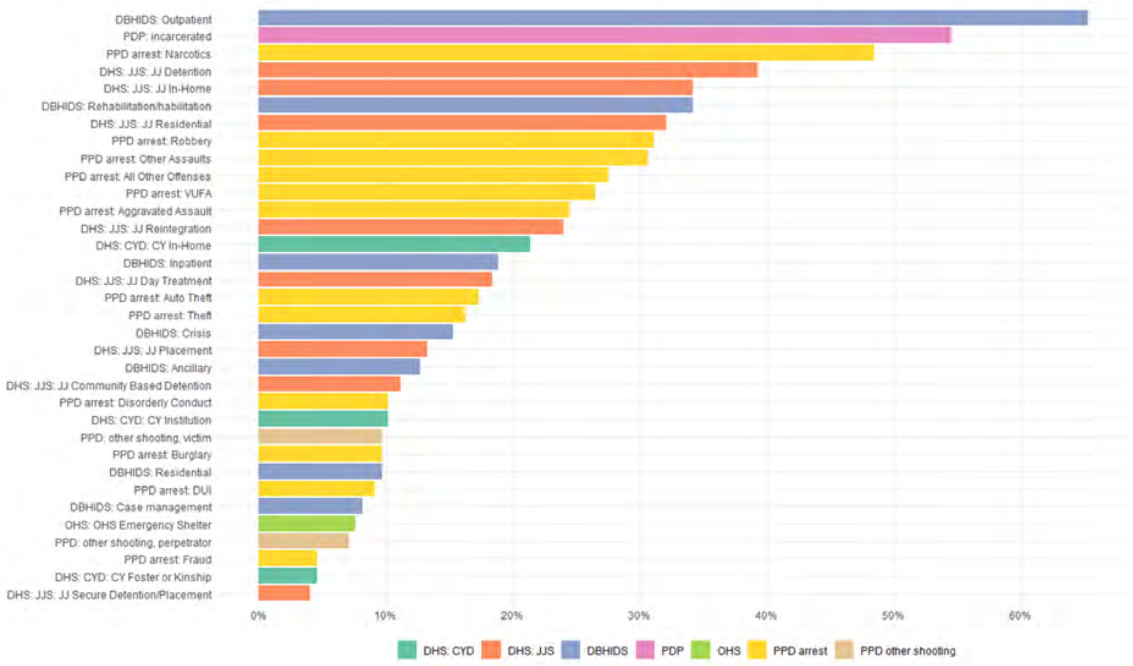

This figure demonstrates the most frequent contacts seen in our cohort. What is demonstrated here is that over 60% of those in this cohort had an outpatient DBHIDS contact, and over 50% were previously incarcerated. Further work in this area needs to be focused on better defining these data elements. In developing this data, PDPH met with representatives from all the agencies who contributed data to this report. Those conversations outlined the importance of understanding the nature of these contacts to better outline what opportunities they might provide. What is the duration of the contact, who is the individual making contact and to what degree is that interaction trauma-informed, what resources is that individual given access to so that necessary referrals can be made, and what additional data do individuals have about the life experiences of those they interact with–these are all critical questions if these are to be seen as opportunities for intervention.

Appendix 9: Defender

Annotated Footnotes: Ecology of Violence Model (full citations at end of document)

A. Factors Influencing Neighborhood-Level Perceived Risk and Safety

1: *Exposure to gun violence*. Exposure to community violence is directly linked to perceived personal threat and increases motivation to carry a gun (Loughran et al, 2016). Direct and indirect exposure to gun violence contributes to increased fear and perceived risk (Mitchell et al., 2019).

2: *Availability and prevalence of firearms*. Increased neighborhood-level availability of illegal firearms predicts a higher frequency of shooting incidents (Yu et al., 2017). Also refer to footnote 1.

3: *Perceptions of law enforcement*. As one might expect, perceived effectiveness of law enforcement is lower in communities where frequent shootings occur (Payne & Gainey, 2007; Yu et al., 2017). Negative perceptions of law enforcement will also result in reduced cooperation with law enforcement, as shown by a significant reduction in 911 calls following a publicized incident in which a Black person was killed during an encounter with police (Desmond et al., 2016).

4: *Perceived threats to personal safety*. In summary, neighborhood exposure to gun violence is exacerbated by the high availability of illegal firearms. Where exposure to gun violence is high, residents fear for their personal safety even when there is a visible law enforcement presence. Negative perceptions of law enforcement contribute to reduced cooperation with law enforcement.

B. Social Capital

In simple terms, “social capital” may be defined as resources that are obtained through interpersonal networks – for example, whether a neighborhood resident can call upon a next-door neighbor to provide child care, whether residents monitor suspicious activity, or jointly contribute to the maintenance and improvement of their block. In this review, we equate “low social capital” with a very similar construct known as “social disorganization.” Both refer to variations in neighborhood-level social cohesion, a shared interest in and commitment to neighborhood improvement, and mutual support.

Criminologists have noted that, when comparing neighborhoods that are equally socio-economically disadvantaged, crime rates may differ markedly. They have found that "social disorganization" (or low social capital) is a predictor of criminal activity and helps explain why similar communities experience dissimilar levels of criminal activity. In the 1990s, advocates of "broken windows theory" noticed that quality of life offenses such as loitering and vandalism are associated with more serious crimes, and opted to prosecute these offenses more aggressively; an alternative explanation is that loitering and vandalism are indicators of social disorganization and may be ameliorated by strengthening social capital within these communities (Binik et al., 2019).

Tree-planting campaigns and related neighborhood improvement strategies are effective crime-reduction strategies insofar as they increase social capital. They may also have unintended deleterious effects if they result in rising property values. Rising property values may result in increased *residential turnover* as disadvantaged residents are pushed out (see footnote #5, below; also, Schwarz et al., 2015; Wachter & Wong, 2008).

Socio-economically disadvantaged communities receive large numbers of parolees returning from correctional institutions. Researchers sought to understand the impact on returning parolees on local increases in crime rates. They found that violent parolees do contribute to increased neighborhood-level crime. However, in communities exhibiting a high level of social capital, the impact of parolees on crime is significantly reduced (Hipp & Yates, 2009).

5: *Residential turnover*. It is a well-supported finding in criminological research that residential turnover is a contributing factor to social disorganization and neighborhood-level crime (Bellair & Browning, 2010). This may be most easily understood by considering neighborhoods where there is low turnover. Where there is low turnover, the following **protective factors** are often observed:

> *Familiarity*: Neighborhood residents easily recognize strangers on the block,
>
> *Neighboring*: Residents engage in mutual assistance and social interactions,
>
> *Participation*: Residents attend block activities and engage in crime prevention programs such as neighborhood crime watches,
>
> *Informal Surveillance*: Residents watch over one another's property.

6: *Lack of agency to impact community*. Referring to the previous footnote (#5), in neighborhoods where there is high residential turnover, residents cannot easily identify

strangers on the block, do not receive support from neighbors, and so on. These each contribute to feelings of powerlessness, social isolation, and mistrust (Booth et al., 2012).

7: *Limited and/or aversive interactions with neighbors*. Infrequent and/or aversive interactions with neighbors contributes to increased neighborhood dissatisfaction, fewer and weaker ties to neighbors, the desire to move out of a neighborhood, and lower involvement in activities aimed at improving the neighborhood (Booth et al., 2012; Sampson & Graif, 2009).

8: *Social Capital*. In summary, residential stability predictably fosters closer interpersonal ties among neighborhood residents. Where these ties are weak or absent, residents are more likely to feel powerless to improve neighborhood conditions.

C. Racial and Socio-Economic Segregation and Disinvestment

9: *Low access to legitimate employment*. An extensive body of research shows that long-term unemployment is directly associated with increased risk of criminal activity, and stable employment is associated with reduced recidivism among formerly incarcerated persons (Lageson & Uggen, 2013). Rather than review this large literature, a couple of key points will be made in connection with youth and the relationship between access to employment and neighborhood-level outcomes.

Summer Youth Employment Programs (SYEPs) have been shown to reduce justice-system involvement among youth. SYEPS provide employment opportunities for young people. It is theorized that structured employment provides youth with occupational skills, optimism regarding future employment, and serves as an alternative to the kinds of "unstructured activities," which, research has shown, may lead to criminal activity (Kessler et al, 2021).

Where there are few opportunities for legitimate employment, individuals may generate income by selling illegal drugs. On average, youth who sell illegal drugs earn an hourly wage that is no greater than the federal minimum wage. Research shows that even small increases in the availability of legitimate employment opportunities can produce a large reduction in drug-selling activity (Ihlanfeldt, 2007).

Where employment opportunities are very scarce, sellers who are incarcerated will be quickly replaced by other individuals; in this situation, the incarceration of a single individual predicts a subsequent *increase* in the number of first-time arrests for sales (Torres et al., 2020). Where a reduction in the number of visible drug transactions can be achieved, it will positively impact residents' level of satisfaction with both their neighborhood and the quality of local policing (MacDonald et al., 2007).

10: *Under-resourced public services*. A non-exhaustive list of public services related to neighborhood-level resilience includes churches, commercial resources, and needs-based government services. Each of these will be briefly discussed.

Churches. Local churches can contribute meaningfully to reductions in neighborhood-level crime. This is particularly true of churches which participate in building neighborhood-level social capital. The role of churches in crime reduction is most clearly evident in disadvantaged neighborhoods (Warner, 2019).

Commercial resources. Neighborhood availability of grocery stores, pharmacies, and fitness centers contribute to improved physical and mental health of residents. In high-crime, distressed neighborhoods, there are fewer of these resources. Increased fear of crime encourages residents to bypass local facilities and purchase these health-promoting goods and services in other neighborhoods (Tung, Boyd, Lindau, & Peek, 2018). In contrast, in neighborhoods with heavily-trafficked local shops and restaurants, social capital increases and crime is reduced (Cabrera & Najarian, 2013).

Needs-based government services. A geospatial analysis of Brooklyn reveals a very high degree of overlap, at the level of census blocks, between concentrations of formerly incarcerated persons and demand for TANF and public housing. These include so-called "million-dollar blocks," where amounts in excess of $1 million per year are spent incarcerating and returning residents to these blocks (Cadora, 2002). Thus, a greater unmet need for services is observed in high incarceration neighborhoods.

11: *Under-performing schools*. In a controlled study, at-risk high school students were randomly assigned to better-performing schools. Students who moved from lowest-ranking schools to average schools subsequently committed 50% fewer crimes than students who had not moved, and were involved in less severe crimes (Deming, 2011). As Deming points out, this finding is consistent with a large body of literature. Students are more likely to become disengaged from schooling if they attend under-performing schools (refer to footnote #20, below).

12: *Summary*. Based on converging empirical data cited above, it is theorized that low access to legitimate employment, under-resourced public services, and under-performing schools each uniquely contribute to neighborhood-level risk for gun violence and criminal activity.

At Risk Youth

13: *Family poverty*. Family poverty and community-level poverty each predict youth involvement in delinquent behavior. Where both are evident, the relationship to delinquency is even stronger (Hay, Forston, Hollist et al., 2007). Across the lifespan, poverty and mental illness exhibit a bi-directional relationship. Poverty contributes to symptoms of depression and anxiety; these mental illnesses contribute, in turn, to greater difficulty finding and maintaining legitimate employment (Ridley, Rao, Schilbach et al, 2020).

14: *Family insecurity / father absence*. In the 1990s, discourse surrounding absent fathers tended to stigmatize single-parent families (Haney, 2018); here, the focus is on incarceration-related, unplanned and involuntary separations of fathers from their children. After controlling for other sources of disadvantage, youth experiencing periods of father absence are at significantly greater lifetime risk of involvement with the criminal justice system (Chetty, 2018). Absence of a parent results in reduced parental monitoring of their children's behavior (Markowitz & Ryan, 2016). This sets the stage for delinquent peer affiliation (refer to footnote 16, below). As noted in the body of this report, paternal incarceration adversely impacts a family's financial resources and is a strong contributing factor to womens' risk of eviction.

15: *Trauma and victimization*. Researchers identified males who were both a witness to and a victim of violent crime, as documented in police reports. These youths were shown to be 49.2% more likely to become involved in violent incidents later in life (Ross & Arsenault, 2017). In a longitudinal sample of 1,829 juvenile justice-involved urban youth, over three-quarters had been threatened with a weapon before reaching age 18. Those who had been threatened by a weapon were 2.6 times more likely to obtain a gun later in life and were 3.1 times more likely to perpetrate a gun crime. Men who had received a gunshot injury before age 18 were 2.4 times more likely to be perpetrators of gun violence as adults (Teplin et al., 2021). Compared to the general population, people who receive a gunshot injury are 177 times more likely to be shot again (Bonne et al., 2020). Also, refer to footnote #16, below.

16: *Delinquent peer affiliation*. Youth who exhibit symptoms of trauma are, compared to other youth, more likely to socialize with delinquent peers. They are also more likely to exhibit externalizing symptoms (i.e., "acting out" emotionally in stressful situations) and bully other youth (Lee et al., 2019). Youth with a history of trauma learn from delinquent peers that aggressive behavior is an outlet for emotional distress (Maschi et al., 2008). Youth who routinely socialize with delinquent peers are more likely to engage in delinquent acts and are more likely to become victims of crime (Walters, 2020).

17: *Low trust in institutions*. Individuals who have been victimized by crime or report a heightened fear of crime are less likely to perceive the court system as fair, are less trusting of law enforcement, and distrust the criminal justice system as a whole (Singer et al., 2019). Other research shows that youth who are exposed to neighborhood crime, poverty, racism, and educational disadvantage report reduced trust in institutions (Twenge et al., 2014). This distrust extends to schools and is a factor in school disengagement (see footnote 20, below).

18: *Housing insecurity*. Housing insecurity is defined as an affirmative response to the following questions: ever having "missed a rent or mortgage payment due to inability to pay; moved in with others due to housing costs; been evicted; or spent at least one night in a shelter, on the streets, in a vehicle, or someplace else not meant for human habitation in the past year." Youth raised in insecure homes are significantly more likely to come into contact with the criminal justice system, more likely to interact with child welfare services, and are more likely to report symptoms of depression (Marçal & Maguire-Jack, 2021).

19: *Cognitive immaturity*. The frontal lobe of the human brain, which is associated with understanding the consequences of one's behavior and inhibiting impulses, is not fully mature until the mid to late 20s (Sowell et al., 1999). This is relevant to policies directed at youth in general but is particularly salient in connection with youth who socialize with delinquent peers (c.f. footnote 16). Among youth aged 12-14, consuming alcohol and cannabis slows the development of the frontal cortex (Infante et al., 2018). Precocious substance use is one of the defining elements of delinquency and a consequence of delinquent peer association (Hoeben et al, 2016). Early initiation of cannabis use contributes to poorer performance in school and increased risk of academic disengagement and drop-out (Lynskey & Hall, 2000). These are, in turn, risk factors for criminal involvement (c.f. footnote 20, below).

Legal scholars have grappled with the implications of brain development in terms of criminal culpability (Caulum, 2007). As a practical matter, cognitively immature individuals are less responsive than older adults to the threat of criminal justice sanctions. Interventions aimed at reducing youth involvement with guns and gun violence will be more effective if these cognitive limitations are considered.

20: *School disengagement*. A trajectory leading from school disengagement to criminal justice system involvement, known as the "school-to-prison pipeline," has received increasing attention in recent years. School suspension is a robust predictor of later

incarceration and has been identified as a key “negative turning point” in terms of lifespan development (Hemez et al., 2020).

School disengagement is more likely when students must adapt to difficult transitions between schools. Matthew Steinberg of the *Philadelphia Education Research Consortium* found that high school students who change schools are twice as likely to later drop out. In Philadelphia neighborhoods experiencing high rates of poverty, segregation, and incarceration, high school students are far less likely than students in other neighborhoods to remain in the same school until graduation. This creates a challenging environment for teachers, and contributes to high teacher turnover. In disadvantaged neighborhoods, only half of Philadelphia high school students remain in the same school for 4 years, and one quarter of all students make two separate transitions between schools. Of these "mobile" students, 70% are Black (Hangley, 2019).

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Philadelphia District Attorney's Office

ENDING MASS SUPERVISION:
EVALUATING REFORMS

IN THE PHILADELPHIA DISTRICT ATTORNEY'S OFFICE :: APRIL 2021

Table of Contents

Key Takeaways

- Under District Attorney Larry Krasner, the Philadelphia District Attorney's Office (DAO) has moved to end mass supervision. It has primarily done so through two policies, both aimed at reducing the amount of time people spend on county and state probation and parole. The first policy was announced in February 2018, the second in March 2019.
- The policies were guided by public safety considerations and research showing that long community supervision sentences are ineffective and harmful. The policies apply to all situations except two categories of cases (sexual assault and potential felonies reduced to misdemeanors for non-trial resolutions) that allow discretion to seek longer supervision in appropriate cases.
- Overall, supervision lengths decreased markedly after the DAO policies were implemented: median community supervision sentence lengths decreased 25% for sentences reached through negotiated guilty pleas.
- Under District Attorney Krasner, the average community supervision sentence reached through negotiated guilty plea is almost 10 months shorter than under previous DAs.
- Since 2018, the number of people on county community supervision has dropped from 42,000 to fewer than 28,000.
- 42% fewer years of community supervision were imposed in the first two years of the Krasner administration than in the two years prior, accounting for all DAO policies and practices since 2018, as well as changing incident and arrest patterns. We estimate that the effects of the DAO Sentencing Policies will lead to 20% fewer newly sentenced people remaining on community supervision sentences five years after reforms than if the policies hadn't been implemented.
- Community supervision lengths were dramatically reduced under the policies without a measurable change in recidivism (being charged with a new criminal offense).
- These anti-racist policies reduced disparities in supervision sentence lengths between Black, Latinx, and white defendants, though sentencing disparities still exist.
- The vast majority of recent pleas have been compliant with the new DAO sentencing standards: 3 of 4 negotiated guilty pleas fall within the 2019 policy's guidelines.

Glossary

Negotiated Guilty Plea: A plea bargain where the specific sentence is agreed upon by both the prosecutor and defendant. A judge must approve the plea to finalize the sentence. For example, a defendant may plead guilty to a misdemeanor offense in exchange for a negotiated sentence of six months of probation.

Open Guilty Plea: A plea bargain where the defendant and the prosecutor have no agreement as to the appropriate sentence. Instead, the defendant pleads guilty and is at the discretion of a judge, who decides the appropriate sentence. For example, a defendant may plead guilty to a misdemeanor offense, but reject the prosecutor's offer of one year of probation in the hopes that the judge will sentence them to less than one year of probation.

Parole: A form of community supervision where defendants can be released from incarceration to serve the remainder of their sentence in their communities with structures set in place by a parole officer. Incarceration sentences in Pennsylvania require a minimum period that is no more than half of the maximum period. Many defendants are paroled at their minimum date. Others, due to behavior in custody or other factors including the nature of the offense, are paroled later than their minimum date. Some serve out their entire sentence in custody up to the maximum date. The overwhelming majority of people sentenced to incarceration are paroled before their maximum date.

Probation: A form of supervision where people are sentenced to be supervised in their communities by a probation officer. Probation is often intended as an alternative to incarceration.

Probation "Tail": A period of probation that follows a period of incarceration and parole.

Violation of Probation/Parole: When the conditions of a community supervision sentence are not followed, either for committing a new crime, or through breaking a rule that is either not against the law or is not prosecuted.

Letter from DA Larry Krasner

Ending mass supervision is critical to reforming the criminal justice system. As this report demonstrates, over the last three years, the Philadelphia District Attorney's Office (DAO) has made enormous strides toward ending mass supervision through two policies focused on reducing the number of people on probation and parole and reducing racial disparities in probation and parole sentences.

Probation and parole (collectively called community supervision) are less restrictive and less expensive alternatives to incarceration. Defendants are sentenced to community supervision by the court and supervised by Philadelphia's Adult Probation and Parole Department or, in some cases, by the Pennsylvania State Parole Board. These defendants are allowed to remain in the community while being supervised for a designated period of time. They may also have to complete conditions mandated by a judicial order to facilitate rehabilitation. Excessively long terms of community supervision can frustrate rehabilitation and feed mass incarceration, as people under community supervision move in and out of our courts and jails for minor infractions and minor crimes, with little or no benefit to public safety. While this dynamic is true in most parts of the country, it has been particularly pernicious in Pennsylvania and, more specifically, Philadelphia. After Georgia and Idaho, Pennsylvania is the state with the largest number of people on supervision per capita. When I took office in 2018, about 1 in every 23 Philadelphians was under community supervision, and these were disproportionately people of color. At the present time, almost 6 out of 10 people in the county jail are incarcerated because they have been accused of violating their probation or parole.

My administration made a commitment to reduce the levels of community supervision in Philadelphia without endangering public safety. First, we studied and obtained the input of national experts, such as Vinny Schiraldi of the Columbia Justice Lab, the former Chief Probation Officer in New York City. What we know is that, in general, the first three years of supervision (especially the first two) may do some good in preventing more crime. We also know that, in general, more than three years are worse than ineffective — they tend to cause people who are supervised to fail and end up back in jail.

We noted that New York, all five boroughs, had only about 12,000 people on supervision as compared with Philadelphia's much higher numbers, despite the fact that New York is about six times larger than Philadelphia. And we noted that New York has lower levels of crime. Philadelphia's levels of supervision virtually doubled the caseloads of probation and parole officers as compared with national standards — strongly suggesting that significant portions of our probation officers' less serious caseloads needed to be pruned in order to effectively supervise the rest.

In 2018, I implemented a policy instructing Assistant District Attorneys (ADAs) to ask for shorter terms of community supervision. A year later, my administration implemented a refined policy with specific caps on the terms of community supervision our ADAs were permitted to offer or ask for in the vast majority of cases. The policy allowed ADAs flexibility to go above or below the capped terms only with a supervisor's or my approval.

I am proud to report that our efforts have been successful. Enough time has now elapsed to study some of those decisions, and we are excited to report that these policies have not led to an increase in crime.

Let me be clear: Community supervision can and should play an important role in the criminal justice system. A defendant leaving jail or prison after serving a sentence can benefit from working with a probation officer and appropriate supervision has been shown to increase community safety. However, numerous reports and studies make it clear that the efficacy of community supervision decreases over time. As this report demonstrates, prior to these policies, Philadelphia community supervision terms were, on average, longer than evidenced-based practices recommend, and long terms of supervision were being handed out in a racially discriminatory manner.

Since I took office in 2018, the number of people on county community supervision has dropped from 42,000 to fewer than 28,000. This is due in large part to the policies discussed in this report, as well as the concerted effort of the DAO, the Defender Association, the Stoneleigh Foundation, and the First Judicial District to identify and terminate supervision for many defendants who simply do not need it any more. Our efforts to reduce future years of supervision promise an enormous potential savings to the city, money that can be invested in preventing crime through programs that reduce poverty, and increase employment and educational attainment.

I am proud of the work this office has done to make Philadelphians, particularly Philadelphians of Color, freer from unnecessary government intrusion, while keeping our communities safe.

Lawrence S. Krasner
District Attorney of Philadelphia

The Philadelphia District Attorney's Office provides a voice for victims of crime and protects the community through zealous, ethical, and effective investigations and prosecutions. The Philadelphia District Attorney's Office is the largest prosecutor's office in Pennsylvania, and one of the largest in the nation. It serves the more than 1.5 million residents of the City and County of Philadelphia, employing 600 lawyers, detectives, and support staff.

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Community Supervision and DAO Policies

Historically, the movement for criminal justice reform has mainly focused on reducing mass incarceration. In this, the Philadelphia District Attorney's Office (DAO) has made great progress: the number of people incarcerated by the Philadelphia Department of Prisons has declined each year since 2013.[i] The reform movement increasingly seeks to build on the success of prison population reduction and decriminalization of non-violent offenses by also addressing drivers of mass incarceration like the overuse of probation and parole, often called "mass supervision."

Pennsylvania has one of the highest rates of residents on community supervision in the nation, behind only Georgia and Idaho in the number of people on probation and parole per capita.[ii] Georgia, along with 37 other states, has implemented legislative reforms to address high rates of community supervision, while Pennsylvania has yet to do so. In Philadelphia, one in every 23 adults is on community supervision, compared with one in 35 adults in Pennsylvania and one in 55 adults nationwide, as of 2017.[iii]

1 in 23 adults in Philadelphia was on community supervision in 2017.[iii]

Although the Pennsylvania legislature has failed to adopt probation and parole reform, the DAO has worked tirelessly to reduce mass supervision since the start of District Attorney Larry Krasner's term. District Attorney Krasner implemented a policy in line with national best practices in **February 2018** with general sentencing guidelines for Assistant District Attorneys (ADAs) and a more specific policy in **March 2019** including concrete recommendations and goals.[iv] This report studies the results of those office-wide policy changes.

Community supervision holds people accountable for crimes without the cost to families and taxpayers of incarceration. Its goal is to allow people to remain in their communities, able to continue with work or school or caregiving, while addressing rehabilitative and restorative needs. The overuse of community supervision, however, has reinforced mass incarceration rather than act as an alternative. Lengthy community supervision terms can be a tripwire that increases the likelihood that supervision requirements will be violated, which may result in re-incarceration, contributing to mass incarceration. Instead of promoting rehabilitation, long community supervision sentences have proven ineffective and counterproductive to the goal of increasing public safety.[v] While many other jurisdictions have realized this and placed limits on supervision terms,

Pennsylvania law allows for some of the nation's longest supervision terms and does not allow best practices in community supervision to be instituted: in Pennsylvania, half of state prison admissions are for supervision violations, and a quarter of admissions are for technical violations of supervision, or rule violations that are not criminal offenses.[vi]

The harmful effects of over-using community supervision disproportionately impact Philadelphians of Color. Black and Latinx people are more likely to be supervised and more likely to be incarcerated for violations of probation and parole than white people.[vii] Additionally, reforms in the criminal justice system often exacerbate racial disparities.[viii] **Mass supervision drives mass incarceration, and the inequities in the criminal justice system cannot be alleviated without ending both.**

In order to reform community supervision, the Philadelphia DAO has worked toward national best practices for community supervision reform: an incentive-based model that rewards success. This stands in contrast to Pennsylvania's model, which punishes non-compliance and in which supervision terms persist long past their effective periods. Four pillars of reform efforts are (1) limiting supervision lengths, (2) re-sentencing limits and graduated sanctions for violating supervision,[1] (3) retroactively applying reforms to individuals already sentenced, and (4) credit for earned time to incentivize good behavior.[2] Shorter sentences allow supervision to be focused on the period just after sentencing or release from custody when re-offense is most likely to occur.[ix]

The DAO's Sentencing Policies have charted a course to transform community supervision in Philadelphia. Specifically, these policies established reasonable supervision time limits for guilty plea offers and sentencing recommendations and limited the sentencing requests that ADAs can make if defendants violate terms of supervision. While the DAO policies are aimed at safely reducing supervision sentence lengths, many of the changes required to meet the four pillars of supervision sentencing reform discussed above require statutory change by the Pennsylvania General Assembly.

3

DAO Policies to Reduce Mass Supervision:

2018 Policy:

- Seek shorter or no probation "tails" after a sentence of incarceration.
- Seek shorter probationary sentences where no sentence of incarceration is sought.

2019 Policy:

- Total supervision length should not exceed 36 months for felonies and 12 months for misdemeanors.
- If a sentence includes incarceration, parole periods should be accounted for to meet the above guidelines.
- Aim for an office-wide average total supervision length of 18 months or less for felonies and 6 months or less for misdemeanors.

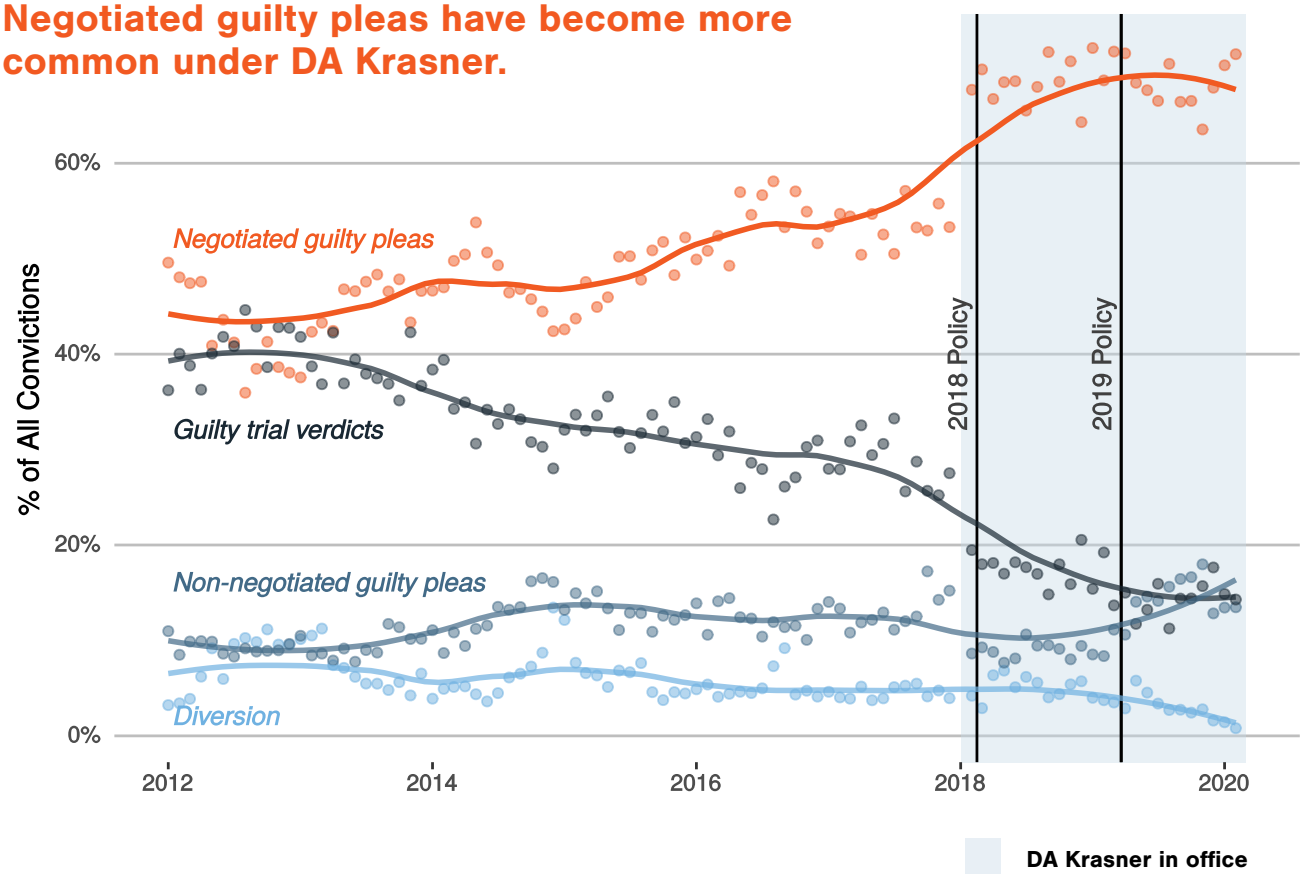
Sentencing recommendations should do justice to each case and longer sentences may be required by law. For example, gun cases might require incarceration instead of community supervision. Additionally, exceptions to the 2019 policy were made for sexual assault cases and for downgraded felonies that allow ADAs to use more discretion to seek longer sentences based on the facts of an individual case.

1. With graduated sanctions, someone serving a community supervision sentence who commits a technical violation of supervision (e.g., missing an appointment with a probation officer) might have more restrictive terms applied to their supervision rather than being incarcerated.
2. Some states have "earned time" programs to reward people on community supervision by reducing their sentence if they complete educational or rehabilitative programs.
3. See Appendix A for a fuller description of DAO policies.

Overview of Pleas and Sentencing

Every defendant in the criminal justice system has a constitutional right to a trial before a jury of their peers. If a defendant chooses to waive that right and plead guilty, they can either accept the plea offer that the assigned ADA makes (a negotiated guilty plea), or they can plead guilty, but let the assigned judge decide the sentence (an open guilty plea). Negotiated pleas are the most common way that criminal cases are resolved in Philadelphia, and, therefore, the most common way that defendants are placed on community supervision. Following the 2018 Sentencing Policy, the proportion of cases ending in negotiated guilty pleas has increased, maximizing the effect of DAO policies on community supervision sentences.

Negotiated guilty pleas have become more common under DA Krasner.



Pennsylvania law creates a system where community supervision is over-used: every jail sentence in Pennsylvania has a minimum and a maximum term, where the maximum must be at least double the minimum. For example, a sentence of 2 to 4 years in prison is a legal sentence under Pennsylvania law, but a sentence of 2 to 3 years in prison is not. A person is eligible to be released on parole at the minimum sentence date, meaning that even "incarceration-only" sentences build in a period of parole eligibility. This sentencing structure contributes to lengthy community supervision terms in Pennsylvania: if a person is released from custody after serving their minimum term in jail or prison, they will likely be on parole at least until they reach their maximum. The use of probation "tails," where a person serves probation after their incarceration and parole end, further extends community supervision terms and increases the likelihood that people on supervision will be incarcerated for technical violations.

District Attorney Krasner's policy reforms aim to directly reduce the supervision burden imposed by Pennsylvania law. Coincident with these changes was a large increase in the proportion of cases resolved by negotiated plea, possibly because the defense recognizes that shorter, policy-compliant sentences are more favorable to the defendant as well as the public. Relying more on negotiated guilty pleas may have both positive and negative consequences. On the one hand, this higher rate of guilty pleas can make the courts more efficient, increase certainty for victims and defendants, decrease case processing times, and allow more resources for those trials that do take place. On the other hand, plea bargaining can have a coercive nature.[x] For example, if a defendant is detained pre-trial, accepting a plea offer for a community supervision sentence might allow their immediate release from incarceration. Some defendants may also have legitimate fear that they will receive a longer sentence if they go to trial and are found guilty.[4] These are important issues that ADAs are trained on, but they are outside the bounds of this report.

4. The vast majority of criminal trials in Philadelphia are bench trials that are tried before a judge rather than a jury. Since 2018, only about 2% of trial convictions occurred in jury trials.

Evaluating Reform

To evaluate the effectiveness of the 2018 and 2019 DAO Sentencing Policies, we compared total community supervision sentences (parole + probation) in cases that were resolved 1) in the time period just prior to District Attorney Krasner taking office, 2) after the 2018 Sentencing Policy was enacted but before the 2019 policy was enacted, and 3) after the 2019 Sentencing Policy was enacted.

Three time periods were defined to allow for a comparison of pre- and post-policy outcomes as detailed in the table below. For more detailed weekly trends, see Appendix C.

PERIOD	DATES	LENGTH
Pre-Krasner	December 1, 2016 to January 1, 2018	396 days
Post-2018 policy	February 15, 2018 to March 20, 2019	398 days
Post-2019 policy	March 21, 2019 to March 13, 2020[5]	358 days

The evaluation of reform has four components and proceeds as follows:

1. **Implementation Fidelity:** We look at the immediate impact of the new DAO Sentencing Policies on supervision length and the extent to which the policies were followed by ADAs to seek evenly applied justice.
2. **Public Safety:** We assess recidivism to look at the effects of shorter community supervision sentences on public safety.
3. **Racial, Ethnic, and Sex-Based[6] Disparities:** We investigate whether the policies have reduced racism in sentencing and were fairly implemented with respect to defendant race, ethnicity, and sex.
4. **Impact on Mass Supervision:** We project the future impact of the policies on mass community supervision in Philadelphia.

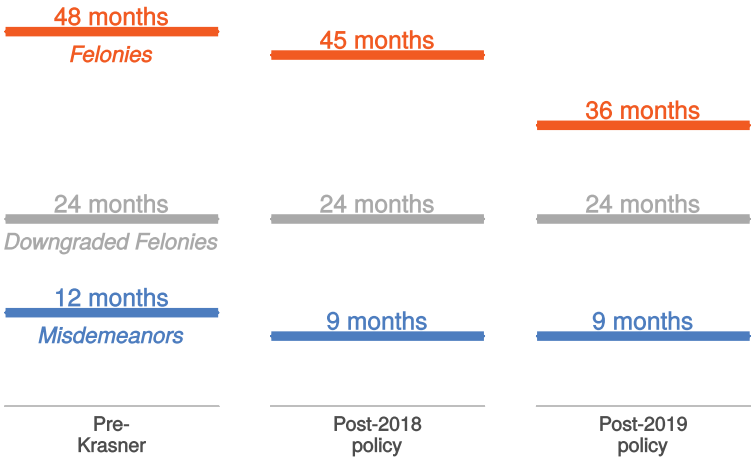
Immediate Impact of New DAO Sentencing Policies

Under District Attorney Krasner, the average community supervision sentence reached through negotiated guilty plea is almost 10 months shorter than under previous DAs.

Trends in Supervision Length

After District Attorney Krasner implemented the new sentencing policies, the median length of community supervision[7] for sentences reached through negotiated guilty pleas decreased substantially for both felonies and misdemeanors (compared with the pre-Krasner period).[8] Based on the nature of the policies, the 2018 Sentencing Policy targeted shorter probation sentences, while the 2019 Sentencing Policy directed ADAs to seek shorter terms of total supervision (parole + probation).[9] Reducing a reliance on overly lengthy supervision terms is more in line with best practices while still holding people accountable and providing support to prevent recidivism.

Following DAO reforms, median supervision lengths fell for most negotiated guilty pleas, but not for downgraded pleas.



Downgraded felonies refer to felony cases that were pled as misdemeanors in the Court of Common Pleas.

In most negotiated guilty pleas, defendants plead to an offense of the same grade as the original charge (e.g., defendant is charged with a felony and pleads to a felony offense). However, downgraded felony pleas, whereby a person charged with a felony pleads to a misdemeanor, are becoming more common. When we use the term "downgraded felonies" in this report, we are referring to cases where the felony is downgraded in the Court of Common Pleas after having met an initial burden of proof. In the Court of Common Pleas, downgraded felony pleas are often made not because of insufficient evidence to convict beyond a reasonable doubt, but to provide a less punitive consequence to defendants where the equities of the case and the defendant make this outcome more just than a felony conviction. Felony downgrades are typically reserved for people without an extensive prior record and cases that do not involve more serious violent felonies. Downgrading felonies is a practice that allows defendants to avoid ineffective lengthy supervision terms while also avoiding collateral consequences that a felony conviction may carry.

Under internal guidelines, the 2019 policy allows ADAs to treat downgraded felony pleas like felonies. For example, if a defendant is originally charged with selling drugs (a felony) and the DAO has met its initial burden of proof, an ADA might offer a plea to drug possession (a misdemeanor). The plea offer would be for the maximum allowed sentence for the misdemeanor charge (one year), but a far shorter sentence than the original felony charge and under the felony ceiling in the 2019 policy.

Felonies may also be downgraded for other reasons, such as having insufficient evidence to proceed with felony charges or when the DAO believes it is not in the interests of justice to pursue a felony conviction.

Felonies with insufficient evidence that are sent back to Municipal Court were considered misdemeanors in this report.

The true effect of the DAO Sentencing Policies on misdemeanor supervision lengths may be dampened in this analysis by recent DAO policies that have ended misdemeanor charging of some low-level offenses.

The *true* effect of the DAO Sentencing Policies on misdemeanor supervision lengths may be dampened in this analysis by recent DAO policies that have ended misdemeanor charging of some low-level offenses.

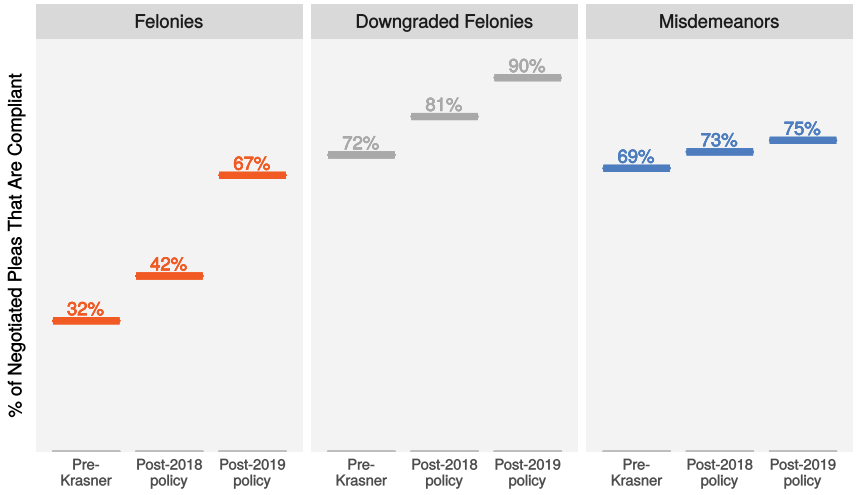
Before District Attorney Krasner took office, approximately 1 in 13 felony guilty pleas were downgraded in the Court of Common Pleas; this practice has recently increased in frequency, with about 1 in 7 felony negotiated pleas being downgraded in the post-2019 policy period. Drug sales and aggravated assault are the two most commonly downgraded felony offenses, which tend to be downgraded to drug possession and simple assault misdemeanor charges, respectively.[10] Median community supervision sentence lengths for downgraded pleas have not changed over time, though the increasing frequency has led to shorter overall sentence lengths.

Implementation Fidelity

The 2018 Sentencing Policy instructed ADAs, generally, to ask for shorter probation sentences. The 2019 Sentencing Policy, by contrast, gives ADAs more specific guidance on how to resolve cases while leaving them discretion to apply individualized justice to each case. Given these differences, we were able to quantitatively measure ADAs' fidelity to the 2019 policy for each individual case, but not the 2018 policy. Compliance with the policy is important for evenly applied justice, but both policies allow for ADAs to deviate with supervisorial approval.[11]

It is clear that ADAs have been successfully implementing the policies in negotiated guilty pleas in both misdemeanor and felony cases. More than 2 out of every 3 felony and 3 of 4 misdemeanor negotiated guilty pleas in the post-2019 policy period met the requirements of the 2019 policy. Prior to 2018, 1 in 3 felony pleas and a majority of misdemeanor pleas would have met this criteria. Most (9 of 10) downgraded felony pleas comply with the felony guidelines described in the 2019 policy. In other words, in the vast majority of negotiated guilty pleas, ADAs are offering sentences of appropriate lengths that align with best practices to end mass supervision.

Overall, 3 in 4 negotiated guilty pleas comply with the 2019 Sentencing Policy.



Downgraded felonies refer to felony cases that were pled as misdemeanors in the Court of Common Pleas.

Recidivism and Public Safety: Being Re-Charged Following a Probation-Only Sentence

District Attorney Krasner's sentencing policies were based on the growing body of evidence which suggests that community supervision has diminishing returns over time. Long periods of supervision have not been found to enhance community safety and often lead to defendants being incarcerated for behavior that would likely go unpunished if the defendant were not on supervision. Supervision conditions can be numerous and easy to violate: in Pennsylvania, the most common technical violation of supervision is changing residences without permission.[xi] A violation is most likely to occur within the first 18 months of a community supervision sentence.[xii] Thus, long periods of supervision have little impact on community safety, but are costly to the City and to the defendant and their family.

To evaluate the effects of DAO policies on public safety, we analyzed the rate at which individuals were re-charged following their sentencing. We compared two different groups: people sentenced to probation before the 2018 policy was implemented versus people sentenced to probation under the terms of the 2018 policy.[12]

Because of the limited timeframe of the study (further magnified by changing arrest policies during COVID-19 in March 2020), we limited our focus to probation-only sentences, excluding sentences with incarceration and parole from the recidivism analysis. People sentenced for shootings and other violent offenses are likely excluded from this group, as it is very rare to be sentenced to only probation for a serious violent crime.

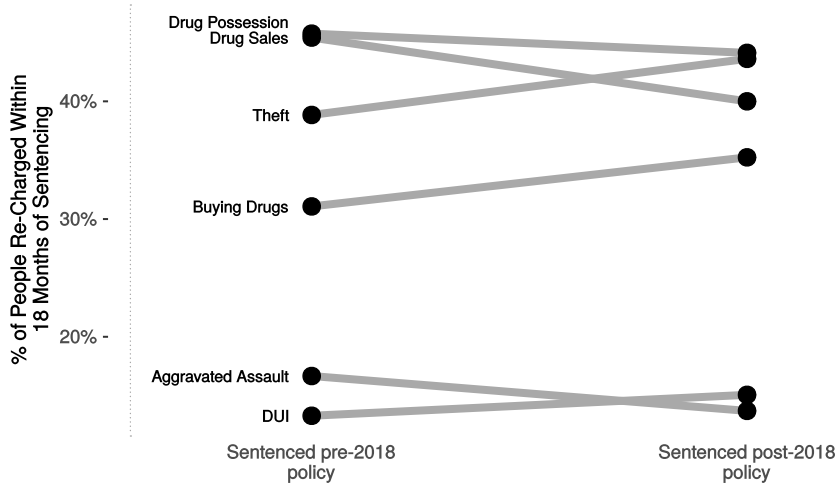
Overall, we found that our policy successfully reduced supervision without an increase in recidivism: we saw no measurable change in re-charge rates between people sentenced under District Attorney Krasner's sentencing policies and those sentenced before the reforms took effect. As a gauge of seriousness of re-offense, we also found no discernible change[13] in felony re-charge rates for people sentenced before and after the policies were implemented. 33% of people sentenced to probation through negotiated guilty plea before the 2018 policy were re-charged within 18 months of their sentencing, and 31% of people sentenced after the 2018 policy was implemented were re-charged within 18 months of sentencing.

When comparing people originally sentenced for the same offense pre- and post-sentencing reform (e.g., comparing someone sentenced to probation for drug possession before the DAO policies versus someone sentenced for drug possession under the 2018 Sentencing Policy), there were no statistically significant changes in 18-month re-charge rates. Different offenses generally see different levels of recidivism; for example, people sentenced for drug possession were more likely to be re-charged than people sentenced for DUIs.

Stated differently, the new DAO sentencing policies were able to safely reduce probation time substantially with no measurable change in re-charge rates. This suggests that for the vast majority of people, long periods of community supervision add little supportive value to their lives and have no discernable effect on community safety. Our findings are in line with a recent study showing that reducing probation lengths had no measurable effect on public safety in multiple states.[xiii]

There has been no discernible change in re-charge rates between people sentenced to probation under the 2018 policy and people sentenced beforehand.

The graph shows re-charge rates in the 18 months after sentencing for people sentenced to probation through negotiated guilty plea. No changes are statistically significant.



Fair Implementation: Racial, Ethnic, and Sex-Based Disparities in Community Supervision

The 2018 and 2019 sentencing policies were enacted within the context of a criminal justice system already steeped in racial inequity.[xiv] Specific to community supervision, Black and brown defendants tend to be supervised longer than white defendants, and studies in other jurisdictions have found that for similar violations, Black defendants are more likely than white defendants to have their supervision revoked, leading to incarceration.[xv] While criminal justice reforms often exacerbate racial inequities, District Attorney Krasner's reforms reduced racial disparities in sentencing, while not yet completely eliminating them.

The DAO Sentencing Policies reduced median community supervision lengths from negotiated pleas for Black, Latinx, and white defendants, while reducing overall racial disparities in supervision sentencing.

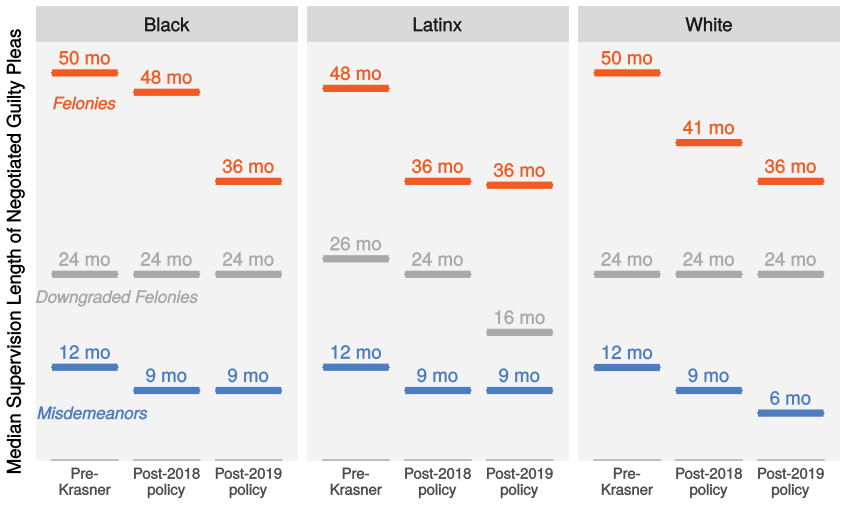
Reducing Overall Racial and Ethnic Disparities in Sentencing

In the aftermath of the two sentencing policy reforms, median supervision lengths decreased for Black, Latinx, and white defendants similarly.[14] In fact, both prior to and after the Sentencing Policies were implemented, Black, Latinx, and white defendants have received similar sentences *for similar offenses* (e.g., comparing Black defendants sentenced for drug possession and white defendants sentenced for drug possession).

Despite these similarities, there were marked racial disparities in sentencing prior to the policies taking effect. Several factors contribute to these sentencing disparities between Black, Latinx, and white defendants. First, Black, Latinx, and white defendants tend to be sentenced for a different *mix* of offenses. For example, Black and white defendants have proportionally more DUI convictions (which are often resolved with a relatively short six-month supervision sentence) than Latinx defendants, who have proportionally more convictions for drug offenses (which can carry longer sentences), pushing median sentences up for Latinx defendants.

Under the DAO policies, Black, Lantinx, and white defendants have seen shorter community supervision sentences.

Downgraded felonies refer to felony cases that were pled as misdemeanors in the Court of Common Pleas.

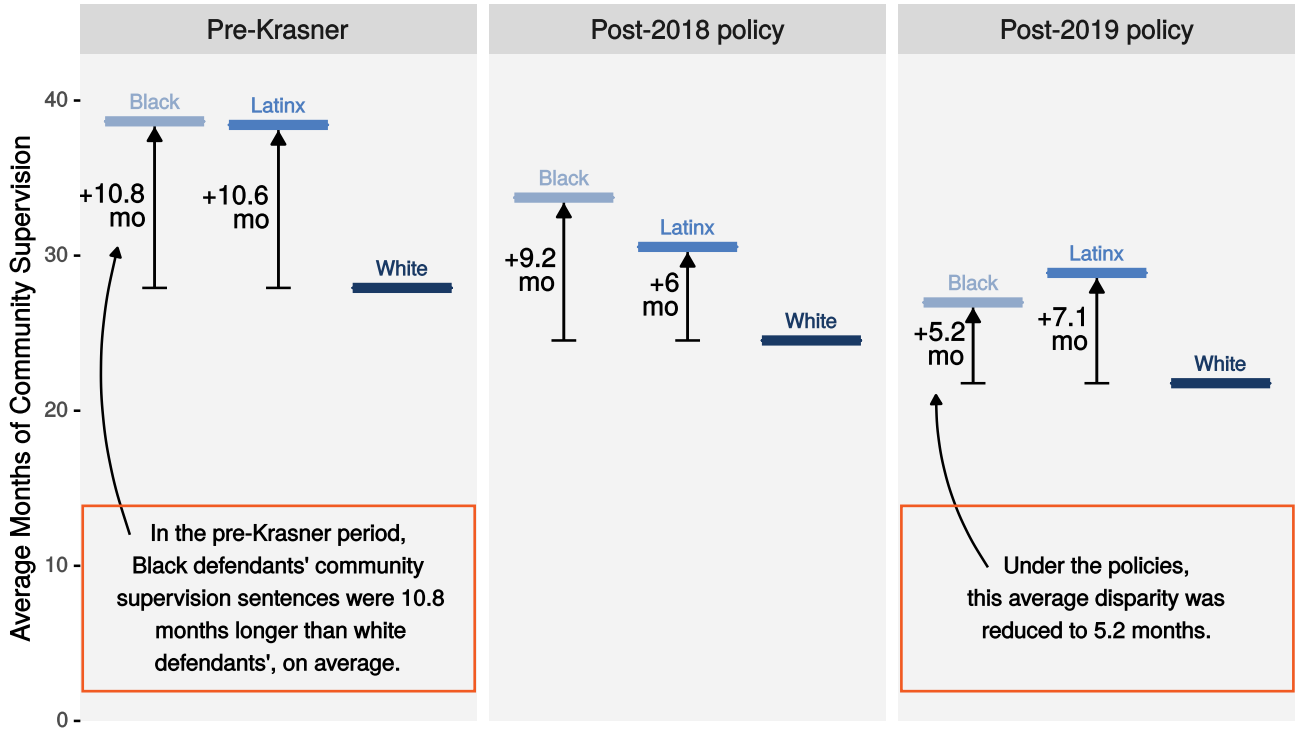


White defendants are charged with and convicted of far fewer felonies proportionally (versus misdemeanors) than Black or Latinx defendants.[15] Additionally, even though white defendants are charged with fewer felonies, prior to the DAO Sentencing Policies being implemented it was more common for white defendants to have a felony case downgraded to a misdemeanor as compared with Black or Latinx defendants.

Disparities have been reduced for a number of reasons. In the post-2019 period, downgraded felony pleas were most common for Black defendants. Similarly, cases that begin as felonies, but are sent back to Municipal Court and pled as misdemeanors because of evidence insufficiency, are also more frequent for Black defendants than white or Latinx defendants.

Overall racial disparities in sentence lengths are clear when looking at average supervision length for all three groups:[16]

Racial disparities in community supervision negotiated guilty plea sentences have lessened under DAO policies.



Despite the relative parity in community supervision length across racial groups seen when felonies and misdemeanors are separated, the graph of combined averages shows that white defendants historically and currently face shorter average community supervision sentences than Black and Latinx defendants. The 2018 and 2019 Sentencing Policies considerably narrowed this gap: in the pre-Krasner period, Black and Latinx defendants were sentenced, on average, to 35% longer supervision periods than white defendants.

Stated otherwise, white defendants received community supervision sentences almost 11 months shorter than the average for Black and Latinx defendants prior to the implementation of these two policies. **Since the 2019 policy, that gap has decreased to 5.2 months between Black and white defendants and 7.1 months between Latinx and white defendants.**

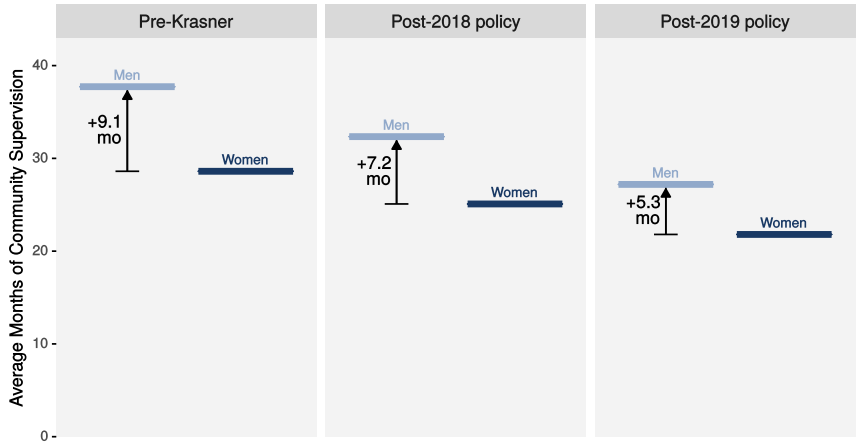
While racial disparities in supervision sentence length have decreased in recent years, the proportion of Black people and people of color sentenced under these policies has increased slightly since the pre-Krasner period.[17] It is difficult to attribute this change to a particular policy, but it is clear that while parts of the system are becoming more racially equitable, disparities still exist and some may be widening.

Implementation Across Gender Groups

The DAO sentencing policies substantially reduced community supervision lengths for women and men compared with pre-sentencing reform trends. Generally, women tend to receive shorter sentences than men because of the mix of offenses they are charged with and the mix of misdemeanors versus felonies.[18] Women's and men's supervision sentences are becoming more similar in length, as average community supervision sentence lengths decrease under the DAO policies.

Women and men saw reductions in community supervision sentence lengths through negotiated guilty plea under DAO reforms. On average, women's and men's sentences have become more similar in length.

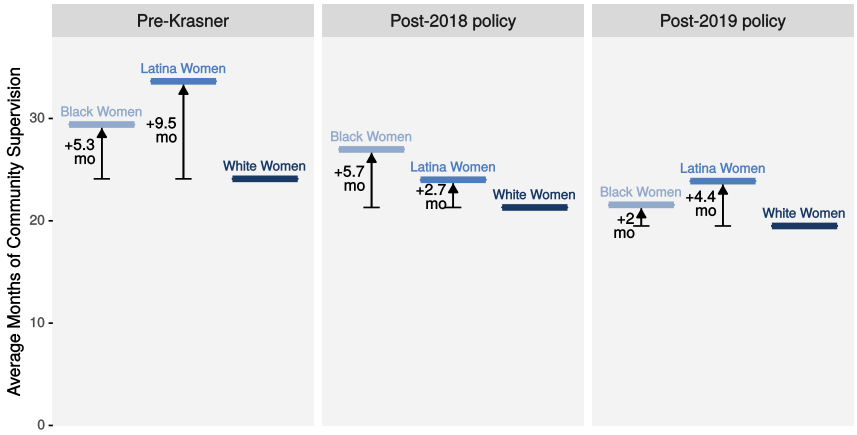
Fewer women than men are sentenced. Therefore, the trends are less consistent and clear for women's sentences.



Black and white women saw similar reductions in average total community supervision from DAO sentencing reform, while average sentence lengths for Latina women were reduced, but remain higher than average sentences for Black and white women. Each of these three groups saw shortened sentences under the DAO policies, and disparities between the racial and ethnic groups decreased. Trends in sentencing data for women (especially Latina and white women) are less clear and consistent than trends in sentencing data for men, given that there are far fewer women than men in the criminal justice system.

Black, Latina, and white women saw reductions in average supervision sentence length under the DAO policies. Additionally, racial disparities in sentence lengths decreased under the policies.

Fewer women than men are sentenced. Therefore, the trends are less consistent and clear for women's sentences.



With shorter community supervision sentences, there is a lower chance of being incarcerated for a technical violation. Importantly, the DAO policies reduced racial disparities rather than exacerbating inequities as can often occur in criminal justice reform. Ending mass supervision and mass incarceration is a question of racial justice; the DAO policies help to chip away at racism in the system, but there is still work to do.

Long-Term Impact on Mass Supervision

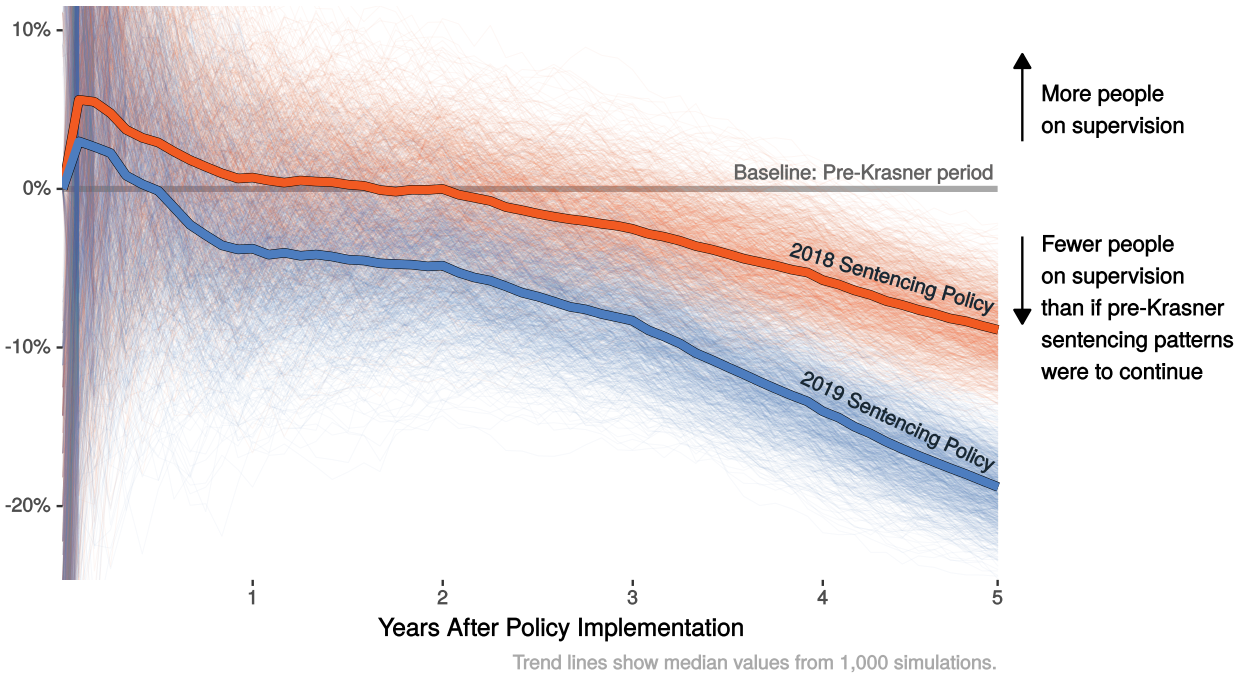
With the numerous reforms implemented under District Attorney Krasner as well as changing incident and arrest patterns, **approximately 38,000 fewer years of community supervision were imposed in the first two years of the Krasner administration compared with the two years prior — a 42% reduction in future years of supervision.**[19]

To better understand the long-term impact of the DAO policies, we developed a model to predict the number of people on community supervision under various scenarios. Using the model, we compared how many individuals sentenced under different scenarios would remain on community supervision at various points in time over a five-year period. We compared three groups of people: those sentenced in the pre-Krasner period, those sentenced under the 2018 Sentencing Policy, and those sentenced since implementation of the 2019 Sentencing Policy. In all three scenarios of the model, we kept the number and types of offenses the same; we only varied the length and type of the sentences that defendants received.

Based on this model, we estimate that the isolated effects of the DAO Sentencing Policies would lead to **20% fewer newly sentenced people remaining on community supervision after five years than if the policies hadn't been implemented.** The reduction in the size of the supervision population is directly related to shorter supervision sentences and the limits on probation "tails" after incarceration central to the policies.

This result cannot be understated. It equates to an enormous decrease in long-term probation and parole populations and the beginning of the end for mass supervision in Philadelphia. As these systems shrink, there is an opportunity to realize significant cost savings, which could be re-invested in education, poverty reduction, and community supports for people under supervision that could in turn further reduce crime, reduce technical violations, and shrink the system. This reduction in community supervision could lead to approximate **savings to the county and state in the range of $1.5 million to $4 million[20] over five years** that could be re-invested in local communities.[xvi] The potential savings are likely much greater if the costs of incarceration from parole and probation violation are accounted for. With almost 38,000 fewer years of supervision imposed during the first two years of DA Krasner's administration compared with the two years prior, **savings to the county and state could range from $15 million to $40 million** over the course of the supervision sentences.

When compared to pre-Krasner sentencing trends, if the DAO policies were followed for five years, we estimate that 20% fewer people sentenced during the time would remain on supervision at the end of that period.



5. The post-2019 policy period ends when Philadelphia began to experience the effects of COVID-19.
6. Our data on sex and gender records binary perceptions of police instead of self-identified data by defendants. We believe the term "sex" is more accurate than "gender" in these circumstances. Additionally, all race and ethnicity data is perceived race and ethnicity, rather than a defendant's self-identification.

7. We commonly use the term "supervision length" throughout this report, referring to the length of total community supervision sentence ordered by the judge at sentencing, including an estimated parole period if a sentence includes incarceration. This length of time is not necessarily equivalent to the length of time served, as supervision can be terminated early or extended.

8. When looking at the overall universe of negotiated guilty plea community supervision sentences (felonies + misdemeanors + downgraded felonies), average sentence length pre-Krasner was 37 months, and was reduced to 32 months under the 2018 policy and 27 months under the 2019 policy. Most of this report discusses medians of felonies and misdemeanors separately.

9. See "Appendix C: Different Impacts of Two Policies" for a more in-depth examination of reduced parole sentences versus reduced probation sentences.

10. See "Appendix C: Felony/Misdemeanor Breakdown" for a table of the most commonly-downgraded felony offenses.

11. In some cases, ADAs were not legally allowed to offer pleas that were within the presumptive ceilings of the policies; for example, if an offense carries a mandatory minimum sentence of five years imprisonment, where the parole term would likely be higher than the policy's ceiling. We considered these sentences to be policy-compliant if they did not carry an additional probation tail.

12. The two groups were made up of people sentenced to probation in the six months before and after policy implementation. We also saw no measurable change in re-charge rates for people sentenced in the periods surrounding the 2019 policy. For more details on how we assessed recidivism, see Appendix C.

13. Not statistically significant at $\alpha = 0.05$. See Appendix C for a fuller explanation of methods.

14. We only examined trends in supervision for Black, Latinx, and white defendants because these are the races and ethnicities that make up most of the system-involved population. For this analysis, Black defendants includes people who are Black and not Latinx; similarly, white defendants includes people are white and not Latinx. Appendix C includes more information about median supervision lengths per offense broken down by defendant race.

15. See "Appendix C: Felony/Misdemeanor Breakdown" for a figure showing the relative mix of felonies and misdemeanors each group is convicted of.

16. Given the bi-modal nature of sentence length distributions (felonies versus misdemeanors), averages (means) are more appropriate than medians when looking at trends with felonies and misdemeanors combined.

17. Black defendants made up 58% of people sentenced in the pre-Krasner period, but 62% of people sentenced in the post-2019 policy period. Latinx defendants made up 18% of people sentenced pre-Krasner and 20% of people sentenced after policy implementation.

18. Trends comparing women and men by lead charge can be found in "Appendix C: Trends in Supervision Length by Defendant Race and Sex."

19. This compares the future years of supervision imposed between January 2, 2018 and March 15, 2020 before the COVID-19 pandemic began in Philadelphia (51,201 future years) and future years of supervision imposed in the same amount of time before DA Krasner took office (89,018 future years of supervision). See the DAO Public Data Dashboard for more details on this metric: https://data.philadao.com/Future_Years_Supervision_Report.html.

20. There is limited published data on the costs of probation and parole to municipalities and states. We are using a short-run marginal daily cost estimate of $1.25 per person and a long-run marginal daily cost estimate of $3.06 per person. These estimates are inflation-adjusted costs from Allegheny County, PA in 2012 and were applied to our projection of community supervision population over five years. The estimates are approximate and likely only reflect orders of magnitude in potential savings.

Future Research

This report is a distillation of the work we have done to evaluate the 2018 and 2019 Sentencing Policies. Prosecutors' offices have long been opaque black boxes with little accountability, but our work seeks to change that by providing transparent evaluations of District Attorney Krasner's reforms. Below is a list of areas where more research should be done.

- **Recidivism**: More time must pass in order to fully examine the effects of decreasing supervision lengths on public safety. Future evaluations will incorporate longer re-charge periods and all sentence types.
- **Individual & Community Outcomes:** While it is a goal of community supervision that people will be able to obtain employment and housing, we do not have a way to measure these outcomes at this time. Efforts by prosecutors' offices to holistically measure these types of policy outcomes have been virtually non-existent in the past.
- **Violations of Probation and Parole:** In order to simplify our analysis and because of current data limitations, this report only examines original sentences, not sentences after violations of probation and parole. We hope to explore the effects of the 2018 and 2019 Sentencing Policies on sentences after a violation, as well as whether reducing sentences reduces future violations that contribute to mass incarceration.
- **Sentence Lengths of Downgraded Felonies:** Though there has been an increase in frequency of misdemeanor offers for cases originally charged as felonies, the median community supervision sentence length for those downgraded pleas has remained stagnant at 24 months. Per the 2019 DAO policy, this is longer than the targeted average office-wide total community supervision length of 18 months for felonies.

Through a partnership with researchers at the University of Pennsylvania made possible by Arnold Ventures and the Chan Zuckerberg Initiative, a more in-depth study of many of these topics is underway.[xvii]

Conclusion

Mass supervision has decimated communities for too long: It is hard to hold a good job when you have to miss several hours each week to report for probation; it is difficult to remain in the community when a single misstep that isn't even a crime can send you back to jail. Reducing the reach of supervision without increasing crime benefits the defendant, the community, and government's flexibility to invest in public wants and needs such as education, healthcare, jobs, and infrastructure. When community supervision sentences are imposed at appropriate lengths on the people who stand to benefit, there will be fewer violations of probation and parole, allowing the system to focus on the most dangerous cases. Reducing the reach of the criminal justice system brings the opportunity for cost savings that could be invested in social services and public goods that benefit all Philadelphians.

Philadelphia must continue to decrease community supervision in order to meaningfully shrink the footprint of the criminal justice system in communities that have been most harmed by unjust policing and mass incarceration. Philadelphia's jail population size has undergone year-over-year reductions, and the Philadelphia District Attorney's Office Public Data Dashboard shows recent reductions in both "Future Years of Incarceration Imposed" and "Future Years of Supervision Imposed."[xviii] **This report offers the clearest evidence to date that policies implemented by the Philadelphia DAO in February 2018 and March 2019 have reduced mass supervision and reduced overall racial disparities in community supervision sentencing in Philadelphia without harming public safety.**

Pennsylvania law limits the ability to fully follow best practices in sentencing. Practices such as mandatory minimum sentencing and allowing courts to re-sentence up to the statutory maximum after a supervision violation uphold the harmful status quo of over-supervising. County prosecutor-led reform is impactful, but collaboration by all system actors and lawmakers across the Commonwealth is necessary to end mass supervision in Pennsylvania.

Acknowledgments

This work was made possible thanks to funding from Arnold Ventures and the Chan Zuckerberg Initiative. We are grateful to Alexa Cinque, Michele Kilpatrick, Viet Nguyen, Liam Riley, Jane Roh, Vincent Schiraldi, Judge Carolyn Temin, Wes Weaver, the District Attorney's Transparency Analytics (DATA) Lab, and the DAO Policy Team for their helpful input on this report.

Letter: District Attorney Lawrence S. Krasner

Report: Tyler Tran, Sangeeta Prasad, Dana Bazelon, Christopher Austin, Molly Pickard, Mike Lee, Oren Gur, Michael Hollander

Appendix A

DAO Policies to End Mass Supervision

The following guidelines to end mass supervision are presumptive rather than mandatory. For exceptions from the guidelines, Assistant District Attorneys (ADAs) must obtain approval from a unit supervisor, a First Assistant District Attorney, or from District Attorney Krasner.

2018 Policy (abbreviated; full policy in references[xix]):

1. Request shorter probation tails (i.e., consecutive period of probation) or no probation tail after a sentence of incarceration.
2. Request shorter probationary sentences where no sentence of incarceration is sought.

2019 Policy (full policy in references[xx]):

The basis of the policies is for ADAs to request shorter periods of total supervision, which includes both parole and probation.

1. In all cases, the appropriateness of a sentence of incarceration (if any) and how much incarceration is appropriate are to be determined first, consistent with all the DAO's policies, including those to end mass incarceration. Once that is determined, the following policies shall be used to determine supervisory aspects of the sentence.
2. In a **felony** matter, all negotiated guilty plea offers and sentencing recommendations shall do **individual justice to each case, but shall be aimed at an office-wide average period of total supervision among cases of around 18 months or less of total supervision, with a ceiling of 3 years of total supervision or less on each case,** except where total supervision is required to be longer by law. This means that for any felony sentence of 3-6 years or more, there will be no tail.
3. In a **misdemeanor** matter, all negotiated guilty plea offers and sentencing recommendations shall do **individual justice to each case, but shall be aimed at an office-wide average period of total supervision among cases of 6 months or less of total supervision, with a ceiling of 1 year of total supervision or less on each case,** except where required to be longer by law. This means that for a misdemeanor sentence of 1-2 years or more, there will be no tail.
4. Negotiated plea offers and sentencing recommendations shall be for **concurrent sentences within a case and among consolidated cases.** Obviously, the plea offer and sentencing recommendation on a group of cases will reflect all consolidated cases.
5. Negotiated plea offers and sentencing recommendations in all cases that involve incarceration shall be for **a period of parole that is no longer than the period of incarceration.**

6. These policies apply to all forms of plea and to all recommendations at sentencing (e.g. negotiated and open pleas of guilty, nolo contendere, etc.), including post-trial sentencings and sentencings after open guilty pleas.
7. ADAs are to make recommendations in all violation of probation (VOP) hearings on whether or not the court should find the defendant to be in violation and, if so, the consequence. For technical violations, do not recommend more than 30-60 days in custody; in most instances of technical violations, recommend no custody. For direct violations, do not seek more than 1-2 years in custody that are additional to the sentence for the new conviction that is the direct violation. Sentencings for the new crime that is the direct violation should reflect the fact that the new offense occurred while the defendant was under supervision and reflect this policy.

Appendix B

Limitations

- Our data captures final sentences in cases rather than offers made by ADAs to the defense. In any particular case, it is possible that negotiations between the prosecution and defense occurs, and that the final sentence differs from the initial offer made by an ADA. However, dockets usually indicate whether a plea is "negotiated"—in other words whether the sentence was agreed to by the parties in advance or whether the Court decided upon the sentence after an "open" plea. The DAO recently implemented a digital form to track offers that will provide more robust data in the future.
- We do not know the exact dates that a person is incarcerated after being sentenced. Therefore, we estimate parole time with the assumption that, on average, defendants with county sentences (incarceration sentences fewer than two years) will serve their minimum sentence in confinement before being paroled and defendants with state sentences (incarceration sentences of two years or more) will serve 1.31x their minimum sentence length in confinement before being paroled.
- Because of the relatively short amount of time that has passed since the Sentencing Policies were implemented, our recidivism analysis should be viewed as preliminary; as more time passes, a more robust analysis will be possible with more data and all sentence types included (the recidivism analysis in this report focuses on probation-only sentences).
- The lead charge of a case at the time of charging is not always the same charge that a defendant pleads to and is sentenced for. This can happen because of insufficiency of evidence to proceed on the original lead charge or because plea negotiations lead to a downgrade, perhaps to avoid the collateral consequences of a felony conviction. In this report, we focus on both the grade of the most serious offense pled to as well as the court where a case was resolved (to account for downgraded felonies).
- Because of data limitations, this analysis operates under the assumption that multiple incarceration sentences will be served concurrently, and that probation sentences will be consecutive to incarceration and parole. Under Pennsylvania law, sentences are served concurrently unless the Court specifically states otherwise.
- It is possible that some data were entered incorrectly, as data entry is manually done. However, it is unlikely that any occasional human errors in data entry would affect the results of this analysis.

Appendix C

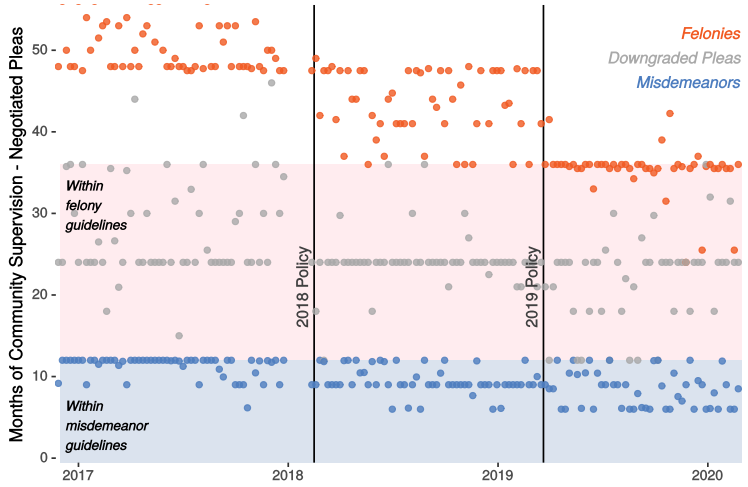
Supplementary Material

Weekly Trends in Supervision

The figures below show median and average lengths of supervision in negotiated plea cases by week. Median supervision lengths show more clearly the immediate effects of the DAO Sentencing Policies. For more information on the changes in supervision length in relation to DAO policies, see the Evaluating Reform section of this report.

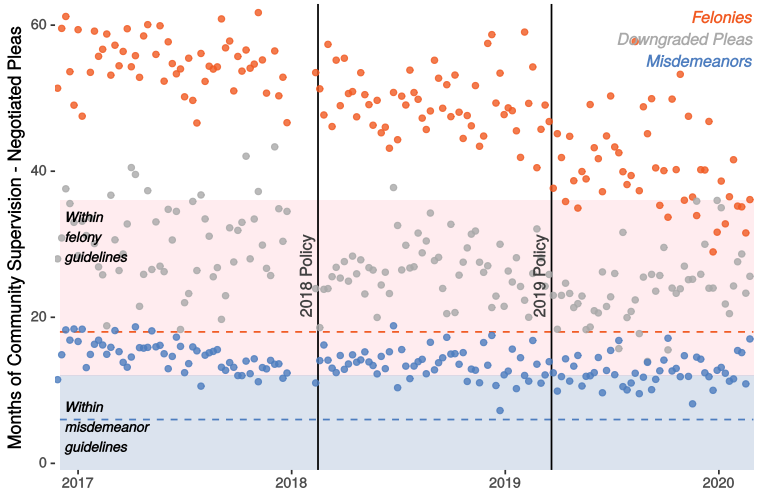
Median Community Supervision Lengths by Week

Downgraded felonies refer to felony cases that were pled as misdemeanors in the Court of Common Pleas.



Average Community Supervision Lengths by Week

Downgraded felonies refer to felony cases that were pled as misdemeanors in the Court of Common Pleas.



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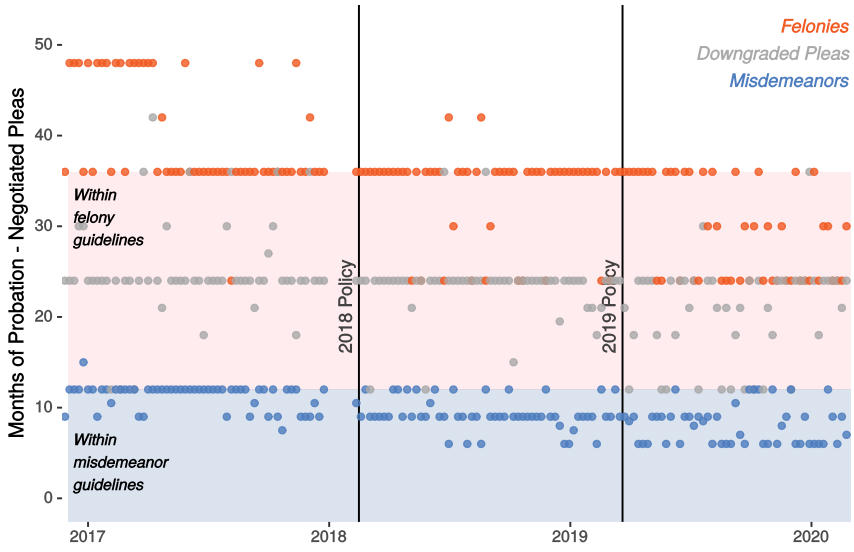
Different Impacts of Two Policies

While both the 2018 Sentencing Policy and the 2019 Sentencing Policy contributed to the DAO's overall goals of reducing mass supervision, they achieved reductions through different approaches. The 2018 policy directed ADAs to seek shorter probation terms (including shorter or no probation "tails"), and the 2019 policy directed ADAs to seek shorter terms of total supervision (parole + probation). The graphs below show total supervision lengths for probation-only sentences and for sentences with parole.

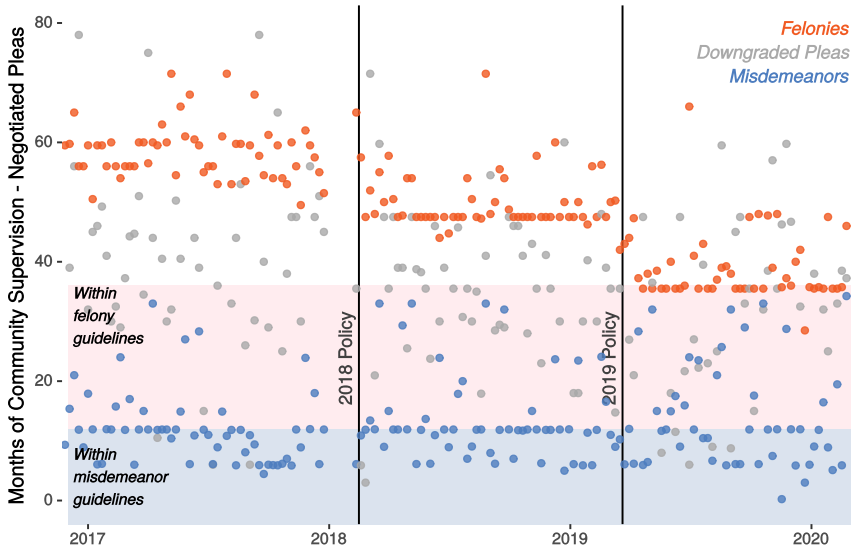
Median Community Supervision by Week - *Probation-Only Sentences*

Downgraded felonies refer to felony cases that were pled as misdemeanors in the Court of Common Pleas.



Median Community Supervision by Week - *Sentences with Parole*

Downgraded felonies refer to felony cases that were pled as misdemeanors in the Court of Common Pleas.



Assessing Recidivism

Methods

We compared the re-charge rate of people sentenced in the six months prior to the 2018 Sentencing Policy implementation (February 15, 2018) to the re-charge rate of people sentenced in the six months immediately following the policy announcement. For each person who was sentenced, we looked at whether they were re-charged during the 18 months after their original sentencing. We also compared people sentenced in the six months pre- and post-2019 Sentencing Policy implementation with six-month re-charge periods. We used chi square and Fisher's exact tests to compare proportions.

Results

33% of people sentenced to probation through negotiated guilty plea before the 2018 Sentencing Policy were re-charged within 18 months of their sentencing, and 31% of those sentenced after the policy was announced were re-charged within 18 months. Using six-month re-charge periods to evaluate the 2019 Supervision Policy, 15% of people sentenced before the 2019 policy was implemented were re-charged, compared to 17% of those sentenced under the 2019 policy. These are not statistically significant differences at a significance level of $\alpha = 0.05$.

When comparing re-charge rates by offense type, there were no statistically significant differences in pre-policy re-charge rate versus post-policy re-charge rate.

We were able to analyze more robustly the effects of the 2018 Sentencing Policy on public safety than the 2019 Sentencing Policy. Only about one year passed between the announcement of the 2019 policy and the anomalies of COVID-19. Future assessments will be able to fully evaluate recidivism for both policies once more time has passed.

Simulating Effects on Community Supervision Population Size

To simulate the effects of the 2019 Sentencing Policy on the number of people on community supervision, we compiled data on offense types, sentence types, and sentence lengths from the three defined time periods of this analysis. For each of the three "sentencing scenarios," we simulated the number of people that would be on community supervision over a five-year period with sentencing patterns from each scenario in place. We held the number of people sentenced constant over the three sentencing scenarios to isolate the effects of the Sentencing Policies on sentence type and sentence lengths.

We ran a Monte Carlo simulation 1,000 times that randomly pulled from the three compiled datasets (one for each time period of analysis) of existing sentencing data to simulate the number of people serving community supervision under sentencing patterns from the three time periods. The table below shows minimum, median, and maximum estimates of community supervision populations from 1,000 simulations under sentencing patterns from each of the three time periods.

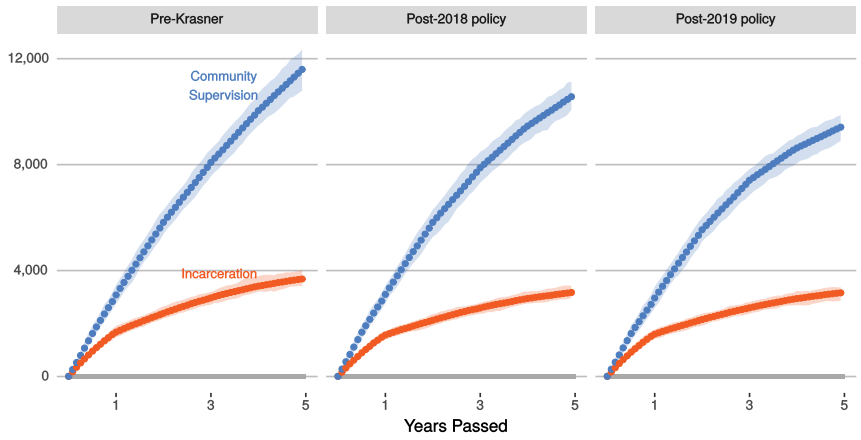
Summary statistics of 1,000 simulations of community supervision size after five years under three sentencing scenarios compared to projections of pre-Krasner sentencing patterns.

SENTENCING PATTERN	MEDIAN CHANGE*	MINIMUM CHANGE*	MAXIMUM CHANGE*
Post-2018 policy	-8.9%	-3.2%	-18.4%
Post-2019 policy	-18.8%	-8.6%	-27.9%

**Percent change from pre-Krasner projections of community supervision size after five years.*

Projected Number of People Incarcerated and on Community Supervision

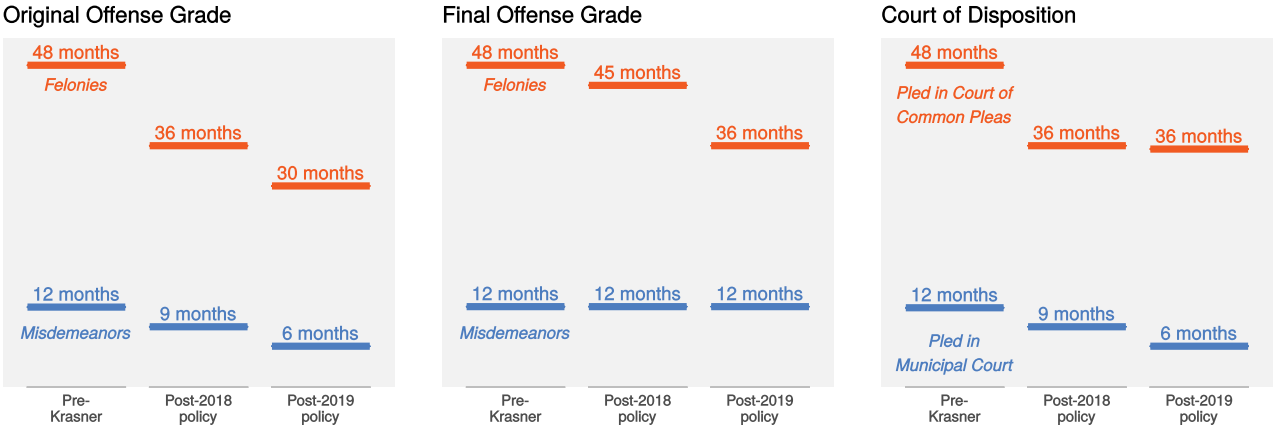
Shaded areas show the range of output from 1,000 simulations and bold points show median values from thouse 1,000 simulations. These projections assume initial populations of 0.



Felony/Misdemeanor Breakdown

Alternative ways to distinguish classes of cases

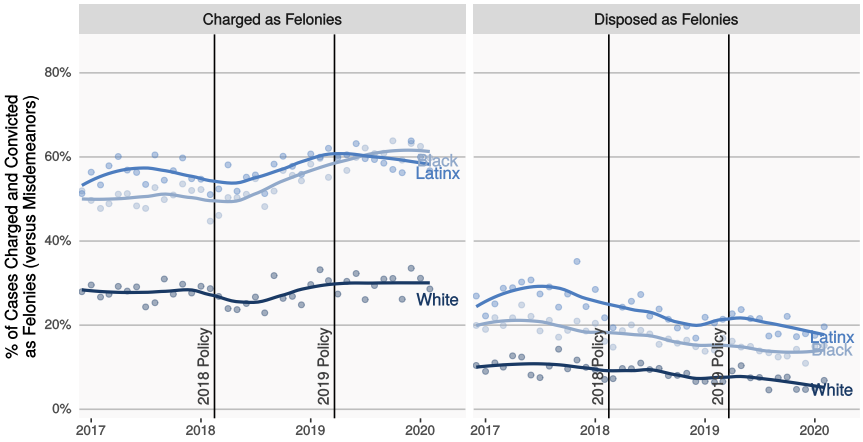
In this report, we displayed felonies, downgraded pleas, and misdemeanors as three separate groups. Below, we show three alternative ways to look at the data that account for downgrades from felonies to misdemeanors differently. No matter the method, the findings stand: the DAO policies dramatically reduced community supervision sentence lengths without a measurable effect on public safety.



Since the 2019 Sentencing Policy was implemented, Black, Latinx, and white defendants all saw increases in the percent of negotiated guilty pleas charged and disposed as felonies, with the largest increases seen for white defendants. These changes are in line with the notion that prosecution should focus more on violent offenses than petty crimes. However, Black and Latinx defendants are still charged with a higher proportion of felonies than white defendants.

Black and Latinx defendants are charged with and convicted for a higher proportion of felonies than white defendants. This contributes to longer overall supervision terms for Black and Latinx defendants than white defendants when considering all cases combined.

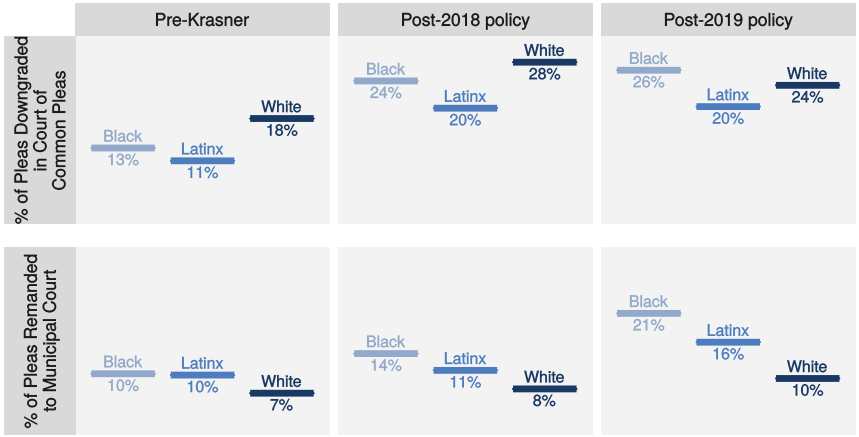
White defendants are charged with and convicted for proportionally fewer felonies than Black and Latinx defendants, leading to overall longer supervision sentences for Black defendents.



The graph below displays the proportion of negotiated guilty pleas that were originally charged as felonies but disposed as misdemeanors by defendant race. Felonies sent back to (remanded to) Municipal Court are likely to have been downgraded for insufficiency of evidence, while cases downgraded in the Court of Common Pleas are more likely a result of a pre-trial decision by an ADA. Pre-Krasner, white defendants saw a higher proportion of negotiated guilty pleas downgraded in Common Pleas than Black or Latinx defendants; the proportions between groups are more similar post-2019 policy.

Negotiated Guilty Pleas Downgraded from Felony to Misdemeanor by Race

After sentencing reform, Black, Latinx, and white defendants have seen similar rates of felony negotiated pleas being downgraded to misdemeaners in the Court of Common Pleas. However, Black defendants have consistently seen more of their pleas being sent back to Municipal Court.



The table below lists the five most common felony offenses that are downgraded to misdemeanors in the Court of Common Pleas and the number of cases downgraded in each period. Downgrading felonies has become a more frequent practice under District Attorney Krasner, even while the size of the system has decreased.

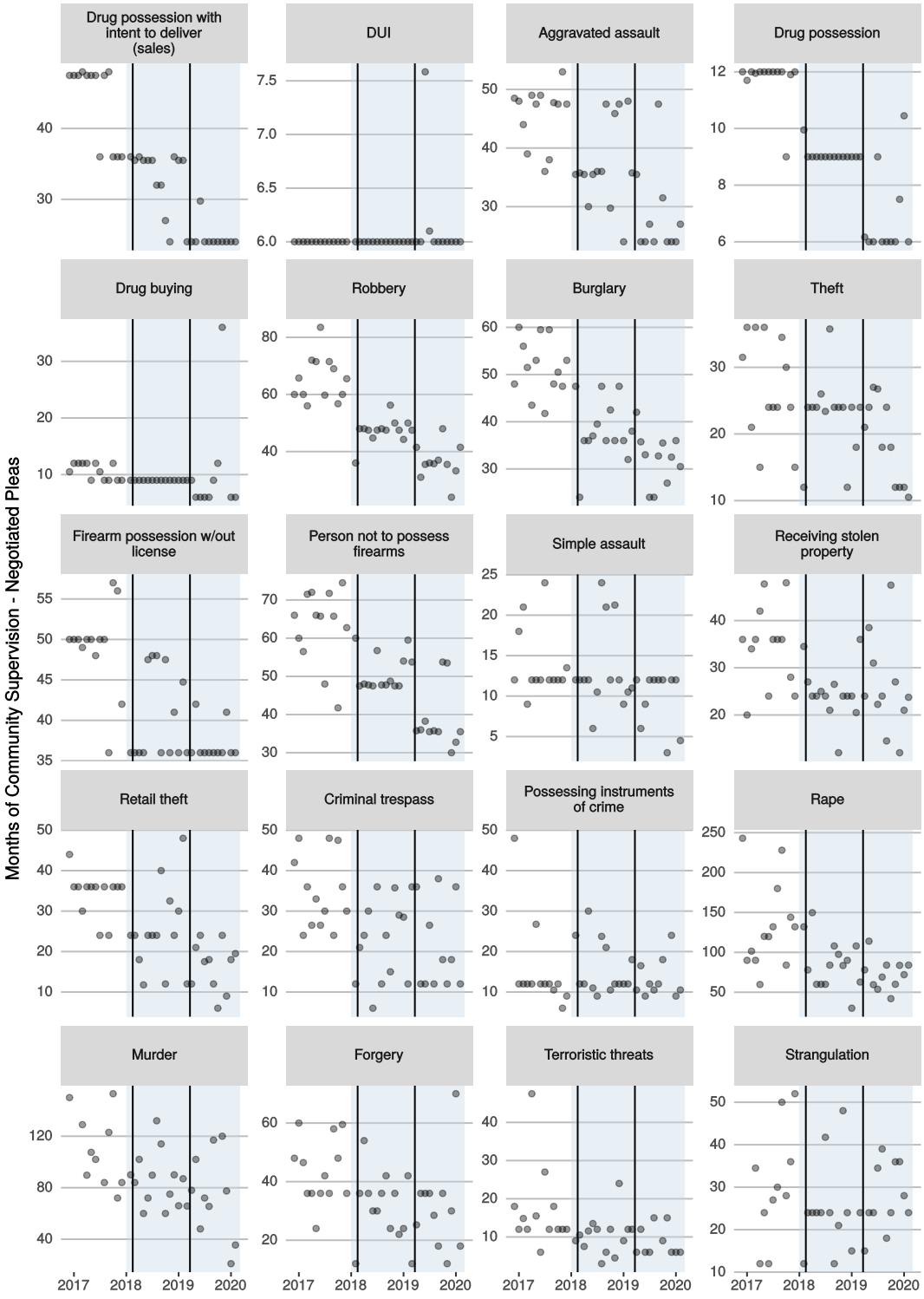
Most frequent felony offenses to be downgraded to misdemeanors and the number of cases downgraded in each period. The percentages in parentheses show the downgrades as proportions of all negotiated guilty pleas in each time period (e.g., downgrades of drug sale felonies made up 5% of all negotiated guilty pleas in the post-2019 policy period).

	PRE-KRASNER	POST-2018 POLICY	POST-2019 POLICY
Drug sales	114 (2%)	280 (4%)	177 (5%)
Aggravated assault	197 (3%)	247 (4%)	133 (4%)
Carrying firearms without a license	18 (<1%)	114 (2%)	54 (1%)
Robbery	45 (1%)	62 (1%)	32 (1%)
Burglary	43 (1%)	59 (1%)	27 (1%)

Supervision Trends by Lead Charge

The graphs and tables below show median total community supervision lengths for negotiated guilty pleas by offense. Some of the most dramatic reductions in community supervision length can be seen with drug offenses. Some violent offenses also saw reductions in median total supervision; in most of those cases, defendants' custodial sentences are not being shortened, but the use of probation tails (after release from prison and parole) are being used less frequently by the DAO.

Monthly Median Community Supervision by Original Lead Charge



Blue box shows period DA Krasner in office. Black lines mark when two supervision policies were announced.
Lead charges for the 20 most common negotiated guilty plea offenses since 2018 are included.

Change in median supervision sentence lengths (in months) of 20 most frequent negotiated plea offenses. Offenses are presented from most frequent to less frequent.

STATUTE	PRE- KRASNER	POST-2018 POLICY	POST-2019 POLICY	CHANGE AFTER POLICIES
Drug possession with intent to deliver (35 PaCS 780-113 A30)	48	36	24	-50%
DUI (75 PaCS 3802)	6	6	6	0%
Aggravated assault (18 PaCS 2702)	48	36	24	-50%
Drug possession (35 PaCS 780-113 A16)	12	9	6	-50%
Purchasing controlled substances (35 PaCS 780-113 A19)	12	9	6	-50%
Robbery (18 PaCS 3701)	66	48	36	-45%
Burglary (18 PaCS 3502)	50	36	33	-34%
Theft (18 PaCS 3921)	24	24	18	-25%
Firearm possession w/out license (18 PaCS 6106)	50	36	36	-28%
Person not to possess firearms (18 PaCS 6105)	66	48	36	-45%
Receiving stolen property (18 PaCS 3925)	36	24	24	-33%
Simple assault (18 PaCS 2701)	12	12	9	-25%
Retail theft (18 PaCS 3929)	36	24	18	-50%
Criminal trespass (18 PaCS 3503)	36	24	18	-50%
Possessing instruments of crime (18 PaCS 907)	12	12	12	0%
Murder (18 PaCS 2502 NA)	102	75	72	-29%
Rape (18 PaCS 3121)	120	84	72	-40%
Forgery (18 PaCS 4101)	36	36	34	-6%
Terroristic threats (18 PaCS 2706)	12	12	6	-50%
Strangulation (18 PaCS 2718)	24	24	24	0%

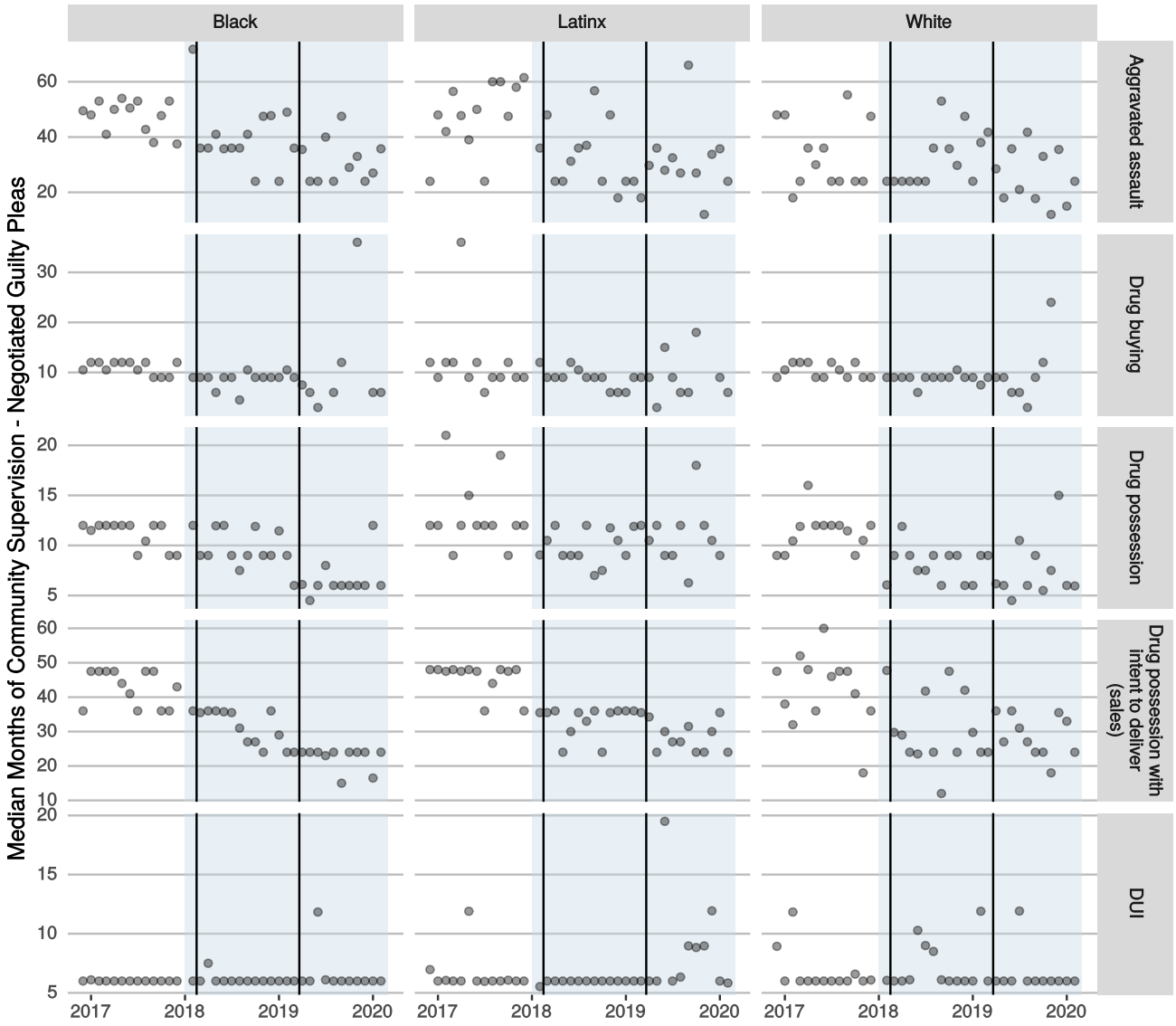
Policy compliance of 20 most frequent negotiated plea offenses. Offenses are presented from most frequent to less frequent.

STATUTE	PRE-KRASNER	POST-2018 POLICY	POST-2019 POLICY	CHANGE AFTER POLICIES (PERCENTAGE POINTS)
Drug possession with intent to deliver (35 PaCS 780-113 A30)	45%	65%	84%	39%
DUI (75 PaCS 3802)	66%	71%	76%	10%
Aggravated assault (18 PaCS 2702)	45%	54%	72%	27%
Drug possession (35 PaCS 780-113 A16)	78%	84%	85%	7%
Purchasing controlled substances (35 PaCS 780-113 A19)	91%	95%	92%	1%
Robbery (18 PaCS 3701)	23%	36%	65%	42%
Burglary (18 PaCS 3502)	31%	52%	69%	38%
Theft (18 PaCS 3921)	52%	62%	74%	22%
Firearm possession w/out license (18 PaCS 6106)	22%	43%	71%	50%
Person not to possess firearms (18 PaCS 6105)	10%	32%	56%	46%
Receiving stolen property (18 PaCS 3925)	55%	68%	71%	16%
Simple assault (18 PaCS 2701)	61%	67%	76%	15%
Retail theft (18 PaCS 3929)	50%	57%	70%	21%
Criminal trespass (18 PaCS 3503)	52%	68%	68%	16%
Possessing instruments of crime (18 PaCS 907)	63%	56%	67%	4%
Murder (18 PaCS 2502 NA)	31%	32%	58%	26%
Rape (18 PaCS 3121)	7%	12%	31%	24%
Forgery (18 PaCS 4101)	46%	69%	62%	17%
Terroristic threats (18 PaCS 2706)	64%	70%	86%	22%
Strangulation (18 PaCS 2718)	67%	90%	72%	5%

Trends in Supervision Length by Defendant Race and Sex

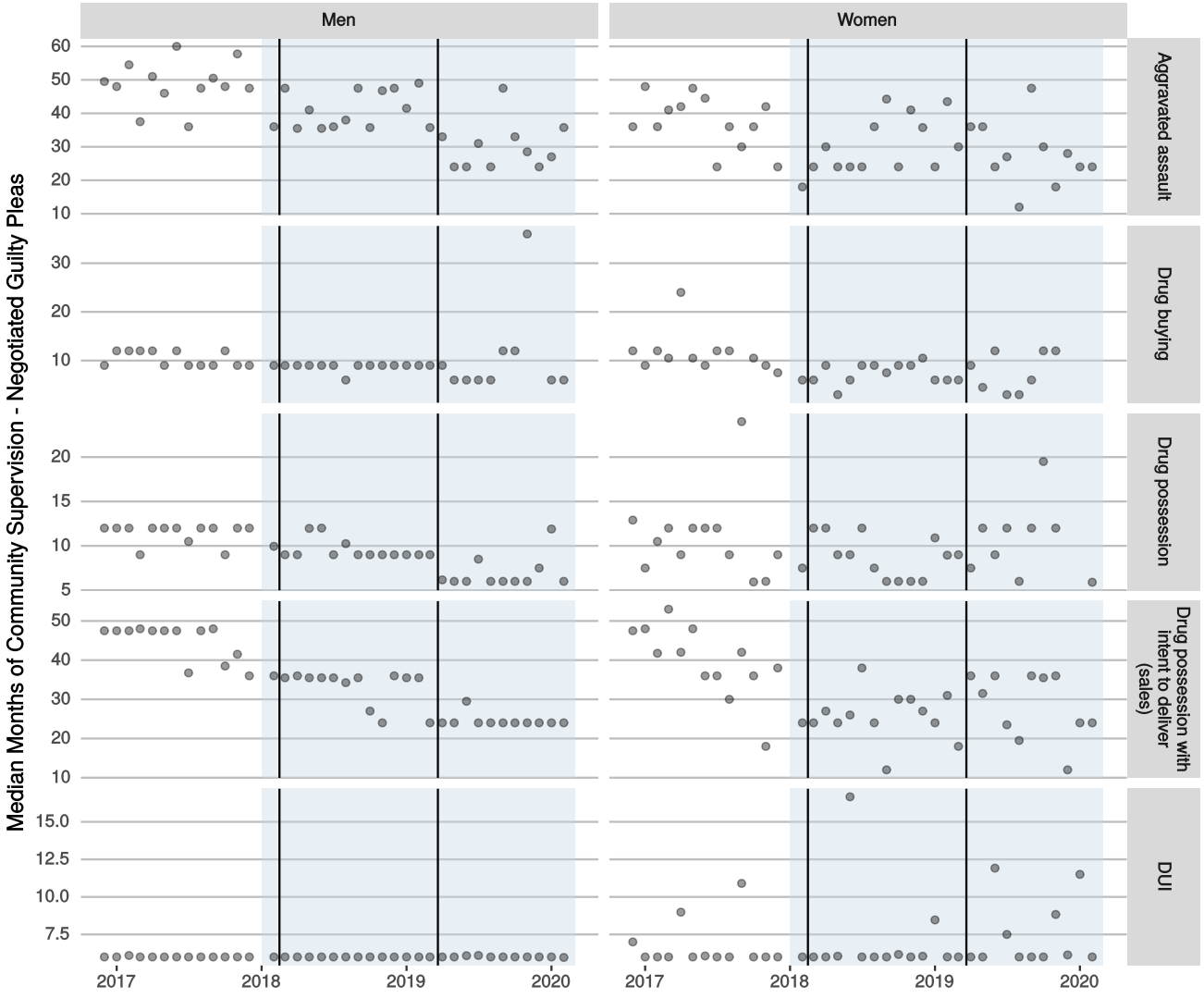
The graphics below show the five most common negotiated plea offenses since District Attorney Krasner took office in 2018. Each pane in the two graphs displays monthly median supervision lengths for that offense by race, ethnicity, and sex. Generally, supervision lengths for common offenses are similar across defendants of different groups. For some offenses, the trends are not as clear as the aggregate data as a whole because sample sizes are lower.

At the offense level, defendants of different races receive similar community supervision sentences



Pink box shows period DA Krasner in office. Black lines mark when two supervision policies were announced.
Lead charges for the 5 most common negotiated guilty plea offenses since 2018 are included.

At the offense level, men and women receive similar community supervision sentences



Fewer women than men are sentenced. Therefore, the trends are less consistent and clear for women.
Pink box shows period DA Krasner in office. Black lines mark when two supervision policies were announced.
Lead charges for the 5 most common negotiated guilty plea offenses since 2018 are included.

Appendix D

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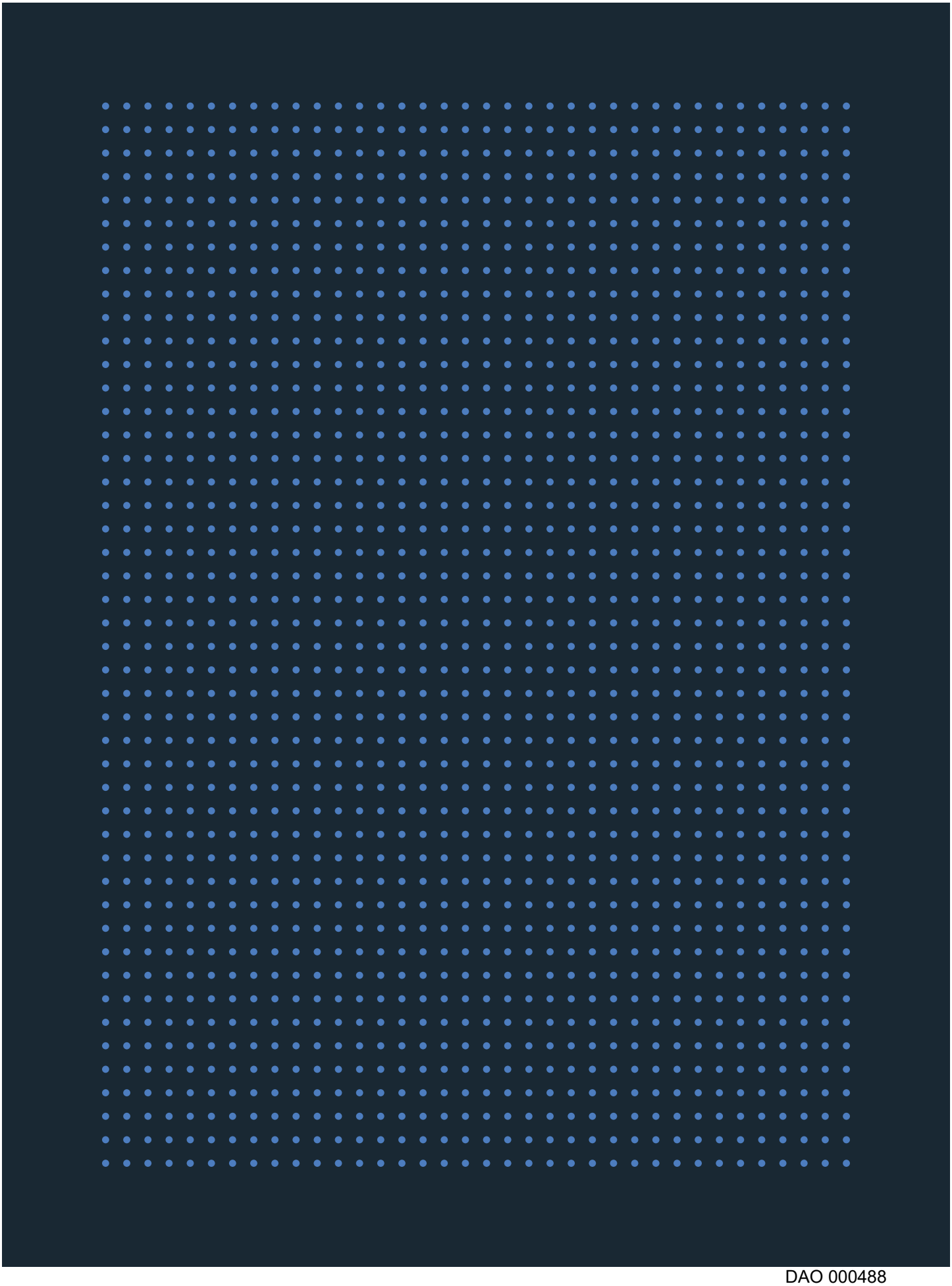
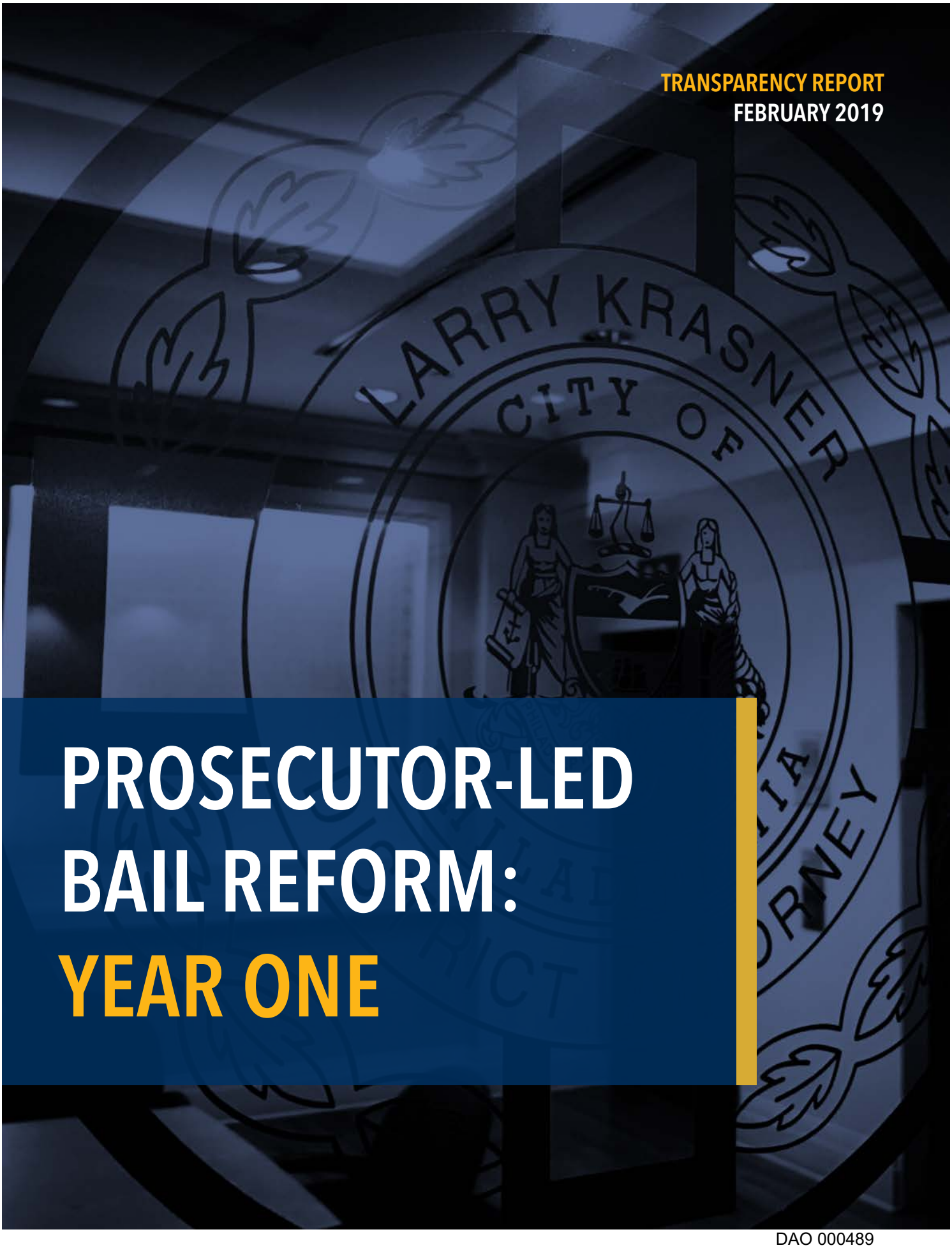
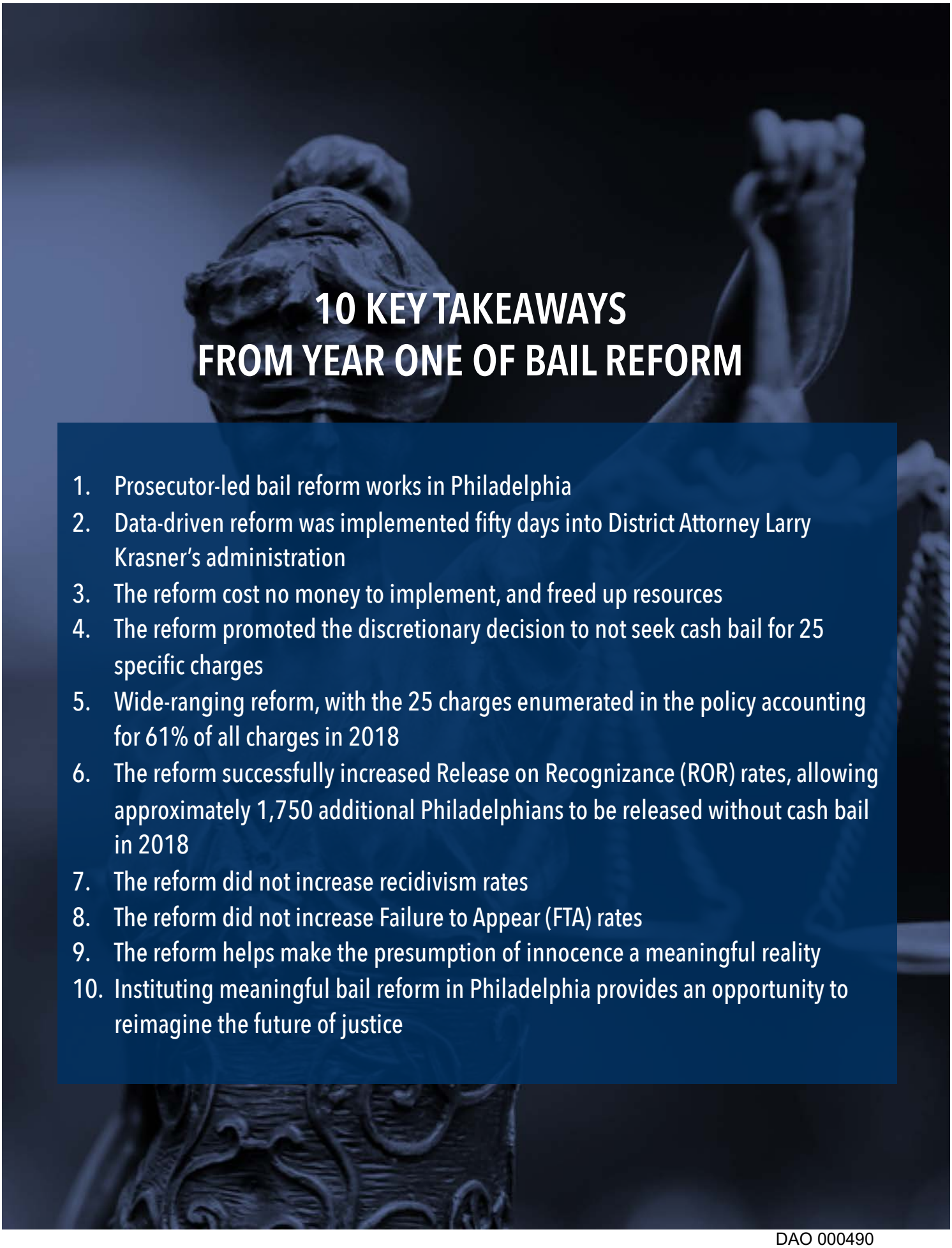




TRANSPARENCY REPORT
FEBRUARY 2019

PROSECUTOR-LED BAIL REFORM: YEAR ONE



10 KEY TAKEAWAYS FROM YEAR ONE OF BAIL REFORM

1. Prosecutor-led bail reform works in Philadelphia
2. Data-driven reform was implemented fifty days into District Attorney Larry Krasner's administration
3. The reform cost no money to implement, and freed up resources
4. The reform promoted the discretionary decision to not seek cash bail for 25 specific charges
5. Wide-ranging reform, with the 25 charges enumerated in the policy accounting for 61% of all charges in 2018
6. The reform successfully increased Release on Recognizance (ROR) rates, allowing approximately 1,750 additional Philadelphians to be released without cash bail in 2018
7. The reform did not increase recidivism rates
8. The reform did not increase Failure to Appear (FTA) rates
9. The reform helps make the presumption of innocence a meaningful reality
10. Instituting meaningful bail reform in Philadelphia provides an opportunity to reimagine the future of justice

CONTENTS

DISTRICT ATTORNEY'S OFFICE
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In January, 2018 a movement for criminal justice reform took over the Philadelphia District Attorney's Office (DAO). That movement had promised to address the injustice of cash bail by bringing about bail reform. In February, 2018 the DAO announced its new policy on cash bail, which has remained in effect ever since. We call it Philly Bail Reform 1.0. We are keeping our promise.

One year later, an independent academic analysis agrees with our own internal analysis: Philly Bail Reform 1.0 is working. This freedom really is free. Substantial reductions in our recommending cash bail have freed people from jail without increasing crime and without increasing failures to appear in court. Taxpayers have saved many millions of dollars on unnecessary pre-trial incarceration. This report, bolstered by independent science, is just one example of the transparency Philadelphians deserve. It is also an example of the way forward: it is the evidence that will be the basis for further bail reform: our Philly Bail Reform 2.0.

Because we understood in early 2018 that the Pennsylvania legislature was not yet ready to join other states and eliminate cash bail statewide, we at the Philadelphia DAO in collaboration with community partners and in consultation with others in the criminal justice system developed Philly Bail Reform 1.0, a policy intended to expand the number of cases where no payment bail was required by finding types of charges for which our office would ordinarily recommend NO cash bail.

Using years of criminal justice data, our criminology, data and policy teams identified 25 charges (comprising 61% of all cases) where the courts had been setting bail very low—requiring payment of less than $1,000. Everybody could pay the bail except the poor. None of the 25 offenses were violent offenses or sex offenses. For these specific charges, we created a presumption that ordinarily we would recommend no cash bail. We hoped this policy would allow people to return to their lives, their families, their jobs, and their communities. We hoped it would reduce our County jail population. We believed, based upon our research into other jurisdictions, that it would not cause a crime spike or result in defendants skipping court.

Our analysis and an independent policy evaluation show that it worked. As this report details, the reform achieved all of its goals:

- Approximately 1,750 additional Philadelphians were released without bail in 2018
- There was no increase in pretrial recidivism for people released without bail
- Defendants released without bail attended court at the same rate as before the reform
- No crime spike, as confirmed by the Philadelphia Police Department's own data: 0% overall increase in crime during 2018 and a 5% decrease in violent crime during 2018.[1]

Bail reform is essential to meaningful criminal justice reform. The use of cash bail in particular has fed mass incarceration and discriminated against the poor and people of color. Cash bail has degraded criminal justice in our courts by coercing those who cannot pay cash bail to plead guilty regardless of their innocence or guilt and to accept the sentence of incarceration they have already served awaiting trial even when that sentence is excessive.

The complete elimination of cash bail has been successful for 30 years in Washington, D.C., and more recently elsewhere. In general, it results in a system that holds a small portion of defendants (12% in Washington, D.C.) who are considered dangerous and/or unlikely to appear in court. This group cannot pay their way out pre-trial custody no matter how much money they have. The other group, who are not considered too dangerous and/or unlikely to appear in court are released with no requirement of any payment (88% in Washington, D.C.).[2]

While we look forward to the day when our Pennsylvania legislature is ready for statewide bail reform, we are not waiting. We are acting now to reform bail because we cannot wait for justice. Our power to achieve criminal justice reform now flows directly from the movement and the people we serve, all Philadelphians.

Lawrence S. Krasner
District Attorney of Philadelphia

The Philadelphia District Attorney's Office provides a voice for victims of crime and protects the community through zealous, ethical and effective investigations and prosecutions. The Philadelphia District Attorney's Office is the largest prosecutor's office in Pennsylvania, and one of the largest in the nation. It serves the more than 1.5 million citizens of the City and County of Philadelphia, employing 600 lawyers, detectives and support staff.

www.phila.gov/districtattorney

II. THE CASH BAIL SYSTEM: THE URGENT NEED FOR REFORM

CASH BAIL PROCESS IN PHILADELPHIA

Bail is set at a bail hearing by a Bail Commissioner shortly after arrest. During the bail hearing, the District Attorney's Office and Defender Association of Philadelphia may recommend bail types.

1. INITIAL ARREST → **2. BAIL HEARING** → **3. BAIL DECISION**

The final bail decision is made by the Bail Commissioner. If they set cash bail, 10% of the amount must be paid as bond for the defendant to avoid being detained. [3]

- **BAIL SET & CAN'T PAY** → **PRETRIAL DETENTION IN JAIL**
- **BAIL SET & PAYS** → **INCARCERATION UNTIL PAYMENT**
  Can take days, weeks, or months to post bond.
- **NO CASH BAIL** → **IMMEDIATE RELEASE**
  Even when there is no cash bail, the defendant must comply with non-monetary bail conditions.

CASH BAIL DEFINED

- "Cash Bail" refers to the money that a defendant has to pay in order to return to the community rather than be incarcerated while awaiting trial.
- It is a contract with a looming penalty: miss court or commit a crime before your case is resolved and you forfeit your bail; show up and stay out of trouble, and you get your money back.

INTENDED PURPOSE

Increase the likelihood that a defendant will appear in court as required for the duration of their case.[4]

Decrease the likelihood that a defendant will pose a threat to the community or commit a new crime.[5]

THE PROBLEM WITH CASH BAIL

Cash bail has been misused. In a criminal justice system that disproportionately impacts people without means, cash bail punishes the poor before a determination of guilt. Even a few days in pretrial detention due to cash bail is associated with a host of negative consequences.

Increases	Decreases
• Disparate impact on poor people and people of color[6]	• Fairness, racial equity[11]
• Coerced guilty pleas[7]	• Long-term public safety[12]
• Negative outcomes such as lost jobs and housing, missed medical care, and loss of custody of one's children[8]	• The ability of the accused to support their family, receive public benefits, and stay attached to their community[13]
• Pre- and post-trial recidivism among low-risk defendants[9]	• Pre- and post-trial employment[14]
• Incarceration[10]	• The presumption of innocence[15]

II. THE CASH BAIL SYSTEM: REFORM EFFORTS

BAIL REFORM COAST TO COAST

Efforts to reform the bail system are ongoing throughout the United States at the federal, state, and local levels. Change at the federal and state levels has generally been intentionally driven by legislation or forced through court decisions following lawsuits challenging the constitutionality of the cash bail system. A range of other factors have motivated bail reforms, including a broader rethinking of the value in spending 17% of our total correctional budgets—an estimated $14 billion annually—on incarcerating people who have not yet been found guilty.[16]

Examples of Jurisdictions with Legislation or Court Decisions:
Washington, D.C.; New Jersey; California; Massachusetts; New Mexico, Illinois (Cook County); Georgia (Atlanta & Calhoun Counties); Alabama (Cullman & Randolph Counties); Texas (Dallas & Harris Counties); Louisiana (Lafayette & Orleans Parishes); Missouri (Jennings County); Oklahoma (Tulsa County); Ohio.[17]

BAIL REFORM IN PHILADELPHIA

In Philadelphia, bail reform has been accomplished through policy changes implemented by District Attorney Krasner to correct clear inequities and unfairness and to safely end unnecessary pretrial incarceration caused by the cash bail system. DAO policies supported Philadelphia's participation in the MacArthur Safety & Justice Challenge and turned a resolution passed by City Council calling for bail reform into a practical reality.[18]

THE DISTRICT ATTORNEY'S NEW CASH BAIL POLICY

On February 21, 2018, the District Attorney's Office implemented a new policy intended to reduce reliance on cash bail in Philadelphia.

61%

BIG IMPACT

Based on an analysis of five years of historical data, the policy identified 25 charges, listed below, for which the DAO would not seek cash bail, with some exceptions. These charges represented **61% of all charges brought in Philadelphia in 2018**.[19]

PROSECUTORIAL DISCRETION

Although the policy presumes no cash bail for the enumerated charges, **Assistant District Attorneys have discretion** to seek cash bail in individual cases when necessitated by the facts.

CHARGES IN THE BAIL POLICY[20]

Offense grade level indicators: M = Misdemeanor, F = Felony, S = Summary.

Theft Related	Access Device Fraud[M,F], Burglary (only of locations not for overnight accommodation when no person is present)[F], Forgery[M,F], Fraud in Obtaining Food Stamps and Public Assistance[M,F], Identity Theft[M,F], Retail Theft[S,M,F], Receiving Stolen Property (not graded F2)[M,F], Theft by Deception or False Impression[M,F], Theft by Unlawful Taking (not graded F2)[M,F], Theft from Motor Vehicle (not graded F2)[M,F], Trademark Counterfeiting[M,F], Unauthorized Use of Motor Vehicles[M]
Controlled Substance Related	Contraband[M,F], DUI[M], Intentional Possession of a Controlled Substance[M], Paraphernalia[M], Possession of Cannabis[M], Possession with Intent to Deliver (less than 5lb of cannabis, non-cannabis subject to caveats)[F], Unlawful Purchase of a Controlled Substance[M]
Other	Criminal Mischief[M,F], Sex Work[M], Providing False Identification to Law Enforcement[M], Resisting Arrest[M], Trespass (non-residential)[M,F]

III. EVALUATING REFORM: TRANSPARENCY AND ACCOUNTABILITY

POLICY TRACKING AND INDEPENDENT EVALUATION

The District Attorney's Office (DAO) developed **internal metrics** to track the new cash bail policy, and invited an **independent assessment** by academic experts in the area of cash bail.[21] While this report focuses on the DAO analytics developed to assess the policy, the external evaluation rigorously considers the policy's impact. These efforts reflecting our belief in public transparency and scientific accountability are outlined below.

DAO METRICS FOR MEASURING SUCCESS

The DAO policy balances **maximizing** the number of people who safely remain in the community before a determination on guilt with **minimizing** the potential that those released may not show up for court or commit new offenses.

Metric	Definition	Successful Outcome
Release on Recognizance (ROR) Rate	Percentage of people released with $0 bail (see page 14).	Large increase *(see page 6)*
Pretrial Recidivism Rate	A pretrial arrest for a new incident within 4 months (see page 14).	No/minimal increase *(see page 8)*
Failure to Appear (FTA) Rate	Failure to appear at one or more hearings within 4 months (see page 14).	No/minimal increase *(see page 8)*

INDEPENDENT EVALUATION OF PHILADELPHIA DAO'S 2018 BAIL REFORM

"Evaluating the Impacts of Eliminating Prosecutorial Requests for Cash Bail," by Dr. Aurélie Ouss, Ph.D., and Dr. Megan Stevenson, Ph.D. (February 15, 2019; see https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3335138).[22]

POLICY OUTCOMES

⬆ 23% *12 Percentage Points*
Increase in the eligible defendants released with no monetary or other conditions (ROR).

⬇ 41% *7 Percentage Points*
Decrease in the use of monetary bail in amounts of $5,000 or less.

⬇ 22% *5 Percentage Points*
Decrease in the number of defendants who spent at least one night in jail.

PUBLIC SAFETY SUCCESS

- No detectable evidence that the decreased use of monetary bail, unsecured bond, and release on conditions had adverse effects on appearance rates or recidivism.
- No detectable change in appearances or recidivism for ineligible defendants, suggesting that there were no concurrent policy changes that led to overstating or understating how accountability affects compliance among eligible defendants.

III. EVALUATING REFORM: INDIVIDUAL LIBERTY

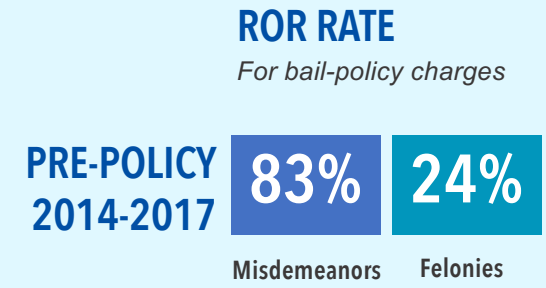
The bail policy successfully increased the percentage of people who did not have to pay to secure their release following an arrest . Approximately 1,750 additional people were released without monetary bail as a result of the bail policy from February to December 2018.[23]

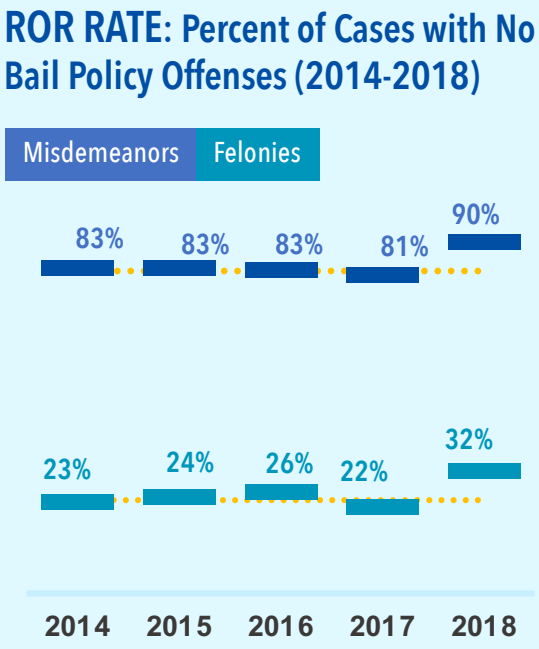
Over the four years prior to the implementation of the bail policy, defendants facing one of the 25 charges targeted by the bail reform were **Released on Recognizance (ROR):**

- **82.6% of the time for misdemeanors**
- **23.9% of the time for felonies**

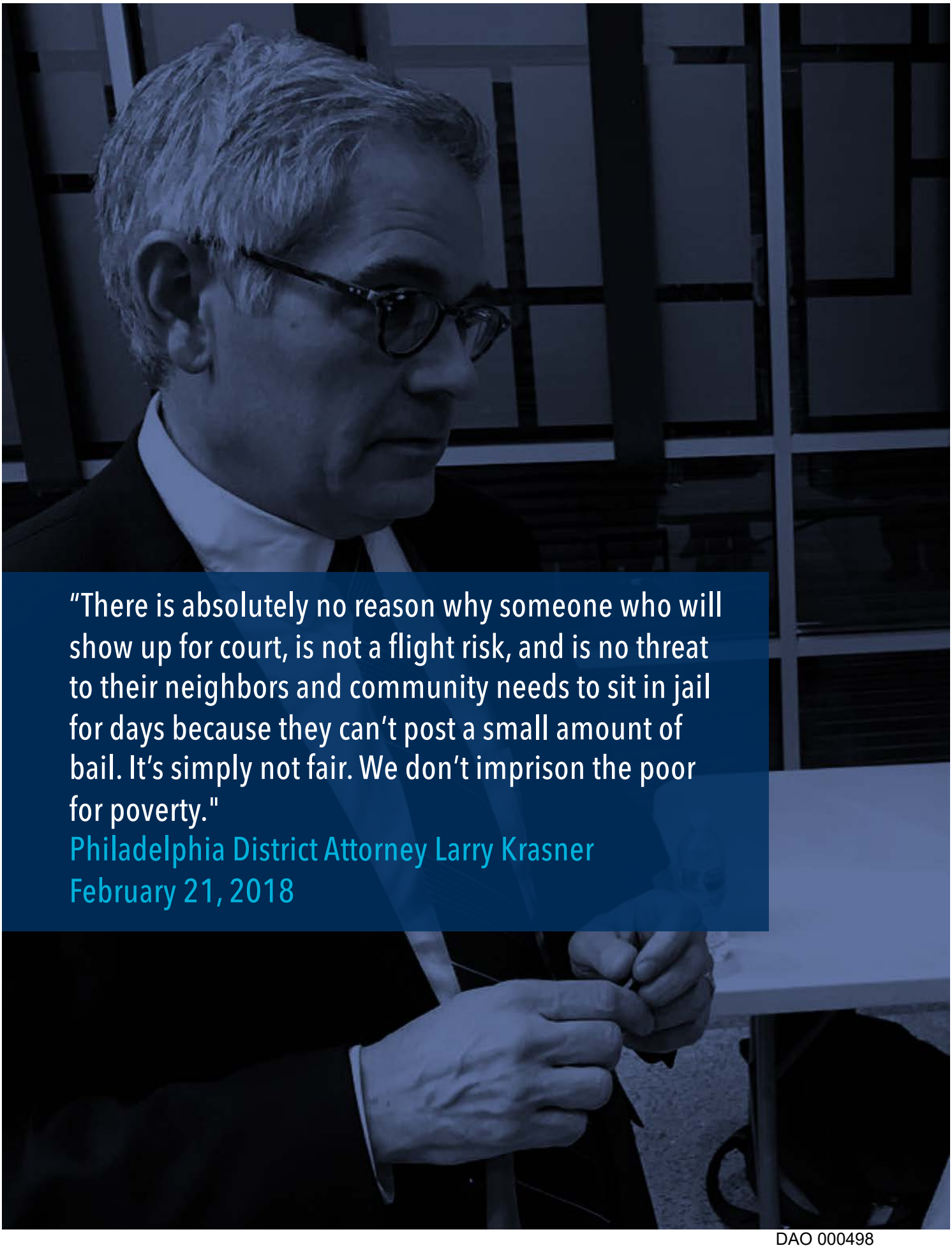
Compared to average rates from 2014-2017, the ROR rate in the 10.5 months following the cash bail reform increased to:

- **89.9% for misdemeanors** (+8.84% increase, +7.3 percentage points)
- **31.5% for felonies** (+31.8% increase, +7.6 percentage points)





Source: DAO analysis of regularly shared court data



"There is absolutely no reason why someone who will show up for court, is not a flight risk, and is no threat to their neighbors and community needs to sit in jail for days because they can't post a small amount of bail. It's simply not fair. We don't imprison the poor for poverty."

Philadelphia District Attorney Larry Krasner

February 21, 2018

III. EVALUATING REFORM: PUBLIC SAFETY

One year after implementation we can conclude that the DAO bail policy successfully allows people to safely return to their lives while awaiting a determination in their case with minimal effects to the community.

RECIDIVISM RATE

For bail-policy charges receiving no bail

	Misdemeanors	Felonies
PRE-POLICY 2017	13%	19%
POST-POLICY 2018	12%	17%

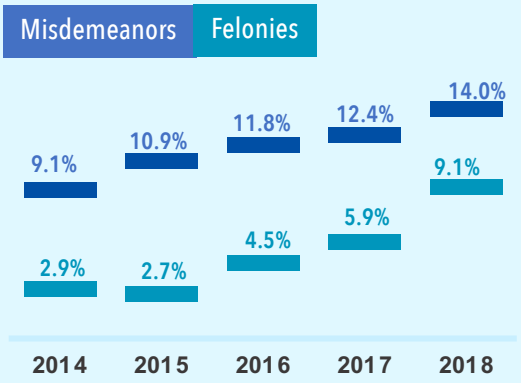
- There were no significant increases in the **Failure to Appear (FTA)** and **Pretrial Recidivism** rates in the period immediately following the implementation of the policy.
- For the charges targeted by our policy, people released without bail in 2018 had slightly lower recidivism rates than people released in 2017, and were rearrested at rates similar to people released with bail.
- Although there was an increase in the FTA rate, it is not attributable to the bail policy. This is because the FTA rate was trending up for several years prior to the policy implementation.[24]

FTA RATE

For bail-policy charges receiving no bail

	Misdemeanors	Felonies
PRE-POLICY 2017	12%	5.9%
POST-POLICY 2018	14%	9.1%

FTA RATE: Percent of Cases with No Bail Policy Offenses (2014-2018)



Source: DAO analysis of regularly shared court data

Historically, a proportion of people who are released before trial fail to appear for court or are re-arrested pretrial. This predates our policy and is based on factors unrelated to bail. We will continue to monitor these public safety metrics, recalibrate the policy accordingly, and find new ways to support people who are released.

While the DAO policy took responsibility for increasing the ROR rate, all stakeholders share credit for maintaining the high percentage of people who successfully appear in court and stay arrest-free pretrial—especially the people released to their communities and those who support them.

IV. TRANSFORMING JUSTICE

A MAJOR DRIVER OF MASS INCARCERATION

The use of cash bail to detain people accused of crimes is a major driver of mass incarceration in Philadelphia and nationally.

- Reducing the reliance on cash bail is a key part of DA Krasner's broader vision to end mass incarceration and transform the justice system.
- Cash bail unfairly punishes poor people solely because of their inability to pay even a small amount of bail, while those who can afford to pay can be released even when charged with serious offenses.
- The presumption of innocence and the right to liberty should apply to everyone, not just to those who can afford to pay for their freedom.

COST-BENEFITS

It is challenging to calculate how much money the system saves by allowing people to immediately return to their lives while awaiting trial. Criminal justice agencies incur the costs of transporting people to and from jail, booking and screening people entering jail, and incarcerating people waiting for their trial or to be bailed out. Making the entire system more efficient by safely removing individuals from this process saves money while simultaneously improving long-term public safety.

Prison costs are complex. A prison construction project might anticipate upwards of a billion dollars in capital and operating expenses over two to three decades. Adding or subtracting incarcerated people does little to change that picture because the greatest costs associated with a prison come from building and running it, not the number of people who reside in it. Once the project starts, the residents of Philadelphia are locked in to paying the bill.[25]

INVEST IN PHILLY

The greatest savings associated with the DAO 2018 Bail Reform Policy will be what Philadelphia can save in the future by reinvesting in people rather than building new jail facilities. Reinvestment means fighting poverty and eliminating the causes of crime—improving education, workforce development, neighborhood stability, housing and food security—and strengthening infrastructure for mental health treatment, drug and alcohol treatment, rehabilitative options while people are incarcerated, and restorative reentry services when they are released.[26]

IV. TRANSFORMING JUSTICE

Beyond monetary benefits, there are broad social benefits that flow from not needlessly incarcerating people awaiting trial. The fabric of Philadelphia's communities is strengthened when a defendant, presumed innocent and not a danger to the community, is allowed to return home shortly after arrest.

FAMILIES	COMMUNITIES	EQUITY
• A person who can return home shortly after arrest will be able to keep a job that may otherwise be lost due to unexcused absences, avoid the destabilizing effect of losing housing, or continue receiving medical treatment that might be lost if absent for a few days. • Children benefit when parents and neighbors are not incarcerated pretrial. Parental incarceration can be psychologically traumatizing, cause economic strain, and lead to placement in the foster care system.	• Communities benefit from stability and local businesses benefit when people remain in the community, keep their jobs, and maintain public benefits. Individuals who are incarcerated often lose these benefits, which expands poverty rather than offering support and stability when they are needed most.	• The justice system benefits when people are not needlessly held in pretrial detention. Removing people from pretrial detention reduces the jail population, allowing for safer staff-to-detainee ratios. Rather than process and support thousands of people each year accused of committing low-level crimes, jails can focus on supporting a smaller number of inmates, keeping them safe, and helping them reenter society. • People released prior to trial are also less likely to plead guilty solely to gain their freedom, leading to a more fair and just system.[27]

MOVING FORWARD

The success of the cash bail policy isn't just about rates and percentages. There is a very real human impact to the policy. Approximately 1,750 additional individuals were released without cash bail because of the bail policy, allowing them to return to their families, communities, and lives without having to pay to secure their freedom.

ROOM FOR IMPROVEMENT	The ROR rate did not reach 100% for any individual charge, and there is room for targeted improvement. That some individual offenses have somewhat low rates is not necessarily a failure of implementation, but rather a sign that the DAO and ADAs are being thoughtful about how we approach bail.
MORE ANALYSIS	Given the success of the 2018 reform, we will identify policy changes for Philly Bail Reform 2.0.
MORE OPTIONS	Prosecutor-led bail reform sets presumptions for one actor in the system, and is limited by the options available. With additional stakeholder engagement and community-based resources, more defendants can remain in the community without bail conditions.

V. RESEARCH NOTES: TERMINOLOGY

TERMINOLOGY

The following technical terms are used in the report. The same definitions and approaches were used for charges targeted by the Philadelphia District Attorney's Office 2018 Bail Reform, and those not targeted by the reform; for analyzing 2018 data, and for data from prior administrations. The terms are defined as follows:

Metric	Definition
Release on Recognizance (ROR) Rate	The Release on Recognizance (ROR) rate is the number of cases that received ROR divided by the total number that were considered for bail. A person is released on their own recognizance if they are released with $0 bail. People who were released with cash bail, but were able to pay no bond to be released (a practice called "signing one's own bond"), are not included in this figure.
Pretrial Recidivism Rate	The Pretrial Recidivism rate is the percentage of cases in which the defendant is rearrested by the police and recharged by the District Attorney's Office in the first four months after the start of a case or before the resolution of the case, whichever is earlier. Although this report is generally concerned only with misdemeanors and felonies (because summary offenses do not lead to money bail), new summary charges are counted as recidivism for the purposes of this report. Recidivism can refer to a wide variety of behaviors, from re-arrest to re-conviction to reincarceration. Accordingly, it is calculated in different ways. Generally, recidivism is considered at the person level—how many people were rearrested—not at a case level. The rate provided in this report is for case-level recidivism: the percentage of cases for which a defendant is recharged. If a single defendant has four (4) pending cases and is recharged with a new offense, that is counted as four (4) instances of recidivism. This was done to measure the effect of bail on defendants in individual cases while those cases are pending, not longer-term recidivism questions that may not be tied directly to bail. While measuring the overall pretrial recidivism rate would be ideal, cases can take longer than six (6) months to resolve. Measuring only pretrial recidivism in the first four (4) months allowed for an evaluation of the bail policy through September 2018 and recidivism through January 2019.
Failure to Appear (FTA) Rate	The Failure to Appear (FTA) rate is the percentage of cases in which the defendant missed at least one hearing in the first four (4) months after the start of a case. The frequency with which defendants were asked to appear over time was not accounted for in this report. Therefore, it is possible that in recent years defendants were asked to appear more frequently in the first four (4) months of their case—i.e., for systemic reasons unrelated to bail or the DAO cash bail reform.

V. RESEARCH NOTES: LIMITATIONS

LIMITATIONS

There are limitations in what can be measured that stem from measurement systems, data quality, and analytical constraints. A responsible analysis should not attempt to do or say more than the data allow, while acknowledging limitations. The analysis presented herein is strong despite the acknowledged limitations. By consistently applying the same analytical methods to cases over time, the same standards were applied to data from before and after the 2/21/18 bail reform.

Limitations include:

- All of data came from information entered into CPCMS, the Administrative Office of Pennsylvania Courts unified criminal case management system.

- Some data may have been entered incorrectly, e.g., by clerks at the First Judicial District. Though there are no specific problem, human error is endemic to criminal justice data, and those errors may be incorporated into the analysis in this report. There is no reason to believe that human error in the system is prevalent enough to affect the conclusions of this analysis.

- Trends can be complex. For example, a one- or two-month increase in the pretrial recidivism rate may be the start or middle of a trend, a few aberrant months, or part of seasonal fluctuations.

- The data presented here are annual data. That was done to smooth out some of the seasonal fluctuations, standardize the time periods for comparison, and make this report more readable. Internally, more granular data is used to inform decision-making as to the effectiveness and potential unintended consequences of the policy.

- The follow-up periods used to measure Pretrial Recidivism and Failure to Appear (FTA) rates are limited to four (4) months because the bail policy is being analyzed less than one (1) year into its existence, limiting the amount of data available.

- The analysis is based on the final bail set in each case, rather than the bail offers made by the District Attorney's Office (DAO). An evaluation of the 2018 DAO Bail Policy might also consider the frequency that $0 bail was requested or not objected to by the DAO in relation to the final bail set.

- A number of charges were excluded from the analysis because they were rarely pursued by the DAO in 2018. Cannabis possession and charges related to sex work are rarely filed by the office, and retail theft charges are rarely processed as misdemeanors or felonies. Including these charges could therefore skew comparisons of 2018 data to statistics from previous years.

V. RESEARCH NOTES: TABLES

TABLE 1: 25 BAIL REFORM CHARGES, BY VOLUME

Statute	2014	2015	2016	2017	2018
18 Pa.C.S. 3304 Criminal Mischief	172	184	155	164	192
18 Pa.C.S. 3502 Burglary	1531	1393	1296	1338	1105
18 Pa.C.S. 3503 Criminal Trespass	284	337	348	371	415
18 Pa.C.S. 3921 Theft by Unlawful Taking	1696	1571	1576	1466	1418
18 Pa.C.S. 3922 Theft by Deception	146	128	133	148	144
18 Pa.C.S. 3925 Receiving Stolen Property	654	730	707	663	591
18 Pa.C.S. 3928 Unauthorized Use Motor/Other Vehicles	81	48	63	78	105
18 Pa.C.S. 3929 Retail Theft	2469	2417	2386	2029	365
18 Pa.C.S. 3934 Theft from a Motor Vehicle	139	145	129	244	130
18 Pa.C.S. 4101 Forgery	304	347	335	286	228
18 Pa.C.S. 4106 Access Device Fraud	21	8	14	35	46
18 Pa.C.S. 4119 Trademark Counterfeiting	46	12	4	6	10
18 Pa.C.S. 4120 Identity Theft	33	28	28	20	16
18 Pa.C.S. 4914 False Identification to Law Enforcement	57	65	37	34	27
18 Pa.C.S. 5104 Resisting Arrest	156	133	117	86	79
18 Pa.C.S. 5123 Contraband	54	69	61	28	19
18 Pa.C.S. 5902 Prostitution	1352	1030	956	1040	362
35 PS 780-113 A16 Intentional Possession of a Controlled Substance	4243	3190	2951	3439	3010
35 PS 780-113 A19 Purchasing a Controlled Substance	1870	2433	2157	3176	3154
35 PS 780-113 A30 Possession with Intent to Deliver	5504	5302	4945	5605	5217
35 PS 780-113 A31 Possession of Marijuana	2460	994	1014	1276	209
35 PS 780-113 A32 Paraphernalia	59	125	59	50	64
62 PS 481 Fraud in Obtaining Food Stamps & Other Public Assistance	NA	NA	NA	NA	2
75 Pa.C.S. 3802 DUI 1st Off	3658	3782	3524	3227	2902

V. RESEARCH NOTES: TABLES

TABLE 2: 25 BAIL REFORM CHARGES, RELEASE ON RECOGNIZANCE (ROR) RATES

Statute	2014	2015	2016	2017	2018
18 Pa.C.S. 3304 Criminal Mischief	42.33	46.39	38.67	45.96	42.59
18 Pa.C.S. 3502 Burglary	8.32	5.07	6.2	7.78	14.21
18 Pa.C.S. 3503 Criminal Trespass	40.29	46.06	42.65	37.4	47.67
18 Pa.C.S. 3921 Theft by Unlawful Taking	47.98	54.85	56.38	55.83	65.47
18 Pa.C.S. 3922 Theft by Deception	82.07	68.8	78.63	70.55	81.36
18 Pa.C.S. 3925 Receiving Stolen Property	50.49	57.12	59.67	59.35	71.66
18 Pa.C.S. 3928 Unauthorized Use Motor/Other Vehicles	81.25	89.58	82.26	85.71	94.79
18 Pa.C.S. 3929 Retail Theft	72.11	75.91	78.8	74.19	78.67
18 Pa.C.S. 3934 Theft from a Motor Vehicle	44.53	53.96	55.04	60.74	65.25
18 Pa.C.S. 4101 Forgery	55.81	60	70.95	60.64	78.65
18 Pa.C.S. 4106 Access Device Fraud	52.38	57.14	57.14	50	50
18 Pa.C.S. 4119 Trademark Counterfeiting	82.61	90.91	100	83.33	80
18 Pa.C.S. 4120 Identity Theft	54.55	64.29	64.29	26.32	76.92
18 Pa.C.S. 4914 False Identification to Law Enforcement	68.42	65.08	72.97	88.24	92.31
18 Pa.C.S. 5104 Resisting Arrest	80.65	72.73	80.87	81.18	83.82
18 Pa.C.S. 5123 Contraband	22.22	19.4	26.67	22.22	18.75
18 Pa.C.S. 5902 Prostitution	88.86	90.69	90.44	87.35	93.57
35 PS 780-113 A16 Intentional Possession of a Controlled Substance	88.3	89.49	87.47	86.26	94.64
35 PS 780-113 A19 Purchasing a Controlled Substance	93.34	93.47	93.78	90.38	98
35 PS 780-113 A30 Possession with Intent to Deliver	12.92	12.28	11.17	7.55	23.26
35 PS 780-113 A31 Possession of Marijuana	96.2	95.74	92.86	80.26	78.12
35 PS 780-113 A32 Paraphernalia	75.86	74.59	80.7	88	92.98
62 PS 481 Fraud in Obtaining Food Stamps & Other Public Assistance	NA	NA	NA	NA	100
75 Pa.C.S. 3802 DUI 1st Off	69.68	70.05	73.11	72.73	82.83

V. RESEARCH NOTES: TABLES

TABLE 3: 25 BAIL REFORM CHARGES, PRETRIAL RECIDIVISM RATES

Statute	2014	2015	2016	2017	2018
18 Pa.C.S. 3304 Criminal Mischief	23.19	9.09	6.9	5.41	13.04
18 Pa.C.S. 3502 Burglary	18.03	11.76	12.82	8.91	11.82
18 Pa.C.S. 3503 Criminal Trespass	15.18	25.66	20	17.04	16.96
18 Pa.C.S. 3921 Theft by Unlawful Taking	14.62	12.53	12.74	15.41	20.86
18 Pa.C.S. 3922 Theft by Deception	3.36	1.16	0.97	0	4.23
18 Pa.C.S. 3925 Receiving Stolen Property	9.23	15.54	13.69	17.77	16.74
18 Pa.C.S. 3928 Unauthorized Use Motor/Other Vehicles	7.69	13.95	25.49	9.09	15.52
18 Pa.C.S. 3929 Retail Theft	22.92	21.59	24.49	24.7	29.13
18 Pa.C.S. 3934 Theft from a Motor Vehicle	19.3	30.67	21.13	27.21	27.59
18 Pa.C.S. 4101 Forgery	6.55	5.88	6.47	1.75	4.72
18 Pa.C.S. 4106 Access Device Fraud	18.18	0	12.5	5.88	14.29
18 Pa.C.S. 4119 Trademark Counterfeiting	2.63	20	0	0	0
18 Pa.C.S. 4120 Identity Theft	0	0	0	0	0
18 Pa.C.S. 4914 False Identification to Law Enforcement	15.38	14.63	7.41	13.33	6.25
18 Pa.C.S. 5104 Resisting Arrest	17.6	12.5	9.68	18.84	17.39
18 Pa.C.S. 5123 Contraband	8.33	15.38	6.25	0	0
18 Pa.C.S. 5902 Prostitution	23.33	18.16	13.36	15.59	7.18
35 PS 780-113 A16 Intentional Possession of a Controlled Substance	15.63	12.7	12.61	13.29	15.3
35 PS 780-113 A19 Purchasing a Controlled Substance	16.41	14.01	10.95	15.39	13.7
35 PS 780-113 A30 Possession with Intent to Deliver	23.57	17.94	20.73	25.84	19.82
35 PS 780-113 A31 Possession of Marijuana	11.52	8.05	4.98	8.87	7.69
35 PS 780-113 A32 Paraphernalia	11.36	9.89	6.52	4.55	8.51
62 PS 481 Fraud in Obtaining Food Stamps & Other Public Assistance	5.18	4.76	4.86	4.12	4.97
75 Pa.C.S. 3802 DUI 1st Off	23.19	9.09	6.9	5.41	13.04

V. RESEARCH NOTES: TABLES

TABLE 4: 25 BAIL REFORM CHARGES, FAILURE TO APPEAR (FTA) RATES

Statute	2014	2015	2016	2017	2018
18 Pa.C.S. 3304 Criminal Mischief	1.64	6.78	6.45	8.11	8.11
18 Pa.C.S. 3502 Burglary	3.7	0	3.7	4.69	7.59
18 Pa.C.S. 3503 Criminal Trespass	10.75	12.04	9.76	8.82	17.14
18 Pa.C.S. 3921 Theft by Unlawful Taking	6.4	6.54	10.9	10.4	9.49
18 Pa.C.S. 3922 Theft by Deception	3.03	1.69	13.33	10.61	8.51
18 Pa.C.S. 3925 Receiving Stolen Property	3.85	3.99	7.28	9.06	10.08
18 Pa.C.S. 3928 Unauthorized Use Motor/Other Vehicles	6.35	14.63	5	15.69	11.67
18 Pa.C.S. 3929 Retail Theft	14.36	12.07	15.88	15.59	14.74
18 Pa.C.S. 3934 Theft from a Motor Vehicle	12.5	5.41	15.22	12.5	15.79
18 Pa.C.S. 4101 Forgery	1.72	3.7	1.34	3.12	10.39
18 Pa.C.S. 4106 Access Device Fraud	14.29	0	14.29	12.5	6.25
18 Pa.C.S. 4119 Trademark Counterfeiting	0	0	0	0	33.33
18 Pa.C.S. 4120 Identity Theft	0	0	7.14	0	0
18 Pa.C.S. 4914 False Identification to Law Enforcement	2.78	10.53	8.7	10	0
18 Pa.C.S. 5104 Resisting Arrest	15.79	10	8.62	10.64	15.38
18 Pa.C.S. 5123 Contraband	12.5	0	0	0	0
18 Pa.C.S. 5902 Prostitution	10.34	17.32	18.83	20.86	8.39
35 PS 780-113 A16 Intentional Possession of a Controlled Substance	10.85	13.09	12.38	14.07	16.38
35 PS 780-113 A19 Purchasing a Controlled Substance	12.57	15.08	17.83	16.91	21.84
35 PS 780-113 A30 Possession with Intent to Deliver	4.11	3.11	5.29	6.96	10.24
35 PS 780-113 A31 Possession of Marijuana	0.84	0.97	3.12	0.97	5.13
35 PS 780-113 A32 Paraphernalia	4.76	11.76	15.22	9.76	8.89
62 PS 481 Fraud in Obtaining Food Stamps & Other Public Assistance	1.94	1.74	0.99	1.78	2.76
75 Pa.C.S. 3802 DUI 1st Off	1.64	6.78	6.45	8.11	8.11

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THE CASH BAIL SYSTEM

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18. Philadelphia City Council Resolution 180032, “Encouraging the Philadelphia District Attorney's Office and the First Judicial District of Pennsylvania to institute internal policies that reduce reliance on cash bail; and further calling on the Pennsylvania State Legislature and the Pennsylvania Supreme Court to revise state laws and procedure codes governing bail to allow for the elimination of cash bail statewide, or to provide for an exemption in the law for cities of the first class.” Adopted 1 Feb 2018. phila.legistar.com/LegislationDetail.aspx?ID=3320331&GUID=26509E32-9EA2-426D-A521-5CEE7484C3EF; MacArthur Safety & Justice Challenge: Philadelphia, PA. www.safetyandjusticechallenge.org/challenge-site/philadelphia/.
19. The bail reform charges represent 61% of all “lead charges” in 2018. Commonly thought of as “most serious charge,” lead charge refers to a single charge identified out of all charges on a transcript, algorithmically in a relational database that integrates police and court data, as most representative of the type of crime a case is considered to be. It is in the vast majority of cases the most serious charge on a transcript; however when charge grades (i.e. levels of felony and misdemeanor offenses) are equal, a case will be assigned the charge considered to be more representative by the authors of the algorithm.

V. RESEARCH NOTES: REFERENCES (CONTINUED)

REFERENCES (CONTINUED)

THE CASH BAIL SYSTEM: THE URGENT NEED FOR REFORM (CONTINUED)

20. The offenses in the bail policy can be found at: 18 PaCS 3304 (Criminal Mischief), 18 PaCS 3502 (Burglary), 18 PaCS 3503 (Criminal Trespass), 18 PaCS 3921 (Theft by Unlawful Taking), 18 PaCS 3922 (Theft by Deception), 18 PaCS 3925 (Receiving Stolen Property), 18 PaCS 3928 (Unauthorized Use of Automobiles), 18 PaCS 3929 (Retail Theft), 18 PaCS 3934 (Theft from Motor Vehicles), 18 PaCS 4101 (Forgery), 18 PaCS 4106 (Access Device Fraud), 18 PaCS 4120 (Identity Theft), 18 PaCS 4119 (Trademark Counterfeiting), 18 PaCS 4914 (False Identification to Law Enforcement), 18 PaCS 5104 (Resisting Arrest), 18 PaCS 5123 (Contraband), 18 PaCS 5902 (Prostitution/Sex Work), 35 PS 780-113 A16 (Knowing and Intentional Possession of Controlled Substance), 35 PS 780-113 A19 (Purchase of a Controlled Substance), 35 PS 780-113 A30 (Possession with Intent to Distribute a Controlled Substance), 35 PS 780-113 A31 (Possession of Small Amounts of Marijuana), 35 PS 780-113 A32 (Drug Paraphernalia), 62 PaCS 481 (Fraud in Obtaining Public Assistance), 75 PaCS 3802 (DUI).

EVALUATING REFORM

21. Dr. Aurélie Ouss, Ph.D., is an Assistant Professor of Criminology at the University of Pennsylvania. Dr. Megan Stevenson, Ph.D., is an Assistant Professor of Law at the George Mason University Antonin Scalia School of Law.
22. Ouss, Aurélie, and Megan T. Stevenson. “Evaluating the Impacts of Eliminating Prosecutorial Requests for Cash Bail.” 15 February 2019, papers.ssrn.com/sol3/papers.cfm?abstract_id=3335138.
23. The estimate that roughly 1,750 additional people were released on their own recognizance because of the policy was calculated by comparing the number of people who were actually released ROR in 2018 (post-policy) to the number of people who theoretically would have been released in 2018 post-policy had the 2017 ROR rates remained unchanged in 2018. For each of the 25 charges, the formula was: (2018 ROR Rate for charge i X 2018 number of cases charge for charge i) - (2017 ROR Rate for charge i X 2018 number of cases charge for charge i). The final result was 1745 people. It is an approximation of 1750 because the number represents a counterfactual—there is no way to know how many people would have been given ROR had the policy not come into effect.
24. Ouss and Stevenson. “Evaluating the Impacts of Eliminating Prosecutorial Requests for Cash Bail.” Furthermore, the frequency with which defendants were asked to appear over time was not accounted for in this DAO report. Therefore, it is possible that in recent years defendants were asked to appear more frequently in the first four (4) months of their case—i.e., for systemic reasons unrelated to bail or the DAO cash bail reform.

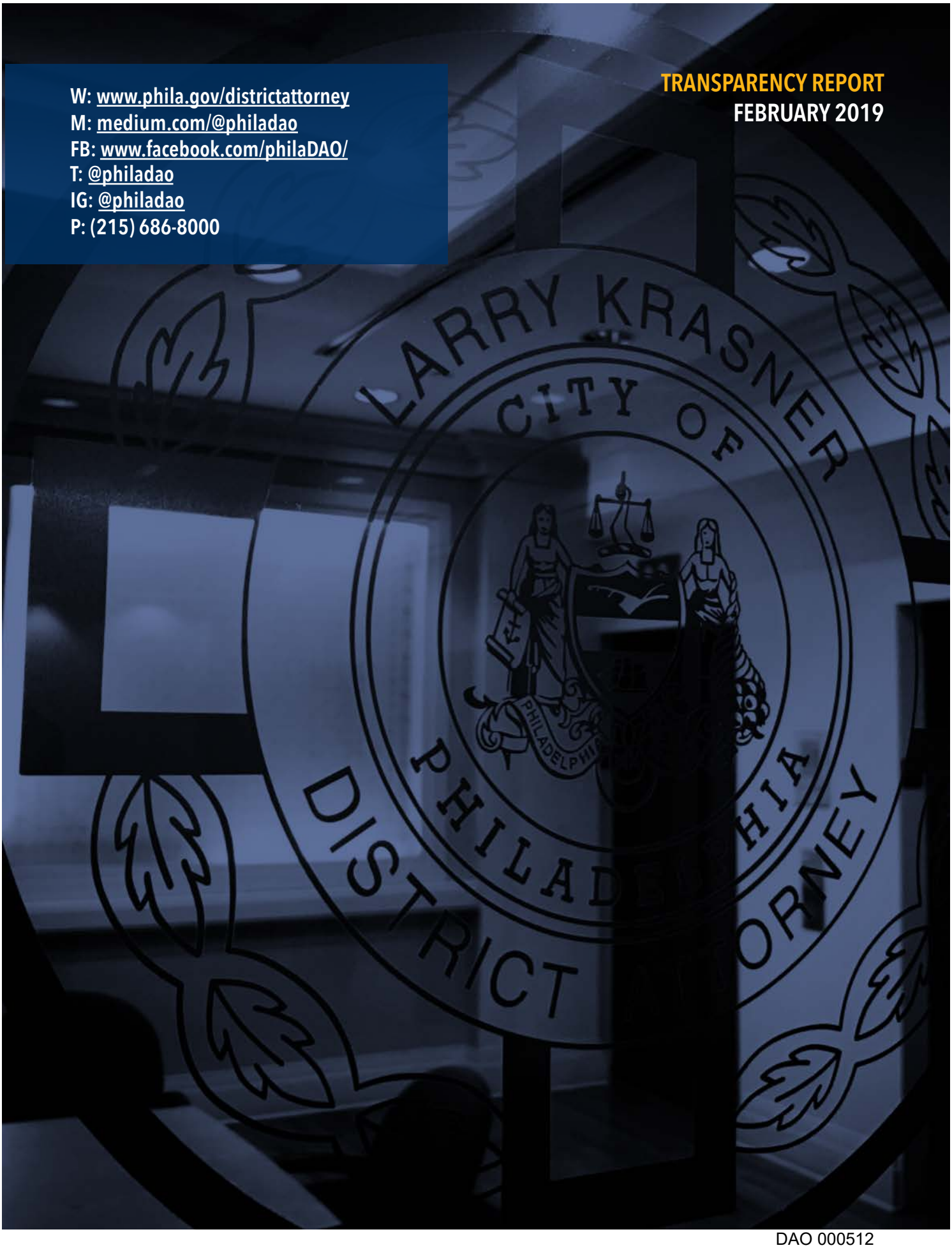
TRANSFORMING JUSTICE

25. John F. Pfaff, JD, PhD, Personal Communication, 31 January 2019. Dr. Pfaff is a Professor of Law at Fordham University School of Law.
26. Ibid
27. The broad social benefits enumerated in this section are informed by literature already cited in this report.

Letter:
District Attorney Lawrence S. Krasner, Esq.

Report:
Oren M. Gur, PhD, Michael Hollander, JD, and Pauline Alvarado, MS(c), MPA(c)

Thanks:
Charging Unit, Moshe Berman, Karli Libbey, Mike Lee, Ben Waxman, Dustin Slaughter, Cameron Kline, Sangeeta Prasad, Sue Hackett, Keith Daviston, Aurélie Ouss, PhD, Megan Stevenson, PhD, and John Pfaff, JD, PhD, Liam Riley, Dana Bazelon, Lyandra Retacco, Arun Prabhakaran, Robert Listenbee, and Carolyn Engle Temin.



TRANSPARENCY REPORT
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Philadelphia District Attorney's Office

Overturning Convictions—and an Era

Conviction Integrity Unit Report
January 2018–June 2021

In my view, the Philadelphia District Attorney's Office and the Philadelphia Police Department have historically violated their sworn oaths to uphold the Constitution, seek justice, and protect and serve Philadelphians. Too often, they engaged in and tolerated horrendous abuses of power. Numerous police officers coerced confessions through physical abuse, verbal threats, and violations of constitutional rights. Sometimes, they simply fabricated the confessions. Some officers in this City planted evidence and lied in court about their investigations to help obtain convictions. Meanwhile, a fair number of Philadelphia prosecutors, driven by a win-at-all-cost office culture, covered for or participated in these abuses. At the same time, the District Attorney's Office sought excessively long, harsh sentences in almost every case, often with little appreciation or understanding of the person's individual culpability or the sentence's frequently negative impact on public safety.

Photo: Hannah Yoon.

When my administration started the Conviction Integrity Unit in 2018, we anticipated that we would uncover many cases where misconduct caused innocent people to go to prison. What we saw, however, has taken our breath away. In just over three years, the Unit has exonerated twenty people in twenty-one cases. Combined, these men spent 384 years wrongfully imprisoned. In twenty cases, prosecutors withheld evidence they were ethically and constitutionally required to disclose. In fifteen cases, police committed egregious misconduct.

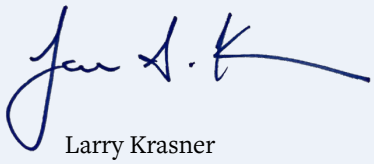
The case reviews revealed that the Philadelphia Police Department chronically under-used forensic science as compared to other jurisdictions. This causes problems for solving crimes and preventing wrongful convictions. Almost all of the men who suffered these systemic inaccuracies and injustices were Black. So were the victims of the crimes for which they were wrongfully convicted. Those victims' hopes that law enforcement was holding accountable the criminals who committed those crimes were dashed. The opportunity to solve those crimes was usually long gone.

My Office does not shy away from examining the harsh realities of prior administrations' misconduct, and this report presents our findings to date. This report also documents the ways in which the Unit has tried to right some of the worst sentencing practices of the past as a secondary aspect of its work. We believe that when people no longer pose a threat to public safety, there is little reason for them to stay in prison. It costs the taxpayer too much money that could go for prevention and public health approaches that actually improve public safety.

Our sworn oath as prosecutors is to seek justice unconditionally, with no limit as to time. When we discover past injustices, we must not only right those wrongs, but implement policies to ensure that they do not occur again in the future. This report describes how an independent Conviction Integrity Unit, with a broad mandate, has worked to change the culture and practices of the District Attorney's Office. Our oath requires that we never stop trying to fix injustices, even if they turn out to be the product of our administration's missteps.

During court proceedings involving defendants the CIU has determined to be innocent of the crimes for which they were wrongly convicted, the District Attorney's Office as an institution has apologized to the exonerees. We should. Lost years and decades of a life cannot be returned. But we remain enormously proud of what we have done to date.

We are putting out this report because transparency is important. For too long, the District Attorney's Office operated in the dark and the public suffered. Our administration, from the start, has been committed to changing that and restoring public trust. We know we have a long way to go.



Larry Krasner
District Attorney

Since I took on the leadership of the new Conviction Integrity Unit, District Attorney Krasner has made conviction integrity a priority, giving us a broad mandate to remedy wrongful convictions and unjust sentences. This first report shines a spotlight on our work to ensure justice is served by the Office's prosecutors and to remedy past injustices, however and whenever they have occurred.

We are proud to have reviewed and/or investigated hundreds of cases, resulting in twenty-one exonerations. We are equally proud to have righted unjust sentences and successfully advocated for commutations for dozens of deserving applicants who have collectively served more than 800 years in prison. And finally, we are proud to have developed policies, led trainings, and investigated official misconduct in our efforts to fix the root causes of wrongful convictions.

This report is about transparency. Transparency cannot be attained if only success stories are reported. Indeed, while we have accomplished great success, we have also faced enormous challenges. Some were expected: the inevitable resource constraints and cultural pushback that conviction integrity units across the nation must contend with, and our inability under narrowly construed, and sometimes draconian, Pennsylvania law to vacate convictions without an occasionally arduous judicial process. But as other challenges have emerged, we have not wavered or acquiesced in our commitment to right past wrongs. We have faced lawsuits by the local police union, the hostility of some judges to our fundamental mission, and the intensity of conflict even within our own Office. Of course, the COVID-19 pandemic gave us yet another hurdle to overcome.

Despite all this, our team has worked steadfastly to advance our mission. With the support of District Attorney Krasner, we have kept the Unit independent within the Office and fought back when law enforcement has sought to impede us. Even at the height of the pandemic, we maintained a steady pace of interviews, court appearances, and even exonerations—both in person and virtual—to ensure that justice is done in our cases without undue delay.

Looking ahead, we have many cases pending in court and are leading more than 100 active investigations. We are working closely with local stakeholders and engaging in dialogue with those doing similar work in other jurisdictions. Our report details these and many other ongoing initiatives. In my opinion, the title of this report—*Overturning Convictions—and an Era*—encapsulates the significance of the Unit's work and echoes public and press sentiment.

But it is important to understand that ending an era of wrongful convictions means so much more than identifying the innocent and wrongfully incarcerated. It means we can learn from our mistakes. And if we learn from our mistakes, we can have a criminal justice system that gets it right the first time.

Patricia Cummings

Patricia Cummings
Supervisor, Conviction Integrity Unit

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Introduction

History

The Conviction Integrity Unit ("CIU") was established in 2018 by District Attorney Larry Krasner. The CIU's predecessor, the Conviction Review Unit ("CRU"), which was established in 2014, had operated for a number of years with only a small staff and a narrow mandate. The CRU only reviewed claims of actual innocence, and rarely undertook investigations into whether new evidence existed that could prove those claims. Cases where the defendant had confessed were largely excluded from consideration, as if false confessions (which occur in a quarter of DNA exonerations nationally) were always reliable.

Today, the CIU is an independent unit within the Philadelphia District Attorney's Office, reporting directly to the District Attorney, and involved in one out of every ten homicide exonerations in the country. When District Attorney Krasner transformed the unit from the CRU to the CIU, he immediately tasked it with a broader mandate: not only to review past convictions for credible claims of actual innocence but also to review claims of wrongful conviction and secondarily to consider sentencing inequities.

Early in his first term, District Attorney Krasner merged the CIU with the Office's Special Investigations Unit ("SIU"). The two units share a common focus on investigating official misconduct, and their cases frequently overlap. However, as the CIU and SIU personnel have grown and expanded their caseloads, the units were separated in the summer of 2020 to better accommodate each unit's mission.

Exoneree Terrance Lewis hugging his son Zahaire after Terrance's release from prison. Zahaire was born a month after Terrance was incarcerated. *Photo*: *The Philadelphia Inquirer*, Jessica Griffin.

Exoneree John Miller after being released from decades in prison. *Photo*: *The Philadelphia Inquirer*, Jose F. Moreno.

Mission

The CIU's mission is to ensure that justice is served by prosecutors at the Philadelphia District Attorney's Office and to remedy the Office's wrongful convictions.

Pennsylvania prosecutors have limited post-conviction discretion in general and they have no legal authority to set aside convictions in the interest of justice. Since CIU prosecutors cannot unilaterally dismiss an existing conviction or free anyone we believe to be wrongfully incarcerated, the CIU makes a recommendation to the court that the petitioner be granted a new trial whenever its independent investigation leads it to conclude that a conviction lacks integrity. If warranted, the CIU will move to withdraw the charges against the petitioner or reduce the charges so that an equitable sentence can be imposed. In cases that are ultimately withdrawn or dismissed, the CIU will investigate and prosecute the actual perpetrator where feasible. However, given the inherent difficulties involved in investigating decades-old crimes where the original investigation was either botched or inadequate, identifying the real perpetrator and bringing that person to justice may be impossible. To date, the Philadelphia Police Department has declined to re-open and re-investigate old cases following exonerations. For example, Walter Ogrod was exonerated of a 1988 murder in 2020. While investigating the case, the CIU identified two alternate suspects. As of almost a year after Ogrod's exoneration, however, police had not even begun the process of re-opening the underlying murder case.

Additionally, the CIU believes that conviction integrity is more than simply fixing past mistakes and exposing misconduct. It also requires policies and processes to prevent future injustices. With this aim, the CIU helps craft office-wide policies and trainings designed to reduce the number of future wrongful convictions.

Review Process & Criteria

Convictions based on any type of criminal charge are generally eligible for review by the CIU. However, to be legally eligible for relief under Pennsylvania's statutory scheme governing collateral challenges to final convictions (the Post Conviction Relief Act), a petitioner must be currently serving a sentence of imprisonment, probation, or parole for the crime. 42 Pa.C.S. § 9543(a)(1). Legal eligibility for federal habeas relief is likewise limited to those who are in custody or under supervision as a result of the judgment they challenge. 28 U.S.C. § 2254(a).

Practically speaking, the overwhelming majority of cases that the CIU pursues involve first- or second-degree murder convictions. This is because the CIU prioritizes capital sentences and sentences of life without parole when assessing whether to accept a case. There is no shortage of these cases because Philadelphia ranks high in national statistics for having incarcerated the most people serving sentences of life without the possibility of parole.

The Duty of a Prosecutor

The prosecutor's oath in Pennsylvania specifically includes a duty to seek justice. Under the Pennsylvania Rules of Professional Conduct, prosecutors have an obligation to act as ministers of justice, rather than purely as legal advocates. To uphold this duty, prosecutors must approach the merits of each case with evenhanded consideration, rather than an eye for tactical advantage. However, these Rules do not impose any such duty after a conviction becomes final. Nor do the Rules impose any obligation to remedy wrongful convictions.

Rather than disregarding the prosecutor's oath and accepting the narrow mandate of the Pennsylvania Rules as its ethical compass, the CIU has committed itself to upholding the more expansive ethical obligations that are recommended by the Model Rules of Professional Conduct. Consistent with the prosecutor's oath to seek justice unconditionally, Rule 3.8 of the Model Rules requires prosecutors to investigate and disclose any exculpatory evidence discovered after a conviction becomes final, as well as to remedy any conviction of the actually innocent.

While Rule 3.8 is a modern-day recognition of the fallibility of our criminal justice system and the understanding that innocent people are convicted and incarcerated for crimes they did not commit, the CIU operates under the principle that its ethical obligations extend even beyond that. Instead of just requiring prosecutors to affirmatively remedy cases of actual innocence, consistent with the prosecutor's oath to uphold the Constitution while seeking justice, the CIU is committed to remedying convictions that lack integrity (*i.e.*, those convictions tainted by prosecutorial misconduct and cases in which an inequitable or illegal sentence was imposed even when there is no credible claim of actual innocence).

Scope of Report

This report encompasses exonerations, commutations, and sentencing adjustments from January 1, 2018 through June 15, 2021. This report includes data on cases submitted to the CIU, active investigations, cases declined or closed, and cases awaiting review that are accurate as of May 31, 2021.

Experts who have opined on the issue of best practices for conviction integrity units agree that in order to increase public understanding of and trust in such units, offices should publish annual reports detailing the results of their conviction and case reviews and actions taken. This report is the first report issued by the CIU under District Attorney Krasner and is a first-term report, rather than an annual report. Although annual reports were contemplated, they were postponed as a result of multiple factors ,including lack of resources, internal technology deficits, caseload, and the COVID-19 pandemic.

By the Numbers

21

Exonerations

See p. 18.

23

Commutations Granted

following CIU support or positive feedback. See p. 31.

447

New Arrests the Office Declined to Charge

out of 9,566 arrests involving officers on the Police Misconduct Disclosure Database (May 8, 2018–May 31, 2021). See p. 33.

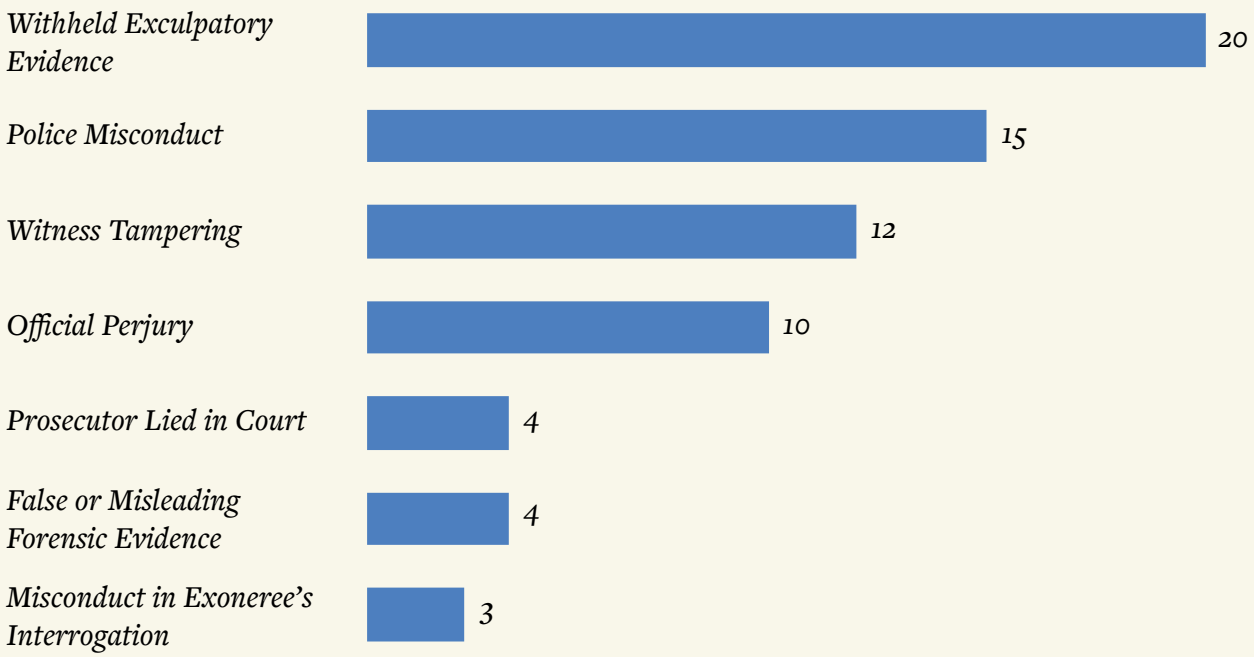
139

Juvenile Resentencings

See p. 44.

The exonerees spent 384 years in prison.

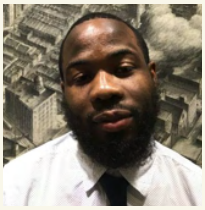
20 of their convictions involved official misconduct, including:



Exoneration Timeline

2018

May



Dontia Patterson
Years in Prison: 11
Vacated: May 2018

December

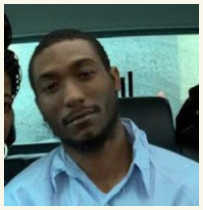
Jamaal Simmons
Years in Prison: 9
Vacated: Dec. 2018

2019

March

Dwayne Thorpe
Years in Prison: 11
Vacated: March 2019

April



James Frazier
Years in Prison: 7
Vacated: April 2019

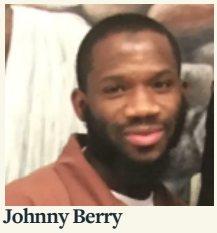
May

No Photo Available

Sherman McCoy
Years in Prison: 6
Vacated: May 2019

June

Terrance Lewis
Years in Prison: 22
Vacated: May 2019



Johnny Berry
Years in Prison: 25
Vacated: June 2019

July

Chester Hollman III
Years in Prison: 28
Vacated: July 2019

John Miller
Years in Prison: 22
Vacated: July 2019

October

Willie Veasy
Years in Prison: 27
Vacated: Oct. 2019

2020

December

Christopher Williams
Years in Prison: 30
Vacated: Dec. 2019

January

Theophalis Wilson
Years in Prison: 28
Vacated: Jan. 2020

June

Walter Ogrod
Years in Prison: 28
Vacated: June 2020

Andrew Swainson
Years in Prison: 32
Vacated: June 2020

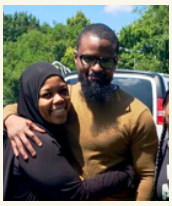
October

Antonio Martinez
Years in Prison: 31
Vacated: Oct. 2020

2021

December

Termaine Hicks
Years in Prison: 20
Vacated: Dec. 2020



Robert Donald Outlaw
Years in Prison: 20
Vacated: Dec. 2020

February

Christopher Williams
Years in Prison: 30
Vacated: Feb. 2021

March

Jahmir Harris
Years in Prison: 8
Vacated: March 2021

May

No Photo Available

Obina Onyiah
Years in Prison: 11
Vacated: May 2021

June

No Photo Available

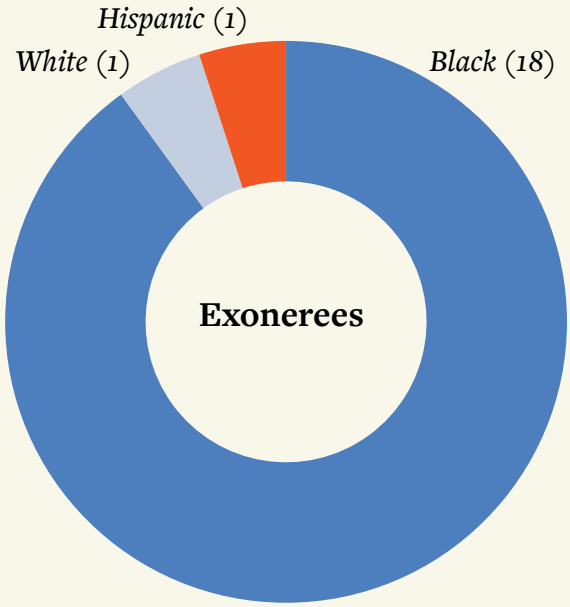
Arkel Garcia
Years in Prison: 8
Vacated: June 2021

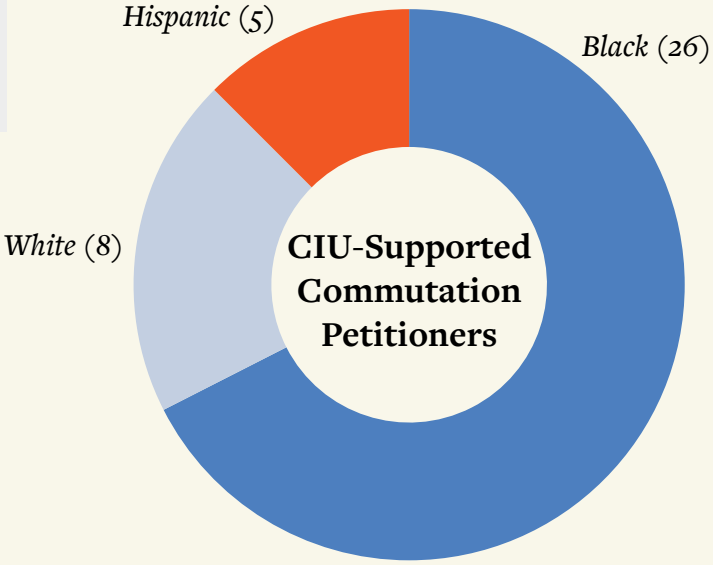
Photo credits can be found on the final page of this Report.

Breakdown of Exonerees and CIU-Supported Commutation Petitioners by Race

According to the National Registry of Exonerations, "African Americans are only 13% of the American population but a majority of innocent defendants wrongfully convicted of crimes and later exonerated."

In Pennsylvania, Black people make up only 12% of the population but 65% of those sentenced to life without parole, and an even higher proportion of those sentenced under the second-degree murder (or "felony murder") statute, according to a recent study.



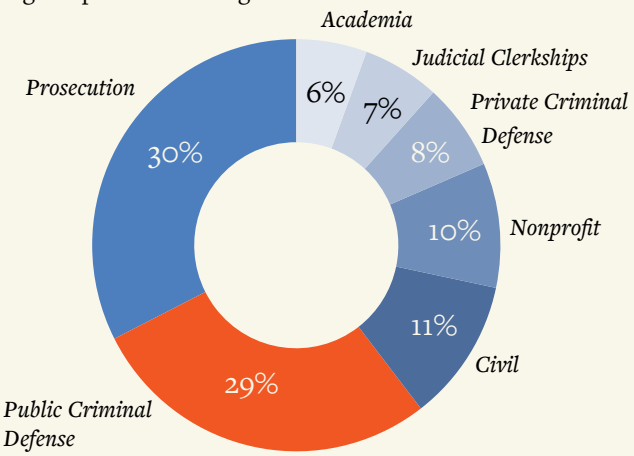


Unit Overview

The Massachusetts Conviction Integrity Working Group—developed in response to the growth in conviction integrity units in order to study those units and recommend best practices—recommends in a February 2021 report that all conviction integrity units include "at least one person with criminal defense or post-conviction innocence experience." The CIU has found the perspectives offered by attorneys with such backgrounds to be invaluable in pursuing its mission. Consequently, the CIU employs attorneys from different professional backgrounds including prosecutors and former defense attorneys, legal aid attorneys, law clerks, and academics. The CIU, however, does not currently meet its goal of creating the same diversity in the racial background of its full-time attorneys. As of 2021, the CIU does not reflect the racial demographics of the community it serves. Despite having improved racial and ethnic diversity in this administration, the CIU recognizes that the lack of diversity remains problematic and is working to remedy this through its recruitment strategies going forward.

Beginning in November 2020, the Unit also selected three attorneys drawn from the two most recent classes of assistant district attorneys to act as CIU fellows. Although it is generally considered a best practice for CIU attorneys to possess significant trial and post-conviction experience, by adding a fellowship program composed of newer attorneys to its bench of more senior staff, the CIU has succeeded in pursuing many of the policy, training, and other projects, including this report, that had not been possible with a smaller staff.

As of June 2021, our twelve attorneys have more than 140 years of combined legal experience across a wide range of practice settings:



The Conviction Integrity Unit as of June 14, 2021, from left to right. Back row: Ryan Kellner, Isabel Ballester, Lyandra Retacco, Graham Sternberg, John Schatz, Jonathan Eubank, Jessica Attie, Thomas Gaeta, Andrew Wellbrock. Front row: Arlyn Katen, Laura McAboy, Banafsheh Amirzadeh, Patricia Cummings, Rebecca McDonald, Janet Morris, Michael Garmisa, Eleanor Carpenter, Samantha Bass. Not Pictured: Lauryn Coleman, Sarah Boyette. *Photo*: Jacqueline Scott.

Challenges

Funding and Resources

Funding constraints limit the extent and pace of the CIU's work. The CIU currently faces a backlog of 1,165 cases awaiting review. Additionally, the CIU has not been able to implement as many training and policy programs as it would have liked, and has had difficulty putting in place a system to track its case submissions and outcomes. This makes collecting detailed data analytics—a best practice recommended by the Massachusetts Conviction Integrity Working Group—a burdensome process.

That said, the CIU has been fortunate in that District Attorney Krasner has continued to prioritize conviction integrity work, increasing the Unit's staff by 150% since he took office in January 2018. As of June 2021, the Unit includes nine full-time attorneys, three Office-funded legal fellows, five paralegals, and investigative support.

To combat its budget and personnel shortfalls, the CIU has also applied for and received several grants. These grants have allowed for the creation of the *Pro Se* Project and the Prosecutorial Misconduct Fellowship. The CIU has also benefitted from the work of law students. In fall of 2019, the CIU began an externship program with the University of Pennsylvania Carey Law School, and the CIU has also hosted legal interns from various law schools during the winter and summer months.

> **"In my opinion, it is no surprise that when you do the work of undoing institutional wrongs, there is resistance from people who want to make excuses for those wrongs. On behalf of all Philadelphians, [we] will not be cowed or deterred from our duty to seek justice in the future."**
>
> **District Attorney Larry Krasner**

Cultural Changes

The priorities of conviction integrity unit attorneys and the priorities of other prosecutors working in the same office can easily come into conflict. To illustrate, the chief of another conviction integrity unit, while in the midst of experiencing the inherent conflict that exists when the work reveals constitutional violations committed by a fellow prosecutor, lamented that conviction integrity unit job descriptions should read: "In addition to experience identifying and extinguishing a burning dumpster fire, candidates should not mind being viewed around the office as the guy who killed Superman."

When the formation of conviction integrity units was being debated nationwide, one recurring sentiment was that they could never truly be effective being run out of the very office where the wrongful conviction occurred. Skeptics likened such an arrangement to "the fox guarding the hen house." The opposite of that problem, however, is what is reflected in the above analogy comparing conviction integrity unit prosecutors to the "guy who killed Superman." Institutionally, trial lawyers in general, and homicide trial lawyers in particular, are often viewed as superheroes in a prosecutor's office. So, when a conviction integrity investigation reveals that the conviction of an innocent person occurred because the trial prosecutor hid exculpatory evidence, internal conflict—if not downright hostility—can ensue. And, just because an elected District Attorney is progressive does not mean the larger office and the conviction integrity unit will be immune from such conflict.

The CIU has also faced cultural conflict with the Philadelphia Police Department ("PPD"). Until recently, this conflict made it difficult to obtain homicide investigative casefiles from the PPD. Traditionally, the PPD would deliver those files whenever a prosecutor requested them and leave the files with the prosecutor for as long as they were needed. However, in May 2018—within months of the start of this administration—PPD overhauled its homicide investigative casefile sharing policy, significantly hindering the

CIU's ability to obtain them. Instead of allowing the CIU to assume possession of the files, the new policy required the CIU to travel to PPD headquarters to examine and copy the files. The policy was then modified again to require the presence of a PPD employee during any examination of the file—on designated, limited days, times, and equipment—thereby further limiting the CIU's ability to access the files. After some further changes during the pandemic, PPD amended its policy yet again in April 2021. The PPD now allows for what appears to be prompt delivery of original physical files to the CIU.

The Unit's Police Misconduct Disclosure Project (discussed *infra*) led to a lawsuit from the Fraternal Order of Police ("the FOP"). The FOP argued that, by disclosing officer misconduct to defense attorneys, the Office violated PPD officers' due process rights and infringed on their privacy and reputational interests. The state trial court dismissed the suit with prejudice, and a ruling on the FOP's appeal has been pending for almost a year. (*See* the briefs filed in response by the City and the District Attorney's Office.)

The FOP also sued the Office after the CIU hired a Special Assistant with a career-long background in criminal defense investigations and case review. The special assistant was tasked with conducting independent casefile reviews and supplementary investigations of claims of actual innocence and wrongful convictions. The CIU, in conjunction with the District Attorney, made this hiring decision in order to ensure that the case review and specialized investigations conducted by the CIU are conducted properly and impartially, but the FOP argued that this violated its collective bargaining agreement with the city. Due to structural changes within the Office and the resulting reassignment of the Special Assistant, this case was settled because the issues were rendered moot.

> **"Often the message from judges is, 'Who are you to come in and try to undo what we've been doing for years?'"**
>
> **CIU Supervisor Patricia Cummings**

Legal Hurdles

As previously mentioned, Pennsylvania law does not give prosecutors unfettered discretion to vacate convictions that have become final nor to simply recommend that convictions be vacated in the interest of justice. Instead, the CIU can only make recommendations as supported by law and fact to the judge, who is the final decisionmaker. Over the past three years, the Unit has found that the judge's role as final arbiter can, at times, make post-conviction proceedings unnecessarily arduous.

For instance, the CIU's collaborative approach to post-conviction relief has garnered criticism from some judges who believe that an adversarial relationship is essential to post-conviction litigation. Indeed, the CIU's approach to each case and to working with defense counsel is required by the prosecutor's oath to seek justice, but does not typify American legal practice. Instead of being adversarial, the CIU engages in a collaborative and cooperative process with defense counsel. This approach allows the CIU to thoroughly investigate claims of wrongful conviction and ensures that previously suppressed information is properly disclosed. Despite the CIU's rigorous investigation in a particular case, some judges remain unclear on the prosecutor's actual role. They are dismayed by this relatively cooperative arrangement, and cannot conceptualize how justice can be done if prosecutors do not fight the defense every step of the way. In such instances, judges can become skeptical of—or outright hostile

Exoneree Willie Veasy leaving court in 2019 following his successful hearing to vacate his conviction. Willie was convicted in 1993. *Photo*: *The Philadelphia Inquirer*, Heather Khalifa.

to—CIU prosecutors, whom they incorrectly view as abdicating their responsibility as prosecutors. In the face of skepticism or hostility, it can be difficult to obtain a fair consideration of the merits in a post-conviction petition.

Another impediment to post-conviction relief can be a judge's skepticism of claims that suggest constitutional violations or other misconduct might be widespread among police and prosecutors. The CIU has encountered judges who are all too ready to credit weak excuses proffered by even repeat offenders in law enforcement. One explanation for this deference may be that many judges are former prosecutors or products of past administrations' culture and so have misconceptions about how prosecutors should behave. But even judges from other backgrounds are often reluctant to recognize how pervasive police and prosecutorial misconduct can be. When that is the case, officials accused of misconduct are likely to find a "sympathetic ear" ready to listen to any reason they might offer for their allegedly problematic behavior. This can make it difficult for the CIU to convince a judge that misconduct occurred, notwithstanding the existence of evidence corroborating the misconduct or a history of similar behavior by the official being questioned.

The unfamiliarity of the CIU's approach to remedying wrongful convictions can also lead to friction with judges over the Unit's ethical obligations. While most state and federal judges have been supportive of the CIU's submissions, one federal judge accused the CIU of failing to live up to its duty of candor and

threatened to impose sanctions after the CIU agreed to waive all procedural and exhaustion defenses in federal court, only to have the petitioner decide to seek relief in a state court proceeding that had essentially been stayed during the pendency of the federal court matter. The state court then went on to grant relief. Although the decision to pursue relief in state court and the ensuing grant of relief were an unexpected turn of events, the federal judge, in an order to show cause, expressed concern that the CIU had not been completely honest about its reasons for waiving the defendant's need to exhaust his state court remedies. Thirty-three attorneys and scholars co-signed an amicus brief in support of the CIU. (The CIU's own brief is available here.) The federal judge ultimately found that the CIU had not violated its duty of candor and that sanctions were unwarranted. The federal judge, however, issued an admonishment requiring the CIU to provide status updates regarding any parallel state court proceedings if relief is being sought on a federal writ of habeas corpus in the Eastern District of Pennsylvania.

Lastly, a judge's role as final arbiter may complicate post-conviction proceedings simply because the judge assigned to hear the post-conviction claims is often the same judge who conducted the petitioner's original trial. While there are, of course, institutional advantages to such an arrangement, it is not surprising that judges might have a hard time second-guessing a conviction that they tacitly or explicitly endorsed at the close of the original trial.

Exoneree Terrance Lewis and CIU Supervisor Patricia Cummings walk past Philadelphia City Hall. *Photo*: *The Philadelphia Inquirer*, Jessica Griffin.

Exonerations

21	88	611	1,165*
Exonerations	**Active Investigations**	**Cases Declined or Closed**	**Awaiting Review**

Overview

Since the CIU's inception, the Unit has found no shortage of cases for its review. In fact, the Unit received 560 submissions in its first year alone. As of June 15, 2021, 1,165 submissions are awaiting review. The high number reflects a newfound hope among the public and incarcerated individuals in remedying injustices and is not unique to Philadelphia. Even conviction integrity units with a narrower mandate or more procedurally streamlined statutory schemes suffer from a high number of cases awaiting review.

In addition, several factors contribute to the CIU's caseload. First, the CIU considers cases submitted by attorneys as well as those submitted *pro se* (by the petitioners themselves). *Pro se* submissions by far outnumber the cases submitted for review by attorneys and are more time-consuming to review. Second, the Unit's mandate is broader than that of many other conviction integrity units. While other conviction integrity units are often limited to the review of actual innocence claims, the CIU reviews wrongful convictions (*e.g.*, claims involving official misconduct) and sentencing inequities as well. Third, governing law, such as Pennsylvania's Post Conviction Relief Act, means the CIU lacks the discretion some other conviction integrity units have to simply vacate or dismiss prosecutions in the interest of justice.

The review process is conducted by CIU prosecutors who coordinate and collaborate with defense counsel (when possible) in order to litigate the defendant's claims and provide relief when appropriate.

Submissions in 2018:	. . . in 2019:
560	777
. . . in 2020:	**. . . in 2021 (as of June 1):**
296	149

Once a request for review is received in the CIU, it goes through an intake process. Then, a claim's credibility is determined through a review of all available files and evidence. Reinvestigations are also conducted to determine if new evidence exists or if exculpatory evidence was suppressed at a prior proceeding. Modern forensic science and/or technology, when applicable, may also be used to extract new information from existing evidence. For example, in May 2021, the CIU secured the exoneration of Obina Onyiah after uncovering affirmative evidence of actual innocence through the use of several photogrammetry experts who reviewed eleven-year-old surveillance footage. (*Discussed infra* at p. 37.)

** The discrepancy between cases submitted and cases in or awaiting review, exonerated, or closed can be explained by cases submitted in 2017 that remain in the queue, by new cases not yet assigned numbers, and by repeat submissions.*

The COVID-19 pandemic likely contributed to a decline in 2020–21 submissions.

Pro se claims are submitted using a sixteen-page Submission and Consent Form in which the defendant outlines their claim of wrongful conviction or actual innocence, cites new evidence, and consents to the CIU review process. Letters that contain enough information may also suffice to open a case file.

Because the CIU receives an enormous number of submissions, they are prioritized according to a range of factors, including the nature of the sentence and the severity of the alleged misconduct.

> **"This is one of those bittersweet moments where [there is] joy in the fact that justice has been served, but sadness in the fact that it has taken so long."**
>
> **Judge Gwendolyn N. Bright,** *on the exoneration of Chester Hollman III.*

The CIU may also decline a submission. This generally happens because the submitter is not imprisoned or on parole—and therefore is ineligible for post-conviction relief under Pennsylvania law—or because their case is outside the CIU's jurisdiction. Sometimes the submission is declined in an exercise of discretion based largely on resources and the reality of having to triage submissions in an effort to identify cases likely warranting relief. A declination is not a decision on the merits of a case or claim.

When Termaine Hicks was convicted in 2001, he told the judge presiding over his case: "An innocent man can't sit in jail for long." He was exonerated in 2020. *Photo*: *Associated Press*, Jason Miczez, for The Innocence Project.

The CIU exonerated twenty people in twenty-one cases from May 2018 to June 2021. They represent about 5% of the submissions considered by the CIU during that period. All told, those people spent 384 years in prison before their exonerations. Two exonerees were originally sentenced to death.

Definitions

The CIU classifies a case as an exoneration using the same criteria as the National Registry of Exonerations. Accordingly, the CIU views a person as exonerated when new evidence, or newly discovered evidence, results in the dismissal of all charges against them.

Additionally, Pennsylvania does not have a statutory definition of "actual innocence," nor have the Pennsylvania Courts adopted one. The Commonwealth therefore relies upon the standard for actual innocence applied in federal courts: whether it is "more likely than not that no reasonable juror would have found [the defendant] guilty beyond a reasonable doubt." *Schlup v. Delo*, 513 U.S. 298, 327 (1995).

Exoneree Profile: Andrew Swainson

Andrew Swainson was convicted of first-degree murder and related offenses in connection with a robbery-gone-wrong at a drug house in 1988. Swainson was sentenced to life in prison without the possibility of parole.

The crime for which Swainson was arrested involved two men who killed Stanley Opher during the robbery of a drug house. Police caught three men fleeing the house, but rather than make any of those men their prime suspects, the police inexplicably relied on one of them as their star witness against Swainson.

One of those men, Paul Presley, identified Swainson as the robber responsible for Opher's death. Police arrested Swainson, but at Swainson's preliminary hearing, Presley failed to identify Swainson. A few months later, Presley told an investigator for the defense that his first identification of Swainson had been incorrect. One month prior to trial, however, Presley was brought in for two interviews at the District Attorney's Office and recanted his recantations, reaffirming his identification of Swainson.

At trial, the Commonwealth bolstered Presley's weak testimony with evidence that Swainson left the country—allegedly to avoid arrest. Indeed, Swainson had flown to Jamaica during this time. On the basis of this evidence, Swainson was convicted.

Date of Exoneration: June 18, 2020

Years in Prison: 32

Years later, Presley provided defense investigators with recantations in which he stated that he had been pressured into identifying Swainson and was promised leniency on open charges if he testified. Presley later died in 2009.

When the CIU began reviewing Swainson's case, it became clear that the Commonwealth had misrepresented and/or suppressed evidence. First, the Commonwealth obscured the severity of the charges that

Exoneree Andrew Swainson with his attorneys Nilam Sanghvi (left) and Nathan Andrisani (right) celebrating his exoneration. *Photo*: Nathan Andrisani.

Presley was facing at the time of Swainson's trial. Importantly, the prosecution had charged Presley with felony drug charges under the false name of Kareem Miller. Presley was held for seven months on those charges prior to Swainson's trial. The charges were then dismissed immediately following Swainson's conviction. Second, the prosecution had suppressed evidence showing that Swainson could not have known that there was a warrant for his arrest when he took a planned trip home to visit his parents in Jamaica, as he left before an arrest warrant was ever issued—and that activity logs showed that detectives were aware of his travel plans ahead of time. Finally, the Commonwealth failed to disclose the existence of at least two alternate suspects, one of whom committed another robbery/homicide and was killed during the commission of a violent crime.

In light of the suppressed evidence, and the possibility that Swainson was actually innocent, Swainson was exonerated (*see* CIU filings here and here) on June 18, 2020.

Exoneree Profile: Chester Hollman

Chester Hollman III was convicted of second-degree murder and related crimes in 1993 for the shooting death of foreign exchange student Tae Jung Ho and sentenced to life imprisonment without the possibility of parole. Ho was attacked by two men who fled by jumping into the back of a white Chevy Blazer with a license plate beginning with the letters "YZA." The Chevy Blazer was driven by a woman and there was also another female passenger in the front seat.

Date of Exoneration:

July 30, 2019

Years in Prison:

28

Hollman was pulled over a few blocks from the crime scene four minutes after the first 911 call was made. He and a woman named Dierdre Jones were driving a rented white Chevy Blazer, the license plate of which included the letters "YZA."

In 2018, the CIU provided Hollman access to his case files for the first time and, as a result, Hollman's attorney discovered exculpatory evidence that had been suppressed by the Commonwealth. That evidence linked at least three other people to the crime, one of whom—Denise Combs—had rented a white Chevy Blazer whose license plate began with "YZA" during the time Ho was attacked.

The two white Chevy Blazer rental cars were rented from Alamo Rent a Car, and the similarity in their license plates was likely a consequence of Alamo having registered them in the same transaction. Incriminatingly, Combs returned her rental car before the car was due back—at 5:00 A.M. on the morning of the murder.

The suppressed evidence also showed that, within 24 hours of the murder, an anonymous caller identified

Exoneree Chester Hollman spent decades in prison as a result of a conviction based on coerced testimony. *Photo*: Hannah Yoon.

Combs as a suspect in the murder. The police pursued this lead, but only in an effort to link her to their initial suspect, Hollman. Once they found no link between the two, they abandoned Combs as a suspect.

Additionally, fingernail clippings had been taken from Ho after he died, but never tested for DNA. Since it was thought that Ho had struggled with Hollman before being shot, and therefore might have scraped DNA from his attacker with his fingernails, the clippings were finally analyzed in 2019. The clippings contained DNA from two people: Ho, and someone who was not Chester Hollman.

Based on the Commonwealth's failure to disclose exculpatory evidence at the time of trial, and the newly discovered exculpatory DNA evidence, Chester Hollman was exonerated (*see* CIU filings here and here) on July 30, 2019.

Exoneree Profile: Walter Ogrod

Date of Exoneration: June 10, 2020

Years in Prison: 28

Walter Ogrod was convicted of first-degree murder and sentenced to death in relation to the infamous 1988 killing of four-year-old Barbara Jean Horn.

Horn's body was discovered inside a cardboard television box on a curb less than 1,000 feet from her home. She had open head wounds and bruises on her head, back, and shoulders. At least five eyewitnesses told police that they had seen a man carrying or dragging a cardboard box through the neighborhood on the afternoon Horn was murdered. Although Ogrod lived in the neighborhood, none of the witnesses described him as the man with the box.

The case drew national attention, including an episode of the nationally broadcast show Unsolved Mysteries, but the attention did not generate any leads that pointed to Ogrod as Horn's killer. Eventually, the case went cold.

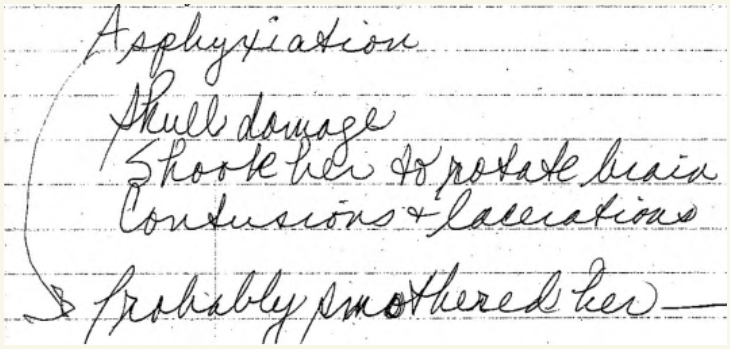
Nearly four years after Horn's death, two new detectives were assigned to investigate the murder. They summoned Ogrod to the Philadelphia Police Administration Building, ostensibly to interview him as a witness in Horn's murder case. When Ogrod arrived, he had already been awake for nearly 30 hours, having just completed an all-night, 18-hour shift driving a bakery delivery truck. The detectives began with an unrecorded "interview" that produced a statement written entirely by the detectives but signed by Ogrod. It was allegedly a verbatim transcript of a confession Ogrod had given the two detectives. Throughout the course of two separate trials (the first trial ended with a mistrial)—and afterward—Ogrod maintained that this confession had been coerced.

Exoneree Walter Ogrod celebrating his release from prison by playing with his lawyer Tracy Ulstad's dog. *Photo*: Tracy Ulstad.

During the second trial that resulted in Ogrod's conviction and death sentence, the written confession and testimony from a jailhouse informant were the only evidence tying Ogrod to the murder. During her closing arguments, the prosecutor argued that there had been no arrangement between the Commonwealth and the informant in exchange for his testimony.

In 2018, an investigation by the CIU combined with newly discovered scientific evidence revealed a voluminous record of other exculpatory evidence—including evidence proving the crime did not occur as detectives had claimed. The jailhouse informant

who testified against Ogrod at trial had worked with the District Attorney's Office on many other cases—including 12 murders. The record also included notes from a police investigation into a separate crime committed by a third person at Ogrod's house that included details about the house's layout that made the events in Ogrod's confession practically impossible. That investigative file also seems to have supplied the detectives who interviewed Ogrod with key details about his house and the purported murder weapon that they included in the confession they wrote. Additionally, handwritten notes from the trial prosecutor's pre-trial interview with a forensic neuropathologist suggested that Horn died from asphyxiation, not blunt force trauma as the confession claimed.



Neuropathologist notes indicating death by asphyxiation, not blunt force trauma. *Photo*: CIU file.

In February 2020, the CIU filed extensive briefing and expert reports (*see* CIU filings here and here) joining in Ogrod's request for a new trial. The CIU also conceded that Ogrod is likely innocent. Although a court date to consider the joint request for a new trial was scheduled, the pandemic effectively shut down the courts in Philadelphia for a period of time. While in prison awaiting a hearing and/or a decision in his case, it is believed Ogrod contracted COVID-19. Fortunately, he recovered.

In light of the overwhelming evidence that Ogrod had been the victim of detectives and prosecutors hellbent on closing a notorious cold case, Ogrod was exonerated on June 10, 2020. The CIU, however, continued its efforts to solve the crime. As of today, two suspects have been identified—one individual was identified as a suspect in the original homicide investigation and has since died, and the other is serving a life sentence in another state for a homicide and sexual offense.

District Attorney Krasner (right) and CIU attorneys Patricia Cummings (left) and Carrie Wood (second from left) meeting with Sharon Fahy (second from right). Ms. Fahy's daughter, Barbara Jean Horn, was murdered in 1992. Ms. Fahy supported the eventual exoneration of Walter Ogrod, who was wrongfully convicted of Horn's murder. *Photo*: District Attorney's Office.

Exoneree Profiles: Theophalis Wilson & Christopher Williams

Theophalis Wilson and Christopher Williams were both convicted of murdering three men who were found shot in the head around Philadelphia on the same day in 1989. Christopher Williams was sentenced to death for this crime, while Wilson was sentenced to life in prison without the possibility of parole. Eighteen months prior to this conviction, Williams was separately convicted for the murder of a man named Michael Haynesworth and sentenced to life in prison without the possibility of parole.

The cases against Wilson and Williams hinged on the testimony of two men: James White and David Lee.

During Williams's separate trial, and in exchange for more lenient sentencing in his own six murder cases, White testified that he had planned Haynesworth's death with Williams and a teenage girl. Lee testified that he had purchased several guns on Williams's behalf, including a 9mm handgun that White testified had been Williams's original plan for killing Haynesworth.

When Williams and Wilson were tried for the deaths of the three men a year and a half later, White and Lee testified again. They claimed that the three men were lured to Philadelphia with the promise of being sold a pair of AK-47 assault rifles, in an attempt to rob them. The victims were unable to produce as much money as their robbers desired, and were forced into a van. The men were allegedly driven around Philadelphia until Williams shot them, one by one, with a 9mm pistol. Their bodies were then thrown from the moving van.

> **"There was some skepticism in me as a human being that one individual could be wrongfully convicted more than once. But lightning did strike twice."**
>
> **CIU Supervisor Patricia Cummings**

Lee again testified that he had purchased a 9mm pistol for Williams—and that it was the exact pistol police had taken from Williams during his arrest. Lee assured the jury that, although he knew that purchasing the guns had been illegal, he had not been offered any leniency from law enforcement and—aside from purchasing the guns—had no criminal record.

A man named Chris Vaughn also testified that White confessed to him in prison about committing three murders in Philadelphia with someone named "Chris."

In 2011, White recanted his testimony against Williams and Wilson in relation to the murder of the three men in 1989. Additionally, an expert concluded

Theophalis Wilson:

Date of Exoneration: January 21, 2020

Years in Prison: 27

Christopher Williams:

Dates of Exoneration: December 18, 2019 & February 9, 2021

Years in Prison: 29

ed that based on the blood evidence available and the condition of the bodies, the three men had been killed where they were found, not thrown from a moving van. The CIU also made a disclosure to the defense that included a significant amount of exculpatory information that had been withheld at the time of trial including reports of alternate suspects, firsthand accounts that make no mention of bodies being thrown from vans, evidence that undermined the timing of events that White gave at trial, and evidence that both Lee and White had been induced to testify by the Commonwealth.

Based on this evidence (*see* here and here), Williams was exonerated of his triple homicide conviction in December 2019, and Wilson was exonerated in January 2020.

Wilson's exoneration marked an unnecessarily late end to his time in prison. Because he was given a mandatory sentence of life without the possibility of parole while he was still a juvenile, the U.S. Supreme Court's decision in *Miller v. Alabama*, 567 U.S. 460 (2012), required that he be resentenced—and, as a model prisoner, any resentencing would likely have involved his release. But the court refused to grant Wilson a resentencing hearing because the claims of innocence that ultimately led to his exoneration were still outstanding.

Exoneree Christopher Williams (right) hugging members of his family upon arriving home after 30 years in prison. *Photo*: *The Philadelphia Inquirer*, Jessica Griffin.

Despite his exoneration, Williams remained in prison due to the Haynesworth conviction.


Exoneree Theophalis Wilson exiting his exoneration hearing, free after 28 years in prison. *Photo*: *Associated Press*.

The CIU revisited the Haynesworth conviction in light of the evidence produced in the triple homicide case. In that case, White's testimony about Hayneworth's murder was inconsistent with the physical evidence that was available. Because of Lee's very similar involvement and the concerns that White's prior testimony raised as to his credibility, the CIU recommended (*see* here) that the Haynesworth conviction be vacated as well. On February 9, 2021, Williams was exonerated for a second time.

Righting Sentencing Inequities

The CIU's work extends beyond identifying and correcting wrongful convictions. In several instances, the CIU has reviewed cases in which defendants were subject to unjust levels of punishment for their offenses. These cases involved defendants either improperly convicted of a more serious crime than their conduct warranted or whose sentences were based on inappropriate factors unrelated to their conduct. Because Pennsylvania law does not generally allow for the correction of unjust sentences, the CIU's ability to correct such errors is tightly circumscribed—absent a legal or constitutional error at trial, it is exceedingly difficult to revisit an unjust sentence.

Four cases involving six individuals illustrate the CIU's efforts in this area. Although these cases did not warrant exonerations, they involved excessive and unjust punishments. In each of these instances, the CIU was able to seek justice only because it identified unrelated errors that gave the CIU an avenue to ensure they were resentenced to a fair and appropriate term of imprisonment.

Jamal Wright

INITIAL SENTENCE: LIFE
NEW SENTENCE: 17–34 YEARS

In the case of Jamal Wright, the CIU reviewed his first-degree murder conviction and life sentence. His codefendant had previously been granted relief in federal court pursuant to an agreement with the Office and pled guilty to third-degree murder. At that time, the Office refused to agree to similar relief for Wright.

Upon review, it was clear that a similar outcome was appropriate for Wright—the circumstances of the crime demonstrated that a conviction for first-degree murder was unjust as neither Wright nor his codefendant had intended to kill. The CIU conceded in federal court that Wright's counsel—who had put on no defense whatsoever—provided ineffective assistance of counsel and that a new trial was required. Rather than retry Wright, the CIU agreed to a plea to third-degree murder on essentially the same terms as Wright's codefendant. Instead of life imprisonment, Wright is now serving seventeen to thirty-four years and is eligible for parole.

Ricky Mallory, Hakim Lewis, & Braheem Lewis

INITIAL SENTENCE: 35–70 YEARS
NEW SENTENCE: 10–20 YEARS

The second case involved three codefendants: Ricky Mallory, Hakim Lewis, and Braheem Lewis. Each was convicted of attempted murder, criminal conspiracy, and related offenses arising out of a nonfatal shooting. When they were sentenced, the trial judge was under police protection, apparently as a result of the judge's belief that someone associated with the defendants intended to retaliate against him. Without disclosing that belief to the defendants, he imposed an extraordinarily severe sentence—the statutory maximum for each count of conviction, run consecutively—which was approximately three times greater than called for by Pennsylvania sentencing guidelines. While it was not possible to address their excessive sentences directly, the CIU was able to seek relief in federal court based upon an unrelated violation of their right to a trial by jury. As a result, their convictions and sentences were vacated. Each then pled guilty to the same offenses in exchange for a guidelines sentence providing for their release after serving over 20 years for their crimes.

Eric Riddick

INITIAL SENTENCE: LIFE
NEW SENTENCE: 10–20 YEARS

In the third case, the CIU reviewed Eric Riddick's conviction and life sentence for first-degree murder and possession of an instrument of crime. The conviction arose out of the 1991 murder of William Catlett. The basis for Riddick's conviction was testimony that placed him at the scene of the crime, firing a rifle. At trial, during a brief sidebar, the prosecutor revealed for the first time that a rifle had been found at the scene, but assured Riddick's attorney that the rifle would not be introduced as evidence against Riddick. The CIU discovered during its review and investigation of the case that the prosecutor did not disclose that the rifle had been found fully loaded, that tests by police revealed that it was prone to jamming, and that it did not match the caliber of any bullets taken from Catlett's body. Rather than merely being unnecessary to prove the Commonwealth's case—as the prosecutor had implied—the rifle was evidence indicating that Riddick not only was not the person who shot Catlett, but he likely never fired the rifle during the crime.

Although this suppressed evidence tended to demonstrate that Riddick did not fire a shot, much less the fatal shot, it did not contradict eyewitness testimony that depicted him as a participant in Catlett's murder. As a result, the CIU agreed that Riddick's conviction and sentence should be vacated and a new trial granted, and proposed a negotiated guilty plea to third-degree murder and possession of an instrument of crime.

In a surprising twist, however, the Common Pleas judge originally presiding over Riddick's post-conviction petition produced a letter from Riddick's original trial prosecutor that attempted to undermine the CIU's finding that a *Brady* violation had occurred. Far from refuting the CIU's theory of the case, however, the letter was an unwitting admission to exactly the misconduct the CIU suspected.

Shortly afterward, the case was reassigned to another judge and Riddick's conviction was vacated. Rather than relitigate his case, Riddick elected to enter a plea of no contest to third-degree murder and was released from prison.

Larry Walker

INITIAL SENTENCE: LIFE
NEW SENTENCE: 10–20 YEARS

Larry Walker was convicted of second-degree murder and sentenced to a mandatory term of life without the possibility of parole for the 1983 homicide of Clyde Coleman. Walker's conviction was based on the testimony of two eyewitnesses—Coleman's fifteen-year-old neighbor and his mother—who believed that Walker resembled one of the three men that they had seen struggling with Coleman. However, another witness, Theresa Teagle, testified that she had seen three men—including one in a bloodied shirt holding a gun—flee past her and was certain that those men were not Walker. Walker denied any involvement in the murder, but admitted to helping Coleman wash his car a few days earlier and that they had been sexually intimate on prior occasions.

For his defense, Walker testified that he had been with his friends watching a karate movie on television the night Coleman was murdered. However, the prosecution was able to demonstrate that no karate movie was aired that evening.

Perhaps because of this botched attempt to present an alibi, the jury convicted Walker despite Teagle's testimony that Walker was not one of the men she saw fleeing on the night of Coleman's murder.

Throughout his incarceration, Walker repeatedly attempted to get his conviction overturned. This included contacting the CIU's predecessor, the CRU. During the CRU's investigation, they were contacted by the trial prosecutor who described the case against

Walker as "the thinnest homicide case" he tried, and "the only homicide case . . . in which I had doubt regarding the guilt of the accused." Despite the former ADA's assistance, the evidence Walker possessed to support his innocence was insufficient to meet the CRU's exacting standard, and the case was declined.

Walker submitted a second request for review following the CIU's creation. Thanks to the CIU's broader mandate, it was able to investigate more than just evidence of Walker's actual innocence. The CIU learned:

- The police investigation into Coleman's murder was limited solely to Walker's involvement, and despite eyewitness testimony that there were at least three assailants, no suspects other than Walker were ever developed.
- Teagle was not merely a civilian witness—she was a cooperating informant in another ongoing murder investigation. Had evidence that police relied heavily on Teagle in another murder investigation been given to Walker's attorney, it is likely that it could have been used to bolster the strength of Teagle's testimony.
- Although no karate movie was aired on the night of Coleman's murder, the very movies that comprised Walker's alibi were aired the following week. Additionally, Walker originally told police that he was simply watching television at the time of Coleman's murder—not that he was watching karate movies. This strongly suggested that the errors in Walker's alibi were attributable to faulty memory rather than an intent to deceive.
- Evidence of Walker's prior relationship with Coleman may have inflamed biases the jury held.

Taken together, the evidence uncovered by the CIU undermined confidence in the integrity of Walker's conviction. However, due to the passage of time, the deaths of critical witnesses, and the fact that the eyewitnesses have stood by their identifications, the CIU was unable to determine with confidence that Walker was actually innocent. As a result, the CIU struck an agreement under which Walker's conviction would be vacated, but he would plead nolo contendere to third-degree murder. Walker was released from prison on May 21, 2021 and pled no contest on June 2, 2021.

> **"I remember the Walker case well because it was the thinnest homicide case I tried while I was in the office, and it is the only homicide case that I tried in which I had a doubt regarding the guilt of the accused. . . .**
>
> **I certainly hope that Mr. Walker is guilty, as I believed when I tried this case. However, recognizing the fallibility of eyewitness identification and the circumstances of this case, it is certainly possible that Mr. Walker, who had no prior record, is innocent."**
>
> **Richard P. Myers**
> *Former Assistant District Attorney who handled the case against Larry Walker, in the 2012 letter urging the District Attorney's Office to assist with Walker's investigation.*

Setbacks

Dontez Perrin

In 2010, Dontez Perrin was convicted of robbery and sentenced to five to ten years of incarceration. As noted by the trial judge at the time, the case against Perrin was relatively weak and turned entirely on the testimony of the Commonwealth's only credible witness, Lynwood Perry.

Shortly after Perrin was convicted, Perry admitted he fabricated his testimony in an effort to obtain a better sentence in his own federal prosecution. Based on that admission, Perrin moved for a new trial.

The motion lingered for over a decade due to the Commonwealth's insistence that the new evidence was procedurally improper. The trial court held a full evidentiary hearing at which Perrin presented witness testimony about Perry's fabricated testimony. Nonetheless, the court ultimately adopted the Commonwealth's procedural argument and denied Perrin's motion without assessing the credibility of the new evidence. On appeal, the Superior Court reversed, resolving essentially every legal issue in Perrin's favor, and remanded the case to the trial court to rule on a single factual question: whether Perrin's new evidence was sufficiently credible to warrant relief. Because the original trial judge retired while the case was on appeal, the motion for a new trial was assigned to a new judge on remand.

After conducting a full review and independent investigation, the CIU agreed that Perry's confession necessitated a new trial. Among other things, the CIU interviewed one of Perrin's witnesses, who reiterated the account to which he had previously testified. That witness was credible, and the CIU concluded that he would present the same testimony already in the record if called again. Accordingly, the CIU conceded that the evidence was sufficiently credible to warrant relief and submitted factual stipulations to that effect.

But the court refused to consider the stipulations at all and insisted that it could not grant the motion without conducting another evidentiary hearing during which the same witnesses would testify. In effect, the court demanded an opportunity to resolve a factual dispute where none existed. The parties asked the court to grant the motion for a new trial in light of the undisputed facts before it without additional testimony. The court denied Perrin's motion for a new trial for lack of evidence.

Stacey Culbert

This case dealt with the question of whether Pennsylvania trial courts possess jurisdiction to rectify a patently illegal sentence even after the one-year limitations period on state post-conviction claims has passed. Culbert was sentenced to twenty to forty years of imprisonment for third-degree murder. At the time of his conviction, the statutory maximum sentence for that offense was ten to twenty years. The CIU conceded that the sentence was illegal and did not oppose relief—a request to simply correct the sentence to a legally valid sentence. The trial court held that Pennsylvania Supreme Court precedent was clear: the trial court lacked jurisdiction to correct the sentence because Culbert's post-conviction petition was filed too late. Culbert appealed the decision and the appellate court affirmed the trial court. The Pennsylvania Supreme Court declined to consider the case.

Fortunately, Culbert filed a federal habeas petition following his loss in the Pennsylvania state courts. In that petition, he argued that his illegal sentence violated the Eighth Amendment's ban on cruel and unusual punishment. The Office's Law Division conceded relief and the federal court granted Culbert's petition, remanding his case to state court for resentencing. Accordingly, a Common Pleas judge vacated Culbert's 1998 sentence on April 9, 2021. At that time, she resentenced him to ten to twenty years with credit received from the date of original sentencing.

Salvatore Chimenti

In October 1986, prosecutors reneged on an agreement to resentence Salvatore Chimenti—who had been convicted of first-degree murder three years earlier—on a lesser charge in exchange for his cooperation in a criminal investigation of his trial attorney for suborning perjury. Chimenti lived up to his end of the bargain, and in doing so lost a critical opportunity to litigate constitutional flaws in his trial.

But when a new District Attorney took office in 1986, the Office abandoned its end of the deal, resulting in Chimenti's imprisonment for almost two decades longer than he would have served had the agreement been honored and accepted.

Chimenti's case was first submitted to the Office's CRU in 2015. The CRU rejected the case in late 2017.

In 2018, Chimenti submitted his case to the CIU for review. A thorough review of Chimenti's file revealed numerous violations of Chimenti's constitutional right to a fair trial.

CIU attorneys, together with Chimenti's post-conviction counsel, appeared before the assigned judge in February 2018. The parties jointly requested that, due to defense counsel's constitutionally deficient representation of Chimenti at trial and subsequent government interference, Chimenti's conviction be vacated and that he be immediately allowed to plead guilty to third-degree murder (as per the terms of the original agreement).

Despite clear evidence of almost thirty-five years of government interference inhibiting Chimenti's presentation of a valid constitutional claim—ineffective assistance of counsel—the judge dismissed the Post Conviction Relief Act petition as untimely. Once again, the appellate court affirmed this conviction.

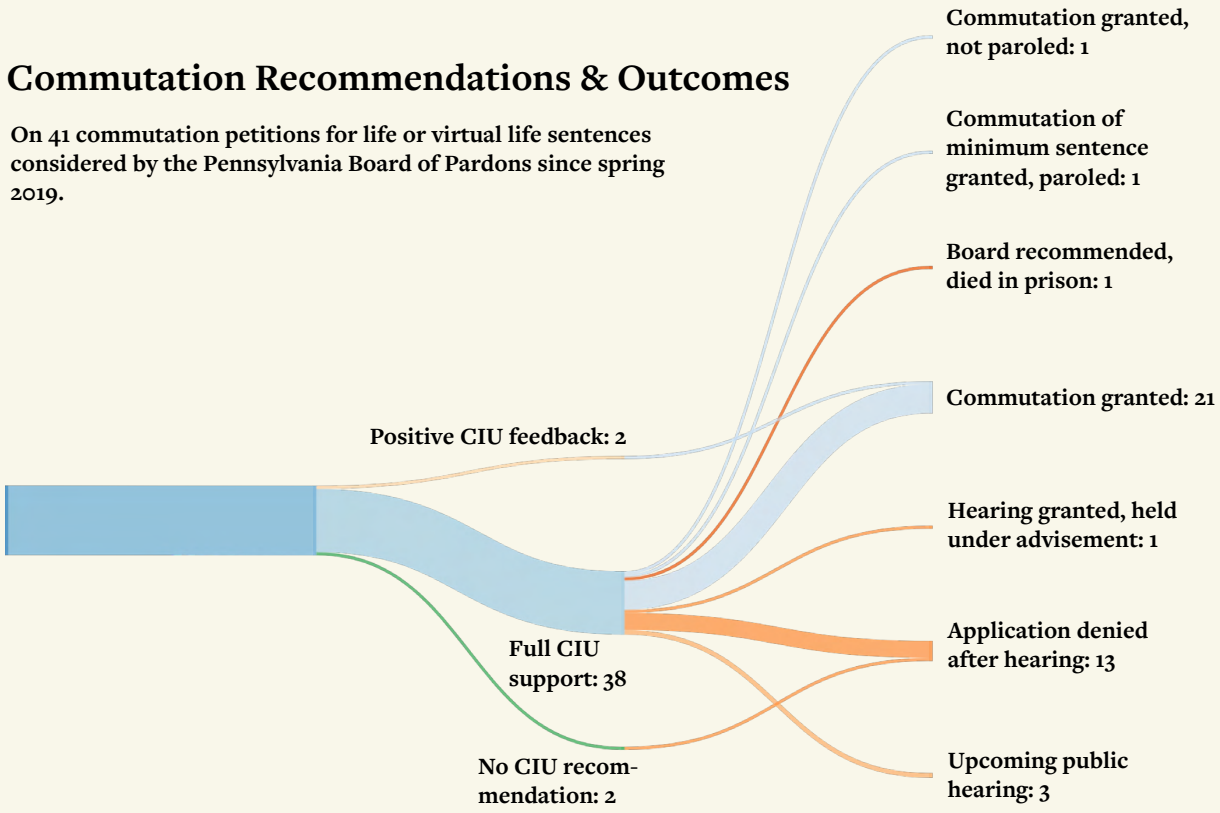
Today, Chimenti is still in prison and, according to his lawyer, has become terminally ill. He is in the process of filing for compassionate release for hospice care under 42 Pa. C.S. § 9777.

> **"If a prosecutor cannot be trusted to adhere to the substance of his agreements, our criminal justice system is in serious trouble."**
>
> **Paul Shechtman**
> *Former Attorney for Chimenti, in a 1986 letter to the then-District Attorney.*

Commutations

Commutation Recommendations & Outcomes

On 41 commutation petitions for life or virtual life sentences considered by the Pennsylvania Board of Pardons since spring 2019.



The CIU also assesses and, where appropriate, advocates for commutations, clemency, and compassionate release for people serving life sentences and "virtual life" sentences with decades-long minimum terms that approximate their lifespans.

Pennsylvania is one of only six states in which people serving life sentences are ineligible for parole. Instead, they must be granted a commutation to be released, no matter what has taken place since they were first imprisoned. And, of the roughly 5,300 people serving life without parole in Pennsylvania, more than 2,000 were convicted in Philadelphia. This makes the CIU's participation in Pennsylvania's commutation process an important replacement for the kind of periodic, case-specific review that is available for parole-eligible convictions in the vast majority of American jurisdictions.

As part of its review process, the CIU provides detailed feedback to the Board of Pardons on requests for clemency and supports those requests when appropriate. Since 2019, the CIU has also taken a role in responding to petitions for compassionate release filed by incarcerated people with terminal illnesses. The CIU's policy is to support such a request when it meets the statutorily imposed criteria.

Parole Granted for the MOVE Nine

In 2019 and 2020, the CIU assisted four members of the MOVE Nine in obtaining parole. The MOVE Nine are nine members of MOVE, a Black revolutionary organization, who were convicted of third-degree murder and each sentenced to 30-to-100 years for their involvement in the 1978 killing of Philadelphia Police Officer James Ramp. (MOVE maintains the innocence of the MOVE Nine, alleging that Officer Ramp died by friendly fire.) The 1978 confrontation was a pivotal moment that set the stage for another tragic event: the 1985 MOVE bombing. On May 13, 1985, the Philadelphia Police Department bombed the residential home that served as MOVE headquarters—killing eleven people and destroying sixty-five homes in the surrounding neighborhood.

Members of the MOVE Nine became eligible for parole in 2008. The first of the MOVE Nine to be granted parole was Debbie Sims Africa, who was released in 2018. Her husband, Michael Davis Africa, was released later that same year.

At their request, the CIU became involved in the parole proceedings of Janine Phillips Africa, Janet Hollaway Africa, Charles ("Chuck") Sims Africa, and Delbert Orr Africa. The CIU wrote letters of support for all four, and they were ultimately granted parole.

Chuck Sims Africa, the last MOVE Nine member to be released from incarceration, was paroled in February 2020.

MOVE member Delbert Africa speaking to the press after his release on parole. Delbert was in prison for almost 42 years. *Photo*: *The Philadelphia Inquirer*, Lauren Schneiderman.

Unit Projects

Police Misconduct Disclosure

In keeping with its mission to prevent wrongful convictions, the CIU developed an office-wide policy regarding the disclosure of police misconduct to the defense. This policy establishes an affirmative duty for prosecutors to retrieve the misconduct history of any law enforcement personnel who would be called to testify in a criminal case. If prosecutors identify instances of misconduct that might constitute exculpatory, impeachment, or mitigating information in that case, then, pursuant to the Office policy and obligations under *Brady v. Maryland*, *Giglio v. United States*, *Napue v. Illinois*, and their progeny, they must turn over that information to the defense. Prosecutors are also required to assess any impact the misconduct has on the integrity of the prosecution.

To effectuate this policy, the CIU works with law enforcement agencies to collect such *Brady*/*Giglio* information about their officers and places this information in a database accessible to all prosecutors. The Police Misconduct Disclosure database automatically flags the existence of *Brady*/*Giglio* information at two critical stages in the life of a case: when charges are first filed, if an officer who engaged in misconduct is involved in the investigation or arrest, and then again if that particular officer is subpoenaed to appear at a preliminary hearing or trial.

The automated alerts divide flagged officers into one of two categories: impact or presumption. An "impact" notification signals for the prosecutor to consider the overall impact that the officer's past misconduct will have on their case and proceed accordingly. On the other hand, a "presumption" notification alerts the prosecutor that there must be extraordinary circumstances to justify calling the officer and they must seek permission from the District Attorney or a First Assistant District Attorney before calling that officer as a witness in their case.

ADA Andrew Wellbrock and District Attorney Larry Krasner reviewing a list of Philadelphia Police Officers noted by a previous District Attorney's Office administration as "damaged goods." *Photo*: *Philly D.A.*, Episode 1, *Public Broadcasting Service* (*PBS*), *Independent Lens*. Directed by Yoni Brook, Ted Passon, and Nicole Salazar (hereinafter, *Philly D.A.* (PBS)).

Assistant District Attorneys attending an office-wide training. *Photo*: *Philly D.A.* (PBS), Episode 2.

This disclosure policy was first implemented in May 2018. From then until the end of May 2021, there have been 114,691 arrests in Philadelphia made by 9,861 police officers. Of those arrests, 9,566 (8%) involved 444 officers with misconduct documented in the database. The Office declined to bring charges in 447 of those 9,566 arrests. Although it is difficult to ascertain exactly what role the policy played in case dispositions, cases involving one or more officers in the database were more likely to be dismissed or withdrawn than those not involving officers in the database.*

> **"We have enough officers on that 'do not call' list to invade Cuba."**
>
> **John McNesby,**
> *President of FOP Lodge #5*

* Oren M. Gur, Andrew Wellbrock, Charles J. Arayata, Sebastian Hoyos-Torres, Alexa Cinque, Stephen Braccia, Wes Weaver, Michael Hollander & Patricia Cummings, *Enhancing accountability: Implementing an automated police misconduct disclosure system in a prosecutor's office*, unpublished manuscript (2021).

Related Litigation

This project prompted a lawsuit by the Fraternal Order of Police ("FOP"), which argued that disclosing incidents of police misconduct to defense attorneys violated individual officers' rights, specifically including their rights to due process and privacy and reputational rights guaranteed by the Pennsylvania Constitution. Likely the result of the lawsuit, the Office has been embroiled in a constant battle with the police department over its requests for *Brady*/*Giglio* information pertaining to its officers.

Rather than complying with the Office's procedures and regulations set up to ensure prosecutors fulfill their constitutional obligations, the police department has maintained that it is able to unilaterally determine what must be disclosed and the procedure for how to disclose information to the Office. Although the lawsuit was dismissed with prejudice, and a decision on the FOP's appeal remains pending, it is possible that further litigation may be required to resolve the many important issues that remain.

Pro Se Review Project

In January 2021, the CIU began a partnership with Phillips Black, Inc.—a nonprofit law office that specializes in advocacy for people who have been sentenced to life without parole or death—to develop the *Pro Se* Review Project. This project is similar to other projects where conviction integrity units, such as in Wayne County, Michigan, and Baltimore, Maryland, have received federal grant funding to partner with Innocence Projects to help review and navigate high numbers of requests from *pro se* applicants (individuals without legal counsel).

> **"We're getting letters saying, 'I got an 80-year sentence and my co-defendants got five.'"**
>
> **CIU Supervisor Patricia Cummings**

Due to the overwhelming number of *pro se* applications the CIU receives, the CIU would require substantially more resources than it has at its disposal to conduct investigations on behalf of these petitioners. Imprisoned individuals are also extremely limited in their ability to access information and engage in the kind of detailed, complex investigation that is necessary to overturn a wrongful conviction. Thus, one of the purposes of the *Pro Se* Project is to address institutional barriers that unrepresented petitioners face when attempting to have their convictions reviewed.

Additionally, the CIU has no legal authority to file petitions on behalf of *pro se* applicants or to provide them with legal advice. As a result, this creates a huge void in *pro se* cases the CIU has reviewed, investigated, and in which it has determined relief is likely. Fortunately, the grant funding provided directly to Phillips Black allows these *pro se* applicants to retain Phillips Black on a pro bono basis should they wish to do so.

Penn Law Externship

Since fall of 2019, the CIU has partnered with the University of Pennsylvania Carey Law School to host clinical externs from the school. The partnership is the first of its kind in the nation. The core purpose of the Penn Law/CIU externship program is to involve law students at each critical stage of case review in actual innocence claims and claims of wrongful conviction. Law school–affiliated innocence projects have been successful in harnessing the energy and enthusiasm of law students in the investigation of and remedying of wrongful convictions.

Similar work in a conviction integrity unit housed within a prosecutor's office is designed to provide equal if not greater advantages to students, the law school, and the Office. Traditional prosecution clinics or externships (such as the current District Attorney's Office/Penn Law prosecution externship) focus on developing litigation and courtroom skills. The CIU externship program allows for developing traditional lawyering skills such as witness interviewing, fact gathering, legal research, and writing that are transferable to any lawyering context, and the program is uniquely designed to help develop investigative and case assessment skills and students' understanding of the workings of the criminal justice system as a whole.

Penn Law Externs

Fall 2019:	*5*
Spring 2020:	*5*
Fall 2020:	*2**
Spring 2021:	*2**

** Remote due to the COVID-19 pandemic.*

Faculty supervision for the externship program is provided by the Quattrone Center for the Fair Administration of Justice and its affiliated faculty at the Law School. The externship is offered for 7 credits in the fall and spring semesters with the possibility of continuing on a second semester.

Official Misconduct Case Review

Although prosecutorial and police misconduct are the result of cultural and institutional practices, there are some actors whose practices are particularly egregious. When those actors are identified, the CIU engages in a systematic review of any convictions in which those individuals participated. To date, the CIU is in the process of conducting two such reviews.

Detective James Pitts

In November 2013, *Philadelphia Daily News* published a report titled, "Dead Wrong: 2 detectives, 3 murder cases, 3 cleared . . . & cries of foul play," based on three prosecutions involving Homicide Detective James Pitts.

The first prosecution described in the article, which ultimately resulted in a jury acquittal, involved the defendant's allegations that Detective Pitts elicited false confession by utilizing "good cop/bad cop" tactics that included Detective Pitts physically assaulting him. In the second prosecution, the defendant was also arrested based on the investigative work of Detective Pitts. That case also resulted in an acquittal by a jury—apparently because the defendant established an alibi using video evidence. The third prosecution involved a dismissal of charges following the trial court's order suppressing the defendant's purported confession. The confession was suppressed because the defendant had been held in custody for forty-one hours, and because the statement was not voluntary and was the product of psychological coercion. In the article, the lawyer for the defendant is quoted as saying that Detective Pitts "gets in there and bullies people, and he causes people to say things that may not be true."

Less than three years later in 2017, a Common Pleas judge heard testimony concerning Detective Pitts's interrogation habits relevant to the post-conviction claims of Dwayne Thorpe, who had been previously convicted of homicide. In 2018, after that hearing concluded, the judge ordered a new trial, finding:

> distinct patterns of behavior described by the witnesses throughout the arc of Detective [Pitts's] ca-

District Attorney Larry Krasner and CIU Supervisor Patricia Cummings review police misconduct records.
Photo: ***Philly D.A.*** (PBS), Episode 2.

> reer rose to the level of habit evidence. Rather than supporting the value-laden conclusion that Detective Pitts has a general propensity of "abusiveness" towards uncooperative or unhelpful witnesses and suspects, this Court found that, when he is operating under the apparent belief that an interrogation subject is untruthful or withholding evidence, Detective Pitts habitually (1) makes unreasonable threats of imprisonment or threats targeting an interrogation subject's specific vulnerabilities, such as family members, children, or housing; (2) employs physical abuse; (3) prolongs detentions of interrogation subjects to an unreasonable degree and without probable cause; and, (4) does not permit witnesses or suspects to review or correct statements before signing them. The witnesses' testimony, described *supra*, established that Detective [Pitts's] conduct was systematic, as he consistently applied two or more of the four distinct tactics described when a witness asserted that he or she knew nothing about a given incident or failed to answer questions to Detective [Pitts's] apparent satisfaction. The timespan over which the incidents described occurred, comprising a majority of Detective [Pitts's] career in the Homicide Unit, established that these behaviors were continuous.

(CP-51-CR-0011433-2008, Opinion 6/7/2018.)

The CIU reviewed the judge's findings set out in her opinion, and undertook an investigation to determine whether there was sufficient evidence to retry Thorpe. The CIU concluded there was not sufficient evidence to retry Thorpe so the charges were dismissed instead of referred to the Homicide Unit for retrial.

Detective Pitts is currently the subject of a pending Internal Affairs investigation and has been administratively reassigned within the police department, and removed from street duty.

Given this history, the CIU is actively reviewing cases involving Detective Pitts. However, unlike cases involving Detective Nordo (*see below*), there is no internal office policy centralizing that review in the CIU.

Exoneree Obina Onyiah

On May 4, 2021, Obina Onyiah was exonerated of his conviction for an October 2010 robbery and homicide, in part because of Pitts's involvement in the investigation. During the original police investigation and trial, Pitts not only obtained Onyiah's purported confession to the crime, he also served as an important witness for the Commonwealth at trial, allowing the Commonwealth to introduce several important pieces of substantive evidence. At trial, Onyiah argued unsuccessfully that the confession had been coerced.

However, the CIU demonstrated the falseness of Onyiah's purported confession by obtaining the analysis of photogrammetry experts. Indeed, the reports showed that Onyiah could not have been the second assailant, because he is 6'3" tall, while the second assailant depicted in video is no taller than 5'10". This, in conjunction with the CIU's investigation into Pitts's conduct, affirmed that Onyiah's confession was false.

> **"That is the equivalent of a DNA exclusion in a rape case. That is affirmative evidence of innocence."**
>
> **Former CIU Assistant Supervisor Carrie Wood**
>
> *on the significance of the photogrammetry expert analysis.*

On the basis of the exculpatory evidence and due process violations present at his original trial, the CIU agreed that Onyiah was innocent and entitled to relief.

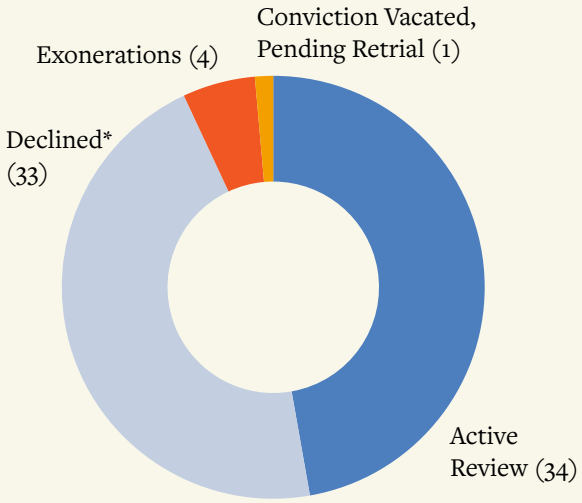
Detective Philip Nordo

Detective Philip Nordo was a homicide detective with PPD who is currently charged with multiple crimes, including various sexual assault offenses, spanning much of his career. In August 2017, the PPD provided Nordo with notice of intent to dismiss in 30 days. In February 2019, he was arrested and criminally charged. Like all criminal defendants, Nordo is entitled to a presumption of innocence until such time as a jury or judge hears the evidence against him and finds beyond a reasonable doubt that he is guilty.

The criminal charges stem from a Philadelphia county investigating grand jury presentment which alleges that Nordo used his position of authority to cultivate relationships with suspects, witnesses, or individuals unrelated to an investigation in order to make them more susceptible to his sexually assaultive and coercive behavior. According to the grand jury presentment, Nordo did this by employing threats, coercion, and force, or by conferring benefits and promising loyalty.

Pursuant to an internal office policy, any identified "Nordo" case on appeal or in other post-conviction litigation is transferred to the CIU for review. Following this transfer, the assigned CIU prosecutor reviews the case to determine the extent of Nordo's involvement in the underlying investigation, and whether that tainted the investigation so as to materially undermine confidence in the conviction. Ultimately, the CIU decides to accept or decline the case based on available information about the extent and the nature of Nordo's involvement.

Thus far, the Nordo policy has produced the following results:



* Declinations are not a CIU conclusion that the conviction is sound or that there is no basis for overturning it. Rather, a declination simply means that the Nordo misconduct, if it exists at all in the case, does not by itself warrant relief.

Exoneree Arkel Garcia

Arkel Garcia is the most recent individual to have their conviction overturned because of Nordo's misconduct. Unlike the criminal charges above which must be proven beyond a reasonable doubt, a judge has found the following to be proven by a proponderance of the evidence at a Post Conviction Relief Act hearing.

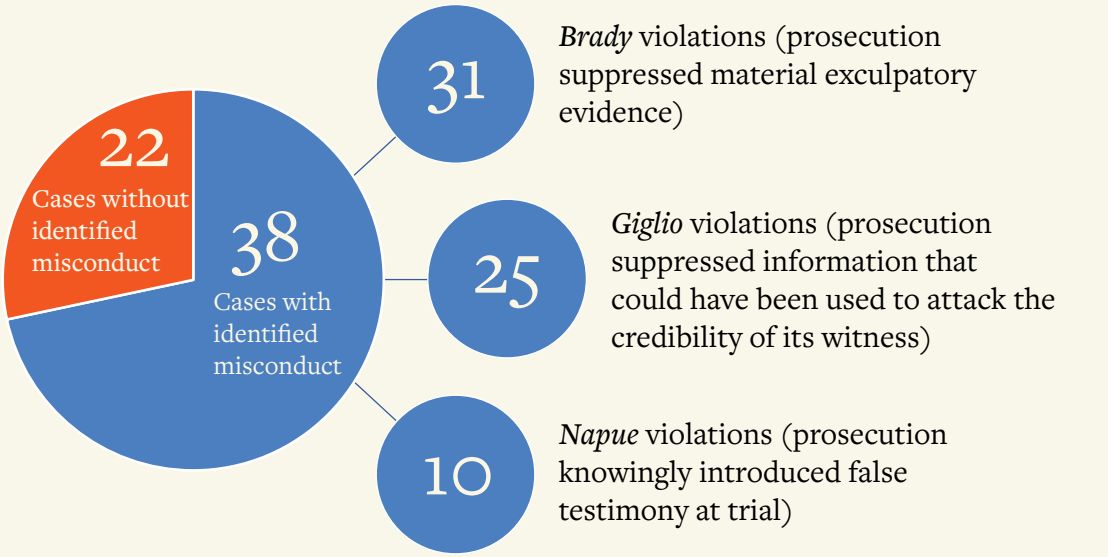
Garcia was convicted of homicide and related offenses, and sentenced to life in prison without the possibility of parole. Garcia was convicted based almost solely on a confession that he purportedly gave to Nordo after the two were alone together for almost two hours. The details of that confession did not match the facts of the crime that were recorded on surveillance video. The investigation into Nordo brought to light evidence that the former detective used this murder investigation as an opportunity to attempt to sexually exploit three individuals, including Garcia.

Overall, the evidence against Garcia—even including the purported confession—was relatively weak. Nordo's habitual misconduct, as well as his specific and documented misconduct in this case, undermined confidence in the jury's verdict. The CIU supported Garcia's petition for a new trial, which was granted on June 4, 2021. The CIU's motion to withdraw charges against Garcia was granted that same day.

Prosecutorial Misconduct Project

The Prosecutorial Misconduct Project is a partnership between the CIU and the Center on the Administration of Criminal Law ("CACL") at NYU School of Law. The goal of the Project is to identify cases involving prosecutorial misconduct that is consciously committed by members of the Philadelphia District Attorney's Office. The Project is focused on misconduct pertaining to prosecutors' constitutional disclosure obligations and their obligation to refrain from using false testimony. The CIU and CACL are reviewing (i) state and federal cases where convictions were vacated as a result of such misconduct, (ii) state and federal cases where a court found that suppression of favorable evidence occurred, and (iii) state cases where people were wrongfully convicted as a result of such misconduct. The Project will eventually release a written report that summarizes case findings and, among other things, offer policy proposals to help minimize the risk of misconduct going forward. The Project started in June 2020, and is expected to continue through July 2021.

To date, the project has substantially reviewed sixty cases dating back to 1980, to the extent that those files were accessible. Of the sixty, thirty-eight involved official misconduct, including (often overlapping) violations of *Brady*, *Giglio*, and *Napue*.



"If I'd spilled hot coffee on myself, I could have sued the person who served me the coffee. But I can't sue the prosecutors who nearly murdered me."

John Thompson

on the outcome of his civil lawsuit against the prosecutors who suppressed exculpatory evidence during his trial. In the landmark case of Connick v. Thompson, *563 U.S. 51 (2011), the U.S. Supreme Court held that prosecutors are immune from civil liability.*

New Orleans death-row exoneree John Thompson. *Photo*: *Associated Press*, Patrick Semansky.

False Confession Project

In response to the number of wrongful convictions that resulted from coerced statements and confessions, the CIU has partnered with a cognitive psychologist and professor of psychology from Iowa State University and a retired Air Force intelligence officer, both of whom specialize in subjects related to false confessions. At the onset of this project, these experts assessed Philadelphia cases that involved problematic or false confessions to determine what interrogation techniques led most frequently to those outcomes.

Exoneree James Frazier on his way home with his mother and attorney, Edward Foster. Frazier's wrongful conviction rested on a false confession and withheld evidence. *Photo*: Edward Foster.

Through their review of CIU cases, police trainings, prior reports, and news coverage of interrogations and interviews in Philadelphia, the experts identified some recurring factors that have contributed to false confessions obtained by PPD. One of the main factors they identified is the detectives' use of an accusatorial interrogation model that feeds information to the person they are questioning—the supplied information is then parroted back to the detectives by the interrogatee after long periods locked in the interrogation room in an attempt to get out of custody.

Beyond their historical reviews, the experts also assist the CIU in active investigations where CIU attorneys believe a false confession may have occurred. In these instances, one of the experts will likely meet with the petitioner and conduct an interview. The expert then generates a report of these findings for use by the CIU. As of April 2021, the experts have reviewed, or are in the process of reviewing, eight cases for the CIU. Of those, three have resulted in exonerations.

Open-File Discovery

The CIU has included discovery reform as part of its efforts to remedy the root causes of wrongful convictions. To this end, the CIU took the lead in developing the Office's *Brady* policy as well as its new open-file discovery policy. A training series on these policies is scheduled to begin in late June 2021.

The goal of open-file discovery is to ensure the defendant has access to all material information relating to their case. Office compliance with even the basic mandates of *Brady* and its progeny has been inconsistent, as exemplified by the fact that in twenty of the CIU's twenty-one exonerations, prosecutors withheld exculpatory evidence from the defense. These violations underscore the importance of a robust discovery policy. Under the Office's new open-file discovery policy, prosecutors must consult with a supervisor before withholding any case information from the defense, must document any decision to withhold evidence, and are encouraged to consult the CIU for guidance. In addition, prosecutors are reminded of their constitutional, statutory, and ethical duties to disclose information regardless of the form the information takes (*e.g.*, written vs. oral) and regardless of whether a case is resolved via plea or trial.

In step with this policy, the CIU has supported a proposal to amend Pennsylvania's statutory discovery obligations by, among other things, eliminating the current requirement that evidence be "material" and that defendants affirmatively request discovery.

Looking ahead, the CIU is working to develop more specific guidelines for open-file discovery in conjunction with a modernized case management system.

Forensic Policy

The CIU believes that an efficient and sufficiently resourced forensics lab is critical for ensuring the integrity of the Office's prosecutions, as well as for solving crimes. As a result, the CIU has spearheaded efforts to reform office-wide policies regarding the testing and retention of forensic evidence. Simultaneously, District Attorney Krasner has persistently advocated for major investments in cutting-edge forensic testing capacity to be done by the Philadelphia Police Department's forensic lab. Because the CIU works closely with the Office of Forensic Science ("OFS"), the City lab that handles chemical testing and other forensic analysis for the Office as part of its work on exonerations, the CIU and OFS maintain an excellent working relationship, making the CIU the natural point of contact for all forensic policy projects. Despite the City's history of chronically under-valuing forensics in investigations, the OFS is led and staffed by nationally recognized experts. However, the City has not provided the funding necessary to expand its capacity and has forced it to outsource requests that utilize certain cutting-edge tools.

Drug Evidence Destruction Policy

In 2018, not long after the CIU formally became the unit that it is today, it became clear that the Office had never established a policy governing destruction of drug evidence. Consequently, decades of evidence remained in storage at OFS. The policies governing destruction of evidence are particularly important to the CIU because of the danger that evidence might be destroyed when it should not. To relieve the lab of this problem while ensuring that evidence was not destroyed inappropriately, the CIU has worked with OFS to audit cases where stored evidence may be ripe for destruction and, when those cases are identified, obtain orders permitting destruction. The CIU is also in the process of developing a uniform policy for requesting orders of destruction in closed cases moving forward.

> **"We should always strive for a criminal justice system that is much more reliant on the truth, instead of one that simply relies on human emotions—in all of their unreliability and flaws."**
>
> **District Attorney Larry Krasner**

Drug Testing Protocol

In 2019, the Office and OFS were experiencing an enormous backlog of untested drugs. The scope of the backlog was such that it could not be remedied solely by hiring new analysts or mandating overtime for existing analysts. The Office's lack of communication with OFS as well as the Office's lack of policies and procedures for prioritizing testing contributed to this backlog. Prosecutors often found themselves urgently needing test results and began individually emailing the lab to request that testing for their case be expedited. Ultimately, this stop-gap solution exacerbated the problem rather than solving it.

37,000 *Drug testing backlog as of July 2019*

Working in conjunction with OFS, the CIU developed a triage protocol for promptly identifying and testing priority cases. Pursuant to that policy, the Office as a whole now categorizes its cases based on their urgency and submits that list to the lab from a single source. It also capped the number of cases that could be categorized as a priority each week to stabilize the load placed on OFS.

Trainings & Outreach

Jean Friedman Rudovsky and the Economy League moderating and hosting a panel discussion with CIU Supervisor Patricia Cummings and The Center for Returning Citizens Exec. Dir. Jondhi Harrell. *Photo*: District Attorney's Office.

The CIU organizes and provides trainings for every Office employee that relate to the unit's mission. Many of these trainings are practical in nature. These trainings serve to familiarize Office employees with policies spearheaded by the CIU and discussed elsewhere in this section, such as the Police Misconduct Disclosure Database, the False Confession Project, Open-File Discovery, and the Office's various forensic policies. The CIU also provides new prosecutors with training regarding their *Brady* obligations.

Two office-wide training sessions deserve special mention because they were given by the outside organizations Witness to Innocence and Healing Justice.

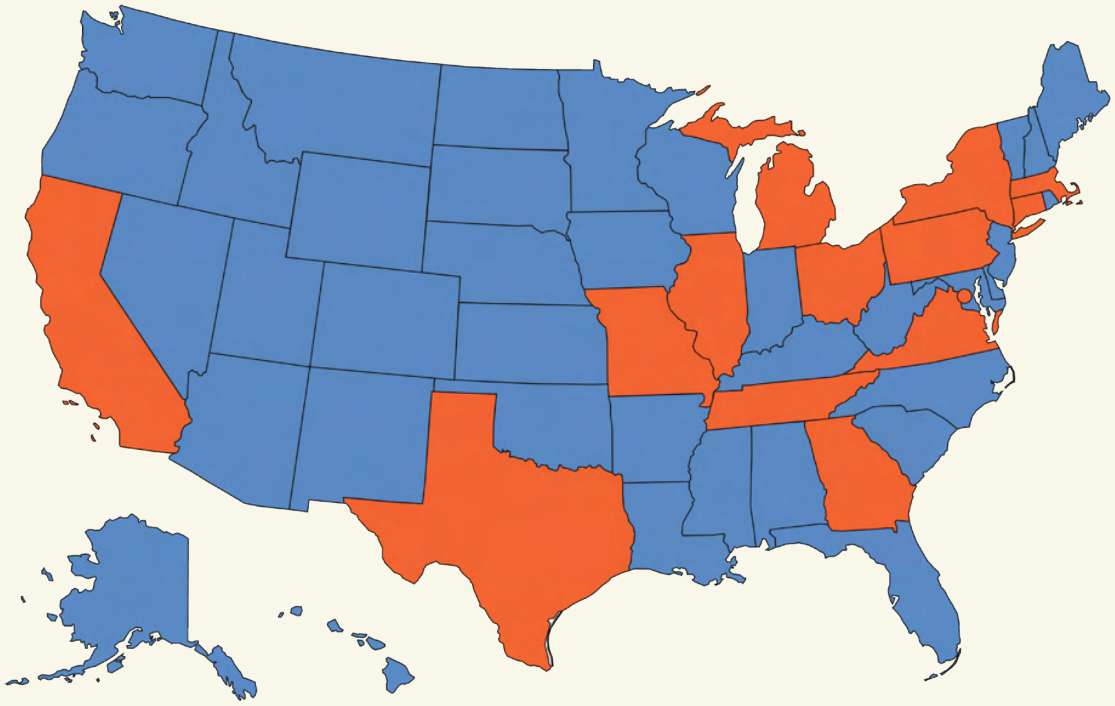
Witness to Innocence

Witness to Innocence is a locally based nonprofit organization founded in 2003 "dedicated to empowering exonerated death row survivors to be powerful and effective voices in confronting problems in the criminal justice system in the United States." The training Witness to Innocence presented included the legal framework through which wrongful convictions could be remedied, firsthand testimony from death-row exonerees, and discussion of the lessons that could be learned from past wrongful convictions.

Healing Justice

Healing Justice is a national nonprofit organization that "provides support and services to crime victims and survivors, their families, and others in these cases." Healing Justice specifically addressed the difficult position that victims are placed in and the complex emotions that they can experience when a wrongful conviction is vacated.

> **"When these wrongful convictions occur, the damage to our criminal justice system and to our country is widespread. So often you hear the focus is on the damage to the defendant. But everybody has to pause and think about the damage that also occurs to the victim and that occurs to the system as a whole."**
>
> **CIU Supervisor Patricia Cummings**



Orange indicates states where the CIU has led presentations or lectures since January 2018.

National Presentations

In addition to the CIU's internal trainings, the CIU has participated in more than thirty educational lectures and trainings across the country. While the lectures predominately focus on the importance of conviction integrity units, the trainings take a practical approach, covering specific areas of law and offering tools to attorneys working within the criminal justice system that will aid them in identifying official misconduct and preventing future wrongful convictions.

These presentations have included the following:

- **Presentation to the Supreme Court of Ohio Task force on Conviction Integrity and Postconviction Review** (Columbus, OH, 11/19/2020) (*see* here).
- **American Bar Association 2019 Criminal Justice Spring Meeting: Plenary Session II—Prosecutors as Agents of Change 2.0—Conviction Integrity Units** (Nashville, TN, 4/5/2019) (*see* here).
- **Association of Prosecuting Attorneys: The Trials and Tribulations of Discovering *Brady* Violations During a CIU Review** (virtual, 2/25/2021) (*see* here and here).

Committee Participation

The CIU sits on two committees within the Office: the *Miller* Resentencing Committee (also known as the Juvenile Lifer Committee) and the Homicide Sentencing Committee.

Miller *Resentencing Committee*

The *Miller* Resentencing Committee was assembled following the U.S. Supreme Court's decision in *Miller v. Alabama*. *Miller* held that imposing mandatory sentences of life without the possibility of parole on juvenile homicide defendants violated the Eighth Amendment's prohibition of cruel and unusual punishment. Pursuant to that decision, the Committee meets to review and recommend resentencing for any prior juvenile conviction that violated the Eighth Amendment.

Homicide Sentencing Committee

The Sentencing Committee is composed of representatives from units throughout the Office. The committee meets whenever the Homicide Unit or the Law Division have cases where special circumstances warrant a departure from the Office's sentencing policies in cases awaiting trial or when a sentence imposed after conviction warrants a "second look."

> **"I was just existing for twenty-one years. Now, I'm about to live."**
>
> **Exoneree Terrance Lewis,** *a wrongfully convicted juvenile lifer, at his release.*

139 *Cases Resentenced by the* Miller *Resentencing Committee*

According to an April 2020 study of the Office's resentenced juvenile lifers, the average age at the time of offense for the Philadelphia juvenile lifers was sixteen years and four months. The average age at the time of resentencing was forty-five years, and the average age at the time of release was fifty-one years.

Pending Cases

Marvin Hill

In 2013, the Commonwealth successfully prosecuted Marvin Hill for a homicide that the CIU now agrees he could not have committed. In his October 2020 PCRA filing, Hill presented a claim of actual innocence, outlining multiple constitutional violations that undermined the integrity of his conviction. He alleged prosecutorial misconduct under *Brady* and *Napue*, as well as ineffective assistance of counsel. After conducting an independent review and investigation of Hill's case, the CIU has agreed relief is warranted.

Most strikingly, in the course of its investigation, the CIU reviewed a surveillance video and other evidence that existed at the time of trial that proved Hill was approximately a block and a half away when the shooting occurred. The video evidence was known to all parties during the original trial; however, other evidence regarding when the shooting occurred was withheld from the defense.

Despite this clear evidence, the Commonwealth maintained at trial that Hill was the shooter. In order to account for the video at trial, the Commonwealth advanced a factually unsupported argument that the shooting occurred later than it actually did, baselessly claiming that the 911 calls and computer assisted dispatch (CAD) report that established when the shooting occurred were not accurate. By presenting such an argument to the court, the Commonwealth misled the court.

In light of its findings, the CIU is supporting Hill's PCRA petition. The matter is pending before the Court of Common Pleas.

Montrell Oliver

In 1998, at the age of seventeen, Montrell Oliver was convicted of first-degree murder and related charges. Police arrested Oliver based on statements from two witnesses, one of whom recanted prior to trial. At the trial, multiple eyewitnesses implicated Oliver's co-defendant in the murder, but none were able to identify Oliver except for the single remaining witness that police had originally relied on. One defense witness testified that Oliver was not present on the night of the murder. The jury deliberated for three days before finding Oliver guilty.

Years after Oliver's conviction, the primary alibi witness who was not called to testify at trial signed an affidavit for Oliver's habeas counsel stating that she "was not asked to testify" at Oliver's trial despite her willingness and availability. It was also discovered that trial counsel likewise failed to present testimony from a second potential defense witness who would have corroborated the accounts of the primary alibi witness and Oliver regarding where they were at the time of the shooting. Later, during an investigation conducted by the CIU and a prosecutor assigned to the federal litigation unit in the Office, it was discovered that Oliver's trial attorney had used the wrong address in his attempt to serve the primary alibi witness with a subpoena to secure her testimony at trial.

Given the weakness of the Commonwealth's case against Oliver, the CIU believes that the two alibi witnesses would have been sufficient to raise a reasonable doubt in the mind of the jury. Because of this, the Office does not oppose Oliver's most recent federal habeas corpus petition and instead joins him in his request for relief.

Curtis Crosland

Curtis Crosland was arrested in 1987 for a 1984 robbery that led to the death of Il Man Heo. Crosland's arrest came only after Rodney Everett, the father of Crosland's nephew, identified Crosland in an attempt to receive leniency regarding a parole violation. Everett, however, asserted his Fifth Amendment right against self-incrimination during Crosland's first trial. This ultimately resulted in a retrial, at which Everett was granted immunity and called to testify. Everett denied making any earlier statements incriminating Crosland, but his statement to police and testimony he had given at a preliminary hearing were read into evidence. The only other evidence linking Crosland to the crime was testimony from Delores Tilghman, who had once been in a relationship with Crosland's cousin. Yet, while she testified in the first trial that was reversed on appeal, she did not testify during the second trial that resulted in Crosland's conviction. Instead, her previous testimony was read to the jury.

Crosland unsuccessfully pursued collateral relief in state court for many years before seeking federal habeas relief. During those proceedings, Crosland presented statements from eyewitnesses who knew Crosland stating that Crosland was not involved in the crime for which he had been convicted, as well as statements from Everett explaining that he had lied to police, and evidence undermining the credibility of the Commonwealth's only remaining witness.

At Crosland's request, the CIU agreed to review his case in March 2020. In the course of its review and investigation, the CIU discovered materials that not only impeached the credibility of Tilghman and Everett, but also exculpated Crosland. In October 2020, as the CIU continued its investigation, it shared these materials with Crosland, informing him that they did not appear to have been previously disclosed. Pursuant to a jointly executed Discovery and Cooperation Agreement, the CIU also provided Crosland with open-file discovery of the prosecution files, as well as the police department's file.

> **"My hope is that there are many like you out there. Compassionate, respectful, understanding, competent, professional and genuine. As I said at the end of our Zoom meeting, 'flip every rock and stone.' Make us proud of the Justice System by always questioning its integrity with respect to equity. I am deeply thankful for your hard work and continuing to do what is right."**
>
> **Charles Heo,** *on the CIU's work. Heo's father was shot and killed during the 1984 armed robbery for which Curtis Crosland was convicted.*

On January 11, 2021, Crosland sought authorization from the U.S. Court of Appeals for the Third Circuit to file a successive petition based on this newly discovered evidence. On January 21, 2021, the Third Circuit granted the motion, authorizing Crosland to file the petition now before the court. *See In re Crosland*, No. 21-1048 (3d Cir. 2021).

In response to Crosland's successive petition, the Commonwealth agreed that the evidence it recently disclosed to Crosland not only undercuts the credibility of the Commonwealth's key witnesses, Tilghman and Everett, but also incriminates others, including Michael Ransome, who was the prime suspect in the original homicide investigation in 1984. Following careful review and investigation of the matter, the Commonwealth recently acknowledged both factually and legally that it violated Crosland's right to due process by not disclosing this evidence to him prior to trial, resulting in his wrongful conviction.

Exoneree Chester Hollman; his attorney, Alan Tauber; and CIU Supervisor Patricia Cummings gather after his exoneration. *Photo*: *The Philadelphia Inquirer*.

The form to request Conviction Integrity Unit review of your case is available here and may be submitted via mail or email to the following addresses:

Conviction Integrity Unit
Philadelphia District Attorney's Office
Three South Penn Square
Philadelphia, PA 19107-3499

CIU.submission@phila.gov

Photo Credits for the Exoneration Timeline (p. 10): Dontia Patterson: *The Philadelphia Inquirer* ("*Inquirer*"), Chris Palmer • Jamaal Simmons: *Inquirer*, Jessica Griffin • Dwayne Thorpe: family • James Frazier: Edward J. Foster • Terrance Lewis: *Inquirer*, Jessica Griffin • Johnny Berry: self • Chester Hollmann III: Hannah Yoon • John Miller: *Inquirer*, Jose F. Moreno • Willie Veasy: *Inquirer*, Heather Khalifa • Christopher Williams: self • Theophalis Wilson: *Associated Press* • Walter Ogrod: Tracy Ulstad • Andrew Swainson: Nathan Andrisani • Antonio Martinez: self • Termaine Hicks: *AP Images* for The Innocence Project, Jason E. Miczek • Robert Donald Outlaw: Monique Solomon Outlaw • Jahmir Harris: *Inquirer*, Yong Kim.

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