reflect current research and our values. It would be even more helpful if these measures included key demographic information (e.g. by race, gender and geography). This is an area where youth of color suffer devastating disparities in how they are treated in the justice system¹⁷.

- **Include measures that show progress around the use of juvenile diversion.** The further young people penetrate the justice system, the more likely they are to stay there. **The county would benefit from a measure that documents how often the DA’s office recommends a young person be diverted from pretrial detention, or post-dispositional confinement.** Ideally, a performance measure would not only look at the number of instances when a youth was diverted at the recommendation of DA’s office, but also show key demographic information (e.g. the number of youth diverted by race, gender, sexual orientation, and geography).

Again, this is an area where the Department of Community Justice, in contrast, demonstrates an intentional effort to keep its agency up to date with research and is committed to developing evolving practices that reflect needed progress. One place this can be seen is in their Juvenile Community Healing Initiative. Here is a brief excerpt from its program description in their budget:

There is a growing body of research that addresses adolescent brain development. Neuroscience indicates that the brain is not fully developed until about the age of 25 years old. DCJ has made a commitment to place concentrated attention on this important responsivity factor for this reason.

Training and Workforce Development:

We believe that prosecutors maybe the only law enforcement public employees in Oregon that have no mandated training by the state that is specific to their role in the criminal justice system. Police officers, sheriff deputies, corrections officers, parole and probation, and emergency medical dispatch must meet basic training with oversight from Oregon’s Department of Public Safety Standards and Training. Yet, a district attorney can hire someone straight out of law school and having passed the bar they can begin prosecuting people.

This dynamic deserves a much larger conversation, but in the context of this budget memo we want to underscore the important need for being able to clearly see and measure what kind of training prosecutors are receiving. It was mentioned earlier that prosecutors in DA offices may have more impact on people in the justice system than any other system actor. It is more than reasonable for community members to want to ensure we are investing in well-trained staff. Poorly trained or untrained staff can actually do very serious harm to the people moving through the system.

¹⁷ [“Misguided Measures: The Outcomes and Impacts of Measure 11 on Oregon's Youth”](#) Partnership for Safety and Justice, and the Campaign for Youth Justice (2012)

Are DA staff, especially those that have contact with victims, trained in understanding trauma and how to provide trauma informed care? What percentage of prosecutors, investigators, and victim advocates have been trained on implicit bias? Are DA staff that are dealing with high percentages of people suffering from mental health issues or addiction well-trained on harm reduction? And what level of continuing education or more advance training is available or mandated for DA staff?

Having spoken to victim advocates about this issue, it became clear how, even with the best intentions, the DA office could exacerbate the symptoms of trauma in victims if not well-trained.

It was very difficult to see when looking at the budget where or how this kind of staff development was happening within the Multnomah County DA office. Perhaps, this is another area that could be added to the Human Resources section of the DA budget. Unquestionably, this is an area where we would want to see real investment. We want to ensure DA staff have the level of training and oversight needed to best serve county residents experiencing moments of extreme vulnerability.

Overarching Budget Themes that Are Missing and the Impact of these Gaps

So far we have examined very specific areas of the existing DA budget to demonstrate the utility of setting a higher bar on performance measures. But outside of specific program offers and departments there are some important overarching themes we think the DA's budget needs to consider and adopt.

Tracking Recidivism:

One of the sharp contrasts between the DA budget and the DCJ budget is that about a third of the outcomes reported by DCJ focus on reducing recidivism. We believe the DA office would seriously benefit from doing the same.

As mentioned earlier, the limitation of "cases resolved" as an outcome is that it provides county commissioners and the public with no useful measure of how the manner of those resolutions were helpful to our communities. **A measure of recidivism begins to focus on the right public safety outcomes.**

We should evaluate and reward the DA's office for helping people make positive changes in their lives, and document changes that contribute to community safety. If the office was publishing and evaluating information on public safety outcomes—like recidivism—it could also be a tool to help promote culture change with a focus on positive outcomes. **Prosecutors shouldn't be evaluated on the number of cases processed but on the quality of the outcome.**

Recidivism reduction as a goal would help prosecutors ask key questions when they see what actual recidivism rates occur as a result of a specific practice: questions like, *'why is the particular way we handle a case resulting in these outcomes'*.

Measuring recidivism could lead prosecutors to have a different kind of stake in the success of the people they prosecute, and serve as a catalyst for different community program improvements. If

Multnomah County's DA office found that people they sentence to a community treatment option are not being as successful as any of us would like, they may want to visit the treatment program, review their quality of the service, and advocate for improving the services individuals were accessing.

A national organization, Fair and Just Prosecution, recently offered that, particularly when constructing diversion programs, prosecutors need to "*rigorously track outcomes and recidivism rates in partnership with outside evaluators.*"¹⁸

We know there are some challenges to adopting this approach.

- We recognize that there are a range of factors that influence recidivism and the actions of the DA's office are not independently responsible for shifts in recidivism. But the choices and strategies of the DA's office have a major influence in those outcomes.
- Recidivism rates are not necessarily indicative of the current practices in the DA's office, rather they are more reflective of past actions and approaches. But clearly tracking trends for various departments will undoubtedly inform whether something different is needed within the office.
- Finally, we know that compiling data to show recidivism outcomes requires hard work. In one municipality where the District Attorney has responsibilities over juvenile justice prosecution, the prosecutor took the step of hand counting case files to get around data system limitations to concretely show, whether a diversion approach was making a difference and reducing youth recidivism.¹⁹ It's worth it.

Given that this is a major outcome measure used by DCJ, we see little reason why the district attorney's office can't also adopt recidivism as a core performance measure. This would be major progress.

Tracking Efforts to Reduce Racial and Ethnic Disparities:

We appreciate the language in the DA's brief narrative section of successes and challenges about racial disparity.

*The criminal justice system continues to face racial and ethnic disparities in our community. The District Attorney's Office is dedicated to continue its work to eliminate those disparities through thoughtful, data-driven, and coordinated policy adjustments*²⁰.

But as mentioned earlier, **there are no explicit performance measures in the DA budget to demonstrate the work or potential progress toward reducing disturbing racial disparities within prosecution practices and outcomes.**

Nonetheless, the very first "guiding principle" offered on the first page of the DA budget is

¹⁸ "[Promising Practices in Prosecutor-Led Diversion](#)," Fair and Justice Prosecution (2018)

¹⁹ Personal Communication, Seema Gajwani, Chief, Restorative Justice and Victims Services Division, Office of the Attorney General, District of Columbia, March 17th, 2018.

*To enforce the Rule of Law by providing **fair, equitable, and unbiased** prosecution services. (we bolded for emphasis)*

This is unquestionably an area that needs concrete, thoughtful, and explicit performance measures added throughout much of the budget.

Multnomah County would not be alone in promoting efforts intentionally focused on reducing racial disparity in prosecution.

Since 2005, the Vera Institute of Justice has been working with prosecutorial offices around the country to address racial and ethnic disparities by helping them identify changes that are rooted in data and evidence. Vera is working with leadership in prosecutorial offices to navigate through an innovation process, informed by values and that contribute to a shift in culture. They are helping places identify institutional factors that may lead to disparate racial outcomes, assess how prosecutors are applying their discretion, and are working with offices to implement corrective courses of action if needed.²¹

In Milwaukee County, Wisconsin, Vera worked with District Attorney Chisholm to build their departments' technological capacity, analyzed key discretion points, and shared publicly what they were learning through the process. What they found was there were racial disparities around the way possession of drug paraphernalia, prostitution, obstructing an officer and domestic violence cases were treated. Milwaukee District Attorney Chisholm used the information to develop new charging instruments, and improve training for prosecutors. The work resulted in cutting in half the number of African Americans sent to prison on drug charges.

In Santa Clara County, California, District Attorney Jeff Rosen has for several years now released an annual Race and Prosecution report. The report says it, "showed that racial disproportionality exists in every part of the prosecution process." According to District Attorney Rosen who offered his perspective in the report, "Disproportionality within the criminal justice system is likely to be a persistent, pernicious problem. We will not shrink from it."²²

Throughout the country, justice system stakeholders are learning that this is not about pointing the finger at one organization or agency over another, but is about introspection, and taking responsibility for actions at key points in the system where agencies have an opportunity to use their discretion.

In early 2016, when Multnomah County released the Racial and Ethnic Disparities (RED) report, the public learned that Black people are 320% more likely than whites to have their crimes accepted for prosecution, 500% more likely to spend time in jail, and 600% more likely to be sentenced to prison.

Just developing the capacity to do that level of analysis is an incredibly important step in being able to address a tragic and unacceptable problem. **Given the important work Multnomah County has done to be able to provide racial and ethnic disparity analysis across the county's justice system and broken down by offense type, there is really no reason we can't develop concrete performance measures built into the DA budget.**

²¹ ["A Prosecutor's Guide for Advancing Racial Equity,"](#) Vera Institute for Justice, 2014

²² ["Race and Prosecutions: 2017 Update,"](#) A Report of the Santa Clara County District Attorney's Office. (San Jose, California: District Attorney's Office, 2017).

If there was ever a place where we want the budget to truly be a reflection of our values, this is it.

Cost Benefit Analysis:

We believe that there should be ways to incorporate performance measures that show how the DA practices and strategies are saving taxpayers money, and are providing public safety benefit in a cost effective way.

We know the most expensive public safety strategy is incarceration, but it is often the least effective. Regardless of whether someone is incarcerated in the county jail or state prison or whether the county or state pays, there are still taxpayers footing the bill.

Oregon's Criminal Justice Commission (CJC) has started offering fiscal impact statements on legislation that shows how longer sentences for certain behaviors impact prison populations and justice system costs. The CJC's Statistical Assessment Center is also developing the kind of analysis that shows, for every dollar spent focused on specific community interventions, what taxpayers are saving compared to crime and incarceration costs over the long term²³.

We acknowledge and applaud efforts by the DA Underhill in supporting the concept of justice reinvestment and putting it into practice here in Multnomah County. We presume that as part of the deliberations through the Local Public Safety Coordinating Council, there are discussions about the money being saved as a result of diversion. So Multnomah County might already have significant capacity to integrate cost-benefit performance measures into the DA's budget. Doing so helps ensure that we are not only being good stewards of public resources, but this work helps to target the most effective strategies.

Philadelphia's District Attorney Larry Krasner recently announced that some of his prosecutors will provide judges and the courts with information about the costs that a particular disposition would have for taxpayers. *"Fiscal responsibility is a justice issue, and it is an urgent justice issue. A dollar spent on incarceration should be worth it. Otherwise, that dollar may be better spent on addiction treatment, on public education, on policing and on other types of activity that make us all safe,"* is how DA Krasner described the need for the change.²⁴

Next Steps:

We are conscious of the fact that we are starting this conversation deep into the process of passing the FY19 County Budget. We are not asking for any changes to the existing substance or structure of what you have before you. What we are asking for is that the county commits to improving over time. **We want the County Commission to commit to working with interested community groups and the DA's office to ensure that this time next year there is a set of new metrics for the DA's budget. We need performance measures that better reflect values like equity, inclusion, fairness, harm reduction, and a**

²³ [Oregon Criminal Justice Commission, Statistical Analysis Center](#)

²⁴ ["Philadelphia's New DA Wants Prosecutors to Talk Cost of Incarceration While in Court,"](#) Bobby Allyn, NPR (2018)

sharp focus on public safety outcomes. Only then, can we have an effective conversation about what we are getting for the tens of millions of dollars spent on the District Attorney's Office.

To be clear, we would not be surprised if the current state of the district attorney's systems were not adequate for tracking some of the information identified in this memo. Such a reality could be used as an excuse or as rationale to say it can't be done. That would not be an acceptable conclusion in our opinion. Given the critical importance of the DA's work and the profound ways people can be impacted by the DA's office for better or worse, we must raise the bar.

We recognize this work will be a multi-year process and that better data tracking and reporting will take system-development, investment, and resources. We would argue that this increased capacity is one of the most important things we could invest in if we want to ensure the future work of the district attorney's office is properly assessed, able to effectively learn and evolve, and reflects the county's values and vision for the justice system. The existing DA budget and performance measures simply do not meet the standards we should set for Multnomah County.

In this context, the ACLU of Oregon can be patient as long as there is meaningful movement forward and a clear plan to improve our district attorney's budget and performance measures. Our patience is indicative of our pragmatism, but we do consider these issues important and urgent.

The development of better data-tracking and performance measures might be an area where, like the capacity-building work to conduct the RED analysis, there could be private funding to support it. That said, there is enough money within the existing DA's budget to move forward. Ultimately it is a matter of prioritization.

The ACLU of Oregon is committed to working with you, sharing information and ideas, and collaborating in other ways to make progress. We hope you take this issue seriously. We have only received tremendous support and affirmation when discussing these issues in the community.

Thank you for your consideration.