

MARYLAND ALLIANCE FOR JUSTICE REFORM

Working to end unnecessary incarceration and build strong, safe communities



Your State's Attorney will be running for re-election in the coming months. Although those campaigns receive little attention the impact of their decisions affect the lives of many in our community.

Maryland prosecutors only rarely are required to speak publicly about how they choose to exercise their powers. But their choices, reflected in statistics, have created serious public problems:

- African-American men are incarcerated in Maryland at more than twice their proportion in the population – the highest rate of any U.S. state.^[1] Of prisoners with 10 year or longer sentences in a 2015 report, 87% were black.^[2]
- African-Americans are incarcerated twice as often for drug offenses, although studies suggest their rates of drug abuse are not significantly different.^[2]
- Baltimore County, for example, was the source of the large majority of all Maryland death penalty cases as its State's Attorney chose to seek this extreme penalty whenever possible.^[3]
- In Frederick County, the State's Attorney refuses approval for a victim-assisting mediation program to work out informal solutions to criminal charges, although almost every other Maryland county has such programs.^[4]

What are those “awesome powers”?

A prosecutor's job is not just to obtain convictions and long sentences. The job, under legal ethics^[19] and Maryland law, requires that the prosecutor must consider the public interest and do justice, sometime not seeking to prosecute.

Maryland prosecutors, by state constitution and common law, have discretion to exercise “**awesome powers**” to control the criminal justice process, with minimal oversight by the Courts:

- *They may advise police officers as to charges, search warrants, and ongoing investigations*

- *They select and write charges before these are filed in court or submitted to grand juries*
- *They may dismiss charges filed by citizens, police or prosecutors themselves for various reasons, including incentives for defendants to plead guilty to other charges*
- *They make plea bargains to maximize convictions*
- *They decide what evidence to disclose or not to disclose to defendants and their attorneys*
- *They decide what evidence to present or not to present at trial*
- *They craft arguments seeking to persuade judges and juries at trial of each defendant's guilt*
- *They argue, at sentencing, for incarceration or, sometimes, alternative sentences*
- *They may oppose defendant's appeals and request for post-sentence modifications*

Many of those decisions are made behind closed doors. And for most such discretionary actions, there is only rare review by Courts.

Some Maryland prosecutors make early review of citizen-filed charges and dismiss those that appear insufficient, rather than make some defendants wait in pretrial detention until their trial dates. Prince George's County's program is a good example. Pretrial screening has become even more important when the COVID-pandemic presents mortal dangers in our local detention centers.

What's one solution?

Prosecutors could be directed to use their discretion in ways to help reduce Maryland's mass incarceration and its disparate impact on the African-American Community. Prosecutors' choices to screen and drop some charges, offer pretrial diversion to avoid convictions, or accept alternatives to prison often result in taxpayer savings.

- Marylanders in harmful pretrial detention because of poverty could be released with pretrial supervision or, sometimes, with dismissal of charges with prosecutors' support.^[5] Earlier screening of laypersons' charges also can reduce caseloads and pretrial detention.^[6]
- "Problem-solving courts"^[7] and criminal mediation programs could be offered in every Maryland jurisdiction with prosecutors' support.^[4]

Will this work?

Prince George's County prosecutors, for example, use early screening of all citizens' complaints to consider mediation, diversion or, if appropriate, dismissal.^[8] Mediation of criminal cases has been offered via court-related programs in nearly half the state^[9] and by community-based programs in the

rest, other than Frederick County due to the prosecutor's lack of cooperation.
[10] Statistics show that successful mediation decreases later court appearances and use of police resources.[11]

“Problem-solving court” techniques and resources have been shown to reduce recidivism.[12] With prosecutors’ support, these could be expanded to all parts of the State and offered as widely as possible within every criminal court.

Learn More!

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MAJR is a nonpartisan association of over fifty community organizations and churches with members in every part of the state, formed to support justice reinvestment. Individual supporters include judges, attorneys, corrections professionals, as well as returning citizens, victims, and service providers.

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