

PRETRIAL DELAY & LENGTH OF STAY IN THE COOK COUNTY JAIL EXECUTIVE SUMMARY

From 2007 to 2011, felony case filings in the Cook County Circuit Court fell by 17% and Cook County jail admissions dropped by 26%. Despite these shrinking caseloads and jail admissions, Cook County's average daily jail population decreased by just 9%. Why? People are staying in the jail for longer. And since the vast majority of people in jail are awaiting trial, it's reasonable to look to the pretrial process for sources of delay.

From 2007 to 2011, the overall average length of stay increased 6.2 days, from 47.9 to 54.1 days in jail. Even small increases in average length of stay can significantly drive up the average daily jail population. This additional 6.2 days translates to a total of 454,888 additional jail bed days or, in other words, 1,246 additional inmates in the jail's average daily population.

This report analyzes the pretrial process in search of causes and solutions to increasing pretrial detention. It draws on jail and court data analysis as well as stakeholder interviews and research literature. We describe the types of offenses and outcomes associated with longer jail stays, and describe how delay affects the justice system. In general, we find no "smoking gun" causing lengthier pretrial detention. Rather, there are a variety of issues that interact to create needless and costly delays. And while all stakeholders share responsibility for these issues, we recommend proven strategies for judges to promote a speedy and fair pretrial process.

LENGTH OF STAY BY CHARGE & DISCHARGE TYPE

Our analysis of length of stay focuses on both charge type (Drug, Property, DUI, Sex, and Violence) and Discharge type (posting bond, prison, dismissal, probation, time served, acquittal), and uses the unit "Jail Bed Days" (number of annual discharges multiplied by mean length of stay) to compare across different group sizes.

Length of Stay by Charge Type

Both the mean and median lengths of stay increased or remained the same for each of the five major charge types. We focus on Drug and Violent charges because of their major contribution to the jail population.

- In 2011, 18,535 individuals charged with violent crimes were discharged from the jail, accounting for 1.25 million jail bed days that year.
- The average length of stay for violent charges increased by 28.2%, from 53 to 68 days, translating into an additional 278,025 jail bed days.
- Drug charges led to 17,503 discharges and 979,902 jail bed days in 2011.

- Drug defendants who exited jail by posting bond took considerably longer to do so (12.4 vs. 17.3 days).

Length of Stay by Discharge Type

In order from most to least common, a defendant may exit the jail by: posting bond, prison sentence, case dismissal, a probation sentence, sentence of time already served, or acquittal at trial.

Two discharge categories showed significant increases in length of stay: Not Convicted and Bond.

- Individuals acquitted at trial ("Not Convicted") are detained the longest of any discharge category, and their length of stay has increased by an average of 31 days.
- Those who post bond make up the largest proportion of discharges--more than one-third of exits in both 2007 and 2011.
- Bond length of stay has increased by a remarkable 45%, from 9 to 13 days.
- Individuals who are sentenced to prison from jail account for the most jail bed days of all discharge types, accounting for 1.88 million jail bed days in 2011--more than half of all jail bed days for all discharge types.ⁱ
- Mean length of stay for "Prison" increased from 134 days to 149 days.

In 2011, 10,371 individuals had their cases dismissed after spending an average of 25 days in the Cook County Jail. While this represents a slight decrease in length of stay for this group, we feel that the "Dismissed" category still represents a major opportunity for the county to reduce the jail population and improve the administration of justice.

SOURCES OF DELAY

As stakeholders and experts point out, focusing on overall time-to-disposition without discussing each stage of the trial process can encourage cutting corners in

Impact of Delay

Jail Crowding

According to a United States Department of Justice investigation into Cook County Jail crowding, "When the [jail] was overcrowded, there was a corresponding increase in fights, uses of force, and weapons, exposing inmates to harm and depriving them of their constitutional rights to safe and humane conditions of confinement."¹ We suppose that longer stays increase the anxiety of an uncertain release date and exacerbate the already challenging jail environment.

Perceived Legitimacy

Perceived legitimacy is linked to many important behaviors on the part of the public in aiding the criminal justice system, including individuals' willingness to adhere to the law and avoid illegal activities. Excessive stays in jail and case delays undermine the public confidence in the system, which in turn has a very real effect on the quality of criminal justice.

Effects on Witnesses and Victims

Studies of attitudes toward the criminal justice system show that witnesses' opinions of the court deteriorate as delays increase.¹ Studies examining the administration of justice associate victim dissatisfaction primarily to procedural delays.¹ A victim interviewed for one study explained, "Your life is on hold until it's over."¹ Repeated visits to court can also re-traumatize victims and witnesses, and, as time passes, eyewitness memory fades and changes, weakening otherwise strong cases for the prosecution.

ways that may not promote justice. This section discusses potential sources of delay in procedures that take place before and after already-brief court hearings.

Processing and Sharing Evidence

Stakeholders attributed delays to forensic processing more than any other source. However, in 2007, when backlogs were even greater than in 2011, studies of felony cases found DNA to be a source of delay in just 2-3% of the cases.

Stakeholders who weighed in on this disconnect pointed out that much of the frustration in delays has to do with a reluctance to share evidence between the parties. Evidence sharing is not prohibitive as a practical matter because public defenders and prosecutors work with one another in courtrooms and offices housed in the same building each day. Nevertheless, our practitioner interviews found that defense counsel and prosecution communicate about cases very rarely outside the courtroom—even to make basic inquiries.

Continuances

The most recent analysis of continuance data (2005) illustrates the pervasiveness of continuances. In one month that year, Criminal Court continuances were requested in 16,000 cases; sampling 1,282 transcripts of those requests, the report found that just 5 were rejected.ⁱⁱ This leniency feeds what researchers call a "continuance cycle": the expectation that a continuance will be granted discourages parties from preparing for court, which then requires them to seek additional continuances. A "positive feedback loop" can break this negative cycle. Judges can initiate this loop by setting firm trial dates once discovery is complete, among other measures.

Mandatory Minimum Sentences and Sentence Enhancements

Since 1999, the Illinois legislature has increased mandatory minimums, time served requirements, gun add-ons, and consecutive sentence requirements, which has resulted in significantly longer prison terms.ⁱⁱⁱ According to an unpublished analysis of sentencing and jail length of stay data from 1995 to 2010, the increase in sentences for these crimes correlates positively with jail population trends.^{iv} Several stakeholders felt the relationship between longer sentences and longer length of stay could be explained by "hard bargaining" (unwillingness to reduce charges to crimes with lower associated prison sentences) by the state. Hard bargaining, combined with harsh sentencing laws, leads to protracted negotiation processes with the defense, who may encourage defendants to seek trial and thereby prolong pretrial detention.

The Speedy Trial Act

In 2007, Illinois passed its Speedy Trial Act, which requires defendants be tried within 120 days of being taken into custody; if the delay is occasioned by the defendant, the clock is stopped.^v Stakeholders reported liberal use of a practice of the defense requesting a continuance so that the clock is suspended even where delays are truly caused by the state—such as a failure to share evidence. Many

stakeholders justified this behavior by the fact that, as a trial strategy, delay may sometimes favor the defense.

Failure of Defendant and Witnesses to Appear

When a defendant or witness fails to appear, the case is continued. Stakeholders report that if the defendant is absent, then often a warrant is issued for his arrest. One straightforward and relatively low cost way to ensure a higher defendant appearance rate is an automated court date reminder system. Experimental studies of court reminding programs show that automated telephone, email, or text message reminders can cut failure-to-appear rates by nearly half.^{vi} There was a solid consensus among stakeholders that Chicago police witness failures to appear in court were a significant cause of delay and dismissal. Some stakeholders theorized that budget pressures contributed to police missing court dates.

COURT-CENTERED SOLUTIONS

The policies of police, prosecutors, defenders, and judges interact constantly and this report seeks to show that one agency's policy affects all the others, and may contribute to unjust delays. Regardless of the source of delay, court management experts agree that the party ultimately responsible for the pace of litigation is the court. Cook County judges recognize with near-unanimity that they are responsible for managing case process.^{vii}

Appleseed interviewed four Cook County Criminal Court judges who were identified by experienced justice system practitioners as managing their courtrooms exceptionally well. Based on their practices and the manifold literature on case management we recommend the following to the court:

- (1) enforce existing local rules establishing differentiated case management;**
- (2) further develop a management information system to track caseload;**
- (3) clearly state policies on the pace of litigation and share these policies with all parties;**
- (4) schedule trials promptly after discovery is complete;**
- (5) and develop a peer mentoring program for judges focusing on caseload management techniques.**

ⁱ Chicago Appleseed analysis: 12,503 discharges x mean length of stay of 149 days.

ⁱⁱ Trotter 2005 at 5.

ⁱⁱⁱ Richards, Stephen L. "Criminal Sentencing in Illinois" in *Defending Illinois Cases* (2010). Also, David E Olson et al., *The Impact of Illinois' Truth-in-Sentencing Law on Sentence Lengths, Time to Serve, and Disciplinary Incidents of Convicted Murderers and Sex Offenders* (2009), and David E. Olson, *Illinois Felony Sentencing: A Retrospective*, Loyola University Chicago (2011).

^{iv} David E. Olson, "Cook County Analyses from 2010" (ppt. presentation)

^v 725 ILCS 5/103-5 available at

<http://www.ilga.gov/legislation/ilcs/ilcs4.asp?ActID=1966&ChapterID=54&SeqStart=3100000&SeqEnd=4200000>

^{vi} Aungst, Sharon, "Pretrial Detention and Community Supervision: Best Practices and Resources for California Counties" (2012) at 12. http://caforward.3cdn.net/7a60c47c7329a4abd7_2am6iyh9s.pdf

^{vii} Coolsen Report, 2007, at 37.