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Tracking Plea Bargaining

A Practical Guide for Prosecutors



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Table of Contents

<i>Introduction to the Plea Tracker</i>	2
<i>The Plea Tracker</i>	3
Section 1: Basic Case Information	3
Case and Defendant Information	3
Victim Information	4
Criminal History and Initial Charges	6
Dismissals	7
Section 2: Trial Information	8
Section 3: Plea Information	13
Communication During the Plea Negotiations	13
Plea Reasoning When Making the Final Plea Offer	15
Entering the Final Plea	16
Additional Information (Optional)	19

Introduction to the Plea Tracker

The Plea Tracker was developed by the Wilson Center for Science and Justice at Duke University School of Law to provide a tool to help prosecutors document the plea-bargaining process. Typically, the plea process, from plea offers to what factors affect the bargaining process, is not formally documented in prosecutors' files or in court. Since the vast majority of cases are resolved through pleas, it is enormously helpful for an office, in examining its decision-making, to have information about the plea process. With the benefit of this simple tool, which we call the Plea Tracker, an office can readily document key steps in the plea process.

We have learned important lessons from implementing this system. The Plea Tracker is a simple survey that a prosecutor can fill out online, before or after resolving a case. It takes as little as 5-10 minutes to fill out, and portions may be filled out by support staff, or draw on existing case management data. Two District Attorney's offices have so far implemented this tracker, for one year each, and we have produced detailed reports describing what was learned from that work. Collecting this information allows offices to generate aggregate data on the factors driving plea outcomes. Offices can explore how factors affecting plea agreements may differ by prosecutor, defendant characteristics, types of charges, and across various teams within the office. Prosecutors can also use the data to improve future decision-making, capitalize on successes, avoid unintended pitfalls or ineffective outcomes, and inform their policies. In addition, prosecutors may share these data with the public, to be transparent about their practices and their work.

This guide provides the questions asked in the Plea Tracker along with a brief explanation for why this information is included. The Tracker is designed to collect data on cases that have concluded through either a plea agreement or trial (or in some instances a dismissal). Some questions could be tailored by an office to better suit the context in which this tool is being used.

The Plea Tracker

The Plea Tracker is divided into three sections including Basic Case Information, Trial Information (if applicable), and the Plea Information. Follow this [link](#) for an example Plea Tracker. This example is provided to demonstrate what the Plea Tracker looks like and to allow potential users to enter *fictional cases*. At the link to our demonstration plea tracker, we include contact information for our team (wcsj@law.duke.edu). If you are interested in collaborating with us, we can discuss entering a research agreement with your office. You can also use the Plea Tracker independently, by using REDCap or a survey tool yourself or with a partnering organization. Alternatively, the questions can be incorporated in an existing case management system.

Section 1: Basic Case Information

Case and Defendant Information

Why is this important? For internal purposes, certain basic aspects of the case are collected to determine which cases have been entered into the Plea Tracker and to potentially allow data from the Plea Tracker to be merged with other data collected by an office such as a case management system. Documenting basic case information in the context of pleas provides the opportunity to analyze patterns in plea outcomes, such as differences based on defendant demographics and type of defense attorney.

1. Prosecutor name _____
2. Docket number(s) _____
3. Defendant name
First name _____
Middle name or initial (if known) _____
Last name _____
4. Defendant date of birth (MM/DD/YYYY) _____
5. Defendant gender(sex). Please select a gender that best describes the defendant.
 - Male
 - Female
 - Non-binary
 - Other (please specify): _____
 - Unknown
6. What is the defendant's race/ethnicity? Select all that apply:
 - White
 - Black
 - Hispanic or Latino/Latina

- Native American
 - Asian
 - Middle Eastern
 - Other (please specify): _____
 - Unknown
7. Was the defendant a minor at the time of the relevant crime event?
- No
 - Yes
 - Unknown
8. Is the defendant classified as indigent for this case?
- No
 - Yes
 - To be determined
 - Unknown
9. Type of defense attorney?
- Public defender
 - Court-appointed lawyer
 - Private attorney
 - Unknown
10. Was the defendant detained pretrial?
- No
 - Yes, less than one week
 - Yes, between one week and up to one month (i.e., 7 to 29 days)
 - Yes, between one month and up to six months (i.e., 30 to 179 days)
 - Yes, between six months and one year (i.e., 180 to 365 days)
 - Yes, more than one year (i.e., 366 days or longer)
 - Yes, but unknown how long they were detained
 - Unknown if they were detained pretrial

Victim Information

Why is this important? Documenting victim information such as demographic characteristics allows for an examination of the kinds of victims involved in the cases. Section 3 of the Plea Tracker asks about communication with the victim and the victim's overall involvement in the case.

11. Who were/was the primary victim(s) of the most serious charge? Select all that apply:
- Person or persons
 - Business or corporation
 - The state

- Other (please specify): _____
- Unknown

if Q11= "Person or persons" then Q12 is displayed:

12. How many total victims were there for the most serious charge?

- 1
- 2-3
- 4-5
- 6-10
- 11+
- Unknown

if Q12="1" then Q13-Q15 are displayed:

13. Was the primary victim of the most serious charge. Select all that apply:

- Under the age of 18
- Elderly
- Someone with an intellectual or physical disability
- Other vulnerable population (specify): _____
- To be determined
- None of the above
- Unknown

14. Primary victim's gender(sex). Please select a gender that best describes the primary victim.

- Male
- Female
- Non-binary
- Other (please specify): _____
- Unknown

15. Primary victim's race/ethnicity. Select all that apply:

- White
- Black
- Hispanic or Latino/Latina
- Native American
- Asian
- Middle Eastern
- Other (please specify): _____
- Unknown

If Q12="2-3" or "4-5" or "6-10" or "11+" or "Unknown" then Q16-Q18 are displayed:

16. Were any of the primary victims of the most serious charge: Select all that apply:

- Under the age of 18
- Elderly

- Someone with an intellectual or physical disability
- Other vulnerable population (specify): _____
- To be determined
- None of the above
- Unknown for all victims

17. Gender(sex) of all primary victims of the most serious charge. Select all that apply:

- At least one male victim
- At least one female victim
- At least one non-binary victim
- At least one victim that defines their gender as other (please specify):

- The gender of all victims are unknown

18. Race/ethnicity of primary victims of the most serious charge. Select all that apply:

- At least one White victim
- At least one Black victim
- At least one Hispanic or Latino/Latina victim
- At least one Native American victim
- At least one Asian victim
- At least one Middle Eastern victim
- At least one Other victim (please specify): _____
- The race/ethnicity of all victims is unknown

Criminal History and Initial Charges

Why is this important? A defendant’s criminal history is often factored into sentencing guidelines and shapes the negotiation process. Therefore, this information helps establish a starting point for the plea process. Documenting the initial charges, specifically the most serious initially charged offense, gives the office a starting point to analyze the “distance traveled” in sentencing outcomes between the initial possible outcomes and the ultimate plea that is entered. This allows the office to explore the trajectory of the plea process and examine how negotiations were associated the final plea outcome.

19. What is the defendant's criminal history? For this question, criminal history is not referring to a guidelines-based offense level calculation, but a more general assessment about the criminal history of an individual.

- None
- Low
- Medium
- Severe
- Unknown

Most serious initially charged offense information:

20. What was the most serious initially charged offense? Please enter the specific offense description, using the statute or how it's written on the indictment. If offense description is unknown, please type "unknown".

21. What was the sentence class, if applicable in your jurisdiction, of the most serious initially charged offense?

22. What is the category of most serious initially charged offense?

- Murder or Manslaughter
- Forcible Rape or Felonious Sexual Assault
- Robbery
- Assault (non-DV)
- Burglary or Breaking and Entering
- Larceny and Embezzlement
- Fraud, Obtaining Property by False Pretenses, or Identity Theft
- Arson
- Domestic Violence
- Possession of Firearm by Felon
- Drug Trafficking
- Drug Distribution/Sale
- Drug Possession
- Other (please specify): _____
- Unknown

23. Mandatory minimum in months for most serious initially charged offense (if applicable) _____

24. Was a firearm charge present in any of the initially charged offenses?

- No
- Yes
- Unknown

Dismissals

Why is this important? As part of understanding the distance traveled and the general plea process, it is important to understand how many of the initial charges were ultimately dropped and why those charges were dropped.

25. What was the total number of initial charges? Please enter a number.
Total number of felony charges _____

Total number of misdemeanor charges _____

26. Were any charges dismissed?

- No
- Yes. Some charges were dismissed. Please enter a number.
Total number of felony charges dismissed (approximate) _____
Total number of misdemeanor charges dismissed (approximate) _____
- Unknown

If Q26= "Yes. Some charges were dismissed" then Q27 is displayed:

27. If any of the charges were dismissed in this case, please indicate the reasons why they were dismissed. Select all that apply:

- Defendant pled to other charges in this case
- Unavailability of arresting officer
- Unavailability of witness
- Availability of civil, regulatory, or private remedies
- Participation in suitable diversion and rehabilitative programs
- Unavailability of suitable diversion and rehabilitative programs
- Background and characteristics of the defendant
- Cooperation of offender in apprehension or conviction of others
- Defendant pled to something else in another case
- Disparate treatment of similarly situated persons
- Doubts concerning guilt
- Fair and efficient use of limited prosecution resources
- Improper conduct by law enforcement
- Lack of probable cause
- Low priority offense
- New evidence
- Possible influence of cultural, ethnic, socioeconomic, or other biases
- Policy (please specify): _____
- Prosecution in another jurisdiction
- Suppression of evidence
- Views and motives of the victim or complainant
- Weakness of the evidence
- Witness cooperation
- Other (please specify): _____
- Unknown

Section 2: Trial Information

Why is this important? The Plea Tracker collects information on trials because it offers an opportunity to examine why plea negotiations were unsuccessful as well as an opportunity to examine case trajectory from initial charge to ultimate sentencing (if convicted).

28. Did the case go to trial?

- No
- Yes
- Unknown

If Q28= "Yes" then Q29-Q49 are displayed:

29. Did the case go to trial because: Select all that apply:

- The defense wanted to exercise the right to a trial
- The defense did not accept the terms of the plea(s) offered
- The defense wanted to avoid a felony conviction
- The defense wanted to avoid collateral consequences
- Other reasons plea negotiations broke down _____
- Other reason(s)_____
- The defense did not share the reasons why they wanted to go to trial.

Information about last extended plea offer before trial

30. Was there a plea offer extended before the case went to trial?

- No
- Yes
- Unknown

If Q30="Yes" then Q31-Q35 are displayed

31. What was **the most serious offense of the last extended plea offer**? Please enter the specific offense description, using the statute or how it's written on the indictment. If offense description is unknown, please type "unknown".

32. What was the sentence class, if applicable in your jurisdiction, of **the most serious offense of the last extended plea offer**?

33. What is the category **of most serious offense of the last extended plea offer**?

- Murder or Manslaughter
- Forcible Rape or Felonious Sexual Assault
- Robbery
- Assault (non-DV)
- Burglary or Breaking and Entering
- Larceny or Fraud
- Arson
- Domestic Violence
- Possession of Firearm by Felon
- Drug Trafficking
- Drug Distribution/Sale

- Drug Possession
- Other (please specify): _____
- Unknown

34. Mandatory minimum in months for most serious offense of the last extended plea offer (if applicable)_____

35. Type of total sentence(s) **for all charges** in the **last extended plea offer**? Select all that apply:

- Active sentence
 - Minimum length____ (please enter number) ○Days ○Months
 - Maximum length____ (please enter number) ○Days ○Months
- Probation period
 - Length____ (please enter number of months)
- Fine(s)
- Restitution
- Time served
- Conditional discharge/deferred

Information about the most serious offense brought to trial

36. What was **the most serious offense brought to trial**? Please enter the specific offense description, using the statute or how it’s written on the indictment. If offense description is unknown, please type “unknown”.

37. What was the sentence class, if applicable in your jurisdiction, of **the most serious offense brought to trial**?

38. What is the category of **the most serious offense brought to trial**?

- Murder or Manslaughter
- Forcible Rape or Felonious Sexual Assault
- Robbery
- Assault (non-DV)
- Burglary or Breaking and Entering
- Larceny and Embezzlement
- Fraud, Obtaining Property by False Pretenses, or Identity Theft
- Arson
- Domestic Violence
- Possession of Firearm by Felon
- Drug Trafficking
- Drug Distribution/Sale
- Drug Possession
- Other (please specify) _____

- Unknown

39. Mandatory minimum in months for the most serious offense brought to trial (if applicable) _____

Information about result of trial

40. What was the result of the trial for **all offenses brought to trial**? Select all that apply:

- Acquittal
- Conviction
- Mistrial
- Hung jury
- Dismissal
- Plea offer accepted during trial
- Unknown

If Q40="Conviction" then Q41 is displayed

41. Was the **most serious offense** brought to trial convicted?

- No
- Yes
- Unknown

If Q41="No" or "Unknown" then Q42-Q46 are displayed:

42. What was the result of the trial for the most serious offense **brought to trial**?

- Acquittal
- Mistrial
- Hung jury
- Dismissal
- Plea offer accepted during trial
- Unknown

Information about the most serious offense convicted at trial

43. What was the most serious offense **convicted at trial**? Please enter the specific offense description, using the statute or how it's written on the indictment. If offense description is unknown, please type "unknown".

44. What was the sentence class, if applicable in your jurisdiction, of the most serious offense **convicted at trial**?

45. What is the category of most serious offense **convicted at trial**?

- Murder or Manslaughter
- Forcible Rape or Felonious Sexual Assault

- Robbery
- Assault (non-DV)
- Burglary or Breaking and Entering
- Larceny and Embezzlement
- Fraud, Obtaining Property by False Pretenses, or Identity Theft
- Arson
- Domestic Violence
- Possession of Firearm by Felon
- Drug Trafficking
- Drug Distribution/Sale
- Drug Possession
- Other (please specify): _____
- Unknown

46. Mandatory minimum in months for the most serious offense convicted at trial (if applicable)_____

If Q40="Conviction" then Q47-Q49 are displayed

47. What was the type of sentence(s) **for all offenses convicted at trial**? Select all that apply:

- Active sentence
 - Minimum length____ (please enter number) ○Days ○Months
 - Maximum length____(please enter number) ○Days ○Months
- Probation period
 - Length____ (please enter number of months)
- Fine(s)
- Restitution
- Time served
- Conditional discharge/deferred

48. Please select any additional sentence conditions. Select all that apply:

- Anger management training
- Behavioral health treatment
- Cognitive Behavioral Intervention (CBI)
- Community service
- Mental health assessment
- Mental health treatment
- "No contact" order
- Protective order
- Restitution
- Restorative justice
- Substance abuse assessment
- Substance abuse treatment
- Supervised probation

- Other (please specify) _____

49. Was a firearm charge present in any of the convicted offenses?

- No
- Yes
- Unknown

Section 3: Plea Information

Communication During the Plea Negotiations

Why is this important? Developing plea negotiations involves communicating with other parties. By documenting the communication between prosecutors and victims and defense attorneys, we can examine patterns in these communications and identify relationships between such communication and case outcomes.

With Victims

50. Did the prosecutor have contact with the primary victim(s) (which can include a guardian or representative)?

- No
- Yes
- Unknown

If Q50= “No” then Q51 is displayed:

51. Why was there no contact with the victim(s) (or victim(s) representative/guardian).

Select all that apply:

- The contact information provided was incorrect or no longer in service
- The victim/representative could not be located
- The victim/representative was not responsive to attempts to contact
- The victim/representative did not wish to be contacted
- The victim/representative chose not to cooperate with prosecution for fear of harm or retaliation
- Contact was not attempted
- Other (please specify): _____

If Q50=“Yes” or “Unknown” then Q52-Q54 are displayed:

52. Did the prosecutor communicate with the primary victim(s) (or victim(s) representative/guardian) in any of the following ways? Select all that apply:

- Before making the initial plea offer
- About the terms (general or specific) of the initial plea offer
- Before entering a final plea
- About the terms (general or specific) of the final plea offer

- Unknown

53. How involved was (were) the primary victim(s) (or victim(s) representative/guardian) in the case?

- The victim was not involved
- A little
- A moderate amount
- A lot
- Unknown

If Q53= “A little” or “A moderate amount” or “A lot” or “Unknown” then Q54 is displayed:

54. Did the primary victim(s) (or victim(s) representative/guardian) become involved in the case in any of the following ways. Select all that apply:

- Informing the initial plea offer
- Exercising their right to be heard at a hearing
- Attending court or a hearing
- Writing a victim impact statement
- Testifying or agreeing to testify
- Other (please specify) _____
- Unknown

With Defense Attorney

55. Did the prosecutor communicate with the defense attorney. Select all that apply:

- Before making the initial plea offer
- About the terms (general or specific) of the initial plea offer
- Before entering a final plea
- About the terms (general or specific) of the final plea offer
- There was no communication with the defense attorney
- Unknown

56. How often did the prosecutor communicate with the defense attorney? Estimate the number of times there was meaningful communication.

- No communication
- 1-2 times
- 3-5 times
- 6-10 times
- 11 or more times
- Unknown

57. Did the defense attorney provide mitigating information before the final plea was entered?

- No
- Yes

- Unknown

If Q57="Yes" then Q58 is displayed:

58. Did the mitigating information meaningfully affect the plea offer negotiations?

- No
- Yes
- Unknown

Plea Reasoning When Making the Final Plea Offer

Why is this important? Over the course of the case, prosecutors learn more about the defendant, victim(s), witnesses, evidence, and more that influence plea offers. This section asks prosecutors to identify what factors they considered in the case and whether these factors were considered for aggravating or mitigating purposes.

59. Which of these factors were important when making the final plea offer? Select all factors that apply and indicate if the factor was *aggravating*, calling for a more serious penalty, or *mitigating*, calling for a less serious penalty.

	Aggravating	Mitigating
Defendant-related factors		
Acceptance of responsibility		
Age		
Community ties		
Cooperation		
Crime victimization of defendant		
Criminal history		
IQ		
Mental health		
Perceived threat to public safety or property		
Physical health		
Rehabilitative potential		
Substance abuse		
Evidence-related factors		
Ballistics evidence		
Complaining witness statements		
Confession evidence		
Digital data		
DNA evidence		
Fingerprint evidence		
Firearms evidence		
Forensic evidence		
Giglio information concerning officer		
Informant or cooperator evidence		

Strength of evidence, generally		
Video footage		
Witness statements		
Offense-related factors		
Degree of community harm		
Nature of offense (violent or nonviolent)		
Role in offense (leadership or minor)		
Seriousness of offense		
Victim age		
Victim input		
Victim member of vulnerable population		
General Factors		
Consequences to defendant family		
Cost of proceeding to trial		
Delay in case		
Employment consequences to defendant		
Evidence of other criminal conduct		
Immigration consequences to defendant		
Office priorities or policies regarding offense-type		
Restitution to victim		
Other factors not listed		
Other factor 1 _____		
Other factor 2 _____		
Other factor 3 _____		

60. Of the aggravating factors you selected, choose the most important from this list.
 [This will be populated based on the factors selected.]

61. Of the mitigating factors you selected, choose the most important?
 [This will be populated based on the factors selected.]

62. Please describe anything else regarding which considerations were most important in making the final plea offer.

Entering the Final Plea

Why is this important? This section documents the entered plea offer and provides case outcomes including the necessary information to calculate the distance traveled from initial charge to final plea. Additional questions document details about the plea process, such as the length of time to negotiate the plea and judicial involvement in the process.

63. How many plea offers did you extend to the defense? [please enter a number] _____

64. How many counteroffers did the defense extend to you? [please enter a number]

65. Does the final plea modify any of the terms of the initial plea?

- No
- Yes
- Unknown

If Q65= "Yes" then Q66 is displayed:

66. Why was the plea modified? Select all that apply:

- Consistency with past sentencing outcomes
- Lack of witness cooperation
- Lapse of time
- New exculpatory evidence
- New incriminating evidence
- New information about aggravating factors
- New information about mitigating factors
- New information about the victim
- Office policy (please specify) _____
- Resource constraints
- Evidence suppressed during pretrial hearings
- Incorporated counter-offer(s) from the defense
- Other (please specify): _____
- Unknown

67. How much time passed between initial plea offer and defendant entering plea?

- 0 - 7 days
- > 7 days - 1 month
- > 1 month - 3 months
- > 3 months - 6 months
- > 6 month - 12 months
- > 1 year
- Unknown

68. Did the defendant plead guilty to the most serious initially charged offense?

- No
- Yes
- Unknown

If Q68="No" or "Unknown" then Q69-Q72 are displayed:

Most serious final pled offense information:

69. What was the **most serious final pled offense**? Please enter the specific offense description, using the statute or how it's written on the indictment. If offense description is unknown, please type "unknown".

70. What was the sentence class, if applicable in your jurisdiction, of **the most serious final pled offense**?

71. What is the category of **most serious final pled offense**?

- Murder or Manslaughter
- Forcible Rape or Felonious Sexual Assault
- Robbery
- Assault (non-DV)
- Burglary or Breaking and Entering
- Larceny and Embezzlement
- Fraud, Obtaining Property by False Pretenses, or Identity Theft
- Arson
- Domestic Violence
- Possession of Firearm by Felon
- Drug Trafficking
- Drug Distribution/Sale
- Drug Possession
- Other (please specify) _____
- Unknown

72. Mandatory minimum in months for the most serious final pled offense (if applicable)_____

73. Was a firearm charge present in any of the final pled offenses?

- No
- Yes
- Unknown

74. Compared to the initial offer, was the minimum *active* sentence in the final entered plea:

- Lower than initial offer by (please enter number if known____ months days)
- Higher than initial offer by (please enter number if known ____ months days)
- Same as initial offer
- The initial plea offer contained an active sentence, but there was no active sentence in final entered plea
- The initial offer did not contain an active sentence
- Unknown

75. Type of sentence(s) **for all offenses pled**? Select all that apply:

- Active sentence
 - Minimum length____ (please enter number) Days Months
 - Maximum length____ (please enter number) Days Months

- Probation period
Length____ (please enter number of months)
- Fine(s)
- Restitution
- Time served
- Conditional discharge/deferred

76. Please select any additional sentence conditions. Select all that apply:

- Anger management training
- Behavioral health treatment
- Cognitive Behavioral Intervention (CBI)
- Community service
- Mental health assessment
- Mental health treatment
- "No contact" order
- Protective order
- Restitution
- Restorative justice
- Substance abuse assessment
- Substance abuse treatment
- Supervised probation
- Other (please specify) _____
- Unknown

77. Did the judge: Select all that apply:

- Accept the presented plea
- Reject the plea at any point in the process
- Modify the plea - Reduce conditions
- Modify the plea - Increase conditions
- Modify the plea – though it is not clear whether conditions were increased or reduced
- Other (please specify) _____
- Unknown

Additional Information (Optional)

Why is this important? This optional section allows prosecutors to document any additional information about the case that was not fully captured elsewhere and/or to provide richer qualitative information about factors that influenced the plea process and final outcomes.

78. If there is any other relevant information you would like to document about this case for the tracker, please enter it here (general view of negotiation process/outcome, lessons learned, policy considerations).

