

CRIMINAL LAW AT A GLANCE

(for more detailed information on careers in prosecution and defense, see

<http://www.law.harvard.edu/current/careers/opia/public-interest-law/practice-settings/prosecution.html> and <http://www.law.harvard.edu/current/careers/opia/public-interest-law/practice-settings/public-defenders.html>)

• What constitutes criminal law practice in the public sector?

- **Prosecution** = legal party responsible for presenting the case in a criminal court against an individual accused of violating the law
 - Three types of prosecutors
 - Federal (violations of federal criminal law)
 - Responsibility shared by United States Department of Justice (DOJ, or “Main Justice”) (D.C.) and United States Attorney’s Offices (field offices of DOJ)
 - Main Justice
 - Most cases prosecuted by the Criminal Division
 - Tax, Civil Rights, and Antitrust Divisions also handle some criminal prosecutions in their substantive areas
 - Both Criminal and Antitrust Divisions have select regional offices
 - United States Attorney’s Offices
 - Bulk of federal prosecutors practice here
 - 93 offices, one for each federal judicial district except Guam and Mariana Islands (share one office)
 - Generally, cases include: organized crime, drug trafficking, political corruption, tax evasion, fraud, bank robbery, and civil rights offenses
 - Some specialized units (e.g., national security)
 - State (violations of state penal code)
 - Responsibility for state penal code violations shared by State Attorneys General and local District Attorneys (concurrent jurisdiction; see next section below)
 - Generally, Criminal Division in State Attorney General’s Office investigates and prosecutes cases of statewide significance or those cases that local DAs don’t have the resources to cover (roles vary from state to state)
 - = organized and white collar crime, narcotics, health care fraud, and criminal enforcement of environmental protection laws
 - Sometimes turf battles between State Attorneys General and District Attorneys
 - Local (violations of state (and if applicable, local) penal code)
 - District or State Attorneys Offices (responsibility shared with State Attorney General’s Office)
 - Generally, cases include: violent crimes, felonies, and misdemeanors, including narcotics)
 - Larger offices may have specialized units focusing on areas such as homicide, juvenile prosecution, domestic violence, and appellate work
 - Duties of a prosecutor: ascertain truth and seek justice
 - Uphold the law
 - Fair and impartial
 - Exercise judgment (when to push forward and when to pull back)
 - Day-to-day work:
 - Investigate cases
 - Draft charges, indictments and other pleadings
 - Negotiate plea agreements
 - Appear in court for bail hearings, pretrial motions, plea hearings, and sentencing
 - Conduct jury trials
 - Brief and argue appeals
 - Common qualities in prosecutors:
 - Work with all kinds of people
 - Self-motivated/ok with responsibility
 - Work independently with very little supervision

- Close attention to detail
- Good memory
- How federal and state/local prosecution differ:
 - Federal
 - Lower caseloads
 - Document driven
 - More legal research, writing and written advocacy
 - Fewer trials
 - Lengthy investigations
 - More leverage in plea bargaining
 - Frequent cooperation agreements
 - State/local
 - Fast paced
 - Cases with shorter duration
 - Higher caseload
 - More trials and pretrial hearings
 - Wider variety of cases (less document driven)
 - Less legal research and writing
- **Defense** = lawyer appointed by the court to represent the accused when he/she cannot afford to hire an attorney.
 - Two types of defenders
 - Federal
 - 58 Federal Public Defender Organizations (PDOs) serve 66 of the 94 federal judicial districts
 - 15 Community Defender Organizations (CDOs) serve 17 of the 94 federal judicial districts
 - = nonprofit legal service organizations incorporated under state law, and usually operating under the supervision of a board of directors and as a branch of a state public defender or legal services organization
 - State/local
 - Typically, serve metropolitan areas and are supplemented by contract/private bar attorneys
 - 16 states have programs in which public defender organization has full authority for provision of defense services statewide
 - Ex: MA Committee of Public Counsel Services
 - The larger the county, the more likely it has a PD office
 - Ex: San Francisco, Philadelphia
 - Some specialized programs exist:
 - Capital crimes (death penalty)
 - Often only appellate/post-conviction services
 - Juvenile advocacy
 - Ex: Youth Advocacy Project (MA), Juvenile Rights Division of the Legal Aid Society (NY)
 - Duties of a public defender: loyalty to the client
 - Zealous advocacy
 - Willingness to confront authority
 - Challenge the prosecution's case
 - Advocate within the bounds of ethics
 - Day-to-day work:
 - Advise clients (client-heavy practice; many clients in need of other, non-legal services)
 - Negotiate plea agreements
 - Appear in court for bail hearings, pretrial motions, plea hearings, and sentencing
 - Participate in jury trials
 - Brief and argue appeals
 - Common qualities in public defenders:
 - Client-focused

- Work with all kinds of people
- Self-motivated/ok with responsibility
- Work independently with very little supervision
- How federal and state/local defense differ:
 - Federal
 - Lower caseloads
 - Document driven
 - More legal research, writing and written advocacy
 - Fewer trials
 - State/local
 - Fast paced
 - Cases with shorter duration
 - Higher caseload
 - More trials and pretrial hearings
 - Wider variety of cases (less document driven)
 - Less legal research and writing

- **Summer internships**

- If you are interested in prosecution or defense work, strongly consider spending at least one summer in a relevant office
 - Demonstrate commitment to prosecution/defense
 - Build network of contacts
- Vast majority of federal, state and local offices take summer interns
 - Some offer paid programs
- Do your research
 - Search out past interns – what was the experience like? Structured or unstructured? Supervision?
 - Attend OPIA’s domestic job search session in November
 - Attend OPIA’s session on volunteer opportunities with the DOJ in November
- Use clinics and SPOs to gain additional criminal experience
 - E.g., CJI, Prosecution Perspectives, Government Lawyer; Defenders, PLAP

- **Postgraduate hiring**

- Prosecution
 - Federal
 - Main Justice and a handful of U.S. Attorneys Offices hire 3Ls and clerks through the Attorney General’s Honors Program
 - Most U.S. Attorneys Offices hire experienced attorneys (3-6 years common)
 - Three common routes:
 - Lateral from Main Justice
 - Lateral from DA’s office/AG’s office
 - Advantages:
 - Courtroom experience
 - Criminal work
 - Disadvantages
 - May not have opportunity to develop research and writing skills
 - May have to convince re: attention to detail
 - Lateral from law firm
 - Advantages:
 - Good training in research, analysis, and writing
 - Learn from attorneys who have time to litigate with painstaking care
 - Disadvantages:
 - No courtroom experience
 - Little to no criminal work
- Grades can be important
- Clerkships also key
 - Application strengthened if you apply in the districts in which you clerked

- Competition for positions is strong, particularly in big cities/geographic flexibility helps
 - Cultivating contacts is KEY
 - Recommendations from respected attorneys enormously helpful
- State
 - AG Honors Programs in several states (MA, CA, OR, WA)
 - Most hire experienced attorneys
- Local
 - Programs in urban areas more likely to hire 3Ls and recent grads
 - Ex: New York County DA, Suffolk DA, Philadelphia DA
 - Often, 2L summer interns in the office will be granted interviews for permanent positions at the end of the summer/before other applicants
- Employers look for:
 - Commitment to public service and the justice system
 - Ability to exhibit sound judgment
 - Ability to work with others
 - Oral advocacy skills
 - Grades in criminal law classes
 - Good interviewees (panel-style/aggressive/test knowledge of criminal law)
 - Clerkships in jurisdiction (not required, but can help)
- Factors to consider in choosing office:
 - Geography
 - Training/mentorship vs. sink-or-swim
 - Resources
 - Assignment of cases and office philosophy
 - E.g., vertical vs. horizontal/case assigned to 1 attorney from beginning to end, or specialized in divisions based on subject matter)
 - Office reputation
 - Case load standards
 - Ex: New York County DAs are expected to work a week of night court several times during the first year in addition to regular case load
 - Office mobility/room for advancement
- Defense
 - Federal
 - Few entry level positions; most offices hire after several years of litigation experience (a limited few hire out of clerkships)
 - State/local
 - Programs in urban areas more likely to hire 3Ls and recent grads
 - Ex: Bronx Defenders, Public Defender Service for the District of Columbia, New Orleans PD
 - Smaller offices usually only hire when there is attrition (= highly competitive)
 - Employers look for:
 - Serious commitment to public service for the indigent (would rather see lots of experience in this area than good grades)
 - Grades in criminal law courses
 - Oral advocacy skills
 - At the Federal level, strong writing skills
 - Good interviewees (panel-style/aggressive/test knowledge of criminal law)
 - Factors to consider in choosing office:
 - Geography
 - Type of program (trial? appellate? both?)
 - Training
 - Supervision
 - National Association of Criminal Defense Lawyers offers good information on the above