

FROM FELONIES TO MISDEMEANORS: EXPLORING VARIATIONS AND REASONS FOR CHARGE REDUCTION

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ThePPIs.org



**Prosecutorial
Performance
Indicators**

SUMMARY

Prosecutorial discretion to charge and amend charges is vast and rarely studied. While individual prosecutors make a determination of charges based on the statute and the facts of a case, their interest in gaining leverage in plea bargaining, securing conviction, and maintaining a positive relationship with law enforcement may affect charging decisions. In this brief, we examine charge reductions at case filing and post-filing across 12 prosecutorial offices that collect data on both phases of charging decisions. We provide an initial effort to establish office typologies based on frequency and timing of charge reductions. In general, reducing felonies to misdemeanors at the case screening stage lessens the need for charge reductions at subsequent stages of case processing. Yet several notable exceptions exist: some offices seldom reduce charges, while others do so frequently at both stages of case processing. We hope this brief generates additional discussions—both internally within prosecutorial offices and externally with policy groups and communities—about the benefits and shortcomings of existing charging practices.

INTRODUCTION

As one of many facets of prosecutorial performance, the [Prosecutorial Performance Indicators](#) (PPIs) measure the extent to which prosecutors avoid unnecessary felony charges at filing ([PPI 8.1](#) – % of felony referrals charged as misdemeanors) and overcharging ([PPI 9.4](#) – % of felony filings disposed as misdemeanors).

Prosecutors have vast discretion over charging decisions, which ultimately drive sentencing outcomes. After police refer a criminal case to the prosecutor's office, prosecutors have a responsibility to screen it thoroughly and ensure charging accuracy. This screening process may result in felony referrals filed as felonies, downgraded to misdemeanors, or declined for prosecution altogether. If

the case is filed, charges may change at various points of case processing and for different reasons. Charge increases are generally uncommon, especially after filing, which makes them difficult to analyze. Charge decreases can occur at arraignment or afterwards as part of the plea negotiation process.

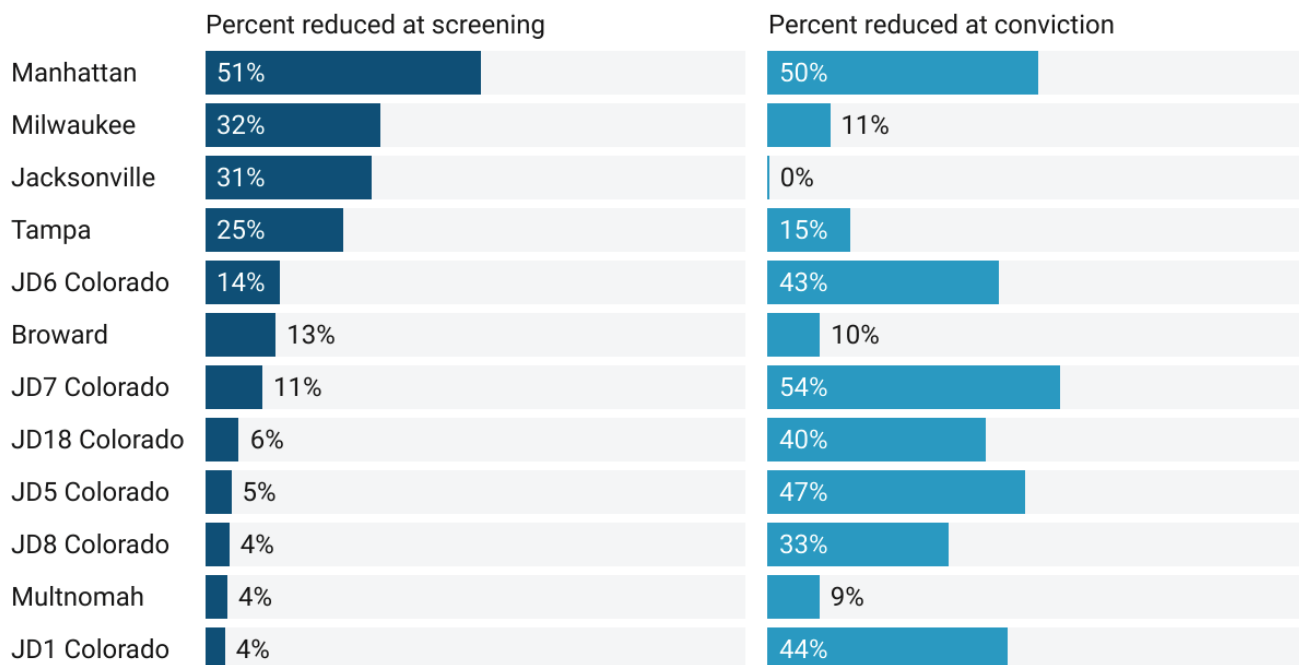
These indicators are based on the rationale that although charging decisions should be informed by the statutory elements of a crime, felony prosecutions should be avoided if filing as a misdemeanor can accomplish the same public safety goals. Prosecutors should also avoid overcharging and should file felonies only if they intend to dispose of them as such.

DATA

Data for this research came from PPI partner jurisdictions that systematically capture charge changes at screening and disposition. We were able to compile data for 12 sites overall (see the figure on p. 3). These sites include district and state attorneys' offices from Broward (FL), Jacksonville/Duval (FL), Manhattan (NY), Milwaukee (WI), Multnomah (OR), Tampa/Hillsborough (FL), and six district attorney's offices from Colorado (Judicial Districts 1, 5, 6, 7, 8 and 18). We analyzed data for 2021. Percent reduced at screening was calculated based on felonies referred to individual offices in 2021 that have since been disposed; and percent reduced at conviction was calculated based on cases disposed of in 2021, regardless of filing date. Note that in many jurisdictions across the country, there is no typical "screening process" because police direct file initial charges; as such, data for those jurisdictions might be available only for charge changes after a case is filed. Because we are interested in the relationship between charge changes at screening and post-screening, we include only the jurisdictions for which such data were available, which is roughly half of our partner jurisdictions.

RESULTS

The figure below shows the percent of felony referrals reduced to misdemeanor/violation at filing, and the percent of felony filings reduced to misdemeanor/violation after filing.



Based on the frequency and timing of charge reductions, four types of prosecutorial offices emerge. We call them screeners, postponers, reducers, and keepers, as described below.

Type	Description	Example
Screeners	Offices frequently reduce felonies at filing, and rarely reduce felonies after filing	Prosecutors in Jacksonville, FL, spend significant time determining charges and case viability up front; as such, this jurisdiction has a relatively high felony-to-misdemeanor reduction rate (31%) and very low charge reduction rate post-screening (less than 1%). Although to a lesser extent, the same can be said about Milwaukee (32% and 11%, respectively), and even Tampa (25% and 15%, respectively).
Postponers	Offices rarely reduce felonies at filing, and frequently reduce felonies after filing	All six Colorado offices analyzed can be characterized as postponers. For example, the 1st Judicial District of Colorado reduces felony charges in 4% of cases at screening but in 44% of cases post-screening. Even in the 6th Judicial District, where 14% of felony charges are reduced at screening, prosecutors reduce charging post-screening in 43% of cases.
Reducers	Offices frequently reduce felonies both at filing and after filing	Manhattan is a good example of this category. Felonies are screened in the Early Case Assessment Bureau (ECAB) where prosecutors review the facts of the case with an arresting officer and adjust charges if they decide to file. In certain serious cases, particularly those involving domestic violence, an arresting officer may bring a defendant into ECAB for questioning. As the graph shows, half of felony referrals are filed as misdemeanors. However, filed felonies are also commonly reduced to misdemeanors or violations at arraignment or through plea bargains.
Keepers	Offices rarely reduce felonies at filing or after filing	Multnomah County reduces a relatively low percentage of felony referrals to misdemeanors at screening (4%). Yet, even after filing, nine out of ten felonies are disposed of as such. Such a low charge reduction rate can be attributable to relatively accurate charge determination practices by law enforcement, or a long-standing practice within the DA's Office of avoiding felony charge reductions to misdemeanors.

FACTORS INFLUENCING CHARGE REDUCTION PRACTICES

As we think about this possible typology, we must acknowledge substantial differences across jurisdictions, including in terms of case filing rates, office organization and culture, and statutory regulations, all of which may influence how often felonies are reduced to misdemeanors.

Charge reduction practices can only be understood in relation to case filing rates because the offices that file fewer cases may have a lesser need to reduce charges. For example, both Manhattan and Milwaukee District Attorney's Offices follow the legal sufficiency standard—the existence of evidence to support each element of an alleged charge. However, prosecutors in Manhattan file more than 90% of felony referrals, while their counterparts in Milwaukee file only about 40% of felony referrals. This suggests that felonies that are filed in Milwaukee may have a stronger evidentiary base; or that this difference stems from cultural differences between the offices.

Organizational structures can also influence charging decisions. Jurisdictions with vertical prosecution—where cases are screened and then handled by the same prosecutors—may have a lesser need for charge reduction post-filing. Prosecutors who know that they themselves will be dealing with every case they file, are incentivized to adjust charges up front at screening. For example, in Jacksonville prosecutors largely screen their own cases, while in Tampa, which is subject to the same Florida penal code, the office has a dedicated screening unit that files

cases and then hands them over to other prosecutors (i.e., the horizontal model). Less than 1% of filed felonies in Jacksonville but 14% of filed felonies in Tampa are disposed of as misdemeanors.

Furthermore, many jurisdictions across the country have direct filing practices, where law enforcement file charges rather than prosecutors. For example, in Maryland, police file all initial charges with little to no involvement from prosecutors. In Chicago, all felony drug charges circumvent the State's Attorney's Office, and are filed automatically with the courts. While direct filing practices may create the impression that resources are saved because prosecutors do not have to spend their time reviewing police referrals, it is possible that such practices require even more time and effort later on. This topic is ripe for a cost-benefit analysis.

Different states provide different deadlines for prosecutors to make felony charging decisions, which also influence case filing outcomes. For example, Florida legislation gives prosecutors 21 days to make a felony filing determination, unlike most other jurisdictions where prosecutors have 72 hours for this decision. Although, even within Florida, we observe varied charge reduction practices across the three jurisdictions included in the analysis (see Figure on p. 3). Besides, while New York and Wisconsin typically require for the defendant to be brought before a judge for arraignment within 24 hours of arrest, they use the screening stage as an opportunity to adjust charges even with this time constraint.



RATIONALES FOR FILING FELONIES

As we engage with prosecutors across the country on this topic, we hear different justifications for filing felony charges, even if it is abundantly clear that, after filing, these cases will likely be reduced to misdemeanors or even to violations/infractions. Below we make an effort to summarize some of those conversations while acknowledging that this topic merits much additional research.

Plea leverage

Prosecutors believe that a felony charge gives them an upper hand in the plea-bargaining process, because misdemeanors do not leave real opportunities for downward departures. They do not necessarily see this process as coercive toward a defendant, or in conflict with charging integrity, as long as the elements of the crime charged are present. Even if these prosecutors can foresee likely charge reductions at later stages of case processing, they believe that “how the case will be disposed” should not affect their initial charging decisions.

Ensuring conviction

If more felony referrals are filed as misdemeanors, prosecutors worry that these cases would be more likely to result in dismissal or diversion, which they do not view as an appropriate outcome. The more dominant the conviction-seeking culture, the more likely the prosecutors are to hold this philosophy.

Victim consideration

Concern for victims’ interest and protection may incentivize felony filings. Felony charges may convey the message that the office takes victims’ wishes seriously and is aggressively pursuing prosecution. They may also afford victims additional safety mechanisms, such as pretrial detention and longer orders of protection from the defendant.

Keeping the cops happy

Maintaining a good relationship with law enforcement is an important priority for most elected prosecutors and their line attorneys. Some prosecutors believe that rejecting or downgrading felonies at a high rate may damage this vital relationship. Generally, screening outcomes are better documented than post-screening prosecutorial decisions, and may receive more attention from the public and the police. Therefore, filing felony referrals, and then downgrading them later on may ruffle fewer feathers.



TAKEAWAYS

Offices that engage in thorough case screening tend to adjust charges early, which ultimately reduces the need for charge changes at subsequent stages of case processing. However, as we see above, the relationship between charge reductions at screening versus post-screening is not as strong in our sample as anticipated. Some offices reduce a high proportion of felony charges at both stages, while others rarely reduce them at any point.

When a charge reduction is needed, it should happen sooner rather than later. Experienced and analytically-prone prosecutors already have a sense which category of felonies are most likely to be disposed of as misdemeanors. We encourage our partners to engage in a systematic analysis of why some felonies are especially likely to be downgraded, and assess the benefits and shortcomings of current practices. There might be a valid strategic interest behind filing felonies, but this practice should be well thought-through to maximize public safety and fairness goals. In line with the PPI objectives, we also encourage prosecutors to collect and publish data on the extent to which prosecutors avoid unnecessary felony charges at filing (PPI 8.1 – % of felony referrals charged as misdemeanors) as well as avoid overcharging (PPI 9.4 – % of felony filings disposed as misdemeanors).

Rather than using charges as a bargaining chip to coerce guilty pleas, prosecutors should only charge what they can and intend to prove. We also believe that charges can be reduced for valid reasons, which includes newly discovered evidence. However, offices should not rely on practices of routinely disposing felony filings as misdemeanors. While on the surface this produces

seemingly favorable outcomes for defendants (i.e., by avoiding a felony conviction), overcharging in hopes of gaining leverage in plea bargaining unfairly disadvantages them. Charge reductions may also disappoint victims who may have been given false hope of a felony conviction, especially after months of case processing.

Offices should also develop policies for when to recommend case dismissal in lieu of charge reduction. Reductions should not function as a replacement for dismissal. A conviction-seeking mindset may force prosecutors to file more felonies than what the office is capable of handling. Spending limited investigative and prosecutorial resources on such felony cases may have negative public safety consequences by taking focus away from prosecuting violent offenses.

Finally, in this brief, we have provided very preliminary thinking about office typologies in terms of when and how often they reduce charges. One benefit of the proposed typology is that it hopefully sparks new conversations about charging and charge reduction practices, which very often go unchallenged for far too long. Cultural norms and practices are typically deeply-rooted in a given office. By providing even limited data on comparable practices in other jurisdictions, we want to generate additional discussion about this important topic.

Whether you are a practitioner, policy maker, community member or researcher, we want to hear your thoughts about charging philosophies and practices, and how they can be improved.



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About the PPIs

PPIs is a research and technical assistance project which aims to promote more effective, just, and transparent decision making in prosecution. It is a bipartisan effort to be smart on crime, to think about new ways to maximize public safety, to enhance fairness, and to create a new system of accountability to the public. It involves 20 forward-thinking prosecutors across the nation working with researchers at Florida International University, Loyola University Chicago, and University of Massachusetts Lowell to take a new look at prosecutorial decision making and performance over time.

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