

Quantifying the Prosecutorial Preauthorization Intake System and the Costs of ‘No Action’ Cases

Pablo A. Ormachea¹, Sasha Davenport¹, Gabe Haarsma¹, David M. Eagleman^{1,2}

¹Center for Science and Law, Houston, TX

²Stanford University, Department of Psychiatry and Behavioral Sciences, Stanford, CA

Correspondence: davideagleman@stanford.edu

Abstract

In most jurisdictions, a police officer arrests and books a defendant, then files the criminal complaint before a judge. The judge sets bail, and if necessary, appoints defense counsel for the accused. Inadequate cases are later dropped – often weeks or months later – by prosecutors. This happens only after extensive investigation and usually not before the accused spent several nights in detention. In 1973, Harris County, Texas developed a solution to this inefficiency: prosecutors receive a phone call from the police officer at the moment of arrest. The officer explains the circumstances of the arrest, and the prosecutor evaluates whether it meets the required elements of the crime. If satisfied, the prosecutor grants authorization, and only then does the police officer file. We quantify the efficacy of this unique pre-authorization intake system, comparing arrests filed in Harris County, TX, Miami-Dade County, FL, and dozens of counties in New Mexico. We find that a pre-authorization intake system would save a municipality like Miami, FL, many millions of dollars annually.

Keywords: prosecutorial discretion, case screening, no action, court proceedings, criminal justice

Introduction

In 1974, Johnny Holmes was the defendant for a show-cause hearing in front of a Harris County (Houston, Texas) magistrate judge. In a courtroom packed with bystanders and cameras, Harris County Chief District Attorney Carol Vance defended his First Assistant, Mr. Holmes, against the charge of obstructing justice. (J. Holmes, personal communication, March 15, 2015).

The charge centered on a new system for processing defendants arrested for a jailable offense. Before 1973, a police officer would arrest a defendant, book him or her, and then file the criminal complaint before a magistrate

judge.

In theory, the magistrate served as a check against police discretion and would reject complaints that lacked sufficient detail or that failed to meet the legal elements of the purported crime. Only the complaints that overcame the check would be passed along to the local district court and county prosecutors.

In practice, however, our interviews with recently retired county officials indicated that the magistrates’ administrative clerks were often the ones accepting complaints. (J. Holmes, personal communication, March 15, 2015). These clerks often lacked the formal legal training to evaluate the merits of each case, resulting in near-total deference to the

decision of the police officer on-site — irrespective of the strengths or weaknesses of the underlying facts of the case. To compound the problem, prosecutors received minimal paperwork regarding the underlying facts. Inadequate cases were dropped only after extensive investigation by the prosecutor, and usually not before the accused spent several, costly nights in detention.

In October 1973, Mr. Vance and Mr. Holmes addressed these inefficiencies by implementing a new intake system for processing accused defendants. Instead of prosecutors evaluating the strength of a case late in the filing process, now prosecutors received a phone call from the police officers at the moment they made an arrest. In a brief conversation, the officer explained the circumstances of the arrest so the prosecutor could evaluate whether it met all the required elements of the crime. If satisfied, the prosecutor granted authorization and the police officer filed the criminal complaint directly with the prosecutors. The prosecutors then brought all of the day's cases to a probable cause hearing in front of a magistrate judge. This is called a *pre- authorization intake system*.

The new process led to a dramatic reduction in dropped cases and to a more efficient courtroom docket no longer bogged down by deficient criminal complaints. It also led to complaints from some who preferred the older system: one magistrate judge attempted to bring Mr. Holmes up on charges of obstructing justice. However, he was forced to drop them when his legal defense demonstrated that the new system fit well within the bounds of Texas law.

Harris County is the third fourth largest county in the U.S., yet it maintains fewer prosecutors per capita than every other jurisdiction in terms of population (Gershowitz & Killinger, 2011) (**Figure 1**).

This points to a potential cost savings due to the pre-authorization intake system. To examine this, we quantified the efficacy of a pre-authorization intake system by analyzing over 3 million arrest records that represent all charges

from 2006 – 2011 in Harris County, TX, Miami-Dade County, FL, and over the whole state of New Mexico. As shown below, our results demonstrate that many millions of dollars are saved annually by a pre-authorization intake system.

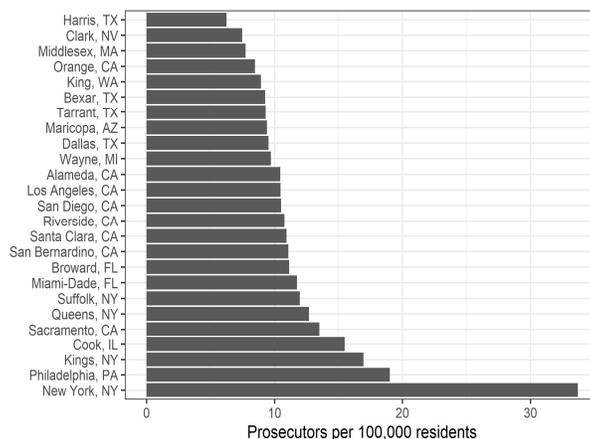


Figure 1. Prosecutors per 100,000 residents for most of the largest U.S. counties. Harris County is the third largest U.S. county, yet it maintains fewer prosecutors per capita than every other jurisdiction in the most populous 25 counties (Gershowitz, & Killinger, 2011).

Methods

Identifying charges which received No Action disposition

Arrest records from the SciLaw Criminal Records Database (CRD; www.SciLaw.org) were used for this analysis (Ormachea et al 2015). Specifically, 3.09 million records from 2006 to 2011 were used from Harris County (Houston) in Texas, Miami-Dade County in Florida, and the state of New Mexico.

For the analysis, a disposition classification schema was used which mirrors each county analyzed. That is, dispositions were classified as *Dismissed*, *Acquittal*, *Guilty*, *Guilty by Plea*, *Conditional Dismissal*, or *No Action*. Cases may be dismissed or dropped for a variety of reasons (having no probable cause, missing witnesses, lack of evidence, etc.), but a ‘No Action’ case, or *nolle prosequi*, occurs when a charge was filed, but the attorney declines to prosecute before trial. For the following analysis, we used only cases defined by each county’s courts as ‘No Action’. The tables for classification are available upon

request.

Although the CRD database lists each charge individually, an individual may face multiple charges in one arrest; for instance, a person selling bootlegged movies might receive a separate charge for every illegal copy. The data presented here is where all charges received a disposition of “No Action”. This ensures that we only analyze arrests in which the accused was detained without adjudication and related criminal justice consequences. Some District Attorney offices maintain their own case records for in-house analysis, however the choice was made to use data in the CRD, which was obtained from each jurisdiction’s criminal court clerk (or, Administrative Office of the Courts, in the case of New Mexico) instead of records from District Attorneys’ offices. This follows our assumption that information entered at arraignment is complete (or updated with any last-minute changes to the charges or case) and has the court’s most complete final disposition noted.

Estimating cost of a dropped No Action case

To estimate cost savings, we estimate costs for wasted police officer time, wasted prosecutorial time, and unnecessary nights in detention. The cost to police forces is estimated using the May 2011 national average hourly wage of \$27.05 according to the Bureau of Labor Statistics. This amount is defined by the Bureau as “straight-time, gross pay, exclusive of premium pay.” To adjust for overtime pay, severance pay, shift differentials, nonproduction bonuses, employer cost for supplementary benefits, and tuition reimbursements (none of which are included in the Bureau’s calculation) the hourly rate was multiplied by a conservative standard of 1.5 times base pay.

The cost of a night in jail is estimated to be \$72.00 (Texas Criminal Justice Coalition, 2012). The cost for prosecutors draws from a 2010 survey conducted by the National Association for Law Placement, which states that the average entry-level prosecutor earns \$50,000 and the experienced prosecutor

\$81,500. Prosecutor salary is converted to an hourly estimate of \$65.75 after assuming an 8-hour workday, five days a week for 48 weeks in the year.

Time estimates reflect our best, cautious judgment after close consultation with active prosecutors and other members of the criminal justice system. Our analysis assumes that a police officer spends an average of 2 hours booking an individual and filing a criminal complaint, and that the accused spends 1 - 3 days in jail (Hassan & Caruba, 2015). For this calculation, we average 2 days. For the cases that will eventually be dropped due to No Action, we estimate that prosecutors require 1 hour to read deficient complaints, to reach police officers for clarification, to opt against prosecuting the cases, and to complete associated paperwork.

Results

No Action cases over time

We first tallied the prevalence of No Action cases in our data set. We found that between 2006 and 2011, the percentage of cases in the No Action category were 38% in Miami-Dade County and an average of 22% for the New Mexico counties. On the other hand, Harris County, which uses a full-time misdemeanor and felony level preauthorization intake system, had a dropped case average of less than 1%. (0.82%). **Figure 2** demonstrates this as the typical trend between 2006 and 2011.

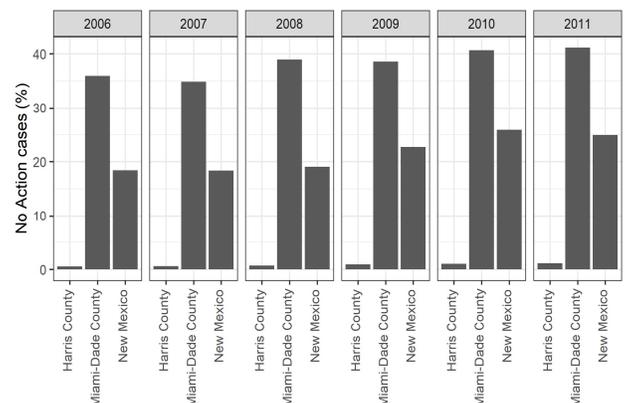


Figure 2. Harris County has dramatically fewer dropped No Action dispositions than Miami-Dade County or the counties in New Mexico.

The cost of dropped No Action cases

Given the large discrepancy of the percentage of No Action cases in data sets, we next evaluated the cost of police time, administrative time, and detention. For each year, we examined the total number of dropped No Action charges in Harris County (5,437), New Mexico (111,874), and Miami-Dade County (246,180). The rate of \$324.77 was applied per case for each jurisdiction which includes police time (2 hours at \$27.05), jail time (\$72.50 per day for 2 days), and prosecutor time averaged at 1 hour at the rate of \$65.75 per hour). Results are shown in **Figure 3**. The cost of court clerks or other staff was not included, presumably making this analysis an underestimate.

There are large cost savings associated with a preauthorization intake system. However, there are also costs of running such a system, including the prosecutors who receive the phone calls to accept or reject an arrest, as well as the administrative personnel who support them. Additionally, the prosecutors often choose to work an additional shift and are thus paid overtime as an incentive to work the 24-hour hotline. However, even with these costs, Harris County's FY2014-15 total budget estimate to run the preauthorization system is \$6.2 million; importantly, this is about half of Miami-Dade's estimated costs for dismissed No Action cases in any given year (Figure 3).

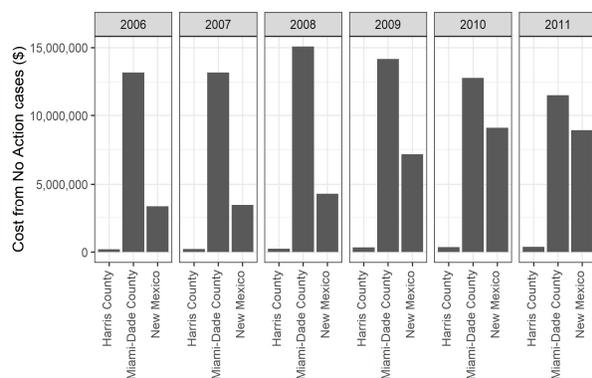


Figure 3. As a result of required preauthorization before arrest, Harris County has fewer officer, prosecutor, and incarceration costs directly attributable to cases that end in a disposition of No Action.

Discussion

Detaining arrested people before trial is “the greatest expense generated by current pretrial justice practice” and that this includes many whose charges will ultimately be dropped.” (Pre-Trial Justice Institute, 2017). Attorney General Eric Holder estimated this cost the US \$9 billion annually (Holder, 2011).

A preauthorization intake system appears to drive many millions of dollars in annual savings. Moreover, several other factors have presumably led us to underestimate the total cost, further improving the cost effectiveness of a pre-authorization intake. First, with a preauthorization intake system, officers are kept on the street instead of filling out time-consuming paperwork for charges will which be dropped days or weeks later. Second, prosecutors can spend their time on strengthening cases, concentrating their efforts on putting the guilty behind bars instead of releasing the innocent. The combined effect frees up criminal justice personnel to handle more serious offenses. Such efficiencies likely explain why Harris County is the third largest county in the country but has the fewest prosecutors per capita of all the 25 most populous counties, which in turn leads to long-term savings in employee pensions and benefits. Third, judicial docket efficiencies likely reduce the needed number of judges and shorten the length (and therefore the cost) of detention. Presumably, this would lead to a reduced number of required administrative personnel as well. Fourth, it is likely that avoiding detentions for spurious cases would reduce the number of lawsuits for wrongful incarcerations, saving a jurisdiction money otherwise spent in civil litigation. Fifth, we here computed with average hourly wages for police officers; however, our interviews with criminal justice personnel suggests that a significant fraction of these spurious cases would be filed at the end of officers' shifts, which could lead to overtime pay of time and a half.

There are potential caveats with the present analysis. When national averages were not

available, estimate jail, officer, and prosecutor costs were used from Texas; it is possible that the salary and jail costs differ somewhat from location to location. Additionally, not all the fixed costs (personnel costs) should be attributed to the intake system. Geographic variations are also likely contributors: Miami-Dade County, for instance, is renowned as a major drug port, which could be one of several reasons driving a need for a larger police force. Nonetheless, while one could quibble small cost differences, the overall picture is clear.

Of necessity, our analysis has only calculated dollar costs. However, a preauthorization intake system provides other benefits that are more difficult to quantify. Most importantly, a preauthorization intake system protects the rights of individuals who would otherwise be unnecessarily detained. Approximately 30 - 40% Harris County arrests are rejected by using the preauthorization intake system (personal communication, Harris County prosecutors John Brewer and Steve Baldassano). In other words, one out of three individuals have avoided the harmful experience of spending time in detention or making bond for a spurious case. Moreover, individuals whose case was rejected before booking avoid negative consequences at work: arrests—even for baseless cases—can lead to firings. In a tight labor market, unemployment can drag on, and extended unemployment is known to play a significant role in criminal activity (Alessio et al 2014). Harvard Law School Professor Ronald Sullivan, Jr. notes, “When employers are looking at the CORI [Criminal Offender Record Information] and see a criminal record, even if a case is ultimately dismissed or the defendant found not guilty, it still prejudices them on the job market” (Pazzanese, 2014).

A final benefit of a preauthorization intake system is that it provides an ongoing training for police officers. Over time, the immediate feedback from the prosecutors means the police officers increase their familiarity with the legal elements of a crime. Experience with

the prosecutor phone call enables police officers to exercise better judgment, reducing unjust arrests.

It is rare to identify a reform with so many positives and so few negatives that has also been tested for nearly 50 years. Although implementing the intake system requires institutional change, and upfront investment, the cost savings and heightened protection for individual liberty appear to be well worth the reform. The White House Council on Economic Advisors stated, “From an economic perspective, the goal of an efficient criminal justice system is to maximize the safety of citizens and minimize criminal activity while also limiting the direct and indirect costs of criminal justice policies to individuals, communities and the economy” (US Executive Office of the President, 2016). It is our hope that the findings presented here will spur other municipalities to adopt a similar system.

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