Johnson County tries 'progressive prosecution' as way to shrink jail population, weed out racial bias

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(Editor's note: This is the final installment in a series of Press-Citizen stories that examined how our area police agencies function and are evolving to try to meet demands for reform.)

Johnson County Attorney Janet Lyness is the chief law enforcement officer for the county. Not the Johnson County sheriff. Not the Iowa City police chief.

Lyness, like all Iowa county attorneys, has a list of more than 70 duties, according to chapter 331 of Iowa Code. Chief among them: She prosecutes state criminal laws, enforces county ordinances, provides legal advice to the Board of Supervisors.

As a prosecutor, Lyness, and her office, have the power to decide who gets charged with what offenses. She can make recommendations for pre-trial detention and plea deals. Therefore, her office has a major role in who gets sent to jail and prison.

Over the past several years, the powers of prosecutors, in Johnson County and across the country, have become increasingly scrutinized by community members as prisons overcrowd and are filled disproportionately with marginalized groups.

This increased scrutiny has come at the same time that large cities have seen a rise in interest in progressive prosecution. Generally, a progressive prosecutor recognizes racial disparities in the criminal justice system and works to end mass incarceration. The idea is to move away from the traditional tough-on-crime approach of prosecution and instead target the root causes of crime.

For Lyness, that has meant implementing diversion programs that give people a second chance, attempting to understand how the criminal justice system creates disparate
outcomes for Black and white residents, and connecting people with social services in the community.

This platform, according to its supporters, is an important piece to fixing the criminal justice system in the United States, which has 25% of the world's incarcerated population but just 5% of the world's general population. The hope is that progressive prosecution, by acknowledging systemic racism, can also make an impact on the disproportionate incarceration of Black and Latino men.

While one in 17 white men are likely to be incarcerated during their lifetimes, one in three Black men and one in six Latino men can expect to face time in jail or prison in their lifetimes, according to the American Civil Liberties Union.

That's why Sue Hutchins, co-chair of the Iowa Justice Action Network, a nonprofit providing education on ending mass incarceration, hosted a webinar this fall about progressive prosecution and reached out to the state's county attorneys' offices to get their feedback. The nonprofit sent letters to each of the offices across Iowa this summer asking them what they think about progressive prosecution and informed them of the webinar.

"We got zero response," she told the Press-Citizen.

During the webinar, which she said was attended by Black Hawk County Attorney Brian J. Williams and Lyness, among a range of prosecutors and community members, Hutchins read a Stanford Law School definition of progressive prosecution:

"True progressive prosecution requires wholesale, bold, dramatic reform in how prosecutors view people accused of law violations, how they adjudicate and punish violent crime, and the way they pursue convictions. Progressive prosecution must mean a change in culture and priorities in district attorneys' offices.

We define 'progressive prosecution' as the model of prosecution committed to truth-telling about systemic racism, shrinking mass criminalization, addressing root causes of crime, and bringing the criminal legal system in line with basic notions of justice and humanity."

Hutchins understands county attorney offices in Iowa are facing backlogs and trying to catch up on cases due to delays from the COVID-19 pandemic, and that likely played a part in their lack of response. She and other members of the action network are going to send letters again.
But she also feels there's a reluctance on the part of prosecutors to embrace parts of the approach.

"The last thing a prosecutor can afford to be in this system, politically, and in Iowa, conservatively, is soft on crime," she said.

**Previous coverage:** As national expert finds fault with police training, Johnson County agencies say they're going beyond the basics

**Second installment:** University of Iowa, Iowa City police departments promised transparency — here's how they're faring

**How it works: Basics of the Johnson County attorney's office**

Lyness worked for the Johnson County Attorney's Office for 16 years before she was first elected to lead it in 2006.

Since, she's won three more uncontested elections, earning between 98% and 99% of the vote each time. Lyness' current four-year term ends in December 2022.

For fiscal year 2022, her office was budgeted $4.48 million, of which 95% goes toward personnel expenses, according to the county's budget book. The office employs about 38 people, including Lyness, assistant attorneys, secretaries, victim-witness coordinators and legal assistants.

To give an idea of the criminal caseload, the county attorney's office saw 200 domestic abuse charges opened in 2018, while it has seen 168 so far this year, according to data provided to the Press-Citizen by the attorney's office. In 2018, the office saw 1,165 charges for driving while intoxicated and has recorded 538 so far this year.

In 2018, the office saw 3,097 indictable offenses, and has seen 1,966 so far this year. An indictable offense is one where the individual charged has a right to a trial by jury.

**Johnson County approach: Increasing diversion efforts, reducing disparities**

Since her first year on the job, Lyness has been launching programs and collaborating with social service organizations with the aim of addressing substance use disorders, reducing the jail population and addressing disparities. Her office has also collaborated with the
University of Iowa Public Policy Center to assess racial and ethnic differences in the processing and sentencing of indictable criminal offenses.

Lyness said, to lower the jail population, one tactic the local criminal justice system ramped up during the pandemic and may continue post-pandemic is waiving initial appearances so people don't have to spend a night in jail for certain offenses.

Last year, judges, law enforcement and the county attorney's office worked to bring the jail population from 63 inmates on March 1 to 28 inmates by the end of the month.

The jail population is now back to pre-pandemic levels, which is partly due to a backlog in cases since the pandemic halted jury trials.

The county attorney's office is in the midst of launching a new restorative justice program and continuing to build on its established diversion programs and treatment courts.

Lyness told the Press-Citizen that ideas shared during the progressive prosecution webinar by a North Carolina district attorney are similar to goals she tries to implement in her office.

"You want to make sure you do justice. You want to make sure that communities are safe," she said. "And part of being safe is trying to find programs that are going to help people not commit crimes again, and really work on trying to decrease recidivism while at the same time protecting people."

Since her first year as county attorney, up until about three years ago, Lyness helped implement and run the drug treatment court in Johnson County. The program provided intensive supervision to participants that would have otherwise been sent to prison.

However, the judicial branch decided not to provide a judge for the program several years ago, Lyness said, leading Johnson County residents to have to go to Linn County if they want the service.

Lyness and assistant attorneys run several programs that she says help divert people from incarceration, reduce disparities and account for impacts on low-income individuals — all concepts that progressive prosecutors emphasize.

For about 10 years, she said, Johnson County has been running a marijuana diversion program and a driving under suspension program, with others added more recently. The marijuana diversion program began, she said, after the ACLU reported the disproportionate number of Black men charged with possession of marijuana in Iowa.
The years for which her office has data for the marijuana diversion program, July 2010 through mid-April 2014, show that 585 people were eligible to participate in the program. People who face a first offense possession of marijuana are eligible. Lyness said her office hasn’t been able to keep up with tracking these numbers since the assistant attorneys are also the ones managing programs.

But in 2010-14, 332 people completed it successfully, 136 didn’t meet the requirements, 71 elected not to participate and 46 are pending, according to the data her office provided.

While no other data is available from the program to measure its effectiveness, Lyness said the program has reduced the disproportionate impact on Johnson County residents. However, her office is still looking at ways to improve the program.

Until the pandemic slowed down its plans, she said, her office was looking for ways to help fund the educational course that participants are required to pay for in order to successfully complete the program. She didn’t have the exact cost for it, but said it was less than the fines someone faces from a conviction or supervision fees from a deferred judgment.

"We've really been exploring new things in the last 18 months," she said.

University of Iowa research team assesses racial disparities in Johnson County

To understand the racial and ethnic differences in outcomes for people going through the criminal justice system in Johnson County, in 2017 the attorney’s office and a University of Iowa Public Policy Center research team partnered to collect information on thousands of criminal offenses.

The Crime and Justice Policy Research Program studied data on 2,743 indictable criminal offenses in the county that occurred in 2015 and 2016 and received a sentence by the following year.

Its findings were published in a comprehensive report in the spring of 2019 and it published two supplemental reports focusing on OWIs and disparities in drug offenses. The comprehensive report looks at several variables in case processing and sentencing for white, Black and Hispanic individuals.

"The experiences of Black defendants during case processing and sentencing are significantly different than the experiences of White and Hispanic defendants," according to the report's main findings.
For example, the researchers found that Black defendants are more likely to receive bond decisions and incarceration sentences than white and Hispanic defendants and they are less likely to receive a deferred judgment.

"In the decision to dismiss and the decision to incarcerate, racial differences are most pronounced among drug offenses," according to the report. "For example, for drug convictions, the likelihood of incarceration is 87.7% for Black defendants compared to 67.8% for White defendants."

Lyness said her office had plans to focus on these disparities before the pandemic put them on hold. She also emphasized that she has long had conversations with prosecutors in her office about bias.

"One of the things I've told our prosecutors for a long time is, 'When you get a case, if you look at it, and you believe this person was pulled over because they were Black, you believe this person was treated differently because they were Hispanic, or whatever the situation is, address it, don't just ignore it,'" she said.

In their conclusion, the researchers recommended that the county create a database of demographic information on individuals going through the criminal justice system and also carry out a qualitative assessment to understand why Black individuals have a different experience of the system.

Lyness said her office is looking into creating an online dashboard for how many charges it has brought in a year. But she said her office hasn't had the capacity for statistical analysis, meaning it is still working on exactly what data will be made public.

More: 'I want peace of mind': Iowa City man charged in 'walking while Black' case files lawsuit against city, Johnson County

Plan has critics: 'It feels like a neon Band-Aid on a gaping wound'

While Hutchins hopes more county attorneys respond to her letter and begin to discuss ideas to reduce mass incarceration, some critics of progressive prosecution think the concept is a distraction and could take effort away from creating systemic changes to the criminal justice system.

"It feels like a neon Band-Aid on a gaping wound," Katryn Duarte, assistant director of sexual assault services for the Iowa City-based Rape Victim Advocacy Program, told the Press-
Citizen. "It's something that is flashy, and it's not something that it's gonna fix the problem."

By adding more diversion programs and initiatives to the county attorney's office, Duarte said, communities are giving the office more power when it already has so much concentrated power.

What Duarte would rather have people consider is how to fix the current criminal justice system, which she says relies on punitive justice and doesn't prevent future harms. She said restorative justice, which the county has started recently, is one step in the right direction, but it still falls short in her opinion.

Lyness said the county had its first case go through the new restorative justice program, which is run through a collaboration with Mediation Services of Eastern Iowa, run by Annie Tucker.

The program involves having the individuals who are experiencing the dispute sit down with trained facilitators. They discuss what occurred and talk about what can be done to repair the harm, such as doing community service or paying restitution.

Lyness said several potential cases are lined up to go through it after the first successfully completed it.

"It's really kind of a goal for, people who have been impacted in the community by the crime, to get a chance to actually meet with the offender and say how they were impacted," Lyness said. "And hopefully make a difference."

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