

A STEP IN THE RIGHT DIRECTION

An Analysis of Felony
Prosecution Data in Cook County

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

BACKGROUND

When Kimberly Foxx was sworn in as Cook County State’s Attorney in December 2016, she inherited an office that was notorious for avoiding public scrutiny and accountability. Very little data about the office’s operations was shared with the public. Many kinds of information were not recorded at all, preventing even internal analysis designed to evaluate and improve office outcomes. Foxx promised a new era of transparency and a “data-driven strategy.”¹

In her sixteen months in office, Foxx has made significant progress towards this commitment to transparency. In October 2017, the Cook County State’s Attorney’s Office released its first ever Baseline Data Report with information on a variety of prosecutorial decisions and case outcomes during the 2016 calendar year, including the number of people charged with different categories of felonies, the rates at which charges initiated by police were approved by the Office, the outcomes in different types of cases, and more.² At the same time, the Office facilitated external examination and validation of its report by releasing its raw data on the Cook County data portal.³

In late February 2018, the State’s Attorney’s Office released a second report reviewing the same data for 2017, Foxx’s first full year in office.⁴ They followed this report with release of an improved dataset that

includes every felony charge filed in Cook County from 2010 through late January 2018, available to the public through the Cook County data portal as of early March 2018. Together, these datasets and reports allow the public to compare the prosecution decisions and outcomes made by the State’s Attorney’s Office under Foxx with the decisions and outcomes of the Office under the leadership of her predecessor Anita Alvarez. In addition, Foxx has hired a Chief Data Officer to improve data collection and analysis within the office and to improve the quality of the publicly accessible data.⁵ Creation of a Chief Data Officer position made the Cook County State’s Attorney’s Office the first and only prosecutor’s office in the United States to dedicate an internal, full-time staff person to data and performance analysis.⁶ We applaud State’s Attorney Foxx for this level of transparency and accountability, which is unprecedented in Cook County and across the nation.

This report is an initial analysis of the two annual reports and some of the raw data released by the State’s Attorney’s Office. This report evaluates how well her office is fulfilling its pledges to decrease incarceration and to begin correcting the longstanding racism and punitiveness of the criminal justice system in Cook County.



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

THE IMPORTANCE OF FELONY CHARGING DECISIONS

After arrest by a police officer, the rest of a criminal case is largely determined by the prosecutor's decisions. According to criminal justice reform expert John Pfaff, a key decision point in the criminal justice system is the question of whether to charge someone with a felony, and if so, which felony or felonies.⁷ Pfaff has examined data and found that nationally, the percentage of arrests that lead to felony charges skyrocketed during the era of mass incarceration, while most other key indicators such as length of sentence, number of arrests, percentage of defendants found guilty, etc. either stayed constant, decreased, or rose much more slowly. Pfaff's conclusion is that the increased number of felony charges was a key driver in increased incarceration, and, correspondingly, that changing local prosecutors' charging decisions is essential to effective reform.

Prosecutors have complete authority and discretion in their charging decisions. Police arrest people and make charging recommendations, but those recommendations must pass through State's Attorney's Office before they are filed with the court. In Cook County, the process through which prosecutors accept, reject, or revise felony charges is called "felony review." The State's Attorney's Office may also choose to present the facts of an incident to a grand jury that will approve or reject the filing of specific charges.⁸ Locally, the major exception to this process is charging decisions in drug-related cases: for decades, the Cook County State's Attorney's Office has voluntarily relinquished this authority by allowing police to make all decisions regarding the filing of felony charges related to alleged drug possession and distribution.

OVERALL CHANGES IN FELONY CHARGES AND INCARCERATION RATES FROM 2016 TO 2017

People Charged with Felonies

From 2016 to 2017, the total number of felony charges filed in Cook County decreased only very modestly. The total number of people charged with felonies annually declined from 31,340 in 2016 to 29,319 in 2017, a decrease of 6.4%. When the source of felony charges is examined, however, the data reveals that the decrease in charges filed was the result of charging decisions by the State's Attorney's Office. In fact, felony drug charges filed directly by police increased slightly between 2016 and 2017. Felony cases charged by the State's Attorney's Office through felony review went down from 19,120 in 2016 to 16,948 in 2017, a decrease of 11.4%. Relatedly, the approval rate by prosecutors of non-drug felony charges brought by police decreased from 92.8% in 2016 to 89.0% in 2017.

Felony drug cases that the State's Attorney's Office allows law enforcement to charge directly, without State's Attorney's Office Felony Review, however, grew from 12,220 people charged in 2016 to 12,371 people charged in 2017, an increase of 1.2%. Because felony drug charges filed by police composed 42% of the total felony cases filed in

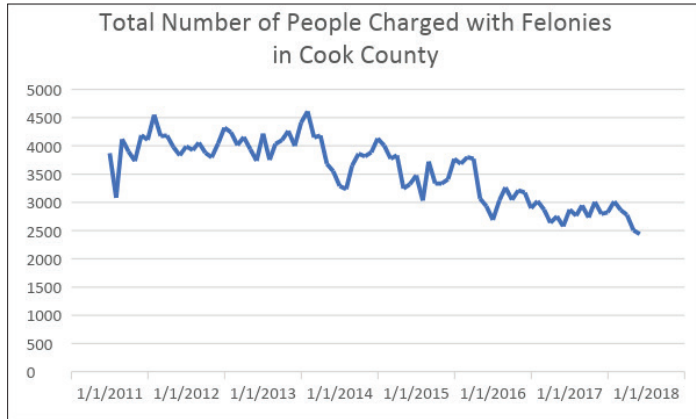
2017, felony drug charges significantly diluted the overall decrease in felony charges filed by the State's Attorney's Office. Therefore, we recommend that Foxx make further progress on reducing incarceration rates by reinstating felony review for drug charges and using prosecutorial discretion to decline to charge some drug possession and sales cases.

People Sentenced to Incarceration

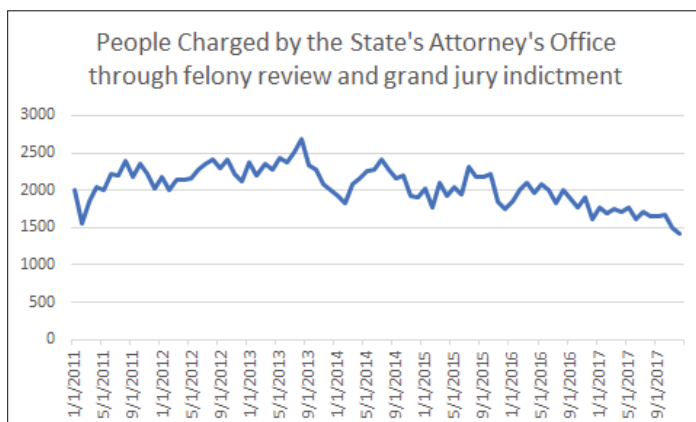
The number of people sentenced to incarceration (jail or prison) as a result of felony charges decreased from 12,361 people in 2016 to 12,053 people in 2017, a 2.5% decrease.⁹ Given that felony cases in Cook County routinely take years to reach a resolution, we would expect this to be a trailing indicator of office policy that would take longer to decrease even if upstream decisions are beginning to move in the right direction.¹⁰

MONTH-BY-MONTH ANALYSIS OF FELONY-RELATED TRENDS

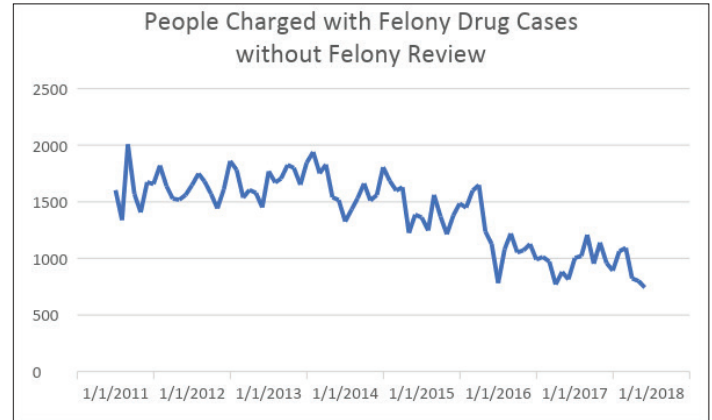
The unprecedented release of case-level data by the State's Attorney's Office makes it possible to do a much more detailed analysis of trends in a number of key areas. The following graphs are based on numbers processed by Data Made using the raw case-level data released by the State's Attorney's Office, including numbers from January 2011 through December 2017.



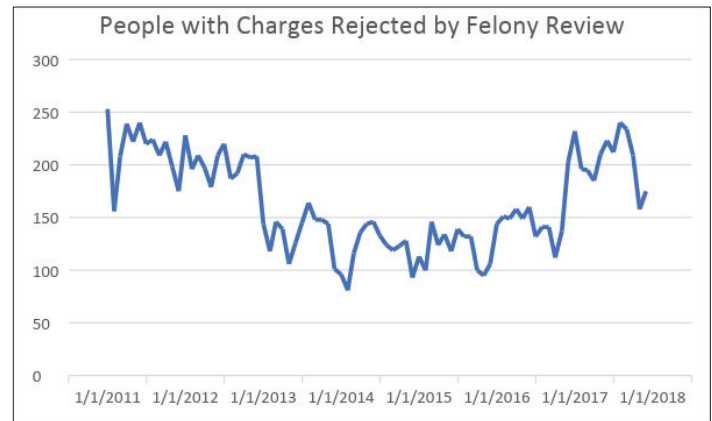
In each calendar year, the number of felony charges goes up in the summer months and down in the winter months, but the trend from 2011 through 2017 is an overall decrease in people charged with felonies.¹¹ The first full year of Foxx's time in office continues this trend with a typical seasonal increase in felony charges during relatively warmer weather and a slight overall decrease. The number of felonies charged is determined by both the number of felony charges brought by police and the rate at which those charges are approved by the State's Attorney's Office, so getting a picture of the extent to which this decrease is a result of State's Attorney's Office decisions requires looking also at the number of felony charges approved and rejected and the approval rate, which is shown below.



People charged with felonies either through the felony review process or by grand juries (a process also initiated and guided by the State's Attorney's Office) decreased noticeably from 2016 to 2017.

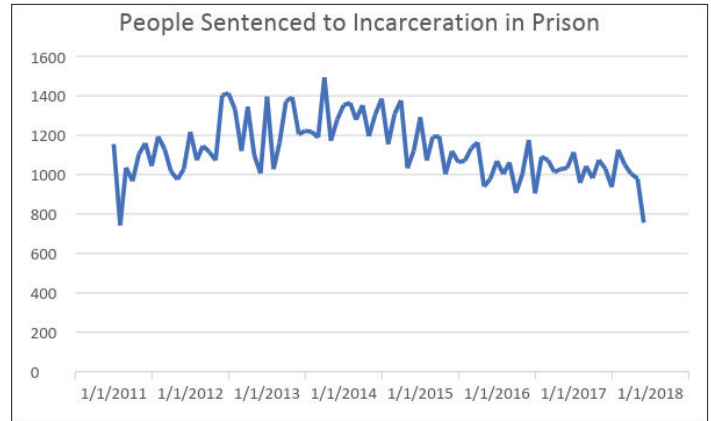
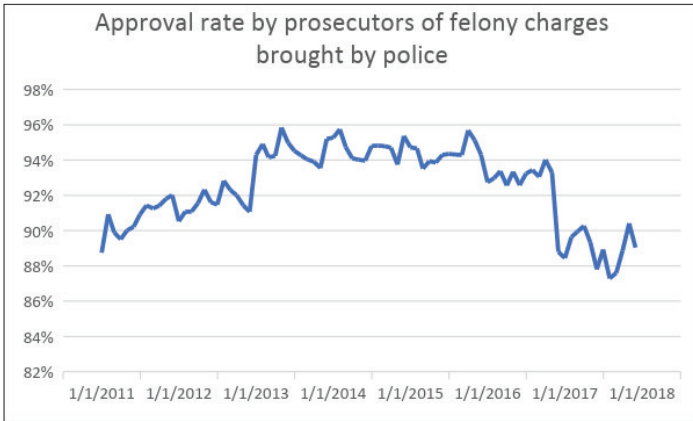


The number of felony drug charges that the State's Attorney's Office allowed law enforcement to file directly without any review decreased dramatically overall during Alvarez's tenure from 2013-2016 but remained roughly flat from 2016-2017, Foxx's first year.¹²



The number of cases rejected by felony review over the course of Foxx's first year in office increased significantly.¹³

MONTH-BY-MONTH ANALYSIS OF FELONY-RELATED TRENDS



The percentage of felony charges recommended by police that are then filed by the State's Attorney's Office decreased significantly during Foxx's first year in office. This shows that the decrease in felony charges since the beginning of Foxx's time in office is not just a function of decreasing arrest rates, but also a function of increasing use of prosecutorial discretion to decide against charging non-drug felonies recommended by police.

The number of individuals charged with felonies whose sentences include incarceration has been decreasing steadily since 2013 and continued to decrease during State's Attorney Foxx's first year in office.



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.

CONCLUSION

Prosecutors play a crucial role in the criminal justice system. The decisions made by the Cook County State's Attorney's Office in previous administrations played a role in creating the crisis of mass incarceration, and State's Attorney Foxx can play a role in ameliorating this problem. The data from State's Attorney Foxx's first year in office shows a commendable commitment to transparency. Although it also shows some progress on important metrics, much progress still remains to be made.

RECOMMENDATIONS

1. Reinstate felony review for drug charges and use prosecutorial discretion to avoid charging lower-level drug crimes.
2. Continue and expand the practice of more rigorous felony review started in State's Attorney Foxx's first year in order to decrease the number of felonies charged.
3. Decide on a department-wide goal of reducing felony charges filed by prosecutors over the next two years.
4. Decide on a department-wide goal of reducing the number of people sentenced to incarceration.



Rev. Dwayne Grant, a leader with The People's Lobby, speaks at a Sept. 18, 2017 rally outside the Cook County Jail for the abolition of money bonds. Photo by Deana Rutherford.

REFERENCES

- ¹ Erica Demarest, "Kim Foxx Promises 'Justice And Transparency' As New Top Prosecutor," DNA Info (Dec. 1, 2016), available at: <https://www.dnainfo.com/chicago/20161201/downtown/kim-foxx-promises-justice-transparency-as-new-top-prosecutor>.
- ² Cook County State's Attorney, "2016 Data Report, 2nd Edition" (Feb. 2018), available at: https://www.cookcountystatesattorney.org/sites/default/files/files/documents/ccsao_2016_baseline_data_report.pdf.
- ³ "Open Data," Cook County Government, <https://datacatalog.cookcountyil.gov/browse?tags=state%27s%20attorney%20case-level>, last accessed May 24, 2018.
- ⁴ Cook County State's Attorney, "2017 Data Report" (Feb. 2018), available at: https://www.cookcountystatesattorney.org/sites/default/files/files/documents/ccsao_2017_data_report_180220.pdf.
- ⁵ Cook County State's Attorney's Office, "Data Transparency," <https://www.cookcountystatesattorney.org/data> ("Increased transparency with the public depends on robust data practices and clear organizational knowledge within the SAO, and the SAO's first-ever Chief Data Officer, Matthew Saniie, joined the Office in 2017. In addition to the annual Data Reports, he is responsible for leading the SAO's ongoing effort to develop these practices and knowledge."), accessed May 20, 2018.
- ⁶ Cook County State's Attorney's Office, "State's Attorney Foxx Announces Unprecedented Open Data Release" (March 2, 2018), available at: <https://cookcountystatesattorney.org/news/states-attorney-foxx-announces-unprecedented-open-data-release> ("The [data] release, the first of its kind in the country, provides unprecedented access and transparency into the work of a prosecutor's office."); Josie Duffy Rice, "Kim Foxx Just Released Six Years of Data — Most Prosecutors' Offices Remain Black Boxes," In Justice Today (March 7, 2018), available at: <https://injusticetoday.com/kim-foxx-just-released-six-years-of-data-most-prosecutors-offices-remain-black-boxes-238a37ee45f0> ("Data release from prosecutors is virtually non-existent," says Tracy Siska, executive director of the Chicago Justice Project.).
- ⁷ See John Pfaff, *Locked In: The True Causes of Mass Incarceration and How to Achieve Real Reform*, Basic Books, 2017.
- ⁸ It is important to note that grand juries are notorious for approving all charges presented to them, even spawning the idiomatic expression that a grand jury will "indict a ham sandwich." See Glenn Harlan Reynolds, "Ham Sandwich Nation: Due Process When Everything is a Crime," (Jan. 20, 2013), Columbia Law Review Sidebar, 2013, University of Tennessee Legal Studies Research Paper No. 206, available at: <https://ssrn.com/abstract=2203713> ("...the actual decision whether or not to charge a person with a crime is almost completely unconstrained."); Toni Messina, "Criminally Yours: Indicting A Ham Sandwich," Above the Law (Feb. 8, 2016), available at: <https://abovethelaw.com/2016/02/criminally-yours-indicting-a-ham-sandwich/> ("Grand juries are the prosecutor's babies. They decide who gets picked, what evidence gets presented, and what gets left out. There's no judge, no defense attorney, and ... the standard of proof is so low — that probable cause exists to believe a crime has been committed — [that] anyone, for the merest hint of an offense, can get indicted.").
- ⁹ Note that these numbers do not include people sentenced to jail for misdemeanor cases, since this data analysis only includes cases initially charged as felonies.
- ¹⁰ Spencer Woodman, "No-show cops and dysfunctional courts keep Cook County Jail inmates waiting years for a trial," Chicago Reader (Nov. 16, 2016), available at: <https://www.chicagoreader.com/chicago/cook-county-jail-pre-trial-detention-investigation/Content?oid=24346477>; Chicago Appleseed, "Pre-Trial Delay and Length of Stay in Cook County Jail: Observations and Recommendations from The Chicago Appleseed Fund for Justice" (Oct. 2013), available at: <http://www.chicagoappleseed.org/wp-content/uploads/2012/06/CAFFJ-Pre-Trial-Delay-and-Length-of-Stay-Final.pdf>.
- ¹¹ Note that much of this decrease is attributable to falling arrest rates. Mick Dumke and Frank Main, "The Watchdogs: Arrests Down 28 Percent in Chicago This Year," Chicago Sun-Times (Jan. 30, 2017), available at: <https://chicago.suntimes.com/news/the-watchdogs-arrests-down-25-percent-in-chicago-this-year/> ("Through mid-December [2016], police were on pace to make about 50,000 arrests citywide in 2016 — down from over 69,000 a year ago. The year's current arrest total is less than half what it was in 2010").
- ¹² It is important to note that almost all of these charges begin with arrests, which decreased dramatically over the same period of time. See Mick Dumke and Frank Main, "The Watchdogs: Arrests Down 28 Percent in Chicago This Year," Chicago Sun-Times (Jan. 30, 2017), available at: <https://chicago.suntimes.com/news/the-watchdogs-arrests-down-25-percent-in-chicago-this-year/> ("Narcotics arrests plummeted by half — the most dramatic decrease for any type of crime. That's partly because of a state law that took effect this summer decriminalizing possession of less than 10 grams of marijuana. Chicago cops [in 2017] will make about 4,200 arrests for misdemeanor pot possession — down from 20,000 five years ago.").
- ¹³ Note that this does not include drug cases filed without felony review by the State's Attorney's Office.



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