

Project Narrative

a. Description of the Issue

Digital evidence is an essential part of criminal investigation and prosecution. By reviewing the data created, distributed, and possessed on smartphones, computers, and third-party sources (e.g. social media, call detail records), law enforcement can assess a suspect's identity, intent, movements, and other relevant aspects of a criminal case. The amount of information can be overwhelming and most prosecutors lack the skills to identify, obtain, manage and use digital evidence.¹ To ensure that appellate decisions, particularly those with precedential value, are correctly analyzed and decided, prosecutors must clearly communicate both the law and its application to the technology at issue. To that end, prosecutors must be trained to understand how digital evidence is obtained, reviewed, and used in criminal cases in a way that comports with the law and ensures fairness, equity, and privacy. This project will provide training supplemented with equipment to substantially upgrade the skills of Louisiana prosecutors, whose limited resources compound its challenges with digital evidence.

Prosecutor-oriented courses by the National Computer Forensics Institute (NCFI) and National White Collar Crime Center (NW3C) provide only basic information on technology, not a substantive understanding of its value in prosecuting crime. A recent survey of prosecutors conducted by one of the principals in this proposal found that although a majority of respondents frequently encounter digital data, fewer than one-third seek to introduce it as evidence. In addition, most reflected significant barriers to training, including cost, time away from the office -- including staffing coverage -- and inconvenience in location.² Even with proper training and

¹ Goodison, S. E., Davis, R. C., & Jackson, B. A. (2015). Digital evidence and the US criminal justice system. Identifying technology and other needs to more effectively acquire and utilize digital evidence. Priority Criminal Justice Needs Initiative. Rand Corporation.

² Miller, C. (2021) *National Prosecutor Survey on Digital Evidence*. Unpublished.

personnel, prosecutors often lack adequate equipment to review digital evidence. This limits the development of investigative leads, forensic assessment of stored data, review of potentially exculpatory evidence, and most of all, prosecutors' ability to counsel law enforcement on legal matters related to the collection of digital evidence.³

These problems are especially profound in Louisiana, whose 64 parishes have consistently seen high crime rates correlated to high measures of poverty.⁴ For example, per the 2019 FBI Uniform Crime Report, Louisiana had the highest per capita murder rate among all U.S. states for the 31st consecutive year, and an equally high rate of aggravated assault cases. Louisiana also has a devastating rate of drug-induced deaths, exacerbated by the COVID-19 pandemic.⁵ According to Centers for Disease Control and Prevention 2020 estimates, 1,771 drug overdose deaths occurred in Louisiana -- a steep rise of 52% compared to 2019.⁶ In response, Louisiana amended its Second Degree Murder statute to enable the prosecution of those who unlawfully distribute or dispense drugs causing the death of a person.⁷ Central to the prosecution of all these crimes is the acquisition and review of cellular telephone data and records maintained by internet service providers (i.e., social media records, call detail records, cloud accounts).

³ *Louisiana Rules of Professional Conduct*. Louisiana Attorney Disciplinary Board. November 27, 2018. available at <https://www.ladb.org/Material/Publication/ROPC/ROPC.pdf> accessed April 20, 2021.

⁴ *State Median Household Income Patterns: 1990-2010*, U.S. Census Bureau. 12 August 12, available at: <http://proximityone.com/stmhi0910.htm> (accessed April 10, 2021); *Crime in the United States by State: 2014*, FBI: UCR, available at: <https://ucr.fbi.gov/crime-in-the-u.s/2014/crime-in-the-u.s.-2014/tables/table-5> (accessed April 10, 2021).

⁵ Alexis Bellamy, "Drug Overdoses Spike in Louisiana during the pandemic," *KNOE News*8, 2 December 2020, available at: <https://www.msn.com/en-us/health/medical/drug-overdoses-spike-in-louisiana-during-the-pandemic/ar-BB1bxH6H> (accessed April 10, 2021).

⁶ Center for Disease Control and Prevention, National Center for Health Statistics, *NVSS Vital Statistics Rapid Release Provisional Drug Overdose Death Counts*, available at <https://www.cdc.gov/nchs/nvss/vsrr/drug-overdose-data.htm> (accessed April 12, 2021).

⁷ *Drug Indicted Homicide in Louisiana*. DrugInducedHomicide.Org, available at: <https://druginducedhomicide.org/la/> (accessed April 10, 2021) (*citing* La.Rev.Stat 14:30.1); Jacqueline DeRobertis, "Murder charges in drug overdose deaths are rare in Louisiana; police, prosecutors explain why," *The Advocate*. 15 Nov. 2020, available at: https://www.theadvocate.com/baton-rouge/news/crime-police/article_626b97f4-1652-11eb-96a4-9b0e918c10d4.html (accessed April 10, 2021).

Louisiana’s violent crime and drug crime rates are compounded by a high rate of internet crimes against children, which rose by 200% during the COVID-19 pandemic.⁸ These cases frequently involve technologies such as peer-to-peer networks, dark web sites, and cryptocurrency. Similarly, internet crimes such as extortion using ransomware, data theft, credit card fraud, and identity theft require a robust criminal justice response.

COVID-19 has had a substantial impact on criminal investigations and prosecutions. Since March 2020, jurisdictions across Louisiana had to suspend jury trials, and many court proceedings were either continued or held via virtual platforms. Even as courts reopened April 1, 2021, significant case backlogs remain. Because the Louisiana District Attorneys Association (LDAA) estimates conservatively that digital evidence is involved in 80% of its criminal cases, efficient examination and presentation of digital evidence would enhance the disposition of cases, whether by plea, trial, or dismissal. Yet, with at least half of Louisiana’s 64 parishes considered persistent-poverty counties, limited financial resources hamper criminal investigation and prosecution.⁹ Over 20% of Louisianans live in rural areas, which are often neglected, and 19% live in poverty. In fact, 73% of all judicial districts are rural, with an average of only 3.8 prosecutors (relative to an average of 22.7 prosecutors in Louisiana’s urban areas). The limited number of prosecutors with experience in digital evidence, coupled with the lack of training, jeopardize viable prosecutions, as well as the rights of defendants and of victims.¹⁰

As chief law enforcement officers with the responsibility of the investigation and

⁸ Akemi Briggs, “Three Arrested in Louisiana for Internet Crimes against Children,” *KLAF NBC*. 21 Nov. 2020, available at: <https://www.kadn.com/content/news/Three-Arrested-in-Louisiana-for-Internet-Crimes-Against-Children-573170441.html> (accessed April 10, 2021).

⁹ *Targeting Federal Funds: Information on Funding to Areas*, *GAO-20-518*. July 2020, available at: <https://www.gao.gov/assets/gao-20-518.pdf> (accessed April 21, 2021).

¹⁰ Louisiana Revised Statutes, Title 46 § 1841 et seq.

prosecution of crime,¹¹ Louisiana's District Attorneys need comprehensive training on the identification, collection, assessment, and use of digital evidence. This training needs to be supplemented by education on forensic software, free or reduced-cost evidence review options, and updated hardware with sufficient technological capacity to better identify information relevant to their cases. Also significant to the effective use of digital evidence is the development of local digital evidence prosecutor specialists. Prosecutors' ability to educate each other, as well as the judiciary and defense bar, results not only in just outcomes for individual cases, but also in better developed case law addressing digital evidence, thereby improving conviction integrity and trust in the criminal justice system.

The mission of the LDAA is to improve Louisiana's justice system and the offices of the District Attorneys by enhancing the effectiveness and professionalism of Louisiana's District Attorneys and their staffs through education, legislative involvement, liaison, and information sharing. As the representative of all 42 elected District Attorneys in Louisiana, the LDAA has identified the compelling lack of resources available to local prosecutors to be prepared to properly, efficiently, effectively and fairly prosecute matters involving digital evidence. The impact of this grant will be three-fold: 1) prosecutors will be effectively and comprehensively trained on understanding digital evidence; 2) citizens accused of crimes will be confident in the accounting and integrity of the digital evidence presented by the state; and 3) prosecutors will make the best use of time in jury trials by presenting digital evidence clearly and cogently.

b. Project Design and Implementation

The LDAA, Zero Abuse Project, the Prosecutors' Center for Excellence, and other content experts will develop Digital Evidence Experiential Training (DEET) to equip prosecutors

¹¹ Louisiana Constitution, Art. 5, Section 26; Louisiana Code of Criminal Procedure Articles 61-62.

to effectively and sustainably use digital evidence to respond to crime. The Project will include development and delivery of a nationally-replicable curriculum and written policies and practices related to digital evidence use for prosecutors' offices. The training curriculum will address issues that span the entirety of a criminal case, from the legal process needed for the collection of evidence, to the proper analysis of that evidence, to its use in plea negotiations or at trial.

The written policies will support prosecutors' offices in Louisiana and nationwide in framing local practices surrounding digital evidence. Cross Associates Research and Evaluation Services (Cross Associates) will conduct a needs assessment to inform the curriculum development and program evaluation to assess the training's impact. As the timeline illustrates, the project will proceed in a series of steps.

Needs Assessment. First, Cross Associates will conduct an assessment of the digital evidence needs of prosecutors from the state's 42 district attorney's offices. Cross Associates will consult with the DEET team (see below) to frame questions to assess needs related to the disparate sources of digital evidence and the variety of prosecutorial tasks associated with this evidence. The online survey will gather data on prosecutors' current levels of competency with digital evidence, access to digital evidence tools/equipment/training, and so forth. The survey will elicit the topics prosecutors identify as training needs, from collection, analysis, and use of digital evidence to communicating with judges and juries. The LDAA will reach out via emails and announcements at the LDAA meetings to promote voluntary participation in the needs assessment. Cross Associates will analyze the data using standard descriptive statistical methods and produce a brief report summarizing the needs across the state and breaking down needs by district characteristics (e.g., geographic location, urbanicity, economic status). The data will then be available to inform the curriculum development. The needs assessment will provide guidance

on the concerns of digital evidence prosecutors. This information will enable curriculum developers to devote time and attention to issues on which prosecutors have the greatest deficits.

Curriculum Development. The DEET team will include content experts across the project (Hansen, Peters, Remy, and Miller) who have sufficient expertise with digital evidence to design the curriculum and provide the training. The DEET team will develop a multi-faceted training curriculum, informed by 1) the major crime problems -- violent crime, drug-related overdose deaths, and child exploitation -- Louisiana is experiencing, 2) the needs identified by prosecutors through the needs assessment as well as follow-up interviews, 3) their own experience and knowledge relating to digital evidence, and 4) an assessment of evolving legal authorities that raise digital evidence issues that need to be addressed by proper education.

The curriculum will address the legal aspects of acquiring digital evidence (i.e., search warrants, subpoenas, consent), as well as provide guidance and tools to allow prosecutors to assess the digital evidence more efficiently (i.e., how to process and review search warrant returns, how to determine the importance of the data to criminal cases, how to use the digital evidence at trial). The format will involve both lecture and highly-experiential training modules that will allow prosecutors to practice examining digital evidence using real-life case scenarios. The curriculum will also include sample, adaptable written policies and practices on accessing and using digital evidence. Deliverables from curriculum development will include lecture materials as well as other documents needed to carry out experiential learning exercises. At the end of the curriculum development phase, the DEET team will have developed a three-day pilot training program ready to implement.

Providing and Evaluating Pilot Training/Addressing Equipment Needs. The LDAA will promote the training at the regular meeting of the elected Louisiana District Attorneys in

early 2022. Next, the DEET team will provide components of the training at the annual LDAA conference in Florida in June 2022 to further educate members of the prosecutorial community on the basics of technology-informed prosecution and the importance of this training program. The DEET team will then offer the full three-day pilot curriculum in Autumn 2022 to representatives from each of 9 judicial regions, along with Bobby Freeman, Senior Attorney at LDAA. Each of the representatives from the 9 judicial regions, as well as the LDAA representative, will receive a forensic laptop capable of reviewing digital evidence. Utilizing methods it has used in previous training evaluations,¹² the evaluation team will develop and implement a set of short- and long-term training outcome measures to assess trainees' response. The evaluation team will write a report on its findings.

Full Training. Based on its experience in the pilot and evaluation results, the DEET team will prepare a revised training curriculum. It will then offer the revised three-day training to the original 9 regional digital evidence prosecution specialists along with each of the 42 judicial districts in Spring of 2023. Two training sessions will be conducted to effectively accommodate all 42 prosecutors. Curriculum training modules will be recorded and made available to prosecutors through LDAA and Zero Abuse. Following the training, members of the DEET team, along with the regional trainees, will be available for follow-up guidance and technical assistance through the length of the grant.

Promoting Dissemination of the Training. The project's training model in Louisiana will have broad applicability that would, if widely disseminated, make an important contribution

¹² Goulet, B., Cross, T.P., Chiu, Y. & Evans, S. (2020). Moving from procedure to practice: A statewide child protection simulation training model. *Journal of Public Child Welfare*. Advanced online publication. <https://doi.org/10.1080/15548732.2020.1777247>. Chiu, Y. & Cross, T.P. (2020). How a training team delivers simulation training of child protection investigators. *Children and Youth Services Review*. Advanced online publication. <https://doi.org/10.1016/j.childyouth.2020.105390>

to prosecutors' use of digital evidence across the country. Led by the Prosecutors' Center for Excellence and Zero Abuse Project, each of which have a significant national presence and distribution networks, the project will take steps to communicate findings from the project nationally and broadly promote education on digital evidence. Publications about the training will be prepared by PCE and distributed to prosecutors' offices and prosecutorial agencies nationwide. PCE will also highlight the training program at national meetings of prosecutor offices. Zero Abuse Project, one of the leading organizations for evidence-based prosecutor training, will be ideally positioned to disseminate and replicate the training. The DEET team will also adapt the curriculum/sample policies for national replication.

c. Capabilities and Competencies

The *Louisiana District Attorneys Association* (LDAA) is a nonprofit organization that has been in operation since 1973. The LDAA is a voluntary membership professional association with 100% participation by all elected District Attorneys in the State. Its mission is to improve Louisiana's justice system and the office of the District Attorney by enhancing the effectiveness and professionalism of Louisiana's District Attorneys, their staffs, and law enforcement through training and education, legislative involvement, liaison and information sharing, and other support. The LDAA is currently the subgrantee of 10 active grants through the Louisiana Commission on Law Enforcement, the Louisiana Department of Children and Family Services, and the Louisiana Highway Safety Commission. They handle all aspects of grant management, including financial reports, GAMs, equipment inventory lists, etc. They host training programs/sessions on all aspects of the role of the district attorney. In 2020 alone, the LDAA scheduled and completed 40 in-person and virtual programs with a total of more than 160 continuing legal education hours. The staff is adept at handling all aspects of training from the

conception of the agenda to the post-training evaluations (e.g., administration/oversight, marketing, on-line registration, and training site logistics).

Robert Freeman, Jr., Staff Attorney/Project Director, has over 30 years experience as a litigator with law licenses in Louisiana, California and the District of Columbia. In addition to his 20 years in Orleans Parish as a seasoned prosecutor specializing in complex homicide and sex crime prosecutions, he has served as Chief of Trials, where he was responsible for the training and supervision of over 30 trial assistants and 3000 active felony files. Bobby served as Chief of the Public Corruption Unit, Violent Offender Unit, and Major Offense Trial Unit, which were responsible for the Grand Jury presentation, indictment and targeted prosecution of media-intensive felony matters. Additionally, Bobby served as the Interim District Attorney for the Parish of Orleans in 2008 and was the Chairman of the Board for the New Orleans' Victim/Witness Security Consortium. As an Associate Professor of Law at Tulane University School of Law, Bobby has taught Trial Advocacy for the past six years.

Zero Abuse Project is a national 501(c)(3) nonprofit organization focused on protecting children from abuse and sexual assault. Its work is widely recognized for engaging people and resources through a trauma-informed approach of education, research, advocacy, and advanced technology. Zero Abuse manages the Trauma-informed Prosecutor Project (TiPP), a training and technical assistance program for child abuse prosecutors awarded by U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention. Through TiPP and related initiatives, developed and delivers the Stopping Technology-Facilitated Abuse of Rural Kids (STARK) Prosecutor Symposium, a groundbreaking curriculum equipping prosecutors with practical information and experiential exercises to maximize their usage of digital evidence and forensic examine testimony in online child exploitation cases. This effort

builds on Zero Abuse's 30-year history training child protection personnel, criminal justice professionals, parents, communities, students, and allied partners.

Robert Peters, Senior Attorney, will lead the Zero Abuse Project effort. He specializes in the investigation and prosecution of sexual offenses and technology-facilitated child abuse. Previously, Robert served as the senior cyber and economic crime attorney and general counsel with the National White Collar Crime Center (NW3C), as well as assistant prosecuting attorney and special prosecutor in various West Virginia jurisdictions.

Cross Associates Research and Evaluation Services, LLC. Cross Associates is a strategic learning consulting firm specializing in applied social science research and program/training evaluations. Elizabeth M. Cross, PhD and Theodore P. Cross, PhD have been colleagues in a variety of capacities (advising, consulting, partnership, university-based) for over 25 years, collaborating on evaluations of myriad social programs serving vulnerable communities and victims of crime as well as co-authoring a manual on outcomes measurement.

Christa M. Miller Communications LLC is an independent contractor of 20 years with a particular focus over the last 13 years on digital forensics and investigations. Owner/principal Christa Miller has collaborated extensively with prosecutors and digital forensic experts to produce articles and white papers addressing the unique challenges of digital evidence, including authenticity and admissibility. Her National Prosecutor Survey on Digital Evidence is the impetus for this project.

Katherine Hansen, Deputy District Attorney/Digital Evidence Specialist, Denver District Attorney's Office, Denver, Colorado. Cathee has over 25 years experience as a prosecutor, both at the appellate and trial court levels. She is a subject matter expert in digital evidence and provides assistance and training to law enforcement and prosecutorial agencies as well as federal

task forces. She is also a member of SWGDE, AAFS (Digital and Multimedia Section), and ASTM (Digital and Multimedia Section).

Joseph Remy, Assistant Prosecutor, Financial & Cyber Section Head, Burlington County Prosecutor's Office, Mt. Holly, New Jersey. In addition to investigating and prosecuting child exploitation and cybercrime cases, Joseph Remy drafts legislative proposals. He previously served as a Deputy Attorney General in the New Jersey Office of the Attorney General, an Assistant District Attorney in the New York County (Manhattan) District Attorney's Office, and as a criminal defense attorney. Joseph frequently teaches at both the national and international levels. He is a Certified Cyber Crime Examiner (3CE) and Certified Blockchain Expert (CBE).

Prosecutors' Center for Excellence (PCE) is a national organization that works with prosecutors, in offices of all sizes, to improve the criminal justice system. PCE provides consulting services to prosecutors on a wide variety of issues including full-office assessments and modern approaches to emerging issues, including digital evidence. PCE hosts regular national meetings for prosecutors and supports statewide prosecutor-led Best Practices Committees in 20 states that proactively work to develop responses to the difficult criminal justice issues of the day.

d. Plan for Collecting the Data Required for this Solicitation's Performance Measures

LDAA understands that ongoing data collection and performance measurement is essential to ensure effective project management. Further, the key to successful project evaluation is to maintain regular communication with BJA throughout the project period and to maintain compliance with all data requirements.

LDAA and project partners will collect the necessary data and regularly report to BJA on progress made with respect to the project's goals, objectives, and deliverables, as detailed in the

RFP. Roxanne Barrios Juneau, in coordination with Project Director Bobby Freeman, will take primary responsibility for collecting, organizing and communicating these data. Upon award, LDAA will develop a detailed, project-specific plan for tracking and reporting all required performance metrics. LDAA will ensure that all DEET team partners understand the PMT reporting procedures and accurately track project progress. LDAA uses Microsoft Office 365 programs, as well as management database, Capital Impact. The Project Director and LDAA administration team, will adapt the current platform to track all project metrics as required in the solicitation's performance measures table to store data and monitor project progress. The Project Director, Bobby Freeman will review the data collected by all project partners quarterly to ensure that it is accurate for reporting, and will submit all information into JustGrants.

Among the data that will be collected and reported are the following: 1) the specific training products developed by the DEET; 2) the number and duration of trainings provided; 3) the number of prosecutors who receive training at each phase, broken down by relevant characteristics of their jurisdiction (e.g., representation of qualified opportunity zone, rural challenges, high-poverty areas 4) the amount of additional technical assistance provided, measured in number of contacts and hours of assistance provided; 5) an inventory of the hardware and software distributed by jurisdiction; 6) output from the program evaluation team, including the number of respondents and response rate on the needs assessment and program evaluation of the training, and a description of the data files and other evaluation products (e.g., data tables). LDAA and all DEET team partners will hold monthly project meetings to review performance data, report on deliverables and assess the current status of the program. Guided by performance data, this team will make adjustments in the recruitment of trainees, the provision of training and technical assistance, and follow-up.