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# Houston district attorney proud of first year in office

By Brian Rogers | December 29, 2017 | Updated: December 29, 2017 6:05pm



Photo: Michael Ciaglo, Staff

Harris County district attorney Kim Ogg announces a new policy to decriminalize low-level possession of marijuana Thursday, Feb. 16, 2017 in Houston. The new policy means that most misdemeanor offenders with less than four ounces of marijuana will not be arrested, ticketed or required to appear in court if they agree to take a four-hour drug education class. ( Michael Ciaglo / Houston Chronicle )

The accomplishment Kim Ogg is most proud of after her first year as Harris County District Attorney was not implementing a new drug policy, energizing the division that holds police officers accountable or working to ensure victims' rights.

It's that the prosecutor's office was able to stay open round the clock during Hurricane Harvey and in the weeks of the storm's aftermath. More than 50 inches of water flooded courthouses and displaced the 24-hour intake division, the critical group which decides whether to accept charges presented by police officers and keeps track of who was arrested and why.

"I'm proudest of my employees because they maintained constant operations, 24/7, throughout the biggest natural disaster in Houston's history," she said earlier this month in a wide ranging interview about her first year as district attorney. "We survived the storm surge."

Ogg, a 56-year-old native Houstonian, became Harris County's third female district attorney Jan. 1 after besting incumbent Devon Anderson in the November 2016 general election. The Democrat is Houston's first openly gay DA although it rarely comes up. Unlike Annise Parker, Houston's mayor from 2010 to 2016, who was well-known in politics because of her LGBT activism, Ogg was known for her criminal justice work, including running the city's first gang task force, then helming CrimeStoppers of Houston. Ogg's sexual orientation came up during last year's campaign when Anderson labeled her a "liberal, pro-choice, lesbian" in an interview.

It was during that campaign that Ogg promised an administration that would champion drug reform, diversion courts and holding police officers accountable, all of which seem to be moving forward.

"I think she's done a great job leading that office in some new directions that the office probably needed to go in," said Tucker Graves, president of the Harris County Criminal Lawyers Association. "I like that she's brought in experienced lawyers to run the upper management of her office who have prosecutorial and defense experience."



He noted the organization of criminal defense lawyers, which typically takes an adversarial role with prosecutors, is cautiously optimistic that their concerns are being heard by Ogg's administration.

"The membership has been very supportive and likes the changes she's made," Graves said. "Like always, there's going to be some who wish she would do more, but she's only been in the office for a year."



Photo: Marie D. De Jesus, Houston Chronicle

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The mother of a rape victim holds a photograph of her child, Wednesday, March 22, 2017, at her home in Cypress.

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### *Jenny's Law*

One of her biggest accomplishments was the passage of Jenny's Law, a victims rights bill. The law was written after it was revealed that a mentally ill rape victim **had been jailed for 27 days in December 2015 to ensure that she testified against her attacker**. The revelation set off a firestorm of criticism which grew after it was discovered the woman, known as Jenny, did not have a lawyer before she was jailed. Prosecutors only had to convince a judge it was necessary. The case dominated the 2016 campaign for D.A. and after Ogg was elected, she took up the mantle to get the legislature to pass protections for victims in similar situations.

"We were the sole driving force behind Jenny's Law, which passed nearly unanimously through the state house of representatives and senate and gave crime victims and other witnesses the same basic due process rights as their attackers," she said.

**SERIAL INDIFFERENCE: How mistakes in the criminal justice system let a serial rapist go free**

With the passage of that law, Ogg also secured \$4 million in grants to double the size of the office's victims' right division.

She said the law was part of a broader push for accountability, which included new leadership for the civil rights division of the office, the department that investigates the police.

"Our civil right division is actively pursuing cases against law enforcement and correctional officers, on and off duty, who abuse people's civil rights and cross the line," she said. "It's important to build community trust and belief that we are a transparent prosecution office and we apply the law equally."

Since Ogg took over, the division has indicted a dozen officers, most after lengthy investigations.

The office came under fire from both sides of the political spectrum after indicting Harris County Deputy Chauna Thompson and her husband for murder in the choking death of John Hernandez. The indictment was handed down days after a large protest by family and friends of the murdered man, who marched to the criminal courthouse and demanded action.

Hispanic and Latino activists said the office did not move fast enough, which forced them to protest. Critics said the office bowed to pressure from the protestors. The murder cases against the Thompsons are pending.

Ogg said she has made a priority out of holding officers accountable, which, she said, was not a priority of past administrations.

"I think that has been a real problem in many communities of color, lower-income areas and really everybody," she said. "This is critical to good policing, good prosecution and most important to democracy because if people don't believe everyone is accountable, they're just going to stop participating."

That would mean fewer people filing reports of crime, she said, fewer witnesses willing to testify, fewer people showing up to serve on juries and ultimately fewer people voting.



Photo: Yi-Chin Lee / Houston Chronicle, Marijuana

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T. Watson is secretary of the local chapter of the National Organization for the Reform of Marijuana Laws.

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## ***Drug Reform***

The cornerstone of her campaign was **reform of drug prosecutions and the expansion of diversion programs for drug users**, which began with marijuana cases and now involves cases with trace amounts of cocaine.

In fact, a interesting phenomenon emerged after Ogg implemented the unprecedented program to divert low-level, non-violent drug users away from jail and into a class to learn about decision making: about 7,000 marijuana smokers disappeared from the usual arrest tally.

"Our statistics showed an enormous decline in misdemeanor filings-10,000 cases-and that's exactly the number we predicted based on average arrest stats," she said.

Under Ogg's policy, when a police officer detains someone for drugs, generally marijuana users with less than four ounces, they are not arrested. They can agree to sign up and complete

a four-hour "cognitive decision making" class. It is open to people no matter their prior record or past drug use. The idea is that there is a significant number of people who get questioned by police and their only crime is possession of a small amount of marijuana. Instead of taking them to the jail and putting them in the criminal justice pipeline, which could ruin future opportunity for education and employment, **they spend an afternoon in a classroom**. It is not unlike defensive driving for minor traffic infractions and they can re-take the class every time they get caught.

In the nine months since it was implemented, there have been 3,085 people who have gone through the program. But there has been a reduction of 10,000 filings for marijuana charges compared to past years.

**AT THE FOREFRONT: Harris County relaxes marijuana-possession punishment**

Ogg said she did not know what happened to the 7,000 people that would have been arrested for marijuana under prior administrations and would be eligible for the class under hers. She speculated that police, who can no longer arrest most marijuana users, have stopped pursuing them. Instead, she said, she hopes she has freed up time for police officers who are now able to focus on burglars and robbers.

"That translates to success for us," she said. "Not just in money savings for the jails, the courts, and our office-freeing us up to work on more serious cases-but it means that 10,000 fewer people will have conditions that hamper their employment opportunities."

She said the numbers indicate that police have more time to pursue more serious criminals.

"We're up on filing more burglaries and robberies," she said. "We feel like the focus of our prosecutors to prioritize crimes against people and property is being revealed by our filing stats."

Even with a crime slowdown partially attributable to Harvey, burglary filings are up 10 percent, she said. There were 1,465 in 2016 and Ogg predicts 2017 will finish out with 1,605. Armed robbery filings are up 5 percent. There were 1,864 in 2016 and 1,965 projected in 2017.

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**TRANSLATOR**

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"It shows we are going in the right direction," she said. "The more cases we file on those specific types of people-those who prey on property and others, then we are doing the will of the people."

During the 2106 campaign, the Houston Police Officers Union endorsed Ogg's competitor. During her unsuccessful run in 2014, the union blasted her proposals, especially drug reform.

After a year of her administration, the union president said the jury is still out.

"If I were going to grade her right now, it would be an I for incomplete," said HPOU President-elect Joseph Gamaldi. "So far, she's been open to talking about issues, but right now it's incomplete."

Gamaldi said police officers are concerned about the criminal justice system as a whole, which includes prosecutors and judges, who they worry are letting offenders out of jail, either on low bail bonds or deferred adjudication probation, a form of probation that allows a person to clear their record if they complete the probation successfully.

"If someone points a gun in someone's face and takes their property, no reasonable person in this community thinks they should not get jail time," he said. "We just can't have lawlessness in the city."

Gamaldi said he has reviewed cases of criminals who have received deferred adjudication for aggravated robbery, aggravated assault of a peace officer, possession of child pornography and compelling prostitution or human trafficking.

"It isn't just the DA's office, its the judges as well," he said. "We've got some great DA's and some great judges. But let me tell you, we've got some terrible DA's and some terrible judges."

However, he said, he is hoping Ogg will rein in what he sees as a bad trend.

"If some of the things I'm talking about, deferred adjudication and low bond amounts, if these things aren't cleared up, next year the grade will be an F."

Ogg said she meets regularly with the unions and has heard those criticisms. She said critics have to look at each case individually instead of generalizing a few examples.

In November, Ogg confirmed that in the wake of the storm, her office reviewed about 600 low-level drug cases to try to get plea deals, dubbed "Harvey Deals." Prosecutors dismissed about 110 of those cases, and accepted pleas in about 200 others. All were low-level drug cases.

Ogg said she investigates every concern the police officer unions bring her, especially when they are unhappy about plea deals.

"Sometimes we make errors, and sometimes with plea bargains, I can understand what they're angry about," she said. "But a lot of time there are things that are outside of our control."

The prosecutor also said she is trying to support law enforcement efforts to go after the predators and "crime drivers" in society.

"We are changing the way we look at public safety and what makes you safe," she said. "Just numbers of cases filed and convicted don't make you safer. You have to get the right people off the street and I fell like we're turning the battleship and pointing it in the right direction."



Photo: Jon Shapley, Houston Chronicle

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Attorneys work in a room called the "law library," in the Harris County Jail, Friday, Oct. 27, 2017, in Houston. Temporary courts were setup in the jail because Hurricane Harvey damaged the Harris County Criminal Courthouse.

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### *Culture Change*

More broadly, she said, she has made an effort to change the hard-charging culture at an office of that has long been criticized for "win at all costs" prosecutions.

"We've changed the way we evaluate our prosecutors," she said. "They're no longer evaluated simply on the number of trials or the number of convictions or their courtroom work. They're evaluated on all aspects of their practice and their professional responsibilities."

She said that meant updating evaluation forms and the performance they measure.

"That required changing everything, from the actual evaluation forms to the written policies to the training of our lawyers and support staff," she said. "I think there's a progressive and important change in the way we pursue justice. It's not at the expense of victims and not at the expense of people's civil rights."

Still, her first year will be known as the year the Harvey devastated the region and shuttered the 20-story criminal courthouse for at least a year, **forcing 300 prosecutors and 400 support staff to move to a handful of office buildings**, some as far from downtown as the Galleria-area, while taking care of business in courtrooms in four different locations.

"Every employee has truly sacrificed and pulled together," she said. "Everyone here has been working hard to be a team player. We grit our teeth and bear it."

She said there's no handbook on how to be a newly-elected public official, and it's especially stressful when the area's worst natural disaster hits.

"I'm proud of our first year," she said with a laugh. "And I'm glad it's over."



**Brian Rogers**

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