

Sentences of Incarceration Decline Sharply, Public Safety Improves During Kim Foxx's Second Year in Office

New data portal demonstrates benefit of criminal justice reform, transparency

A Report from Community Partners

*by Reclaim Chicago, The People's Lobby, and
Chicago Appleseed Fund for Justice*

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INTRODUCTION

The People's Lobby, Reclaim Chicago, and Chicago Appleseed Fund for Justice have been tracking data on how prosecution is changing in Cook County since Cook County State's Attorney Kim Foxx's first year in office. The People's Lobby and Reclaim Chicago ran major voter contact operations to support State's Attorney Foxx's election on a decarceration platform and pledged to work to ensure that her vision of criminal justice reform happened once she took office. Chicago Appleseed has been advocating for criminal justice reform for decades and has a history of tracking data related to the Cook County court system. This is the fourth report in our series.¹

In May 2019, State's Attorney Foxx's office took another major step forward in transparency by creating a user-friendly data portal, a dynamic dashboard showing how the office handles felony cases from initiations to sentencing in real time. This data portal helps make the Cook County State's Attorney's Office one of the most transparent in the country.

This report looks at four key metrics in the data that was recently released: number of sentences of incarceration, number of felony charges, number of guilty pleas, and number of cases dropped. We find that the use of prosecutorial discretion in the Cook County State's Attorney's Office has led to a decrease in incarceration sentences. At the same time, public safety has improved, benefiting everyone, but especially the Black communities disproportionately impacted by incarceration and violence. We recognize that this data does not include measurement of the kinds of interventions that address the root causes of crime and violence - improved public services, living wage jobs, mental health care, restorative justice, etc. - and we encourage the Cook County Board of Commissioners to comprehensively measure those interventions.

REDUCTION IN INCARCERATION & VIOLENT CRIMES

Sentences of incarceration decrease by 19%

Data released by Kim Foxx's office shows that sentences of incarceration declined significantly in her second year in office. Kim Foxx was elected in November 2016 and was sworn into office on December 1, 2016. The number of people given sentences of incarceration decreased from 12,262 in 2017 to 9,941 in 2018, a decrease of 2,321 individuals or nineteen percent.²

Reports of violent crimes decrease by 8%

It is important to note that FBI statistics show that violent crimes reported in Chicago were down 8% during the period of January - June 2018 compared with the same time frame in 2017.³

Incarceration makes communities less safe

Consistent with Cook County Chief Judge Timothy Evans' report showing that higher rates of pre-trial incarceration don't make us safer, this new data on incarceration rates suggests that sentencing more people to incarceration doesn't make us safer. The root causes of many crimes, including poverty and lack of mental health services or substance use treatment, go unaddressed or are made worse through prison sentences. Incarceration disrupts what little security and stability people have, hurting entire communities by separating parents from children, workers from employment and caregivers from the people who need them most.

POLICY CHANGES RESULTING IN FEWER SENTENCES OF INCARCERATION

The judicial system is complex, and there could be factors outside of Foxx's control that are contributing to decreasing sentences of incarceration. It is also difficult to pinpoint every one of Foxx's policy decisions that directly contribute to the decline in sentences of incarceration. However, several key policy changes stand out, including reducing the number of felony charges for retail theft, pursuing alternative prosecutions that give people charged with felonies an opportunity to resolve cases without conviction and incarceration, and improving the training and strengthening the discretionary decision making of frontline prosecutors.

1. Raising the threshold for felony retail theft charges

Under Anita Alvarez, retail thefts of \$300 or greater were prosecuted as felonies. During her second week in office, Kim Foxx raised the bar for felony retail theft charges to \$1,000 or greater. In an article for The Marshall Project, Steve Bogira called this a conservative move, noting that a panel established by former Gov. Bruce Rauner recommended raising the bar for felony retail theft charges to \$2,000. However, raising this threshold to \$1,000 has had a large impact: Under that last two years of the Alvarez administration, 6,010 cases were charged with felony retail theft. During the first two years of the Foxx administration, just 1,540 cases were charged with felony retail theft, a decrease of almost 74%.⁴

2. Increasing the use of alternative prosecutions

Alternative prosecutions, also called diversion programs, provide people charged with felonies various opportunities to resolve cases in ways that do not lead to a felony conviction and incarceration by participating in programs of various sorts. Some alternative prosecutions connect people to treatment for mental illness and substance use disorders. Others focus on people facing charges for the first time. During Foxx's first two years in office, assistant state's attorneys referred 25% more people facing felony-level charges to diversion programs than were referred under Anita Alvarez.⁵

3. Improving training of frontline prosecutors

State's Attorney Foxx ran on a platform of moving from being "tough on crime" to being "smart on crime" and to addressing the structural racism of the criminal justice system. She committed in her transition report to replace the "win at all costs" culture maintained by her predecessor, a culture that has been particularly devastating to Black communities, to a culture focused on "integrity, discretion, accountability, collaboration, and fairness." She has repeatedly committed to grassroots organizations, including The People's Lobby, to improve the training of prosecutors so that they focus on overall community health and safety, which is not achieved by a single-minded focus on incarcerating defendants.

Foxx is following through on that commitment by allowing prosecutors to exercise discretion by negotiating more reasonable plea deals and dropping some charges for which prosecution isn't the best way to promote community health and safety. Under Foxx, frontline prosecutors dropped 8,031 cases in 2018 compared with 6,240 cases in 2017, an increase of almost 29%.⁶ Relatedly, the number of felony guilty pleas are down, with 16,851 guilty pleas in 2018 compared with 19,031 guilty pleas in 2017, a decrease of eleven percent.⁷ This increase in the number of charges dropped and reduction in the number of felony guilty pleas suggests that the State's Attorney's Office is deciding in more cases that the appropriate resolution is either dropping charges or connecting defendants to diversion programs rather than pushing for conviction and incarceration.

"During Anita Alvarez's administration, prosecutors were directed to offer the same plea deal in all cases of a certain type: for example, always asking for three years incarceration on certain types of gun possession cases. Prosecutors who deviated from these policies were often harshly reprimanded and felt they were denied advancement opportunities and placed their jobs at risk. This meant that line prosecutors, who are the ones who are closest to the facts of the case, weren't able to treat each case, and each defendant, individually, by offering sentences of probation when they were appropriate. In Kim Foxx's administration, line prosecutors have been given the discretion to look at the facts of each case, and negotiate a fair sentence. Defense Attorneys have found that they are more regularly able to get probation, rather than prison time, for their clients. Of course, not all prosecutors have adopted this more flexible approach, and there are still supervisors within the office who enforce plea deal policies similar to the ones used in the Alvarez administration. But slowly, the office is changing."

-- Sarah Staudt, Senior Policy Analyst and Staff Attorney, Chicago Appleseed Fund for Justice

POLICY CHANGES TO WATCH IN THE FUTURE

In June 2018, Foxx announced that her office would no longer prosecute people driving on a suspended license for financial reasons, such as a failure to pay parking tickets or child support. It's still too soon to know the full impact of this policy change, but the number of people who plead guilty to driving with a suspended license declined from 1,063 in 2017 to 721 in 2018, a decline of 32%.⁸ State's Attorneys continue to prosecute people driving on a suspended license for charges like DUI, fleeing a police officer and reckless homicide.

CONCLUSION

The data recently released by the Cook County State's Attorney's Office shows that the office has made significant progress in decreasing sentences of incarceration. The key drivers of the decrease appear to be:

1. Implementation of a policy of not charging felony retail theft in cases of less than \$1,000,
2. Increased use of diversion programs, also called alternative prosecutions, some of which provide treatment for mental health issues and substance use disorder, and
3. Improved training of frontline prosecutors who are empowered to use discretion to seek alternative prosecutions and make more reasonable plea deals.

At the same time, public safety has improved, reinforcing the case made by criminal justice reform advocates that incarceration is not the best strategy to improve public safety. In fact, the root causes of many crimes, including poverty and lack of mental health services or substance use treatment, go unaddressed or are made worse through prison sentences. Incarceration disrupts what little security and stability people have, hurting entire communities by separating parents from children, workers from employment and caregivers from the people who need them most.

These are hopeful steps for low-income communities and communities of color that have been devastated by violence and incarceration, which we urge the State's Attorney's Office to continue to build on in the years to come. We encourage State's Attorney Foxx to continue taking further steps to use prosecutorial discretion to address the crisis of mass incarceration. In future data reporting and analysis, we encourage the State's Attorney's Office to look at a broader set of data on overall community health and safety, and track and advocate for non-carceral interventions such as restorative justice outcomes, mental health care, improvements in public services, etc. We encourage State's Attorney Foxx to reduce the overall number of felony charges filed, which increased slightly from 30,169 in 2017 to 31,430 in 2018. We urge other system stakeholders -- including judges, police departments, the Chicago City Council, the Cook County Board of Commissioners, and the Cook County Sheriff -- to decrease incarceration and support a larger shift in resources from policing and incarceration to public services and investments that will address the root causes of crime and violence.

REFERENCES

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