



Chicago Appleseed  
FUND FOR JUSTICE

# **Pre-Trial Delay & Length of Stay in Cook County Jail**

**Observations and Recommendations from  
the Chicago Appleseed Fund for Justice**

**October 2013**



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# Introduction

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The research contained in this report was prompted by a surprising trend in Cook County criminal justice data. From 2007 to 2011, both Cook County's criminal caseload and jail admissions fell at roughly the same dramatic rate. In just five years, the number of felony cases filed in the Cook County Circuit Court fell by 17% and misdemeanor case filings fell by 32%.<sup>1</sup> Jail admissions dropped almost as much, falling 26% in the same time frame. Despite shrinking caseloads and jail admissions, however, Cook County's average daily jail population fell by just 9%. Why? Because people are staying in the jail longer. According to a Cook County Sheriff Research Bulletin, the average length of stay within Cook County Jail increased by 13.0%, from 47.9 days to 54.1.<sup>2</sup> That is, despite admissions falling by over one quarter from 2007 to 2011, the jail's average daily population fell by only one-tenth.<sup>3</sup>

Increased length of stay in the jail has many significant implications. For example, since an estimated 90% of the jail detainees are awaiting the disposition of their case, the increased length of stay directly impacts people who are presumed to be innocent under the law. Over one third of defendants leave jail when they post bond. But this group is taking 3½ days longer to do so in 2011 than they did in 2007. Each year, more than 10,000 detainees leave jail because their cases have been dismissed. Still others are sentenced to time served or probation after spending increasingly longer periods in the Cook County Jail. The court eventually deemed all of these individuals to be non-threatening enough to be released back into the community, and yet they had been detained while that decision was pending. In 2011, a total of 11,719 defendants were in jail an average of about two months, until they were found guilty and sentenced to time already served or probation. For them, the pretrial process amounted to a harsher penalty than the sentence. Longer pretrial detention, it would seem, neither protects the public nor furthers justice.

We have approached this issue by examining Cook County felony case processing following arrest. The report addresses four issues: 1) who is spending more time in jail, 2) how increased length of stay affects the justice system, 3) which features of the process may influence length of stay, and 4) how length of stay can be reduced fairly and cost-effectively. To summarize our research, there is no apparent smoking gun behind increased length of stay in the Cook County Jail. The potential drivers of longer stays range from changes in legislation to information sharing issues. And while these issues may be resolved by legislative or logistical improvements, the existing system can best be improved through sound case management practices, initiated by the court.

Finally, this report should not be read in isolation. Since it builds upon and borrows from several prior studies of Cook County pretrial detention and felony case process, we recommend that readers also review those sources (listed in the text below).

### **COOK COUNTY FELONY CASE PROCESS: Recommended Research Resources<sup>1</sup>**

**An Assessment of the Felony Case Process in Cook County, Illinois and its Impact on Jail Crowding (1989) & Review of the Cook County Felony Case Process and Its Impact on the Jail Population (2005), Trotter et al.** Both provide a comprehensive examination of the Cook County Felony Case Process. These reports sought to determine whether and to what extent the criminal case process was itself contributing to jail pressures. They concluded that the process was a principal contributor to jail overcrowding and put forth a number of recommendations to remedy this, including the adoption of an interagency process to develop time standards for various categories of cases, i.e., a Differentiated Case Management System (DCM).

**Differentiated Case Management in Cook County (Chicago), Illinois: Stakeholder Perceptions and Empirical Data (2007)**

Outlines a plan for implementing many of the “Trotter Report” (above) suggestions. Based upon stakeholder surveys and data analysis of caseflow process, and sample case file reviews, the plan suggests, among other things, the introduction of simpler, flexible time standards with an eventual transition to tighter standards.

**An Examination of Admissions, Discharges & the Population of the Cook County Jail, 2012 (2013); Population Dynamics and the Characteristics of Inmates in the Cook County Jail, 2011 (2012); & Characteristics of Cook County Jail Inmates, 2010 (2011)**

These reports provide a statistical summary and analysis of current and historical jail population data. They also discuss possible drivers of the Cook County Jail population, but do not make policy recommendations.

#### **A Report on Chicago's Felony Courts, Chicago Appleseed Fund for Justice (2007)**

This report draws on 104 intensive interviews with judges, lawyers, and other experts on criminal justice in Cook County, 160 hours of observation spread over 25 different courtrooms, and survey responses from state's attorneys and public defenders, among other sources. The report found, among other things, that the court system was overburdened by nonviolent drug offenses and that the county jail had become the de facto mental health provider for the county. Recommendations include increased funding and oversight of the probation system, mental health courts and other diversionary programs, and the establishment of an independent oversight commission; the report also notes various areas for improved efficiency throughout the system.



## Part 1:

# Length of Stay by Charge & Discharge Type

The Chicago Appleseed Fund for Justice (Chicago Appleseed) had the opportunity to evaluate data from the Cook County Sheriff's Department, which included all discharges, length of stay, charge and discharge type from the years 2007 and 2011. We analyzed the data with respect to changes in length of stay over the five-year time span. While the overall mean (average) length of stay increased 6.2 days, from 47.9 to 54.1 days in jail, the changes varied considerably by charge and discharge type.

Table 1 below shows the total number of discharges, and the mean and median length of stay for each major charge category, as well as each discharge sub-type. Some groups, such as individuals charged with sex offenses resulting in acquittal, include a relatively small number of people (22 in 2011) who stay in jail a relatively long period of time (average 299 days in 2011). Others, such as those charged with drug offenses who leave by posting bond, are a very large group (5,677 in 2011) but stay a relatively short period of time (17.3 days). As a way of comparing these groups, the final column, "Jail Bed Days" multiplies number of admissions by mean length of stay to show the group's impact on the jail population.

## LENGTH OF STAY BY CHARGE TYPE

Chart 1 below illustrates mean and median lengths of stay for the five major charge types: Drug, Property, DUI, Sex, and Violent charges. Both mean and median lengths of stay increased or remained the same for all charge types (defined below). That is, both the average and the middle (50th percentile) detainee stayed longer. If mean had changed but median did not, then we could suppose that outliers--a small number of extremely long or short stays--skewed the mean. Instead, increased length of stay appears to be affecting a wide range of cases.

### COOK COUNTY CHARGE TYPES<sup>II</sup>

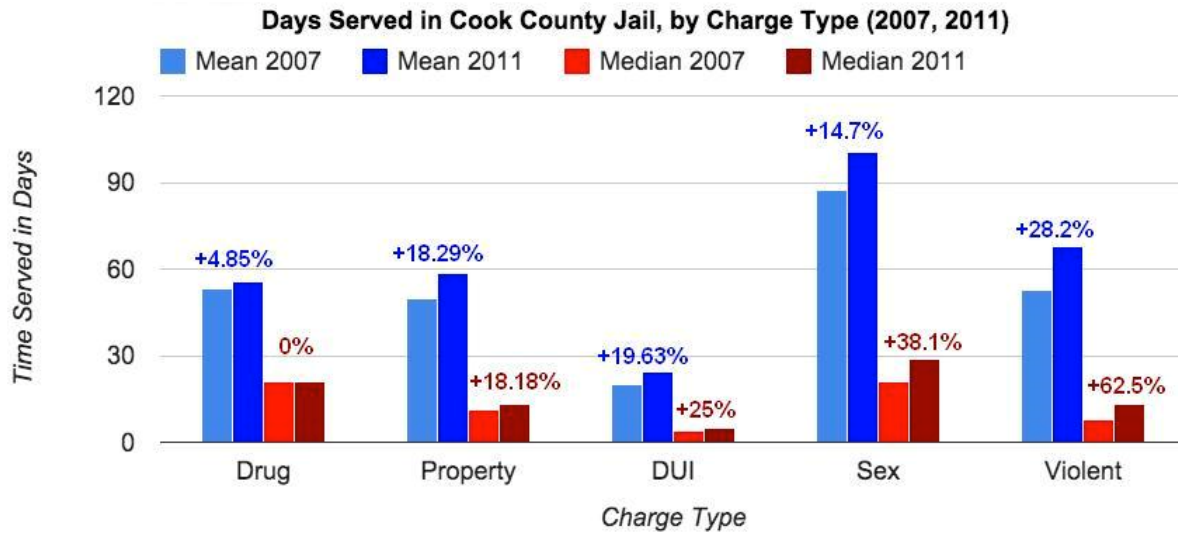
**Drug** charges include but are not limited to the following offenses: possession of a controlled substance, manufacture or delivery of a controlled substance, possession of cannabis, or manufacture or delivery of cannabis.

**Violent** charges include but are not limited to the following offenses: domestic battery, unlawful use of a weapon, aggravated unlawful use of a weapon, and armed robbery.

**DUI and Traffic** charges include but are not limited to the following offenses: driving with a suspended license, driving under the influence, aggravated driving under the influence, and aggravated fleeing from an officer.

**Sex** charges include but are not limited to the following offenses: prostitution, failure to register as a sex offender, aggravated criminal sexual assault, and failure to report change of address.

**Property** charges include but are not limited to the following offenses: retail theft, burglary, theft, and residential burglary.



While length of stay increased for all charge types, there are small differences between the types (defined below). For instance, DUI charges have the shortest mean length of stay in both years (20, 24 days), while Sex crimes have the longest (87, 100 days). Moreover, Drug charges' mean length of stay increased the least (up 4.85% from 53.2 to 55.8 days), while Violent charges increased the most (28.2% from 52.8 to 67.8 days). Drug charges were the only category without an increased median length of stay, while Violent charges saw a 62.5% increase from 8 to 13 days.

**Table 1: COMPARISON OF DAYS SERVED IN THE COOK COUNTY JAIL FOR ALL DISCHARGES, SORTED BY CHARGE & DISCHARGE TYPES (2007 & 2011)<sup>III</sup>**

Discharge Type	Number of Discharges		Mean Length of Stay		Median Length of Stay		Jail Bed Days (# of Discharges x Mean Length of Stay)	
	2007	2011	2007	2011	2007	2011	2007	2011
<b>Drug</b>								
Bond	8840	5677	12.4	17.3	2	3	109,970	98,042
Acquitted	152	78	182.2	200.2	172	183.5	27,697	15,615
Dismissed	6641	4711	27	29.9	20	21	179,307	140,718
Time Served	940	818	121.6	80.7	23	18	114,257	66,045
Probation	3598	2488	61.1	79.7	42	45	219,982	198,219
Prison	7,528	3,731	106	123.6	57	74	805,345	461,264
<b>Total</b>	<b>27699</b>	<b>17503</b>	<b>53</b>	<b>56</b>			<b>1,468,047</b>	<b>980,168</b>
<b>Property</b>								
Bond	4143	3096	11.9	17.1	2	3	49,095	53,004
Acquitted	41	36	221.4	242.2	200	198	9,077	8,719
Dismissed	1874	1476	28.1	21.1	13	11	52,566	31,158
Time Served	2162	1140	35.5	54.1	5	10.5	76,665	61,617
Probation	2024	1751	52.1	56	28	33	105,430	98,109
Prison	3,397	2,956	120.1	127.9	68	63	407,912	378,107
<b>Total</b>	<b>13641</b>	<b>10455</b>	<b>50</b>	<b>59</b>			<b>682,050</b>	<b>616,845</b>
<b>DUI</b>								
Bond	7766	4195	6.18	7.26	1	1	47,994	30,456
Acquitted	5	5	95.4	110.8	89	119	477	554
Dismissed	411	422	29.31	24.67	15	7	12,046	10,411
Time Served	1274	1024	28.96	20.23	11	7	36,895	20,716
Probation	923	876	50.86	31.03	23	9	46,944	27,182
Prison	1297	1194	75.07	84.65	42	47	97,366	101,072
<b>Total</b>	<b>11676</b>	<b>7716</b>	<b>20</b>	<b>24</b>			<b>233,520</b>	<b>185,184</b>
<b>Sex</b>								
Bond	378	272	16.34	17.74	3.5	3	6,177	4,825
Acquitted	15	22	198.4	298.77	85	268	2,976	6,573
Dismissed	192	195	30.08	20.01	18	6	5,775	3,902
Time Served	247	123	13.42	17.38	7	4	3,315	2,138
Probation	186	188	57.23	80.52	34	58.5	10,645	15,138
Prison	684	437	197.32	212.82	69	111	134,967	93,002
<b>Total</b>	<b>1702</b>	<b>1237</b>	<b>88</b>	<b>100</b>			<b>149,776</b>	<b>123,700</b>
<b>Violent</b>								
Bond	10983	7289	7.93	11.02	1	1	87,095	80,325
Acquitted	111	183	315.14	336.91	232	209	34,981	61,655
Dismissed	4158	3567	20.17	20.23	14	14	83,867	72,160
Time Served	1030	1103	94.56	101.78	16.5	17	97,397	112,263
Probation	2201	2208	35.13	41.7	16	15	77,321	92,074
Prison	3,570	4,185	212.32	199.04	88	68	757,982	832,982
<b>Total</b>	<b>22053</b>	<b>18535</b>	<b>53</b>	<b>68</b>			<b>1,168,809</b>	<b>1,260,380</b>

## Drug Charges

Drug charges are a significant driver of the jail population, leading to 17,503 discharges and 980,168 jail bed days in 2011. Total admissions for Drug charges have dropped more significantly than the total (37% vs. 26% overall). Average length of stay for Drug charges increased the least of all charge types: mean stay increased two days from 53.2 to 55.8 days, and median was unchanged at 21 days. These factors combined for an overall reduction in jail bed days for Drug charges.

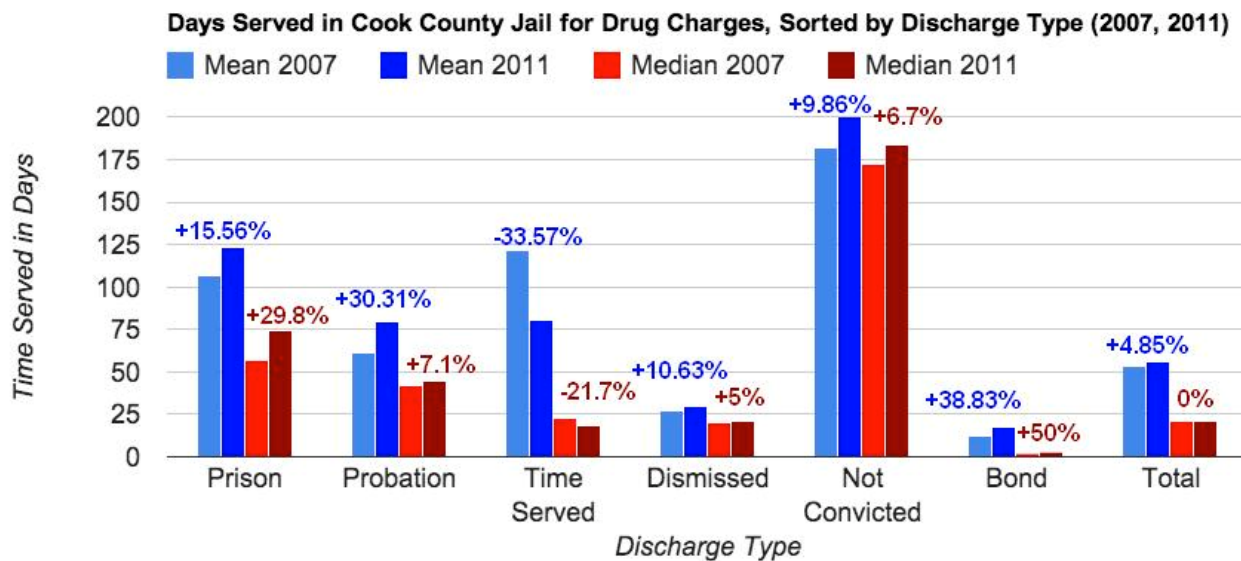


Chart 2 breaks out Drug charges by discharge type (defined below). Drug charges' length of stay increased in every discharge category except "Time Served," which fell by a third from 122 to 81 days. On the other hand, drug defendants who posted bond took considerably longer to do so (12.4 vs. 17.3 days). Length of stay for drug defendants sentenced to probation also increased from 61 to 80 days. Despite higher mean stays, lower admissions drove jail bed days down by 33%, or 487,879 days, from 2007 to 2011.

## Violent Charges

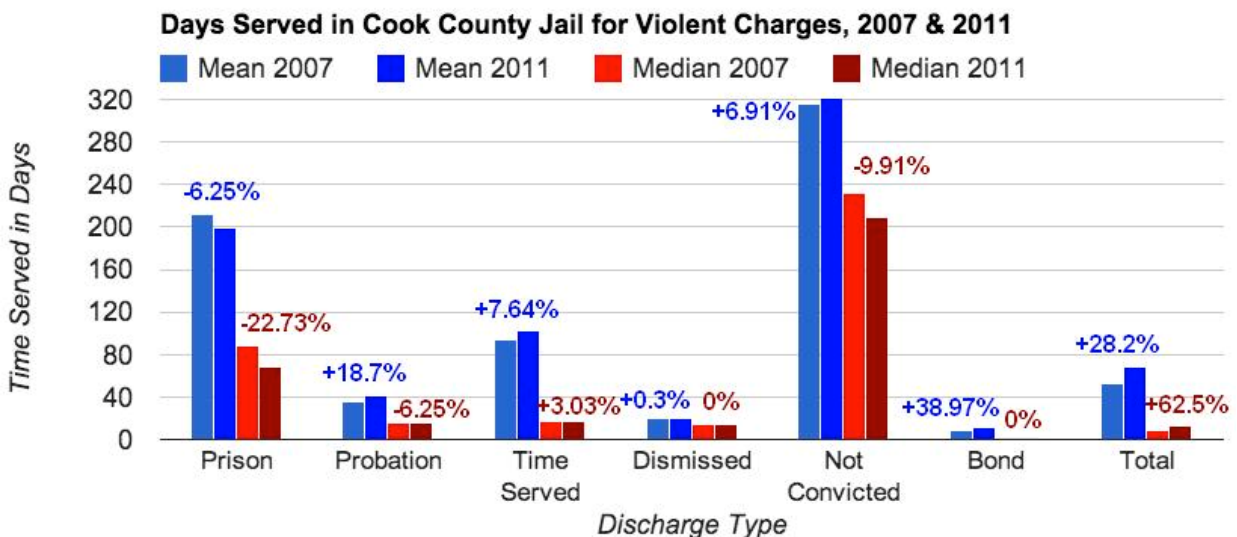
Violent charges drive the jail population more than any other offense type, generating 1.25 million jail bed days in 2011. From 2007 to 2011, a smaller proportion of Violent offenders were able to post bond, and greater proportion were discharged to prison, probation, and time served. Thus, even though the number of offenders fell, the total jail bed days actually increased by over 100,000 for the Violent charge category of detainees.

In 2011, the most common violent charges were domestic battery (44.3% of Violent offenses and 12.7% of total), unlawful use of a weapon (7% of Violent



offenses), aggravated unlawful use of a weapon (6.7% of Violent offenses), and armed robbery (3.1% of Violent offenses).<sup>4</sup> While the overall number of discharges fell by 26%, the number of discharges for Violent offenses dropped just 16%, from 22,053 to 18,535. A 25% decrease (from 10,983 to 8,289) in the number defendants exiting jail by way of posting bond is largely responsible for the fall in discharges. The drop in defendants posting bond is offset by an increase in the number of Violent offense defendants discharged to prison, probation, time served, and those acquitted. Defendants sentenced to prison increased 17% from 3,570 to 4,185; defendants sentenced to time served increased 7% from 1030 to 1103; defendants sentenced to probation increased slightly from 2201 to 2208; and those not convicted went up from 111 to 183.

Chart 3 below illustrates the change in days served for each discharge type. For Violent charges overall, average length of stay increased by 28.2% from 53 to 68 days. This 15-day increase translates into an addition of 112,816 additional bed days.

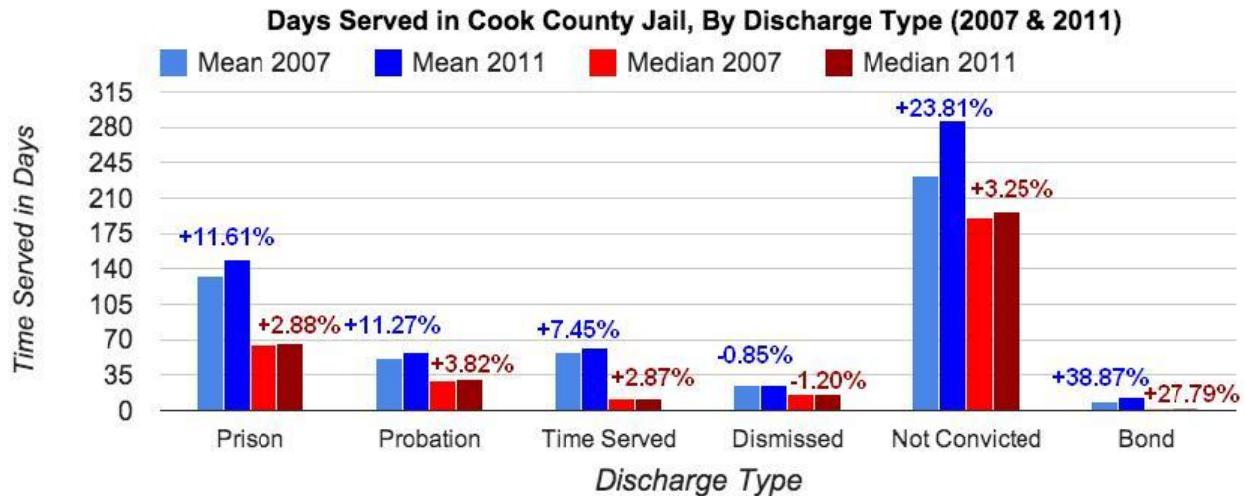


## LENGTH OF STAY BY DISCHARGE TYPE

The dataset included six categorical reasons for why defendants exit the Cook County Jail. Ordered from most to least common, a defendant may exit the jail because: s/he posts Bond, is sentenced to Prison, his/her case is Dismissed, s/he is sentenced to Probation, s/he is sentenced to Time Served, or s/he is acquitted (Not Convicted) at trial. Chart 4 below compares mean and median length of stay for each of these discharge types.

Mean length of stay was stable for the "Time Served" (61 vs. 59 days) and "Charges Dropped" (26 vs. 25 days). Two discharge categories showed significant increases in length of stay: "Not Convicted" (254 vs. 285 days) and "Bond" (10 vs. 13 days). The Not Convicted category is associated with the longest length of stay and

yet includes the fewest number of defendants. On the other hand, Bond has the shortest stay and largest number of defendants. Note that the mean is more affected by outliers than is the median, and therefore the mean is less stable and the percentage differences tend to be larger.



### Defendants Who Post Bond

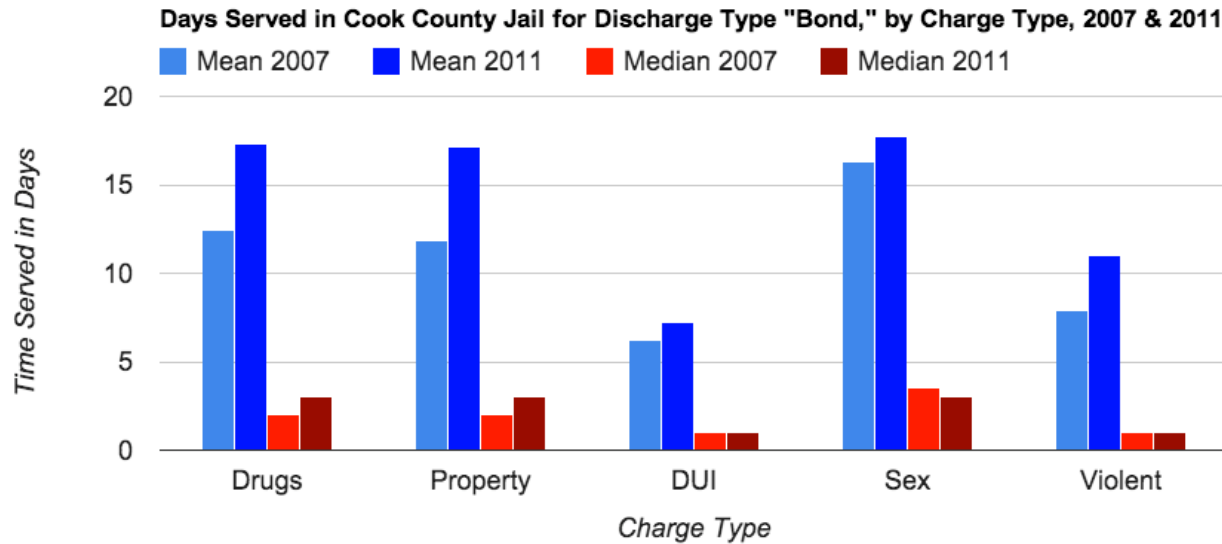
Posting bond is the most common reason that individuals leave the Cook County Jail, comprising more than one-third of exits in both 2007 and 2011. According to a federal study in 2006, approximately three-quarters of felony defendants had their release conditioned upon money bond.<sup>5</sup> Changes in whether an individual can post bond and how quickly they can post it are thus very likely to impact the jail population.<sup>6</sup> From 2007 to 2011, a significantly smaller proportion of people left the jail by posting bond (41.8% vs. 37%, respectively).

The Bond average length of stay is the shortest of all discharge types, but the average has increased 39% from 9 days to 13 days during the research period. Multiplied across 20,529 individuals, this seemingly small 4-day increase translates into an additional 82,116 jail bed days. Divided by 365 days, this increase means an additional 225 inmates in the jail's average daily population.

Looking at the Bond Discharge category by Charge Types, it appears that mean length of stay

### Cook County Jail Discharge Categories<sup>IV</sup> (from most to least common)

1. **Bond.** Defendant posts bond.
2. **Prison.** Defendant is convicted via guilty plea or trial, and sentenced to prison.
3. **Dismissed.** The defendant's case is dismissed by either the court or the state.
4. **Probation.** Defendant is convicted and sentenced to probation.
5. **Time Served.** Defendant is convicted and sentenced to time already served in custody.
6. **Not Convicted.** Defendant is acquitted at trial.

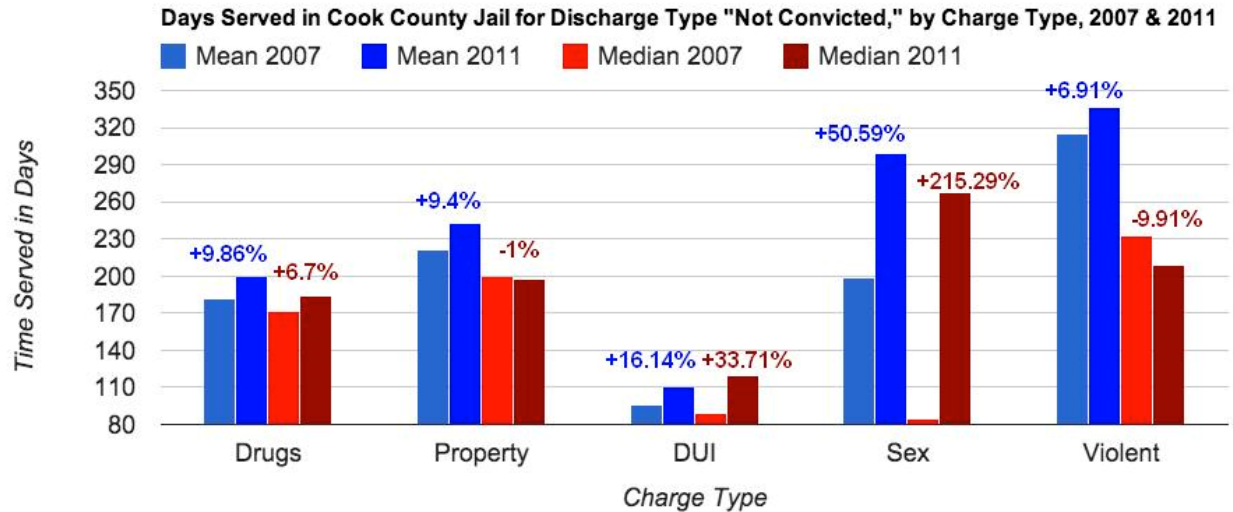


increased in all charge categories. Median for all charge categories ranges tightly between just 1 and 4 days. In other words, half of all those detained on condition of money bond are able to post it within 4 days.

This increase could be a reflection of the economy, of higher bond amounts, of an overall increase in the seriousness of crimes, or all of the above.

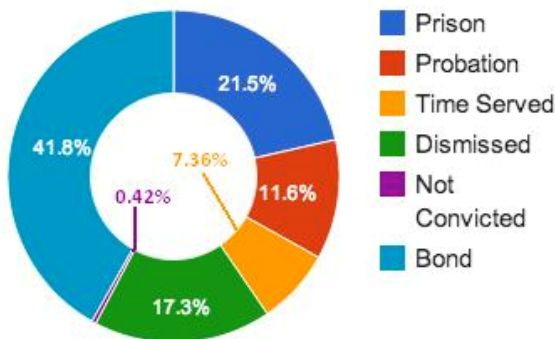
## Defendants Who Are Acquitted at Trial

“Not Convicted” individuals are defendants who refused to plead guilty, went to trial, and were found not guilty. While this group is relatively small (324 in both 2007 and 2011), they face the greatest pretrial detention period by a large margin. This prolonged detention amounts to a kind of “trial tax,” or added cost--in this instance, days in jail--incurred as a result of exercising the Sixth Amendment right to trial rather than pleading guilty.<sup>7</sup> In many cases, the delay results from continuances before going to trial. In Cook County: the Not Convicted category mean and median length of stay increased by 55 and 7 days, respectively. Below, we look at both of these categories in greater detail.

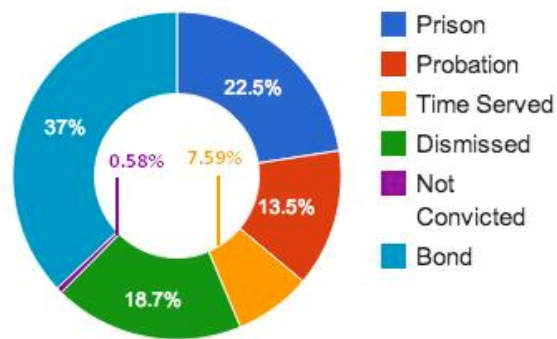


The length of incarceration is greatest for defendants who are charged with violent crimes. And from 2007 to 2011, a greater proportion of defendants discharged after acquittal had been charged with violent crimes. In 2007, 111 individuals were found not guilty of violent charges after spending an average of 315 days in jail, for a combined total of 34,981 jail days. In 2011, that figure rose to 183 individuals who spent an average of 337 days in jail, for a combined total of 61,655 (183 x 337) jail days, despite little change in Chicago's violent crime rates during the same period.<sup>8</sup>

**Cook County Jail Discharges by Type, 2007**



**Cook County Jail Discharges by Type, 2011**



This category represents a relatively small proportion of jail bed days, although that number has increased to 93,115 from 75,208, even as discharges are flat at 324. This increase of 17,907 bed days translates into an addition of 49 inmates to the jail's average daily population (17,907 / 365 days).

### Defendants Whose Cases Are Dismissed

In 2011, 10,371 individuals spent an average of 25 days in the Cook County Jail before having their cases dismissed--a large decrease in the volume and slight

decrease in the average length of stay since 2007. As such, they are not a likely driver of increased length of stay from 2007 to 2011. Still, as with the "Not Convicted" group, the Dismissed category presents a major opportunity for simultaneously reducing the jail population and improving justice. These individuals are incarcerated for a considerable period of time until the charges are dismissed.

The two largest groups of defendants whose cases are dismissed are those charged with Drug and Violent crimes. In 2011, Drug and Violent crimes discharged through Dismissal accounted for 4,711 and 3,567 cases, respectively. With an average length of stay of 30 days, Drug charges ending in dismissal alone comprise 141,330 jail bed days, or 387 inmates in the average daily population.

According to expert interviews, cases are typically dismissed at the preliminary hearing, which typically takes place between two and four weeks after arrest, and must occur within 30 days by statute. The most common reasons that cases are dismissed are because of insufficient evidence or because a police or lay witness fails to appear at the preliminary hearing.

### Defendants Who Are Sentenced to Prison

Defendants sentenced to prison are the most significant driver of jail bed days of all discharge types, responsible for 1.8 million jail bed days in 2011--more than half of all jail bed days for all discharge types.<sup>9</sup> Members of this group are convicted via either guilty plea or at trial, and then sentenced. Their mean length of stay increased by 12%, from 134 days to 149 days. This increase translates into an additional 187,545 bed days, or an additional 513 inmates to the jail's average daily population (187,545 / 365 days).

While less serious cases took longer to process than they previously had, the most serious cases actually resolved more quickly than they had. Mean length of stay increased 17 and 8 days, respectively, for 6,500 Drug and Property defendants who were ultimately sentenced to Prison. On the other hand, the disposition of "Violent" cases resulting in a prison sentence--generally considered to be the most serious cases--*sped up* (212 vs. 199 days). The median fell more significantly than the mean--from 88 to 68 days--suggesting that a small number of cases are taking an extremely long time to resolve and raising the mean as a result. As discussed, the total number of Violent cases resulting in a prison sentence also increased 17%, from 3,570 to 4,185. In other words, as the number of these most serious cases has gone up, the average processing time has decreased.



## Part 2: The Impact of Delay

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In 2011, 29,908 felony cases were filed in Cook County courts, the largest felony court system in the United States.<sup>10</sup> When small but common inefficiencies are multiplied nearly 30,000 times, the effect is bound to be significant. Thus, management systems for consistent case disposition—including time-to-disposition, conviction rate, and sentencing—are critical. Understanding the length of stay in the Cook County Jail is a valuable precursor to improving the overall justice process. Needlessly long pretrial detention imposes significant cost on defendants, their families, taxpayers, and victims awaiting justice.

Faster adjudication, of course, is not necessarily more just. Hearings already tend to take very (perhaps too) little time as many stakeholders reminded us, and so faster process could produce worse outcomes for defendants. Moreover, for a variety of reasons, going to trial too quickly is more likely to undermine a vigorous defense. The view that faster processing could harm defendants is pervasive in Cook County: a 2005 survey of Cook County justice system personnel found that a large majority (67%) thought that resolving cases more quickly would result in less fair dispositions. This concern is particularly strong among defense attorneys: 90% of PD and 75% of private defense attorneys were very concerned about the danger to fairness.<sup>11</sup>

Setting and enforcing time standards for time to disposition is a simple and effective way to make cases move more quickly. However, focusing on overall time-to-disposition without discussing each stage of the trial process can encourage cutting corners in ways that may not promote justice. At a recent public forum, former Cook County Public Defender Randolph Stone gave one such example: Public defenders, who are swamped by their pending caseloads, may be inclined to rush interviews with new clients. Automating steps that demand a human touch will actually undermine efficiency goals, Professor Stone noted, leading to more post-conviction claims such as ineffective assistance of counsel.<sup>12</sup>

This report concentrates on the best way to allocate scarce, valuable resources, like time, money, data, and even public confidence. Recognizing that crime levels and caseloads are unpredictable, we suggest ways to improve performance in areas within stakeholders' control. Efficient justice systems can in fact be fairer and better equipped to cope with fluctuating crime rates and public agendas. Savings that often follow can be reinvested to address the underlying conditions of crime.

### Jail Crowding

Small case delays can have a big effect on the overall jail population. This is because the average daily jail population is driven not only by the number of

admissions, but also the length of each detainee's stay. To the extent that case delays increase that length of stay, so too does it increase the average daily jail population.

For example, from 2007 to 2011, the mean length of stay increased 6.2 days. David Olson explains in a 2012 Cook County Sheriff's Research Bulletin: "While an increase in the average time served of 6.2 days per detainee does not seem like a dramatic change, when this small change is multiplied by the 73,369 inmates discharged in 2011, that additional 6.2 days translates to a total of 454,888 additional jail days ( $6.2 \times 73,369$ ), or an addition of 1,246 inmates to the jail's average daily population." (Emphasis in original) In other words, processing cases more slowly has the same effect as jailing greater numbers of people.

Case delay drives up the jail population, which, in turn, leads to jail crowding. After investigating claims of unconstitutionally crowded conditions within the Cook County Jail, the United States Department of Justice wrote, "When the [jail] was overcrowded, there was a corresponding increase in fights, uses of force, and weapons, exposing inmates to harm and depriving them of their constitutional rights to safe and humane conditions of confinement."<sup>13</sup> Moreover, unlike prisoners whose time served is defined at the outset, nearly everyone in the Cook County Jail is awaiting trial. Longer stays probably compound the anxiety associated with an uncertain release date and exacerbate the already challenging jail environment. Prompt adjudication of felony cases can help to relieve crowding, promoting a more humane justice system.

### Perceived Legitimacy

Excessive stays in jail and case delays lessen the perceived legitimacy of the system, which in turn has a very real effect on the quality of criminal justice. Perceived legitimacy is linked to many important behaviors on the part of the public in aiding the criminal justice system. Numerous studies show that the perception of legitimacy explains the level of compliance with the law, including the willingness of individuals to cooperate with the authorities, to defer to the decisions of police officers and judges, to continue to accept decisions in the long term, and the willingness to adhere to the law and avoid illegal activities.<sup>14</sup>

The importance of perceived legitimacy extends beyond defendant compliance. The literature shows that legitimacy is based on the public's perception of how fairly and effectively authorities exercise their power. Procedural aspects of the justice system--chiefly the appearance of neutrality and the respectful treatment of individuals--typically improve the public's perception even more than the favorability of the outcome.<sup>15</sup>

## Witness and Victim Participation

The justice system exists in large part to serve and protect the victims of crime. In practice, procedural delays undermine witness and victim participation in the system, and ultimately their satisfaction with it. By rendering testimony less reliable, case delay weakens witness and victim participation, and the effectiveness of the system as a whole.

Studies of victims and witnesses' attitudes toward the criminal justice system show that witnesses' opinions of the court deteriorate as delays increase.<sup>16</sup> Other studies examining the administration of justice associate victim dissatisfaction with procedural delays.<sup>17</sup> A victim interviewed for one study explained, "Your life is on hold until it's over."<sup>18</sup> Repeated visits to court can also re-traumatize victims and witnesses, further undercutting the goals of justice.<sup>19</sup>

As time passes, eyewitness memory fades and changes. This common sense notion is well supported by research. A study of child and adult eyewitnesses showed significant memory loss after a five-month delay.<sup>20</sup> Delay causes the greatest memory loss and distortion with children and elderly individuals.<sup>21</sup> By providing evidence of a defendant's guilt or innocence, witnesses and victims play an essential role in many prosecutions. However, as their memory fades and changes, this source of evidence also weakens. One stakeholder put the resulting phenomenon this way: "With time, good cases get worse and bad cases get better."

Delay can also weaken a victim or witnesses' resolve to cooperate with a prosecution. In particular, the American Bar Association ("ABA") has noted, domestic violence victims often withdraw from prosecution because of procedural delays.<sup>22</sup> As a solution, the ABA advises prompt and consistent prosecution.

## Part 3:

# Potential Sources of Delay

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Half of Cook County felony defendants were detained in the Cook County Jail until their cases were disposed in 2006, the most recent year for which this particular statistic is available.<sup>23</sup> About three-quarters of those charged with felonies spend some amount of time in the jail.<sup>24</sup> This relationship means that delays in the pretrial process in general will have a big effect on the average length of stay and the Cook County Jail population. During the course of interviewing practitioners and stakeholders across the justice system, Chicago Appleseed heard many different explanations for case delay. This section of the report analyzes several of the more commonly held theories.

These explanations are meant to be instructive, but they should not be interpreted as either conclusive or exhaustive. Some proposed explanations not explored here include: inefficient use of courtroom space, sub-optimal calendaring practices, a subjective methodology used for setting bond, and post-conviction matters. Pinpointing the sources of justice system delay requires more data than is currently collected and shared in Cook County. Chicago Appleseed made several attempts to obtain such information, including data on court continuances, vacation calendaring, arrest warrants issued and executed, bond amounts, and forensic processing times. We were told at various points that the data was either unavailable or could not be shared. And while we did not exhaust every avenue for obtaining the data, this research was plainly restricted by the lack of available data. The following sections are supported by stakeholder interviews, past studies, and other secondary research. These explanations are meant to catalyze discussion about ways to improve our system. With access to the relevant data, more in-depth research could yield even more specific recommendations.

### Processing and Sharing Evidence

During the course of our interviews, stakeholders attributed delays to forensic processing more than any other source. This response confirms a 2007 study of stakeholder attitudes in the Cook County Criminal Court system. There, surveyed respondents ranked DNA and other forensic evidence processing as the number one source of delay, followed by police witness failure to appear, and missing or incomplete police reports. For a variety of reasons, it appears that forensic processing times have risen in recent years. But delays in inter-agency sharing of evidence seem to be as problematic as the processing of evidence.

Illinois is processing more forensic evidence than ever before. By statute, the Illinois State Police (ISP) conducts forensic science analysis for more than 1,200 state, county, and local criminal justice agencies, including Cook County's. A 2009

Pro Publica investigation<sup>25</sup> discovered over 4,000 unprocessed rape kits in the Illinois State Police's crime lab. As a legislative response to this backlog, Illinois passed the Sexual Assault Submission Act ("SASA"), becoming the first state of the nation to mandate the submission of sexual assault evidence for testing.<sup>26</sup> SASA also ordered the crime labs to process rape kits within six months, and to eliminate their backlogs entirely by 2015. In order to comply with the law, crime labs re-prioritized rape kits over less time-consuming tests, like drug or alcohol tests. Prior to the new legislation, the backlog of forensic biology cases decreased in recent years, from 2,604 cases in 2007 to just 128 cases in 2009. However, by the end of 2011, the backlog had risen back to 2,094 cases.<sup>27</sup>

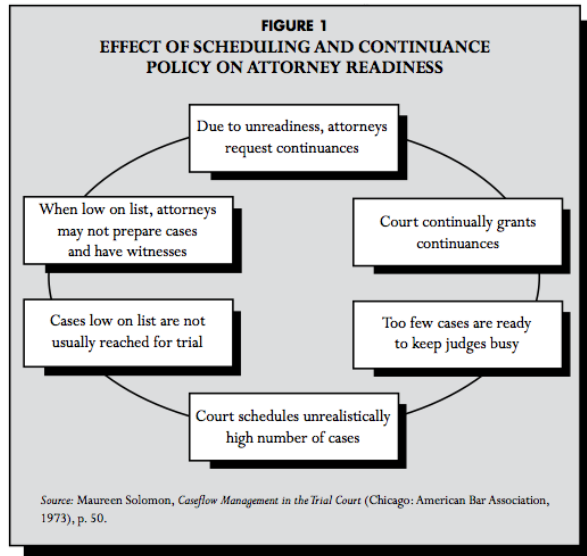
While DNA has certainly become a greater source of delay in recent years, evidence processing likely plays a smaller role in delays than evidence *sharing*. In 2007, when backlogs were even greater than in 2011, case studies of a sample of felony cases found DNA to be a source of delay in just 2-3% of the cases—though DNA testing is likely more common now. Stakeholders who weighed in on this question pointed out that more delay has to do with a reluctance to share evidence between the parties. Evidence sharing is not prohibitive as a practical matter. Each day, public defenders and prosecutors work with one another in courtrooms and offices housed in the same building.

However, one stakeholder pointed out that defense counsel and prosecution communicate about cases very rarely outside the courtroom—even to make basic inquiries. Others confirmed that it's customary for attorneys to discuss cases only before status hearings and, even then, for just a few rushed minutes. In situations where evidence must be considered, the absence of any meaningful case management discussion between court dates virtually ensures that attorneys will not be prepared to move cases forward. Being unprepared for court is the fundamental cause of continuances, which we discuss below.

## Continuances

To say that a case is continued is to mean that the parties appeared in court, the case was not disposed, and another court date was scheduled for two weeks to six weeks in the future.<sup>28</sup> Attorneys in both civil and criminal courts rely on continuances to ease the burden of high caseloads and hectic calendaring.<sup>29</sup> In this sense, continuances are less a problem in and of themselves than a symptom of other factors (such as those discussed within) stalling cases.





Continuances are a mainstay of the felony court schedule. Perhaps as a result, in Cook County, continuing cases numerous times is considered to be an acceptable - even desirable - element of case processing.<sup>30</sup> Interviewees from all stakeholder groups cautioned against assuming that all continuances were bad. Continuances are most commonly initiated as a result of lack of attorney preparedness. Requests are made orally, rather than in writing. Some judges then handwrite the reason given, which the clerk then types into a computer database.

The most recent analysis of continuance data (2005) illustrates the pervasiveness of continuances. In one month that year, Criminal Court continuances were requested by parties in 16,000 cases. Sampling 1,282 transcripts of those requests, the report found that just 5 were rejected.<sup>31</sup> In a system like Cook County's felony courts, which handles nearly 30,000 cases per year, even a few extra continuances per case can easily snowball into large backlogs. Routinely granting—and only exceptionally denying—requests for continuance leads to what researchers characterize as a "continuance cycle." Figure 1 above illustrates the cycle: the expectation that a continuance will be granted discourages parties from meaningfully preparing for trial. While this concept is at least forty years old, the principle remains: cases move forward meaningfully only when all parties are ready. When even one party fails to prepare, the continuance cycle will repeat unless the court holds parties accountable.

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### Differentiated Case Management Case Studies:

#### Hennepin County, MN and Pierce County, WA

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- Hennepin County, MN (St. Paul) Reduced backlog and jail crowding by fast tracking drug cases and formally assigning all criminal cases to one of three tracks that follow standard hearing schedules. In 2004, St. Paul system granted only 8% of all continuances requested.<sup>32</sup>
- Pierce County, WA (Tacoma) used a similar DCM system (3 tracks, time standards for each track, SAO and PD review to assign track). From 1985-1990 that system helped decrease average time to disposition from 210 to 90 days despite a 53% increase in criminal cases during the same period.<sup>33</sup>

The larger and more complex the system, the more difficult it becomes to break the continuance cycle. This common problem is a major subject of urban court research in both criminal and civil systems, under the broader field of court case management studies. The general antidote to this negative cycle is sometimes called a "positive feedback loop." Judges can initiate this loop by setting firm trial dates once discovery is complete. The expectation of having to argue a case at a firm trial date encourages attorneys to prepare for court and/or settle more quickly.<sup>34</sup>

Court management experts agree that urban court systems benefit the most from a systematic approach to case management, prioritizing speedy evidence sharing and firm trial dates.<sup>35</sup> Cook County has, in fact, established local court rules for caseload management, which reflect this philosophy. Cook County Circuit Court Rule 15.1 "Management of Cases Generally" instructs the court to categorize cases based upon their readiness for trial, expedite pretrial discovery, set firm trial dates, and refrain from holding cases indefinitely "on call."<sup>36</sup> With respect to continuances, Rule 15.1(g) holds counsel accountable for prolonged delays: "If a case is to be continued on pretrial status for longer than forty-two (42) days, the reason therefore shall be memorialized by the clerk in the memorandum of orders."<sup>37</sup> Yet, though these principles and practices form the cornerstones of case management, stakeholders report that the rules are not enforced and are followed by judges solely on a voluntary basis.<sup>38</sup>

## Mandatory Minimum Sentences and Sentence Enhancements

One of the more frequently cited explanations for increased delays is a change in Illinois sentencing laws. Since 1999, the Illinois legislature has made criminal sentencing both harsher and more complex. Increased mandatory minimums, increased time served requirements, gun add-ons, and consecutive sentence requirements have resulted in significantly longer prison terms.<sup>39</sup> The Appendix—which is itself a simplification of the law—illustrates the state of the law as of 2008. Mandatory minimum sentences have endowed the State with greater leverage in plea negotiations, but may ultimately delay the pretrial process by discouraging defendants from pleading guilty.

The Illinois Truth in Sentencing Act is a case study for considering the impact of harsher sentences on case processing time and pretrial detention. Truth in Sentencing (TIS), enacted in 1998, required that those convicted of first-degree murder must serve 100% of the court-imposed sentence and that specific classes of violent offenders must serve 85% of their sentences. Since then, the legislature has added to the list of offenses that require 85% time served.<sup>40</sup> The projected average time served by those convicted of murder after 1999 is now 40 years—up from 11 years for first degree murderers released in 1999.<sup>41</sup>

Longer sentences are linked strongly with longer pretrial detention. According to an unpublished analysis of sentencing and jail length of stay data from 1995 to 2010, the increase in sentences for homicide and other violent felonies correlates positively with jail population trends.<sup>42</sup> For detainees charged with Class X offenses (including aggravated kidnapping, home invasion, sexual assault, and other offenses defined in the Appendix), average length of stay in the Cook County jail prior to being sentenced to prison has increased by approximately 200 days since 1995 and by more than 100 days since 2000.<sup>43</sup>

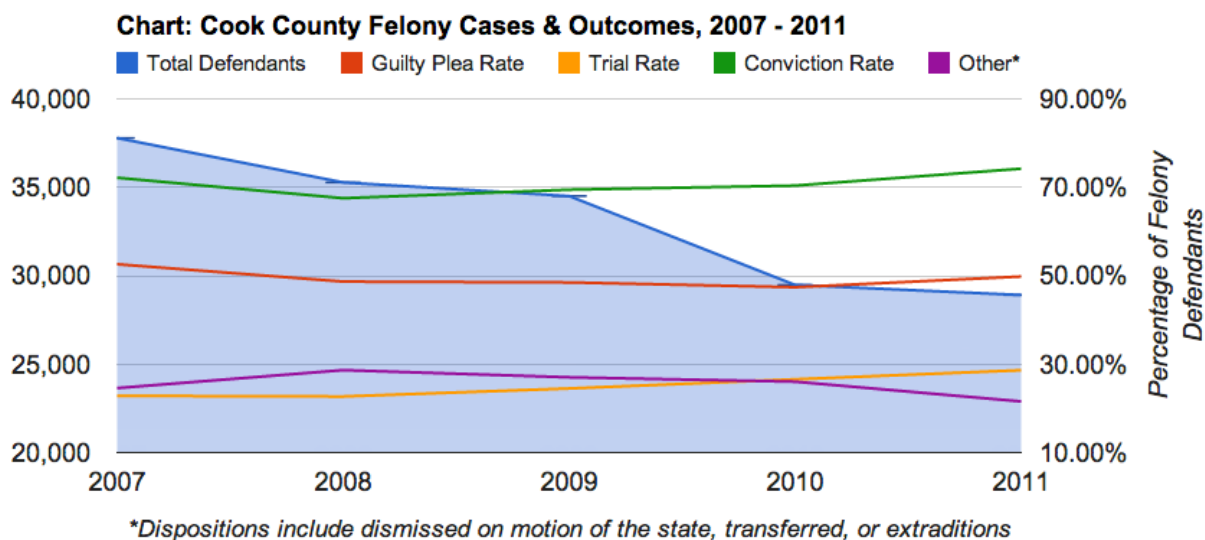
The empirical literature is unclear about the impact of mandatory minimum sentences on case processing time. However, a 2000 study of nine urban felony courts examined the impact of mandatory sentences and aggressive prosecution tactics with respect to case processing times. The study found, conclusively, that more serious cases and those with longer sentences did take longer to process.<sup>44</sup> The study said sentence enhancements “raise the stakes for defendants and may make them less inclined to plead guilty or to do so early in the process.” Yet, the authors explain, sentence enhancements can also be a bargaining chip, for inducing pleas, which dispose of cases sooner.

Several stakeholders felt the relationship between longer sentences and longer length of stay could be explained by “hard bargaining” by the state. Loosely defined, hard bargaining is a prosecutorial strategy whereby the state insists upon charging an offense with a mandatory minimum rather than one that has no minimum. This practice in and of itself is not reportedly new. However, instead of using the higher charges as a “hammer” to make a plea to a lesser charge more attractive, we were told, prosecutors increasingly make “take it or leave it” offers with respect to offenses that mandate long prison sentences. Defense attorneys, in turn, either cannot or will not advise their clients to accept such offers, leading to a protracted negotiation process. To be perfectly clear, we could not obtain any data to confirm or deny “hard bargaining” (such as information comparing charge at arrest with charge at conviction). Yet, Chicago Appleseed was repeatedly told by various stakeholders, including former Assistant State’s Attorneys, that Cook County prosecutors are increasingly anchoring to charges with longer mandatory minimum prison sentences attached to them, leaving little room for negotiation.

One lengthy study of state criminal justice strategy<sup>45</sup> suggests that a policy of inflexible negotiating limits Assistant State’s Attorneys’ ability to prosecute effectively. This is especially the case when combined with lax charging practices. “Denied the latitude to negotiate on cases that were weak or improperly charged,” the study reads, “assistants had to find ways in the courtrooms of circumventing their bosses’ policy restrictions when they were handling cases that they felt were inappropriate to try, but which they could not dismiss or *nolle prosequi* without jeopardizing their position in the office or incurring the wrath of the policy’s enforcer.”<sup>46</sup> One of the ways prosecutors ostensibly get around hard bargaining policies is by permitting (through insinuation to the defense that a more attractive

offer will not be forthcoming) more cases to go to trial, where a judge may convict a defendant of a lesser included offense. We were able to confirm that this strategy does indeed take place in Cook County, though we cannot say how commonly.

Readying for trial takes much longer than obtaining a plea bargain. Thus, any strategy encouraging defendants to seek trial will result in an increased length of stay for pretrial detainees, consistent with the increases described herein. This “trial tax” is discussed in greater detail in the "Defendants Who Are Acquitted At Trial" section of Part I of this report. To be sure, a greater number of cases going to trial is not generally a bad thing. Many advocates and researchers agree that a greater number of cases *should* be resolved at trial. But trial-seeking can also result from counter-productive plea bargaining strategy, encouraged by harsh mandatory minimum sentences and enhancements.



## The Speedy Trial Act

Criminal defendants in the United States are entitled to a speedy trial. The right is especially important for those defendants languishing in jail while their cases proceed. Illinois and federal laws have codified this right. However, as an adaptation to other sources of delays, it appears that many defendants in Cook County effectively waive this right. It may be that, in practice, the Illinois Speedy Trial Act may serve to mask and legitimize forms of delay.

The US Supreme Court case, *Barker v. Wingo*,<sup>47</sup> expounded the speedy trial right and established a balancing test for determining whether the right had been violated. In determining whether a defendant has been prejudiced by the lack of a speedy trial, the Court requires the following factors to be considered:

1. the length of delay,
2. the reason for the delay,
3. the time and manner in which the defendant has asserted his right, and
4. the degree of prejudice to the defendant which the delay has caused.

In response to *Barker*, the US Congress passed the Speedy Trial Act of 1974. Along with others, Illinois followed suit with its own Speedy Trial Act.<sup>48</sup> It reads in pertinent part (emphasis ours):

Every person in custody in this State for an alleged offense shall be tried by the court having jurisdiction within 120 days from the date he was taken into custody unless delay is occasioned by the defendant, by an examination for fitness ordered pursuant



to Section 104-13 of this Act, by a fitness hearing, by an adjudication of unfitness to stand trial, by a continuance allowed pursuant to Section 114-4 of this Act after a court's determination of the defendant's physical incapacity for trial, or by an interlocutory appeal. **Delay shall be considered to be agreed to by the defendant unless he or she objects to the delay by making a written demand for trial or an oral demand for trial on the record.**

In other words, a defendant cannot be jailed without trial for more than 120 days. . . *unless* the defendant has caused the delay. Table 1 data suggests that individuals are routinely detained pretrial for longer than 120 days--particularly those individuals who are ultimately acquitted or sent to prison. How is this possible?

As the excerpt below explains, when the defense initiates a delay, the "speedy trial clock" stops:

(f) Delay occasioned by the defendant shall temporarily suspend for the time of the delay the period within which a person shall be tried as prescribed by subsections (a), (b), or (e) of this Section and on the day of expiration of the delay the said period shall continue at the point at which it was suspended.

Stakeholders reported liberal use of this practice. Even when delays are truly caused by the State--such as failure to share evidence-- the defense will oftentimes agree to a continuance, which has the effect of suspending the speedy trial clock. Further, Illinois appellate courts have generally upheld the practice, deferring to the trial court's determination that the defendant bears responsibility for the delay, absent an abuse of discretion.<sup>49</sup>

Many stakeholders explained that, as a trial strategy, delay tends to favor the defense. As discussed above, delays undermine witness participation--an outcome that can be favorable to defendants who are facing a strong case from the state.

The practice is compounded by delays in evidence sharing discussed at the beginning of Part 3 of this report. It is never in the defendant's interest to go to trial without seeing all of the evidence that may be used against him or her. Thus, defense counsel will only rarely move for trial before the discovery is complete. The longer discovery takes, the longer the defendant's constitutional right to a speedy trial is suspended.

It is unclear at this point whether the Speedy Trial Act, in practice, has actually added to the delays within our system. While there is no research to prove such laws cause delay, at least one (thirty-five-year-old) national study found that the provisions do not alleviate delay, finding no "significant relationship between the state speedy trial standards and actual disposition times."<sup>50</sup> And yet, that same

study credited the speedy trial law with reducing case processing time where legal challenges to defense waivers were sometimes overturned by appellate courts. Even if the law does not increase delay, it seems plausible—and extremely concerning—that defense waivers serve to mask or legitimize delays that would otherwise be open to swifter case management by the court.

## Failure of Defendants and Witnesses to Appear

Each time a defendant or witness fails to appear, the case must be continued. Stakeholders report that if the defendant is absent, then often (but not always) a warrant is issued for that person’s arrest. If a witness is absent, then the case may be dismissed, depending upon the stage of the case. Executing the warrant is costly, as it requires administrative processing and may involve the deployment of Sheriff’s deputies. And while we do not have data addressing this issue, we have observed (and stakeholders confirm) that defendants who are arrested for failure to appear typically receive a higher bond than they had previously, or are barred from pretrial release altogether.

**Table 2: PERCENT OF RELEASED DEFENDANTS WHO FAILED TO APPEAR IN COURT PRIOR TO CASE DISPOSITION, 2006<sup>v</sup>**

County	Total	Returned to Court	Remained a Fugitive
Cook, Illinois (Chicago)	21%	18%	3%
Kings, New York (Brooklyn)	20%	15%	4%
Dallas, Texas	3%	1%	1%
Milwaukee, Wisconsin	16%	11%	5%
Miami-Dade, Florida	12%	10%	3%

Stakeholders expressed that they felt defendant failure to appear rate was generally not a problem. However, the table above shows room for improvement—over one-fifth of felony defendants failed to appear in court in 2006, while other large urban jurisdictions had comparable or lower rates. One straightforward and relatively low cost way to ensure defendant appearance rates is an automated court date reminder system. Experimental studies of court reminding programs show that automated telephone, email, or text message reminders can cut failure-to-appear rates by nearly half.<sup>51</sup> Not only that, but the call nudges a defendant to let his lawyer know if he expects to miss court. Stakeholders reported—and judges confirmed—that judges tend to be less likely to issue a warrant for the arrest of a defendant if his attorney can explain his absence.

## Court Reminder Case Studies: Portland, OR & Flagstaff, AZ<sup>VI</sup>

- **Multnomah County, Oregon (Portland):** A randomized study compared defendants receiving automated reminders by phone to those who did not receive calls. Pretrial defendants who were notified of their court date had a 16 percent failure to appear rate, compared to 28 percent in the group that was not reminded.
- **Coconino County, Arizona (Flagstaff):** Volunteers created a telephone reminder system. Randomized trial results: 25.4 percent of the control group failed to appear, while 12.9% of the court date reminder group failed to appear.

Even though stakeholders generally did not feel defendant failure to appear was a large problem, there was a solid consensus that Chicago Police Department witness failures to appear in court were a significant cause of delay and case dismissal. Police may find it difficult to attend court dates. Unlike judges, public defenders, and state's attorneys who spend the majority of their professional hours in or near the criminal courts, police must balance their regular work schedule with giving testimony in court. Consequently many do not carry out their obligations under subpoenas—either at the direction of their superiors or on their own initiative. Stakeholders also reported that Chicago Police commanders sometimes gave court appearances a lower priority than other matters. We confirmed that, by contract with the City of Chicago, officer court appearance time must be approved by supervising officers.<sup>52</sup> Officers appearing in court are then awarded overtime pay, which is typically two hours of time-and-a-half pay.<sup>53</sup> Perhaps then, some stakeholders theorized, budget pressures contributed to police missing court dates. When officers do miss court, stakeholders reported that they often do so without notifying the parties or the court--necessitating a continuance. Judges and defense attorneys report feeling somewhat helpless in changing this pattern. While this relationship merits closer examination, it is fair to say that a reminder system would still be helpful for police--especially those who have received supervisor approval.

## Part 4:

# A Court-Centered Solution

As this report has shown, delays originate throughout the criminal justice system. Delay can be an unintended consequence of well-meant legislation, as with the DNA backlogs created by the Sexual Assault Submission Act. It may also result from organizational problems common to all complex systems--such as the difficulty of scheduling trial dates in such a way that all parties will reliably attend. Moreover, the policies of police, prosecutors, defenders, and judges interact constantly. One agency's internal policy--say to target certain types of offenses more aggressively--can ripple through other agencies. For this reason, all stakeholders should self-evaluate for practices that may be producing delays within and outside of their own organizations.

Regardless of delay's source, however, court management experts agree that the party ultimately responsible for the pace of litigation is the court. Cook County judges share this view, responding to a 2007 survey with near-unanimity that judges are primarily responsible for managing case process.<sup>54</sup>

Cook County Court administration has acknowledged judges' role in case management by developing informal time-to-disposition goals for different types of cases. Local court rules, too, set guidelines for moving cases toward trial.<sup>55</sup> However, as we discussed in the policy brief, "Use of Data in Criminal Court Performance Management," no internal policy enforces the use of these standards.

In preparation for this report, Chicago Appleseed interviewed four Cook County Criminal Court judges who were commended as good court managers. Past bar association evaluations of these judges characterized them as knowledgeable about the law, punctual, and well-respected by their peers.<sup>56</sup> These judges helped us to understand avoidable causes of delay in the justice system discussed within this report. But they also shared their own court

### Caseflow Management Strategies to Reduce Delay<sup>VI</sup>

- Enforce existing local guidelines, establishing time standards and differentiated case management.
- Develop Management Information System to track case histories and statistics and to provide real-time feedback on caseflow.
- Display in the court clear policies governing the pace of litigation.
- Train judges in caseflow and courtroom management.
- Document reasons given for continuance requests.
- Schedule trials promptly after discovery is complete. Reschedule rarely.
- Encourage peer mentoring between supervising judges and their team.
- Set an example of punctuality.

management philosophies and practices. Tellingly, their practices mirrored many of what are considered to be best practices for managing a fair and effective courtroom.

All of the judges discussed the logistical and sometimes personal challenge of keeping cases on schedule. After all, they cautioned, most aspects of the pretrial process depend upon the actions and decisions of other parties that are outside of a judge's direct control. Yet, these judges managed to earn reputations for running a fair but firm courtroom. How did they do it? As cases progress, they create a sense of urgency by granting shorter continuances (less than one month, but sometimes less than a week). They also note the reason given for the continuance, and hold counsel accountable to that reason at the next hearing. They shepherded the discovery period for what they considered to be a reasonable period of time, but then set firm trial dates immediately after discovery ended.<sup>57</sup>

Every one of these practices and characteristics is considered to be essential for timely and fair felony case adjudication.<sup>58</sup> The box on the previous page draws from the robust literature in courtroom management,<sup>59</sup> highlighting practices that we consider to be especially relevant to the Cook County Criminal Court.

These judges also utilized basic data to check their own progress. Using routine docket reports, they compared the age of each case against the court's informal time-to-disposition standards. Where cases are running long, they set an urgent tone with the parties that day. Time standards also enabled them to focus on an objective goal in the face of sometimes-uncomfortable encounters with counsel—some of whom may be former colleagues or friends.

Yet, even ambitious judges who are committed to resolving cases expeditiously simply do not have the technological tools to manage a busy courtroom. With access only to paper files and reports, they lack easily retrievable aggregate information or time series data that would enable a quick assessment of case management performance. Such measures are the “vital signs” that judges and administrators require to evaluate how well they are shepherding cases from initial filing to final disposition. Moreover, the data system does not allow for digital inter-agency information sharing, thereby limiting potential for evidence-based cooperation.

While these four judges exhibit superb courtroom management skills, it is a reality of any group of professionals that strengths and weaknesses may be distributed unevenly. As a practical matter, something as basic as a trial can vary significantly by judge: in studies of other courts, trials have been found to take three times longer under some judges than others, controlling for type of case.<sup>60</sup> Moreover, management of judges presents what one researcher characterized as a “span of control” problem.<sup>61</sup> In other words, it is nearly impossible for one presiding judge to manage dozens of independently elected judges. To cope with this organizational challenge, Cook County delegates leadership responsibilities to supervising judges, who lead 7 to 10 other judges. A 2010 federally funded guide for



urban court management commends this approach, noting that leadership in the court “is the cornerstone on which an effective caseflow management structure can be created and sustained.” Indeed, each of the four judges we spoke with credited senior judges as being instrumental in shaping their craft.

To address both the range of ability and the challenges of management, Chicago Appleseed recommends that the court enhance its supervising judge structure by incorporating peer mentoring in best practice court management. In this arrangement, supervising judges could mentor 7 to 10 judges in case flow management techniques, encouraging their peers to develop a management philosophy founded on experience, evidence, and best practice research. Judicial mentoring can be rewarding for all judges, and, like any management training program, it instills pride, promotes healthy competition, and enhances accountability for performance.<sup>62</sup> For a profession that reports among the highest levels of stress and burnout, collegiality is likely to be especially rewarding.

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# Appendix

## MANDATORY MINIMUMS IN ILLINOIS SENTENCING<sup>VII</sup>

Charged Offense	Basic Sentencing Range	Firearm Add-Ons Apply	Probation Prohibited	Consecutive Sentences	% Of Sentence Not Available For Good Time Credits
<b>First Degree Murder</b>	20 – 60 years (730 ILCS 5/5-4.5-20(a)(1))	Yes	Yes	Yes	100%
<b>Class X Felonies</b> aggravated kidnapping; aggravated battery of a child; home invasion; aggravated criminal sexual assault; predatory criminal sexual assault of a child.	6 – 30 years (730 ILCS 5/5-4.5-25(a))	Yes	Yes	Yes	85%. Though, for Home Invasion, only if a victim suffered great bodily harm.
<b>Class X Drug Possession and/or Intent to Deliver:</b> Possession with intent to deliver or delivery of heroin or cocaine (15-100 grams); Possession w/ intent to deliver more than 5,000 gr. of Cannabis		No			
<b>Class 1 Felonies:</b> aggravated robbery; residential arson; vehicular invasion; burglary of school or place of worship; aggravated discharge of a firearm	4 – 15 years (730 ILCS 5/5-8-1(a)(4));	Only for aggr. criminal sexual assault; aggr. Vehicular hijacking; armed robbery.	No	Yes, if defendant inflicted severe bodily injury; or if criminal sexual assault.	No single formula applies for these offenses.
Residential Burglary; vehicular hijacking; criminal sexual assault			Yes		
<b>Class 1 Drug Possession and/or Intent to Deliver:</b> Possession of more than 5,000 grams of Cannabis; Possession of 15-100 grams of Heroin, Cocaine, or Morphine;			No		
Possession w/ intent to deliver 2,000-5,000 grams of Cannabis; Possession w/ intent to deliver 1-15 gr. of Heroin or Cocaine.			Yes		
<b>Class 2 Felonies:</b> Aggravated criminal sexual abuse;	3 – 7 years (730 ILCS 5/5-	No	No	No	

## Felony Case Process Drivers of Length of Stay in the Cook County Jail

burglary; kidnapping; aggravated battery of a police officer; aggravated battery of a senior citizen.	8-1(a)(5));				
			Yes	Yes	
<b>Class 2 Drug Possession and Possession with Intent to Deliver:</b> –Possession of 2,000-5,000 gr. of Cannabis; –With intent to deliver less than 1 gram of Heroin or Cocaine. –With intent to deliver 500-2,000 gr. of Cannabis.			No	No	
			Yes		
<b>Class 3 Felonies:</b> –Involuntary manslaughter; –reckless homicide; –aggravated battery; –aggravated stalking; –theft of over \$300.	2 – 5 years (730 ILCS 5/5- 8-1(a)(6))	No	No	No	
<b>Class 3 Drug Possession or Possession with Intent to Deliver:</b> — Possession of 500-2000 gr. of Cannabis; — With Intent to Deliver 30-500 gr. of Cannabis;			No		
			Yes		
<b>Class 4: Drug Possession or Possession with Intent to Deliver:</b> –Possession of Less than 15 grams of Heroin or Cocaine. –Possession of 30-500gr. of Cannabis; –Possession with intent to deliver 10-30 gr. of Cannabis.	1 – 3 years (730 ILCS 5/5- 8-1(a)(7)).	No	No	No	
			Yes		

**Firearms Add-Ons.** Pursuant to P.A. 91-404 (eff. Jan. 1, 2000), the sentences of select crimes are enhanced under the following conditions: (1) Fifteen years are added to a sentence if the crime was committed while “armed with a firearm”; (2) Twenty years are added if the defendant personally “discharged a firearm”; and (3) Twenty five years to natural life are added if the defendant “personally discharged a firearm that proximately caused great bodily harm, permanent disability, permanent disfigurement, or death to another person.”

**Probation Prohibited.** For some offenses probation is prohibited. In addition to those instances indicated in the table above, select other offenses are not allowed probation, including any forcible felony if the offense was related to the activities of an organized gang and any transactional drug offense (manufacture, delivery, or possession with intent to deliver). For other crimes, however, there is a presumption in favor of probation, unless the sentencing court finds the imprisonment “necessary for the protection of the public” or if the “conditional discharge would deprecate the seriousness of the offender’s conduct and would be inconsistent with the ends of justice.” 730 ILCS 5/5-6-1(a).

**Consecutive Sentences.** The table above indicates the offenses that trigger consecutive sentencing (when one or more of a defendant’s sentences cannot be served at the same time). Consecutive sentencing maybe triggered by other conditions as well, including when the defendant is currently under sentence, on bond, or in pretrial or post-trial detention for another offense; or if the Defendant is committed a new offense that was either an escape or an attempted escape.

**% Of Sentence Not Available for Good Time Credits.** This indicates the percentage of the sentence in years that must be served and may not be shortened due to the good behavior of the prisoner.

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### Table and Text Box Notes

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