



New Responses to Illegal Gun Possession

**Prosecutor-Led Gun
Diversion Programs
Convening Summary
Spring 2022**



THE UNIVERSITY OF
CHICAGO

**SMART
DECARCERATION
PROJECT**



Introduction

As part of an ongoing research project studying the development and implementation of Prosecutor-Led Gun Diversion Programs (PLGDPs), The Smart Decarceration Project at the University of Chicago and The Joyce Foundation are collaborating to organize a series of convenings to discuss and advance this evolving work. These interdisciplinary convenings have served as both an opportunity to curate presentations on a range of topics relevant to PLGDPs, and also to engage various PLGDP stakeholders in facilitated conversations, drawing from their collective wisdom and experience.

This report discusses some of the key takeaways from these generative conversations, as well as key questions for the field as PLGDPs continue to evolve and expand. These convenings have forged important connections between prosecutors and other criminal legal actors, service providers, advocates, and researchers. These gatherings have also made invaluable contributions to the research on this emerging program that holds significant promise for decarceration and for more effectively addressing issues of gun violence. We hope that this report provides useful information to those engaged in criminal legal, decarceration, and community violence prevention work.



The Context of Prosecutor-Led Gun Diversion Programs

In recent years, prosecutors' offices have gained attention as a key site for criminal legal reforms. Prosecutors have the discretion and power to divert people away from further criminal legal involvement, either through case-by-case dismissal or in more structured ways, such as through a diversion program. Prosecutors have a major role in efforts to reverse mass incarceration in the United States and its harmful effects. The Smart Decarceration Project, with support from The Joyce Foundation, has been working to understand the impact of prosecutors on criminal legal reforms.

Prosecutor-led diversion programs (PLDPs) divert people from traditional court processing, resulting in the dismissal of their charge(s) if program requirements are fulfilled. PLDPs are premised on the understanding that incarceration is not effective at reducing recidivism or addressing the root causes of criminalized behaviors (1). Each jurisdiction determines which charges are eligible for a PLDP. Although diversion programs have primarily focused on low-level charges, in recent years there has been growing interest in PLDPs for gun-related charges.

Prosecutor-led gun diversion programs (PLGDPs) are emerging at a time when gun violence is a frequent topic in mainstream media, and when rates of gun deaths are at their highest nationwide since the mid-1990s (2). Prosecutors are navigating a political environment that may be resistant to PLGDPs, so there is a need for stakeholders to be informed on emerging evidence, hear from other practitioners, and build buy-in for programs before and during their implementation.



In fall 2021, the Smart Decarceration Project released a report providing a landscape scan of PLGDPs, their structures, and common program models (3). We identified eight PLGDPs nationwide, many of which focused on participants with limited criminal histories who were charged with low-level gun offenses.

Jurisdictions have a variety of motivations for launching a gun diversion program, including but not limited to: reducing the collateral consequences of a criminal record; addressing the racial disparity present within gun-related charges; and increasing efficiencies with regard to resource allocation within prosecutors' offices. While illegal gun carrying does not directly correlate to gun violence, jurisdictions are also exploring PLGDPs with the broader, more long-term context of strategies to reduce gun violence.

Smart Decarceration Project has been studying the work of PLGDPs since 2019. The convenings discussed in this brief are an effort on the part of Smart Decarceration Project and The Joyce Foundation to coalesce actors in the PLGDP space, explore the impact and potential of these new programs, and examine the ways in which gun diversion programs and gun violence prevention efforts might intersect.

October 2021 Convening

In October 2021, over 30 stakeholders attended the first PLGDP convening, with representatives from prosecutors' offices, community organizations, and research institutions. The virtual gathering was an opportunity for attendees to make connections with others that are working to implement PLGDPs in their communities. Currently, there is little research on PLGDPs; the emerging, limited nature of these programs often leaves prosecutors' offices without the opportunity to learn from and collaborate with others. This convening was one of the first opportunities for prosecutors to hear from other jurisdictions engaged in similar work.

Presentations at the convening covered topics such as:

- The context of smart decarceration
- Creating a gun diversion program and garnering support
- Different models of gun diversion programming
- Defining metrics of success and implementing data management systems for a PLGDP
- Exploring the intersections of criminal legal system reform and gun violence prevention

Presenters included prosecutors from active PLGDPs in Minneapolis, MN and Brooklyn, NY; program service providers in Cook County, IL; and researchers who are spearheading evaluation efforts. These presentations enabled participants to gain a shared understanding of current PLGDPs and prepare for deeper conversations at the April 2022 convening.



April 2022 Convening

The two-day convening in April 2022 brought together over 50 participants to focus on four main topics:

- Procedural justice
- Building buy-in for PLGDPs
- Racial disparities in gun possession
- The community impact of PLGDPs

Each of these topics was paired with small group discussions for participants to more deeply engage in the topics and draw on the knowledge of fellow participants.

To set the stage for these conversations, **Matt Epperson**, PhD, and **Hannah Lee**, LSW of the Smart Decarceration Project provided updates on their research of PLGDPs, including preliminary concepts emerging from qualitative interviews and program observations. Some highlights of the preliminary findings from their research include: differentiation as the first step to diversion, and aligning programming, outcomes, and participants.

Differentiation as the first step to diversion refers to prosecutors' process of recognizing that not all gun charges are the same in terms of the circumstances of the charge, the impact on public safety, or needs of the individual charged. This differentiation allows prosecutors' offices to develop different approaches to types of charges or circumstances, instead of relying on a one-size-fits all prosecution model. Instead, differentiation allows for the identification of an initial set of charges that could be good candidates for diversion. In contrast, traditional prosecution often relies on incarceration, and does little to address the root cause of illegal gun carrying behavior.



Aligning programming, outcomes, and

participants refers to ensuring that programming within a PLGDP lines up with a participant's needs and strengths. It emphasizes that programming should not over-intervene or put unnecessary requirements on participants, and should intentionally address the root cause of illegal gun carrying. As PLGDPs begin to think about expanding their target population to those further along the "continuum" of potentially engaging in gun violence, it is imperative to ensure that programming and outcomes align with the needs and characteristics of the participant population.

Procedural Justice

"Procedural justice" refers to the idea that people's perception of fairness is impacted by how they feel they are treated during the criminal legal process, not just the outcome of their case. Procedural justice is a critical, and often overlooked, element of PLGDPs and the broader criminal legal system.

Emily LaGratta, JD of LaGratta Consulting, LLC presented on the core tenets of procedural justice: **respect, neutral decision-making, trustworthy motives, and voice.**

Each of these tenets is critical for work with PLGDPs participants and community engagement. Respect can be communicated through how one refers to individuals ("participants" vs. "offenders"), in how people's time and rights are respected, and in how court actors balance the rights/needs of victims and participants. Neutral decision-making includes transparency, objectivity, publicized eligibility and programmatic procedures, and anti-bias efforts. Investing in voice involves inviting participant and community input, and then showing how it is integrated into procedures or policies.

Communicating trustworthy motives requires ensuring that program success is tied to participant success and community safety. As PLGDPs attempt to advance procedural justice, it is critical to increase transparency about eligibility, process, and expectations.



Building Buy-In

Given the current political landscape and public safety concerns related to rising gun violence across the country, cultivating buy-in is a key component for the development of PLGDPs. To better understand strategies for building buy-in, the convening hosted a panel with a variety of stakeholders: law enforcement, public defense, and prosecution. The panel included Sheriff **Jerry Clayton** of the Washtenaw County, MI, Sheriff's Office, **Emmanuel Andre** of the Cook County, IL, Public Defender Office, and City Attorney **Lyndsey Olson** of the St. Paul, MN, City Attorney's Office. Panelists shared about their experiences building buy-in across agencies and stakeholders, and how they have navigated barriers to addressing gun violence that arise when there are differing perspectives and approaches.

The discussion touched on **building buy-in** with community stakeholders and mitigating racial disparities, as the majority of individuals charged with illegal gun possession in all of the offices represented are young, Black men. One key takeaway from the panel was the importance of **communicating to decision makers** the social factors that contribute to a person's decision to illegally possess a firearm, such as a lack of community safety or limited access to resources.

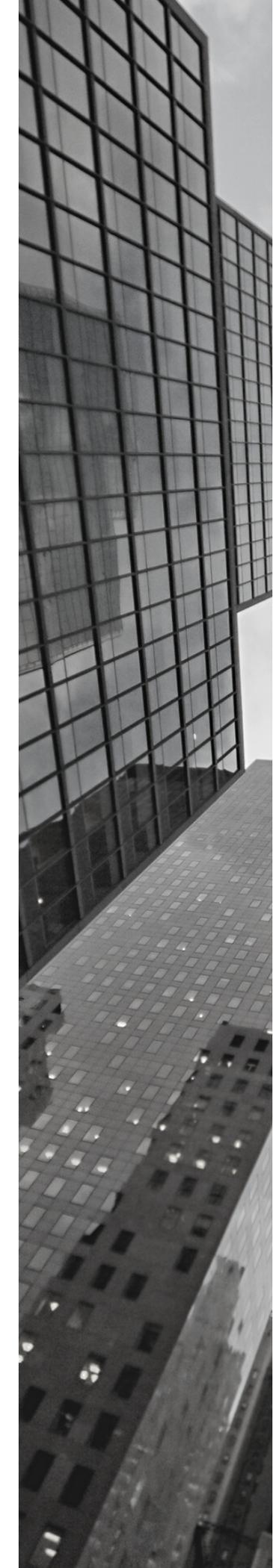
Another major element of building buy-in is to challenge false or misleading narratives about illegal gun possession, such as the narrative that the problem of gun possession and violence in the United States is solely concentrated in communities of color. Such narratives are often racially coded and are a barrier to successful program implementation.



Racial Disparities in Gun Charges

Don Steman, PhD of Loyola University Chicago presented on racial disparities within illegal firearm possession charges in Illinois. Within the criminal legal system, the term “gun crime” refers to both the use of a firearm to commit a crime, and the possession of a firearm by someone not licensed/permitted to do so. **The term “gun crime” conflates the two behaviors and disguises the nuance of which offense is a greater risk to public safety.** In other words, illegal gun possession does not equate to the use of a weapon in a violent act.

Dr. Steman discussed how illegal possession of a firearm is handled in Illinois, and how **arrests and convictions for these offenses disproportionately impact Black men**. Black men account for the large majority (74%) of the lowest level firearm possession convictions in Illinois (4). Racial disproportionality in arrests then leads to disproportionality in convictions and punishment. While there has been a narrowing of racial disparity in convictions recently, racial disparity persists in sentencing, with young Black men more likely to receive a prison sentence than those in other racial groups. Attendees discussed how PLDGPs can be one approach to reducing the racial disparities within illegal gun possession, and the need to communicate that gun possession is not a good proxy for commission of violent crime.



Community Impact

In cities across the country, gun violence and arrests for illegal gun possession most directly impact communities of color. **It is important to understand and recognize the impact that PLGDs have on communities and community stakeholders** outside of the criminal legal system. To discuss these issues, the convening hosted a panel about assessing community impact, which included **Aaron Mallory**, founder and CEO of Gro Community in Chicago, IL; **Julie Biehl**, Director of Children and Family Law Clinic at Northwestern Bluhm Legal Aid Clinic in Chicago, IL; and **Richard McLemore II**, of McLemore Holdings, facilitator of restorative justice circles for the PLGDP in St. Paul, MN.

Panelists were asked to share how “the community” plays a role in developing and implementing gun diversion programs, opportunities for these programs to build community buy-in, and any assumptions about community perspectives or experiences that they would like to see challenged. Panelists discussed the importance of **expungement** opportunities for PLGDP graduates to mitigate the collateral consequences of a criminal record. Panelists emphasized the importance of **connecting PLGDP participants to high-quality community resources and reducing barriers to participation**, such as providing remote services. The input and feedback of service providers is necessary to understand the program’s successes and challenges. Engagement with the community is also a two-way relationship, as it can be an education tool for the public and can potentially contribute to long-term sustainability.

Discussion Themes

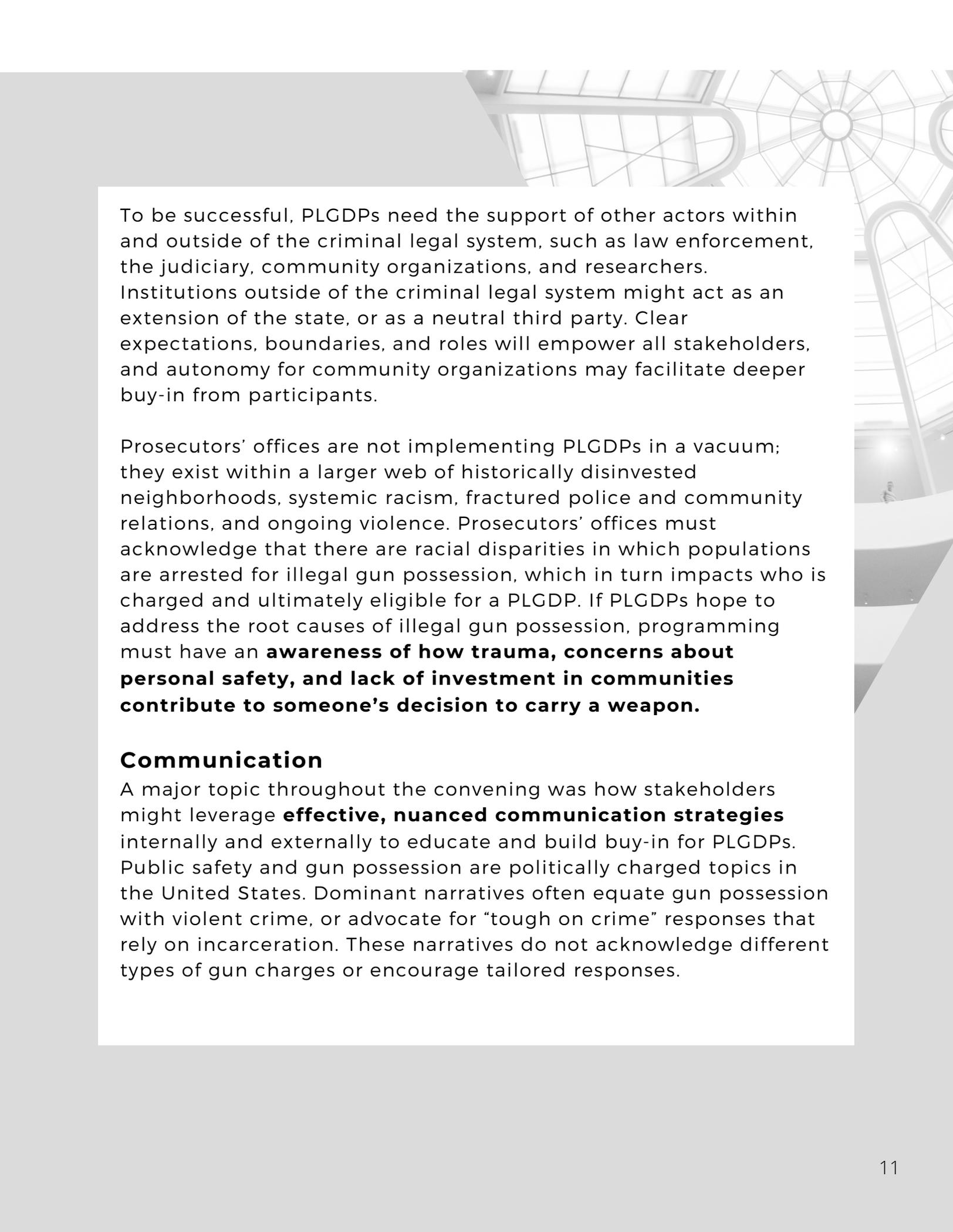
After each presentation, convening participants had the opportunity to discuss the content shared and provide their own perspectives as PLGDP stakeholders. Over the course of the two-day convening, four themes emerged from discussions:

- The relationship between PLGDPs and the community
- The importance of communication
- The role of data in supporting PLGDPs
- Necessary changes to the legal process.

While the specifics of each of these themes vary in each jurisdiction, there were similarities in how the themes impact the success of PLGDPs.

PLGDPs and the Community

Stakeholders, regardless of their role, know that it is important to situate PLGDPs within a broader social context. The first step in doing so is to **define “community”** as it relates to each jurisdiction. This could refer to a geographically bound population, or a group identified by some other criteria, such as family members of program participants. PLGDP stakeholders discussed the importance of **community buy-in** for programs, both to cultivate success for participants and to reduce any political resistance, but the communication and relationship with the “community” depends on how it is defined. Similarly, PLGDPs need to include the **perspective and input of participants** and people impacted by the criminal legal system to successfully address the root causes of illegal gun carrying. The relationship between the community and PLGDPs also requires **an acknowledgment of the ongoing harm of mass incarceration**, an understanding of why participants might be hesitant to engage in criminal legal system programs, and a valuing of community reinvestment as a longer-term strategy for trust and buy-in.

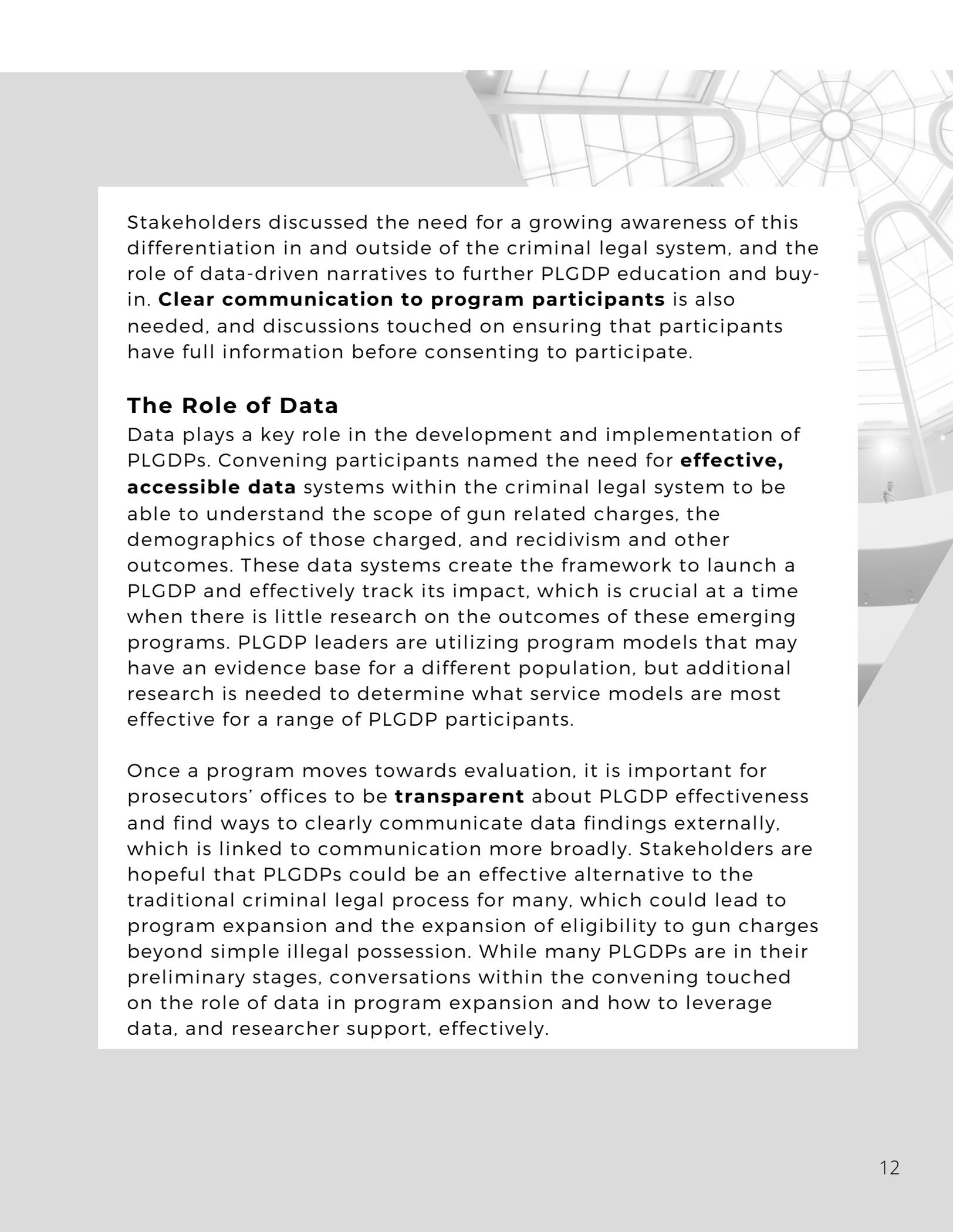


To be successful, PLGDPs need the support of other actors within and outside of the criminal legal system, such as law enforcement, the judiciary, community organizations, and researchers. Institutions outside of the criminal legal system might act as an extension of the state, or as a neutral third party. Clear expectations, boundaries, and roles will empower all stakeholders, and autonomy for community organizations may facilitate deeper buy-in from participants.

Prosecutors' offices are not implementing PLGDPs in a vacuum; they exist within a larger web of historically disinvested neighborhoods, systemic racism, fractured police and community relations, and ongoing violence. Prosecutors' offices must acknowledge that there are racial disparities in which populations are arrested for illegal gun possession, which in turn impacts who is charged and ultimately eligible for a PLGDP. If PLGDPs hope to address the root causes of illegal gun possession, programming must have an **awareness of how trauma, concerns about personal safety, and lack of investment in communities contribute to someone's decision to carry a weapon.**

Communication

A major topic throughout the convening was how stakeholders might leverage **effective, nuanced communication strategies** internally and externally to educate and build buy-in for PLGDPs. Public safety and gun possession are politically charged topics in the United States. Dominant narratives often equate gun possession with violent crime, or advocate for "tough on crime" responses that rely on incarceration. These narratives do not acknowledge different types of gun charges or encourage tailored responses.

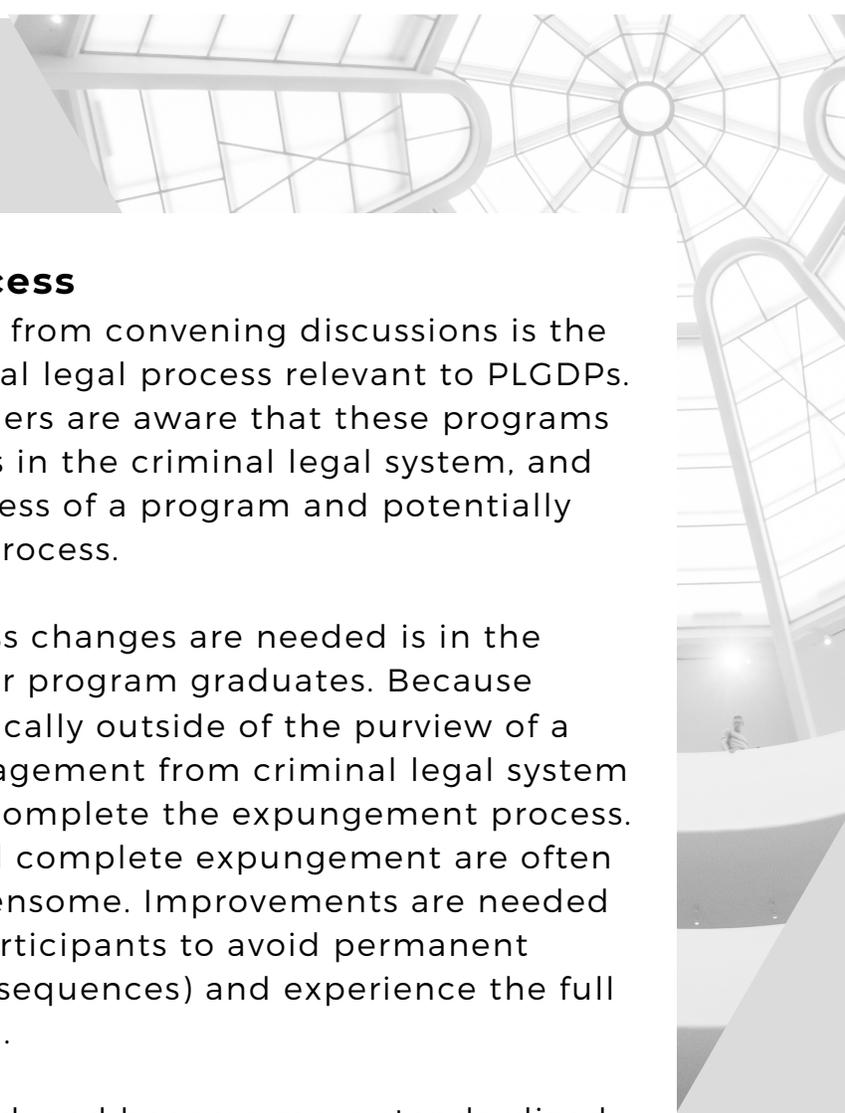


Stakeholders discussed the need for a growing awareness of this differentiation in and outside of the criminal legal system, and the role of data-driven narratives to further PLGDP education and buy-in. **Clear communication to program participants** is also needed, and discussions touched on ensuring that participants have full information before consenting to participate.

The Role of Data

Data plays a key role in the development and implementation of PLGDPs. Convening participants named the need for **effective, accessible data** systems within the criminal legal system to be able to understand the scope of gun related charges, the demographics of those charged, and recidivism and other outcomes. These data systems create the framework to launch a PLGDP and effectively track its impact, which is crucial at a time when there is little research on the outcomes of these emerging programs. PLGDP leaders are utilizing program models that may have an evidence base for a different population, but additional research is needed to determine what service models are most effective for a range of PLGDP participants.

Once a program moves towards evaluation, it is important for prosecutors' offices to be **transparent** about PLGDP effectiveness and find ways to clearly communicate data findings externally, which is linked to communication more broadly. Stakeholders are hopeful that PLGDPs could be an effective alternative to the traditional criminal legal process for many, which could lead to program expansion and the expansion of eligibility to gun charges beyond simple illegal possession. While many PLGDPs are in their preliminary stages, conversations within the convening touched on the role of data in program expansion and how to leverage data, and researcher support, effectively.

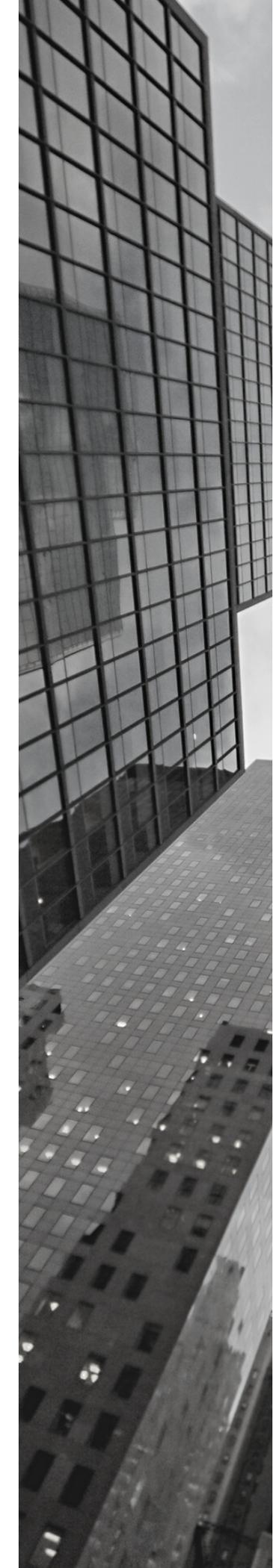


Changes to the Legal Process

The last major theme to emerge from convening discussions is the necessary changes to the criminal legal process relevant to PLGDPs. Prosecutors and other stakeholders are aware that these programs need the support of other actors in the criminal legal system, and this support will expand awareness of a program and potentially facilitate a smoother diversion process.

One key area where legal process changes are needed is in the **arrest expungement** process for program graduates. Because expungement of an arrest is typically outside of the purview of a PLGDP, a participant needs engagement from criminal legal system actors outside of the PLGDP to complete the expungement process. The details of how to access and complete expungement are often unclear and unnecessarily burdensome. Improvements are needed to these processes for PLGDP participants to avoid permanent punishments (e.g. collateral consequences) and experience the full benefit of program participation.

Lastly, as PLGDPs mature, expand, and become more standardized, there is a need for **transparency and a clear, equitable process around program eligibility and acceptance**. Programs in their pilot phase are typically screening eligibility closely, limiting the total number of participants. If PLGDPs hope to grow and successfully intervene with the population that would most benefit, there needs to be an **unbiased, efficient, and consistent enrollment process** in place.



Conclusion

We are eager to continue these conversations, and hope that ongoing convenings and the resulting summaries will contribute to the efforts of those jurisdictions already engaged in PLGDP work. We hope that this summary sparks discussion about PLGDPs in locations that are curious about new ways to respond to issues of gun possession, public safety, and racial disparity, that do not rely on incarceration. Prosecutors' offices have a key role in reimagining the criminal legal system, and we are excited about the learning that can emerge from the innovations of PLGDPs, and how these programs can contribute to decarceration efforts.



References

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The Smart Decarceration Project

The Smart Decarceration Project at the University of Chicago's Crown Family School of Social Work, Policy, and Practice is bridging research and practice to reduce the over reliance on incarceration while addressing racial and behavioral health disparities in the criminal legal system. Generating real-world evidence in close collaboration with local and national stakeholders, the Smart Decarceration Project seeks to reduce the use of incarceration by developing interventions that deliver tangible impact, informing the next generation of criminal legal policies and programs, and spearheading a cross-sector movement sustained by transdisciplinary dialogue.

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