



Preventing Death and Injury on the Job

The Criminal Justice Alternative
in State Law

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Executive Summary

On March 30, 1972, shortly after 9:30 am, a massive explosion at a Pyro Products, Inc., fireworks manufacturing plant in Bridgewater, Massachusetts, took the lives of three workers and injured several others.¹ The three who were killed had been working in the building where the first in a series of blasts occurred, leveling several other buildings at the complex.

The building where the workers died served primarily as storage for fireworks undergoing a drying process, but it was also used to store uncompleted fireworks. Workers would finish the fireworks by adding final wrapping to the tubes and inserting the lifting charge that allows them to propel upward and detonate. At the time of the explosion, the building contained an unusually high quantity of roughly 4,000 to 5,000 uncompleted fireworks. Employees had told the company's president, Edmund J. Godin, they were concerned about the dangerously large number of uncompleted fireworks in storage. Despite this notice about the hazardous conditions—conditions that increased the probability of an explosion and the degree of harm that would result—Godin took no action.

Following the incident, a local prosecutor in Massachusetts indicted Godin for involuntary manslaughter for killing the three employees. The jury issued a guilty verdict, later upheld on appeal, and Godin was sentenced to serve time in state prison.

Such accountability is rare. Like the three workers tragically killed in this explosion, thousands of workers die every year in the United States. Thousands more are seriously injured. Many of these injuries and deaths are due to their employers' egregious disregard for worker health and safety. In 2014 alone, 4,679 workers suffered fatal occupational injuries. Disturbingly, employers and regulators often treat work-related fatalities and serious injuries as "unfortunate accidents," even though some of these violent incidents amount to crimes. Any underlying regulatory violation may trigger a civil fine, but criminal charges for the violation are rare.



The Occupational Safety and Health Act (OSH Act) authorizes criminal penalties, but only in limited circumstances. The federal Occupational Safety and Health Administration (Fed-OSHA) can refer a case to the U.S. Department of Justice (DOJ) for prosecution when it cites an employer for a “willful” violation that causes a worker’s death. A violation of the OSH Act is “willful” when an employer knowingly fails to comply with a legal requirement or acts with plain indifference to employee safety. Even then, the OSH Act classifies the criminal offense as only a misdemeanor, for which the maximum fine for a first conviction is \$250,000 and/or jail time up to six months for an individual or a \$500,000 fine for an organization. Individual states that have opted to establish their own occupational health and safety (OHS) agencies that take the place of Fed-OSHA (called “state-plan” states) can choose to impose higher criminal penalties, but few have done so.

Even if such small penalties have some deterrent value, that value is lost because employers know that Fed-OSHA and its state-plan OHS counterparts have so few inspectors that it would take more than a century to inspect every workplace within federal and state-plan jurisdiction. Moreover, Fed-OSHA and its state-plan OHS counterparts refer few cases to prosecutors for potential criminal charges, and prosecutors often choose not to pursue criminal charges for OHS violations, instead allocating their limited resources to prosecutions that they deem easier to win. In fact, between 1970 and 2013, federal prosecutors only pursued criminal charges for violations of the OSH Act in 88 cases, for which the convicted criminals have served a combined total of 100 months in jail.²

Inadequate funding, legislative failure to update criminal penalties, and lack of political will have all worked together to undermine the goals of the OSH Act. Workers and their advocates have called on the U.S. Congress and state legislatures to update the laws and increase agency funding for years, to no avail. Workers’ voices are muffled by the rhetoric of big business lobbyists who donate generously to legislators’ campaigns with the expectation that they will oppose *any* new regulation on business. Instead of protecting workers, anti-regulatory members of Congress have stopped numerous efforts to modernize the OSH Act and have actively sought to starve Fed-OSHA of funding, with sufficient success that the agency lacks the necessary resources to carry out its mission effectively.

The Obama Administration has made some headway increasing Fed-OSHA’s budget, but the agency’s current funding is still too low to cover the agency’s many statutory obligations. Despite these severe resource constraints, the President and leadership at Fed-OSHA have committed to enhancing OHS criminal enforcement, most recently by announcing an expansion of the Department of Labor’s (DOL) worker endangerment initiative.³ But restoring our OHS system will require a collaborative effort by Congress and the President, which is unlikely to happen in the current political climate.

Workers and advocacy groups are turning to the states as possible avenues for successful reform, urging local prosecutors to pursue crimes involving worker fatalities and serious injuries under their states' general criminal laws, as the Massachusetts prosecutor did in the case against Edmund Godin for involuntary manslaughter more than 30 years ago. To date, only a few prosecutors in a handful of states (e.g., California, Illinois, Massachusetts, Michigan, and New York) have actively pursued such cases, but those prosecutors have been remarkably successful. Such advocacy efforts suggest that criminal prosecutions are increasingly important for punishing and deterring employer neglect and malfeasance.

In 2014, Center for Progressive Reform Member Scholars and policy analysts published *Winning Safer Workplaces: A Manual for State and Local Policy Reform*, which discussed this reform effort, along with a series of workers' rights campaigns beginning to take hold at the state and local level. Following up on the 2014 manual, this new manual offers more detailed assistance to advocates who want to enhance criminal prosecutions for crimes against workers.

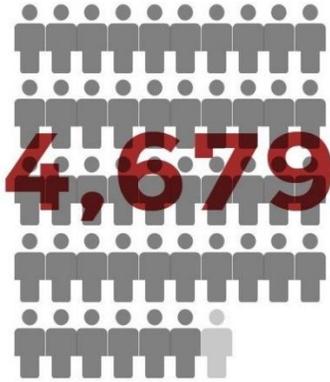
This manual begins by explaining why local prosecutors should focus more attention on bringing criminal charges against employers—the business entity as well as responsible executives and managers—in appropriate cases involving the death or serious injury of one or more workers. It also offers an introduction to criminal law and criminal procedure to help advocates understand what charges might apply. Then, this manual discusses how to build a successful campaign and provides an appendix of helpful resources that advocates can utilize and tailor to fit their campaign. These resources are also available online at:

<http://progressivereform.org/WorkerSafetyStates.cfm>. In addition, new materials will be posted to the online resource library as they become available.

Find helpful advocacy materials and more on CPR's Resource Clearinghouse at <http://bit.ly/2aOOXmD>.

Introduction

Worker Fatalities FY 2014



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When most Americans think of a crime, what probably comes to mind is murder, bank robbery, drug offenses, and other common “street crimes” that are frequently the subject of news stories and popular crime series on television. We seldom hear about crimes involving companies and their officers looking to save a few dollars by cutting corners on health and safety and causing a worker’s injury or death.

Every year, thousands of workers across the United States are seriously injured or killed on the job. In 2014, at least 4,679 workers suffered fatal occupational injuries.⁴ Many of these deaths were entirely preventable with basic safety measures. Some of these deaths resulted from company policies and practices that encouraged and rewarded behavior that created unacceptably risky conditions.

When people in positions of authority make profit-oriented choices that put workers at risk, it is no excuse that they did it in pursuit of profits or on behalf of a business entity. Prosecutors should therefore focus their resources on locking up criminals who perpetrate violence “in the name of business,” victimizing workers who are trying to provide for themselves and their families. When a drunk driver kills a pedestrian, we consider it manslaughter. Reckless business decisions that cause workplace fatalities and egregious injuries are no different.

This manual begins by explaining why local prosecutors should focus more attention on bringing criminal charges in state court against employers—the business entity as well as responsible executives and managers—in cases involving the death or serious injury of one or more workers. This manual also offers guidance to workers and their advocates on building a successful campaign to encourage local prosecutors to seek justice on behalf of workers seriously injured or killed by employers’ criminal activities and to deter employers from committing similar crimes in the future.

In the pages that follow, advocates will find the following resources to help them promote vigorous prosecution of corporate crimes against workers:

- **The Case for Reform: Prosecuting Crimes Against Workers**
- **The Basics: Charging Employers for Killing and Injuring Workers**
- **The Solution: Establishing a Workplace Crime Reduction Program**
- **Take Action: Building a Successful Grassroots Campaign**

Local Prosecutors

Generally, local prosecutors are called district attorneys, or DAs, but in some areas, they are referred to as city, county, or state attorneys.

Most states also have a state attorney general who can prosecute state crimes.

Whom should you contact in your state? Find out with our Prosecutors Directory located in the appendix.

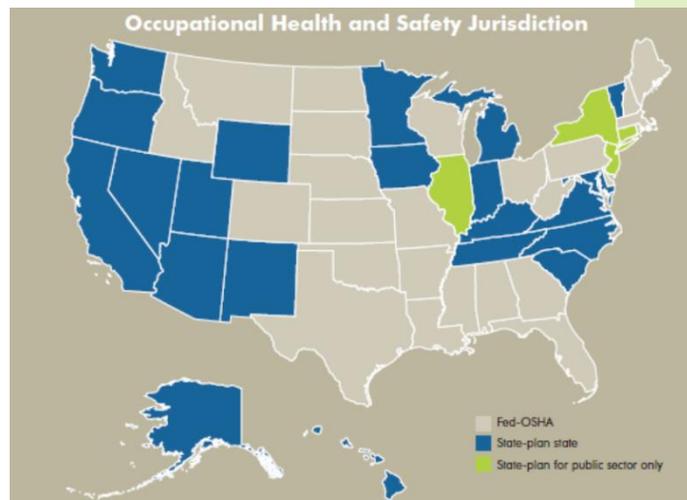
The Case for Reform: Prosecuting Crimes against Workers

The Inadequacy of Criminal Penalties for OHS Violations

In 1970, Congress passed and the President signed into law the Occupational Safety and Health Act (OSH Act) to address a growing number of workplace fatalities, injuries, and illnesses and “[t]o assure safe and healthful working conditions for working men and women.”⁵

The Act tasks the federal Occupational Safety and Health Administration (Fed-OSHA) with establishing occupational health and safety (OHS) standards and enforcing those standards by conducting worksite inspections and imposing civil or criminal penalties against an employer found in violation. The Act also permits individual states to operate their own OHS agencies in place of Fed-OSHA so long as the “state plan” has been approved by Fed-OSHA and the state agency administering it is at least as effective as Fed-OSHA in protecting workers’ health and safety.

Over the more than 40 years that have followed the OSH Act’s passage, the federal and state standards established under it have saved hundreds of thousands of workers’ lives and prevented countless more injuries and illnesses. During that same time, however, more than 390,000 workers died on the job,⁶ signaling that life-threatening hazards persist in many workplaces today.



Despite the law’s marked success, members of the U.S. Congress who are vehemently opposed to any regulation on business (regardless of the public benefits), and the business lobbyists who back their campaigns, have orchestrated the breakdown of our OHS system. These legislators have blocked numerous efforts to modernize the outdated OSH Act and to allocate critical funding to Fed-OSHA.

Due to funding constraints and intense political pressure, Fed-OSHA constantly struggles to find sufficient resources to carry out its most basic operations effectively. The Obama Administration has made some headway on increasing the agency’s budget, but Fed-OSHA’s current funding is still insufficient to cover all of its many obligations.

The good news is that President Obama and leaders at Fed-OSHA have committed to ramping up enforcement of OHS violations during the President’s remaining time in office. Just recently, in December 2015, the

DOJ's Worker Endangerment Initiative

The Department of Justice established this initiative in 2005 to bring attention to the fact that companies that endanger workers also often violate environmental laws.

Department of Labor (DOL) and Department of Justice (DOJ) announced an expansion of its worker endangerment initiative.⁷ But the OSH Act's weak criminal penalty provisions severely limit Fed-OSHA's ability to enforce its standards in the criminal courts, and without legislative action, it will be difficult to bolster criminal enforcement enough to have a powerful deterrent effect on potential violators.⁸

OSH Act Criminal Penalties

The OSH Act authorizes criminal penalties (all misdemeanors) in only three instances:

- ***Willful violation of a safety standard causing worker's death:*** maximum \$250,000 fine (\$500,000 for corporation) and/or six months imprisonment; maximum penalties may double for repeat convictions.
- ***Giving advance notice of an inspection:*** maximum \$1,000 fine and/or six months imprisonment.
- ***Knowingly making a false statement, representation, or certification:*** maximum \$10,000 fine and/or six months imprisonment.

To get a clear sense of just how weak these criminal penalties are, compare them to the criminal penalties found in other federal laws. For example, someone could be imprisoned up to one year for maliciously killing or harassing a wild burro or horse in a national park under the Wild Free-Roaming Horses and Burros Act of 1971—twice as long as someone responsible for willfully violating a safety standard and causing a worker's death.⁹ Under the Clean Water Act, a corporation could be fined \$1 million, and an individual could be imprisoned for 15 years and fined \$250,000 for knowingly putting another person in imminent danger of death or serious bodily injury.¹⁰ As a result, federal prosecutors often tie OHS cases to other violations, such as environmental law violations. But it is not always the case that environmental laws are broken in incidents involving a worker's death or serious injury.

Although state-plan states can choose to impose higher criminal penalties than Fed-OSHA, in practice, many state plans still use the original penalties specified in the federal law as enacted in 1970, limiting first convictions for a willful violation causing a worker's death to a \$10,000 fine and/or up to six months imprisonment, and repeat convictions to a \$20,000 fine and/or up to one year imprisonment.

Even if such small penalties have some deterrent value, that value is lost because employers know that Fed-OSHA and its state-plan OHS

counterparts have too few inspectors to investigate most workplaces. In FY 2015, Fed-OSHA and state-plan states employed a combined 1,882 inspectors, meaning that at present staffing levels it would take 114 years to inspect all 8 million workplaces within OSHA’s jurisdiction once.¹¹ In the simplest terms, employers who violate OHS standards are unlikely to be cited as the result of a routine inspection.

Moreover, when an employer is cited for a willful violation, federal and state safety regulators have historically referred few cases to prosecutors for criminal charges. A 2003 “Frontline” investigation found that Fed-OSHA had referred only 151 cases to DOJ as of that time.¹² The *New York Times* also conducted an investigation in 2003, identifying 1,798 workplace fatality investigations conducted between 1982 and 2002 by Fed-OSHA and state OHS agencies, of which the agencies only referred 196 cases to federal or state prosecutors.¹³ Unfortunately, these revelations have not changed the pattern of enforcement.

As shown in the chart below, from 2006 to 2013, Fed-OSHA referred only 88 cases to the Justice Department for potential criminal penalties, according to the Fed-OSHA’s enforcement data.¹⁴

Table 1. Total Annual Fed-OSHA Criminal Referrals to the Justice Department

<i>Fiscal Year</i>	<i>Criminal Referrals</i>
2006	12
2007	10
2008	14
2009	12
2010	14
2011	10
2012	13
2013	3

Additional data (not shown in the table) reveals that even when a case is referred for possible criminal charges, prosecutors have little incentive to pursue the case, given that the maximum penalty they can impose would do little to punish the violator or deter future violations. Of all the cases Fed-OSHA referred to DOJ for prosecution between 1970 and 2013, federal prosecutors pursued criminal charges for violations of the OSH Act in fewer than 90 cases, and all of the convicted criminals were sentenced to serve a combined total of 100 months in jail.¹⁵

Providing the necessary funding and meaningfully addressing the weak criminal provisions of the OSH Act to restore our OHS system will require a collaborative effort by Congress and the President, which is unlikely to happen with a presidential election on the horizon. In states that oversee their own OHS programs, the legislatures could update state laws to strengthen OHS criminal penalties, but few have done so.

From 2006 to 2013, Fed-OSHA referred only 88 cases to the Justice Department for potential criminal penalties.

In every state, prosecutors have ample authority under the state's general criminal laws to pursue criminal convictions of businesses and executives when their reckless or negligent behavior causes a worker's death or serious injury.

These legislative and regulatory failures have prompted progressive grassroots campaigns to work to secure workers' rights by urging local prosecutors to pursue crimes involving worker fatalities and serious injuries under their states' general criminal laws. Such campaigns suggest that criminal prosecutions are increasingly important for punishing and deterring employer neglect and malfeasance. To date, few jurisdictions actively pursue such cases, but those that do have been remarkably successful.

Utilizing State General Criminal Laws to Prosecute Crimes against Workers

In every state, prosecutors have ample authority under the state's general criminal laws to pursue criminal convictions of businesses and executives when their reckless or negligent behavior causes a worker's death or serious injury. In fact, during the late 1970s and 1980s, state or local prosecutors from at least eight states—California, Connecticut, Illinois, Massachusetts, Michigan, New York, Texas, and Wisconsin—pursued criminal charges against businesses and/or individual employers for causing worker injuries and fatalities.

However, the push by prosecutors to utilize general criminal laws in workplace death and injury cases mostly faded out by the 1990s due to a handful of erroneous court decisions, ruling that the federal OSH Act barred, or "preempted," a state from enforcing its general criminal laws against an employer in a workplace fatality case.¹⁶ Fortunately, subsequent court decisions concluded that the earlier cases were wrongly decided and that states undoubtedly have the power to enact and enforce their general criminal laws to protect public safety, even against employers.¹⁷ The only requirement is that the state law treats employers the same as any other member of the public. The rationale for parting with the earlier cases is stated succinctly by the Supreme Court of Michigan in its 1989 decision in *People v. Hegedus*.

While deterrence, and thus to some extent regulation, is one aim of general criminal laws, so too is punishment—clearly not one of OSHA's primary goals. A more important purpose, however, is the protection of employees as members of the general public. While OSHA is concerned with protecting employees as "workers" from specific safety and health hazards connected with their occupations, the state is concerned with protecting the employees as "citizens" from criminal conduct. Whether that conduct occurs in public or in private, in the home or in the workplace, the state's interest in preventing it, and punishing it, is indeed both legitimate and substantial.¹⁸

Now that courts have clarified that all states hold the power to enforce their general criminal laws even in the employment context, prosecutors once again have the discretion to pursue criminal charges in appropriate

workplace injury and death cases. Advocates should encourage prosecutors to review egregious workplace fatality and injury cases to determine whether criminal charges might be appropriate. In doing so, advocates should explain to prosecutors that criminal charges under a state's penal laws should not replace regulatory enforcement actions for OHS violations, but that they can supplement those actions, especially when the OHS standards are inadequately enforced. For example, with the weak criminal penalties under the OSH Act and most state OHS laws, prosecuting business entities and their managers under the general criminal code of a state offers another avenue for action.

Further, some egregious misconduct that endangers workers may not violate any OHS standard, or may violate an OHS standard without triggering criminal penalties. As a result, criminal prosecutions under a state's penal laws may be the only available mechanism for punishing employers in those instances.

Advocates should also educate prosecutors about the deterrent value of bringing criminal charges in terms of preventing future bad acts by scofflaw employers and sending a strong message to others in the industry. At present, companies that have a culture that rewards cost-cutting regardless of the risks to workers see civil and criminal fines under the federal OSH Act and state OHS laws as a mere cost of doing business. Given that the fines issued for violating safety standards are unreasonably low, and OHS agencies have limited ability to conduct inspections, a company faces little risk of serious penalties for even the most egregious violations.

The threat of hefty criminal charges can change this perspective by tipping the scales in favor of accountability and making it riskier to break the law in the first place. Likewise, the threat of jail time for individuals within the company can make people think twice before they put their personal liberty on the line just to help save a few dollars for their employers.

Criminal charges under a state's penal laws can supplement regulatory enforcement actions, especially when the OHS standards are inadequately enforced.



The Basics: Charging Employers for Killing and Injuring Workers

In criminal cases, the prosecutor must prove beyond a reasonable doubt that the defendant committed a voluntary act that caused a specific harm (*actus reus*), and that the defendant acted with a “guilty mind” (*mens rea*), such as with purpose, knowledge, recklessness, or criminal negligence. Defendants who commit a criminal act with a guilty state of mind may be convicted of a variety of offenses, depending on the state.

Each state legislature defines the crimes for that state. Sometimes they look to national models for inspiration: two-thirds of the states have enacted criminal laws that track the provisions of the Model Penal Code.¹⁹ A private group of lawyers, judges, and scholars known as the American Law Institute created the Model Penal Code in 1962, and revises it from time to time, in an effort to promote uniformity. Ultimately, however, states vary greatly in how

they define criminal offenses. Advocates should refer to each state’s criminal code and the judicial decisions within the state that interpret the reach of those laws.

One major element of OHS criminal prosecutions is determining whether to charge the business entity or the individuals acting on its behalf, or both. States have created different legal standards to determine whether the mental state of an officer of an organization can be attributed to the organization itself for purposes of a criminal prosecution. As a result, it is important to review state law to

determine which actors and which actions count as the basis for a crime by the entity.

Thus, this part of the manual begins with a discussion on the advantages and disadvantages of charging a business entity and its officers as criminal defendants. Then, it provides a brief introduction on the basic elements of a crime (the criminal offense and the state of mind), before turning to the criminal offenses for which a local prosecutor might indict an employer.



The Criminal Defendant

Charging the Responsible Officer

Responsible officers (e.g., the company president, owner, board of directors) of a business act criminally when they use a position of business authority to engage in criminal misconduct for the perceived benefit of the company and such conduct results in a worker's serious bodily injury or death.²⁰ In the case of offenses that threaten the "public welfare," the Supreme Court has expanded the scope of potential individual defendants to include managers who fail to prevent risky conditions from arising from activities over which they are responsible.²¹

Pressure on individual officers to violate the law can come from a general interest in increasing business profits or market share, or more specifically from a desire to seek personal advancement within the company. Or perhaps officers choose to commit crimes because they fear being disliked or even fired for speaking up. Maybe they have been delinquent in their duties and failed to recognize the misconduct was occurring when they should have known. Whatever the motive, employers who disregard worker safety and cause the death or serious injury of a worker should be criminally liable if prosecutors can prove the normal elements of a crime. Pursuing criminal charges against business executives and managers punishes the individuals directly responsible for causing an injury or death. It can also have a larger deterrent effect than convicting a business entity that is incapable of serving jail time.

Prosecutors should consider criminal charges against an executive or manager when the death or injury results from his or her own actions or inactions, or when he or she authorizes, encourages, tolerates, or fails to prevent or correct misconduct of others. However, prosecutors must be careful not to indict low-level managers or supervisors as scapegoats for a larger business-wide failure.²² Employees who have no authority over company decisions should not be criminally liable for those decisions.

Workers and their advocates may wish to communicate with prosecutors about the employee's position and actual authority within the company and the degree to which he or she contributed to the injury or fatality. The prosecutor will have discretion concerning who is charged for a crime and may be lenient with a low-level manager in exchange for his or her cooperation in identifying others inside the organization who exercise more control over business decisions.

Charging the Business Entity

When a worker dies or is seriously injured on the job, prosecutors should consider whether the business entity itself is responsible, and in addition to responsible officers, whether the entity should be subject to criminal prosecution. Often, worker fatalities and serious injuries happen because of

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policies and practices ingrained in a business's culture. When the problem is within the institution itself, prosecutors should charge the business entity because punishing only the individuals responsible for the immediate injury or fatality will not get to the root causes of the problem.

Prosecuting the business entity is also appropriate in cases where the business structure obscures individual responsibility. In such cases, the evidence establishes that someone inside the company is responsible, but cannot specify exactly who took which actions with the necessary state of mind. In this setting, the business structure obscures individual responsibility, so a prosecution against the entire business entity is the necessary remedy.

While businesses cannot serve prison time, a judge can sentence a company that has pled guilty or been convicted of a crime to pay fines or serve "probation." Prosecuting the business entity has the power to make long-term changes to the company's internal policies and practices by targeting a culture that encourages or permits law-breaking. For example, criminal prosecutions can result in requiring a company to create ongoing health and safety programs.²³ Ensuring a company is held accountable for its crimes against workers can also help establish a record that agencies at the federal, state, and local level can reference in making permitting, licensing, and contracting decisions involving that particular company.

The Supreme Court has recognized since 1909 that business entities can be criminally liable for crimes committed by agents acting within the scope of employment on behalf or for the benefit of the business.²⁴ In that case, the Court concluded that it could find "no good reason why corporations may not be held responsible for and charged with the knowledge and purposes of their agents, acting within the authority conferred upon them."²⁵ Following this seminal decision by the Court, the Model Penal Code and several states began to recognize criminal liability for business entities in state statutes to varying degrees.²⁶

Under the Model Penal Code, the criminal statute must express a clear intent to impose criminal liability on business entities. Liability applies to the entity only insofar as the criminal offense results from conduct "authorized, requested, commanded, performed or recklessly tolerated by the board of directors or by a high managerial agent," acting in the company's interest and within the scope of his or her employment.²⁷ The states have created different, and often broader, legal standards for determining which officers of an organization can bind the organization itself for purposes of a criminal prosecution. As a result, it is important to review state law to determine which actors and which actions count as the basis for a crime by the entity.

A prosecutor will first need to determine whether the criminal statute expresses a clear intent to impose liability on business entities and individual

persons. Then the prosecutor will need to prove that the individuals acting on behalf of the business (usually a supervisor or manager) possessed the mental state required to commit the crime. It might be challenging to prove an individual's state of mind, especially when the structure of the organization makes it hard to assign responsibility to any individual. But when clear evidence of the company's culpability exists, the prosecutor should indict the entity along with any responsible officers.

The Guilty State of Mind (*Mens Rea*)

To decide how blameworthy an action is, criminal law considers the defendant's state of mind (or *mens rea*). Many states' criminal codes recognize four broad categories of states of mind, ranked from most to least blameworthy: purpose, knowledge, recklessness, and criminal negligence. In practice, states vary in how they define these mental states, and in the degree of punishment for each. Often, the state penal code will specify the required level of *mens rea* in the definition of each offense. In addition, case law in each state will further clarify how the particular state treats each level of *mens rea*.

Purpose

Under the Model Penal Code and in some states, a person acts with "purpose" when it is his or her *conscious objective* to cause a particular social harm.²⁸ To show that a defendant possessed a purposeful state of mind, the prosecutor must prove it was the defendant's desire to cause the offending result or to engage in the offending conduct.

For example, Steven is behind on his residential mortgage payment. He is a supervisor at the company where he works and has access to the store safe. He is worried he will lose his home if he misses another payment so he plans to take the money from the safe. The next day, Steven opens the safe and takes the money. Steven acted with purpose because it was his conscious objective to steal the money from the store for his own personal gain.

With this set of facts, a prosecutor might choose to charge Steven with embezzlement under the state's general criminal code. However, the company that Steven works for would not be a proper defendant because Steven acted in his own interest and against the interest of the company.

In cases involving a worker injury or fatality resulting from unsafe working conditions, the employer is unlikely to have acted deliberately, or with premeditation. Thus, general criminal laws requiring a purposeful state of mind would not apply to the type of employer misconduct that is the subject of this manual.

When clear evidence of the company's culpability exists, the prosecutor should indict the entity along with any responsible officers.



Knowledge

Under the Model Penal Code and some states, a person has “knowledge” as to the *result* of his or her conduct when he or she is aware that his or her actions or omissions are “practically certain” to produce that harmful result.²⁹ Further, a person has knowledge with respect to the nature of his or her *conduct* or to the surrounding *circumstances* when he or she is “aware that his [or her] conduct is of that nature or that such circumstances exist.”³⁰

For example, Sally discovers her coworker, Don, is trying to get her fired. She wishes he were dead and decides to plant a bomb in his work locker and sets it to detonate the next morning when he arrives at work. Although Sally’s only objective is to kill Don, she is aware that Gene’s locker is next to Don’s and they arrive at the same time every morning. She is practically certain Gene will also die in the explosion. The next morning, the bomb detonates, killing Don and Gene. Sally acted with “purpose” when she killed Don because it was her conscious objective to do so. Even though Sally did not set out to kill Gene, she acted with “knowledge” because she was practically certain he would die in the explosion. However, the company Sally works for would not be a proper defendant in this case because Sally was acting in her own interest and against the company’s interest.



As with criminal offenses requiring “purpose,” it is unlikely in a worker fatality or injury case that a prosecutor will have explicit evidence that an employer is “practically certain” that a failure to fix safety hazards in the workplace will result in a worker’s death or serious injury. However, some states recognize an expanded view of “knowledge” when a defendant is “willfully blind” or deliberately ignorant of a fact or circumstance necessary for the commission of the crime.

The willful blindness doctrine is unsettled and a topic of substantial debate among legal scholars.³¹ In general, the defendant is aware of a high probability of the existence of the fact in question (say, a workplace hazard) and deliberately fails to investigate in an effort to avoid confirmation of the suspected fact. Most states will explain this doctrine to the jury in what is called an “ostrich instruction”: If the jury concludes that a

defendant deliberately avoided information in an effort to remain ignorant (that is, tried to bury his or her head in the sand), the jury should treat the defendant *as if* he or she actually knew about the suspected fact (in our situation, the workplace hazard and its likely result). The instruction also typically reminds the jury that mere negligence or mistake in failing to learn

the fact is not sufficient to infer knowledge; the defendant must have avoided the fact or circumstance consciously and deliberately.

For example, Russell Walker, a machine operator employed by Horn Packaging Company, was manufacturing boxes using the plant's corrugated box making machine when he became entangled in an unguarded drive shaft, was pulled into the machine, and suffered fatal injuries.³² In the weeks prior to the incident, Horn Packaging relocated the box machine from one of its old plants to a new location.

The foreman overseeing Walker's work told OSHA during the investigation that he had noticed the machine was missing guards before it was put back into operation at the new plant, but the safety hazards had not registered with him at the time. The day after the incident, a distraught Horn employee returned to the old plant and discovered the missing safety guard in a dumpster, which had been left behind during the move and then later discarded.

According to OSHA's investigation, Horn Packaging knew that the machine was missing guards prior to restarting operations. Just days before the incident, a technician from the firm hired to move the machine informed Horn Packaging's CEO, Peter Hamilton, of missing machine guards. Employee statements suggested that certain guards might have been missing from the machine even before it was relocated. In fact, OSHA had cited the company previously for missing guards. Yet Hamilton chose to restart the machine without first conducting an inspection of the machine and without the proper guards.

OSHA cited Horn Packaging for 11 serious and one willful violation and imposed civil penalties on the company totaling \$78,180. However, federal prosecutors did not file criminal charges in this case for the potential violation of Fed-OSHA standards; nor did local or state prosecutors file any charges under the general criminal laws of the state. Yet the facts of this case illustrate actual knowledge by Horn management that guards were missing from the machine and that serious safety hazards existed. At the very least, it could be argued that Horn's management officials were "willfully blind" because they deliberately chose not to perform an inspection of the machine prior to restarting operations to avoid acquiring actual knowledge that the guards were missing and that the safety hazards existed.

Recklessness

Under the Model Penal Code and many states' criminal codes, a person acts with "recklessness" when he or she consciously disregards a substantial and unjustifiable risk that harm will result from his or her actions or omissions.³³ In other words, the person must foresee that his conduct would create an unacceptable risk of harm and choose to disregard it. The decision to disregard the risk must be a gross deviation from what a reasonable person would do in the circumstances.



For example, Chris, a supervisor of ABC Industries, is at a worksite overseeing a team of day laborers who are digging a trench to lay sewer pipe.³⁴ Chris is under pressure from his boss to finish the project as quickly as possible and to cut costs substantially. Chris decides to ignore safety standards that require the trench to be "shored up" so that it does not cave in and bury the workers. Shortly after beginning work, the trench collapses, almost burying two of the workers. After Chris clears the trench, he orders the workers to finish the project. Less than an hour later, the trench collapses again, this time killing one of the workers and severely injuring another.

Chris acted recklessly because he consciously disregarded the substantial risk of death by not shoring the trench before ordering the team of day laborers to work inside of it. Chris chose to violate an OHS trench shoring standard designed to prevent trenches from collapsing and burying workers. Working inside an un-shored trench creates a

substantial risk of death in the event of a trench collapse. Although it was not a practical certainty that the trench would collapse and kill a worker (as is required to prove knowledge), it was highly foreseeable that an un-shored trench could collapse and any workers inside the trench could be buried alive. After the first collapse nearly buried two workers, Chris certainly was aware of the substantial and foreseeable risk of death and chose to disregard it a second time by ordering the team to re-enter the unsafe trench. His actions were a gross deviation from what any reasonable person would have done in these circumstances.

Under this set of facts, a prosecutor might also consider whether Chris's recklessness can be imputed to the company, ABC Industries. The prosecutor would need to look to the laws of the state where the incident occurred to determine whether Chris is the type of "agent" whose state of mind can be imputed to the company. Under the general rule, Chris's recklessness could be imputed to the company because Chris was a supervisor acting within the scope of his supervisory authority when he chose to recklessly disregard the substantial risk of death to day laborers by

not shoring the trench, and he engaged in this reckless behavior to help cut costs for the company.

One way for prosecutors to establish that a significant risk existed from a particular hazard is to show a violation of an OHS standard, as in the example above. Prosecutors could also prove the significant risk by reference to accepted industry standards. But it should be noted that the violation of an administrative or industry standard may not by itself be sufficient to prove that a risk was substantial and unjustifiable in every case.³⁵ At the same time, a prosecutor can prove that an employer acted recklessly with respect to a substantial risk of death or serious bodily harm to employees without establishing that the employer violated an existing regulatory or industry standard.

Criminal Negligence

Under the Model Penal Code, and in most states, a person acts with “criminal negligence” when he or she should be aware that a substantial and unjustifiable risk will result from his or her actions or omissions.³⁶ The actor’s failure to perceive the risk must constitute a gross deviation from what a reasonable person would have perceived in the situation. The “simple” negligence that operates under tort law is typically not enough for criminal negligence. With criminal negligence, the risk involved is the same as for “recklessness.” The difference is that with recklessness, the personal alleged to have committed the crime foresaw the risk, yet contrary to what a reasonable person would have done in the situation, he or she consciously chose to disregard that risk. On the other hand, criminal negligence is established based solely on whether a reasonable person in similar circumstances should have been aware of the risk.

For example, the city hires a construction company to install a sanitary sewer line. The worksite is on property owned by the power company, and power lines run overhead. Before beginning the project, management warns the workers about the live power lines, but takes no other action. Management does not seek to have the lines de-energized or put up any safety barriers to prevent workers from being electrocuted. Although the company is in compliance with OHS standards, it violates its own written safety program and certain safety standards in the contract with the city.

Sam, a backhoe operator, is working at the site to help dig a trench to lay pipes. While operating the backhoe, Sam misjudges the distance of power lines immediately overhead and makes contact with the live lines. Unaware of this, Carol, another worker at the site, attaches a chain to the bucket on the backhoe. When she makes contact with the backhoe, Carol is fatally



electrocuted. The company was criminally negligent by failing to observe basic safety measures to protect workers from the substantial risk of electrocution while working near live power lines. It would have been foreseeable to a reasonable person that failing to protect workers on the site in the presence of live power lines could result in a worker being electrocuted.

This fact pattern is from *State v. Richard Knutson, Inc.*, a case involving a company that was convicted of “negligent homicide by vehicle” under Wisconsin’s state criminal code.³⁷ On appeal, the court affirmed the conviction, explaining that the company had notice that the power lines were present and should have been aware that failing to comply with safety standards while working in proximity to the live power lines created a substantial risk of harm to employees. The company’s failure to take basic safety precautions was a substantial cause of the worker’s death by electrocution.

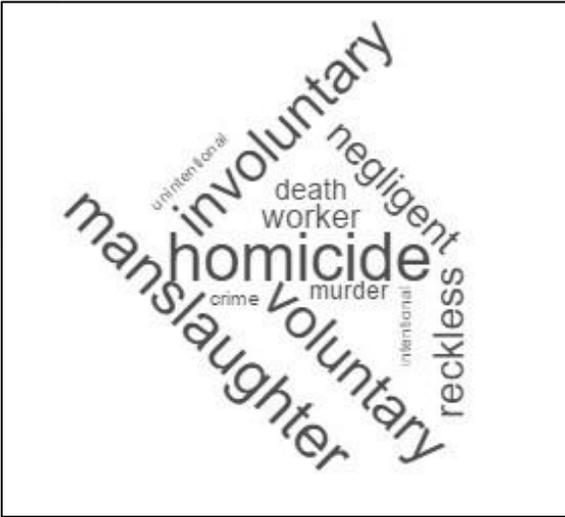
The Criminal Act (Actus Reus)

Examples of criminal offenses requiring recklessness or criminal negligence are provided below, from the Model Penal Code, as well as from state laws for California, New York, Maryland, Illinois, Vermont, and Oregon. Depending on how each state defines the criminal offense, certain cases may be easier or harder for the prosecutor to prove. As noted earlier, advocates should refer to the laws of their state to determine whether a business entity can be charged for a particular crime. Advocates should also keep in mind that states vary in terms of whether they classify an offense as a felony or misdemeanor and in the maximum criminal penalties allowed.

Criminal Homicide

A person commits criminal homicide when his or her actions or omissions cause the death of a human being.

Criminal homicide is typically broken into two types—intentional and unintentional.



In almost every state, if not all, an intentional killing is murder. As noted earlier in this manual, in worker fatality cases, it is unlikely the employer acted with purpose or knowledge to kill workers. Thus, the focus here is on unintentional killings. An unintentional killing is generally called manslaughter, although some states distinguish between voluntary and involuntary

manslaughter, and others call the offense reckless homicide or negligent homicide.

The following table shows the variation among the Model Penal Code and several states in defining unintentional homicides, and the level of *mens rea* required to commit the offense:

Table 2. Criminal Homicide Offenses in Selected State Penal Codes

Penal Code	Offense	State of Mind	Charge
<i>Model Penal Code</i> ³⁸	<i>Manslaughter</i>	<i>Recklessness</i>	<i>Felony</i>
	<i>Negligent Homicide</i>	<i>Negligence</i>	<i>Felony</i>
<i>California</i> ³⁹	<i>Involuntary Manslaughter</i>	<i>Negligence</i>	<i>Felony</i>
<i>Illinois</i> ⁴⁰	<i>Involuntary Manslaughter</i>	<i>Recklessness</i>	<i>Felony</i>
<i>Maryland</i> ⁴¹	<i>Involuntary Manslaughter</i>	<i>Recklessness</i>	<i>Felony</i>
<i>New York</i> ⁴²	<i>Second Degree Manslaughter</i>	<i>Recklessness</i>	<i>Felony</i>
	<i>Criminally Negligent Homicide</i>	<i>Negligence</i>	<i>Felony</i>
<i>Oregon</i> ⁴³	<i>Second Degree Manslaughter</i>	<i>Recklessness</i>	<i>Felony</i>
	<i>Criminally Negligent Homicide</i>	<i>Negligence</i>	<i>Felony</i>
<i>Vermont</i> ⁴⁴	<i>Involuntary Manslaughter</i>	<i>Negligence</i>	<i>Felony</i>

Example: Mariani & Richards, Inc.⁴⁵

On August 18, 2009, Ron Suty, a foreman employed by Mariani & Richards, Inc., was working alongside Roy Pfoertner, an experienced mason, on a restoration and maintenance project of a historic building in Pennsylvania. It was the last day of the project and Suty and Pfoertner were cleaning up and removing scaffolding from the site. The two men went onto the roof of the building to pull up cables that had been detached from the scaffold platforms below. Pfoertner was not wearing fall protection equipment, in violation of Fed-OSHA standards and the company’s written policy. Suty leaned out over the ledge to grab the cable and pull it behind him so that Pfoertner could continue to pull it up and onto the roof. Suty handed Pfoertner the cable and began to move away from the ledge of the roof when he witnessed Pfoertner fall onto the unprotected ledge of the roof and then plummet 13 stories to his death.



During a follow-up investigation, Suty admitted that he did not talk with Pfoertner about wearing fall protection equipment and was aware he was not wearing it when they began working on the roof. Although the company's fall protection program assigned the foreman the responsibility to monitor and enforce employee compliance with safety standards, Suty told investigators that this was not one of his responsibilities as foreman; rather, he explained that each employee typically assumed responsibility for wearing safety equipment.

A closer look at the case suggests that management failed to provide Suty with sufficient training to understand and carry out his role as foreman. For instance, Fed-OSHA had cited the company for violations in the past, including once in 2007 when Fed-OSHA officials encountered Pfoertner and Suty working on a different project without proper fall protection equipment. The company's president, Ron Freeborough, suspended the two men for only one day.

According to management officials, Suty was suspended because he failed as foreman to ensure compliance with safety standards. Yet Suty was unaware of the reason for his suspension when asked about it by investigators. He could not recall any follow-up conversation with management to discuss the citation or to discuss a corrective action plan. In fact, Suty had not been required to attend the company's safety training at any time since 2007, although he had since completed voluntary training of a more general nature.

Fed-OSHA conducted an investigation of the worksite following Pfoertner's fatal fall and cited Mariani & Richards, Inc. for one willful violation, for which the agency issued an initial civil penalty of \$70,000. Fed-OSHA and the company agreed to a settlement under which the company would pay the full \$70,000 penalty over a period of 25 months and would establish or improve certain elements of its safety and health program.

Like so many other egregious workplace fatalities and serious injuries caused by an employer's disregard of worker health and safety, no criminal action was pursued in this case by federal prosecutors for the potential criminal violation of Fed-OSHA standards or by the state under its general criminal laws. Yet relying on these facts, a prosecutor could justifiably indict Freeborough under its general criminal laws for reckless homicide, or involuntary manslaughter, depending on the state. Freeborough consciously disregarded the substantial risk of death to workers from

working on a roof without fall protection equipment. He failed to take measures to ensure employees were properly trained on their job responsibilities and safe work practices even after Fed-OSHA cited the company in 2007 due to Suty and Pfoertner working on a roof without fall protection equipment. Although it was not certain Pfoertner would suffer a fatal fall, it was foreseeable that an employee working on a roof without fall protection equipment could fall to his or her death. His actions were a gross deviation from what any reasonable person would have done in these circumstances.

Under this set of facts, a prosecutor might also consider whether Freeborough's recklessness can be imputed to the company. Under the general rule for imputing mens rea, Freeborough, as president of the company, would qualify as a "high managerial agent" acting on the company's behalf and within the scope of his employment. Unless the state shields businesses from criminal liability, Freeborough's recklessness could be imputed to the company.

Assault and Battery Offenses

An employer who causes a worker to be seriously injured on-the-job may be guilty of a crime. States vary on whether this crime is called "assault" or "battery." For example, in California, a person commits a battery when they actually use force or violence upon another person; the crime of assault is committed when a person attempts a battery.⁴⁶ In Maryland, the crime of assault includes attempts to cause and actually causing serious physical injury.⁴⁷

In many states, the severity of injury required is "serious physical injury" or "serious bodily injury," which is defined as a bodily injury that creates a substantial risk of death, causes permanent disfigurement, or causes protracted loss or impairment of the function of any bodily member or organ.⁴⁸ State laws vary on whether the offense is a misdemeanor or a felony, usually based on the severity of the injury, the defendant's state of mind, and whether a weapon was used.

Many states define assault (or battery) by levels or "degrees" of the offense, depending on the severity of injury caused and the offender's state of mind. For example, New York recognizes three degrees of assault, with first and second degrees classified as felony offenses, and third degree assault classified as a misdemeanor.⁴⁹

Table 3. Assault (by Degree) in New York’s Penal Code

<i>Assault (NY)</i>	<i>Criminal Act</i>	<i>State of Mind</i>	<i>Charge</i>
First degree	Engages in conduct which creates a grave risk of death of another person and thereby causes serious physical injury to another person	Recklessness, under circumstances evincing a depraved indifference to human life	Felony
Second degree	Causes serious physical harm using a deadly weapon or dangerous instrument	Recklessness	Felony
Third degree	Causes physical injury to another	Recklessness	Misdemeanor
	Causes physical injury to another with a dangerous weapon	Criminal negligence	Misdemeanor

In other states, such as in Oregon, there may be four degrees of assault. Alternatively, a state’s code may classify assault or battery as two types—simple and aggravated, as is the case in Vermont, Illinois, and in the Model Penal Code.⁵⁰

An assault or battery charge may also be appropriate if an employer’s conduct is the cause of a serious physical injury to emergency services personnel responding to an incident.⁵¹ For example, an employer should be charged with assault if he or she knew or should have known about the presence of toxic chemicals at the site of an incident but withheld that information, causing a serious physical injury to emergency services personnel.

Endangerment

Unlike criminal homicide or assault/battery offenses, endangerment offenses do not require that the offender cause actual physical harm to the victim. Because of this, most states that recognize the offense of endangerment classify it as a misdemeanor.

Under the Model Penal Code, a person commits “reckless endangerment” if he or she “recklessly engages in conduct which places or may place another person in danger of death or serious bodily injury.”⁵² As with assault, serious bodily injury is a bodily injury that creates a substantial risk of death, causes permanent disfigurement, or causes protracted loss or impairment of the function of any bodily member or organ. Maryland, Oregon, Vermont, and New York (called reckless endangerment in the second degree) follow the

Model Penal Code, except that in Maryland, Oregon, and New York the conduct must actually place the person in danger of death, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.⁵³

Some states may combine assault/battery and reckless endangerment into one criminal offense. Illinois's criminal code, for example, defines the offense of "reckless conduct" as recklessly causing bodily harm or endangering the safety of another, or causing great bodily harm, permanent disability, or permanent disfigurement.⁵⁴ The first prong—bodily harm or endangerment—is a misdemeanor and the second prong—great bodily harm, permanent disability, or permanent disfigurement—is a felony.

Example: *People v. Formica*⁵⁵

On December 15, 2003, Lorenzo Pavia and John Paci were working in New York inside a trench during the installation of sewer pipes. Kenneth Formica, a partner in Formica Construction Corp. and a licensed contractor with 30 years of experience, was supervising the work. Federal and city regulations required trenches greater than five feet deep to be shored or sloped to prevent a collapse, but Formica ignored these rules and directed Pavia and Paci to connect a sewer pipe in the trench at a depth of approximately 12 to 15 feet. The trench collapsed, killing Pavia and injuring Paci.

Testimony presented to a grand jury revealed that only a couple months prior to the incident, NYC Department of Transportation Highway inspectors found violations at another Formica worksite Mr. Formica was supervising. The inspector had ordered a worker out of a trench that was not shored or sloped. The inspector said it was unsafe and ordered Mr. Formica to shore up the trench.

Following the collapse on December 15, Mr. Formica was indicted for second degree manslaughter, criminally negligent homicide, first degree reckless endangerment, and third degree assault, relating to the trench collapse and a separate incident. In 2007, he pled guilty to criminally negligent homicide and was sentenced to serve 16 weekends in jail under an alternative sentencing program. The company was initially denied a renewal of its business license, but Formica challenged the denial, and a judge overturned the decision. Formica Construction received a new license in 2009.

But Formica did not learn its lesson. In November 2014, Delfino Velazquez Mendizabal, a Formica employee, was crushed to death during an unpermitted building demolition of an auto dealership. In the wake of the incident, workers' advocates in New York have established the Justice4Delfino campaign to bring attention to this injustice and urge the Staten Island district attorney to file criminal charges. The Formica

experience underscores the importance of continued monitoring of business criminals.

Other Offenses

In addition to crimes against the person—homicide, assault/battery, and endangerment—a state criminal codes may include other criminal offenses that might apply in a situation involving a worker fatality or serious injury.

For example, some states make it a crime to conceal known dangers from employees. In California, a corporation, limited liability company, or responsible manager with “actual knowledge of a serious concealed danger” that is subject to an agency’s regulatory authority and is associated with a product, product component, or business practice must inform the Division of Occupational Safety and Health and warn affected employees.⁵⁶ A product or business practice has a “serious concealed danger” if exposure to or reasonable use of a product or business practice is substantially likely to result in death, great bodily harm, or serious exposure, and the danger is not readily apparent to the exposed individual. “Actual knowledge” does not require that the entity or manager knew of the concealed danger; it only requires that a reasonable person in similar circumstances as the manager would be convinced by the available information that a serious concealed danger exists. Knowingly failing to provide the information and warning within 15 days of acquiring actual knowledge, or immediately when the risk of bodily harm or death is imminently risky, is a criminal offense.

Many states also make it a crime to impede an investigation by making false statements to government officials or by tampering with physical evidence or witnesses.⁵⁷ Some states also make it a criminal offense to interfere with a fatality investigation by failing to notify the district medical examiner that a death has occurred, by removing the body or other effects related to the fatality without consent, disposing of a body without authority to do so, or impermissibly entering areas under control of authorities.⁵⁸

Example: Pymm Thermometer Corp.⁵⁹

In 1983, Pymm Thermometer began operating a secret mercury reclamation project in the basement of the Brooklyn, New York, facility where it manufactured thermometers. Pak Glass Machinery Corporation also operated out of this facility and performed servicing and repairs of Pymm’s machinery. William Pymm became president of both companies in 1984; he previously served as vice president of the two companies from 1981 to 1984. Edward Pymm, Jr. served as the plant manager of both companies from 1981 and in 1984 also became vice president of the two companies. Numerous inspections of the facility revealed that employees were inadequately protected from mercury exposure. But none of these inspections included the secret project in the basement because Pymm had omitted the basement area from earlier inspections, preventing Fed-OSHA

from discovering the project until 1985. William Pymm also denied the project's existence when Fed-OSHA officials asked him about it.

Vidal Rodriguez, a Pymm employee, was assigned to the reclamation project where he recovered mercury from broken thermometers. An inspection of the reclamation project uncovered stacks of boxes from which mercury was seeping out onto the floor. The basement was also ventilated improperly, resulting in mercury levels more than five times higher than permitted by Fed-OSHA. Yet Rodriguez did not have a respirator for the first several months after he began working in the basement. When a respirator was later provided, Rodriguez was made to share it with another worker. In 1984, doctors found that Rodriguez had developed neurological symptoms consistent with mercury poisoning.

Pymm Thermometers, Pak Glass Machinery Corp., William Pymm, and Edward Pymm, Jr. were charged under New York's penal law for conspiracy in the fifth degree, falsifying business records in the first degree, assault in the first degree, assault in the second degree, and reckless endangerment in the second degree. At trial, the jury returned a guilty verdict on all counts, but the verdict was set aside on grounds that the federal OSH Act preempted the state's prosecution and that there was insufficient evidence for the conspiracy and reckless endangerment charges. However, the state appealed and the New York State Supreme Court, Appellate Division reversed the lower court's decision to set aside the verdict. On a subsequent appeal by the defendants, the Court of Appeals, the state's highest court, affirmed the Appellate Division's decision to reverse the lower court.



The Solution: Establishing a Workplace Crime Reduction Program

Overcoming Challenges and Changing Attitudes

When law enforcement officers respond to a typical crime scene, they notify the local prosecutor, who may send an assistant district attorney out to the site as well. Generally, local prosecutors are called district attorneys, or DAs, but in some areas, they are referred to as city, county, or state attorneys. Most states also have a state attorney general who can prosecute state crimes. Normally, however, the state attorney general only gets involved in prosecutions at the invitation of the district attorney, based on a need for special expertise or a possible conflict of interest.

In most criminal investigations, police officers or detectives go to the scene of the crime and build an investigative file, which they deliver to the prosecutor's office. The prosecutor's office then reviews the case and decides whether to file charges. Many prosecutors' offices assign special teams or divisions to handle particular types of crimes they believe warrant special attention, such as homicides, sex crimes, domestic abuse, narcotics, and so on.

However, when a worker dies or is seriously injured on the job, the process is much different. Fed-OSHA and most states require employers to report a worker fatality within eight hours and work-related hospitalizations, amputations, or loss of an eye within 24 hours.⁶⁰ Police may not even be notified that a death or injury has occurred until hours after it occurs, if at all. It is uncommon for anyone from the prosecutor's office to go out to a facility where a death or injury has occurred. It is even less common for law enforcement officers to conduct an investigation or make arrests.

In addition to lacking proper channels of communication between first responders, investigators, and prosecutors, officials are generally reluctant to investigate and charge businesses or their officers for worker fatalities and egregious injuries because they view worker deaths and injuries as unfortunate accidents rather than crimes. Prosecutors are also reluctant to bring criminal charges because of concerns about the time and expense involved in litigating the cases in light of the scarce resources allocated to their offices.⁶¹ This reluctance is especially challenging to overcome when the alleged crime is a misdemeanor and not a felony,⁶² as prosecutors typically want to maximize the effectiveness of their resources by pursuing cases that are easier to win or are more likely to garner media attention.

Although federal or state OHS investigators will conduct an investigation in response to a fatality, the investigation may not occur until several hours or days after an injury or fatality. Moreover, the agency's investigation will focus on potential violations of worker safety standards rather than

Officials are generally reluctant to investigate and charge businesses or their officers for worker fatalities and egregious injuries because they view worker deaths and injuries as unfortunate accidents rather than crimes.

collecting evidence needed for a criminal case. Thus, it is not surprising that few workplace fatalities and injuries result in criminal indictments, even when they are caused by violations of health and safety standards.

Enhancing criminal prosecutions of businesses and responsible officers and managers requires proactive action by law enforcement officers, health and safety inspectors and investigators, and local prosecutors, which at present usually does not happen. The following steps are necessary to bring about successful prosecutions.

As soon as a death or injury occurs, employers should notify law enforcement officials and request their presence at the facility, in addition to notifying Fed-OSHA or the state OHS agency. Law enforcement officers should collect evidence and conduct a thorough investigation, just as they would if someone had been killed on the street. They should notify the local prosecutor's office and help seek justice for the victims and their families. Prosecutors should impanel grand juries and file criminal charges against businesses and their officers when they engage in criminal misconduct that injures or kills workers. State legislatures should ensure state laws impose strong penalties that punish and deter crimes against workers, and they should provide law enforcement agencies, investigators, and prosecutors with the resources they need to carry out their missions.

Any of these changes would be an improvement over the status quo in many states, but instituting them may require incremental steps, especially in jurisdictions with fierce political opposition or limited resources. However, to achieve the best results and lasting success, the goal should be to incorporate these individual actions into a coordinated, comprehensive OHS crime reduction program in which all entities actively participate.

A Model: Los Angeles District Attorney's Rollout Program

The Los Angeles district attorney's OSHA and Environmental Crimes Rollout Program⁶³ is a comprehensive program that can serve as a model to be adapted for any locality or even for a statewide program. First established in 1985, today's program reflects best practices developed and shaped by three decades of on-the-ground experience.

In the program's earliest days, the district attorney sought to collaborate with law enforcement by reaching out to all of the police chiefs and to the Los Angeles County sheriff and asking them to investigate all workplace fatalities as potential crimes.⁶⁴ The district attorney's office provided law enforcement officers with training materials and hosted training sessions on investigating workplace fatalities.

Enhancing criminal prosecutions of businesses and responsible officers and managers requires proactive action by law enforcement officers, health and safety inspectors and investigators, and local prosecutors.



Fast forward 30 years, and the district attorney's office now works in coordination with first responders, law enforcement, and the California Occupational Safety and Health Administration (Cal/OSHA), not only to respond to workplace incidents as they happen, but to disseminate information for investigations, and where a potential crime has been committed, to prosecute the case. The first responders to the scene of a workplace fatality contact the district attorney's Bureau of Investigation's "command center," in addition to contacting

Cal/OSHA. The district attorney's office is notified of the fatality through the command center. Cal/OSHA inspectors are also required by state law to notify prosecutors of workplace fatalities.⁶⁵ The district attorney has a 24-hour on-call deputy district attorney and investigator who proceed to the scene of a workplace fatality if they feel they can usefully supplement Cal/OSHA's investigation.

The San Bernardino district attorney's office has a similar program.⁶⁶ Within the district attorney's office, the Specialized Prosecutions Group is tasked with investigating and prosecuting workplace deaths, along with environmental crimes and consumer fraud. The district attorney coordinates with Cal/OSHA to review worker death and injury cases for potential criminal action. The San Bernardino DA's Bureau of Investigations also operates around the clock. When substantial workplace incidents occur, the Bureau's investigators and Cal/OSHA will go out to the site. Unlike the Los Angeles County DA program, however, it is unclear whether the San Bernardino DA's program will pursue charges independently of labor code violations referred by Cal/OSHA.

Only a few prosecutors outside of California have dedicated resources to workplace fatality and injury cases. The fact that California's Labor Code includes several strong criminal provisions and imposes higher penalties than does the federal OSH Act and most other state OHS laws may explain why the Los Angeles and San Bernardino district attorneys have established workplace fatality programs.

Take Action: Building a Successful Grassroots Campaign

Forming a Coalition and Setting Goals

As workers and their advocates begin strategizing about how to achieve reform, they could seek to identify potential allies—workers, union leaders, advocacy groups—and form a coalition dedicated to the reform effort. The coalition could build a list of contacts and supporters, including prosecutors, lawmakers, members of the press, workers, businesses, and so on. Widespread and diverse public support is essential for a reform effort that will inevitably face strong opposition from businesses, some with a long history in the area, deep pockets, and heavy political influence.

At the outset, it is also essential to assess existing state laws, prosecutorial programs, and the political climate to determine what “asks” the campaign should make and to develop a plan for achieving those goals. For example:

- If the state oversees its own occupational safety and health program, does it impose higher civil and/or criminal penalties for violating health and safety standards? What statutory changes are needed to improve OHS criminal penalties?
- Does the state limit criminal charges applicable to business entities and/or impose inadequate penalties on entities that are convicted?
- Could the state build on existing programs or will new programs or policies be necessary?

For OHS criminal prosecutions to be worthwhile, the state must have strong criminal laws that put employers on notice that they can be charged with crimes when their employees are killed or injured on the job. In states where criminal liability for entities is unclear or is narrowly limited by statute, advocates may wish to begin their campaign for enhanced criminal prosecutions of OHS crimes with a push to reform the state’s law. State legislators in every state are capable of establishing a corporate manslaughter law that makes it clear that businesses are subject to criminal prosecution when they cause a worker’s death. Advocates could then work with local law enforcement and prosecutors to ensure that workplace fatalities and serious injuries are investigated thoroughly and that prosecutors take action to enforce the law.

Reporting Fatalities and Injuries When They Happen

When a serious injury or fatality occurs at a worksite, the employer should report it immediately to the police, just like any other emergency, as well as to Fed-OSHA or the state-plan OHS counterpart. Unfortunately, immediate notification is not legally required in most states. Without an immediate response, critical evidence may be lost, cleaned up, or tampered with, and

Advocacy Resources

Don't forget to take a look at the appendix, where you will find Checklists, Talking Points, and Sample Materials for your campaign!

witnesses may become hard to locate or have trouble remembering what happened.

In states that operate their own OHS programs, advocates might consider campaigning for a law that requires employers to report work-related fatalities and serious bodily injuries to police and to the state OHS agency



within 15 minutes of learning about them. In union workplaces, this could also be included in a collective bargaining contract. Prompt reporting of incidents will help ensure that law enforcement and the OHS agency arrives at the scene while the evidence is undisturbed and the incident is still at the front of witnesses' minds.

Advocates in the state-plan states could also push for a state law requiring the state OHS agency to notify local prosecutors as soon as it is informed of a worker fatality or severe injury. Another way to accomplish this without legislation is through an agreement among law enforcement, the state OHS agency, and the prosecutors' offices that would

operate in a similar fashion to the rollout programs in Los Angeles County and San Bernardino. Even in states under Fed-OSHA's jurisdiction, first responders, law enforcement, and prosecutors' offices can work collaboratively to ensure that reports of workplace fatalities and serious injuries are transmitted immediately to all relevant institutions. For such an agreement to be effective, the parties should develop clear written rules on the particular types of cases that require notification, when notification must occur, who exactly should be notified, and what information should and should not be made available to prosecutors.

Even if employers are legally required to report a fatality or injury, they may not always comply. Thus, advocates could encourage employees to report injuries or fatalities that occur at a worksite by immediately calling 9-1-1. The caller should provide his or her location, the details of what occurred, and indicate whether medical assistance is needed. The caller should specifically ask the police to respond to the scene. If comfortable, the caller should also provide his or her name and contact information so the police or prosecutor can follow up with the witness. But even if the caller does not provide his or her name, the call is still very important. Documenting the scene and circumstances of the injury or fatality is critical to ensuring police and Fed-OSHA or state OHS officials perform a thorough investigation and to determining whether criminal misconduct is to blame.

After contacting police, witnesses should wait for police to arrive and provide individual statements. If anyone attempts to begin cleanup or move anything possibly related to the injury or fatality, witnesses should ask them

to stop, unless it is unsafe to do so. Without disturbing the scene or endangering oneself or others, video or photos taken with a camera or a cellphone may yield critical evidence needed to show whether a crime did or did not occur.

Supporting Thorough Investigations

In addition to ensuring that worker fatalities and injuries are promptly reported to authorities, police must be trained to investigate workplace incidents thoroughly and to communicate promptly with OHS investigators and prosecutors' offices. Prompt and thorough investigations with open channels of communication can prevent evidence from being destroyed, lost, or interfered with, intentionally or inadvertently. Interviews with witnesses, coworkers, and others with information about an incident should be conducted early to ensure potential witnesses do not forget critical information, confuse important details, become difficult to locate, or become unwilling to cooperate with authorities.

Thorough investigations can also help uncover business policies, practices, or systemic failures that created conditions of high risk. For example, interviewing employees can help to reveal insufficient training by the company, unaddressed language barriers, failure to maintain equipment, or similar problems inside a facility.

Before an injury or death occurs, the local prosecutor's office should be responsible for providing local law enforcement officers with training on investigating workplace incidents as possible crimes. In state-plan states, prosecutors could also provide training for OHS investigators who could utilize this information when investigating worksites. This includes proper techniques for collecting evidence and, in fatality cases, ensuring the cause of death is recorded properly. If the state does not require medical examiners to conduct investigations, advocates could push for state laws making medical examinations mandatory for every on-the-job fatality.

Advocates could also meet with local law enforcement officials to discuss their campaign and the importance of investigating workplace fatalities just as they would any other homicide. To ensure thorough investigations, advocates could promote a requirement that law enforcement agencies investigate all workplace fatalities and submit a report to the OHS agency and the relevant prosecutor's office. Over time, these data would show trends where certain industries or companies have high fatality rates. This could be imposed by state law, or as part of an interagency agreement between law enforcement, OHS officials, and prosecutors participating in an OHS crime reduction program.

Thorough investigations can help uncover business policies, practices, or systemic failures that created conditions of high risk.



Communication across all agencies with regulatory authority over an employer or worksite can also help facilitate thorough investigations and decisions that safeguard workers and the public. Companies that disregard worker health and safety are likely to disregard other laws and regulations as well. Agencies should work together to review a company's history—wage theft complaints, workers' compensation fraud, retaliation complaints, environmental violations, building and fire code violations, and so on. Advocates could utilize this information to request licensing and permitting boards to revoke a company's authorization to operate locally and deny any pending permit and licensing applications.

Contacting the Prosecutor's Office

For effective criminal enforcement of workplace fatalities and egregious injuries, local prosecutors must be dedicated to going after the employer criminals.

Currently, few prosecutors throughout the country have established programs focused on occupational crimes. Advocates should not wait for an incident before contacting their local prosecutors, but could meet with them early on and urge them to establish a permanent unit or task force within their offices that is dedicated to investigating and prosecuting cases involving workplace fatalities, serious injuries, and other egregious violations of OHS standards.

Advocates campaigning for a comprehensive OHS crime reduction program could talk with local prosecutors about their roles and possible challenges. As with the Los Angeles County DA rollout program, it would be important for prosecutors' offices to have a staff member and investigator from the office on call to respond to workplace fatalities or serious injuries by going out to the scene and working with law enforcement to ensure all potential evidence of criminal activity is collected. This program need not involve a huge new investment of limited resources: it might simply involve special training for a single prosecutor who would take the lead in any workplace homicide or injury cases.

If prosecutors' offices are interested in taking on these cases but lack the resources to do so, advocates might consider pushing for an "OHS circuit prosecutor" program that would establish a small OHS crimes team that travels throughout the state. In some states, the state attorney general or the statewide professional association for prosecutors employs "resource attorneys" who serve this function for other specialized crimes such as arson, domestic violence, or capital murder. Workplace death cases could operate in the same way. This could help ensure prosecution of crimes that occur in localities where prosecutors lack resources or subject-matter experience.

In addition to contacting the local prosecutors' offices, local workers' advocates could reach out to the state prosecutorial association or join with

For effective criminal enforcement of workplace fatalities and egregious injuries, local prosecutors must be dedicated to going after the employer criminals.

advocates from surrounding states to contact a regional or national association. If possible, advocates could attend those meetings and ask to present at a seminar. Sometimes a local prosecutor's office or the prosecutorial association will have a website, forum, or social media platform set up to allow members of the public to submit comments or suggestions, which may present another opportunity for advocates to build awareness with prosecutors about OHS crimes or to mobilize pressure around a particular case.

Advocates could also encourage prosecutors who are willing to take on OHS criminal cases or who have established specialized occupational crime units to talk with fellow prosecutors about taking similar action in their jurisdictions. Ask those prosecutors who have shown a willingness to pursue these cases if they would be willing to speak at a seminar and educate other prosecutors about their experience. Working with progressive prosecutors to speak to their state or national association would be instrumental in bringing attention to this important matter.

Ideally, advocates will establish relationships with prosecutors before any workplace injuries or deaths actually occur in their communities. Then, when an incident does occur, the time arrives for a follow-up. When a worker is seriously injured or killed on the job, advocates could meet as soon as possible with the local prosecutor about the particular case and ask his or her office to pursue criminal charges against the business entity and any responsible officers.



Providing the prosecutor with any of the evidence needed to make the case will be particularly useful, such as information that an employer knew of a health or safety standard and that it was not being followed, which put the lives of workers in jeopardy. This might include past or pending citations for violating federal or state OHS standards—especially for similar violations. Although knowledge is not required for many of these crimes, such information is compelling evidence and may convince the prosecutor to pursue the case.

Other useful evidence might show that responsible officers knew a hazardous condition existed and that it presented a substantial risk to workers, even if it may not have violated a particular standard. For example, advocates could include complaints by employees about the hazard or dangerous conditions generally, injury and illness reports relating to the hazard, company documents or policies addressing the hazard, or even proof that the employer was out of compliance with its own standard operating procedures or well-established industry standards and customs.

Also, advocates should point out to the prosecutor the benefits of taking the case and remind him or her that they are willing to help do some of the work. If the advocacy coalition has the resources and expertise, it may be persuasive to develop some of the materials the prosecutor would need for the case, such as briefing memos, relevant case citations, potential defenses, pleading language, or even jury instructions.

Meeting with OHS Officials

Advocates could also reach out to state OHS officials early on in their campaign effort to engage them in the dialogue and discuss how the coalition and agency might support one another's efforts.

One important reform advocates could raise with state OHS officials is ensuring that victims, their family members, and their representatives are informed about all aspects of an investigation. The agency could also speak to them before issuing a citation or choosing not to refer a case for criminal prosecution. They could also have the right to appear and testify at any agency proceeding related to the case. Advocates could ask the OHS agency to develop a written policy for communicating with victims, witnesses, and their representatives. Advocates could also seek legislative changes that impose this requirement on the agency by law.

When seeking to establish an OHS crime reduction program, it is critical to gather input from the agency about what role it would have, as well as resource constraints, legal issues, or other obstacles that need to be addressed. State OHS offices should also train inspectors to identify potential criminal violations and assist local prosecutors by gathering evidence and preparing police reports in a manner that corresponds to prosecutors' needs.

Meeting with Other Elected Officials

Advocates could meet with state legislators as well as members of their city and county councils when they begin their campaign to inform them of the reform effort and seek their support. Lawmakers are very influential allies and can be instrumental in waging a successful campaign. If the coalition plans to pursue legislative reforms, then it is critical to meet with state legislators far in advance of introducing a bill to identify potential sponsors, draft the bill, gain support, hold hearings, and bring it to a vote.

Advocates could also meet with lawmakers when they are pursuing criminal charges for a particular workplace fatality or injury. Supportive lawmakers may be willing to reach out to the prosecutor's office personally to encourage it to bring charges. Additionally, the coalition could ask for an oversight hearing related to the incident and the need for criminal charges.

Raising Public Awareness

Grassroots' interest in enhancing OHS criminal enforcement would help prosecutors recognize that the public cares about protecting workers and that prosecuting these crimes will win the community's support. Moreover, engaging the public and gaining support for the reform effort would help people recognize that worker deaths and serious injuries are not just accidents, but might be criminal acts by employers and ought to be punished accordingly.

To engage the public, advocates could consider targeted social media campaigns and direct actions like vigils, rallies, and protests. Advocates could identify and share personal stories about workplace incidents and company misconduct to illustrate why criminal prosecutions are so important in these cases. Victims and families of workers killed on the job who are willing to share their stories could participate in any meetings the coalition has with prosecutors, OHS officials, and lawmakers. They could also share their stories with reporters who are able to get the word out and help the public recognize that worker injuries and fatalities are often no accident.

As the campaign moves forward, the coalition could recognize the important roles played by law enforcement, OHS officials, prosecutors, and lawmakers. One way to express appreciation could be to applaud their efforts publicly, on social media, before the press, and so on.

Advocates could consider a campaign to call attention to industries and/or individual companies with egregious worker health and safety records to help educate the public and policymakers about the problem and bring more attention to the need for reform. One approach could be to produce reports that show a high incidence of fatalities and injuries within the industry or company despite clear and simple standards or techniques to prevent incidents. Reports focused on individual fatality cases may also be useful for raising awareness and helping the public and media understand the facts, the employer's criminal actions or omissions that caused the worker's death or injury, and why the company and responsible officials should be indicted.

The public cares about protecting workers and prosecuting these crimes will win the community's support.



Endnotes

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¹¹ AFL-CIO, DEATH ON THE JOB: THE TOLL OF NEGLECT 2, 126 (24th ed. 2015), available at <http://www.aflcio.org/content/download/154671/3868441/version/2/file/DOTJ2015FinalNoBug.pdf>.

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- ³¹ JOSHUA DRESSLER, UNDERSTANDING CRIMINAL LAW § 10.04(B), at 128 (5th ed. 2009).
- ³² The details of this case as discussed herein are based on documents in the OSHA Inspection File in the Matter of Horn Packaging, Inspection No. 315516005 (on file with author), which OSHA provided to the Center for Progressive Reform in response to a Freedom of Information Act (FOIA) request submitted to OSHA Region I on Aug. 22, 2013. For publicly available information relating to this case, see News Release, Occupational Safety & Health Admin., U.S. Dep't of Labor, U.S. Labor Department's OSHA Cites Lancaster, Mass., Packaging Manufacturer Following Worker Fatality (May 7, 2012), https://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=NEWS_RELEASE_S&p_id=22341.
- ³³ MODEL PENAL CODE § 2.02(2)(c).
- ³⁴ This fact pattern is similar to a 2006 incident involving the fatality of Jeffrey Padot, an employee of Maco Concrete, Inc. See Press Release, Mich. Dep't of Licensing & Regulatory Affairs, MIOSHA Cites Maco Concrete for Willful and Serious Violations in Fatal Trench Collapse and Proposes \$103,600 in Penalties (Dec. 18, 2006), http://www.michigan.gov/lara/0,4601,7-154-10573_11472-158381--,00.html; *Maco Concrete Sentencing*, MIOSHA NEWS, Summer 2007, at 4, http://www.michigan.gov/documents/cis/wsh_mioshanews_summer07_203622_7.pdf.
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- ⁴⁰ 720 ILL. COMP. STAT. ANN. 5/4-6, 5/9-3 (West, LEXIS through P.A. 99-495 of the 2015 Reg. Sess.).

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⁴² N.Y. PENAL LAW §§ 15.05(3)-(4), 125.10, 125.15 (McKinney, LEXIS through L.2015, chapters 1 to 589).

⁴³ OR. REV. STAT. ANN. §§ 161.085(9)-(10), 163.125, 163.145 (West, LEXIS through 2015 Reg. Sess.).

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⁴⁵ The details of this case as discussed herein are based on documents in the OSHA Inspection File in the Matter of Mariani & Richards, Inc., Inspection No. 312634389 (on file with author), which OSHA provided to the Center for Progressive Reform in response to a Freedom of Information Act (FOIA) request submitted to OSHA Region III on Aug. 22, 2013. For publicly available information relating to this case, see News Release, Occupational Safety & Health Admin., U.S. Dep't of Labor, U.S. Labor Department's OSHA Cites Pittsburg Construction Company for Lack of Fall Protection Following Worker's Death (Feb. 12, 2010),

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⁴⁸ E.g., MODEL PENAL CODE §§ 210.0(2)-(3), 211.00; N.Y. PENAL LAW § 10.00(9)-(10) (McKinney, LEXIS through L.2015, chapters 1 to 589); MD. CODE ANN., CRIM. LAW § 3-201(d).

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⁵⁰ MODEL PENAL CODE § 211.1; VT. STAT. ANN. tit. 13, §§ 1023, 1024 (West, LEXIS through First Sess. 2015-2016); 720 ILL. COMP. STAT. ANN. 5/12-1 to 12-3.05 (West, LEXIS through P.A. 99-495 of the 2015 Reg. Sess.).

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⁵⁸ *E.g.*, OR. REV. STAT. ANN. §§ 146.100(4), 146.103(1)-(2), 146.107(4)-(5), 146.121(1) (West, LEXIS through 2015 Reg. Sess.).

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APPENDIX

PREVENTING DEATH AND INJURY ON THE JOB

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FACT SHEET

PROSECUTING EMPLOYERS FOR CRIMES AGAINST WORKERS

WHAT IS THE PROBLEM?

Every year, thousands of workers die and thousands more are seriously injured in workplace incidents, many due to their employers' egregious disregard for worker health and safety.

Disturbingly, employers and police often view workers' deaths and injuries as "tragic accidents," rather than potential crimes. Employers may not notify police until hours after an incident, if at all. Police seldom investigate a workplace incident as they do a typical "street crime." Local prosecutors rarely go out to the scene or pursue criminal charges. Instead, workplace incidents are left for federal OSHA or a state OHS agency (in state-plan states) to handle. After an incident, agency investigators inspect the worksite and issue citations for regulatory violations they discover.

What's a State-Plan State?

A "state-plan state" is a state that operates its own occupational safety and health program under a "state plan" approved by federal OSHA.

However, most regulatory violations only trigger civil fines; criminal penalties only apply to the most extreme violations. Even then, the penalties are too low to be an effective deterrent. Employers know routine inspections before an incident are rare, leading some to believe they have more to gain by cutting corners than they might lose in the off chance they are caught.

WHAT IS THE SOLUTION?

When a company or the individuals acting on its behalf encourage or fail to prevent risky business decisions that ultimately cause a worker's serious injury or death, prosecutors should pursue criminal charges under the state's criminal code—e.g., for manslaughter, assault and battery, or reckless endangerment. State and local prosecutors in every state already have ample authority to file charges for criminal offenses found in the state's general criminal code.

The threat of criminal charges has the potential to deter future bad acts by scofflaw employers and to send a strong message to the industry. Pursuing criminal prosecutions under a state's general criminal laws can also serve as a valuable supplement to regulatory enforcement actions. Moreover, when an employer's conduct endangers workers but does not violate a regulation (or is not cited by agency inspectors), criminal prosecutions under a state's penal laws may be the only available mechanism for punishing offenders.

WHAT CAN LOCAL ADVOCATES DO TO HELP?

Advocates can campaign in their communities to encourage prosecutors to pursue criminal charges in worker fatality and injury cases under their states' general criminal laws. Ideally, advocates will seek to establish a comprehensive OHS crime reduction program with active participation by first responders, law enforcement, regulators, and prosecutors. However, depending on their states' political climate, advocates may need to take incremental steps. This manual offers guidance on responding to individual workplace incidents and encourages advocates to pursue a range of additional reforms that will help set the foundation for establishing a comprehensive program in the future.



CHECKLIST FOR ADVOCATES

CAMPAIGNING FOR CRIMINAL CHARGES IN RESPONSE TO A WORKPLACE INCIDENT

GOAL: ENCOURAGE WORKERS TO IMMEDIATELY REPORT ALL WORKPLACE INCIDENTS

- Workers who witness a fatality or serious injury on the job should immediately call 9-1-1.
- All witnesses should wait for police to arrive and provide individual statements.
- Witnesses should ask anyone who attempts to disturb the scene to stop and wait for authorities to arrive.
- Without disturbing the scene, witnesses can assist investigators with documenting the scene of the incident by capturing videos or photos with his or her cell phone.

GOAL: CONTACT THE PROSECUTOR'S OFFICE AS SOON AS POSSIBLE

- Arrange to meet with the prosecutor's office about the incident as soon as possible to request an investigation and urge the prosecutor to pursue applicable criminal charges.
- Send letters to the prosecutor from workers, worker representatives, family members, and other interested persons asking the prosecutor to indict all responsible parties.
- If you have adequate resources and expertise, develop some of the materials the prosecutor might need for the case, such as briefing memos, relevant case citations, potential defenses, pleading language, or even jury instructions.

GOAL: MEET WITH CITY AND COUNTY COUNCIL MEMBERS AND STATE LEGISLATORS

- Discuss the incident and explain why criminal charges should be pursued against the business entity and responsible officers in the case.
- Ask them to personally contact the prosecutor about pursuing criminal charges.
- Request for them to convene an oversight hearing before the council, committee, or legislature related to the incident, the investigation, and potential criminal charges.

GOAL: ENGAGE THE PUBLIC TO RAISE AWARENESS AND GAIN SUPPORT

- Create and implement a targeted social media strategy.
- Organize direct actions like vigils, rallies, and protests and invite the public and press.
- Ask workers and their families to share their stories on social media, in press conferences, and in meetings and letters to police, prosecutors, lawmakers, investigators, etc.
- Call attention to specific industries or companies with egregious records (through fact sheets, reports, etc.) to help raise awareness about the need for comprehensive reform.



CHECKLIST FOR ADVOCATES

CAMPAIGNING FOR A COMPREHENSIVE OHS CRIME REDUCTION PROGRAM

GOAL: STATE LAW IMPOSING CRIMINAL LIABILITY ON EMPLOYERS

- Urge the state legislature and governor to enact a new law (or make improvements to an existing law) imposing criminal liability on entities and its representatives for causing workplace incidents.

GOAL: IMMEDIATE REPORTING OF ALL WORKPLACE INCIDENTS TO AUTHORITIES

- Advocate for employers to report workplace incidents immediately:
 - In all states, work with unions to require employer notification in bargaining agreements.
 - In state-plan states, campaign for a state law requiring employers to notify police and the state OHS agency within 15 minutes of learning of an incident.
- Encourage workers to report incidents immediately to 9-1-1, even if the employer is legally required to do so.

GOAL: ESTABLISHING AN INTER-AGENCY OHS CRIME REDUCTION PROGRAM

- Meet with first responders, law enforcement, and prosecutors and help them to develop interagency agreements. In state-plan states, include state OHS officials in discussions. Interagency agreements could include:
 - Immediate notice of workplace incidents to all relevant agencies.
 - Training for law enforcement on investigating workplace incidents and collecting evidence.
 - Information-sharing between all state agencies with oversight of an employer or establishment.
 - Policies on communicating with injured workers, families, and representatives about investigations.
- Ask local prosecutors to establish a specialized OHS crime task force in their offices to investigate and prosecute OHS crimes. A member of the task force should be on call to go out to the scene of incidents and work with law enforcement to investigate.
 - If prosecutors show interest in establishing a task force, but lack the resources, advocate for an OHS circuit prosecutor program that sets up a small OHS crimes team that travels throughout the state.

GOAL: EARN BROADER SUPPORT FOR OHS CRIMINAL PROSECUTIONS

- Meet with state legislators and town, city, or county council members to ask for their support in instituting a comprehensive OHS crime reduction program. Ask lawmakers to ensure agencies have adequate funding and resources to operate an effective program.
- Encourage prosecutors who support OHS criminal liability to talk with fellow prosecutors about establishing a task force in their office or supporting a statewide program.
- Reach out to the state prosecutorial association or join with nearby advocates to contact a regional or national association, attend meetings, and ask to present at seminars.
- Engage the public and communicate the public's support to the prosecutor's office to help demonstrate that the public cares about prosecuting these crimes.



TALKING POINTS

PROSECUTE EMPLOYERS WHEN THEY KILL OR SERIOUSLY INJURE WORKERS

- Thousands of workers die every year, and thousands more suffer on-the-job injuries, often because of business policies and practices that encourage and reward behavior that creates unacceptably risky conditions. Such behavior is against the law, but it is rarely prosecuted. It is time to recognize that many worker fatalities and serious injuries are crimes and that they must be prosecuted to the full extent of the law.
- Prosecutors have a moral and legal duty to protect the public. By not charging employers for their bad acts, prosecutors are failing in their duty to protect the public, and sending a message to scofflaw employers that they can get away with breaking the law and endangering their employees.
- Prosecutors should focus resources on locking up criminals who perpetrate violence “in the name of business,” victimizing workers who just want to make a solid living and return home to their loved ones at the end of the day.
- Criminal penalties only apply to those who are truly blameworthy, not businesses or executives that abide by the law and take meaningful steps to keep workers safe.
- Criminal prosecutions against businesses or company officers must be proved beyond a reasonable doubt and must be tried before a jury of peers, just like any other criminal case.
- If companies are to be granted the same rights and privileges as people, they should also be subject to the same penalties and punishments. Businesses are capable of wrongdoing. It should not be a valid defense or justification that a crime was committed by or on behalf of a business, or in pursuit of profit.
- Prosecuting responsible officers who commit criminal acts for the benefit of the company’s bottom line can help level the playing field for competitors that abide by the law.
- Prosecuting a company for crimes committed by its responsible officers and managers may be the only means of getting at the root cause of the problem, which often lies in the company’s structure and is ingrained in its culture.
- The criminal employer—not the prosecutor—is at fault when a criminal prosecution drives customers away or hurts stock prices. Sagging stock prices do not justify letting an employer off the hook for causing a worker’s death or injury. It is time to stop treating companies as the victims of their own misconduct. The stigma that results from a criminal conviction is the consequence of committing the crime.



SAMPLE LETTER REQUESTING INVESTIGATION, ARREST, AND PROSECUTION

[Your Street Address]
[City], [State] [Zip Code]

[Date]

[Chief of Police Name]
Chief of Police, County of [County Name]
[Street Address]
[City], [State] [Zip Code]

[District Attorney's Name]
District Attorney, County of [County Name]
[Street Address]
[City], [State] [Zip Code]

Re: Request for Investigation, Arrest, Indictment, and Prosecution of [Insert Company Name and/or Individual Names]

Dear [Chief of Police's Name] and District Attorney [Name]:

I am writing to request an investigation and arrest of the above-named company and individuals for the following criminal violations:

[Name of Defendant] for:
For each violation alleged, indicate the crime and any applicable citation to the law or regulation violated, and provide the facts that support the charge.

I appreciate your immediate response to this request. Thank you for serving the public and ensuring those who break the law are punished to the fullest extent.

If you have questions or would like additional information, please contact me anytime at [phone number] or [email address].

Sincerely,

[Signature]



SAMPLE LETTER ASKING PROSECUTOR FOR AN INDICTMENT

[Your Street Address]
[City], [State] [Zip Code]

[Date]

[District Attorney's Name]
District Attorney, County of [County Name]
[Street Address]
[City], [State] [Zip Code]

Re: Request for Criminal Indictment of [Employer and/or Officers/Managers]

Dear District Attorney [Last Name]:

I am writing to request that your office investigate and file the appropriate criminal charges against [name of employer or company officials responsible for fatality/injury] due to their [negligence/ recklessness] for worker health and safety, which resulted in the [death/serious injury] of [Name(s) of Victims] on [date] at [employer's name and address].

[Describe who you are and your connection to the workplace and the fatality or injury. How long have you worked at the company? What's your current position? How long and how often did you work with the worker(s) that were injured and/or killed? Were you present when the death/injury happened and did you witness it?]

[Describe what happened from your perspective with as much detail as possible. Times/dates leading up to the incident may be helpful to include.]

[Discuss any actions taken by the company or its officials leading up to the death/injury that you believe are related. Have you witnessed similar incidents in the past? Are you aware of anyone raising health and safety concerns to a supervisor or other official with the company?]

[Inform the prosecutor of others who support your claims and/or witnesses.]

Thank you for your attention to this matter. Please feel free to contact me at [phone number] or [email address] if I can be of further assistance.

Sincerely,

[Your name]- If you can get others from the same workplace to sign the letter with you, it may help to do so, but it is not required.

TIP!

Maximize the reach of your letter by mailing a copy to the:

- ★ *State Attorney General's Office*
- ★ *Your Mayor*
- ★ *State Legislators*
- ★ *City/ county council members*
- ★ *Workers' rights organizations*
- ★ *Local media*



SAMPLE FORM

POLICE INTAKE FORM FOR WORKPLACE INCIDENTS

Employer(s) Name:

Site Address:

Mailing Address:

Date/Time of Incident:

Date/Time of 911 Call:

Date/Time of Police Intake:

Responding Law Enforcement Officer:

Police Report Number:

Date/Time Reported to OSHA:

Investigating OHS Officer:

Date Referred to Prosecutor:

Prosecutor Assigned to Case:

Victim(s) Information: *For each victim, please include his or her full name, job title, name of employer(s), age/date of birth, physical and mailing address, telephone number(s), the type of injury sustained, and any other identifying information.*

Description of Incident:

Potential Witnesses: *List all potential witnesses to the incident. Include the individual's first and last name, job title, and contact information, where available.*



SAMPLE PRESS RELEASE URGING ACTION BY LOCAL PROSECUTOR

For Immediate Release
May 29, 2015

Contacts:

Jorge Torres, El Centro del Inmigrante, jorge@elcentronyc.org

Nadia Marin-Molina, NDLO, nadia@ndlon.org

OSHA Investigation into Worker's Death at Worksite Finds "Willful" Disregard by Construction Company, Fines Over \$121,000

"No more excuses" for Staten Island DA to delay immediate charges against Formica Construction

Staten Island, NY: The Justice4Delfino Campaign welcomes the completion of the Occupational Safety and Health Administration (OSHA) investigation of Formica Construction and the significant fines levied in the death of Delfino Velazquez, who was crushed in an unpermitted demolition on Staten Island.

OSHA has issued 7 citations, 3 serious, 3 willful, and one other than serious, with fines totaling \$121,000. This amount is more than 5 times larger than the fines in a previous worker death, that of Lorenzo Pavia, who was killed in a trench collapse while working for Formica in 2003. This acknowledges the seriousness of the violations, as well as the importance of vocal and persistent organizing by workers, community and family members.

In light of the results of the OSHA investigation confirming Formica's "willful" disregard for worker safety, the Justice4Delfino Campaign reiterates its call for the Staten Island District Attorney to immediately press criminal charges against Formica Construction and for the NYC Department of Buildings to revoke Formica's license.

Delfino's family and organizations participating in the campaign issued the following reactions:

Monica Velazquez, Daughter of Delfino Velazquez: "Thanks to all who have supported us in this campaign for justice for Delfino and all workers in the center. My family is very grateful that after six months OSHA has completed a good investigation, with \$121,000 in fines. Thanks to all."

Jorge Torres, El Centro del Inmigrante: "One more time, it shows that when workers organize and fight back, we are stronger than the people in power. After 6 months of consecutive actions and on the 6 month anniversary, OSHA fined Formica Construction company with \$121,000 for their responsibility in killing our member and friend Delfino Velazquez. This is 10 times more than what OSHA usually sets in fines for other death cases. We demand that the DA use this report to file criminal charges on Mr. Formica and we demand that the DOB revoke his license. We will keep mourning the death of Delfino and fight like hell for the living until we achieve justice for all workers!"



Charlene Obernauer, NYCOSH: "OSHA has done its job and fined an employer who endangered a worker's life. It's time for the Staten Island DA to move forward with criminal charges."

Nadia Marin-Molina, NDLO: "There are no more excuses for inaction now that OSHA has completed its 6 month investigation. The Staten Island District Attorney should act immediately to press criminal charges, so that Formica, a repeat offender, is brought to justice. Day laborers and community members who have been organizing for justice believe that criminal charges and revocation of the license to operate is the minimum that should be done to protect all workers."

Justice4Delfino Campaign supporters: El Centro Community Job Center, National Day Laborer Organizing Network, NDLO, NYCOSH, Wind of the Spirit, New York City Workers Center Federation, Enlace, Laundry Workers Center, New Immigrant Community Empowerment, Street Vendor Project, Project Hospitality, Don Bosco Workers Inc. Port Chester NY, Worker's Justice Project, and Laborers Local 55.

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DIRECTORY OF PROSECUTORS AND PROSECUTORIAL ASSOCIATIONS

National Prosecutorial Associations

Association of Prosecuting Attorneys

www.apainc.org
1615 L Street NW
Suite 1100
Washington DC 20036
Tel: (202) 861-2480

National Association of Attorneys General

www.naaq.org
2030 M Street NW
8th Floor
Washington DC 20036
Tel: (202) 326-6000

National Association of Prosecutor Coordinators

www.napc.us
8283 Williams Road
Dewitt MI 48820
Tel: (517) 402-8177

The National Black Prosecutors Association

www.blackprosecutors.org
1507 East 53rd Street
Suite 108
Chicago IL 60615
Tel: (773) 299-8474

National Criminal Justice Association

www.ncja.org
720 Seventh Street NW
Third Floor
Washington DC 20001
Tel: (202) 628-8550

National District Attorneys Association

www.ndaa.org
99 Canal Center Plaza
Suite 330
Alexandria VA 22314
Tel: (703) 549-9222

National White Collar Crime Center (NW3C)

www.nw3c.org
4905 Dickens Road
Suite 106
Richmond VA 2320
Tel: (800) 221-4424



DIRECTORY OF PROSECUTORS AND PROSECUTORIAL ASSOCIATIONS

State and Local Prosecutors and Prosecutorial Associations

Alabama

Office of the Attorney General

www.ago.state.al.us

PO Box 300152
Montgomery AL 36130
Tel: (334) 242-7300

Alabama Office of Prosecution Services

www.alabamaprosecutor.com

PO Box 4780
Montgomery AL 36103
Tel: (334) 242-4191

District Attorneys Directory

www.alabamaprosecutor.com/DAList.aspx

Alaska

State of Alaska Department of Law

www.law.alaska.gov

PO Box 110300
Juneau AK 99811
Tel: (907) 465-3600

Regional District Attorney's Directory

www.law.alaska.gov/department/criminal/doa.html#anchorage

Arizona

Office of the Attorney General

www.azag.gov

1275 W Washington Street
Phoenix AZ 85007
Tel: (602) 542-4266

Arizona Prosecuting Attorneys' Advisory Council

www.apaac.arizona.gov

1951 West Camelback Road
Suite 202
Phoenix AZ 85015
Tel: (602) 542-4212

City Prosecutors and Town/County Attorneys Directory

www.apaac.arizona.gov/useful-links



DIRECTORY OF PROSECUTORS AND PROSECUTORIAL ASSOCIATIONS

Arkansas

Office of the Attorney General

www.ag.arkansas.gov

323 Center Street
Suite 200
Little Rock AR 72201
Tel: (800) 482-8982

Arkansas Prosecuting Attorneys Association

www.arkpa.org

323 Center Street
Suite 750
Little Rock AR 72118
Tel: (501) 682-3671

District Attorneys Directory

<http://criminal.findlaw.com/criminal-legal-help/arkansas-district-attorneys.html>

California

Office of the Attorney General

www.ag.ca.gov

1300 I Street
Suite 1740
Sacramento CA 95814
Tel: (916) 445-9555

California District Attorneys Association

www.cdaa.org

921 11th Street
Suite 300
Sacramento CA 95814
Tel: (916) 443-2017

City Attorney Directory

www.cdaa.org/city-attorney-roster

District Attorney Directory

www.cdaa.org/district-attorney-roster

Colorado

Office of the Attorney General

www.coloradoattorneygeneral.gov

Ralph L Carr Colorado Judicial Center
1300 Broadway
10th Floor
Denver CO 80203
Tel: (720) 508-6000

Colorado District Attorneys Council

www.cdacweb.com

1580 Logan Street
Suite 420
Denver CO 80203
Tel: (303) 830-9115

District Attorneys- Judicial District Map

www.cdacweb.com/CDAC/JudicialDistrictMap.aspx

Connecticut

Office of the Attorney General

www.ct.gov/ag

55 Elm Street
Hartford CT 06106
Tel: (860) 808-5318

Connecticut Association of Prosecutors

www.ctprosecutors.org

Connecticut Office of the Chief State's Attorney

www.ct.gov/csao

300 Corporate Place
Rocky Hill CT 06067
Tel: (860) 258-5800

State's Attorneys Directory

www.ct.gov/csao/cwp/view.asp?a=1795&q=285528&csaoNav=



DIRECTORY OF PROSECUTORS AND PROSECUTORIAL ASSOCIATIONS

Delaware

Office of the Attorney General
www.attorneygeneral.delaware.gov
Carvel State Building
820 N French Street
Wilmington DE 19801
Tel: (302) 577-8500

District of Columbia

Office of the Attorney General
www.oag.dc.gov
441 4th Street NW, Suite 1100S
Washington DC 20001
Tel: (202) 727-3400

U.S. Attorney's Office for the District of Columbia
www.justice.gov/usao-dc
555 4th Street NW
Washington DC 20530
Tel: (202) 252-7566

Florida

Office of the Attorney General
www.myfloridalegal.com
The Capitol PL 01
Tallahassee FL 32399
Tel: (850) 414-3300

Florida Prosecuting Attorneys Association
www.yourfpaa.org
107 West Gaines Street, Suite L-066
Tallahassee FL 32399
Tel: (850) 488-3070

State Attorneys Directory
www.yourfpaa.org/public-information/state-attorneys

Georgia

Office of the Attorney General
www.law.ga.gov
40 Capitol Square SW
Atlanta GA 30334
Tel: (404) 656-3300

Prosecuting Attorneys' Council of Georgia
www.pacga.org
1590 Adamson Parkway, 4th Floor
Morrow Georgia 30260
Tel: (770) 282-6300

District Attorneys & Solicitors General Directory
www.pacga.org/site/fyp

Hawaii

Office of the Attorney General
www.ag.hawaii.gov
425 Queen Street
Honolulu HI 96813
Tel: (808) 586-1500

Prosecuting Attorneys Directory
<http://criminal.findlaw.com/criminal-legal-help/hawaii-district-attorneys.html>



DIRECTORY OF PROSECUTORS AND PROSECUTORIAL ASSOCIATIONS

Idaho

Office of the Attorney General

www.ag.idaho.gov

PO Box 83720

Boise ID 83720

Tel: (208) 334-2400

Idaho Prosecuting Attorneys Association

www.ipaa-prosecutors.org

200 W Front Street

Room 3191

Boise Idaho 83702

Tel: (208) 577-4434

County Prosecutor Interactive Map

www.ipaa-prosecutors.org/Prosecutors_01.html

Illinois

Office of the Attorney General

www.illinoisattorneygeneral.gov

James R. Thompson Center

100 W Randolph Street

Chicago IL 60601

Tel: (312) 814-3000

State's Attorneys Appellate Prosecutor

www.ilsaap.org

725 South 2nd Street

Springfield IL 62704

Tel: (217) 782-1628

Illinois Prosecutors Bar Association

www.ilpba.org

State's Attorney's Offices Directory

www.ilpba.org/links

Indiana

Office of the Attorney General

www.in.gov/attorneygeneral

Indiana Government Center South

5th Floor, 302

West Washington Street

Indianapolis IN 46204

Tel: (317) 232-6201

Indiana Prosecuting Attorneys Council

www.ai.org/ipac

302 W Washington Street

Room E-205

Indianapolis IN 46204

Tel: (317) 232-1836

Find Your Prosecutor Interactive Map

www.in.gov/ipac/2330.htm

Iowa

Office of the Attorney General

www.iowaattorneygeneral.gov

Hoover State Office Building

1305 E Walnut Street

Des Moines IA 50319

Tel: (281) 5164

Iowa County Attorneys Association

www.iowa-icaa.com

Hoover State Office Building

Second Floor

Des Moines IA 50319

Tel: (515) 281-5428

County Attorneys Directory

www.iowa-icaa.com/wp-content/uploads/2016/01/Roster-of-CA-ACAs1.pdf



DIRECTORY OF PROSECUTORS AND PROSECUTORIAL ASSOCIATIONS

Kansas

Office of the Attorney General

www.ag.ks.gov
120 SW 10th Avenue
Second Floor
Topeka KS 66612
Tel: (785) 296-2215

Kansas County and District Attorneys Association

www.kcdaa.org
1200 SW 10th Avenue
Topeka KS 66604
Tel: (785) 232-5822

County & District Attorney Prosecutor Search

www.kcdaa.org/memberdirectory

Kentucky

Office of the Attorney General

www.ag.ky.gov
700 Capitol Avenue
Suite 118
Frankfort KY 40601
Tel: (502) 696-6300

Kentucky County Attorneys Association

www.kycaa.com
PO Box 4629
Frankfort KY 40601
Tel: (502) 395-2985

Commonwealth's and County Attorneys Directory

www.ag.ky.gov/criminal/pac/Pages/attorneys.aspx

County Attorneys Directory

www.kycaa.com/directory.html

Louisiana

Office of the Attorney General

www.ag.state.la.us
PO Box 94095
Baton Rouge LA 70804
Tel: (225) 325-6000

Louisiana District Attorneys Association

www.ldaa.org/main
1645 Nicholson Drive
Baton Rouge LA 70802
Tel: (225) 343-0171

District Attorney Directory

www.ldaa.org/main/da_roster

Maine

Office of the Attorney General

www.maine.gov/ag
6 State House Station
Augusta ME 04333
Tel: (207) 626-8800

Maine County Commissioners Association

www.mainecounties.org
4 Gabriel Drive
Suite 2
Augusta ME 04330
Tel: (207) 623-4697

District Attorneys Directory

www.mainecounties.org/district-attorneys.html



DIRECTORY OF PROSECUTORS AND PROSECUTORIAL ASSOCIATIONS

Maryland

Office of the Attorney General

www.oag.state.md.us

200 Saint Paul Place
Baltimore MD 21202
Tel: (410) 576-6300

Maryland State's Attorneys' Association

www.mdsaa.org

3300 North Ridge Road
Suite 185
Ellicott City MD 21043
Tel: (410) 203-9881

Maryland State's Attorneys Directory

www.mdsaa.org/marylandstatesattorneys.html

Massachusetts

Office of the Attorney General

www.mass.gov/ago

1 Ashburton Place
Boston MA 02108
Tel: (617) 727-2200

Massachusetts District Attorneys Association

www.mass.gov/mdaa

One Bulfinch Place
Suite 202
Boston MA 02114
Tel: (617) 723-0642

District Attorneys Directory

www.mass.gov/mdaa/district-attorneys

Michigan

Office of the Attorney General

www.michigan.gov/ag

PO Box 30212
Lansing MI 48909
Tel: (517) 373-1110

Prosecuting Attorneys Association of Michigan

www.michiganprosecutor.org

Samuel D. Ingham Building
116 West Ottawa Street
Suite 200
Lansing MI 48933
Tel: (517) 334-6060

Directory of Prosecutors and Victim Service Agencies

www.michigan.gov/mdhhs/0,5885,7-339-71548_54783_54853_54856-277574--,00.html

Minnesota

Office of the Attorney General

www.ag.state.mn.us

1400 Bremer Tower
445 Minnesota Street
St. Paul MN 55101
Tel: (651) 296-3353

Minnesota County Attorneys Association

www.mcaa-mn.org

100 Empire Drive
Suite 200
St. Paul MN 55103
Tel: (651) 641-1600

County Attorneys Directory

www.mcaa-mn.org/?page=countyattorneys



DIRECTORY OF PROSECUTORS AND PROSECUTORIAL ASSOCIATIONS

Mississippi

Office of the Attorney General

www.ago.state.ms.us

PO Box 220
Jackson MS 39205
Tel: (601) 359-3680

District Attorneys Directory

<http://criminal.findlaw.com/criminal-legal-help/mississippi-district-attorneys.html>

Missouri

Office of the Attorney General

www.ago.mo.gov

PO Box 899
Jefferson City MO 65102
Tel: (573) 751-3321

Missouri Association of Prosecuting Attorneys

www.moprosecutors.gov

PO Box 899
Jefferson City MO 65102
Tel: (573) 751-0619

Prosecutor Directory

www.moprosecutors.gov/directory

Montana

Office of the Attorney General

www.doj.mt.gov/our-attorney-general

PO Box 201401
Helena MT 59620
Tel: (406) 444-2026

Montana County Attorneys Association

www.mtcoattorneysassn.org

34 West Sixth Ave., Ste. 2E
Helena MT 59601
Tel: (406) 443-1570

County Attorneys Directory

www.mtcoattorneysassn.org/county-attorneys-in-montana

Nebraska

Office of the Attorney General

www.ago.ne.gov

PO Box 98920
Lincoln NE 68509
Tel: (402) 471-2682

Nebraska County Attorneys Association

www.necaa.org

PO Box 80044
Lincoln NE 68501
Tel: (402) 476-6047

County Attorneys Directory

www.necaa.org/county-attorneys



DIRECTORY OF PROSECUTORS AND PROSECUTORIAL ASSOCIATIONS

Nevada

Office of the Attorney General

www.ag.nv.gov
100 North Carson Street
Carson City NV 89701
Tel: (775-684-1100)

Nevada Advisory Council for Prosecuting Attorneys

www.nvpac.nv.gov
5420 Kietzke Lane, Suite 202
Reno NV 89511
Tel: (775) 688-1872

District Attorneys Directory

www.nvpac.nv.gov/uploadedFiles/nvpacnv.gov/Content/Attorneys/DAList.pdf

City Attorneys Directory

www.nvpac.nv.gov/uploadedFiles/nvpacnv.gov/Content/Attorneys/NPAC_CityAttorneys.pdf

New Hampshire

Office of the Attorney General

www.doj.nh.gov
33 Capitol Street
Concord NH 03301
Tel: (603) 271-3658

New Hampshire Association of Counties

www.nhcounties.org/index.html
Bow Brook Place
46 Donovan Street
Concord NH 03301
Tel: (603) 224-9222

District Attorneys Directory

<http://criminal.findlaw.com/criminal-legal-help/new-hampshire-district-attorneys.html>

New Jersey

Office of the Attorney General

www.state.nj.us/lps
RJ Hughes Justice Complex
25 Market Street
Box 080
Trenton NJ 08625
Tel: (609) 292-4925

New Jersey State Municipal Prosecutors' Association

www.njsmpa.org
PO Box 10539
Trenton NJ 08650
Tel: (609) 915-3593

County Prosecutors Directory

<http://criminal.findlaw.com/criminal-legal-help/new-jersey-district-attorneys.html>

New Mexico

Office of the Attorney General

www.nmag.gov
PO Drawer 1508
Santa FE NM 87504
Tel: (866) 626-3249

New Mexico District Attorney's Association

www.nmdas.com
625 Silver Ave SW
STE 420
Albuquerque NM 87102
Tel: (505)827-3789

District Attorney Interactive Map

www.nmdas.com



DIRECTORY OF PROSECUTORS AND PROSECUTORIAL ASSOCIATIONS

New York

Office of the Attorney General

www.ag.ny.gov
The Capitol
Albany NY 12224
Tel: (800) 771-7755

District Attorneys Association of the State of New York

www.dassny.com
3 Columbia Place
Albany NY 12210
Tel: (518) 598-8968

District Attorney Interactive Map

www.daasny.com/?page_id=48

North Carolina

Office of the Attorney General

www.ncdoj.gov
Department of Justice
PO Box 629
Raleigh NC 27602
Tel: (919) 716-6400

North Carolina Conference of District Attorneys

www.ncdistrictattorney.org
PO Box 3159
Cary NC 27519
Tel: (919) 890-1500

District Attorney Interactive Map

www.ncdistrictattorney.org/yourDA.html

North Dakota

Office of the Attorney General

www.ag.state.nd.us
State Capitol
600 E Boulevard Avenue
Bismarck ND 58505
Tel: (701) 328-2210

North Dakota State's Attorneys' Association

www.ndsaa.org
1661 Capitol Way
Bismarck ND 58502
Tel: (701) 328-7342

State's Attorney Interactive Map

www.ndsaa.org/directory

Ohio

Office of the Attorney General

www.ohioattorneygeneral.gov
State Office Tower
30 E Broad Street
Columbus OH 43266
Tel: (614) 466-4320

Ohio Prosecuting Attorneys Association

www.ohiopa.org
196 East State Street
Suite 200
Columbus OH 43215
Tel: (614) 221-1266

County Prosecutor Interactive Map and Directory

www.ohiopa.org/yourprosecutor.html



DIRECTORY OF PROSECUTORS AND PROSECUTORIAL ASSOCIATIONS

Oklahoma

Office of the Attorney General

www.oag.state.ok.us

313 NE 21st Street
Oklahoma City OK 73105
Tel: (405) 521-3921

District Attorneys Council

www.ok.gov/dac

421 NW 13th Street
Suite 290
Oklahoma City OK 73103
Tel: (405) 264-5000

District Attorney Interactive Map and Directory

[www.ok.gov/dac/District Attorneys/DA by County/index.html](http://www.ok.gov/dac/District_Attorneys/DA_by_County/index.html)

Oregon

Office of the Attorney General

www.doj.state.or.us

Justice Building
1162 Court Street NE
Salem OR 97301
Tel: (503) 378-6002

Oregon District Attorneys Association

www.oodaa.oregon.gov

2250 McGilchirst Street SE
Suite 100
Salem OR 97302
Tel: (503) 378-6347

District Attorney Directory

www.oodaa.oregon.gov/members.htm

Pennsylvania

Office of the Attorney General

www.attorneygeneral.gov

1600 Strawberry Square
Harrisburg PA 17120
Tel: (717) 787-3391

Pennsylvania District Attorneys Association

www.pdaa.org/pdaa

2929 N Front Street
Harrisburg PA 17110
Tel: (717) 238-5416

District Attorney Directory

www.pdaa.org/da-directory

Rhode Island

Office of the Attorney General

www.riag.state.ri.us/index.php

150 South Main Street
Providence RI 02903
Tel: (401) 274-4400



DIRECTORY OF PROSECUTORS AND PROSECUTORIAL ASSOCIATIONS

South Carolina

Office of the Attorney General

www.scattorneygeneral.org

PO Box 11549
Columbia SC 29211
Tel: (803) 734-3980

South Carolina Commission on Prosecution Coordination

www.prosecution.state.sc.us

PO Box 11561
Columbia SC 29211
Tel: (803) 343-0765

Solicitor's Directory

www.prosecution.state.sc.us/Content/Solicitors.aspx

South Dakota

Office of the Attorney General

www.atg.sd.gov

1302 East Highway 14
Suite 1
Pierre SD 57501
Tel: (605) 773-3215

South Dakota State's Attorneys Association

www.sdstatesattorneys.org

206 West Missouri Avenue
Pierre SD 57501
Tel: (605) 224-0461

State's Attorneys Interactive Map and Directory

www.sdstatesattorneys.org/sd-states-attorneys/

Tennessee

Office of the Attorney General

www.tn.gov/attorneygeneral

425 5th Avenue North
Nashville TN 37243
Tel: (615) 741-3491

Tennessee District Attorneys General Conference

www.tndagc.org

226 Capitol Boulevard
Suite 800
Nashville TN 37243
Tel: (615) 741-1696

District Attorneys General Interactive Map

www.tndagc.com/dir.htm

Texas

Office of the Attorney General

www.texasattorneygeneral.gov

PO Box 12548
Austin TX 78711
Tel: (512) 463-2100

Texas District and County Attorneys Association

www.tdcaa.com

505 W 12th Street
Suite 100
Austin TX 78701
Tel: (512) 474-2436

County Attorneys Website Links

www.texasattorneygeneral.gov/agency/useful-links#stateags

District Attorneys- Texas State Directory

www.txdirectory.com/online/da



DIRECTORY OF PROSECUTORS AND PROSECUTORIAL ASSOCIATIONS

Utah

Office of the Attorney General

www.attorneygeneral.utah.gov

State Capitol
Room 236
Salt Lake City UT 84114
Tel: (801) 538-9600

Utah Prosecution Council

www.upc.utah.gov

PO Box 140841
Salt Lake City UT 84114

County and District Attorneys Directory

www.upc.utah.gov/contacts-attorneys.php

City Attorneys Directory

www.upc.utah.gov/contacts-city-attorneys.php

Vermont

Office of the Attorney General

www.atg.state.vt.us

109 State Street
Montpelier VT 05609
Tel: (802) 828-3173

Department of State's Attorneys and Sheriffs' Association

www.prosecutors.vermont.gov/offices

12 Baldwin Street
Montpelier VT 05633
Tel: (802) 828-2891

Directory of State's Attorneys Offices by County

www.prosecutors.vermont.gov

Virginia

Office of the Attorney General

www.oag.state.va.us

900 East Main Street
Richmond VA 23219
Tel: (804) 786-2071

Commonwealth's Attorneys' Services Council

www.cas.state.va.us/index.htm

PO Box 3549
Williamsburg VA 23187
Tel: (757) 253-4146

Commonwealth's Attorneys Search

www.cas.state.va.us/cgi-bin/attorneySearch.cgi

Washington

Office of the Attorney General

www.atg.wa.gov

PO Box 40100
Olympia WA 98504
Tel: (360) 753-6200

Washington Association of Prosecuting Attorneys

www.70.89.120.146/wapa/index.html

206 10th Avenue SE
Olympia WA 98501
Tel: (360) 753-2175

Prosecuting Attorneys Directory

<http://criminal.findlaw.com/criminal-legal-help/washington-district-attorneys.html>



DIRECTORY OF PROSECUTORS AND PROSECUTORIAL ASSOCIATIONS

West Virginia

Office of the Attorney General

www.wvago.gov

State Capitol Complex, Building 1, Room E-26
Charleston WV 25305
Tel: (304) 558-2021

West Virginia Prosecuting Attorneys Institute

www.pai.wv.gov/Pages/default.aspx

90 MacCorkle Avenue, Suite 202
South Charleston WV 25303
Tel: (304) 558-3348

Prosecuting Attorney Interactive Map

www.pai.wv.gov/Pages/Prosecutors.aspx

Wisconsin

Office of the Attorney General

www.doj.state.wi.us

PO Box 7857
Madison WI 53707
Tel: (608) 266-1221

Department of Administration State Prosecutors Office

www.doa.state.wi.us/divisions/administrative-services/state-prosecutors-office

PO Box 7869
Madison WI 53707

Wisconsin District Attorney's Association

www.wisconsindaa.com

District Attorney Directory

www.dait.state.wi.us/category.asp?linkcatid=181&linkid=95&locid=13

Various District Attorneys Websites

www.wisconsindaa.com/about.php

Wyoming

Office of the Attorney General

www.ag.wyo.gov

Kendrick Building
2320 Capitol Avenue
Cheyenne WY 82002
Tel: (307) 777-7841

Wyoming Association of County Officers

www.wyowaco.org/index.html

County Attorneys Directory

<http://criminal.findlaw.com/criminal-legal-help/wyoming-district-attorneys.html>

About the Center for Progressive Reform

Founded in 2002, the Center for Progressive Reform is a 501(c)(3) nonprofit research and educational organization comprising a network of scholars across the nation dedicated to protecting health, safety, and the environment through analysis and commentary. CPR believes sensible safeguards in these areas serve important shared values, including doing the best we can to prevent harm to people and the environment, distributing environmental harms and benefits fairly, and protecting the earth for future generations. CPR rejects the view that the economic efficiency of private markets should be the only value used to guide government action. Rather, CPR supports thoughtful government action and reform to advance the well-being of human life and the environment. Additionally, CPR believes people play a crucial role in ensuring both private and public sector decisions that result in improved protection of consumers, public health and safety, and the environment. Accordingly, CPR supports ready public access to the courts, enhanced public participation, and improved public access to information.