

# Prosecutorial Discretion and Decisionmaking in Plea Bargaining in Philadelphia

Andreea Matei, Lily Robin, Leigh Courtney, and Kelly Roberts Freeman

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

We used mixed methods, and this fact sheet synthesizes results from the following [data-collection activities](#):

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

From our findings, we drew several [recommendations](#) specific to Philadelphia, including the following:

- standards for prosecutorial data collection should be produced
- more mechanisms for measuring compliance with officewide policies should be added
- prosecutors should consider withdrawing cases in which evidence is weak instead of extending coercively low plea offers
- efforts should be made to mitigate heavy trial penalties
- sentencing guidelines should be revised

Read the accompanying final report at this link: [urban.is/3EtY780](https://urban.is/3EtY780)

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 an exploratory 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. Although ADAs we interviewed could not cite official mechanisms for reviewing plea decisionmaking after pleas are offered, a 2021 DAO report found high compliance with an officewide policy on plea negotiations and community supervision terms.

[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 a defendant might accept a plea despite asserting their innocence because of various pressures on them to resolve their case quickly.

[Different ADA units take different approaches to plea bargaining.](#) These approaches are informed by units' policies and norms. A supervisor can determine their unit's 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 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 pled cases are processed faster.** Over half of negotiated guilty pleas in the Court of Common Pleas resulted in incarceration, and *almost 90 percent included probation terms*, which averaged about 32 months in Common Pleas cases.

**Cases resulting in negotiated guilty pleas were resolved (that is, moved from initial filing to disposition) faster than cases resulting in other guilty or no-contest outcomes.** In our sample of cases, many offers did not change, but the ones that did change generally received more lenient offers. Also, *among people who accepted pleas, larger shares of Black people than white people had custodial outcomes, and Black people had longer sentences.* This finding is complicated by the fact that structural racism heavily impacts the factors that structure the Pennsylvania 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.** *Average minimum and maximum incarceration periods for defendants detained pretrial were twice those of people not detained pretrial.* Other differences between the population of people detained pretrial and those released pretrial 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, people's criminal histories, and the impacts of implicit biases* on 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, as is the nature of the offense.** Some ADAs said they offer *more lenient pleas when they have a weak case* or little admissible evidence. Defendants whose cases go to trial do not always receive that leniency: ADAs, defense providers, and people who have accepted pleas generally indicated 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 compounds racial disparities at earlier points in the criminal legal system, and it is affected by the discretion and reputations of other system actors.** For instance, defense providers and people who have accepted pleas say 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.

## ABOUT THE AUTHORS

### Andreea Matei

[amatei@urban.org](mailto:amatei@urban.org)

Matei is a policy associate in the Justice Policy Center at the Urban Institute and is an expert on prosecution and defense.

### Lily Robin

[lrobin@urban.org](mailto:lrobin@urban.org)

Robin is a research associate in the Justice Policy Center and an expert on policing and juvenile justice.

### Leigh Courtney

[lcourtney@urban.org](mailto:lcourtney@urban.org)

Courtney is a senior policy associate in the Justice Policy Center and works on restorative justice.

### Kelly Roberts Freeman

[kfreeman@ncsc.org](mailto:kfreeman@ncsc.org)

Freeman is a senior court research associate at the National Center for State Courts and is an expert in criminal case flow processing and quantitative data analysis.