

REJECT OR DISMISS? A PROSECUTOR'S DILEMMA

**A research report by the
Prosecutorial Performance Indicators
(PPIs) about prosecutorial case
screening and dismissal practices**



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**Prosecutorial
Performance
Indicators**



This report is part of the Prosecutorial Performance Indicators (PPIs), which is a research and technical assistance project launched in 2017 by researchers from Florida International University and Loyola University Chicago. The project supports local prosecutors to build data and analytical capacity, examine and address racial and ethnic disparities, and produce public-facing dashboards. PPIs are an office management, performance measurement, community engagement, and transparency and accountability tool. With a menu of 55 indicators, PPIs measure performance toward three goals: Capacity & Efficiency, Community Safety and Well-being, and Fairness and Justice.

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INTRODUCTION

One of the key decisions that prosecutors make is whether or not to file charges against a defendant. Depending on the office, this decision point may be called initial case assessment, screening, review, or filing. Prosecutors, or in some instances paralegals, review evidence provided by law enforcement and decide whether to file any charges in each case.

The core purpose of case screening is to identify and eliminate cases that cannot or should not be prosecuted. In other words, prosecutors have the difficult task of assessing limited case facts in front of them and rejecting cases 1) that do not involve enough evidence to support a conviction, and 2) for which prosecution would not be in the best interest of justice and victims. The decision to reject a case is highly consequential because it means that the defendant will avoid formal charges and conviction.

Cases can also be dismissed after they are filed. While judges can dismiss cases—due, e.g., to missing case processing deadlines or 4th amendment violations—most dismissal decisions are made by prosecutors. Cases may be dismissed by a prosecutor due to evidentiary issues (including victim or witness cooperation) or plea negotiations in other cases, for example.

PPI 2.1 examines the relationship between these two highly discretionary case outcomes: case rejection and case dismissal. While there is no agreed-upon standard for what proportion of referred cases should be rejected for prosecution, or what proportion of filed cases should be dismissed, we suspect that these proportions will vary across jurisdictions and by offense types.

Local criminal justice systems should enable prosecutors to identify dismissible cases as early as possible. Eliminating dismissible cases at the screening stage reduces negative consequences for defendants, victims, and the criminal justice system. For defendants, the declination of dismissible cases reduces unnecessary pretrial detention, disturbances to family life and employment, and chances of wrongful conviction. For victims, identifying dismissible cases at filing minimizes the burden of involvement in the criminal justice system and avoids false expectations, though in some cases prosecution may provide victims with temporary protections they need. For the criminal justice apparatus, declining dismissible cases reduces caseloads and criminal justice expenditure.

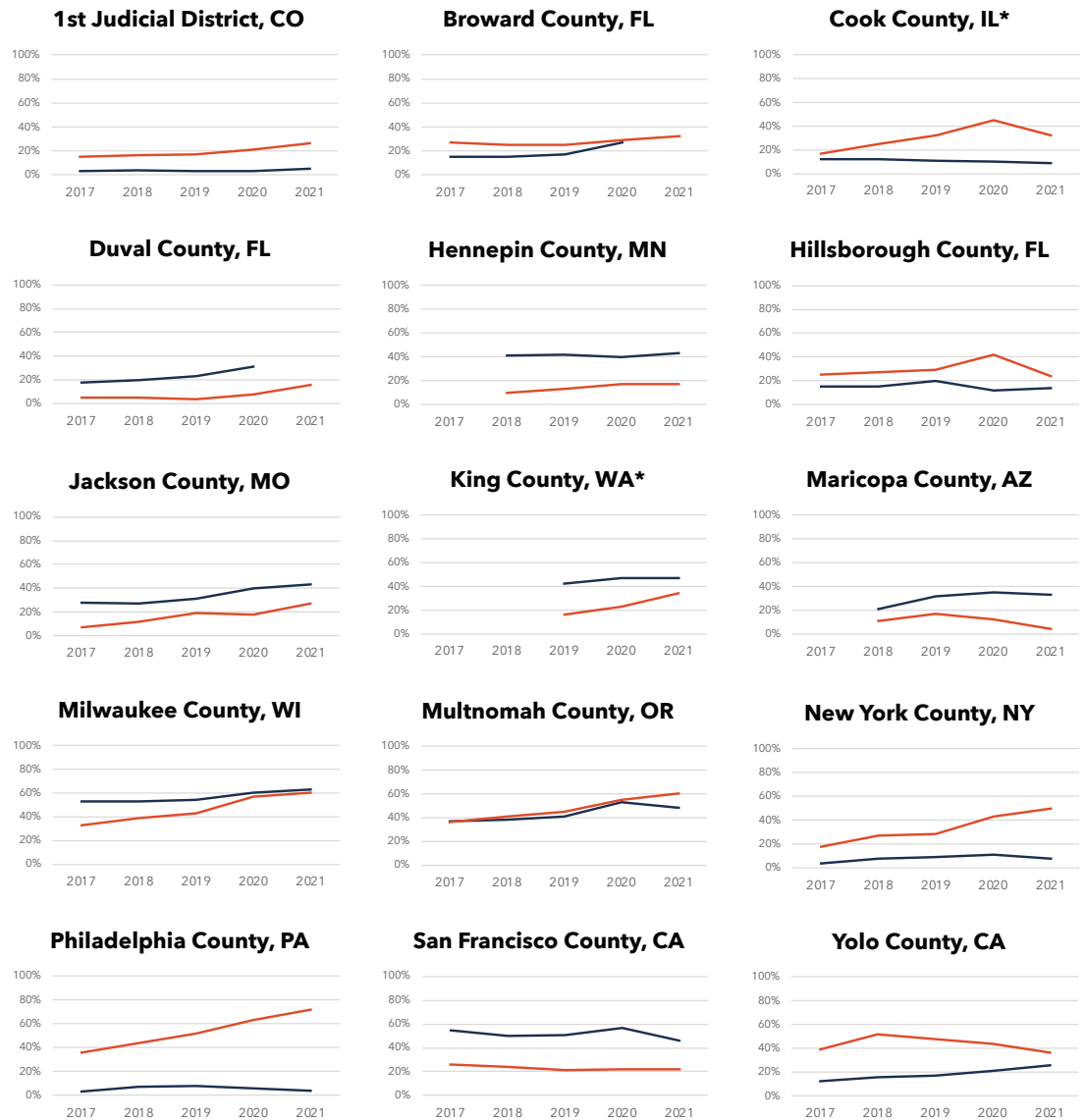
In this report, we provide a rare compilation of data on screening and dismissal decisions from jurisdictions across the country. We explore case rejection and dismissal trends in 15 prosecutor's offices before drilling down in these two important outcomes to examine variations across defendant race and offense type in select jurisdictions.

While reading this report, let's keep in mind that there are marked jurisdictional differences that influence screening and dismissal decisions. For example, New York prosecutors typically have two days to file a case, while Florida allots several weeks for this decision. Furthermore, jurisdictions have adopted different COVID-19 regulations: some closed certain court operations for months, while others remained open. Yet others quickly moved operations virtually, as is still the case in Hennepin County. Lastly, what is counted as a rejection or dismissal may vary across jurisdictions: a dismissal in the interest of justice in Philadelphia might have been labeled a deferred prosecution in Milwaukee and therefore excluded from dismissal rate calculations. Given these differences, we encourage cross-site learning about rejection and dismissal practices, but not direct comparison.

FINDINGS

SECTION I: Case Elimination Mechanisms

FIGURE 1: CASE REJECTION AND DISMISSAL RATES FOR 15 JURISDICTIONS



Blue lines represent rejection rates. Orange lines represent dismissal rates.

Rejection rates are calculated as a percentage of all cases referred for prosecution; dismissal rates are calculated as a percentage of all cases filed for prosecution.

*Data could be collected only for felony cases

REJECTIONS

Annual rejection rates are shown in blue in Figure 1. Prosecutors reject an average of 28% of cases at screening, but rejection trends show that this percentage varies widely across jurisdictions. Some jurisdictions reject as few as 3% of their cases at filing (1st Judicial District of Colorado), while others reject more than 60% (Milwaukee).

There are several factors that may help to explain why rejection rates vary so much. First, some jurisdictions have implemented “auto-file” policies, in which particular types of cases (e.g., drug offenses or low-level misdemeanors) are automatically filed rather than being reviewed by a prosecutor upon receipt from law enforcement. Jurisdictions that reject a high percentage of their caseloads tend not to have any auto-file policies.

Second, jurisdictions with high rejection rates also tend to employ more vertical prosecution, where line attorneys both screen and prosecute their own cases. This approach is most common for felony cases. In contrast, jurisdictions with low rejection rates may rely more heavily on horizontal prosecution, where some prosecutors are assigned to a dedicated screening unit that filters cases before passing the filed cases off to trial attorneys.

Among offices that use horizontal prosecution, a third factor that impacts rejection rates is which attorneys are assigned to the screening unit. In some prosecutor’s offices, the screening unit is comprised of seasoned prosecutors, whose experience may allow them to feel more confident and more likely to reject unsuitable cases up front. In others, junior level prosecutors make the screening decisions.

The COVID Effect?

In the 15 sample jurisdictions in this study, changes in rejection and dismissal rates after the onset of COVID-19 are noticeable but not dramatic.

While jurisdictions were forced to alter practices in the short term to respond to the pandemic, we see surprisingly little year-over-year change. Two notable exceptions: clear spikes in dismissal rates in Cook County, and in rejection rates in San Francisco, in 2020.



DISMISSALS

Annual dismissal rates are shown in orange in Figure 1. Across the five-year study period, prosecutor dismissed an average of 28% of filed cases. However, dismissal rates have generally increased since 2017. Some increases may be attributable to COVID-19 policy changes, but most of the upward trends began prior to the pandemic. Dismissal rates also vary widely across jurisdictions, ranging from an annual low of 4% (Jacksonville) to a high during COVID of 72% (Philadelphia).

Case dismissals are not always the result of superficial screening practices. Dismissals may be due to factors that emerge after cases are filed, such as inability to locate victims or witnesses, inconclusive lab results, and attempts to “clean house” by closing out stagnant cases that are several years old.

REJECTIONS AND DISMISSALS: A RELATIONSHIP?

Looking across jurisdictions, we expected to observe an inverse relationship between rejections and dismissals – jurisdictions with higher rejection rates would tend to have lower dismissal rates, and vice versa.

Among the 15 jurisdictions we examine, the relationship is not so clear-cut. Several jurisdictions fit the expected pattern, with either a high rejection rate and low dismissal rate (Jacksonville, Hennepin), or a low rejection rate and high dismissal rate (Philadelphia, Yolo). But select other jurisdictions (Milwaukee, Multnomah) maintain high rates of both rejection and dismissal. None of the jurisdictions in our sample have especially low rejection and dismissal rates.

This does not necessarily mean that there is not a relationship between rejections and dismissals within individual jurisdictions over time. As a jurisdiction adjusts its policies to screen cases more thoroughly up front, fewer cases may need to be eliminated after filing. Observing changes in rejection and dismissal rates over longer periods of time may provide better evidence of this relationship.

Section II: Race and Case Elimination

TABLE 2: RACIAL DIFFERENCES IN REJECTIONS AND DISMISSALS IN BROWARD COUNTY, FL

REJECTIONS	2017-2021	Pre-COVID	COVID, Pre-Election	COVID, Post-Election
Black	16.8%	14.4%	30.8%	22.7%
Hispanic	15.8%	13.4%	30.9%	21.8%
White	16.1%	14.0%	29.3%	20.7%
Number of cases	201,582	156,983	14,885	29,714
DISMISSALS	2017-2021	Pre-COVID	COVID, Pre-Election	COVID, Post-Election
Black	29.7%	28.1%	37.5%	35.6%
Hispanic	24.7%	23.8%	28.2%	28.2%
White	25.0%	24.2%	27.2%	28.6%
Number of cases	163,411	130,843	9,949	22,619

Percentages represent rates of rejection and dismissal after accounting for offense type and severity, prior record, case referral type, defense counsel type, defendant gender, and defendant age. Sample data represent all cases resolved in Broward County, FL, between January 2017 and November 2021. Pre-COVID includes the period from January 1, 2017 to March 12, 2020, which was the day before the Broward County courts closed due to the COVID-19 pandemic. COVID, pre-election represents the period from March 13, 2020 to January 5, 2021, when a new Broward State Attorney, Public Defender, and Sheriff were all sworn into office. COVID, post-election represents the period from January 6, 2021 to November 19, 2021.

As jurisdictions reconsider their rejection and dismissal rates, it is important to consider the racial impact that their strategies have. Previous research identifies racial disparities in both case rejection and dismissal outcomes, with commentators often describing higher dismissal rates for defendants of color as a correction for the over-arrest, over-referral, and over-filing of cases against defendants of color. If prosecutors file cases against Black and Hispanic defendants with weaker evidence, they will be forced to dismiss more of these cases post-filing.

In Broward County, we do not see meaningful racial and ethnic disparities in case rejections between 2017 and 2021, though the difference between Black and White defendants has increased slightly over time. Changes in rejection rates affected all racial and ethnic groups to approximately the same extent. Before the COVID-19 pandemic began, the Black-White gap was about 4%. This gap grew to 10% during the COVID/pre-election period, meaning that Black defendants became even more likely to have their cases dismissed. Since the recent State Attorney, Public Defender, and Sheriff elections in Broward County, the difference among racial and ethnic groups has shrunk moderately. In this jurisdiction, dismissal outcomes for Hispanic defendants largely mirror those for White defendants.

The George Floyd Effect

Jurisdictions that became epicenters of racial justice demonstrations have experienced an influx of protest-related cases and have had to make decisions about how to process them. For example, Multnomah County has processed nearly 1,100 protest-related cases since May 2020, out of which more than 80% have been rejected. Understandably, such a high rejection rate skews overall annual percentages.



SECTION III: Offense Types and Case Elimination

Not only is there variation across jurisdictions in rejection and dismissal rates, we also notice marked differences within jurisdictions across broad offense categories. These differences are visible across four sample jurisdictions where we are able to distinguish among offense types, as detailed in Table 3. Generally speaking, person offenses are much more likely to be rejected or dismissed than other offense categories. This is expected, because person offenses pose unique investigative and prosecutorial challenges; evidence comes largely from victim or witness testimony.

Domestic violence crimes pose particularly great challenges for law enforcement. Victims who report domestic violence are often reluctant to later cooperate with prosecutors due to concerns such as safety, fear, or financial dependency on the perpetrator. As such, rejection and dismissal rates among domestic violence cases are noticeably higher.

Among property offenses within the four jurisdictions analyzed, rejection rates are generally higher than dismissal rates. For example, Broward County rejects 28.5% of property offense referrals and dismisses just 9.5% of filed cases. An even larger gap is observed in Milwaukee County, where 57.3% of referred property cases are rejected, and an additional 14.8% of filed cases are subsequently dismissed. A similar pattern of rejection and dismissal rates is observed among drug offenses. The exception to this is in Cook County, where felony drug cases are filed automatically by law enforcement and do not involve any prosecutorial discretion.

TABLE 3: CASE REJECTION AND DISMISSAL RATES, BY OFFENSE TYPE

	Person, not domestic violence		Domestic violence		Property		Drug	
	% Rejected	% Dismissed	% Rejected	% Dismissed	% Rejected	% Dismissed	% Rejected	% Dismissed
Broward County	50.41%	20.46%	51.40%	71.91%	28.51%	9.51%	14.38%	11.88%
Cook County*	14.20%	8.20%	21.20%	10.20%	27.10%	14.70%	00.00%	49.70%
Duval County	26.70%	11.03%	37.04%	13.48%	18.36%	5.08%	18.25%	5.46%
Milwaukee County	58.60%	17.50%	74.30%	38.80%	57.30%	14.80%	48.70%	11.00%

*Data is only available for cases referred as felonies, and all felony drug cases are filed automatically by law enforcement. Percentages represent rates of rejection and dismissal for different offense types without accounting for any other factors. Sample data represent cases resolved between 2017 and 2021.

TAKEAWAYS

The data suggests a moderate relationship between rejection and dismissal decisions. Jurisdictions that reject more cases tend to dismiss fewer cases, though there are several exceptions to this general trend. This finding underscores the rationale behind PPI 2.1: Identifying dismissible cases at filing: cases that cannot or should not be prosecuted should be screened out quickly rather than allowed to linger in the system. If we agree that dismissible cases should be eliminated as early as possible, to minimize cost to taxpayers and individuals involved in each case, then what are some useful mechanisms for achieving this goal?

Recommendations

Justify the decision to file as well as the decision to reject a case. Require the use of memos or justifications for all filing decisions, so that line attorneys do not treat filing as the default action on a case. Even if the evidence is sufficient to warrant prosecution, in line with ABA standards (Prosecution Function 3-1.2), screening attorneys should consider whether filing each case serves the interest of justice and the community. This principle should also be reflected in the name of the attorneys or unit who make filing decisions – refer to the unit as a screening rather than a filing unit. Language matters!

Implement more vertical prosecution. When prosecutors must screen their own cases, they are less likely to accept weak cases. Given that more and more cases are being assigned to each prosecutor, prosecutors will be reluctant to add weak cases to their own caseloads. Vertical prosecution is not a panacea, however—when prosecutors adhere to legal sufficiency standards for filing, many weak cases will still end up in the system.

Elevate the screening process as an important part of prosecution. Support junior prosecutors in developing the knowledge and confidence to weed out non-meritorious cases up front. Senior prosecutors should provide guidance to junior attorneys about when and how to reject cases. When vertical prosecution is not feasible, screening units should be staffed by a mix of more and less experienced attorneys. This makeup sends the message that the office is placing more value on screening decisions and the prosecutors who make them.

Abolish the practice of automatic filing. Many jurisdictions use automatic filing practices to save resources up front. Yet, prosecutors will still end up having to address the weak cases somewhere down the line, and these cases continue to incur administrative costs. Defendants, meanwhile, may experience more and greater collateral consequences the longer their cases continue.

Track rejection and dismissal decisions, and their impact. Most prosecutor's offices do not have meaningful codes for capturing the reasons why cases are rejected or dismissed. Many don't know how many cases they reject or dismiss. And some only record data for cases that are filed, making it impossible to examine screening decisions. In addition to gathering the information and analyzing it on a periodic basis, offices should assess the racial impact of these decisions. Given higher rejection and dismissal rates among domestic violence cases, research that promotes victim engagement and support can help improve domestic violence prevention and case processing.

While we generally encourage thorough screening decisions and case elimination as early as possible, we must also acknowledge the merits of filing some dismissible cases. For example, domestic violence prosecutions may give victims time to seek support and safety even if the cases are ultimately dismissed. The aggressive prosecution of particularly serious offense types is also a tool for communicating important office priorities to the public.

DATA SOURCES

Data for this report reflect case processing outcomes in 15 prosecutor's offices across the United States. Some of the data were provided by prosecutor's offices directly to the research team, while other data were collected from public data dashboards. The source of each jurisdiction's statistics is detailed below, along with a link to the data dashboard where available. We thank each of these jurisdictions for collecting and sharing data to further effectiveness, fairness, and transparency in the criminal justice system.

1st Judicial District, CO (Golden)	First Judicial District Attorney's Office of Colorado	PPI Dashboard is Forthcoming
Broward County, FL (Fort Lauderdale)	Office of the State Attorney for the 17th Judicial Circuit of Florida	PPI Dashboard is Forthcoming
Cook County, IL (Chicago)	Cook County State's Attorney's Office	https://www.cookcountystatesattorney.org/about/data-dashboard
Duval County, FL (Jacksonville)	Office of the State Attorney for the 4th Judicial Circuit of Florida	https://sao4thdatadashboard.com/
Hennepin County, MN (Minneapolis)	Hennepin County Attorney's Office Data Dashboard	https://www.hennepinattorney.org/about/dashboard/data-dashboard
Hillsborough County, FL (Tampa)	Office of the State Attorney for the 13th Judicial Circuit of Florida	https://www.sao13th.com/data/
Jackson County, MO (Kansas City)	Jackson County Crime Strategies Unit Case Dashboard	https://www.arcgis.com/apps/dashboards/b7db05881e914094aa4b872a0ed87455
King County, WA (Seattle)	King County Prosecuting Attorney's Office Data Dashboard	https://kingcounty.gov/depts/prosecutor/criminal-overview/CourtData.aspx
Maricopa County, AZ (Phoenix)	Maricopa County Attorney's Office Data Dashboard	https://www.maricopacountyattorney.org/419/Data-Dashboard
Milwaukee County, WI (Milwaukee)	Milwaukee County District Attorney	https://data.mkedao.com/
Multnomah County, OR (Portland)	Multnomah County District Attorney's Office	https://www.mcda.us/index.php/prosecutorial-performance-indicators-ppis
New York County, NY (Manhattan)	Manhattan District Attorney's Office Data Dashboard	https://data.manhattanda.org/
Philadelphia County, PA (Philadelphia)	Philadelphia District Attorney's Office	https://data.philadao.com/
San Francisco County, CA (San Francisco)	San Francisco District Attorney Data Dashboards	https://www.sfdistrictattorney.org/policy/data-dashboards/
Yolo County, CA (Woodland)	Commons Data Transparency Portal	https://www.measuresforjustice.org/commons/yoloda/case-flow

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About Florida International University

Florida International University is Miami's only public research university. Designated a top-tier research institution, FIU emphasizes research as a major component in its university mission. FIU is among the top 10 largest universities in the nation. Of its 54,000 students, 67% are Hispanic, and 12% are Black. This project is housed in the Department of Criminology and Criminal Justice, and the Center for the Administration of Justice, which are part of the Steven J. Green School of International and Public Affairs.

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