Center for Justice Innovation

POLICY BRIEF

A Moment for Misdemeanor Policy Change

While the national gaze tends to fixate on federal courts, state and local courts handle more than 95 percent of all legal matters in the United States.[1]And while felony trials often represent the workload of criminal court judges and attorneys in the popular imagination, lower-level misdemeanors make up over 80 percent of all criminal cases—approximately 13 million Americans are charged each year.[2] Factoring in the intervention of both law enforcement and the courts, estimates peg the cost for processing these lower-level crimes between $2,190 to $5,896 apiece.[3] Combined with other non-felony offenses, misdemeanors account for roughly 25 percent of the U.S. jail population, though the percentages skew considerably higher in some parts of the country.[4]

Implementing misdemeanor reform was the topic of a national working session involving a broad range of jurisdictions convened in February 2025 by the Institute for Justice Policy Implementation—a collaboration between the Center for Justice Innovation and New York Law School with support from The Pew Charitable Trusts.[5] Over the course of the event, two recurring themes emerged.

First, every jurisdiction recognized the need to increase early case resolution with the goal of freeing up resources to focus on people with more serious needs who are at the greatest risk of cycling through courts and jails. Indeed, since the event, the focus on resources has only intensified as cuts by the federal government have left funding for substance use treatment and mental health care in serious jeopardy.[6]

Second, efforts to change misdemeanor case handling are often besieged by implementation challenges that either diminish or defeat outright the intended reforms. Some of the implementation challenges involve resources—from the number of attorneys available to cover misdemeanor proceedings to the availability of community-based social and mental health services for the purposes of diversion. Others concerned the lack of centralized cross-agency collaboration and the struggle to get and stay aligned on policy and procedural changes. Still others have to

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do with managing community perceptions of crime and safety and pressures to default to arrest and incarceration, particularly with respect to chronic low-level crime. Across the board, jurisdictions cited the difficulty of sustaining stakeholder buy-in long enough to durably change practice; on this score, one of the most formidable headwinds was staff attrition and the resulting loss of institutional champions and memory.

Indeed, the latest scholarship on implementation finds that even highly motivated system-actors armed with robust empirical research will often struggle to change practice on the ground. While the reasons may vary, researchers point to "organizational inertia" as a leading cause of implementation failure. The antidote? More digestible "changes to preexisting infrastructure" that can be "more naturally folded into subsequent processes."[7] In other words, changes to existing operating procedures tend to fare better than efforts that entail the building of entirely new infrastructure.

In light of these implementation challenges, how might jurisdictions seek to reduce the direct and indirect social costs of misdemeanor prosecution, especially given the likelihood of ongoing budgetary belt tightening over the next several years?

The good news is that for most people charged with misdemeanors, you can do more simply by doing less. The best causal research to date finds that the prosecution of people charged with nonviolent misdemeanors "substantially *increases* their subsequent criminal justice contact." As a result, researchers warn that "[w]e may...be *undermining* public safety by criminalizing relatively minor forms of misbehavior,"[8] the "large proportion" of which "involve neither violence nor firearms."[9] There are good reasons to think that for most people entering the criminal justice system on lower-level charges, the best possible systemic response is simply to dismiss their case or to not even file the charges to begin with.

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Yet there is an important caveat: every jurisdiction noted significant challenges with a small subset of their justice-involved population that repeatedly cycles through courts and jails on misdemeanors.

Obviously, for these individuals, a rapid dismissal of the criminal case often means an equally rapid return to the same alleged behavior and another arrest. But the overall message—and research—is clear: if the bulk of misdemeanor cases are safely and effectively off-ramped prior to or early in the court process, more time, attention, and resources can be invested in more intensive diversion, treatment, and alternative-to-incarceration programs for higher-risk people with more extensive histories of system involvement.[10]

Prosecutorial Declination: An Underutilized Off-Ramp

Despite the formidable implementation challenges, the working session highlighted the potential for smaller changes to existing practices and procedures that can yield

outsized effects in the misdemeanor context. Moreover, these adjustments can happen along a continuum of early case resolution decision points.

Participants were struck, for example, by the potential impact of prosecutorial declination—also referred to as "a presumption of non-prosecution"—for nonviolent misdemeanors.[11] Declination has received less attention than law-enforcement-led deflection, whereby an officer declines to either issue a citation or effect a custodial arrest. Here, a prosecutor exercises their discretion to decline to prosecute the case before it reaches the courthouse. Harvard Law Professor Alexandra Natapoff characterizes declination as "a unique species of dismissal because it occurs immediately after arrest, preventing a formal case from coming into being at all and thus short-circuiting the criminal process."[12] Arguably, cases appropriate for declination are *prima facie* appropriate for deflection by law enforcement. In most jurisdictions, there is an opportunity for law enforcement and prosecutors to better coordinate their arrest and charging policies to off-ramp cases even earlier.

Multiple participants linked early off-ramping to decades of research establishing the harms of overly intensive interventions for lower-risk people.[13] Nevertheless, many system actors are reluctant to adopt policies built on the routine rejection of criminal charges immediately following an arrest. Natapoff points out that while misdemeanor declination rates are typically much lower than felony declination rates—around 5 percent or less versus 25 percent or more—misdemeanor *dismissal* rates are much higher—between 30 and 60 percent.[14] This discrepancy is notable given that the material difference between declination and dismissal is a protracted court process that has never been shown to produce any public safety benefit. In fact, causal evidence supports a presumption of non-prosecution for non-violent misdemeanors—especially for people without prior criminal records. In a recent study of charging decisions, the District Attorney's Office in Suffolk County, Massachusetts, found that non-prosecution of a nonviolent misdemeanor offense led to a 53 percent reduction in the likelihood of a new criminal complaint and a 60 percent reduction in the number of new criminal complaints over the next two years.[15] These are remarkable findings in a field where any reform that brought down future arrests by, say, 10 percent would be hailed as a major victory.[16]

Nevertheless, every jurisdiction must weigh its resources against its tolerance for routine dismissal or declination of charges. The working session explored two innovative approaches to lower-level offenses that balance the desire for some form of judicial accountability with a strong preference for minimal court process.

> We need to free up resources to focus on people who are at greatest risk of further system involvement.

An Implementation Compromise

Led by the Manhattan District Attorney's Office in New York City, the Rapid Reset model combines elements of diversion and decli-

nation to resolve misdemeanor cases at the courthouse but just short of the courtroom itself. It illustrates an innovative approach to an implementation challenge. Rapid Reset is an iteration of the Project Reset program, which began in February 2018 as a post-arrest, pre-arraignment diversion program for people arrested and released with citations to appear in court for nonviolent lower-level misdemeanors. Under Project Reset, eligible participants are offered a single-session community-based program and connection to support services in lieu of traditional court processing, with the district attorney declining to prosecute their cases upon completion.

In Manhattan, however, because contact information collected at the time of arrest was often missing or inaccurate, or prospective participants did not have access to phones or email, Project Reset program staff were unable to reach around 60 percent of eligible people between the time of receiving their citation, the district attorney determining program eligibility, and the court date. As a result, many people who were eligible for Project Reset did not benefit from the program, exposing them to judicial proceedings that cost the court system valuable time and resources with no ostensible public safety benefit.

Through several procedural adjustments, Rapid Reset solves this implementation challenge. When someone who is Reset-eligible who did not previously connect with the program arrives at the courthouse, the Manhattan District Attorney's Office coordinates with court clerks to delay the docketing of their case. A service provider then offers same-day diversion groups on-site at the courthouse; upon completion, the prosecutor declines to prosecute the case, and the matter is never docketed for arraignment. In the absence of this intervention, Reset-eligible people would have gone before a judge and likely received an adjournment in contemplation of dismissal (ACD) with a condition that the person complete the one-day program session. If there are no further arrests and the person attends the program session, the case is dismissed and sealed in six months. However, even if the person is not arrested within six months, failure to complete the program results in the issuance of an arrest warrant, which can lead to rearrest, a withdrawal of the ACD, and additional court process. By contrast, Rapid Reset participants experience same-day case resolution with a sealed arrest record, while benefiting from a meaningful program session and connection to voluntary services.

The results so far are encouraging. According to the Manhattan District Attorney's Office, individuals who completed Rapid Reset programming were less likely to be arrested within six months and one year when compared to similarly situated individuals whose cases were dismissed before the Rapid Reset model was implemented.[17]

Of course, given evidence that in the misdemeanor context, no court process may have benefits over *any* court process, one could reasonably question the Rapid Reset model's requirement that a person complete programming—even very light-touch programming—rather than simply decline to prosecute the case outright. It is indeed possible, or even likely, that many of the individuals who complete the programming would not have been arrested again had their cases been declined from the outset. For some people without risk of collateral consequences (e.g., immigration, housing, or employment

concerns), an ACD without conditions might even be seen as a less intrusive outcome than the program-dependent declination. Of the 25,256 misdemeanor arrests in 2023 in Manhattan (prior to the introduction of Rapid Reset), a healthy 19 percent were declined prosecution. But 37 percent were dismissed after charges were filed, and another 17 percent dismissed after an ACD, suggesting that many of these cases could have been declined at the outset. While it is likely that some of these cases may have involved complaining witnesses, orders of protection, or other reasons to file charges, further evaluation of the Rapid Reset data on this point would be worthwhile.

More importantly, as an implementation solution, the lesson here is undeniable: delayed docketing combined with on-the-spot programming allows the Manhattan District Attorney's Office to decline to prosecute significantly more cases, and this procedural change has resulted in reductions in future arrests. Moreover, even brief voluntary services can be game-changing for some people at risk of further system-involvement.

Rapid (and Efficient) Court Diversion

Where an initial appearance before a judge cannot be avoided—either through declination or through novel approaches such as Rapid Reset—the Municipal Court's Community Diversion Program in Toledo, Ohio, is a case resolution model "intended to disrupt contact with the criminal justice system for persistent low-level offenders."[18]

Seeking to break the cycle of "endless arrests and short-term incarceration" for higher-risk people facing lower-level charges, the only requirement for the Toledo Municipal Court's Community Diversion Program is that "a person must be a repeat offender."[19] Employing an evidence-based practice that can be effective in small doses but that has not traditionally found its way into diversion curricula, Judge Tim Kuhlman describes the programmatic innovation that has transformed Toledo's misdemeanor case resolution:

"At the heart of our program is a revolutionary concept: procedural fairness. Studies show the use of procedural fairness principles of voice, neutrality, respect, and trust is effective in changing behavior and reducing criminal justice contacts. This change comes from the limited time it takes a police officer to issue a citation or a judge to issue a ruling from the bench. By ensuring individuals feel heard, respected, and treated neutrally, we've discovered a powerful tool for long-term behavioral change. The results are staggering: participants are more likely to comply with law enforcement, engage constructively with legal processes, and make different choices."[20]

The model also solves a perennial implementation challenge. Typically, mandated programs for people with lengthy criminal records require multiple sessions to complete (along with multiple court hearings), reducing the likelihood of successful completion.[21] Here, however, the entire intervention is delivered in a single three-and-a-half-hour group session. Upon the recommendation of the prosecutor, the judge accepts a no contest plea and reserves finding; the case is then dismissed upon the completion of the group, which is offered on a weekly basis. As Judge Kuhlman observes, the model is "short enough that we can afford to do it, and de-

fendants are willing to do it, but that is long enough to create a change."[22]

To date, nearly 3,000 people have been referred to the program, which has maintained a 64 percent successful completion rate over eight years. Ninety-four percent of people that complete the program endorse gaining at least one new coping skill, with 81 percent gaining a new perspective on criminal justice, and 97 percent saying that they would recommend the experience to others. The Access to Justice Lab at Harvard Law School is conducting a randomized controlled trial over the next several years. The study will look at a range of outcomes, from traditional public safety concerns such as recidivism, to more holistic considerations such as employment and housing stability.

While this formal evaluation will not be available for several years, a small batch of preliminary outcome data already exists. It suggests that, on average, the participants in Toledo's program in 2023 were arrested at the same rate in the year after their involvement with the program (2024) as they were in the year preceding their involvement (2022). At first glance, these results could seem discouraging. However, that interpretation does not account for the contextual reality that this program serves as an alternative to a traditional system of punitive sanctions that includes jail, fines, and extended court processes that are far more costly to the jurisdiction and to the defendants themselves—sanctions which have been shown to have little to no positive public safety benefit. A recent analysis of more than a hundred research studies concludes—as a matter of "criminological fact"—that incarceration has "no effect on reoffending or slightly increase[s] it when compared with noncustodial sanctions."[23] And it does not take much time behind bars to increase one's future risk. A 2022 study found that "any length of time…is associated with a higher likelihood of a new arrest pending trial."[24]

If the net effect of jail sentences, fines, and extended court process is to have no impact—or even a negative impact—on recidivism, and the net effect of the Community Diversion program is to have no impact on recidivism, it stands to reason that doing *less* in response to lower-level offenses, even among a population that has significant criminal history, is *just as effective, if not more effective* than the status quo.

Reinvesting Limited Court Resources

Working session participants across jurisdictions were quick to point out that while the above interventions may be effective for most individuals, there is a (relatively small) group of people who are not responsive to these approaches and continue to cycle through courts and jails on misdemeanor cases. It is often this group of individuals that are top of mind when policymakers opt to maintain the status quo of traditional prosecution. And throughout the pendulum swings of the preceding decades, no jurisdiction seems to have landed on a structure that is effective at deterring repeat lower-level criminal conduct. What is to be done?

Working session participants from New York City explored the possibility of reimagining the response to repeat lower-level criminal conduct to focus on *people*, not *cases*. Participants noted that as a person's criminal history grows longer, the effort from court system actors to support a change in their

behavior diminishes. Each time they are arrested, they are assigned a new lawyer whose primary duty is to get their cases resolved; they appear before judges who are equally eager to resolve cases quickly, often through jail sentences that appear to have little or no deterrent value for this population; and, because of their criminal records, members of this population are often ineligible for alternative dispositions. Many of them have tried court-based programming before but have been sentenced after failing to abide by frequently onerous court mandates, and their lack of interest in what courts have to offer is met by increasing indifference from justice-system actors.

Rather than disengage from these individuals, court actors should formulate a consistent and deliberate response to repeat lower-level offenses that emphasizes two broad themes: relentless personal engagement with the person across their multiple contacts with the court system, regardless of the status of their criminal case(s); and a persistent focus on what will support their desistance from repeat criminal behavior.

Given that this population often declines voluntary services and demonstrates higher rates of failures to appear, the courtroom itself would need to be an integral part of the "treatment" or intervention model. While a court docket dedicated to this population could feature many of the same resources as traditional problem-solving courts—mental health and substance use treatment, social workers and case managers, peers, and nonprofit service providers—the key difference would be that the person would be offered these services *every time* they are in the courtroom, regardless of whether they have accepted any kind of case disposition, whether they appeared voluntarily or involuntarily, or even whether they have any open cases. The same attorneys would represent these individuals from one case to the next rather than pass them off to the next lawyer assigned, and the focus would be on addressing the circumstances of the individual rather than the resolution of the currently pending criminal case(s).

At every court appearance, the key question would be "what do you need to help you stop getting arrested?" Unlike traditional court mandates, there would be no presumption that each case will end with the person fully abstinent from substances and employed. Instead, the emphasis would be on offering them support in achieving stability and making the changes necessary to reduce or eliminate future arrests. Initial appearances might focus on overdose prevention: offering fentanyl test strips and naloxone, advice on safe drug use, information on needle exchanges. Once an initial relationship has been established, case workers might offer assistance with housing and benefits, mental health care, and substance use programs. At that point, a longer-term treatment and desistance plan could be developed that would continue to be used and adapted, even after subsequent arrests.

> Bring the same energy to the *how* of practice that is often exhausted on the *what* of policy.

The key implementation solution in this reimagined court model is that it focuses on using the problem—the person's frequent contacts with the criminal justice system—as a means of implementing a meaningful longer-term solution to the pattern of criminal behavior. It also still allows for traditional judicial responses—including, as a last resort, the use of jail. Such a model would be resource-intensive, involving not only traditional forms of treatment, but an increased use of case managers and new methods to incentivize personal engagement with people who are notoriously difficult to engage. Yet it would be far less resource-intensive than the cost of repeated incarcerations and protracted court processes. Jurisdictions looking to maximize their public safety impact could consider this targeted reinvestment of limited resources on the individuals most concerning to communities, law enforcement, and policymakers, rather than on the people who are unlikely to be arrested again, even with little or no court intervention.

Implementing Forward: Three Lessons for Making Misdemeanor Reforms Stick

There are no easy, off-the-rack solutions to misdemeanor crime, particularly when the people involved are facing substantial obstacles to stability such as unmet mental health treatment needs, unsafe substance use, prolonged housing instability, and a disconnection from vital community-based supports and services. Yet it *is* possible to increase public safety while decreasing court-involvement for most people.

There are at least three lessons that emerged from the national working session to help guide the way. First, off-ramp *most* people early through strategies such as law-enforcement-led deflection, prosecutorial declination, and court-based diversion. Second, avoid major disruptions to preexisting operating practices by incorporating these strategies into the status quo via smaller tweaks and adjustments—even more ambitious efforts will fare better if they hew as closely as possible to the existing infrastructure. Finally, focus on implementation, bringing the same spirit and energy of innovation to the *how* of practice that is so often exhausted on the *what* of policy.

These are the high stakes of implementation. But with the right preparation and support, a good idea can make it from policy to practice—and change systems and lives for the better.

FOR MORE INFORMATION

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