New York State Justice Task Force

Recommendations Regarding Criminal Case Disposition Data

June 2021

I.   Introduction

In February 2021, the Charging Decisions Working Group of the New York State Justice Task Force recommended the creation of a new working group to evaluate criminal case dispositions and, particularly, the dismissals of felony cases in the local courts throughout the state. That recommendation resulted from the Charging Decisions Working Group's review of data from 2019, which demonstrated that the dismissal rates in the local criminal courts were high in general and statistically much higher for Black and Hispanic defendants. The Task Force adopted the Charging Decisions Working Group's recommendation to create a new working group, comprised of individuals with the requisite expertise in data analysis. *See* Recommendation Regarding Working Group on Uniform Collection, Organization, and Reporting of Criminal Case Dispositions Data (February 2021). In doing so, the Task Force recognized the necessity of understanding driving factors for the dismissal data before further work regarding potential recommendations to address racial and ethnic disparities could be considered.

This report is the product of the new Data Working Group's deliberations. The Data Working Group, chaired by Hon. Deborah Kaplan, Administrative Judge of New York County Supreme Court's Civil Term, met bi-weekly over the course of three months. Pursuant to the mandate by the Task Force in constituting the working group, its membership consisted of individuals from different criminal justice areas, including law enforcement, prosecutors, public defense providers, the judiciary, the Division of Criminal Justice Services ("DCJS"), and the Office of Court Administration's Division of Technology & Court Research ("DoTCR").

The Data Working Group primarily focused on answering whether the Task Force could use disposition data to determine if the criminal action may have been unjust at its inception. The working group examined data provided by DoTCR and discovered that the most frequently used dismissal codes were "Motion to Dismiss Granted" and "Interest/Furtherance of Justice CPL 170.30(1)(g)." These categories were identified as particularly problematic as they seemed to be used as "catchalls" that offered little information as to the actual reasons for the disposition.[1] For example, one concern raised was that dismissals due to uncooperative witnesses were being coded the same as dismissals due to unwarranted arrest charges. In other words, the same code was being employed for different purposes, blending prosecutions that could not go forward for lack of witness cooperation, as well as for criminal actions unjust at their inception. Of course, such blending makes it impossible to accurately use the data in order to make substantive recommendations for reform.

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[1] 81% of NYC and 67% of outside NYC local court dismissals were marked as either "Motion to Dismiss Granted" (NYC=74%, ONYC = 19%) or "Interest/Furtherance of Justice CPL 170.30 (g)(1)" (NYC = 7%, ONYC = 48%). These high percentages suggest a legal misuse of the "Motion to Dismiss Granted" code and indicate that these codes are being used inappropriately as a catchall for various dismissal reasons.

II.   Recommendations

This report recommends that DoTCR remove some of the broader categories and replace them with more specific ones identified by the working group that conform with the reasons for dismissal by the Court authorized by the Criminal Procedure Law ("CPL").[2]

As explained in greater detail below, this process should be done in phases beginning, as DoTCR has recommended, with changes to the Universal Case Management System ("UCMS"). UCMS is the case management system for the local criminal courts in New York City and all of the city and district local criminal courts outside of the City.

The first two phases of these recommendations will allow for a significant effect, while still providing data to the Task Force within a reasonable amount of time so that it may be used for additional reforms. The remaining phases are dependent on work DoTCR is currently undertaking to transfer systems off the mainframe. This work is a crucial step toward DoTCR's ability to implement the recommendations for the town and village local criminal courts.

Phase 1 (within 9 months of these recommendations):

The first phase of our proposal consists of the following actions:

1) Remove the following UCMS dismissal codes as they are overly broad and/or not based on the CPL:

    a. *Motion to Dismiss Granted*

    b. *Interest/Furtherance of Justice CPL 170.30(1)(g)*

    c. *Other Jurisdictional/Legal Impediment (CPL 170.30 (1)(f))*

2) Create the following dismissal codes to replace the ones above:

    a. Statewide:

        i. *Statutory Motion to Dismiss in Furtherance of Justice (CPL 170.40)*

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[2]   The CPL authorizes a motion to dismiss the local court accusatory instrument for the specified reasons set forth in CPL 170.30. There is no generic motion to dismiss. A motion to dismiss in furtherance of justice pursuant to 170.30(1)(g) is also not a generic code and requires compliance with CPL 170.40. Upon such a motion, the court must consider ten enumerated factors and, if granting the motion, "must set forth its reasons therefor upon the record." Whether the dismissal is a favorable termination for the defendant depends on a case specific analysis of the court's reasons for granting the dismissal to determine if the disposition was not inconsistent with innocence. *See Cantalino v. Danner*, 96 N.Y.2d 391 (2001).

        ii.   *Conditions Met- Post ARGN, on consent of parties and court (CPL 170.40) – (e.g. Nonjudicial Diversion)*

       iii.   *Uncooperative witness (CPL 170.30 (1)(f))*

       iv.   *Law enforcement misconduct (CPL 170.30 (1)(f))*

       v.   *Witness/Police officer credibility/error leading to suppression of evidence (CPL 170.30 (1)(f))*

       vi.   *Other insufficient evidence (CPL 170.30 (1)(f))*

       vii.   *Other reason preventing prosecution (CPL 170.30 (1)(f))*

       viii.   *Judicial Diversion (CPL Art. 216 Judicial Diversion Program for Certain Felony Offenders)*

   b. Outside New York City only[3]:

       i.   Decline to Prosecute (DTP)

          1. *DP – DAT processing problem or officer unavailable*

          2. *DP – Pre-arraignment diversion*

          3. *DP – No prosecution policy*

          4. *DP – Insufficient evidence*

          5. *DP - Prosecutorial merit of arrest charge*

          6. *DP – Unknown reason*

3) Create a memorandum issued by the OCA Executive Office explaining the importance of the new codes and how Judges will communicate the information to support staff for data entry.

4) Conduct training sessions for Judges and staff and create support documentation.

5) Include the new codes on the legislatively required data extracts ("OCA Stat-Act, Pretrial Release Data").

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[3] New York City has a separate "Decline to Prosecute" process through the NYC e-Arraignments application that cannot be revised at this time. In New York City, this process takes place prior to arraignment so that the court does not docket the case. Outside of New York City, this process happens post-arraignment and is currently grouped into a broader dismissal code.

Phase 2 (six months after phase 1 is completed):

1) Court Research will issue a report to the Task Force containing demographic and charge information for cases dismissed, separated by dismissal code reason.

2) DoTCR will request information from the New York City District Attorneys offices in order to produce a report containing demographic and charge information by decline to prosecute ("DTP") reasons. This will also be provided to the Task Force.

Phase 3 (cannot be completed until the new Criminal Disposition Reporting (CDR) system upload is finalized – 6/30/2024 is the estimated start date):[4]

1) Remove the Court Room Program ("CRP") dismissal code of "Dismissed – Interest of Justice" as an option from the Case Disposition Reporting ("CDR") menu.

2) Create dismissal codes that track the new UCMS options. At a minimum the following codes should be created:

   a. *Statutory Motion to Dismiss in Furtherance of Justice (CPL 170.40)*

   b. *Conditions Met- Post ARGN, on consent of parties and court (CPL 170.40*

   c. *Uncooperative witness (CPL 170.30 (1)(f))*

   d. *Law enforcement misconduct (CPL 170.30 (1)(f))*

   e. *Witness credibility/error leading to suppression of evidence (CPL 170.30 (1)(f))*

   f. *Other insufficient evidence (CPL 170.30 (1)(f))*

   g. *Other reason preventing prosecution (CPL 170.30 (1)(f))*

3) DoTCR will change the upload process to allow for these values to be transmitted to OCA.

4) Conduct training sessions for Judges and staff and create support documentation.

5) Include the new codes on the legislatively required data extracts ("OCA Stat-Act, Pretrial Release Data").

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[4] Information used by the Town and Village Justice Courts is transmitted to OCA using a mainframe system. Currently, no changes can be made to this system due to the lack of mainframe programmers. DoTCR is currently working to migrate this system to a non-mainframe process and any changes to the transmission must wait until this work is done.

6) DoTCR will report statewide dismissal codes to the Task Force upon request. In an effort to reduce the need for data reconciliation and duplicative work, this report proposes that DoTCR be responsible for the Task Force's data needs whenever possible. This will also ensure the consistency of the data reporting as DoTCR is responsible for creating the majority of the public facing data extracts.