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INVESTIGATIVE REPORT; BARGAINING FOR JUSTICE; Do a crime, serve less time in Norfolk. DAs take different routes to justice.

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The Patriot Ledger Criminals charged in **Norfolk County** are more likely to get a plea deal with less prison time than those who commit similar crimes in **Plymouth** County, according to a Patriot Ledger analysis of court data.

While high-publicity trials - with juicy testimony and suspenseful verdicts - tend to captivate the public and grab headlines, the majority of cases are actually resolved through pleas hashed out under the public's radar.

A review of available court records shows that the vast majority of criminal cases adjudicated in Norfolk Superior Court never reach trial, with 74 percent being settled by plea agreements, a number that's on par with the state average. Even in **Plymouth** County, which has the lowest rate in the state, 66 percent of cases were settled by pleas in the 12 months ended June 30, 2004, the most recent period for which data was available.

"As somebody said, 'In the halls of justice, more justice is done in the halls,'" said retired Quincy **District** Court Judge Albert Kramer.

The Ledger analysis - which examined nearly 800 pleas stemming from cases originating from 2002 through 2004 in Norfolk and **Plymouth** counties - found that different approaches to how and when prosecutors bargain can yield outcomes that vary significantly from county to county.

Among the findings: Defendants who copped to pleas in **Norfolk County** to forcible rape and attempted rape were sentenced to less than half the amount of time as those in **Plymouth** County. Norfolk defendants who admitted guilt in cases that involved drugs and robbery were less likely to receive incarceration than those who pleaded guilty to similar crimes in **Plymouth**. At least some charges were dropped or reduced in nearly half of **Norfolk County** robbery cases. Only two robbery cases had charges reduced in **Plymouth** County.

But at the same time, **Norfolk County** was able to usher cases through the system more

quickly.

In that county, 8.4 percent of pending cases were more than three years old as of June 2004, well below the state average of 15.4 percent. In **Plymouth** County, 14.5 percent of cases fall into that category. **Norfolk County District Attorney** William **Keating** said his office looks at every case individually when deciding whether to strike a deal, and weighs the risk of going to trial and whether a negotiated settlement might spare victims further trauma. "We do it with the perspective of, this victim is here with us, they're trusting us. We're going to do everything we can to make them safest, and make the public safest as well," **Keating** said. "That's where the passion of being a prosecutor is, not to put notches in your belt, but to do the best you can. That's where we're coming from."

Plymouth District Attorney Timothy Cruz, on the other hand, said that while defendants can always plead guilty, he won't bargain.

"There's no quid pro quo," he said. "You plead guilty to this and we'll get rid of that - we don't do that."

Rape

Rape cases provide a stark contrast between Norfolk and **Plymouth** counties.

The Patriot Ledger examined 20 **Norfolk County** cases disposed of through plea agreements in which a defendant was initially charged with forcible rape or attempted rape. The actual rape charge was dropped 13 times. Defendants instead pleaded guilty to lesser charges such as indecent assault and battery, or simple assault and battery.

Compare that to **Plymouth** County, where forcible rape or attempted rape charges stuck in 9 of the 11 pleas reviewed by the Ledger.

While the Norfolk defendants who pleaded guilty after being charged with forcible rape or attempted rape received an average minimum sentence of 1.7 years, those in **Plymouth** got 4.6 years.

The reduced charges can affect more than just time behind bars.

A defendant who pleads to a nonsexual crime such as assault and battery doesn't have to register with the statewide sex offender database, for example. And in some pleas that do involve sex crimes, judges have discretion through sentencing to spare the defendant from registering as a sex offender, as was the case with Canton teens Justin Kesner and Justin Goldstein, who pleaded guilty to indecent assault and battery for a 2002 assault.

Jeanmarie Carroll, chief of **Keating's** sexual assault and domestic violence unit, disagreed with the Ledger's methodology when reviewing rape cases, saying so-called statutory rape - sex with a child younger than 16 - should have been included in any analysis.

The Ledger used definitions from the FBI Uniform Crime Reporting program as a guide when classifying crimes, and the program does not include statutory rape in the same category as forcible rape.

More broadly, **Keating** said the Ledger's statistics don't tell the entire story, and especially ignore the special attention that must be paid to victims in sexual assault cases in deciding whether to press for a trial or settle the case by plea.

"In each and every one of those cases, the victim indicated that they wanted the finality of ending it at that stage of the case," **Keating** said. "There are many reasons the victim might have wanted it.

"They might not have wanted to go forward and testify. They might have been satisfied with the conditions of probation. They might have wanted the finality of an agreed upon plea. ... They don't keep having to go back and relive this. That's what we found consistently with those cases."

In such cases, accepting a plea that involves probation and gets the crime on someone's record can be better than going to trial without the victim's support and losing outright, **Keating** said.

But Wendy Murphy, a nationally recognized victims' rights attorney and a professor at the New England School of Law, called that explanation "the ultimate in blame-the-victim tactics.

"How many prosecutors say in a murder prosecution or a bank robbery prosecution or a home invasion prosecution that we dropped the charges or we let a murderer plea to assault because the victim's family didn't want to testify or because we wanted to spare them the trauma?" she said.

Murphy said the Ledger's findings raise the question of what the "going rate for rape is" in each county.

"Are people in one county better protected than in another county, and how fair is that?" she said. "The public expectation is that this crime is prosecuted with a fair amount of uniformity."

Drugs

The differences in the way pleas are handled is also evident in other major crime categories that affect safety and quality of life, including drugs, robbery and assault.

Of 59 **Norfolk County** drug pleas reviewed by the Ledger, defendants were slapped with an average minimum sentence of 2 years. That includes 16 defendants - or 27 percent - who got no time.

Drug pushers and users who pleaded guilty in **Plymouth**, by contrast, face an average 3.1-year minimum sentence. Only 9 percent walked away without a jail or prison sentence.

In both counties, some defendants were able to dodge minimum terms when a felony charge of a drug violation near a school was dropped, reduced or not pursued.

In **Norfolk County**, defendants had all school zone violations dropped in 12 of 14 cases reviewed by the Ledger. In **Plymouth** County, the charges were dismissed, dropped or not pursued against 16 of 40 defendants.

Keating said that in the Norfolk cases where the charge was dropped, students were never involved. In all except one case, the drug buy - including the location - was arranged by police, he said.

Tom Finigan, the office's chief of narcotics prosecution, added that in cases where the school violation charge is dropped, the defendant has often agreed to plead

guilty to another, more serious charge that carries a longer sentence. But in three Norfolk cases reviewed by the Ledger, the defendant received less than the mandatory two-year sentence the school violation charge carries.

In **Plymouth** County drug cases, defendants received less than two years in eight of the 16 cases in which the school violation charge was dropped.

For his part, Cruz said drug cases in general are one area where his prosecutors are willing to give more leeway if police or other law enforcement officials want the defendant's help nabbing higher-up dealers or suppliers. In exchange for setting up or participating in a buy, for example, prosecutors might agree to reduce a charge.

"A lot of times there may be a cooperating witness who may be able to provide important information about the other people," Cruz said. "Especially in Brockton, drug cases come with guns, and whenever we can get guns off the street, we're going to do that."

Other violent crimes

Reviews of pleas in robbery and assault cases in the two counties found similar trends.

Of 155 **Norfolk County** pleas reviewed by the Ledger involving robberies and attempted robberies, at least one charge was dropped, reduced or not pursued in 49 percent of the cases. In some instances, serious charges such as armed and masked robbery were abandoned. In other cases, lesser charges of being an accessory after the fact, or in some cases motor vehicle charges, were dismissed.

The defendants whose cases were disposed of by plea received an average minimum sentence of 2.2 years.

In **Plymouth** County, by comparison, defendants pleaded guilty to all original charges in 67 of 69 cases reviewed by the Ledger. In both the remaining cases, armed robbery was reduced to larceny from a person.

In **Plymouth** County, the sentence for pleas in robbery cases averaged 2.7 years, or 23 percent longer than in **Norfolk County**.

In 102 assault cases in **Norfolk County**, criminals who fessed up faced a minimum average jail or prison sentence of 2.3 years. In 26 **Plymouth** County cases, criminals landed behind bars for an average of 3.3 years.

Again, **Keating** took issue with the methodology the Ledger used, saying armed robberies should not be lumped in with unarmed robberies, for example, and assaults with weapons should not be grouped with those in which weapons were not used. In reporting both crimes, the FBI includes offenses with and without a weapon in the same category.

And he said that, in general, the prison and jail sentences calculated by the Ledger do not give a complete view of criminals' punishments because they do not account for probation.

"As a criminal justice system, they're trying to get more probation time and more parole time," **Keating** said. "The modern trend is that if the criminal reoffends, there needs to be some kind of mechanism to put him away for a long time right away."

Other factors

David Siegel, a criminal law professor at New England School of Law, said shorter sentences or a greater willingness to plea-bargain in one office can't be viewed as evidence that the prosecutor isn't doing his job.

"It may be that in the other county cases should have been dismissed or should have been resolved less severely more often," he said. "It's not clear to me that there's a problem if one county has less clear outcomes."

Both **district** attorneys and experts said there are other factors that could affect sentences meted out or pleas that are accepted.

Chief among those is defendants' criminal histories, said Michael Cassidy, a Boston College law professor and a former assistant attorney general.

"That's going to be the primary thing that is going to influence a prosecutor," said Cassidy, who headed the attorney general's criminal bureau. "Has he done it before? Has he served jail time before? ... Even charged with identical offenses, that explains the difference."

County demographics could also affect outcomes, since tough urban areas such as Brockton might have more repeat criminals, or more violent crimes that carry stiffer penalties, Cassidy said. And both **Keating** and Cruz noted that the jail or prison times ultimately handed out by judges are often not what their offices recommended.

Still, Cassidy said prosecutors' recommendations play a role in determining sentences.

"In an adversarial system we expect both sides to be advocates for their position," he said. "A judge probably hears the prosecutor's recommendation and the defense's recommendation and says probably a fair result is somewhere in between."

While declining to comment on the other's strategies or results, **Keating** and Cruz both said they think their policies are best for their counties.

"At the end of the day, we join the victims in being satisfied with the outcome," **Keating** said.

Cruz also cited the victims as being a major factor in how his office disposes cases.

"I have to be prepared to try any indictment that we have and let the chips fall where they may,'' he said. "I think that's what people want. I don't think they want to see us making deals and knocking a first-degree murder down to a manslaughter. The victims in these cases have a right. They have a right to have justice." Karen Eschbacher may be reached at keschbacher@ledger.com.

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