

The Prosecutor's Impact on Mass Incarceration in Philadelphia (2017-2018)

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Abstract:

Introduction: Larry Krasner was elected as Philadelphia District Attorney under a reform platform in November 2017. A memo was released in February 2018 with policies to curtail mass incarceration through increased plea bargaining.

Objective: Analysis of sentencing decision outcomes from the Philadelphia Court of Common Pleas case dockets afforded a quantitative evaluation of the prosecutorial-driven initiative.

Methods: The research followed an interrupted time series design grouping unique cases into pre-memo (April 1, 2017 to February 28, 2018) and post-memo (March 1, 2018 to January 31, 2019) periods. To determine causality, cases were coded into a treatment group (Negotiated Guilty Pleas) and a control group (Other Findings of Guilt).

Conclusion: The study found that the goals of the memo were accomplished. In the post-memo period, 3 out of 4 cases were plea-bargained, and the volume of incarceration sentences decreased by 40.4%. The memo had a highly statistically significant effect ($p < 0.01$) on incarceration sentence lengths. The average incarceration sentence lengths of plea-bargained cases decreased by 1.26 to 2.039 months relative to cases that had other findings of guilt.

1 Introduction

As of March 2019, Philadelphia County Jail's average daily population (ADP) consisted of 4,536 individuals with an average length of stay of 5-6 months. People of color made up 88.8% of the jail population. Moreover, 15.2% of the total population were diagnosed with serious mental illnesses. In comparison, 58% were people of color and 9% were diagnosed with serious mental illnesses out of the total population ($n=48,438$) in state correctional facilities (Pennsylvania Department of Corrections, 2017). Within the past five years, public-private partnership efforts to tackle mass incarceration reduced the jail population. ADP decreased by 43.9%, and cases filed by prosecutors decrease by 33.3% (First Judicial District of Pennsylvania, 2019; Palmer, 2019). Nevertheless, Philadelphia continued to have the highest incarceration rate in the Northeast (Schiraldi, 2018) costing the county and taxpayers about \$360 million per year (Krasner, 2018).

In November 2017, Larry Krasner was elected as the Philadelphia District Attorney. Winning 75% of the total votes (Office of the Philadelphia City Commissioner, 2017), Krasner's victory was a mandate from the community to fulfill his criminal justice reform platform. Krasner's victory was a community mandate to fulfill his criminal justice reform platform. Within the first 100 days of his administration, the Philadelphia District Attorney's Office (DAO) released a memo on February 2018 (hereafter "the memo") to curtail mass incarceration through plea bargaining. Due to efforts by the City of Philadelphia and MacArthur Foundation, the incarceration rate decreased. However, this paper examines whether Krasner's decarceral initiatives affected the length of incarceration.

The memo's presumptive guidelines (see Appendix A) focused on charging certain offenses at a lower grade and making plea offers below the Pennsylvania Sentencing Guidelines' mitigated range. The

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policy's overarching goal was to “achieve accountability and justice while avoiding conviction where appropriate.” The memo emphasized reducing the pre-trial incarceration rates, expediting case resolutions, and seeking incarceration alternatives (diversion and probation). However, the guidelines did not necessarily apply to homicides, violent crimes, sexual assault crimes, “felon[s] in possession of [a] weapon,” white collar crimes, and cases involving attacks on the integrity of the judicial process. Assistant District Attorneys (ADAs) must obtain supervisory approval from the unit supervisor and executive leadership for these specific cases (Krasner, 2018).

Prosecutors are “the gateways to justice.” With 94% of all felony convictions resulting from plea bargaining, prosecutors decide not only which criminal cases to pursue but the severity of the charge (Kerstetter, 1990; Vera Institute of Justice, 2019). Thus, this analysis of sentencing decision outcomes provided an opportunity to conduct a quantitative evaluation of prosecutorial discretion.

Section 2 focuses on literature, court rulings, and current affairs related to prosecutors and prosecutorial discretion. Section 3 and 4 describes the data and delineates research methods, respectively. Section 5 presents the results of the analysis on the memo’s level of effect. Section 6 concludes with an overall discussion that includes study limitations, further areas of research, and policy implications.

2 Literature

2.1 Overview of Prosecutorial Discretion

In this paper, “prosecutor” is defined as:

“...[A]ny attorney, regardless of agency, title, or full- or part-time assignment, who acts as an attorney to investigate or prosecute criminal cases or who provides legal advice regarding a criminal matter to government lawyers, agents, or offices participating in the investigation or prosecution of criminal cases” (American Bar Association, 2015).

Prosecutorial discretion manifests in the form of plea bargaining, where the prosecutor and the defendant negotiate the terms and type of sentence in exchange for a guilty plea (Wright & Miller, 2002). The prosecutor can offer concessions through charge reduction (Spohn & Hemmens, 2012). Prosecutorial nullification, a specific form of prosecutorial discretion, is the decision to drop cases (Fairfax, 2011). Historical responses of prosecutors to drug legislation and court rulings in Washington and New York demonstrate that legislation can only be enforced at their volition. In the early 1980s, the Washington State Legislature relinquished the first-time offender waiver to reduce heroin and cocaine distribution sentences to hand down harsher punishments. During the post-enactment period, the number of convictions for the delineated offenses decreased. When the Washington Court of Appeals overturned that law, convictions increased (Engen & Steen, 2000). Furthermore, Enforcement of the State of New York’s 1978 Rockefeller Drug Laws depended on prosecutors' priorities. Within the first years from the passage of the law, there were no increases in the number of drug convictions that led to incarceration. During the height of the crack-cocaine epidemic, convictions proliferated (Pfaff, 2017).

2.2 Notable United States Supreme Court Cases

The American Bar Association’s Standards for Criminal Justice broadly defines the prosecutor's role in seeking justice and addressing deficiencies within the criminal justice system (2015). Since these standards are only aspirational (Spohn & Hemmens, 2012), court rulings have shaped the function of the prosecutor. *Santobello v. New York* (1971) recognized that plea bargaining is an efficient and effective approach to settling cases. *Blackledge v. Allison* (1977) ruled that plea bargaining reduces the anxiety of uncertainty on both sides. *Blakely v. Washington* (2004) and *Cunningham v. California* (2007) ruled that judicial discretion to charge above the maximum sentence determined by plea bargaining or jury verdict infringed upon a defendant’s Sixth Amendment rights. With this decision, the US Supreme court put the onus on the prosecutor to provide evidence that merits a more severe sentence (Spohn, 2009).

2.3 Opportunity for Data-Driven Criminal Justice Improvements

2.3.1 Prosecutors and the Rise of Mass Incarceration

Prosecutors are one of the key drivers of mass incarceration. Increased filings by prosecutors since the 1970s induced growth within prison and jail populations (Pfaff, 2017). However, adding years to an incarceration sentence does not necessarily generate an additional marginal effect of deterrence (Tonry, 1996). Both Tonry (1996) and Spohn (2009) compiled studies that provide evidence of the nondeterrent effects of mass incarceration with the following conclusions:

1. A 20-year follow-up of inmates showed that sentencing decisions did not influence an individual's likelihood of recidivating;
2. Crime is affected by socioeconomic factors and random circumstances; and
3. Some crimes, such as drug crimes, have greater rewards than the threat of confinement.

A comparative case study of harsher and mandatory sentencing laws on gun crimes across Michigan (Detroit), Florida (Tampa Bay, Jacksonville, and Miami), and Pennsylvania (Philadelphia and Pittsburgh) demonstrated no overall preventative effect on crime rates (McDowall, Loftin, & Wiersema, 1992). Nationwide, there was a lack of information from prosecutors' offices on the outcomes of harsher incarceration sentences (Nielson, 2018; Sklansky, 2016; Pfaff, 2017).

2.3.2 Transparency and Data-Driven Reform Efforts

The freedom of prosecutorial discretion allows administrative flexibility in the criminal justice system. As a direct "safety valve" for the overcriminalization of sentencing decisions, change can occur at a faster rate than the legislative process (Fairfax, 2011). With that level of immediacy, information related to prosecutorial discretion and sentencing outcomes must be readily available for review. While there is a lack of scholarly consensus on how to measure impact, previous and current efforts provide insight on the policy evaluation (Wright & Miller, 2002; Cowart, 2009; Bibas, 2010; Gold, 2011; Fairfax, 2011; Hall, 2017; Sklansky, 2016).

Data collection in the Orleans Parish District Attorney's Office (Louisiana) led to consistent charging decisions. For every declination of charges, a prosecutor must report their rationale by choosing from a standardized list. Supervisors discerned that a majority of justifications included: 1) "prosecution of other charges" (38%), "flawed evidence" (26%), and "concerns about the victims of crime" (18%). Each category was broken down into more nuanced subsets. For example, subcategories in "flawed evidence" included: "insufficient lab tests," "weak testimony," "unlawful search," and "insufficient testimony" (Sklansky, 2016).

Vera Institute of Justice's Prosecution and Racial Justice Project in Milwaukee, Wisconsin used data to examine racial parity in sentencing. The Milwaukee County District Attorney's Office digitized case information and compiled data from different agencies. The analysis concluded that "possession of drug paraphernalia" charges were dropped 41% of the time for whites and 27% for non-whites. Ultimately, further review concluded that the disparity was caused by a prosecutor's level of experience and the geographic concentration of crack-pipe possession (Mackenzie, Stemen, Coursen, & Farid, 2009).

Recently, Cook County State Attorney Kimberly Foxx (Illinois) released a comprehensive data report containing intake, initiation, sentencing, and disposition information for every felony case since 2010. The report intended to make prosecutorial discretion accessible and understandable for the community through data narratives and visualizations (Foxx, 2018).

2.4 Current State of Prosecutorial-Driven Reform

2.4.1 Successes

In the past two years, "reform-minded prosecutors" were elected in red and blue states. Also known as "Progressive Prosecutors," they aim to "promote equity, compassion and prevention-oriented responses within the criminal justice system." Fair and Just Prosecution, The Brennan Center of Justice, Yale Law School Senior Research Fellow Emily Bazelon, and The Justice Collaborative *coauthored 21 Principles*

for the 21st Century Prosecutors (2018) outlined case studies and evidence-based strategies for prosecutors. Some of these principles include: 1) emphasizing diversion; 2) charging with restraint; 3) reforming the cash bail system; 4) “minimizing misdemeanors”; 5) shrinking supervision; and 6) addressing racial disparity.

Harris County District Attorney (Texas) Kim Ogg challenged the cash bail system for misdemeanor cases at the state supreme court. Wyandotte County District Attorney (Kansas) Mark Dupree created a Conviction Integrity Unit to review cases tied to problematic police practices. Kings County District Attorney (New York) Eric Gonzalez emphasized diversion for some low-level offenses (Bazelon & Krinsky, 2018).

In Philadelphia, the Krasner Administration in February 2018 dealt with cash bail reform. For 25 non-violent and non-sexual offenses (61% of all cases), the policy advised ADAs to forgo cash bail. The bail reform initiative attempted “to correct clear inequities and unfairness and safely end unnecessary pre-trial incarceration” (Gur, Hollander, & Alvarado, 2019). An external academic evaluation from the University of Pennsylvania concluded that there was “no detectible evidence that the decreased use of monetary bail, unsecured bond, and release on conditions had adverse effects on appearance rates or recidivism.” DAO also created a Conviction Integrity Unit that reviewed life sentences in prison without parole, especially for juveniles. If a disposition were deemed too harsh, it would be brought to court to be re-sentenced to a lesser charge (Hager, 2018).

2.4.2 Challenges

Challenging the “status quo” within the criminal justice system naturally comes with criticism from other agencies and stakeholder groups. The National Police Association (NPA) filed a bar complaint against Suffolk County District Attorney (Massachusetts) Rachael Rollins. According to NPA, Rollins’ policy proposal to not prosecute 15 petty offenses constituted as a “reckless disregard” of state laws (Flannigan, 2018). Florida Governor Rick Scott re-assigned 20 capital murder cases away from Orange-Osceola State Attorney Aramis Ayala due to her anti-death penalty stance (Elliott, 2017). Six Dallas County police agencies and the Mayor of Dallas Michael Rawlings publicly defied Dallas County District Attorney (Texas) John Creuzot’s plan not to prosecute marijuana offenses and “thefts of necessity” under \$750 due to public safety and victim concerns (Heinz & Kalthoff, 2019).

The Krasner Administration faced many detractors, including judges, law enforcement, and community members. Many judges within the Philadelphia court system rejected more plea deals than previous administrations for sentencing below the appropriate range mandated by state law (Melamed, 2018). Victims and their families publicly aired grievances on policy against capital punishment and lack of communication on the resolution of cases (Palmer, 2019). The president of The Fraternal Order of Police (FOP) Lodge 5 has been an outspoken dissenter and participated in a lawsuit against the Krasner administration regarding a “do-not-call” list of police officers. This database listed police officers who were deemed “problematic” for testifying in court. FOP claimed that these officers were deprived of “the fundamental right to reputation by the Pennsylvania Constitution” through a judgment of their credibility by an impartial entity (Dean & Fazlollah, 2018).

3 Data

Data used in this analysis comprised 6,543 publicly available unique cases sentenced to incarceration from the First Judicial District of the Pennsylvania Court of Common Pleas from April 1, 2017 to January 31, 2019 (Administrative Office of the Pennsylvania Courts, 2019).

3.1 Sample Population Parameters

Since 87.4% of the case dockets sentenced to incarceration were handed down in the Philadelphia Court of Common Pleas, this court was the focus of analysis. The First Judicial District of Pennsylvania encompasses two courts that make up the Philadelphia County Court System: Municipal Court and Court of Common Pleas. Generally, the Municipal Court handles civil cases with small claims (less than

\$12,000) and cases with sentencing recommendations up to five years of incarceration (misdemeanors and summary offenses). The Court of Common Pleas is under the Unified Judicial System of Pennsylvania, where major civil and criminal cases are adjudicated (First Judicial District of Pennsylvania, 2019).

The unit of analysis was characterized as an individual's case information for the "lead charge" per incident, which is the "most serious charge most representative of the crime committed" (Gur, Hollander, & Alvarado, 2019). Multiple case dockets can be linked to one individual for one incident through the Primary Offense Tracking Number (OTN). To prevent the overcounting of actual charges and sentences handed down, only the "lead charge" was retained per OTN.

3.2 Definition of Measures

3.2.1 Outcome Variable (Continuous): Sentence Length

The outcome variable for the study was the sentence length in months. Pennsylvania generally operates under indeterminate sentencing guidelines. A sentence is handed down with a minimum sentence of incarceration, which is up to half of the maximum sentence length. When the minimum sentence is served, the Pennsylvania Board of Probation and Parole decides to grant parole or recommend further confinement to carry out the rest of the sentence. Thereby, the "minimum sentencing range value" denotes the length in months that an individual is sentenced to incarceration before being eligible for parole. The "maximum sentencing range value" is the total length of the sentence. That is, if not granted parole, an individual would have to spend that whole time incarcerated. Thus, the minimum and maximum sentencing range values were analyzed separately.

The Pennsylvania Sentencing Guidelines (hereafter "sentencing guidelines") are an essential factor in sentencing decisions. Instituted in 1928, these presumptive guidelines were developed by the Pennsylvania Sentencing Commission to "create and maintain a consistent and rational statewide sentencing policy through the adoption of guidelines that promote fairer and more uniform sentencing throughout the Commonwealth" (Pennsylvania Commission on Sentencing, 2019). Mandated by the Pennsylvania General Assembly, an individual's prior record ("prior record score") and severity of the offense ("offense gravity score") are taken into account to determine whether their sentence lies at the standard, mitigated, and aggravated levels of the recommended sentencing range (Cirillo, 1986). The memo encouraged sentencing below the mitigated level.

3.2.2 Independent Variables (All Dichotomous)

Cases were coded on whether they were sentenced 11 months before and after the release of the memo. Although the memo was announced on February 15, 2018, the post-memo period started on March 1, 2018 to account for the implementation rollout. The pre-memo period occurred from April 1, 2017 to January 31, 2018 and the post-memo period was dated from March 1, 2018 to January 31, 2019. Offenses were coded into a treatment group (Negotiated Guilty Pleas) and a control group (Other Findings of Guilt). "Other Findings of Guilt" included "Guilty," "Guilty Plea," "Guilty Plea Non-Negotiated," "Guilty Plea – Mentally Ill," and "Nolo Contendere."

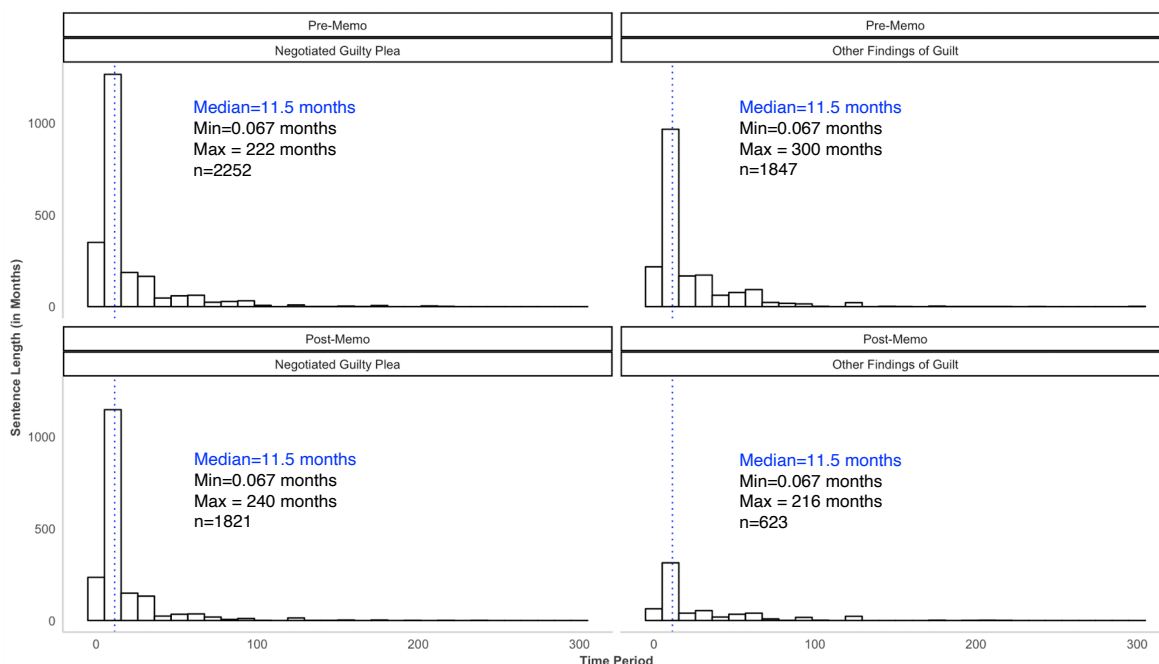
3.3 Data Description

As shown in Figure 1 and Figure 2, out of all the 6,543 unique cases examined, 63% were disposed in the pre-memo period (n=4,099) and 37% in the post-memo period (n=2,444). The sentencing length data for all dependent variable subsets were positively skewed for both the minimum and maximum sentencing range values.

The decrease in volume by 1,655 unique cases in the post-memo period was in line with the downward trend in the volume of case filings (Palmer, 2019) and incarceration dispositions (Appendix B). Moreover, 62% of unique cases in the dataset were negotiated guilty pleas (n=4073), while 38% were categorized as other findings of guilt (n=2470). The percentage of incarceration sentences that were negotiated guilty pleas went from 55% in the pre-memo period (n=2252) to 75% in the post-memo period (n=1821).

The shortest time an individual can be incarcerated before parole eligibility (minimum sentencing range value) was for 0.067 months (n=33) across both periods and plea bargain status. The median sentence length remained at 11.5 months across all variables (n=2,278). However, the longest time a person can be incarcerated before supervision, if granted, increased from 222 months (n=1) in the pre-memo period to 240 months (n=1) in the post-memo period for cases with negotiated guilty pleas. As for cases with other findings of guilt, the length decreased from 300 months (n=2) to 216 months (n=1) in the post-memo period.

Figure 1. Frequency Distribution of Incarceration Lengths Prior to Parole Eligibility (Minimum Sentencing Range Value)



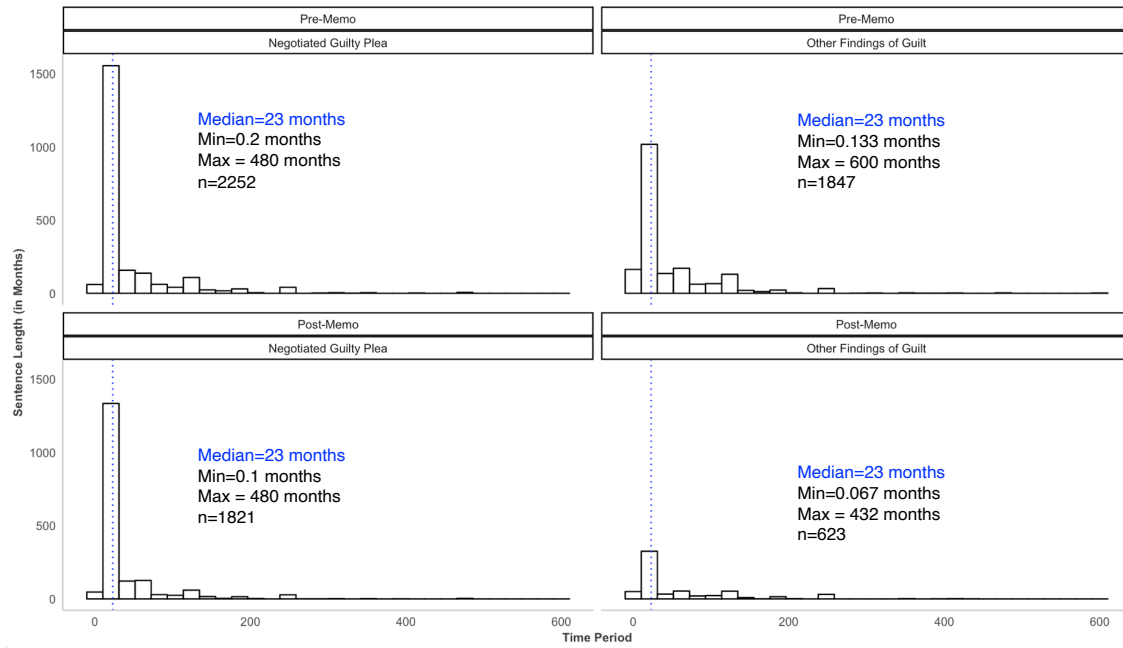
Source: Philadelphia Court of Common Pleas, Administrative Office of the Pennsylvania Courts (2019)

*Pre-Memo Period: April 2017-February 2018

** Post-Memo Period: March 2018-January 2019

Looking at the maximum sentencing range values, the total sentence length, there were few notable changes. Across all variable subsets, the shortest total sentence length remained at less than or equal to 0.2 months (n=188) while the median sentence length held steady at 23 months (n=3,888). There were no changes in the maximum total sentence length of 480 months (n=13) between the periods for negotiated guilty pleas cases. Cases with other findings of guilt experienced a decrease in the maximum total length from 600 months (n=2) in the pre-memo period to 432 months (n=1) in the post-memo period.

Figure 2. Frequency Distribution of Total Sentence Length (Maximum Sentencing Range Value)



Source: Philadelphia Court of Common Pleas, Administrative Office of the Pennsylvania Courts (2019)

*Pre-Memo Period: April 2017-February 2018

** Post-Memo Period: March 2018-January 2019

4 Methods

4.1 Research Design

The random nature of the policy change presented an opportunity to conduct a natural experiment. Coding cases into pre- and post-memo groups followed an interrupted time series design to show the memo's effect (Nicosia, MacDonald, & Arkes, 2013). To determine whether there was a causal relationship between sentence lengths and the memo, offenses were coded into a treatment group (Negotiated Guilty Pleas) and a control group (Other Findings of Guilt). Since the memo emphasized plea bargaining, there should be little to no changes in the control group's sentencing outcomes (Ouss & Stevenson, 2019).

4.2 Regression Model

The Robust Linear Regression Model (RLM) was used for statistical analysis. Since the data was heavily skewed to the right, RLM was an appropriate alternative to the Ordinary Least Squares (OLS) Model. RLM is less sensitive to outliers (observations with large residuals) as compared to OLS. RLM was applied to Equation 1 to provide a regression output that was a balance between altogether omitting outliers and weighing all the data points equally. This was done by weighing and re-weighting observations using the M-Estimator to analyze residuals with outliers down-weighted in R (UCLA Statistical Consulting Group, 2019).

$$Sentence\ Length_i = \beta_0 + \beta_1 post_i + \beta_2 negotiated_i + \beta_3 negotiated_i \times post_i \quad (1)$$

In this model, the time period was denoted by the dummy variable labeled “post.” The pre-memo period was coded as 0 and the post-memo period as 1. Disposition type was another dummy variable labeled “negotiated.” Negotiated guilty pleas were coded as 1, and other findings of guilt were coded as 0. The

interaction terms showed the memo's average treatment effect on sentence lengths of negotiated guilty pleas relative to cases that had other findings of guilt. This difference-in-difference analysis determined the effect of the memo by controlling for the time period and disposition type.

5 Results

The key takeaway from the RLM output was that the average minimum and maximum sentences for negotiated guilty pleas decreased, on average, relative to cases that had other findings of guilt. Specifically, the memo reduced the minimum sentencing range value by 2.039 months, and the maximum sentencing range value by 1.126 months. The results in Table 1 demonstrated that the dependent variables (time period and plea-bargaining status) had a highly significant effect ($p > 0.01$) on sentence lengths for both the minimum and maximum values of the sentencing range.

Table 1. Robust Linear Regression Results

	Dependent Variables:	
	Minimum Sentencing Range Value (1)	Maximum Sentencing Range Value (2)
Post-memo	1.664*** (0.498)	0.663*** (0.245)
Negotiated Guilty Plea	-2.584*** (0.337)	-0.605*** (0.166)
Post-memo x Negotiated Guilty Plea	-2.039*** (0.602)	-1.126*** (0.296)
Constant	15.074*** (0.250)	25.121*** (0.123)
Observations	6,543	6,543
Residual Std. Error (df = 6539)	9.067	3.375
Note: *p < 0.1, **p < 0.05, ***p < 0.01		

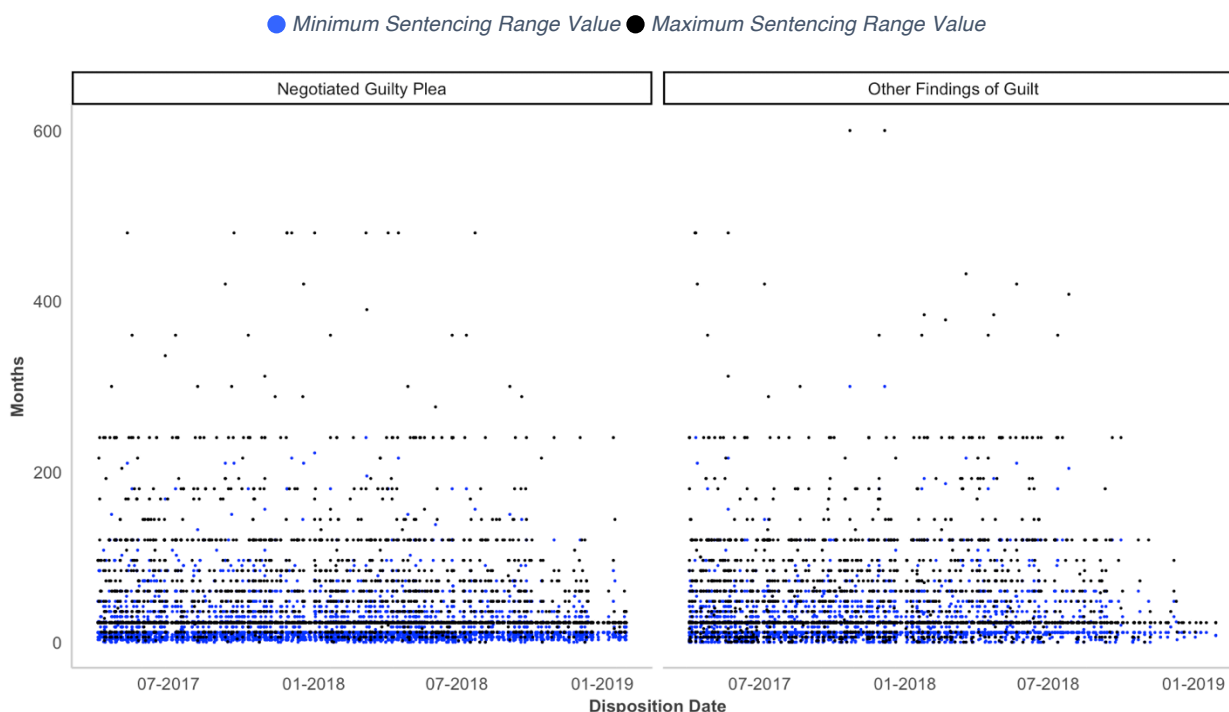
The memo had a statistically significant effect on reducing the total sentence length before parole eligibility. All the coefficients had a p-value of less than 0.01 on average for the minimum sentencing range value. For the time period parameter, incarceration sentences disposed in the post-memo period increased by 1.644 months on average. Incarceration cases resolved through plea bargaining decreased by 2.584 months on average. Looking at the interaction terms of $\beta_3 negotiated_i \times post_i$, incarceration cases that were both plea-bargained and sentenced in the post-memo period had a compounding effect of a decrease of 2.039 months on average, relative to other findings of guilt.

The memo also had a statistically significant effect on reducing the total length of the sentence, which can be spent incarcerated and/or on parole. The RLM output of the maximum sentencing range value indicated that all the coefficients had a p-value of less than 0.01. Incarceration sentences that were disposed in the post-memo period increased by 0.663 months on average. Cases that were plea-bargained decreased by 0.605 months on average. Looking at the interaction terms, incarceration cases that were sentenced in the post-memo period and plea-bargained had a compounding effect of a decrease of 1.126 months on average, relative to other findings of guilt.

For both the minimum and maximum sentencing range values, the model did not necessarily explain the data's variability. The residual standard error was 9.067 months for the minimum sentencing range value and 3.375 months for the maximum sentencing range value. Nevertheless, the p-values of the coefficients rejected the null hypothesis that the coefficients were equal to zero. This is to be expected since, at any given day, within the scope of time of the data used, the Court of Common Pleas hands

down multiple unique cases with varying lengths of sentence (see Figure 3). Taking a random date from the dataset, Appendix C listed offenses of cases disposed with incarceration sentences for November 29, 2017. The offenses ranged from a Misdemeanor “DUI: General Impairment/Incapable of Driving Safely - 2nd Offense” (0.333-6 months) to Felony 1 Murder (180-360 months). There were also varying amounts of sentence lengths for the same offense due to the two constant determinants (offense gravity and prior record scores) of the Sentencing Guidelines. For example, the offense of “Receiving Stolen Property” was sentenced to 11.5-23 months for a Felony 3 conviction and 30-60 months for a Felony 2 conviction. The robbery offenses listed were 3-23 months in a Felony 1 case and 90-180 months for a Felony 2 conviction. Felony offenses of Burglary, Aggravated Assault, and “Manufacture, Delivery, or Possession with Intent to Manufacture or Deliver” generally fell under the overall median sentencing range values (11.5 to 23 months) on that day.

Figure 3. Scatter Diagram of Incarceration Sentence Lengths Per Unique Case Disposition Per Day at the Philadelphia Court of Common Pleas (April 2017-January 2019)



Source: Philadelphia Court of Common Pleas, Administrative Office of the Pennsylvania Courts (2019)

6 Discussion

The study found that the goals of the memo were accomplished. In the post-memo period, 3 out of 4 cases were plea-bargained, and the volume of incarceration sentences decreased by 40.4%. The memo had a highly statistically significant ($p < 0.01$) yet minimal effect on incarceration sentence lengths. The average incarceration sentence length of plea-bargained cases decreased by 1.26 to 2.039 months relative to cases that had other findings of guilt. Plea bargaining generally led to less harsh sentences than jury verdicts. On average, sentences tended to increase in length when only taking into account the time period. With the emphasis on alternatives to incarceration in the post-memo period, the rise may have indicated that the remaining cases sentenced to incarceration were of a higher level of severity.

This analysis did not control for criminal history, changes in case-level factors, and split sentencing. Thus, cases may not be comparable across time periods and geographical locations. In 2018, DAO rarely

charged offenses related to cannabis possession and sex work. Including these charges alongside severe offenses may have skewed comparisons across the independent variables (Gur, Hollander, & Alvarado, 2019). A more nuanced method to determine the effect of the memo would be to conduct an analysis by offense categories based on Federal Bureau of Investigation's Uniform Crime Reporting Handbook codes. Thus, the offenses within the dataset can be categorized comparable samples of offenses for analysis. Since the memo specifically focuses diverting low-level offenses, the subcategories of "Driving Under the Influence," "Prostitution and Commercialized Vice," "Stolen Property: Buying, Receiving, and Possessing," and "Drug Abuse Violations" can provide more exacting insights.

Notably, the memo had more of an effect on decreasing the length of incarceration before parole eligibility for plea-bargained cases than the total sentence length. This allows an incarcerated individual to return to their communities sooner and take advantage of reentry programs while under supervision. However, further study needs to look at how the memo affected probation rates. For example, since the volume of cases sentenced to incarceration decreased, was there an increase in the volume of probation sentences? In March 2019, the Krasner administration released a memo to diminish mass supervision since 42,000 individuals in Philadelphia are either on probation or parole. 40% of those detained in jail are individuals who have violated their terms of probation. Due to split sentencing, an individual may be sentenced to a combination of incarceration and probation that can last years and even decades (Krasner, New Philadelphia D.A.O Policies Announced March 21, 2019 to End Mass Supervision, 2019).

The decrease in sentencing length would allow the City of Philadelphia to save taxpayers money. Using the estimated cost of incarceration outlined in the memo, the cost of incarcerating an individual for 1.26-2.039 months would be about \$4,410.00-\$7,136.50. However, this calculation does not fully estimate how much the criminal justice system saves by this policy change. There are many factors to consider for costs incurred: transportation to and from jail; booking and screening; and incarcerating individuals waiting for trial or meeting bail. Nevertheless, the City of Philadelphia benefits through the reinvestment of funds for rehabilitative options (mental health and drug treatment) and reentry services (housing stabilization and workforce development) (Gur, Hollander, & Alvarado, 2019).

A significant policy implication of this memo is the institutionalization of a decarceral approach to sentencing decisions. Although these guidelines are only presumptive, the Krasner administration provided benchmarks that enable transparency and accountability to tackle deficiencies and elevate accomplishments. With the recent rise of "reform-minded prosecutors" who will institute similar initiatives, providing data-driven evidence is crucial to their ongoing efforts.

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Works Cited

- Administrative Office of the Pennsylvania Courts. (2019). *Common Pleas Court Docket Sheets*. Retrieved from The Unified Judicial System of Pennsylvania Web Portal: <https://ujportal.pacourts.us/DocketSheets/CP.aspx>
- American Bar Association. (2015, February 13). *Criminal Justice Standard for the Prosecution Functions*. Retrieved from Criminal Justice Standards: Fourth Edition: http://www.americanbar.org/groups/criminal_justice/standards/ProsecutionFunctionFourthEdition/

- Bazelon, E., & Krinsky, M. (2018, December 11). *There's a Wave of New Prosecutors. And They Mean Justice*. Retrieved from The New York Times: <https://www.nytimes.com/2018/12/11/opinion/how-local-prosecutors-can-reform-their-justice-systems.html>
- Bibas, S. (2010). The Need for Prosecutorial Discretion. *Faculty Scholarship*, Paper 1427.
- Blackledge v. Allison, 431 U.S. 63 (United States Supreme Court 1977).
- Blakely v. Washington, 542 U.S. 196 (United States Supreme Court 2004).
- Boehmke, B. (2018). *t-test: Comparing Group Means*. Retrieved from University of Cincinnati Business Analytics R Programming Guide: https://uc-r.github.io/t_test
- Cirillo, V. A. (1986). Windows for Discretion in the Pennsylvania Sentencing Guidelines. *Villanova Law Review*, 31(5), 1309-1349.
- Cowart, K. T. (2009). On Responsible Prosecutorial Discretion. *Harvard Civil Rights - Civil Liberties Law Review*, 44(2), 597-608.
- Cunningham v. California, 549 U.S. 270 (United States Supreme Court 2007).
- Davidow, R. P. (2017). Dealing with Prosecutorial Discretion: Some Possibilities. *Wayne Law Review*, 62, 123-129.
- Dean, M. M., & Fazlollah, M. (2018, 13 November). *FOP sues Kenney, Krasner, Ross over police 'do-not-call' list*. Retrieved March 2019, from The Philadelphia Inquirer: <https://www.inquirer.com/philly/news/breaking/fop-lawsuit-kenney-krasner-ross-police-do-not-call-list-philadelphia-20181113.html>
- Elliott, D. (2017, May 8). *Cases Pulled for Refusing the Death; Attorney Sues to Get Them Back*. Retrieved from National Public Radio: <https://www.npr.org/2017/05/08/527206026/taken-for-refusing-the-death-penalty-attorney-sues-to-get-cases-back>
- Engen, R. L., & Steen, S. (2000, March). The Power to Punish: Discretion and Sentencing Reform in the Way on Drugs. *American Journal of Sociology*, 105(5), 1357-1395.
- Fair and Justice Prosecution; Brennan Center for Justice; The Justice Collaborative. (2018). *21 Principles for the 21st Century Prosecutor*. Retrieved from Fair and Justice Prosecution, Brennan Center for Justice, Emily Bazelon, and The Justice Collaborative: <https://fairandjustprosecution.org/issues/a-new-vision-for-the-justice-system/>
- Fairfax, R. A. (2011). Prosecutorial Nullification. *Boston College Law Review*, 52(1243).
- First Judicial District of Pennsylvania. (2019, April). *About the Philadelphia Courts*. Retrieved from <http://courts.phila.gov>
- First Judicial District of Pennsylvania. (2019, April). *Philadelphia's Jail Population Detailed Snapshot Report: July 2015-March 2019*. Retrieved from <https://www.phila.gov/documents/philadelphia-jail-population-snapshot-reports/>
- Flannigan, K. (2018, December 28). *Police Group Accuses Suffolk DA-Elect of 'Reckless Disregard' for Massachusetts Laws*. Retrieved from NBC Boston 10 News: <https://www.nbcboston.com/news/local/Rachael-Rollins-Suffolk-District-Attorney-Elect-National-Police-Association-Bar-Complaint-503616441.html>
- Foxx, K. (2018). *Cook County State Attorney's 2017 Data Report*. Retrieved from Office of the Cook County State Attorney: <http://cookcountystatesattorney.org/about/data-reports>
- Gold, R. M. (2011). Promoting Democracy in Prosecution. *Washington Law Review*, 86(1), 69-124.
- Gur, O. M., Hollander, M., & Alvarado, P. I. (2019, February). *Prosecutor-Led Bail Reform: Year One*. Retrieved from The Justice Wire: Philadelphia District Attorney's Office Media Center: <https://medium.com/philadelphia-justice/prosecutor-led-bail-reform-year-one-transparency-report-76574546049c>
- Hager, E. (2018, March 20). *The DAs Who Want to Set the Guilty Free*. Retrieved March 2019, from The Marshall Project: <https://www.themarshallproject.org/2018/03/20/the-das-who-want-to-set-the-guilty-free>
- Hall, A. (2017). Using Legal Ethics to Improve Implicit Bias in Prosecutorial Discretion. *Journal of the Legal Profession*, 42(1), 111-125.
- Heinz, F., & Kalthoff, K. (2019, April 19). *Growing Criticism of Dallas County DA Reforms*. Retrieved from NBC Dallas 5 News.

- Kerstetter, W. A. (1990). Gateway to Justice: Police and Prosecutorial Response to Sexual Assaults Against Women. *Journal of Criminal Law and Criminology*, 81(2), 267-313.
- Krasner, L. S. (2018, February). New Policies Announced February 15, 2018. *Memo to Assistant District Attorneys*. Philadelphia, Pennsylvania.
- Krasner, L. S. (2019, March). New Philadelphia D.A.O Policies Announced March 21, 2019 to End Mass Supervision. *Memo to District Attorneys*. Philadelphia, Pennsylvania.
- Mackenzie, W., Stemen, D., Coursen, D., & Farid, E. (2009, March). *Prosecution and Racial Justice: Using Data to Advance Fairness in Prosecution*. Retrieved from The Vera Institute of Justice: <https://www.vera.org/publications/prosecution-and-racial-justice-using-data-to-advance-fairness-in-criminal-prosecution>
- McDowall, D., Loftin, C., & Wiersema, B. (1992). Comparative Study of the Preventive Effects of Mandatory Sentencing Laws for Gun Crimes. *Journal of Criminal Law and Criminology*, 83(2), 378-394.
- Melamed, S. (2018, April 6). *Philly judges block DA Krasner's deals for juvenile lifers*. Retrieved May 2019, from The Philadelphia Inquirer: <https://www.inquirer.com/philly/news/crime/krasner-juvenile-lifer-judge-rejecting-deals-20180406.html>
- Nicosia, N., MacDonald, J. M., & Arkes, J. (2013, June). Disparities in Criminal Court Referrals to Drug Treatment and Prison for Minority Men. *American Journal of Public Health*, 103(6), 77-84.
- Nielson, A. (2018). How Agencies Choose Whether to Enforce the Law: A Preliminary Investigation. *Notre Dame Law Review*, 93(4).
- Office of the Philadelphia City Commissioner. (2017, November). *2017 General Election Results: District Attorney*. Retrieved from <http://philadelphiavotes.com>
- Ouss, A., & Stevenson, M. T. (2019). Evaluating the Impacts of Eliminating Prosecutorial Requests for Cash Bail. Ouss, Aurelie and Stevenson, Megan, *Evaluating the Impacts of Eliminating Prosecutorial Requests for Cash Bail (February 17, 2019)*. George Mason Legal Studies Research Paper No. LS 19-08. Available at SSRN: <https://ssrn.com/abstract=3335138> or <http://dx.d>
- Palmer, C. (2019, 9 January). *Larry Krasner's first year as Philly DA: Staff turnover, fewer cases plenty of controversy*. Retrieved from The Philadelphia Inquirer: <https://www.inquirer.com/news/larry-krasner-philadelphia-district-attorney-staff-reform-cases-first-year-20190106.html>
- Pennsylvania Board of Probation and Parole. (2012). Sentence Types and Paroling Authority. In *Pennsylvania Board of Probation and Parole Procedures* (Vol. III).
- Pennsylvania Commission on Sentencing. (2019). *About the Commission*. Retrieved from <http://pcs.la.psu.edu/about-the-commission>.
- Pennsylvania Department of Corrections. (2017, December). *2017 Year End Inmate Statistic Report*. Retrieved April 2019, from <https://www.cor.pa.gov/About%20Us/Statistics/Pages/Reports.aspx>
- Pfaff, J. F. (2017). *Locked In: The True Cases of Mass Incarceration and How to Achieve Real Reform*. New York, New York: Basic Books.
- Santobello v. New York, 404 U.S. 257 (United States Supreme Court 1971).
- Schiraldi, V. (2018, April). *The Pennsylvania Community Corrections Story*. Retrieved from Justice Lab at the Columbia University of New York: <http://justicelab.columbia.edu/pennsylvania-community-corrections-story>
- Sklansky, J. A. (2016). The Nature and Function of Prosecutorial Power. *Journal of Criminal Law & Criminology*, 106(3), 473-520.
- Spohn, C. (2009). *How Do Judges Decide? The Search for Fairness and Justice in Punishment*. Los Angeles, California: SAGE Publications.
- Spohn, C., & Hemmens, C. (2012). *Courts: A Text/Reader (2nd Edition)*. Los Angeles, California: SAGE Publications.
- Tonry, M. H. (1996). *Sentencing Matters*. Ne York, New York: Oxford University Press.
- UCLA Statistical Consulting Group. (2019). *Robust Regression: R Data Analysis Examples*. Retrieved from UCLA Institute for Digital Research & Education: <https://stats.idre.ucla.edu/r/dae/robust-regression/>

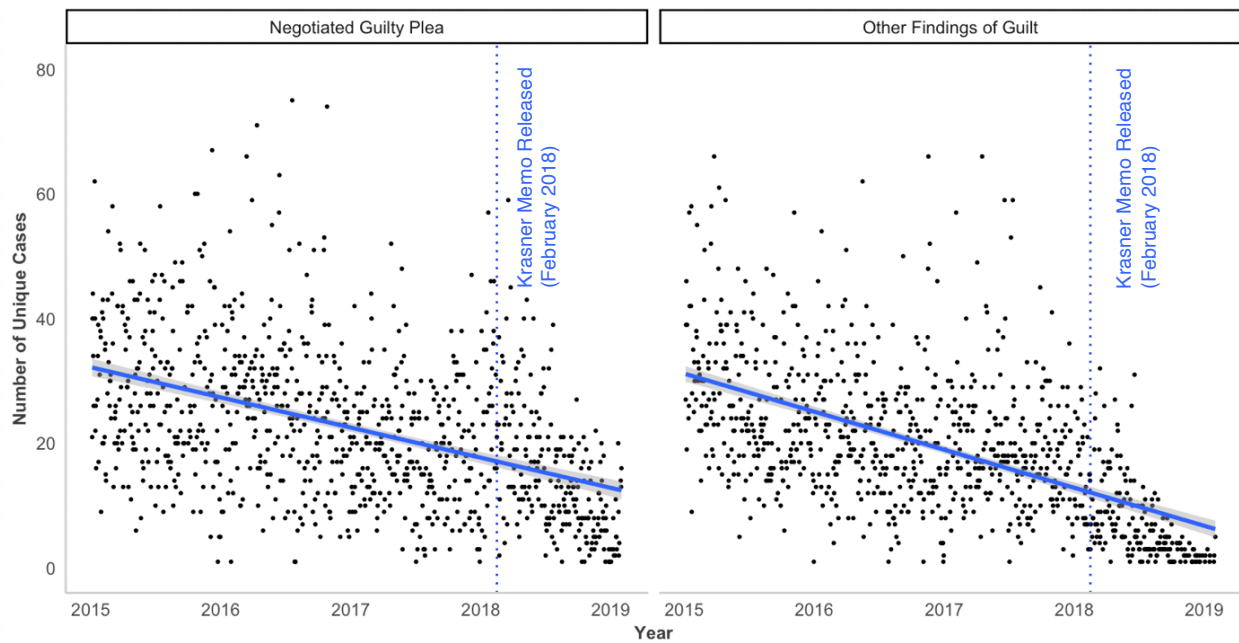
Vera Institute of Justice. (2019). *Reshaping Prosecution*. Retrieved from
<https://www.vera.org/projects/reshaping-prosecution-program>
Wright, R., & Miller, M. (2002, October). The Screening/Bargaining Tradeoff. *Stanford Law Review*, 55(1),
29-118.

Appendix A: Summary of Key Presumptive Guidelines from the February 2018 Krasner Memo

1. Charge lower gradation for certain offenses to reduce pre-trial incarceration rates and expedites the resolution of case dockets.
2. Emphasize diversion and re-entry approaches to “achieve accountability and justice while avoiding conviction where appropriate.”
3. Decline to charge offenses related to marijuana and prostitution cases against sex workers who have 0 to 2 prior prostitution convictions.
4. Make plea offers below the bottom end of the mitigated range of the PA Sentencing guidelines for most crimes.
5. At sentencing, Assistant District Attorneys (ADAs) must justify, on the record, when recommending incarceration. This includes a cost-benefit analysis and providing the financial cost of confinement (\$42,000-\$60,000 per year for an individual).
6. ADAs should seek alternative sentences (house arrest, probation, etc.) to incarceration if the sentencing guidelines range is between 0 to 24 months.
7. Any extraordinary circumstances must be approved by the unit supervisor and either the D.A. or the First Assistants.
8. Guidelines do not necessarily apply to homicides, violent crimes, sexual assault crimes, “felon in possession of a weapon”, white collar crimes (loss of \$50,00 or more), and cases involving attacks on the integrity of the judicial process. Any deviation from the Pennsylvania Sentencing Guidelines must obtain supervisory approval per specific case for these offenses.

Appendix B: Case Disposition Trends

Figure 4. Number of Unique Cases Sentenced to Incarceration in the Philadelphia Court of Common Pleas by Year (2015-2019)



Source: Philadelphia Court of Common Pleas, Administrative Office of the Pennsylvania Courts (2019)

Appendix C: Variation of Sentencing Lengths Per Day and Per Offense

Table 2. List of Offenses Sentenced to Incarceration on November 29, 2017 at the Philadelphia Court of Common Pleas

Statute	Offense Description	Grade	Disposition Type	Minimum Sentencing Months	Maximum Sentencing Months
18 Pa.C.S. 2702	Aggravated Assault	F1	Negotiated Guilty Plea	11.5	23
18 Pa.C.S. 3502	Burglary - Overnight Accommodation, No Person Present	F1	Negotiated Guilty Plea	11.5	23
18 Pa.C.S. 3502	Burglary - Overnight Accommodations; Person Present, Bodily Injury Crime	F1	Negotiated Guilty Plea	11.5	23
75 Pa.C.S. 3802	DUI: Controlled Substance - Impaired Ability - 2nd Offense	M1	Other Findings of Guilt	6	24
75 Pa.C.S. 3802	DUI: Gen Imp/Inc of Driving Safely - 2nd Offense	M	Other Findings of Guilt	0.33333333	6
75 Pa.C.S. 3802	DUI: Gen Imp/Inc of Driving Safely - 3rd Offense	M1	Negotiated Guilty Plea	9	23
35 Pa.C.S. 780-113	Manufacture, Delivery, or Possession with Intent to Manufacture or Deliver	F	Negotiated Guilty Plea	11.5	23
35 Pa.C.S. 780-113	Manufacture, Delivery, or Possession with Intent to Manufacture or Deliver	F	Other Findings of Guilt	9	23
18 Pa.C.S. 2502	Murder	F1	Other Findings of Guilt	180	360
18 Pa.C.S. 2502	Murder of the Second Degree	H2	Other Findings of Guilt	42	84
18 Pa.C.S. 2502	Murder of the Third Degree	F1	Other Findings of Guilt	96	192
18 Pa.C.S. 6105	Possession of Firearm Prohibited	F2	Other Findings of Guilt	11.5	23
18 Pa.C.S. 3925	Receiving Stolen Property	F3	Other Findings of Guilt	11.5	23
18 Pa.C.S. 3925	Receiving Stolen Property	F2	Negotiated Guilty Plea	30	60
18 Pa.C.S. 3929	Retail Theft - Take Mdse	F3	Negotiated Guilty Plea	3	23
18 Pa.C.S. 3701	Robbery - Inflict Threat Immediate, Bodily Injury	F2	Negotiated Guilty Plea	3	23
18 Pa.C.S. 3701	Robbery -Threat Immediate Serious Injury	F1	Other Findings of Guilt	90	180

Source: Philadelphia Court of Common Pleas, Administrative Office of the Pennsylvania Courts (2019)