

# ***EXERCISING FULL POWERS:***

Recommendations to Kim Foxx on  
Addressing Systemic Racism in the  
Cook County Criminal Justice System

**A Report from Community Partners**

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

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# INTRODUCTION

In 2016, Cook County State’s Attorney Kim Foxx was elected in a landslide victory that was widely seen as a referendum on Cook County’s criminal justice system. Voters rejected the “tough on crime” stance of Anita Alvarez as well as her cover-up of the police murder of Laquan McDonald. Voters chose, instead, a candidate who ran on a platform of holding police accountable and reversing some of the policies that led to massive increases in the number of African American and Latinx people incarcerated in Cook County.

Changing practices in such a large criminal justice system is a big order. The People’s Lobby and Reclaim Chicago – which organized a significant portion of Kim Foxx’s electoral operation – have been working with Chicago Appleseed to report regularly on Foxx’s progress to reduce incarceration. The following is a report on the first nine months of 2018 data released by the State’s Attorney’s Office. It includes key recommendations for how Foxx can strengthen her decarceration efforts and be a leader in rolling back the failed policies of over-policing and mass incarceration.

In this report we evaluate the performance of Foxx’s State’s Attorney Office on four major criteria we believe are vital to the advancement of criminal justice reform and overturning decades of systematic racism in the Cook County court system. We look at the role of felony charging by the prosecutor’s office and highlight limited successes in a context of rising felony charging by Foxx’s office. How people are charged within the criminal justice system has far reaching consequences not just for sentencing, but also for people’s ability to avoid pre-trial detention. We analyze how wealth and class effect pre-trial detention in light of recent reforms by Chief Judge Evans and attempts by Foxx to find alternatives to incarceration. This type of research and evaluation is only possible with regular, detailed access to data from the court system, so we evaluate Foxx’s efforts at transparency in a court system renowned for antiquated and incomplete record keeping. The most recent data release also provides a clearer window into how gun crimes are charged and adjudicated. The data suggest that a “war on guns” is now adding to the “war on drugs” with equally disastrous results.

# METHODOLOGY

The data in this report was gathered primarily from the State's Attorney's Office's public data disclosures, available on the Cook County government website. The data sets used in our analysis were those regarding "Charge Initiation", "Intake", "Sentencing", and "Dispositions" that were updated on October 3, 2018. The data was analyzed by policy analysts at Chicago Appleseed and DataMade. When examining overall trends we excluded case-level data from before 2010 because the quality and consistency of data improved substantially post-2011 due to internal rule changes about data

entry by attorneys. We also excluded entries that did not have key fields (a case or defendant identifier, a specific act and section of Illinois law violated, or a disposition and sentence listed).

When measuring data from Attorney Foxx's administration, we used all data from events that occurred in 2017 and 2018. When measuring data from Anita Alvarez's administration, we used data dating from 2011-2016. Where noted, we instead used data from 2015-2016 to analyze Attorney Alvarez's administration where comparing similar amounts of time is necessary.

## GOAL 1: REDUCE FELONY CHARGING AND END THE WAR ON DRUGS

Felony convictions cause devastating consequences for people of color and the poor in Chicago. A felony conviction is often a sentence of poverty, with those convicted facing discrimination in employment,<sup>1</sup> housing, financial aid and other vital parts of civil society.<sup>2</sup> And, broadly, felony convictions are racially discriminatory, with 33% of adult African American males in the U.S. having a felony conviction.<sup>3</sup> Felony charging is particularly insidious because it can negatively affect the trajectory of a case and prevent less punitive interventions. The Cook County State's Attorney is responsible for deciding whether to prosecute someone with a felony. Reducing the rate of people charged and then prosecuted with felonies is a powerful tool to reduce the racist and discriminatory effects of felony convictions and of mass incarceration.

An important measure of State's Attorney Foxx's efforts to reduce incarceration is the number of felonies charged and the number of felonies rejected in felony review. In June of 2018, we released a study of the comprehensive data released by the State's Attorney's Office covering State's Attorney Foxx's first full year in office (2017) plus the previous 5 years. In this report, we have analyzed the first nine months of 2018 data released by the State's Attorney's Office and found a mixed set of results, with some numbers showing a decrease in

incarceration and others moving in the opposite direction.

In most felony cases, police recommend felony charges that prosecutors are then given the opportunity to review and decide to approve or not approve. The major exception to this is drug cases, in which the State's Attorney's Office allows police to file charges directly without felony review. The numbers that are important in evaluating the effectiveness of decarceration efforts are A) the total number of felonies charged, and B) the percentage of felonies recommended by police that the State's Attorney's Office decides to approve. In this report, we compared the numbers from January through September of 2017 to the numbers from January through September of 2018 in order to evaluate how State's Attorney Foxx has progressed in the first nine months of their second year in office. We compare the same months in both years in order to account for seasonal variation in crime rates and arrest rates.

The number of people charged with felonies by the State's Attorney's Office from January to September increased from 25,944 in 2017 to 26,289 in 2018. The number of people that the police arrested and charged with drug felonies or recommended be charged with non-drug felonies also increased, from 27,430 to 28,008, and the subset of people charged with drug

# GOAL 1: REDUCE FELONY CHARGING AND END THE WAR ON DRUGS CONTINUED

felonies increased from 9,392 to 9,612. At the same time, the number of people arrested by the police whose felony charges were rejected by the State's Attorney's Office during felony review went up from 1,486 to 1,719. The rate of rejection of felony charges by the felony review process went up from 8.24% to 9.34%.

There are two important points about these numbers. One, the number of felony charges – a key metric that leads to future incarceration – is going up, which is problematic for a State's Attorney who promised to reduce incarceration. The rate of rejecting charges in felony review is also going up, which is a good sign, but that increase is small. Two, the increase in the number of people charged with drug felonies directly by the police is close to the total increase in the total number of people charged with felonies. This shows that in refusing to require felony review for drug charges, the State's Attorney's Office is leaving a tool on the table that could be useful for their decarceration agenda.

In response to our report in 2018, States Attorney Foxx noted that she was hesitant to reduce prosecutions across the board for petty amounts of narcotics, since she had received backlash from some law enforcement groups for her across-the-board raising the cash amount necessary to trigger a felony retail theft<sup>4</sup> charge in December 2016. These law enforcement groups alleged that increasing the felony threshold would increase the incidence of retail theft. We believe that Foxx's critics are wrong. Contrary to criticisms, there has been no rise in the number of larceny arrests between 2016 and 2017.<sup>5</sup> Indeed, the number of larceny arrests fell from 7299 arrests in 2016 to 7062 arrests in 2017. Foxx should not allow critics who make overblown or counter-factual claims deter their decarceration efforts.

In an interview with the Marshall Project<sup>6</sup>, in which Foxx responded to our report on her first year in office<sup>7</sup>, Foxx vowed to put her office's weight behind state-level legislation to reform laws related to the possession of small amounts of narcotics. Foxx's office should lead the way in publicly calling for new laws that

eliminate felony charging for low-level drug possession cases.

Although her office is still charging a huge number of felony narcotics cases, Foxx's administration has provided some relief in the form of deferred prosecution programs. Foxx's administration has created a larger set of diversion courts for low level drug offenses and is diverting more drug cases out of the criminal justice system. These diversion programs and specialty courts allow individuals to complete community based services – usually drug treatment – in order to have their cases dismissed. Foxx has more than doubled the percentage of felony drug cases that are diverted, both by using existing programs and by creating new ones. Foxx is diverting about 8% of narcotics and cannabis cases to diversion programs and specialty courts, compared to only 5% during 2015 and 2016 under Anita Alvarez's Administration<sup>8</sup>. Foxx's office was instrumental in creating a new diversion court for non-violent crimes when they helped create the Restorative Justice Community Court in North Lawndale<sup>9</sup>. So far, Foxx's office has dismissed at least 1,869 cases because of successful completion of diversion programs.<sup>10</sup>

This still leaves thousands of individuals charged with possession or delivery of narcotics and cannabis in the traditionally punitive justice system. The Foxx administration could be reaching more people with their reforms. All States Attorney's diversion programs have restrictions on who can enter them, some taking into account not only adult criminal history but also juvenile delinquency history. Many are only available to first time offenders. And, as explained below, eligibility relies on how a defendant is charged by the police. This means that overcharging decisions by police can shut out defendants who might otherwise be good candidates for diversion.

In most criminal cases in Cook County, a team of lawyers called the Felony Review Unit reviews arrest reports, speaks to officers and witnesses, determines whether charges are warranted, and decides what those charges should be. The Cook County State's Attorney's office,

however, does not review narcotics cases prior to charging. Instead officers themselves, rather than lawyers, decide what charges have enough evidence to proceed with prosecution, and how harshly each arrest should be charged. This discretion should be in the hands of trained states attorneys, rather than police officers. The lack of felony review for drug cases causes substantial harm because the ways facts are interpreted by an individual lawyer or police officer can have a major effect on how the case is charged and its ultimate outcome. As noted above, Foxx has reduced the number of felony charges that their office has approved, but narcotics cases remain shielded from this change because they lack any felony review by attorneys.

The fact that officers, rather than lawyers, make charging decisions in drug cases can lead to overcharging. The effect is noticeable in the State's Attorney's data releases. In non-narcotics cases, lawyers from the State's Attorney's Office review the cases at the very beginning of the case. They choose the class of felony that corresponds to the facts that, in their legal opinion, allow them to pursue the prosecution further. In general, although some felony charges are reduced to a less serious class during plea deals, it is rare for lawyers to reduce the charge dramatically in non-narcotics cases. Only 4% of non-narcotics cases are reduced all the way down from a Class X felony, the most serious felony, to a Class 4 felony, the least serious.<sup>11</sup> This is what we would expect – it shows that in general, the State's Attorneys who eventually negotiate plea deals in cases are making judgments about the seriousness of cases that are not wildly out of step with how their colleagues assessed the case at the outset.

But in comparison, State's Attorneys in narcotics cases are routinely finding that the original charge chosen by police was substantially too serious. 49% of Class X hard drug<sup>12</sup> felonies are eventually plead out as Class 4 felonies. The gulf between the State's Attorney's assessment of the case, and the police's assessment suggests that the Chicago Police are routinely charging people with drug charges that are more serious than what Foxx's own office would recommend. This could be because the lawyer who eventually reviews the case believes they cannot prove the facts they would need to prove to justify the higher class. It could also mean that regardless of the provable facts of the case,

Foxx's office is showing leniency and mercy by reducing narcotics cases to less serious felonies. Either way, allowing police to choose the original charge in narcotics cases may stymie some of Foxx's reform efforts.

Simply being charged with a Class X felony can have serious consequences for a criminal case, whether or not a person ends up ultimately convicted of a Class X felony. Being charged with a Class X felony makes it impossible to access many of the diversion programs that the Foxx administration uses for drug crimes: while 15% of Class 4 hard drug felonies were diverted since January 2017, only .01% of Class X hard drug felonies were diverted. Individuals charged as Class X felons have a lot to lose by fighting their cases. If an individual goes to trial and loses, they face a mandatory minimum of 6 years in prison. This highly incentivizes people to plead guilty and creates substantial risk of individuals being coerced to give up their constitutional rights.

If Foxx's office wants to reach more people with their reforms, they need to institute felony review by attorneys in narcotics cases, just as they do in all other felony cases. Even if resources do not immediately allow review of every felony drug case, Foxx's office should focus its initial attention on Class X drug felonies. Lawyers, not police officers, should be making the legal decisions about how serious a felony to charge an individual with.

## Recommendations:

1. Institute Felony Review for Narcotics Charges, with the highest priority on Class X drug charges.
2. Expand eligibility requirements for States Attorney diversion programs to include Class X drug felonies.
3. Work with advocates to change Illinois laws to decrease penalties for low-level drug possession felonies.



## GOAL 2: ADVANCE BAIL REFORM

The picture of bail reform in 2018 has been shaped by Chief Judge Evans's general order that requires judges to set money bail only at levels that defendants can afford after conducting investigation into their ability to pay. That order went into effect in September 2017 and in the first few months of its implementation dropped the Cook County jail population by almost 1,000 inmates; a population of 6,940 prisoners in October 2017 dropped to 6,015 inmates in May 2018. The progress on decreasing the jail population since then has been uneven. The period from August to September of 2018 saw the first substantial rise in the jail population; there were 188 more people in jail in September than there were in August, though that number has gone back down and is now at a 30-year low of less than 5,700. Between July and September, over 1,000 people spent at least some period of time incarcerated solely because a judge set their bond too high for them to afford<sup>13</sup>.

Foxx has made strong statements calling for an end to money bond<sup>14</sup>, but their office could do more to help make sure defendants are not held in custody solely because they cannot afford to pay. The State's Attorney has a uniquely powerful role to play in implementing bond reform. Bond court observers have measured that when States' Attorneys recommend that defendants be released on I-Bonds (where they are not required to post any money to secure their release), those recommendations are followed by bond court judges 90% of the time. Foxx has instituted a policy of requesting I-Bonds in a subset of low level, non-violent felony charges for individuals with no violent crimes in their background. I-Bonds have proven to be safe and successful for individuals who have many kinds of backgrounds and charges; of the approximately 20,000 people released since October 2017, only 13.2% have been re-arrested for any misdemeanor or felony, and of those who have been arrested, only 0.5% (97 defendants) have been charged with a new violent crime while on pre-trial release. The State's Attorney's office has not thus far updated their I-Bond policy to include more types of offenders, even as the data becomes clearer that the vast majority of defendants can be released without creating

any risk to public safety. If this policy were expanded it could have a dramatic effect in reaching the bond reform goals Foxx has said that she supports.

In another area, Foxx has decreased the use of punitive felony charges against individuals who violate pretrial conditions. They have achieved this by decreasing the filing of felony charges against people who violate the terms of their electronic monitoring program. The State of Illinois has an extremely broad felony called "Escape" from electronic monitoring, which criminalizes much more than what the average lay person would consider "escape." Rather than only criminalize those who become fugitives after violating Electronic Monitoring, or those who commit new crimes while in the program, this statute makes it a Class 3 felony to violate ANY terms of the electronic monitoring program while on pre-trial release for a felony. The Cook County Sheriff's electronic monitoring program requires individuals to remain in their homes 24 hours a day, 7 days a week, 365 days a year, unless they receive specific permission for some activities by the Sheriff's department<sup>15</sup>. Even relatively minor, non-criminal acts like getting locked out of one's house and needing to stay elsewhere for an evening or attending school or work without official approval could violate the statute and add 2-5 years prison time to the individual's underlying charge if convicted<sup>16</sup>.

Escape prosecutions are exactly the kind of charges we expect that States' Attorneys will apply with care and discretion to avoid injustice. Foxx has reduced the filing of escape and violation of electronic monitoring felonies. Foxx's felony review team is approving about 92.5% of these "escape from electronic monitoring" cases, where in a similar period (2015-2016) Anita Alvarez charged 98.2% of them<sup>17</sup>. The fact that 92.5% of these cases are still being charged may mean that some people who commit minor, technical violations of electronic monitoring programs are facing the harsh charge of a Class 3 felony. Attorney Foxx should limit the charging of escape felonies for individuals who flee the jurisdiction or evading are prosecution.

## Recommendations:

1. Speak out publicly in favor of full enforcement of General Order 18.8a.
2. Direct Bond Court prosecutors to request I-Bonds in an increased number of cases.
3. Discontinue the charging of felony escape charges against EM participants who disobey the rules of the program because of emergencies or to attend to reasonable functions of everyday life, reserving use of the statute for people who leave their approved location for the purpose of evading prosecution.



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.



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.



## GOAL 3: INCREASE TRANSPARENCY & ACCOUNTABILITY

In March 2018, Foxx's office released a huge amount of case level data dating back to before 2011. It includes much of what The People's Lobby and Chicago Appleseed asked for in our June 2018 report, including felony charging information, with race, age, and gender breakdown, felony review information, and full sentencing information for tens of thousands of cases. There are visualization tools available on the website, and the data reports are fully downloadable for researchers and the public to explore and use. They followed up with an update about 6 months later that included 2018 data through October. This is the largest data release by any State's Attorney in Cook County history and allows unprecedented access to information about the court system. Foxx has also created an internal data team which ran a free training for criminal justice reformers to educate them about the data sets and how to interpret them.<sup>18</sup> Foxx is showing a genuine desire to reveal the inner workings of the office, warts and all.

There are a few things that are not included in the public data that would make excellent further disclosures. Information about bond and pretrial incarceration is not included. Information on the pre-trial release status of defendants could allow reformers and the Foxx administration itself to see the precise effects of pretrial incarceration on the length of pre-trial cases and on the severity of sentences. The data does also not include any information about plea negotiations, such as noting whether an original offer was made by a prosecutor and whether it was accepted or rejected before landing on a final plea deal. There is also no misdemeanor data. Our understanding is that currently, misdemeanor data is not recorded electronically with the same regularity as felony data. However, misdemeanor charges can have a huge impact on individuals' lives. More importantly, the number of misdemeanor arrests in Chicago dwarfs the number of felony arrests; there were over 42,000 misdemeanor arrests by Chicago Police in 2017, compared to less than 20,000 felony arrests.<sup>19</sup> Thus, the majority of individuals who interact with the criminal justice system in a given year do so in the misdemeanor courts.

Misdemeanor data is vital to understanding how exactly the criminal justice system is functioning in Cook County. State's Attorney Foxx should create a system that will start capturing that data and release it in a similar way to felony data.

Lastly, while it's understandable that the office doesn't want to release juvenile court data - even if it is anonymized - to the public, it would be beneficial if the office could create a structure where researchers can apply for access to that data, so that researchers can begin probing the efficacy and fairness of the juvenile courts in the same way they do the adult courts. The juvenile delinquency system in Cook County has a substantial caseload and affects the lives of thousands of children. According to data by the Illinois courts, 4,032 new juvenile cases were filed in 2017.<sup>20</sup> At the very least, Foxx should release aggregate data reports on the juvenile justice system that its own office produces so that the public can have more information about how those court cases proceed.

Overall, the Foxx Administration should be commended for its data disclosures, and we look forward to additional and broader access.

### Recommendations:

- Continue to release data reports; aim for quarterly data releases, rather than yearly
- Provide a waiver/researcher agreement program for qualified researchers to access non-anonymized data that is part of the public record but has not been publicly released
- Work with the juvenile courts to allow researchers access to anonymized juvenile court data



## GOAL 4: ADDRESS PATTERNS OF GUN POSSESSION CASES WHERE POLICE HAVE FREQUENTLY PROVIDED INSUFFICIENT EVIDENCE TO CONVICT

In Illinois, the possession of a firearm by someone who does not have a firearm owner identification card (FOID) is a Class 4 felony, called “Aggravated Unlawful Use of a Weapon”<sup>21</sup> (720 ILCS 5/24-1.6). Despite the somewhat misleading name, being found guilty of this felony does not require that a person use a weapon in a crime. All the state must prove is that they had a loaded firearm in their possession, either on their body or in a location where they could immediately access it, and they were not in their own home.<sup>22</sup> The fact patterns in these cases generally involve a law enforcement officer observing a person in possession of a gun, either because they see it in their hand and confiscate it or lawfully search them or their immediate surroundings and find a loaded firearm. In theory, these cases should be straightforward and easy for the state’s attorney to prove – or at least, as easy for the state’s attorney to prove at trial as other contraband possession cases like drug possession felonies.

In fact, the data shows that Foxx’s office is having a substantially harder time proving gun possession cases at trial than drug possession cases. Since January 2017, Foxx’s office has resolved 1,097 gun possession charges where gun possession was the most serious charge. Of those, 93.4% ended with a plea of guilty, and 6.6% - a total of 72 - went to trial. At trial, Foxx’s office won just 16 of these trials, about 22%. In the other 56 trials, the judge or jury found the defendant not guilty of gun possession. This problem is a smaller sample of an issue that has affected both Attorney Foxx and Attorney Alvarez’s administrations. Since 2011, the State’s Attorney’s Office has taken 1,214 gun cases to trial and has only won 27% of them.

These success numbers at trial are substantially lower than the trial outcomes in another major type of possession case; possession of narcotics. Foxx’s office has resolved 1,174 Class 4 drug possession cases since January 2017.<sup>24</sup> Of those, 97% resulted in a plea of guilty. When

the cases did go to trial, Foxx’s office won 42% of the time. Since 2011, the office has won Class 4 drug possession cases 47% of the time. The gaps between the dispositions of trials in the two types of possession cases are troubling.

The concern raised by these numbers is that they may show that the gun possession cases are weaker than other classes of cases that the State’s Attorney is bringing forward. Foxx herself addressed this issue in an interview with the Chicago Tribune in July 2017, noting the win rate in gun possession cases is “an embarrassing number.” She noted the primary concern raised by these numbers, asking “Are we charging the right cases? Do we have sufficient evidence on these cases?”<sup>25</sup>

These are exactly the questions that Foxx’s office should be asking and acting upon. There are three main reasons why this problem should be of immediate concern given the Foxx administration’s commitment to reform and to the integrity of their prosecutions. First, gun possession charges are among the most commonly charged case by Foxx’s administration. Police referred 8,424 charges of gun possession to Foxx’s office,<sup>26</sup> and prosecutors approved felony charges on 90% of them. Only narcotics charges are made more frequently. Second, gun possession charges disproportionately affect young men of color. Since January 2017, 16% of gun possession arrestees have been under 21, compared to 10% of arrestees overall in all cases. 96% are Black or Latinx, compared to 85% overall.<sup>27</sup> Third, penalties for gun charges are rising; the most common gun possession charge, under 720 ILCS 5/24-1.6(a)(1), now carries a one-year mandatory minimum in prison. Even more concerning is the rising rhetoric that “gun offenders,” a term that nearly always lumps lower level gun possession felonies with more serious gun discharge and gun trafficking cases, are dangerous and should not be released pretrial.

## GOAL 4: ADDRESS PATTERNS OF GUN POSSESSION CASES WHERE POLICE HAVE FREQUENTLY PROVIDED INSUFFICIENT EVIDENCE TO CONVICT CONTINUED...

If there is a systemic problem where people are being improperly charged with gun possession at a higher rate than other crimes, this discrepancy is falling hardest on young black men who already face heavy stigma in the criminal justice system. The weakness of gun possession cases amplifies the need to ensure that we are not stigmatizing people who are simply charged with gun possession crimes by labeling them as “violent offenders.” Every time an innocent person goes through the criminal justice system, only to be ultimately found not guilty, it vastly and unjustly disrupts that person’s life and can stigmatize them for the long term. These effects are even more severe in cases where judges, sheriffs, police and State’s Attorneys have decided people charged with those crimes are inherently “high-risk” or “violent,” because those defendants will be more likely to be incarcerated pre-trial or face restrictive pre-trial electronic monitoring or other requirements. Data from the office of the Chief Judge shows that defendants with gun possession charges make up 15.7% of the Cook County Jail Population and 34.6% of the population released on Electronic Monitoring.<sup>28</sup> Since gun possession defendants are more likely to be found not guilty than the average defendant, and they are more likely to face severe pre-trial conditions than the average defendant, the system is likely placing a highly unjust burden on a substantial number of innocent people.

The fact that these cases are being lost at a high rate at trial is disturbing because the specific kind of evidence that possession cases normally requires is law enforcement testimony. There are many reasons that judges and juries can find that the state has not presented sufficient evidence to prove beyond a reasonable doubt that a defendant has committed the crime he is accused of. In possession cases, however, police testimony is often central to the state’s case. In many cases, the word of the officer who testifies that they saw the defendant holding a gun is the centerpiece of the State’s case. Judges and juries may not believe the testimony of these officers, or they may not find that their testimony to be persuasive enough to prove that the defendant is guilty of a crime. Having zero tolerance for perjury by police has been a hallmark of Foxx’s policy positions since day one. The 73% of gun possession cases that go to trial and come out without a conviction may be a fruitful place to look for officers who are routinely failing to arrest the right people or tell the truth in court.

### Recommendations:

- Improve scrutiny and oversight of gun offense charging decisions in felony review process.
- Improve training of staff involved in felony review.

## CONCLUSION

State’s Attorney Kim Foxx was one of the first of a growing number of reform prosecutors winning elections all over the country. She has played a significant role in some important reforms in Cook County, from bail reform to increasing the threshold for felony retail theft to exonerating dozens of defendants convicted on the testimony of corrupt police officers. There continue to be some extremely important areas for improvement that would lead to significant further reductions in incarceration in the County.

# REFERENCES

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- <sup>2</sup> COLLATERAL CONSEQUENCES OF CRIMINAL CONVICTIONS: CONFRONTING ISSUES OF RACE AND DIGNITY by Michael Pinard [https://digitalcommons.law.umaryland.edu/cgi/viewcontent.cgi?article=1820&context=fac\\_pubs](https://digitalcommons.law.umaryland.edu/cgi/viewcontent.cgi?article=1820&context=fac_pubs)
- <sup>3</sup> The Growth, Scope, and Spatial Distribution of People With Felony Records in the United States, 1948–2010 by Sarah Shannon, “We estimate that 3 % of the total U.S. adult population and 15 % of the African American adult male population has ever been to prison; people with felony convictions account for 8 % of all adults and 33 % of the African American adult male population.” [https://link.springer.com/epdf/10.1007/s13524-017-0611-1?author\\_access\\_token=jXD6ohexE1c1ur2WRWhpkfe4RwlQNchNBiy7wbcMAY4uMYrYNkMZx911WjnbPAWM-g13AQImw4x8-Va1oT3wS1z7bR6McpJuw6uJspKuwHQtd1aIlFBkHajdo4QVT1CPUCL7C\\_5xQhC8-ZXzjA6g%3D%3D](https://link.springer.com/epdf/10.1007/s13524-017-0611-1?author_access_token=jXD6ohexE1c1ur2WRWhpkfe4RwlQNchNBiy7wbcMAY4uMYrYNkMZx911WjnbPAWM-g13AQImw4x8-Va1oT3wS1z7bR6McpJuw6uJspKuwHQtd1aIlFBkHajdo4QVT1CPUCL7C_5xQhC8-ZXzjA6g%3D%3D)
- <sup>4</sup> Steve Bogira, The Marshall Project. “The Hustle of Kim Foxx”. October 29, 2018. Available at <https://www.themarshallproject.org/2018/10/29/the-hustle-of-kim-foxx>.
- <sup>5</sup> Data Analyzed from the Chicago Police Department’s Public Arrest Data, available at <https://home.chicagopolice.org/online-services/public-arrest-data/>. Larceny crimes were defined as those that used the FBI code “6”, which, according to the Chicago Police, includes Retail Theft, Identity Theft, and other non-violent takings of property. Definition of FBI codes used by the Chicago Police Available at: [http://gis.chicagopolice.org/clearmap\\_crime\\_sums/crime\\_types.html](http://gis.chicagopolice.org/clearmap_crime_sums/crime_types.html).
- <sup>6</sup> <https://www.themarshallproject.org/2018/10/29/the-hustle-of-kim-foxx>
- <sup>7</sup> <https://www.thepeopleslobbyusa.org/report-kim-foxxs-progress-on-reform-agenda/>
- <sup>8</sup> Data analyzed by Chicago Appleseed Fund for Justice; “diverted” cases were those in the disposition data table where the charge disposition reason was marked as ‘Deferred Prosecution Program Completed’, ‘Drug Court Graduate’, Mental health Graduate, Veteran’s Court Graduate, Rehabilitation Alternative Probation, Restorative Justice Community Court, or abbreviations of these programs. Because not all charge dismissals include an entry in the “Charge Disposition Reason” field, these count may underestimate the total number of people diverted. Data gathered by Attorney Alvarez’s administration in 2015-2016 and data gathered by Attorney Foxx’s administration in 2017-2018 have similar rates of blank entries for in “charge disposition reason” for case dismissals (In both administrations, approximately 54% of dismissed cases have a specific reason for dismissal entered)
- <sup>9</sup> Restorative Justice Community Court arrives in North Lawndale, July 20, 2017, available at: <http://www.cookcountycourt.org/MEDIA/ViewPressRelease/tabid/338/ArticleId/2564/Restorative-Justice-Community-Court-arrives-in-North-Lawndale.aspx>.
- <sup>10</sup> Analysis by Chicago Appleseed; based on charge dispositions in 2017 and 2018 that had their charge disposition reason listed as a dismissal due to a deferred prosecution program. Because not all charge dismissals include an entry in the “Charge Disposition Reason” field, this count may underestimate the total number of people diverted.
- <sup>11</sup> Analysis by Chicago Appleseed of all cases charged under statutes OTHER than the Illinois Controlled Substances Act (720 ILCS 570)
- <sup>12</sup> By “hard drug felonies”, we refer to charges for non-cannabis controlled substances charged under the Illinois Controlled Substances Act.
- <sup>13</sup> Office of the Chief Judge, “Circuit Court of Cook County Model Bond Court Dashboard”, available at “<http://www.cookcountycourt.org/Portals/0/Chief%20Judge/Model%20Bond%20Court/Q3%202018/CY18-Q3%20MBC%20Dashboard%2011.27.18.pdf>”
- <sup>14</sup> Steve Bogira, The Marshall Project. “The Hustle of Kim Foxx”. October 29, 2018. Available at <https://www.themarshallproject.org/2018/10/29/the-hustle-of-kim-foxx>.
- <sup>15</sup> Cook County Sherriff’s office; “Electronic Monitoring Program Placement”, available at <https://www.cookcountysheriff.org/cook-county-department-of-corrections/electronic-monitoring-program-placement/>. Accessed December 21, 2018.
- <sup>16</sup> As a class 3 felony, Escape from Electronic Monitoring carries a sentence of 2-5 years, or probation. Normally, when an individual is sentenced for two cases at the same time, the sentences are served concurrently. However, because, by definition, Escape from pre-trial electronic monitoring happens when an individual is awaiting trial on a prior case, Illinois law requires that the sentence for escape be run consecutively, rather than concurrently with the sentence for the first case (See 730 ILCS 5/5-8-4(d)(8)).
- <sup>17</sup> Data Analyzed from the “Intake” data set of the State’s Attorney’s public data. In 2015 and 2016, Attorney Alvarez’s felony review team received 848 referrals for felonies titled “Escape – Failure to Return”, and approved 833. In 2017-October 2018, Kim Foxx received 818 referrals for Escape and approved 757.
- <sup>18</sup> <https://www.cookcountystatesattorney.org/about/h4ck1ng-4-just1c3>
- <sup>19</sup> “Chicago Public Arrest Data 2014-2017”, available for download at <https://home.chicagopolice.org/online-services/public-arrest-data/>. Accessed December 21, 2018. There were 19,627 felony arrests and 42,620 misdemeanor arrests.
- <sup>20</sup> Annual Report of the Illinois Courts, Statistical Summary – 2017. Available at: <http://www.illinoiscourts.gov/SupremeCourt/AnnReport.asp#2017>., accessed December 21, 2018.
- <sup>21</sup> The statute labeled simply “Unlawful Use of a Weapon”, rather than “Aggravated” is reserved for weapons that are not firearms, like knives and Tasers.
- <sup>22</sup> There are a number of other aggravating factors that can cause the act of possessing a handgun as “Aggravated Unlawful Use of a Weapon”. The fact scenario described is the most common way that a person is charged with gun possession. For our analysis, we including in the term “gun possession” all felonies that involve the possession of a firearm and NOT its discharge or use in any other crime. Statutes included in Chicago Appleseed’s analysis were 720 ILCS 5/24-1(a)(4), 24-1(a)(7), 24-1(a)(8), 24-1(a)(9), 24-1.6(a)(1), 24-1.6(a)(2), 24-1.6(d), 24-1.8(a)(1), 24-1.8(a)(2), 24-3.8, 24-5(b), and 24-3.9(a)(1).
- <sup>23</sup> By “resolved” we mean charges that resulted in either a plea of guilty or a trial. We do not include charges that were diverted or dismissed. We examined only those cases where the “primary charge” as indicated by the states attorney’s office data set, was the gun possession charge, rather than a separate felony like robbery or battery.
- <sup>24</sup> These are cases where the primary charge is a class 4 violation of the Illinois Controlled Substances Act; in effect, it includes only cases that involve possession, rather than delivery, of hard drugs.
- <sup>25</sup> “Top prosecutor ‘stunned’ at how few gun cases brought to trial yield convictions”. Chicago Tribune, July 27, 2017. Accessed at: <https://www.chicagotribune.com/news/local/breaking/ct-kim-foxx-gun-convictions-met-20170725-story.html>. Accessed December 21, 2018.
- <sup>26</sup> This number refers to charges, not individuals charged. Most arrests will result in multiple felony charges being filed against a single person. Each felony charge against a person is approved separately by prosecutors.
- <sup>27</sup> Of those for whom race was recorded. It is important to note that States Attorney race data is reported by CPD, and is not self-reported data given by defendants, so exact counts of each racial identity may not be accurate.
- <sup>28</sup> Office of the Chief Judge of Cook County, “2018 Q3 Model Bond Court Dashboard”, available at : [www.cookcountycourt.org/ABOUTTHECOURT/OfficeoftheChiefJudge/CourtStatisticsAndReports.aspx](http://www.cookcountycourt.org/ABOUTTHECOURT/OfficeoftheChiefJudge/CourtStatisticsAndReports.aspx)



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