

# ***IN PURSUIT OF JUSTICE FOR ALL***

An Evaluation of Kim Foxx's  
First Year in Office

A Report from Community Partners  
*by Reclaim Chicago, The People's Lobby, and  
Chicago Appleseed Fund for Justice*

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# INTRODUCTION

Kim Foxx’s election as Cook County State’s Attorney in November 2016 presented organizers and advocates with the opportunity to make serious structural changes to the criminal justice system in Cook County and the State of Illinois. During Foxx’s campaign, she committed to help implement bail reform, end the school-to-prison pipeline and overcharging by prosecutors, and use her discretion to promote alternatives to incarceration. Foxx also committed to using her influence as State’s Attorney for the largest county in Illinois to help move criminal justice reform legislation in the state legislature. On December 1, 2016, Foxx was sworn in as the first African American Cook County State’s Attorney.

In order for Foxx to succeed as a reformer, she must maintain the trusting and supportive relationships with impacted communities that began to be built during her primary campaign. Towards that end, The People’s Lobby and Reclaim Chicago, which collectively called and knocked

on the doors of more than 300,000 voter for Foxx during the primary election, have worked to build public support and accountability for the reform agenda that Foxx committed to advance once in office. In Foxx’s first year in office, The People’s Lobby and Reclaim Chicago have organized two town hall meetings with Foxx and several hundred constituents, one larger public meeting with more than 1,000 people, and a number of smaller meetings with clergy, community leaders, and people directly impacted by violence and incarceration. In each of these meetings, State’s Attorney Foxx was presented with testimony on the ways that the criminal justice system negatively impacts low-income communities and communities of color, and community residents encouraged her to make bold moves to decrease incarceration. During the public meetings, Foxx made explicit commitments to take specific steps forward in her reform agenda—commitments her constituents can later hold her to.

## WHO WE ARE

The People’s Lobby (“TPL”) is a membership-based organization that brings together people across the Chicago region to organize for racial and economic justice. TPL’s members include but are not limited to individuals directly impacted by incarceration and violence, as well as clergy and community leaders in neighborhoods impacted by the criminal justice system. Reclaim Chicago is a partnership of TPL and National Nurses United that endorses, elects, and holds accountable elected officials who put the needs of people and the health of the planet before corporate profits. National Nurses United represents thousands of nurses in Illinois including nurses in the Cook County Health and Hospital System and the Cook County Department of Corrections who are impacted by injustices in the criminal justice system. The work of TPL and Reclaim Chicago is informed both by the direct experiences of our members in the criminal justice system and by the policy expertise of our allies such as Chicago Appleseed. This work is also part of a larger campaign by the national community organizing

network People’s Action to elect and hold reform-oriented prosecutors accountable to the communities they serve.

Chicago Appleseed is a nonpartisan, independent research and advocacy organization with unique connections to the local justice system. Chicago Appleseed’s staff and network of pro bono lawyers bring decades of experience and expertise—in the courtroom as well as in moving policy changes—to the project of criminal justice reform. Appleseed’s recent work has included supporting expansion of the stationhouse representation program for people in Chicago Police custody and convening the Coalition to End Money Bond, including coordination of the Community Courtwatching Initiative through which dozens of volunteers observed hundreds of hours of bond court to track key outcomes related to recent reforms. Chicago Appleseed’s Executive Director Malcolm Rich also served on State’s Attorney Foxx’s transition team.

## OTHER GRASSROOTS ORGANIZING

In addition to The People’s Lobby, Reclaim Chicago, and Chicago Appleseed, a number of other grassroots organizations have worked both to elect State’s Attorney Foxx and to support and hold her accountable to a broad platform of progressive criminal justice reforms. Some of these organizations include the Black Roots

Alliance, Southsiders Organized for Unity and Liberation (SOUL), Action Now, and the Workers Center for Racial Justice. The progress detailed in this report is a testament both to State’s Attorney Foxx’s leadership and to the work done by a broad array of community stakeholders.

# EXECUTIVE SUMMARY

In order to assess State's Attorney Foxx's progress in her first year in office, we identified five key areas of reform, reviewed her campaign promises in each area, documented the progress so far, and made recommendations for next steps.

## Obstacles to Reform

State's Attorney Foxx is operating under significant constraints, particularly 1) an established office culture, and a staff of more than 1,100, mostly hired under previous administrations; 2) other criminal justice players like police and judges less committed to reform; and 3) a Cook County budget crisis that limited the resources available for reform.



Kim Foxx speaks before Reclaim Chicago's Get Out The Vote launch in March of 2016. Photo by Kristi Sanford.

# EXECUTIVE SUMMARY

## Goal 1: Advance Bail Reform

This is an area of reform where much progress has been made by Foxx during her short time in office, often in collaboration with other justice system stakeholders. We recommend Foxx continue to exercise public leadership in this area by calling for full implementation of local reforms, pushing for permanent and state-wide improvements in the pretrial system, and advocating for pretrial release whenever possible.

## Goal 2: Increase Transparency and Accountability

With the release of the office's first ever Data Report in October 2017, Foxx broke new ground in prosecutor's office transparency. The Data Report includes both accessible infographic-style illustrations of important data and also access to underlying datasets for use by independent researchers. Still, it provides information only on felony cases in 2016 and thus does not reflect Foxx's time in office. We recommend release of 2017 data by January 2018 and quarterly, real-time release of 2018 data. In addition, we recommend the State's Attorney's Office collect and share data on misdemeanors, juvenile prosecutions, and sentencing recommendations and outcomes for adult felony cases.

## Goal 3: Lessen Immigration Collateral Consequences

State's Attorney Foxx has expressed enthusiasm for developing internal guidelines and/or policies designed to limit the collateral immigration consequences for non-citizens accused of crimes, but this is an area in which she has not yet made significant progress. We recommend the State's Attorney's office act immediately to create and implement a policy that directs Assistant State's Attorneys to exercise discretion and consider alternate charges, diversion opportunities, plea offers, and sentencing recommendations for non-citizen defendants. In addition, all decision-making staff in the office should receive training on the immigration consequences of different charging and plea bargaining decisions.

## Goal 4: End the Drug War

The failed War on Drugs has decimated African American and Latino communities and contributed to the unnecessary overdose deaths of thousands of people. State's Attorney Foxx has spoken publicly in a number of settings on the need to address drug use as a public health issue rather than a criminal justice issue but has not yet made significant progress in implementing this change. In order to truly support a public health approach to the drug use and addiction, Foxx should use her discretion to stop prosecuting people for drug offenses under 3-5 grams and publicly call for establishment of a Law Enforcement Assisted Diversion (LEAD) program in Cook County.

## Goal 5: Reduce Overcharging

For years, the Cook County State's Attorney's Office has been known for bringing the maximum number and most severe types of charges against people, using such leverage to extract plea deals and other administrative benefits. State's Attorney Foxx appears to be making some progress in improving training for prosecutors so that they make more appropriate charging decisions. In order to meet her goals of pursuing justice in a manner other than tallying convictions, State's Attorney Foxx should develop and publicly share guidelines on charging decisions and also set a goal of charging fewer criminal cases overall.

# OBSTACLES TO REFORM

Despite broad public support for reform of her office, State's Attorney Foxx faces significant challenges in implementing her plans. First, the State's Attorney's Office employs more than 1,100 people, including more than 700 attorneys.<sup>1</sup> The overwhelming majority of Foxx's staff was hired under previous State's Attorneys, and anecdotal evidence suggests that many are firm believers in the vigorous prosecution and harsh punishment approaches favored by Anita Alvarez and her predecessors. Foxx can neither micromanage every individual assistant state's attorney nor replace everyone, so internal opposition and simple lags in organizational culture change are both expected.

Second, Foxx and her employees operate within a complex criminal justice system touched by many other actors who are not accountable to Foxx or her campaign goals. Many of these influences, such as police officers and judges, have pushed back quite publicly against the reforms that Foxx has implemented. For instance, when Foxx made a decision to stop prosecuting some financial-based traffic offenses early in 2017, the Chief of Police in Riverside, a suburb in Cook County, criticized that decision publicly as a "get out of jail card."<sup>2</sup>

Then, in August, First Assistant State's Attorney Eric Sussman was threatened with contempt by a judge after Sussman advocated forcefully for release of a pregnant woman forced to give birth in jail because she was being held without bail on traffic and retail theft charges.<sup>3</sup> In November, after Foxx's Conviction Integrity Unit vacated the convictions of 17 people based on evidence of police misconduct that raised significant doubts regarding the integrity of their investigations and trials, the President of the local Fraternal Order of Police blasted her in a letter to the Chicago Sun-Times, alleging that "Foxx has demonstrated a clear movement away from prosecuting criminals into vilifying police officers."<sup>4</sup>

Third, the State's Attorney's office has endured significant budget cuts since Foxx was sworn in. The County faced a \$200 million budget deficit after the Cook County Board of Commissioners repealed a sweetened beverage tax in October.<sup>5</sup> As a result, positions throughout County government went unfilled throughout 2017, and according to Foxx and her staff, spending for new initiatives such as Foxx's planned data transparency and analysis were significantly constrained.

# GOAL 1: ADVANCE BAIL REFORM

In her Transition Report issued in December 2016, Kim Foxx identified bail reform as a key area in which her office could advance "smart strategies to promote public safety." Listed as a first step was to "Assess current practices around cash bail, and propose reforms that will ensure that non-violent offenders are not being detained pre-trial based solely on inability to pay."<sup>6</sup> Since coming into office, Foxx has made significant progress in reforming the bail system, both through changing policies internal to her office and by supporting efforts led by others.

One of Foxx's first bail reform measures was to partner with the Cook County Public Defender's Office to craft an "agreed I-Bond policy"<sup>7</sup> in which her prosecutors were instructed to support the release of some several dozen people held in Cook County Jail for "non-violent offenses" only because they could not post \$1,000 or less

in bond.<sup>8</sup> While important in increasing the public awareness of the harms of unpayable money bonds, this effort had minimal impact measured by absolute numbers and had only resulted in the release of around 20 people in the first two months after it was announced.<sup>9</sup>

Several months later, in May and June of 2017, Foxx supported the passage and signing of the Bail Reform Act of 2017,<sup>10</sup> a small step forward in Illinois state laws governing the use of monetary bonds, access to counsel, and conditions of release.<sup>11</sup> Foxx declined to support more transformative and progressive pieces of legislation on bail reform and pretrial justice, however, including The Equal Justice for All Act, which was developed and supported by our organizations.<sup>12</sup>

On June 12, 2017, Foxx announced a set of guidelines for prosecutors to proactively

## GOAL 1: ADVANCE BAIL REFORM

recommend release on individual recognizance (I-Bonds) in bond court.<sup>13</sup> This proactive support for pretrial freedom is an important public statement and crucial contributor to efforts to shift courtroom culture, but its impact has not been formally documented by the State's Attorney's Office or the court. While prosecutors may make requests and recommendations, judges ultimately make the final decision about whether or not to release someone pretrial and with what conditions. Furthermore, due to limitations in the policy's applicability, it only applies to a small portion of the overall number of people who go through bond court. During the month of August 2017, volunteer courtwatchers from the Coalition to End Money Bond's Community Courtwatching Initiative<sup>14</sup> observed prosecutors recommend an I-Bond in just 77 (or 5%) of the 1,696 cases they observed in Cook County's Central Bond Court.<sup>15</sup> Central Bond Court judges did grant I-Bonds in almost all cases recommended by the prosecutor.

In addition to the role State's Attorney Foxx played in changing the way prosecutors interact directly with the bail system, Foxx has played a role in laying the groundwork for larger-scale bail reform that Cook County Chief Judge Timothy Evans announced in July 2017.<sup>16</sup> State's Attorney Foxx's public statements on bail, the steps that her office took directly to begin addressing excessive pretrial detention, and the landslide election that she won on a platform that included bail reform all contributed significantly to the public support and political will for bail reform in Cook County. This broad and well-organized pressure for reform and a pending lawsuit all contributed to Chief Judge Evans' issuance of the general

order requiring judges to set money bond only in amounts that people can afford to pay. Since the general order took effect on September 18, 2017, the population of Cook County Jail has decreased by more than 1,000 people, from roughly 7,400 people to 6,350 people on November 20, 2017.<sup>17</sup>

Lastly, Foxx has supported Cook County Public Defender Amy Campanelli's call for a new Illinois Supreme Court Rule requiring that any money bonds set be affordable.<sup>18</sup> The proposed rule, if adopted, would be an important step in securing permanent and meaningful bail reform throughout Illinois and making our justice system fairer—especially for poor people and people of color. For this reason, the proposed Supreme Court rule is also supported by our organizations. Overall, Foxx has shown significant leadership on bail reform, and we commend her office for the progress it has helped achieve.

### Recommendations

1. Continue to publicly support full implementation of the local court rule limiting money bond to amounts defendants can afford and a corresponding Illinois Supreme Court rule.
2. Continue to maintain an active role in promoting pretrial release through guidelines for Assistant State's Attorneys and public statements encouraging respect for the presumption of innocence.
3. Support improved access to data on bond court outcomes and Cook County Jail population statistics for the public.<sup>19</sup>

## GOAL 2: INCREASE TRANSPARENCY & ACCOUNTABILITY

Foxx's Transition Report also promised to "Improve data collection and transparency in the Office, to provide employees, parties, academic institutions, the media, and Cook County residents with access to information on key issues related to prosecution, diversion, racial and gender impacts of enforcement efforts, and other critical issues."<sup>20</sup> At her swearing in ceremony on December 1, 2016, Foxx said that "Her office also plans to

quickly begin sharing data on its charging and plea bargaining decisions 'to address the racial disparities that people in the community have concerns about[.]'"<sup>21</sup>

Despite these plans, progress on transparency and data release was slow in Foxx's first 10 months in office. First, the State's Attorney's Office has been obligated to upgrade internal databases and case management systems in order to collect

## GOAL 2: INCREASE TRANSPARENCY & ACCOUNTABILITY

necessary data. In addition, the office created but has encountered significant delays in filling its first-ever Chief Data Officer position—someone with the expertise to design and oversee the necessary systems for data collection and analysis in a complex government office.

Despite this slow start, Foxx released a groundbreaking report on important data with accessible infographics and also underlying data sets on October 17, 2017 with the support of the MacArthur Foundation.<sup>22</sup> We, and in fact criminal justice advocates all over the country, are grateful for this unique and truly innovative effort at transparency and accountability on Foxx's part. For example, one infographic shows the total number of cases filed in 2016 by the State's Attorney's Office for the nine most common types of offenses, and then further breaks down the numbers to show how many cases originated in the City of Chicago versus the Cook County suburbs and also the race and ethnicity of the people charged.<sup>23</sup> Another series of bar graphs shows how cases resolved in each category of offense, allowing us to see, for example, that of the 2,920 people charged with retail theft whose cases ended in 2016, 69% pleaded guilty, 4% went through trial by judge or jury, and 22% had their cases dismissed.<sup>24</sup> The State's Attorney's Office has long been difficult to understand, and these steps to improve public access to information about what is happening to people in our criminal justice system are critical in all progress towards reform.

The report and data release are important displays of Foxx's commitment to transparency and evaluation by not only internal mechanisms or experts, but also deeply invested members of the community. One limitation of the data, however, is that the report is prepared as a snapshot of occurrences in 2016, and thus the information about cases initiated and cases resolved refer to separate cases. As a result, the data cannot be used to evaluate the complete progression of any individual cases through the system. Since the data is from 2016, it also is unable to reflect any policy changes made by Foxx, given that she was only in office for one month at the end of the year.

### Recommendations:

1. By January 2018, release data detailing 2017 prosecution decisions, including:
  - a. Number of felony charges filed, broken down by offense type and race/ethnicity and gender of people charged;
  - b. Number of felony charges recommended by police that prosecutors decline to approve, broken down by offense type and race/ethnicity and gender of the people in question.
2. Release 2018 data on these same prosecution decisions quarterly, in real time, throughout 2018 rather than delaying release until 2019.
3. Begin gathering data that is not currently recorded, or is recorded on paper and thus is effectively unavailable for either the public or the State's Attorney's office to use in improving practices and holding prosecutors accountable:
  - a. Number of misdemeanor charges filed, broken down by offense type and race/ethnicity and gender of people charged;
  - b. Average length of sentence recommended by prosecutors for each type of offense, broken down by race/ethnicity of people charged;
  - c. Average length of sentence imposed on people for each type of offense broken down by type of resolution (guilty plea, bench trial, and jury trial) and race/ethnicity and gender of the people charged.
  - d. Data on juvenile prosecutions should be collected and shared with all personal identifying information removed.



## GOAL 3: LESSEN IMMIGRATION COLLATERAL CONSEQUENCES

Foxx's Transition Report noted her plans to "Provide [the] comprehensive and consistent training necessary to restore discretion to prosecutors at key decision points, including plea bargaining and bond decisions, and ensure that training addresses risk screening, available diversion and alternative court resources, and any potential collateral consequences of various options particularly regarding immigration status."<sup>25</sup> While Foxx continues to voice public support for undocumented victims of crimes and an intention to develop more specific policies to reduce the collateral consequences of prosecution on documented and undocumented immigrants, the State's Attorney's Office has not yet released any specific proposals.

Increasingly aggressive immigration enforcement under the Trump administration has resulted in Immigration and Customs Enforcement ("ICE") agents going into and hanging around outside of state courthouses in New York City,<sup>26</sup> Austin, Texas,<sup>27</sup> and other places. Media coverage and reports of arrests in suburban Cook County courthouses have prompted fears from community members and advocates and even a response from the Illinois Supreme Court denouncing the tactic.<sup>28</sup> Foxx herself spoke about the fears of undocumented immigrants at an event in March 2017 but maintained a focus on victims who would be afraid to come to court and apparently did not make any comments about office policies regarding non-citizens people facing prosecution by her office.<sup>29</sup> In addition, Assistant State's Attorneys in bond court continue to raise the issue of accused persons' countries of birth in open court and ask if people born in other countries would like their consulates notified, increasing their profile and creating a possible record of non-citizenship that could expose them to immigration repercussions.<sup>30</sup>

Foxx has models available to her, including the Santa Clara District Attorney's policy regarding collateral consequences for charging and sentencing choices within the prosecutor's discretion, which was issued in 2011. The policy simply states that "in those cases where the collateral consequences are significantly greater than the punishment for the crime itself, it is incumbent upon the prosecutor to consider and, if appropriate, take reasonable steps to mitigate those collateral consequences."<sup>31</sup> Any such policy changes by Foxx's office must be accompanied, as suggested in the Transition Report, by adequate training and buy-in from State's Attorney's Office employees responsible for implementing the changes and understanding the collateral consequences of certain charging and sentencing decisions.

### Recommendations:

1. Train Assistant State's Attorneys and other office staff on the immigration consequences of different charging and plea bargaining decisions.
2. Create and implement a policy directing Assistant State's Attorneys to exercise discretion and consider alternate charges, diversion opportunities, plea offers, and sentencing recommendations for non-citizen defendants in order to avoid collateral immigration consequences.

## GOAL 4: END THE DRUG WAR

State's Attorney Foxx has frequently expressed her support for an alternative handling of drug-related prosecutions. In her response to the Reclaim Chicago Candidate Questionnaire, Foxx stated that "it is better investment of public funds to treat the use of and addiction to drugs through the public health system rather than the criminal justice system." Despite this commitment to promoting a public health approach to drug use and addiction and public criticism of the War on Drugs as a war on poor people and African American and Latino communities, Foxx's office has not yet taken steps to change any office policies related to drug possession, use, or sales. In fact, the office continues to allow police to charge felony drug offenses without the oversight of the State's Attorney's felony review process required to approve other charges before filing. Even without state law changes, her broad prosecutorial discretion allows the State's Attorney's Office to refuse to approve felony drug charges below common-sense weight thresholds or for other reasons such as concerns about the constitutionality of police stops or searches that initiated an arrest.

Throughout the U.S., local jurisdictions are recognizing that War on Drugs has been a failure on multiple levels. A number of analyses have noted that the War on Drugs increases violence by creating an unregulated and highly lucrative black market.<sup>32</sup> Drug criminalization leads to higher overdose death rates because it limits dosage precision and constrains treatment for overdoses; in fact, after Portugal decriminalized drugs, overdose deaths plummeted.<sup>33</sup> "Treatment" received involuntarily through coercive diversion programs like some of the ones currently used by Cook County are inadequate as a solution because coercion limits the effectiveness of drug treatment programs and recovery. In fact, it may be better to do nothing: a study by the Massachusetts Department of Public Health found that "clients who received involuntary treatment were 2.2 times as likely to die of opioid-related overdoses and 1.9 times as likely to die of any cause compared to those with a history of voluntary treatment only."<sup>34</sup>

A number of municipalities have responded to the failed War on Drugs by creating policies that direct law enforcement to use their discretion to stop arresting people and charging them with drug offenses, including both possession and lower-level distribution charges. In Seattle's Law Enforcement Assisted Diversion ("LEAD") program, for example, people are not charged for possession of below 3 grams of a controlled substance and are instead connected to case management services.<sup>35</sup> Participants in the LEAD Program were more likely to obtain housing and employment than without the program and experienced decreased recidivism, resulting in cost savings for the jurisdiction.<sup>36</sup> In Portland, the LEAD threshold is 5 grams of heroin or 10 grams of cocaine.<sup>37</sup> In Brooklyn, New York, District Attorney Eric Gonzalez has pushed successfully for funding to create such a program.<sup>38</sup>

The success of LEAD programs in other urban jurisdictions and decisions by prosecutors to stop prosecuting marijuana possession in places ranging from Houston to Cook County (a policy established under the conservative Anita Alvarez administration) shows that Foxx has a number of models and precedents for using her discretion to stop prosecuting drug offenses. We applaud the recent commitment Foxx made to work with The People's Lobby and Chicago Appleseed to create a pilot project for non-prosecution of some drug crimes.<sup>39</sup>

### Recommendations:

1. Create a policy of non-prosecution of drug offenses using thresholds similar to those used in cities that have implemented LEAD.
2. Advocate publicly for resources and police cooperation in bringing LEAD to Cook County.



Member of The People's Lobby demonstrate outside the office of former Cook County State's Attorney Anita Alvarez after she refused multiple requests to meet with leadership about reforms to her office. Photo by Kristi Sanford.



Rev. Dwayne Grant, a leader with The People's Lobby, speaks at a rally outside the Cook County Jail for the abolition of money bonds. Photo by Deana Rutherford.

## GOAL 5: REDUCE OVERCHARGING

Previous Cook County State's Attorneys have historically used the discretion of their position to overcharge people, bringing every conceivable count and ensuring the highest penalties possible. This practice was known to create enormous pressure on accused people to take plea deals instead of going to trial, ensuring higher conviction rates and more manageable caseloads for the office. The driving force in the office was convictions, not justice. Promotion patterns were also believed to reflect these office policies, thus encouraging line prosecutors to engage in overcharging and pushing those who would have taken more measured approaches out of the office or keeping them out of positions of influence.

In her Transition Report, Foxx outlined a variety of steps necessary to reverse this office culture, including "Form[ing] a working group of line attorneys and supervisors to review employee evaluation and promotion practices, and solicit input on how to adjust those practices to encompass a different definition of success and reward the sound judgment and discretion of skilled prosecutors."<sup>40</sup> In addition, she planned to "Review guidelines and training regarding plea bargaining process, evaluate data regarding offenses for which there is currently no discretion to offer plea bargains, and identify possible points for additional prosecutor discretion or input."<sup>41</sup>

The office appears to be taking active steps to improve training of prosecutors so that all charging decisions are consistent with the standards recommended by the American Bar Association<sup>42</sup> and the National District Attorneys Association.<sup>43</sup> A few highlights from these standards include that prosecutors should only "file charges...which he or she reasonably believes can be substantiated by admissible evidence at trial," and should avoid "improper leveraging," i.e. "should not file charges where the sole purpose is to obtain from the accused a release of potential civil claims."<sup>44</sup> These standards, if fully implemented, would make significant improvements in the charging practices in the Cook County State's Attorney's office. However, the State's Attorney's Office is not making all the details of these steps public, so they are not subject to public review and accountability.

In addition, plans to "Evaluate the felony review process ... and ensur[e] that attorneys on the felony review unit receive adequate training and are supported by experienced attorneys" should help weak cases (such as those with unconstitutional searches or other issues) be dismissed earlier instead of right before trial and after many months or even years of pressure on the accused person and their loved ones.<sup>45</sup>

State's Attorney Foxx has also implemented several important changes in the office's charging practices around specific offenses that will decrease incarceration. Within two weeks of taking office, Foxx raised the threshold on felony retail theft from \$300 to \$1,000, thus decreasing the number of people charged with felonies for a relatively minor offense.<sup>46</sup> In addition, she has ceased the practice of charging people for driving on a suspended license when the suspension is due to unmet financial obligations.<sup>47</sup> This was one of the most direct ways that previous Cook County State's Attorneys criminalized poverty, and we applaud Foxx for making this change.

Lastly, Foxx has taken bold steps to confront past wrongs through her recent dismissals of cases believed to be tainted by police misconduct. In November 2017, the Conviction Integrity Unit of the State's Attorney's Office agreed to vacate the convictions of 15 men whose cases were connected to a disgraced former police officer known for planting evidence and falsifying charges<sup>48</sup> and to dismiss all charges against two men who were granted retrials after new DNA tests failed to connect them to their alleged victims.<sup>49</sup> These voluntary dismissals stand in especially stark contrast to the Alvarez administration, which was known for rejecting DNA evidence of innocence.<sup>50</sup> These acknowledgments of the criminal justice system's failures and the corresponding decision to seek justice rather than convictions provides insight into the changing paradigm in the State's Attorney's Office.

### Recommendations:

1. Publicly release training materials and guidelines for charging decisions.
2. Set county-wide goal for reduction in the number of felony charges filed.

# CONCLUSION

During her first year in office, Kim Foxx has made significant strides in reforming the Cook County State's Attorney's Office. Nevertheless, we are still a far cry from transforming our criminal punishment system into a justice system that serves community needs. Millions of people across Cook County and the entire country celebrated Foxx's election and have followed the progress made in her first year. Meaningful changes have been made, but Foxx must continue pushing forward in order to live up to the expectations of those who support and celebrate her.

We need Foxx to continue to display courageous leadership and a clear vision of public safety that relies on building strong communities, crafting

public health solutions, and ending the draconian practices that created mass incarceration. With the election of more reform-oriented prosecutors around the country, including Larry Krasner's recent victory in Philadelphia, we are entering a new era in how the U.S. views public safety and the role of the prosecutor.<sup>51</sup> We hope that in the coming year and throughout her term, Foxx will continue to lead that national conversation. To do so, she will need to demonstrate a clear and continued commitment to ending mass incarceration and embrace the support and guidance of the communities who elected her. We look forward to working with her and her office in achieving these goals.



Reclaim Chicago members head out to canvass voters about their endorsement of Kim Foxx in Bridgeport just prior to election day in March 2016. Photo by Kristi Sanford.

# REFERENCES

- <sup>1</sup> "About The Cook County State's Attorney's Office," Cook County State's Attorney, (last accessed Nov. 22, 2017), available at <https://www.cookcountystatesattorney.org/about>.
- <sup>2</sup> Ben Bradley, "Prosecutors will let some Cook County drivers off the hook," WGN TV (June 15, 2017), available at: <http://wgntv.com/2017/06/15/prosecutors-will-let-some-cook-county-drivers-off-the-hook-2/>.
- <sup>3</sup> Chuck Goudie and Barb Markoff, "Combative Court Session for Prisoner/Mom and Baby," ABC 7 News (Aug. 14, 2017), available at: <http://abc7chicago.com/combative-court-session-for-prisoner-mom-and-baby/2308049/>.
- <sup>4</sup> Kevin Graham, "Cop Union Says State's Attorney Foxx 'Vilifies' Officers," Chicago Sun-Times (Nov. 17, 2017), available at: <https://chicago.suntimes.com/opinion/cops-fop-chicago-states-attorney-foxx/>.
- <sup>5</sup> Sarah Schulte, "Deal Reached to Repeal Cook County Sweetened Beverage Tax, Commissioner Says," ABC 7 News (Oct. 7, 2017), available at: <http://abc7chicago.com/politics/deal-reached-to-repeal-cook-county-soda-tax/2499416/>; Aditi Singh, "Cook County Budget Cuts Could Threaten Fundamental Rights of Indigent Defendants," Chicago Appleseed (Oct. 19, 2017), available at: <http://www.chicagoappleseed.org/cook-county-budget-cuts-could-threaten-fundamental-rights-of-indigent-defendants/> ("Already implemented budget cuts have already had negative impacts on both the Public Defender's and State's Attorney's offices. Further cuts would be detrimental to necessary initiatives and reforms currently underway in Cook County and Chicago Appleseed sincerely hopes that the Board of Commissioners will take this into consideration when making their decision.").
- <sup>6</sup> Kim Foxx, Cook County State's Attorney Transition Report, p. 7 (December 5, 2016), available at [https://www.cookcountystatesattorney.org/sites/default/files/files/documents/kim-foxx-transition-brochure\\_0.pdf](https://www.cookcountystatesattorney.org/sites/default/files/files/documents/kim-foxx-transition-brochure_0.pdf).
- <sup>7</sup> I-Bonds are a type of unsecured financial condition, also commonly called individual recognizance bonds. I-Bonds have a monetary amount attached to them, which can be forfeited upon non-appearance in court, but they do not require payment of any amount before release. As a result, they do not result in incarceration in the jail for non-payment the way secured monetary bonds such as D-Bonds and C-Bonds do.
- <sup>8</sup> Steve Schmadeke, Foxx agrees to release of inmates unable to post bonds of up to \$1,000 cash, Chicago Tribune, March 1, 2017, <http://www.chicagotribune.com/news/local/breaking/ct-kim-foxx-bond-reform-met-20170301-story.html>.
- <sup>9</sup> Numbers provided by Foxx during a public event on May 22, 2017. See <https://twitter.com/ChiAppleseed/status/866821148822130689>.
- <sup>10</sup> "SA Foxx on today's signing of the Bail Reform Act of 2017: 'This legislation represents a major step in achieving meaningful reform.'" from Foxx's official Twitter account (June 9, 2017), available at: <https://twitter.com/SAKimFoxx/status/873233191313821696>.
- <sup>11</sup> For more information on the Act and its implications, see Sharlyn Grace, "Illinois Takes Small First Step Toward Bail Reform," Chicago Appleseed (June 9, 2017), available at: <http://www.chicagoappleseed.org/illinois-takes-small-first-step-toward-bail-reform/>.
- <sup>12</sup> For more information, see Sharlyn Grace, "Legislation Introduced to Eliminate Monetary Bond in Illinois," Chicago Appleseed (Feb. 10, 2017), available at: <http://www.chicagoappleseed.org/legislation-introduced-to-eliminate-monetary-bond-in-illinois/>.
- <sup>13</sup> "State's Attorney Foxx Announces Major Bond Reform," Cook County State's Attorney (June 12, 2017), available at: <https://www.cookcountystatesattorney.org/news/state-s-attorney-foxx-announces-major-bond-reform> (accessed Nov. 22, 2017).
- <sup>14</sup> A full report on the Community Courtwatching Initiative's findings and methodology is forthcoming. The People's Lobby and Chicago Appleseed Fund for Justice are both member organizations of the Coalition to End Money Bond. More information is available at [www.chicagoappleseed.org/coalition-to-end-money-bond/](http://www.chicagoappleseed.org/coalition-to-end-money-bond/).
- <sup>15</sup> This statistic was generated through an analysis of all courtwatching observations made in August 2017 by trained volunteers. Because these findings are based on observers' notes and not on official court record-keeping, they are subject to human error. We welcome official statistics if they become publicly available.
- <sup>16</sup> "General Order No. 18.8A - Procedures for Bail Hearings and Pretrial Release," State of Illinois Circuit Court of Cook County, available at: <http://www.cookcountycourt.org/Manage/DivisionOrders/ViewDivisionOrder/tabid/298/ArticleId/2562/GENERAL-ORDER-NO-18-8A-Procedures-for-Bail-Hearings-and-Pretrial-Release.aspx> (accessed Nov. 22, 2017); For more analysis of the general order, see Sharlyn Grace, "Cook County Chief Judge Announces New Order Limiting Use of Monetary Bond," Chicago Appleseed (July 17, 2017), available at: <http://www.chicagoappleseed.org/chief-judge-order-on-monetary-bond/>.
- <sup>17</sup> Amanda Vinicky, "Cook County Jail Population Down 15 Percent After Bond Reforms," WTTW (Nov. 20, 2017), available at: <http://chicagotonight.wttw.com/2017/11/20/cook-county-jail-population-down-15-percent-after-bond-reforms>.
- <sup>18</sup> Mari Cohen, "Wide Range of Groups Push for Statewide Change on Bail," Injustice Watch (Nov. 14, 2017), available at: <https://www.injusticewatch.org/news/2017/wide-range-of-groups-push-for-statewide-change-on-bail/>.
- <sup>19</sup> See, for example, The Civic Federation, The Impact of Cook County Bond Court on the Jail Population: A Call for Increased Public Data and Analysis (Nov. 15, 2017), available at: [https://www.civiced.org/sites/default/files/report\\_publicsafety.pdf](https://www.civiced.org/sites/default/files/report_publicsafety.pdf).
- <sup>20</sup> Transition Report, p. 6.
- <sup>21</sup> Steve Schmadeke, "Kim Foxx promises 'new path' of transparency as Cook County state's attorney," Chicago Tribune, December 1, 2017, available at: <http://www.chicagotribune.com/news/local/breaking/ct-kim-foxx-states-attorney-met-20161201-story.html>.
- <sup>22</sup> "Data Transparency," Cook County State's Attorney, <https://www.cookcountystatesattorney.org/data> (accessed Nov. 22, 2017).
- <sup>23</sup> Cook County State's Attorney's Office, 2016 Data Report, p. 7, available at: <https://www.cookcountystatesattorney.org/sites/default/files/files/documents/ccsao-data-report-oct-2017.pdf>.
- <sup>24</sup> 2016 Data Report, pp. 8-9.
- <sup>25</sup> Transition Report, p 8.
- <sup>26</sup> Noah Hurowitz, "31 Immigrants Arrested by ICE Agents at Court Since February, Officials Say," DNA Info (Sept. 25, 2017), available at: <https://www.dnainfo.com/new-york/20170925/bed-stuy/ice-arrests-in-nyc-courthouses>.

# REFERENCES

- <sup>27</sup> "ICE Arrest at Courthouse Stokes Concern From Defense Attorneys," KXAN (March 6, 2017), <http://www.nbcchicago.com/news/politics/ICE-Arrest-at-Courthouse-Stokes-Concern-415499173.html>.
- <sup>28</sup> Chief Justice Lloyd A. Karmeier, "ICE Arrests Threaten to Chill Access to Justice," Illinois Courts Connect (Aug. 28, 2017), available at: [http://www.illinoiscourts.gov/Media/enews/2017/082517\\_chief\\_justice.asp](http://www.illinoiscourts.gov/Media/enews/2017/082517_chief_justice.asp) ("Disruption of state court proceedings by ICE agents not only threatens the rights and interests of the participants in state legal proceedings, it also raises fundamental questions regarding the boundaries of state and federal sovereignty.").
- <sup>29</sup> Stephanie Lulay, "Immigrant Victims 'Afraid To Come To Court' Due To Deportation Fears: Foxx," DNA Info, March 29, 2017, available at: <https://www.dnainfo.com/chicago/20170329/downtown/fearing-deportation-cook-county-immigrants-not-reporting-crimes-foxx>.
- <sup>30</sup> Based on numerous personal observations by courtwatchers.
- <sup>31</sup> Jeff Rosen, "Memo," (September 14, 2011), available at: [https://www.ilrc.org/sites/default/files/resources/unit\\_7b\\_4\\_santa\\_clara\\_da\\_policy.pdf](https://www.ilrc.org/sites/default/files/resources/unit_7b_4_santa_clara_da_policy.pdf).
- <sup>32</sup> See "Medical Marijuana and Crime: Further Evidence From the Western States," in Journal of Drug Issues (Jan. 13, 2016), available at: <http://journals.sagepub.com/doi/abs/10.1177/0022042615623983> (finding "significant drops in rates of violent crime associated with state [medical marijuana laws]"); "Effect of Drug Law Enforcement on Drug-Related Violence: Evidence from a Scientific Review," International Centre for Science in Drug Policy (2010), available at: <http://www.countthecosts.org/sites/default/ICSDP-1%20-%20FINAL.pdf> (finding that "the existing evidence suggests that drug-related violence and high homicide rates are likely a natural consequence of drug prohibition and that increasingly sophisticated and well-resourced methods of disrupting drug distribution networks [by law enforcement] may unintentionally increase violence.").
- <sup>33</sup> Christopher Ingraham, "Why Hardly Anyone Dies from a Drug Overdose in Portugal," The Washington Post (June 5, 2015), <https://www.washingtonpost.com/news/wonk/wp/2015/06/05/why-hardly-anyone-dies-from-a-drug-overdose-in-portugal/>.
- <sup>34</sup> Massachusetts Department of Public Health, An Assessment of Opioid-Related Deaths in Massachusetts (2013-2014), p. 49, (Sept. 2016), available at: <http://www.mass.gov/eohhs/docs/dph/stop-addiction/dph-legislative-report-chapter-55-opioid-overdose-study-9-15-2016.pdf>.
- <sup>35</sup> Seema L. Clifasefi, Heather S. Lonczak, Susan E. Collins, "LEAD Program Evaluation: The Impact of LEAD on Housing, Employment and Income/Benefits," p. 5, (March 31, 2016), available at: [http://static1.1.sqspcdn.com/static/f/1185392/27047605/1464389327667/housing\\_employment\\_evaluation\\_final.PDF](http://static1.1.sqspcdn.com/static/f/1185392/27047605/1464389327667/housing_employment_evaluation_final.PDF).
- <sup>36</sup> "LEAD Program Evaluation: The Impact of LEAD on Housing, Employment and Income/Benefits," p. 2-3.
- <sup>37</sup> Tony Hernandez, "Program Allows Portland Police to Send Low-level Drug Users to Help Instead of Jail," The Oregonian (Feb. 27, 2017), available at: [http://www.oregonlive.com/portland/index.ssf/2017/02/portland\\_police\\_can\\_send\\_low-l.html](http://www.oregonlive.com/portland/index.ssf/2017/02/portland_police_can_send_low-l.html).
- <sup>38</sup> Kadia Goba, "DA Race: Swern, Gonzalez Go At It Over Marijuana Prosecutions," King's County Politics (April 21, 2017), available at: <https://www.kingscountypolitics.com/da-race-swern-gonzalez-go-marijuana-prosecutions/>; "The City Council of The City of New York Fiscal Year 2018 Adopted Expense Budget Adjustment Summary / Schedule C," available at: <https://council.nyc.gov/budget/wp-content/uploads/sites/54/2017/03/FY-2018-Schedule-C-Cover-Template-FINAL-MERGE.pdf>.
- <sup>39</sup> This commitment was made during the "From Protest to Power" public meeting hosted by The People's Lobby and Reclaim Chicago on November 5, 2017. See <https://twitter.com/briannatong/status/92729220923387521>.
- <sup>40</sup> Transition Report, p. 7.
- <sup>41</sup> Transition Report, p. 9.
- <sup>42</sup> American Bar Association, "Criminal Justice Standards for the Prosecution Function," available at: [https://www.americanbar.org/groups/criminal\\_justice/standards/ProsecutionFunctionFourthEdition.html](https://www.americanbar.org/groups/criminal_justice/standards/ProsecutionFunctionFourthEdition.html).
- <sup>43</sup> National District Attorneys Association, "National Prosecution Standards," available at: <http://www.ndaajustice.org/pdf/NDAAP%20NPS%203rd%20Ed.%20w%20Revised%20Commentary.pdf>.
- <sup>44</sup> NDAA "National Prosecution Standards," p. 52.
- <sup>45</sup> Transition Report, p. 8.
- <sup>46</sup> Erica Demarest, "Shoplifting Under \$1,000 Will No Longer Be A Felony, Kim Foxx Says," DNA Info (Dec. 15, 2016), available at: <https://www.dnainfo.com/chicago/20161215/little-village/kim-foxx-raises-bar-for-retail-theft-felonies>.
- <sup>47</sup> Megan Crepeau, Cook County to Stop Prosecuting Some Traffic Offenses Because It Lacks Resources, Foxx's Office Says," Chicago Tribune (June 15, 2017), available at: <http://www.chicagotribune.com/news/local/breaking/ct-states-attorney-traffic-offense-prosecution-20170615-story.html>.
- <sup>48</sup> Matt Masterson, "15 Men Cleared in First-Ever Mass Exoneration in Cook County," WTTW (Nov. 16, 2017), available at: <http://chicagotonight.wttw.com/2017/11/16/15-men-cleared-first-ever-mass-exoneration-cook-county>.
- <sup>49</sup> Gregory Pratt, "Two Chicago Men Freed From Prison After DNA Tests Prompt Retrials," Chicago Tribune (Nov.21, 2017), available at: <http://www.chicagotribune.com/news/local/breaking/ct-met-two-inmates-freed-20171117-story,amp.html>.
- <sup>50</sup> Erica Goode, "When DNA Evidence Suggests 'Innocent,' Some Prosecutors Cling to 'Maybe,'" The New York Times (Nov. 15, 2011), available at: <http://www.nytimes.com/2011/11/16/us/dna-evidence-of-innocence-rejected-by-some-prosecutors.html>; Mick Dumke, "The Trials of Anita Alvarez," Chicago Reader (Sept. 16, 2015), available at: <https://www.chicagoreader.com/chicago/anita-alvarez-cook-county-states-attorneys-office/Content?oid=19119102>.
- <sup>51</sup> Holly Otterbein, "'Completely Unelectable' Progressive Larry Krasner Wins DA's Race," Philadelphia (Nov. 7, 2017), available at: <http://www.phillymag.com/news/2017/11/07/larry-krasner-wins-district-attorney-general-election/>.



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