

Prosecutorial Discretion and Decisionmaking in Plea Bargaining in Philadelphia

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The Urban Institute partnered with [the DAO](#) to learn more about its plea negotiation process.

The study involved mixed methods, and this fact sheet synthesizes results from the following [data activities](#):

- administrative data analysis
- review of case files
- a survey of ADAs
- interviews with ADAs, defense providers, and people who have accepted pleas

We drew a number of [recommendations](#) from our findings specific to Philadelphia, including the following:

- standards for prosecutorial data collection should be produced
- training and mechanisms for measuring compliance around officewide policies should be provided
- district attorneys' offices should lower case backlogs through withdrawals, diversion, and expanding community-based responses to crime
- sentencing guidelines should be revised
- heavy trial penalties should be eliminated

Read the accompanying final report at this link: [urban.org/tbd](https://www.urban.org/tbd)

The Urban Institute was funded by the MacArthur Foundation through the Safety and Justice Challenge research consortium, which is managed by the CUNY Institute for State and Local Governance, to conduct a study unpacking the black box of plea bargaining by examining policies, practices, and outcomes in the Philadelphia District Attorney's Office (DAO).

We organized our findings by three main topics: *policies and goals* of plea bargaining, *trends* in plea offers and outcomes, and *decisionmaking and perceptions* of key actors.

POLICIES AND GOALS OF PLEA BARGAINING

[Assistant district attorneys \(ADAs\) exercise wide discretion in plea bargaining decisionmaking.](#) This discretion is somewhat constrained by sentencing guidelines, officewide policies, and supervisory oversight. Despite ADAs being unable to identify official mechanisms to review decisionmaking after a plea is offered, a 2021 DAO report found high compliance to officewide policies on plea negotiations.

[Providing justice is ADAs' most common goal for plea bargaining.](#) ADAs said plea bargaining is a tool used to produce fairer results for people who have been victimized, defendants, and communities, though also to resolve cases quickly and relieve backlogs. But its outcomes can be contrary to the goal of providing defendants justice; nearly half of the ADAs we surveyed thought innocent people "sometimes" or "often" accept guilty pleas, and people who have accepted pleas indicated that someone might accept a plea despite their assertion of innocence because of various pressures on a defendant to be rid of their case quickly.

[Different ADA units take different approaches to plea bargaining.](#) These approaches are informed by units' policies and norms. A unit's supervisor can determine the general approach and whether pleas are more rehabilitative or punitive. The DAO's Pre-Trial Unit is the unit most engaged in plea bargaining, and ADAs in that unit generally can exercise much discretion so that they can resolve as many cases as possible.

TRENDS IN PLEA OFFERS AND OUTCOMES

[Like offices across the country, the DAO has limited data on plea offers.](#) The best source of data is case files, which still often have missing information. This tracks

with what we learned from ADA interviews: *many plea offers are conveyed and tracked in emails* and are not consistently stored elsewhere.

Over two thirds of convictions are resolved by negotiated guilty pleas, and pleas result in faster case processing. Over half of negotiated guilty pleas in the Court of Common Pleas resulted in an outcome including incarceration, and *almost 90 percent included a term of probation*, which averaged about 32 months in Common Pleas cases.

Cases that resulted in negotiated guilty pleas had shorter average case pendency from initial filing to disposition than cases that resulted in other guilty or no contest outcomes. In our sample of cases, many case offers did not change, but the ones that did generally received more lenient offers. Also, *Black people who accepted pleas were more likely to have custodial outcomes and longer sentences* than white people. This finding is complicated by the fact that structural racism heavily impacts the factors that structure the sentencing guideline matrix.

In our sample of cases with accepted pleas, people who were detained generally received worse plea outcomes, including longer periods of incarceration, than people who were released. Detained defendants had *more than double incarceration minimum and maximum average lengths* than those not detained. Other differences between the population of people detained and those released at plea acceptance could be contributing to these outcomes, including prior record scores and offense gravity scores.

DECISIONMAKING AND PERCEPTIONS OF KEY ACTORS

Most ADAs acknowledged that racial disparities are embedded in the criminal legal system and impact plea offers and outcomes. Several believe there are racial disparities in plea offers because of *policing practices, prior criminal histories, and how implicit bias* can impact ADAs' decisionmaking. More specifically, how ADAs interpret actions as mitigating or aggravating might impact disparities.

The strength of a case is one of the most important pieces of case-level information that can influence a plea offer. Some ADAs said they offer *more lenient pleas when they have a weak case* or little evidence. Defendants whose cases go to trial do not always receive that leniency: ADAs, defense providers, and people who have accepted pleas generally believed there are *larger consequences* for defendants who go to trial.

People going through the criminal legal system are often not given enough information or time to properly understand the consequences of accepting a plea and are not offered the opportunity to advocate for themselves. People who accept pleas are heavily pressured by *long case processing times* and the *certainty of outcomes plea offers afford*. Pretrial custody also has a coercive effect on defendants and pushes some to accept plea offers to leave custody quicker.

Prosecutorial decisionmaking in plea bargaining is simply one point involving one actor in a criminal legal system that compounds racial disparities at earlier points in that system and the discretion and reputations of other system actors.

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For instance, defense providers and people who have accepted pleas said their decisions have often been influenced by the judges they have been in front of and those judges' *reputations for trial penalties*. Similarly, which law enforcement officer is on a case and their *credibility* matters to some ADAs.