



ATPA Best Practices for Vertical Prosecution

Strategic Focus: Funding a Vertical Prosecution Program

Purpose

The purpose of the document is to provide a strategic focus for Auto Theft Prevention Authorities (ATPAs) when considering funding specialized auto theft prosecutor¹ units. In light of today's budgetary concerns, it is very unlikely that a prosecutor's office will vertically prosecute auto theft unless it receives funding to help cover the additional costs of such prosecutions.

Definition

The two most common prosecution models are referred to as horizontal prosecution and vertical prosecution. Vertical prosecution is generally limited to special units within a prosecutor's office (e.g., homicide, sexual abuse, child abuse).

Horizontal Prosecution

Under the horizontal prosecution model, a prosecutor's office is made up separate divisions that transfer cases between them as the cases travel through the criminal justice system. For example, if during an investigation a law enforcement agency needs a search warrant, it will have the search warrant reviewed by the prosecutor that is on call that day. Once the investigation is complete and an arrest warrant is requested from the prosecutor's office, the warrant request will be assigned to a screening division where a different prosecutor will review the facts of the warrant request and determine what crimes, if any, should be charged. This same prosecutor will order any necessary lab work, interview witnesses, review additional search warrants and charge the case. Once charged, the case will be assigned to a prosecutor in the office's grand jury/preliminary examination² division. This prosecutor will present the case to a grand jury or conduct a preliminary examination in order to obtain an indictment. Once the indictment is received, the case is assigned to a prosecutor in the office's trial division. This prosecutor will handle the case through sentencing. As you can see at least three or four different prosecutors will have worked on the same case.

¹ The term "prosecutor" refers to any local prosecuting attorney, including State's Attorneys, District Attorneys, and DAs.

² Prosecutors obtain an indictment by either presenting their case to a grand jury or holding a preliminary examination before a judge.



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Vertical Prosecution

Under the vertical prosecution model, a single prosecutor handles a case from beginning to end. The case is not transferred from division to division as it travels through the criminal justice system. Generally, vertical prosecution results in higher conviction rates than horizontal prosecution, however, vertical prosecution generally requires more prosecutors than horizontal prosecution. Therefore, how cases are selected to be vertically prosecuted can significantly impact the success of a vertical prosecution program.

The following strategies are offered for an ATPA to consider when contemplating the funding of a vertical prosecution program.

Strategy 1. Benefits of a Vertical Prosecution Auto Theft Unit.

The main advantage of vertical prosecution is that one prosecutor handles the case from the beginning of its investigation to its very end. The prosecutor becomes intimately familiar with all the relevant facts and has investigated the case from its beginning. In addition, a prosecutor generally becomes more invested in the case when she or he alone is responsible for its outcome. Victims, witnesses, and law enforcement have continuity in their prosecutor and don't have to tell the same story over and over to different prosecutors. It also prevents law enforcement from prosecutor shopping which can cause an unequal caseload among prosecutors. Under the horizontal model, it is not uncommon for law enforcement to wait and present their case on a day when their favorite screening prosecutor is working. Under the vertical prosecution model, each case is evaluated and assigned to a prosecutor by a supervisor. This prosecutor /supervisor function is a critical component of a vertical prosecution program, as they provide the much needed "gatekeeper" to control the flow of the caseload.

Strategy 2: General Considerations for Implementing a Vertical Prosecution Program

When an ATPA is considering a funding request for a vertical prosecution program, the following information should be evaluated.

- A. Determine what factors will be reviewed as part of the case selection process for vertical prosecution ("Case Selection Process") and understand how and why these factors were selected.
- B. Determine how the Prosecutor's Office will ensure that the Case Selection Process will remain current with changing auto theft trends.
- C. Will the Case Selection Process produce the number of cases that can be successfully managed by the vertical prosecution program?



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- D. Determine the amount of input the ATPA will have regarding the selection and continuation of prosecutors assigned to the vertical prosecution program.
- E. Identify who will be responsible for monitoring and measuring the success of the vertical prosecution program, the Case Selection Process and how this information will be reported to the ATPA.
- F. Ensure that the prosecutor's office has the capability to dedicate the personnel required to vertically prosecute auto theft.
- G. If the prosecutor's office intends to dedicate prosecutors to the vertical prosecution program on a part-time basis, determine how the prosecutor's office will document that its prosecutor(s) spent the amount of time required under the terms of the ATPA's funding.
- H. An ATPA must be able to determine whether it's funding of a vertical prosecution unit is a worthwhile investment. Therefore, ensure that the prosecutor's office has the historical data needed to measure the success of the vertical prosecution program.
- I. Obtain feedback on a regular basis from law enforcement regarding their overall perceptions of the vertical prosecution program, including the individual performance of its prosecutors.

Strategy 3: Developing a Case Selection Process.

The Case Selection Process must not only determine which cases should be vertically prosecuted, but it must also limit the number of cases to an amount that can be successfully managed by the vertical prosecution program. The most important factor to consider is whether sufficient evidence already exists or can be efficiently developed to sustain a conviction at trial. Additional factors to consider include the number of times a defendant has been charged with auto theft crimes in the jurisdiction and current auto theft problems in the jurisdiction (e.g., wheel and tire theft, carjackings), financial loss to a victim(s), complexity of the case, number of suspects or defendants, is this a continuing pattern of criminal behavior, extent violence was involved, high auto theft crime areas, new auto theft crime trends, whether the defendant(s) are subject to enhancements such as mandatory minimums or other conditions established by statute. The Case Selection Process should be in writing to help ensure consistency in the cases being selected for vertical prosecution.

Strategy 4: Case Intake Process.

The initial determination of whether a case will be selected for vertical prosecution should be made a Senior Trial Attorney. Whenever possible this review should include a meeting with the officer in charge. With limited exception, all of the below existing items should be provided to the Senior Trial Attorney when he/she reviews the case as part of the Case Intake Process.



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- Incident/Offense report for the current criminal behavior
- Incident/Offense reports previously created by the agency regarding each defendant's past criminal behavior
- Arrest Report, if arrested
- Each defendant's criminal history
- Suspects' written statements, including any recordings of these statements
- Written witness statements or at least a detailed summary of the statements
- Copies of any photographs and videos (including body cams and scout car videos)
- 911 recordings
- Jail tapes (i.e. most jails record inmate phone calls)
- Search warrants, including search warrant returns
- The property sheet for physical evidence
- All reports (e.g., phone dumps, DNA, fingerprints, computer forensics)

The goal is to have all of the evidence available to the Senior Trial Attorney when he/she determines whether a case will be vertically prosecuted. It is inefficient to return cases for further investigation - so make sure the law enforcement agencies know that the reviewing Senior Trial Attorney will require all available evidence to be presented when a case is reviewed. The review should ensure that the case meets the Case Selection Process criteria, the elements of a crime(s) exist AND sufficient evidence exists or can be efficiently developed to sustain a conviction at trial. **REMEMBER, the stronger a case - the more likely it is to be disposed of quickly. Efficiently disposing of cases increases the number of cases that can be accepted for vertical prosecution.** If a case is selected to be vertically prosecuted, this same Senior Attorney should recommend the charges he/she believes will be sustained at trial (i.e., proof beyond a reasonable doubt). It is the responsibility of the assigned vertical prosecution attorney to develop the evidence to prove the charges beyond a reasonable doubt. Any amendments to the charges should require the Senior Trial Attorney's approval. To ensure consistency plea offers should be authorized by the Senior Trial Attorney who recommended the charges.

If a case is returned for further investigation the officer in charge and his commanding officer should be notified in writing of what additional actions or evidence are needed to in order for the case to be accepted for vertical prosecution. Be sure to include a deadline for completing these tasks. If the additional actions or evidence are not completed/obtained by the deadline either extend the deadline or decline the case for vertical prosecution. Ensure that cases returned for further investigation are monitored and timely

declined. Do not let returned cases sit for extended periods of time and avoid prosecution, because they were never referred for non-vertical prosecution.



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If a case is declined for vertical prosecution the officer in charge and his commanding officer should be notified in writing as to why the case was declined. This ensures the reviewing attorney did not misunderstand something about the case and it lets the officer in charge know that if a case does develop (additional victims are discovered, the financial loss increases, etc.) that case can be transferred within the office to the vertical prosecution program.

Strategy 5: Measurements.

The ATPA should consider what objective measurements are best applicable to determine the effectiveness of a vertical prosecution program as compared to a horizontal prosecution program. Ensure that the prosecutor's office has the historical data needed to make this comparison. The measurements can include, but are not limited to the following:

- Number of arrest warrant requests³ reviewed
- Number of arrest warrant requests declined
- Number of arrest warrant requests returned for further investigation
- Number of defendants whose preliminary examinations/grand jury presentations were (a) held and bound over, (b) held and dismissed for insufficient evidence, (c) not held and dismissed (e.g., witness(es) failed to appear), and (d) waived and bound over.
- How quickly each defendant's case is disposed of (e.g., the average number of days from arraignment on the warrant until sentencing)⁴,
- Number of defendants who pled guilty as charged
- Number of defendants who pled guilty to a lesser charge(s)
- Number of defendants who went to trial
- Number of guilty as charged trial verdicts
- Number of guilty of a lesser crime trial verdicts
- Number of not guilty trial verdicts
- Number of defendants who resolved their case through any type of pre-prosecution diversion program
- Number of repeat offenders convicted
- Amount of restitution ordered
- Amount of restitution collected at sentencing
- Dollar amount of forfeitures collected

³ Arrest warrant requests should be counted by each person for whom an arrest warrant is requested. So if a particular case requests arrest warrants for five suspects then five arrest warrant requests should be counted.

⁴ Efficiently disposing of cases increases the number of cases that can be accepted for vertical prosecution.



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- Average length of incarceration
- Victim feedback
- Law enforcement feedback
- Increase/decrease of auto theft crime in the jurisdiction