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About Chicago Appleseed

Chicago Appleseed Fund for Justice is a policy research and advocacy organization. We identify problems, research solutions, and recommend practical and systemic reforms.

POLICY BRIEF

Early Criminal Case Assessment in Urban Jurisdictions

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Introduction

The twin goals of early case assessment are to devote more resources to those cases for which a conviction can confidently be obtained, and also to decline to prosecute, reduce charges, or divert other cases.¹ These goals are accomplished through two functions: prosecutor assessment of all cases within 24 hours of arrest, and early post-arrest case conferences between prosecutors and police. Implementing either practice independently will further the goals of early assessment, though to a lesser extent.

After hearing of early case assessment's prospects for reducing pretrial detention rates, Chicago Appleseed staff sought to learn how the assessment works in practice.² Research consisted of reviewing relevant publications, interviewing criminal justice researchers in several cities, interviewing assistant district attorneys currently administering early case assessment programs in Philadelphia, PA; Brooklyn, NY; and Milwaukee, WI.

The theoretical argument for early case assessment is that if prosecutors identify and reject (or reduce the charges in) weak or less significant cases shortly after arrest, then they can divert scarce public safety resources from losing cases to strong and more serious ones. The empirical evidence largely supports this argument. Recent studies have shown that early case assessment can increase conviction rates, reduce the rate and length of pretrial detention, and also reduce the caseload burden for the entire post-arrest criminal justice system.³

Cook County could certainly benefit from comprehensive early case assessment. In Cook County, an average of three weeks passes between arrest and preliminary hearing, with a large number of defendants detained in jail before being processed and released.⁴ In 2010, 12,446 defendants were released from jail after their cases were dismissed – on average, detainees had spent 25 days in jail before dismissal.⁵ 45% (5,638) of those dismissals were drug charges--often-victimless cases that are relatively simple to assess. Not identifying these cases for dismissal early on not only runs afoul of basic notions of justice, but also represents a massive waste of resources.

What follows is a summary of benefits of early case assessment, features of successful early case assessment programs, a case study of Philadelphia District Attorney's newly implemented early case assessment program, and a brief description of programs in Brooklyn and Milwaukee.



Benefits of Early Case Assessment: Optimal Resource Allocation, Higher Conviction Rates, and Fair Results

- Significantly reduced number of pretrial detainees, and attendant cost savings.⁶
 - Reduced prosecutorial caseloads, allowing for resources to be focused on more serious and stronger cases.⁷
 - More realistic charges at arraignment, which supports optimal pretrial release decisions, limits subsequent charge bargaining.⁸
 - Fewer continuances, prompt case disposition, and reduced burden on justice system.⁹
 - Less misunderstandings with police and witnesses because they are contacted early, when memories are fresh.
 - Dismiss fewer cases post-arraignment.
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Early Case Assessment in Three Urban Jurisdictions

The following case studies are based upon publicly available reports as well as telephone interviews with district attorneys operating early case assessment programs in three U.S. cities: Brooklyn, NY; Milwaukee, WI; and Philadelphia, PA.

Philadelphia, Pennsylvania

Philadelphia County has a population of 1.5 million with a metro population of 5.9 million. In 2009 and 2010, respectively, the Philadelphia Police Department made 77,717 and 75,540 arrests, and its jail population averaged 9,321 and 8,273.¹⁰ Prior to current District Attorney Seth Williams' inauguration in 2010, the Philadelphia DA's office did not have a robust early case assessment program. Inexperienced ADA's were assigned to these roles and they declined to prosecute too few cases. The Philadelphia DA was motivated to strengthen early case assessment because of overcrowded jails, long case processing delays, and a low conviction rate for violent felonies.¹¹ DA Williams appointed a highly respected ADA with homicide experience to head up the proposed Charging Unit, now a full Pretrial Division, and authorized her to nominate other qualified ADA's to the unit. Today, 12-15 of Philadelphia's most experienced ADA's staff the Pretrial Division. These attorneys serve a nine-month rotation before rotating back to another division. All ADA's must work on early case assessment in Pretrial Division as a prerequisite for trying a homicide.

The Pretrial Division currently assesses the merits of every single arrest--including all felonies and misdemeanors--typically within 17 hours. Paralegals do a first round review of less serious cases, but supervising ADA's make all final decisions. They may decide to decline to prosecute, refer to one of several diversion programs, adjust the charge, or prosecute the police-recommended charge.

According to a 2011 Pew Report, Philadelphia's early case assessment policy has significantly reduced the number of pretrial detainees, reducing the jail population and saving millions of tax dollars:



Recommended Resources

Pennsylvania Supreme Court, "The Reform Initiative: First Judicial District Criminal Courts, Commonwealth of Pennsylvania."

Pretrial Justice Institute

Criminal Justice Agency of New York City

Pew Report Philadelphia

Jacoby Institute

Vera Institute of Justice, "Proposals for New Orleans Criminal Justice System"

"In 2010 alone, the average daily population declined by 11 percent. Population in the system peaked in January 2009 at 9,787; in June 2011, it stood at 8,048, after falling below 7,700 in the spring. As a result, the city's budget for its jails in Fiscal 2012, at \$231 million, is \$10 million lower than it was three years ago. The declining population has also contributed to a reduction in the amount of overtime paid to police (\$6.4 million over two years) and sheriff's personnel (\$1 million in Fiscal 2011)."¹²

A reduction in detainees reduced jail costs by \$10 million, police overtime expenditures by \$6.4 million, and police personnel expenses by \$1 million.

A recent review of early case assessment by the Pennsylvania Supreme Court determined that case dismissals had fallen, which may indicate that police are handling arrests more judiciously.¹³ The same report noted that the number of felony arrests reduced by the Pretrial Division to misdemeanors increased immediately after the program began, but then fell again more recently.¹⁴ According to interviewees, police may have responded to immediate dismissal of weak cases by making higher quality arrests, which could also explain the reduced number of felony reductions.

Kings County, New York (Brooklyn)

Kings County, NY has a population of 2.5 million, with a metro population of 8.5 million. Kings County established its Early Case Assessment Bureau ("ECAB") in 1975 as part of a Vera Institute for Justice demonstration project. The team assesses between 90,000 and 100,000 arrests per year.

ECAB is administered by a veteran ADA of the DA's office, and employs two types of staff: supervisors and expeditors. There are currently six supervisors, all of whom are ADA's with extensive trial experience, and at least ten years of experience with the DA's office. Expeditors consist of about two dozen paralegals and interns. As part of training, all new ADA's serve a 6 month rotation in ECAB, where they support both expeditors and supervisors and "learn the law," according to the program administrator.

The ECAB team assesses all misdemeanor and felony arrest charges within several hours of arrest. In this time frame, ADA's and paralegals interview crime victims, witnesses, and police officers and gather additional evidence. The experienced ADA's then decide the appropriate course of action to take before arraignment.

While Kings County does not file criminal cases electronically, the ECAB uses a computer software program to complete their assessments. They print all documentation for purposes of sharing with the various parties.

Milwaukee County, Wisconsin

The following description of Milwaukee's early case assessment process comes from a Vera Institute Report and was verified by Chicago Appleseed: "In Milwaukee County, Wisconsin, the prosecutor, working with the arresting officer, screens the



cases of all incarcerated defendants within one working day of the arrest to determine the appropriate charges. The process usually consists of the prosecutor conferencing with the arresting officer and examining police reports and any other information about the alleged crime. Moreover, the prosecutor often meets with the complainant and the arrestee and then decides whether to file charges within 24 hours after an arrest on a weekday and within 36 hours on a weekend.¹⁵

Features of Successful Early Case Assessment Programs

- Public safety leadership support for early case assessment philosophy and objectives.
- Prosecutors assess charges within 24 to 48 hours of arrest.¹⁶
- Written guidelines for declining to prosecute, diversion, and traditional charging.
- Police and prosecutors communicate in real time about cases, typically using case management software systems. They do not process cases sequentially.¹⁷
- Police willing to produce discovery quickly.
- Experienced prosecutors staff early case assessment division (but may include less experienced staff to do less discretionary aspects of review).
- Statutory deadlines for charging are less than one month, and are strictly adhered to.¹⁸

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¹ "Proposals for New Orleans' Criminal Justice System: Best Practices to Advance Public Safety and Justice," Vera Institute of Justice, June 2007, at 4-5.

² This practice is sometimes referred to as felony review, but this memo discusses felony and misdemeanor review, and so uses the all-encompassing term "early case assessment."

³ Early Case Assessment: An Evaluation, Vera Institute of Justice, 1977

⁴ Disproportionate Justice Impact Study Commission's 2010 report, pages 33-34.

http://www.centerforhealthandjustice.org/DJIS_FullReport_FINAL.pdf

⁵ Olson, David, "Characteristics of Inmates in the Cook County Jail," *Cook County Sheriff's Reentry Council Research Bulletin*, March 2011, page 4.

⁶ "Philadelphia's Less Crowded, Less Costly Jails: Taking Stock of a Year of Change and the Challenges That Remain."

http://www.pewtrusts.org/uploadedFiles/wwwpewtrustsorg/Reports/Philadelphia_Research_Initiative/Philadelphia-Jail-Population.pdf

⁷ Gershowitz, Adam & Laura Killinger, "The State (Never) Rests: How Excessive Prosecutor Caseload Harms Criminal Defendants." University of Houston, Public Law and Legal Theory Series, 2010 at 21-24.

⁸ "Philadelphia's Less Crowded, Less Costly Jails: Taking Stock of a Year of Change and the Challenges That Remain."

⁹ Supreme Court of Pennsylvania, "The Reform Initiative: First Judicial District Criminal Courts, Commonwealth of Pennsylvania." Interim Report, July 2011, at 27. <http://www.courts.phila.gov/pdf/report/ri/The-Reform-Initiative-Interim-Report.pdf>

¹⁰ "Philadelphia's Less Crowded, Less Costly Jails: Taking Stock of a Year of Change and the Challenges That Remain."

¹¹ Eckholm, Eric, "Smart on Crime' Mantra of Philadelphia Prosecutor," *The New York Times*, June 19, 2010.

<http://www.nytimes.com/2010/06/20/us/20philly.html> See also, "Justice: Delayed, Dismissed, Denied," a *Philadelphia Inquirer* series, which includes the verified assertion that of violent felony cases that did not result in a conviction, 92 percent were withdrawn or dismissed. http://www.philly.com/philly/news/special_packages/79211302.html

¹² "Philadelphia's Less Crowded, Less Costly Jails: Taking Stock of a Year of Change and the Challenges That Remain."

¹³ The report did not provide precise statistics quantifying this reduction.

¹⁴ Supreme Court of Pennsylvania, "The Reform Initiative: First Judicial District Criminal Courts, Commonwealth of Pennsylvania." Interim Report, July 2011, at 27. <http://www.courts.phila.gov/pdf/report/ri/The-Reform-Initiative-Interim-Report.pdf>

¹⁵ "Proposals for New Orleans' Criminal Justice System: Best Practices to Advance Public Safety and Justice," Vera Institute of Justice, June 2007, at 7.

¹⁶ ¹⁶ "Proposals for New Orleans' Criminal Justice System: Best Practices to Advance Public Safety and Justice," Vera Institute of Justice, June 2007, at 5.

¹⁷ Id.

¹⁸ The preliminary research revealed that time-to-dismissal tracks the statutory mandate for evidentiary hearings. The statutory deadline for preliminary hearing in Illinois is 30 days. Average length of stay in jail for detainees whose case is dismissed is 25 days. In New Orleans, where the statutory period for making a charging decision is 45 days for detainees, average length of stay is close to 45 days, according to the Vera Institute's report "Proposals for New Orleans' Criminal Justice System," at 3. Under NY Code Section 180.80 (<http://codes.lp.findlaw.com/nycode/CPL/TWO/H/180/180.80>), prosecutors have just 6 days to make a charging decision before a defendant is released. According to experienced prosecutors familiar with early case assessment, Kings County (Brooklyn) prosecutors rarely miss this deadline. On the other hand, Queens County prosecutors avert the deadline in the vast majority of cases by requiring defendants to waive the right as a condition of accepting a plea.