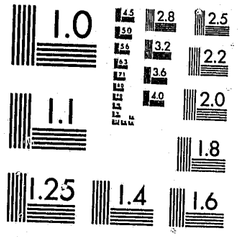

U.S. Department of Justice
Bureau of Justice Statistics

Bureau of Justice Statistics
Special Report

The Prevalence of Guilty Pleas

December 1984

In 1979, with the publication of "A Cross-City Comparison of Felony Case Processing," the Bureau of Justice Statistics inaugurated a statistical series designed to measure and document the flow of cases from arrest to final disposition in the prosecutor's office or court. One of the purposes of the project, now entitled "The Prosecution of Felony Arrests," is to provide data that can be used to analyze a variety of important criminal justice issues from reasons for arrest rejection to sentencing patterns in several jurisdictions. This special report uses data from that project to describe another important issue—the ratio of guilty pleas to trials. While computerized data from prosecutors cannot illuminate the nature of the process through which defendants plea guilty to criminal acts, such data are nonetheless useful for addressing several basic questions related to the prevalence of guilty pleas: How does the prevalence of guilty pleas vary across jurisdictions? Is there a connection between the prevalence of guilty pleas and prosecutors' decisions to reject cases at "screening" or to dismiss cases after filing? Are most pleas made to reduced charges or to the top charge? How do high trial and high plea jurisdictions differ? These questions are the focus of this special report.

Steven R Schlesinger
Director

The most common disposition of a felony arrest not rejected or dismissed is a plea of guilty. The Constitution guarantees the right to trial by jury and protects against self-incrimination, but for at least 60 years defendant pleas of guilty, not trial by jury, have been the more common means of criminal case conviction.[1] Although defendants have a right to a trial to determine guilt or innocence, many decide, for whatever reasons, to plead guilty to the original or reduced charges. Bureau of Justice Statistics data obtained from prosecutors in a number of urban jurisdictions show that in 1979 forty-five of every 100 felony arrests ended in guilty pleas, while only 5 ended in trials (4 guilty verdicts and 1 acquittal). The remaining dispositions (50 of every 100) were rejections and dismissals.[2] Consistent with prior studies, guilty pleas were found to outnumber trials by about ten to one.

Recognition of this fact—that the majority of convictions are the result of a guilty plea rather than a verdict of guilty—has, since the mid-1960s, fostered a vigorous national debate over the nature and propriety of the guilty plea process. At the center of this debate is the role the prosecutor plays in obtaining guilty pleas.

[1]Albert Alschuler, "Plea Bargaining and Its History," Columbia Law Review, vol. 79 (1979); Lawrence M. Friedman, "Plea Bargaining in Historical Perspective," Law and Society Review, vol. 13 (1979); Milton Heumann, Plea Bargaining. (Chicago, IL: University of Chicago Press, 1978).

[2]Barbara Boland, et al., The Prosecution of Felony Arrests, 1979. (Washington, DC: Bureau of Justice Statistics, 1983).

The plea process

Many pleas to reduced charges are not the result of negotiations between the prosecutor and defense counsel, but rather reflect a decision on the part of the prosecutor that the appropriate conviction charge should be a less serious crime than the initial arrest or court charges. Often such decisions are made at screening or in the early pre-bindover stages of felony case processing, before the prosecutor has any opportunity to talk with defense counsel. The reduction of a felony charge to a misdemeanor, for example, most often reflects the prosecutor's decision not to carry certain types of cases forward to the felony court rather than the result of a negotiated plea.

Rather than viewing the plea process from a total system perspective, most studies have focused on the guilty plea process only in the felony court. But even after cases have been bound over to the felony court, the nature of the plea process is more varied than the notion of a prosecutor and defense attorney negotiating charge reductions indicates.

Some view the idea of inducements by prosecutors to encourage guilty pleas as a violation of both the Fifth

and Sixth Amendments, while others view the very same inducements as excessive leniency that violates the Constitutional protection of domestic tranquility. Victims often see plea bargaining as a practice that further removes them from the criminal justice system. And others see it as an "under-the-table" procedure that serves primarily to undermine respect for the criminal justice system.

Unfortunately, there has been relatively little quantitative analysis of either the causes or consequences of the prevalence of guilty pleas. A major reason for this is insufficiency of data. This special report presents results of an analysis of a recently assembled BJS data base to enhance our understanding of the guilty plea process. The data are from the Bureau of Justice Statistics project on the Prosecution of Felony Arrests for 1980.[3] The data in this report cover 14 jurisdictions, all with populations of 200,000 or more. In each jurisdiction, the data were obtained from a computer-based management information system called PROMIS (Prosecutor's Management Information System) developed by INSLAW, Inc. The data refer to cases initiated in 1980 or 1981.

It is important to clarify at the outset that this special report focuses directly on the prevalence of pleas, and not on the process of plea negotiation or "plea bargaining," per se. It has been discovered previously that even in jurisdictions where the process of plea negotiation is terminated, approximately 80% of all convictions are obtained by way of pleas rather than trial verdicts.[4]

Table 1. Number of pleas per trial, caseloads, and crime rates (based on all felony arrests)[a] for selected jurisdictions

Jurisdiction	Pleas per trial	Pleas and trials	Index crime rate[b]	Population
Geneva, Illinois	37	680	6,400	278,000
Manhattan, New York	24	17,033	13,800	1,428,000
Cobb County, Georgia	22	1,456	8,800	298,000
Littleton, Colorado	19	699	8,400	330,000
Golden, Colorado	18	1,129	5,200	374,000
Rhode Island	15	3,250	9,100	947,000
Colorado Springs, Colorado	12	809	8,200	317,000
St. Louis, Missouri	10	2,533	14,300	453,000
Salt Lake, Utah	9	1,338	11,700	619,000
Lansing, Michigan	8	1,057[c]	6,300	272,000
Tallahassee, Florida	7	684	12,000	202,000
Washington, D. C.	5	4,024	10,000	638,000
New Orleans, Louisiana[d]	4	3,103	9,600	557,000
Portland, Oregon[d]	4	2,986	11,200	563,000
Jurisdiction median	11	1,400	9,400	414,000

[a] See methodological note at end of this bulletin.
[b] The index crime rate is the number of serious crimes (including murder, rape, aggravated assault, burglary, larceny, motor vehicle theft, and arson) reported per 100,000 residents. The numbers shown refer to the largest city (or cities) within each jurisdiction.
[c] Estimate of 1,057 pleas and trials is based on the proportion of 2,403 felony arrests filed and the proportions of filed felony cases that were disposed as guilty pleas and trials.
[d] Approximately half the trials in New Orleans and Portland are bench trials (heard by a judge only without a jury). When bench trials are excluded, both jurisdictions still have a plea-to-trial ratio below the 14-jurisdiction median.

Pleas, trials, and caseloads

While the decision to plead guilty or go to trial rests with the defendant, the decision may be affected by the prosecutor's decisions or policies. In theory, a defendant may plead guilty and thereby accept the certainty of a conviction, or he or she may go to trial with some probability of being found innocent and some probability of being convicted.

The defendant's choice of which alternative to pursue depends in part on the probability of conviction if tried and in part on the relative severity of sentence given upon conviction in a trial as opposed to the severity of sentence one would receive upon pleading guilty. The prosecutor can affect the defendant's probability of conviction if tried by deciding how to allocate his trial resources; similarly, the prosecutor can affect sentencing differentials between pleas and trial by making sentencing recommendations to the judge.

Consequently, the ratio of pleas to trials indicates how defendants' individual decisions, taken collectively, are made in light of the probabilities confronting them. This ratio is presented for the 14 reporting jurisdictions in table 1.

The median ratio of pleas to trials among these 14 jurisdictions is 11 pleas for every trial. Around this median, however, there exists a great deal of variation. Three jurisdictions have more than 20 pleas for every trial, while three others have only 4 or 5 pleas per trial. What accounts for this difference in the prevalence of pleas among jurisdictions?

Data presented here suggest that high crime rates and the press of a large volume of cases may not be a sufficient explanation. Among the high plea jurisdictions (those with plea-to-trial ratios above the median), four are suburban jurisdictions (Cobb County, Geneva, Golden, and Littleton) with generally lower crime rates and average or below average numbers of cases.

Similarly, among the high trial jurisdictions, three (New Orleans, St. Louis, and Washington, D.C.) are inner city jurisdictions with high crime rates and above average numbers of cases.

For these 14 jurisdictions, with the exception of Manhattan, there does not appear to be a strong association between the simple volume of cases and the plea-to-trial ratio.

These data, however, do not control for the availability of resources. High plea jurisdictions, regardless of the absolute volume of cases, may have fewer resources to process each case.

Pleas and case selectivity

Jurisdictions that have a high fraction of trials tend to be more selective in the early stages of prosecution. This can be seen by dividing the 14 jurisdictions shown in the previous table in two equal size groups—those with 12 or more pleas per trial (the "high plea" jurisdictions) and those with 10 or fewer (the "high trial" jurisdictions). The mean percentage of cases rejected at screening or dismissed after filing among jurisdictions, shown in table 2 (based on the 9 jurisdictions for which such data were available), is similar between the high plea and high trial groups; but the high trial jurisdictions reject a higher fraction of cases before filing.

Why do the high trial jurisdictions reject more cases at screening? One explanation is that dropping cases prior to court filing frees up court resources for more trials. Another explanation is the prosecutor's policy. The minimum legal standard for filing charges is "probable cause," but in some jurisdictions the prosecutor's screening and charging policy is based on the more stringent trial standard of "guilt beyond a reasonable doubt."

Table 2. Mean percentage of felony arrests rejected or dismissed among jurisdictions in high plea and high trial categories.

Jurisdiction	Percent rejected	Percent dismissed	Total
Four high plea	6%	41%	47%
Five high trial	27	22	49

In those jurisdictions, cases are not filed unless the evidence, both physical and testimonial, is considered sufficient to prove guilt at trial. Vigorous efforts are made before filing to determine whether victims and witnesses will be available and willing to testify at trial. If they will not return to court to testify or do not want the case to proceed, charges will not be filed. Since the cases that survive a rigorous screening process are strong ones, prosecutors are not likely to accept pleas to lesser charges unless resource limitations demand it.

Pleas to top charge

Are the high plea jurisdictions necessarily more lenient? Given the notion that guilty pleas are supposed to be the result of promises of leniency by the prosecutor, high plea jurisdictions might be expected to grant charge reductions more frequently than high trial jurisdictions.

One readily available indicator of charge reduction is the rate at which defendants who plead enter a plea to the top charge. The percentages of pleas to the top charge in the felony courts of three high plea and five high trial jurisdictions are shown in table 3. Pleas to the top charge are more prevalent in the high trial jurisdictions (the mean percentage of pleas made to the top charge among the five jurisdictions was 68 percent) than in the high plea jurisdictions (47%).

What is equally interesting is that most defendants in the jurisdictions studied plead guilty to the top charge filed by the prosecutor. This result is not unique to the eight jurisdictions in table 3. Similar data on felony court dispositions for 15 jurisdictions show that close to 60% or more of the guilty pleas are to the top charge in 11 of the 15.[5]

However, a plea to the top charge does not necessarily imply the absence of negotiation or concession. In some jurisdictions, the substance of plea discussions is focused not on the charge but on the sentence. In several jurisdictions, these discussions routinely include the judge. And even where charges are the subject of prosecutor-defense counsel discussions, the primary issue is not always the reduction of the top or lead charge but may be the dismissal of other included charges or another pending case. Where judges give concurrent rather than consecutive sentences, it is unclear how this type of bargaining affects the term of incarceration given to the defendant.

In some jurisdictions, the dropping of lesser charges can remove the risk of sentence "enhancements." A felony gun possession charge, for example, is a common lesser charge that automatically adds time to the sentence in many jurisdictions. In such cases, dropping lesser charges in exchange for a defendant's plea to the top charge may shorten the period of incarceration.

In still other jurisdictions, the prosecutor's plea offers are not "negotiated" but are presented to the defense on a take-it-or-leave-it basis. This is the case in New Orleans. The office plea position in each case is determined at the time of screening by one of the screening assistants, usually an experienced prosecutor, before contact with the defense. Trial attorneys who handle cases after they are filed in court are not allowed to reduce charges or make sentence recommendations.

If defendants do not plead to the charges as filed, assistants are required to take the case to trial. Some defendants are allowed to plead to a reduced charge when the evidence deteriorates (e.g., when a witness changes his or her testimony) or when new evidence indicates that such a reduction is legally warranted, but this is not common and requires a written explanation by the trial assistant.

Indications of charge reductions represent an unknown mixture of evidence weaknesses and prosecutorial concessions. The precise mix is difficult to establish analytically because of limitations in measuring the quality of evidence for each charge in each case.

Table 3. Mean percentage of guilty pleas to the top charge in felony court among jurisdictions in high plea and high trial categories.

Charge	Jurisdictions: Three high plea	Five high trial	All eight
Total	100%	100%	100%
Pled to top charge	47	68	60
Pled to lesser charge	53	32	40

Table 4. Mean percentage of felony or misdemeanor convictions (on original felony arrests) resulting in prison or jail sentences among jurisdictions in high plea and high trial categories

Type of crime	Jurisdictions: Five high plea	Four high trial
All crimes		
Prison or jail	45%	42%[a]
Prison	18	24
Robbery		
Prison or jail	74	64[a]
Prison	54	53
Burglary		
Prison or jail	52	48[a]
Prison	21	29
Larceny		
Prison or jail	38	36[a]
Prison	9	17

[a] Total incarceration rates are calculated with three jurisdictions; one could not be included because of insufficient data.

Guilty pleas and sentences

Another way to address the issue of leniency and plea bargaining is by relating plea rates to the severity of sentences. Table 4 presents data on the proportion of convicted defendants sentenced to prison or jail in five high plea and four high trial jurisdictions.

The five high plea jurisdictions are slightly more likely to sentence convicted defendants to a term of incarceration, but they sentence a smaller fraction of those convicted to prison (defined here as a year or more of incarceration). The mean percentage of convictions resulting in a prison sentence among the high plea jurisdictions is 18%, compared to a mean of 24% for the high trial jurisdictions.

The differences in imprisonment rates are slight for the violent crime of robbery, but more pronounced for the less serious property crimes of burglary and larceny.

While these findings presume a direct relation between pleas and sentences, it should be noted that other factors may explain the association: variations in the severity of crimes within a given category; the length of a defendant's prior history of crime; public opinion in each jurisdiction; and so on.

When sentences are measured as a fraction of all arrests rather than of all convictions (table 5), high trial jurisdictions show a slightly higher fraction of long-term incarcerations and a substantially lower fraction of any incarceration. While these results are not definitive (largely because the numbers of jurisdictions in each group are small), they suggest that punishment

[3] Barbara Boland and Elizabeth Brady, The Prosecution of Felony Arrests 1980 (Washington, DC: Bureau of Justice Statistics, forthcoming).

[4] Michael L. Rubenstein, Stevens H. Clarke, and Teresa J. White, Alaska Bans Plea Bargaining (Washington, DC: U.S. Department of Justice, 1980).

[5] Boland and Brady, op cit. The 15 jurisdictions include the 8 in table 3 plus 7 others. The additional 7 were not included elsewhere in this special report because plea and trial data were available only for felony court dispositions.

may be more certain in high plea jurisdictions and more severe in high trial jurisdictions.

Table 6. Mean number of days from felony arrest to plea or trial for all felony arrests filed for selected jurisdictions

Jurisdiction	Plea/trial ratio	Mean days from arrest to Plea	Trial	Difference	Mean days from arrest to all post filing dispositions
Geneva, Illinois	37	109 days	175 days	66 days	108 days
Manhattan, New York	24	88	274	186	101
Golden, Colorado	18	146	214	68	162
Colorado Springs, Colorado	12	126	189	63	131
St. Louis, Missouri	10	195	237	42	195
Salt Lake City, Utah	9	121	211	90	124
Washington, D.C.	5	127	267	140	130
New Orleans, Louisiana	4	78	122	44	85
Portland, Oregon	4	84	109	25	86

Pleas and time in the system

Another factor that is understood to be related to pleas of guilty is the length of time that cases are in the court. One reason given for plea bargaining is that it enables the prosecutor to expedite the flow of convictable cases through the court.

The data show clearly that guilty pleas are disposed more quickly than trials. The time from arrest to disposition is longer for cases that go to trial than for cases in which defendants plead guilty in all jurisdictions shown in table 6. The amount of additional time required for trials varies considerably, however, among jurisdictions: in New Orleans, Portland, and St. Louis, trials take an additional month to 6 weeks to process, while in Manhattan and Washington, D.C., trials take approximately 5 to 6 months longer to dispose than pleas.

It is also noteworthy that speedy dispositions overall do not appear to be related to whether the jurisdiction has a high plea rate. The jurisdictions with the shortest time intervals from arrest to disposition, Portland and New Orleans, are high trial jurisdictions. The average time from arrest to disposition is even less for the high trial jurisdictions when arrests rejected at screening are included, since arrest rejections tend to be more prevalent in those jurisdictions.

Summary and implications

Most convictions do not follow a trial. Prior studies report plea-to-trial ratios of about 10 to 1; among the jurisdictions sampled here, pleas outnumber trials by 11 to 1. Jurisdictions vary greatly, especially in the rate at which they dispose of cases through trial. In some jurisdictions, there are more than 20 pleas for every trial; in others, 1 in 4 or 5 cases goes to trial.

These results, when combined with earlier ones on the plea-to-trial ratio in jurisdictions that do not engage in plea negotiation[6], suggest that the plea-to-trial ratio is not likely to fall much below 4 to 1 even in jurisdictions where prosecutors do not negotiate with defendants. The jurisdictions with higher ratios may engage more often in negotiation, as suggested by the generally lower percentages of pleas to the top charge in the high plea jurisdictions.

Table 5. Mean percentage of arrests resulting in prison or jail sentences among jurisdictions in high plea and high trial categories

Sentence	Jurisdiction: Three high plea	Two high trial
Prison or jail	27%	18%
Prison	9	11

The data from these jurisdictions also suggest, contrary to a common belief, that the majority of felony pleas are to the top charge. While sentence concessions and the dropping of less serious charges may accompany many of these pleas, in the aggregate of the jurisdictions studied here, most pleas were to the top charge.

The data presented here suggest that high trial jurisdictions differ from those with a high proportion of pleas in several important respects:

- they tend to be more selective in screening arrests, rejecting cases at higher rates than the high plea rate jurisdictions;
- they appear to be less likely to reduce the top charge when accepting pleas of guilty than are the high plea rate jurisdictions;
- while they may produce fewer incarcerations per arrest, the high trial jurisdictions tend to produce slightly more long-term imprisonments per arrest, and more per conviction, than do the low trial rate jurisdictions. Thus, the high trial jurisdictions tend to have an implicit policy of relatively severe sanctions, while the high plea jurisdictions tend to have one of somewhat more certain sanctions.

As more data become available, it will be possible to validate these findings further. More detailed data, and data from other jurisdictions and later periods, can be used also to address several related issues:

- By jurisdiction and offense, to what extent do concessions result from charge reductions rather than direct sentence reductions?
- What is the average concession, by offense, under each system?
- What role do resource constraints (i.e., prosecutors, judges, and courtrooms per case) play in the plea process?
- To what extent is the plea process shaped by regional, demographic, and urban-rural variation?
- Does the plea process work differently in states with determinate sentencing systems?
- To what extent are plea agreements overturned by parole boards that base release decisions on the "real" offense rather than the conviction offense?

Methodological notes

1. The calculation of the plea-to-trial ratio is based on all felony or misdemeanor guilty pleas and trials resulting from a felony arrest. This departs from the standard measure used by prosecutors—pleas and trials obtained only in the felony court. In a number of jurisdictions, however, half or more of the convictions following felony arrest are to misdemeanors in the misdemeanor court. Because jurisdictions vary considerably in the extent to which felony arrests are carried forward to the felony court, to derive comparable cross-jurisdiction statistics requires counting both misdemeanor and felony convictions.

The sample of 14 jurisdictions included in table 1 was selected because it was possible in each jurisdiction to trace all felony arrest convictions, and thus include both felony and misdemeanor convictions as well as long and short term incarcerations in a number of jurisdictions. Subsequent tables do not include all 14 jurisdictions because not all variables of interest could be measured for every jurisdiction.

[6] Rubenstein, et al., op cit.

2. The "high plea" and "high trial" partitioning of jurisdictions used in most of the tables presented here was designed primarily to achieve two objectives: to present more clearly and simply the findings obtained from a more sophisticated analysis and to preserve some degree of anonymity among the participating jurisdictions.

Analyzing data for the individual jurisdictions tends to produce stronger results because the simple grouping into high plea and high trial jurisdictions loses the variation of relevant factors within the two groups. This can be seen by dividing the tables into finer divisions. In table 3, for example, the difference in pleas to the top charge between the high plea and high trial jurisdictions is 21 percentage points. If we redefine "high plea" as 18 pleas per trial or more and "high trial" as 8 pleas per trial or less, thus dividing the table into three roughly equal-size groups rather than two, the difference grows appreciably: 63 percent of all pleas in the high trial jurisdictions are pleas to the top charge, while only 31 percent of all pleas in the high plea jurisdictions are pleas to the top charge — a 32 percentage point difference under this finer grouping system.

3. Because each jurisdiction maintains a different data set, jurisdictions were frequently omitted from the various tables. Most of the jurisdictions, for example, do not maintain data on incarcerations; only five are reported in table 5. It is possible that missing data biases some of the results, although the direction of any such bias is not evident. Data were missing for the high trial jurisdictions at about the same rate as for the high plea jurisdictions.

4. The results reported here are also subject to potential biases inherent in simple bivariate analysis. Controlling for other variables and for "feedback" effects (e.g., by using a multivariate structural equation technique) could produce different results. The results of table 4, for example, could suggest that more long-term imprisonment tends to result from a strategy of screening more cases out and taking more to trial; alternatively, they could suggest that crime mix differences from jurisdiction to jurisdiction cause some jurisdictions to have higher trial rates and more long-term imprisonments and others to have higher plea rates and more overall incarcerations. Disaggregating sentence differentials by pleas and trials in each jurisdiction could provide further insights into the effects of plea policies on sanctions.

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