

***DATA SHOW MAJOR DECREASES IN FELONY  
CHARGES, INCARCERATION RATES FOR  
BLACK AND LATINX RESIDENTS IN COOK  
COUNTY SINCE 2017***

**A Report from Community Partners**

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

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## EXECUTIVE SUMMARY

As of 2016, the United States' incarcerated population (in jail or prison) was almost 2.2-million—far more than any other nation on earth in both raw numbers and as a proportion.<sup>1</sup> When considering the total number of individuals subjected to any form of supervision by the adult correctional system—which includes those on probation and parole, in addition to incarcerated—the number of people is over a staggering 6.5-million.<sup>2</sup> This population is disproportionately made up of Black and Latinx people. People identifying as Black or Latinx made up 56% of the U.S. prison population in 2017, despite comprising only 28% of the total population.<sup>3</sup>

There is a growing movement of public interest organizations and community activists working to end mass incarceration by setting forth ameliorative policies that can be enforced by police, courts, and especially by prosecutors. A wave of justice-focused

prosecutors who are committed to implementing these policies have been elected across the country recently. Kim Foxx was elected as Cook County State's Attorney (SA) in November 2016 and took office in December 2016. Since SA Foxx took office, The People's Lobby, Chicago Appleseed, the Chicago Council of Lawyers, and Reclaim Chicago have produced reports monitoring how or if the policies and practices of the State's Attorney's office have produced a continual reduction in mass incarceration in Cook County. This report is the sixth in our series. You can find all reports at [ThePeoplesLobbyUSA.org](http://ThePeoplesLobbyUSA.org) and [ChicagoAppleseed.org](http://ChicagoAppleseed.org).

The examination herein discusses the performance of the Cook County State's Attorney's office under Kim Foxx with regard to policies that can ameliorate mass incarceration, particularly for those disproportionately affected by it: Black and Latinx communities.<sup>4</sup>

## INTRODUCTION

There is broad consensus among experts that aside from stark disparities in socioeconomic opportunity, the mass incarceration crisis is due, in large part, to aggressive and overly punitive prosecution practices, such as charging and sentencing, and a severe lack of rehabilitation-focused discretion. The term "prosecutorial discretion" refers to the freedom prosecuting attorneys have to decide a course of action on a case-by-case basis. These decisions include whether or not to pursue the charges; how serious a crime to charge; whether to accept a plea bargain or grant immunity; or dismiss charges.<sup>5</sup> As maintained by the Supreme Court, prosecutors are also allowed to decide which, if any, crimes to prosecute "when an act violates more than one criminal statute."<sup>6</sup>

For a variety of reasons, including socioeconomic conditions and the legacy of racism, the vast majority of defendants in the penal system are

non-white. Rather than making racial comparisons, this report focuses on how the State's Attorney's office under Kim Foxx has created tangible results and improved outcomes for Cook County's communities of color—Black and Latinx, specifically—in comparison to the previous administration. The concern with such discretion arises because all humans, by nature, hold some implicit biases, and there is no true way to ensure that these discretionary decisions "[do] not discriminate against any class of defendants."<sup>7</sup> This report looks at the use of prosecutorial discretion through the lens of four important data points that impact mass incarceration, with a specific eye on the outcomes for Black and Latinx people: sentences of incarceration, retail theft charges, felony review rejections, and the dropping of drug charges before arraignment.

# SENTENCES OF INCARCERATION FOR BLACK AND LATINX DEFENDANTS

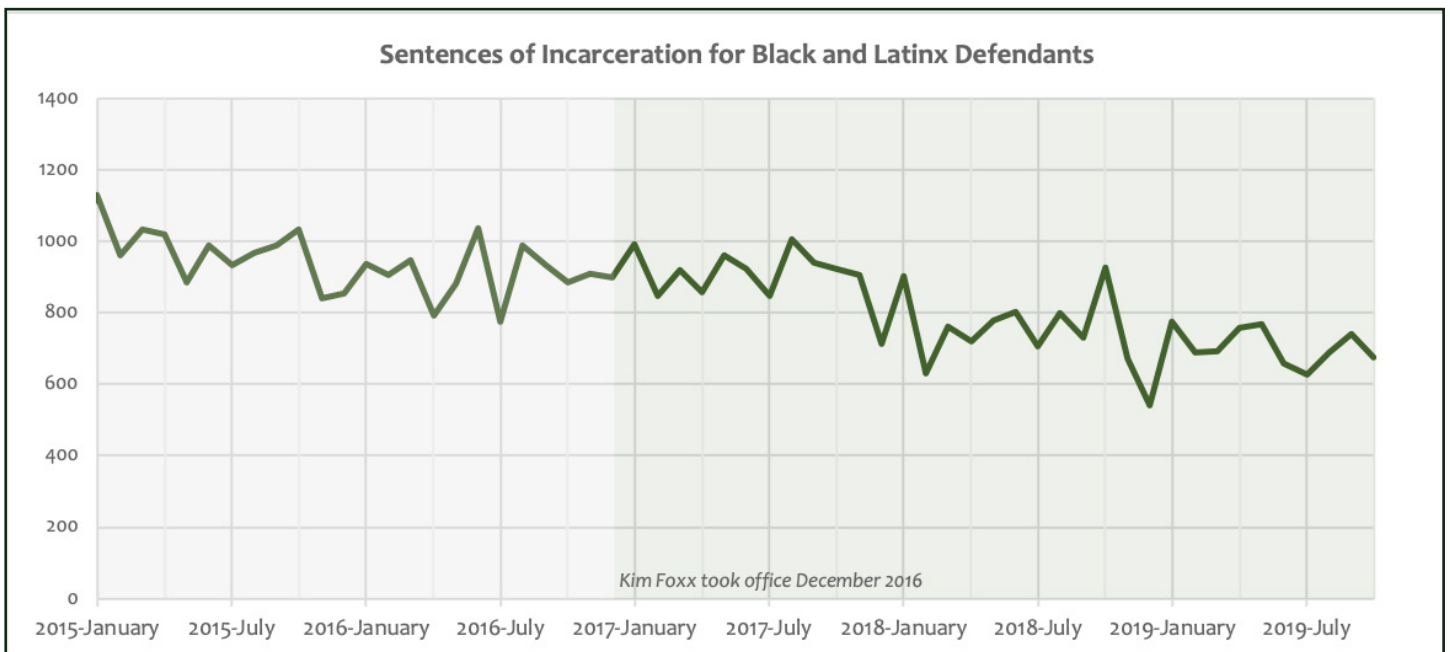
Alternative sentences such as probation or deferred prosecution programs are often more appropriate and beneficial than incarceration for individuals, families, and entire communities.

Instead of using prison as a go-to, the current State's Attorney's Office has more often allowed probation, provided access to deferred prosecution programs, and has continually dropped weak cases quickly after arrest—rather than keeping people locked up pretrial. In 2012, on average, former State's Attorney Alvarez's administration sent 1,063 Black and Latinx people to prison each month. In 2019, that average is down to 706, a 34% drop. These reductions produce much better outcomes for defendants and communities than does incarceration, which often results in loss of employment, auto repossession, eviction, homelessness, and even the loss of child custody and family separation.

This decrease in incarceration cannot be explained simply by decreasing crime rates. The homicide rate (an accepted proxy for general crime rate) was approximately equal in 2019 to what it was in 2012 (500 homicides 2012, 490 in 2019). The reduction in rates of incarceration has partially resulted from the State's Attorney's office moving away from a culture that rewards mass incarceration to one that values rehabilitation and outcomes rooted in justice.

The following factors: retail theft charges, felony review rejections and drug cases dropped before arraignment are all significant in the overall reduction of incarceration of Black and Latinx persons.

*The graph below shows a marked decrease in the use of incarceration as a sentence for Black and Latinx defendants under the Kim Foxx administration.*

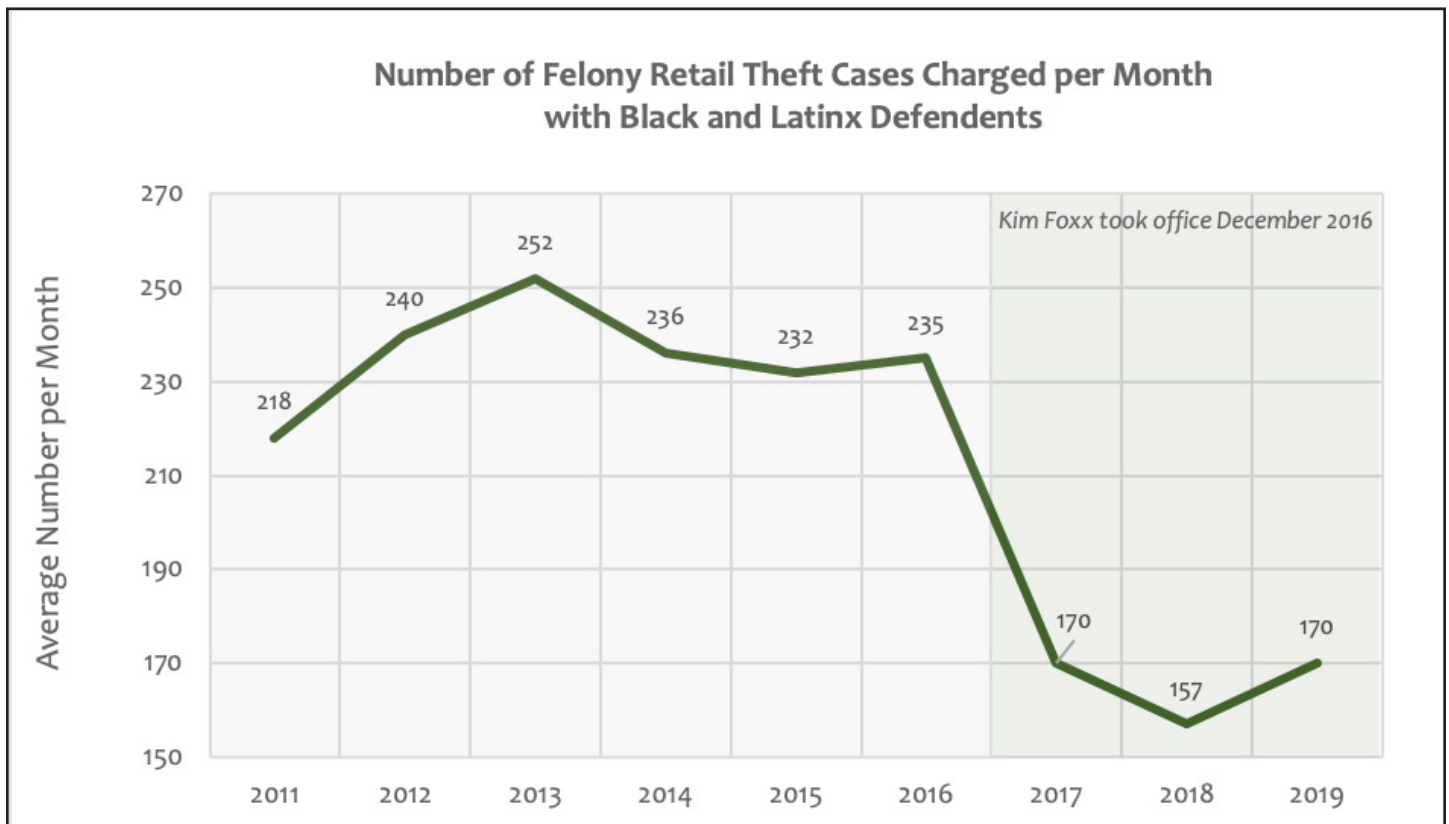


# RETAIL THEFT

Before State’s Attorney Foxx took office, the threshold for prosecuting felony retail theft charges was much lower. Under Kim Foxx, the State’s Attorney’s office has raised the threshold for bringing felony retail theft charges from \$300 to \$1000. There are much more effective remedies for small value retail theft than aggressively pursuing felony convictions with sentences of incarceration. Research suggests petty shoplifting is closely related to occurrences of substance use disorders and mental health issues.<sup>8</sup> The results of long bouts of incarceration and lifelong felony records have lasting and intergenerational negative impacts on families and entire communities.

As shown, felony retail theft charging in Cook County has decreased dramatically since Kim Foxx took office in 2016. The number of felony retail theft cases charged shrunk to 170 in 2019 from 235 per month during Anita Alvarez’s last year as State’s Attorney. Although retail thefts under \$1000 can still be prosecuted as misdemeanors, these cases resolve much quicker than felonies, use fewer resources, and have fewer long-term collateral consequences. These positive results come from the intentional policy change made by the State’s Attorney Kim Foxx’s office to raise the threshold for felony retail theft.

*The graph below shows that decreasing felony charges for retail theft is a majorly important policy initiative for combating mass incarceration.*

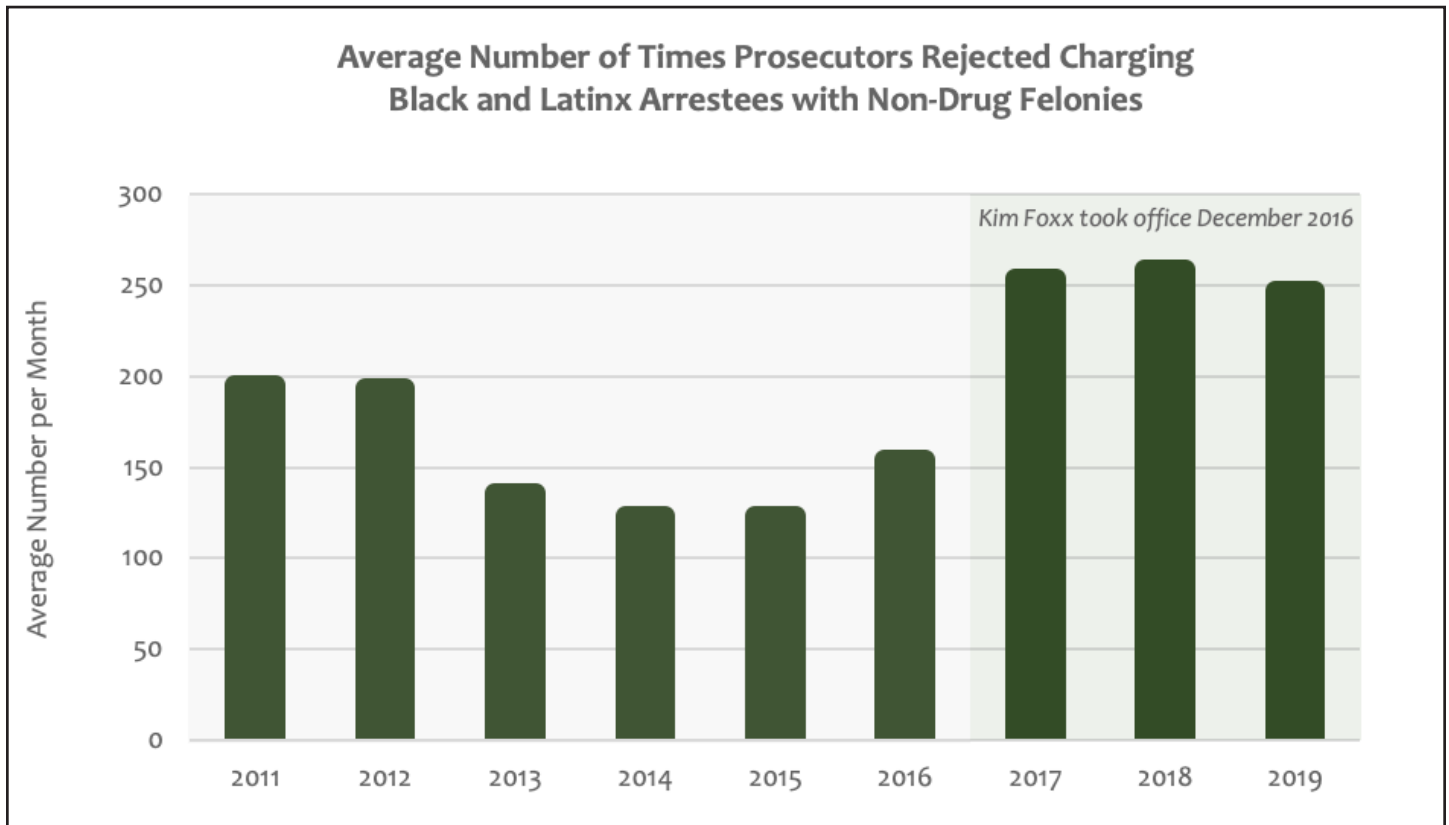


# FELONY REVIEW REJECTION

Felony review is an examination of evidence conducted by the State’s Attorney’s office after investigation by law enforcement.<sup>9</sup> Before formal charging in non-narcotics cases, or when seeking felony arrest or search warrants, the Cook County State’s Attorney’s office must provide approval. Felony review acts as a barrier to avoid people being charged with crimes that are insufficiently investigated by police, or crimes that should be charged as misdemeanors rather than felonies. Instances where charges were rejected during the

felony review process for Black and Latinx people have remained at or around 250 per month for the past three years—an increase of almost 100 more dropped cases monthly since 2016. This kind of serious review of felony charges that rejects inappropriate and overzealous policing is essential to dismantling mass incarceration. Not only does this policy result in a decrease in incarceration for Black and Latinx people, but it is also a more prudent use of resources of both the State’s Attorney’s office and court system.

*The graph below shows that under the Kim Foxx administration, felony review is rejecting more cases, which likely shows that they are holding police to a higher standard than Alvarez did while in office.<sup>10</sup>*



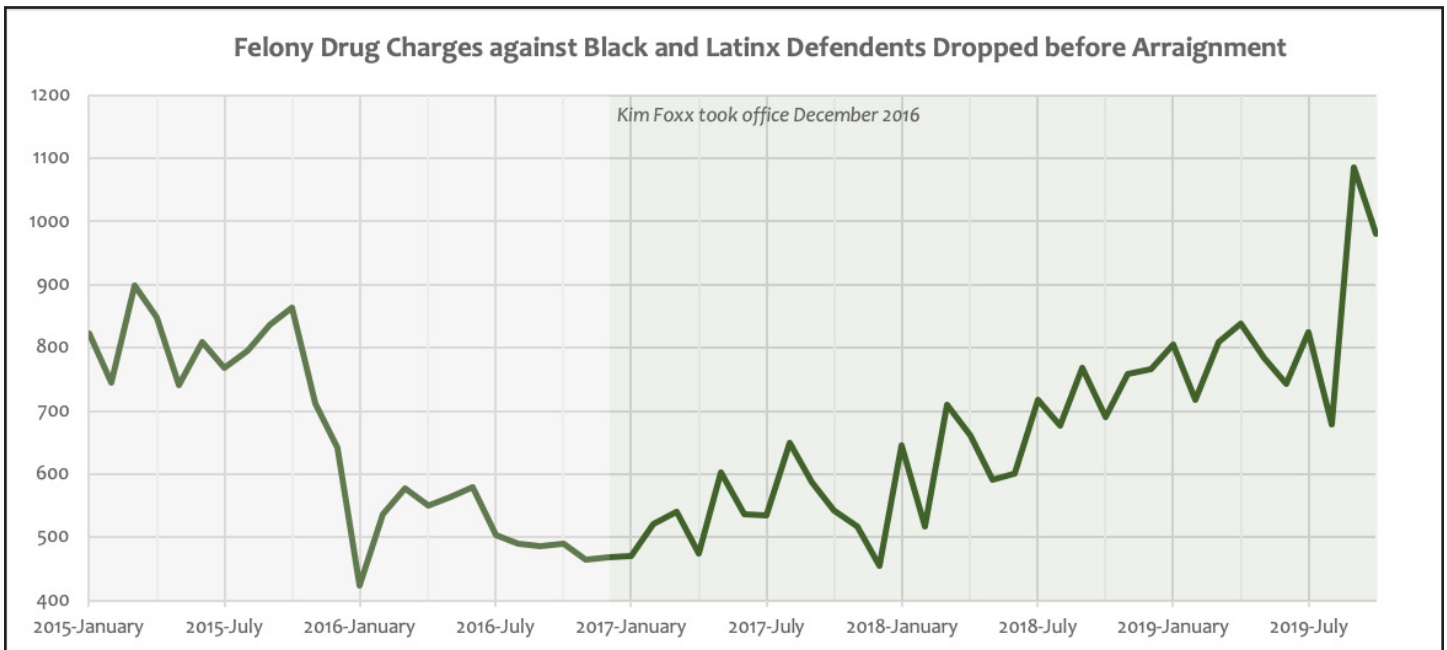
# DRUG CASES DROPPED BEFORE ARRAIGNMENT

After a felony arrest, prosecutors in Cook County have thirty days to decide whether to proceed with an official indictment or a preliminary hearing to establish probable cause. Not all cases warrant prosecution, and dropping charges does not only benefit the accused and their family and community, but also saves the resources of the justice system. Cases can be dropped early for any number of reasons, including: a lack of sufficient evidence to proceed; the prosecutor decides to charge a misdemeanor rather than a felony;<sup>11</sup> evidence not available at arrest (like a test of whether a certain substance is or is not a drug) becomes available

and exonerates the individual; or the prosecutor sends the person to a pre-arraignment deferred prosecution program and dismisses the case upon completion.

The number of dropped felony drug charges against Black and Latinx people has steadily increased under the Foxx administration. Dropping cases early for any of the above-stated reasons decreases a person's time in and involvement with the criminal justice system by making sure that weak cases are dismissed quickly, rather than being dragged through useless court proceedings.

*The below chart shows that the Kim Foxx administration has been steadily increasing the number of cases where the State's Attorney's office does not ever arraign a felony arrestee.*



# CONCLUSION

In four key areas—sentences of incarceration, felony theft prosecutions, felony review rejections, and felony drug charges dropped before arraignment—there has been a significant improvement in the outcomes for Black and Latinx people under the Foxx administration compared to the prior Alvarez administration. The instances of cases being dropped due insufficient evidence for felony prosecution have increased; there is an increased use of diversion programs and alternative outcomes in the place of unwarranted incarceration.

Communities of color in the Chicago metropolitan area and across the country have been devastated by over-incarceration throughout the past

decades—much of which is due to aggressive and punitive tactics related to the prosecution of suspected criminals. Criminal justice policies—prosecution in particular—must continue to move away from the “tough-on-crime” approach that has proven ineffective, racist, and unsustainable, toward justice-oriented procedures focused on rehabilitation and restoration. This report finds clear evidence that the Cook County State’s Attorney office is on the right track in its use and pursuit of policies that are just, prudent, and aimed to counteract years of the draconian methods that have devastated communities of color for far too long.

# REFERENCES

- <sup>1</sup> See e.g. Kaeble, D. & Cowhig, M. (April 2018). “Correctional Populations in the United States, 2016” from the U.S. Department of Justice’s Bureau of Justice Statistics (BJS). Retrievable at <https://www.bjs.gov/content/pub/pdf/cpus16.pdf>
- <sup>2</sup> Ibid.
- <sup>3</sup> See e.g. Gramlich, J. (April 2019). “The Gap Between the Number of Blacks and Whites in Prison is Shrinking” for Pew Research Center. Available at <https://www.pewresearch.org/fact-tank/2019/04/30/shrinking-gap-between-number-of-blacks-and-whites-in-prison/>
- <sup>4</sup> The data discussed herein was updated by the Cook County State’s Attorney on December 2, 2019, and can be found at <https://www.cookcountystatesattorney.org/about/case-level-data>. Special thanks to Bea Malsky of DataMade and Sarah Staudt of Chicago Appleseed and the Chicago Council of Lawyers for the subsequent analysis.
- <sup>5</sup> See e.g. Krauss, R. (2012). “The Theory of Prosecutorial Discretion in Federal Law: Origins and Developments,” in *Secton Hall Review* 6(1). Available at [http://erepository.law.shu.edu/circuit\\_review/vol6/iss1/1](http://erepository.law.shu.edu/circuit_review/vol6/iss1/1)
- <sup>6</sup> Ibid.
- <sup>7</sup> Ibid.
- <sup>8</sup> See e.g. Blachman, A. (March 2019). “Over Retailers’ Opposition, Illinois Bill to Ease Retail Theft Law Progresses,” for Injustice Watch. Retrievable at <https://www.injusticewatch.org/news/2019/over-retailers-opposition-illinois-bill-to-ease-retail-theft-law-progresses/>
- <sup>9</sup> See e.g. Chicago Police Department (CPD) Special Order S06-03: Felony Review by Cook County State’s Attorney. (April 2015). Retrievable at <http://directives.chicagopolice.org/directives/data/a7a57be2-1293c433-cb612-93ce-9c013ae422006b3e.html>
- <sup>10</sup> This chart is for non-narcotics cases; the Cook County State’s Attorney’s office does not currently do felony review for drug cases or syndicating gambling cases when the arrests are made by members of the Bureau of Organized Crime.
- <sup>11</sup> In cannabis cases, for instance, since there is no misdemeanor version of other controlled substances cases.

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