

LONG-IGNORED SOLUTIONS: AS COURT DELAYS WORSEN, OFFICIALS HAVE FAILED TO EMBRACE REFORMS. HERE ARE STEPS THEY COULD TAKE.

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FULL TEXT

A decade ago, the court systems in both New York City and Chicago were so backlogged that hundreds of people had been sitting in jail for more than two years while awaiting trial.

But only one of these places treated the situation like a crisis.

In New York, the state's top judge stepped in, ordering teams of judges into slow courthouses to finish old cases, then announcing a plan with New York City's mayor, police and court system to find out what led to the backlog and fix it.

And in Chicago? No teams of judges to address backlogs, no big interagency plans, not even any public acknowledgment from the courts of a serious problem that has only worsened in that 10-year window.

A recent Tribune investigation showed how Cook County courts are taking far longer than they should to complete murder cases, a symptom of widespread dysfunction and long-standing failures in a system overseen by judges who have enormous power but fail to limit delays.

The county jail is now holding nearly 1,100 felony defendants who have been waiting more than two years for a trial. That's more than double the tally held for that long in New York City's jail system, even though New York City courthouses regularly prosecute more people for felonies than Cook County.

Chief Judge Timothy Evans declined to be interviewed about the persistent delays in the court system he has run since 2001 or to directly answer the Tribune's written questions. But in a statement his office said he and other courthouse players are doing their best to be swift and fair in a busy and complex system.

"The Circuit Court of Cook County has been continuously working with the Illinois Supreme Court and other stakeholders to improve case disposition time," the statement said.

Court officials have been continuously pledging reforms for years, but the follow-through hasn't matched the promises, the Tribune found after reviewing 12 studies and interviewing dozens of people who have researched or worked in the courthouse.

People with the power to effect change have either ignored or failed to fully enact decades' worth of reform suggestions from national experts, local advocates and even the criminal court's own administrator. Instead, a culture of inertia and finger-pointing persists.

"The whole thing is so confounding," said Cook County Sheriff Tom Dart, among the few politicians who have regularly complained about a problem that leaves some people lingering for a decade or more in his jail. "It all keeps coming back to: They just don't care. Because if you cared, you wouldn't do this."

The Tribune found concrete steps that local officials could take, from actually tracking why delays happen to fully implementing long-promised case management protocols. Some observers said the problems are so deeply entrenched, however, the Illinois Supreme Court may need to step in and force change.

TRACKING AND TRANSPARENCY

Before a problem can be fixed, it needs to be accurately measured. Reporters wanted to measure Cook County

case delays by analyzing court data.

But unlike most states, Illinois doesn't force courts by law or judicial rule to release that kind of information, according to the Court Transparency Coalition. The local coalition is pushing for Illinois lawmakers to expand the state's Freedom of Information Act to apply to courts too. But for now, it's up to individual courts to decide what performance metrics they want to release.

And in Cook County -- one of the largest court systems in the world, located in an urban area where crime is a constant concern -- officials don't release much information at all.

"In Cook County, it is more difficult to get data than anywhere else," said Tom Geraghty, a Northwestern University professor emeritus who has studied courts around the world. "And I've worked in Bangladesh, Ethiopia, Malaysia, a number of Third World or developing countries, where the data is much more readily available than it is in Cook County."

When the Tribune asked for case-level court data kept by the Circuit Court clerk's office, Evans ordered the circuit clerk to provide it to the Tribune, if the office was able to. But the spreadsheets provided by the clerk's office didn't include the case-level docket data that would make it possible for reporters to analyze delays in murder cases. The office then said it was too busy to provide any more information.

Reporters had to deduce the court's worsening performance through data kept by other agencies: state prison data showing how long it takes Cook County to convict defendants, county jail data showing how long detainees wait for trials, and data from prosecutors that tracks arrest dates and disposition dates.

The prosecutors' data sets are complete enough to allow analysis of murder cases. But it's not a perfect substitute for data sourced directly from the courts.

And none of the available data show why case delays are occurring. Did it take years for prosecutors to gather up and share all the evidence with the defense? Was a pretrial hearing put off because cops didn't show up to testify? Was the trial postponed because attorneys weren't ready?

How often do these things happen? Not even Evans knows -- because his office doesn't keep track.

When Cook County commissioners brought up court efficiency at a special hearing in January 2021, Evans told them his staff was already working with the circuit clerk's office on ways clerks could enter one of 24 codes to categorize why a case was delayed.

At the same hearing, then-Public Defender Amy Campanelli told commissioners there was "nothing more meaningful" than tracking the reasons.

"We can do this," Campanelli said. "We just need to start doing this."

No one did.

Last October, Evans told county commissioners that he expected, within a month, for the circuit clerk to begin the process of reprogramming its system to collect the data. But a circuit clerk spokesperson later told the Tribune that nobody had asked his office to begin the process -- and besides, the office needed more details on how judges wanted clerks to categorize reasons for delays.

Still, the spokesperson said, if the court could provide that information, the "programming of these codes is not that difficult."

CASE MANAGEMENT ORDERS

One potential solution for reducing delays was first suggested to the Cook County courts more than 33 years ago. It's a pretty simple idea: Develop goals for how long different types of cases should take, and work toward them. To keep cases from stalling, judges issue "case management orders" that give attorneys deadlines to complete various tasks. Those deadlines can be adjusted (and often are), but they set expectations and allow judges to track progress -- similar to the way teachers sometimes set due dates for different stages of a group project. There are typically four tracks for cases, with murders expected to last the longest.

Known as "differentiated case management," the concept was first recommended to Cook County officials in 1989 in a federally supported study of the county courts. It still hasn't been fully adopted.

Some judges started to use it in 2006, briefly helping to lessen backlogs, after two additional studies had

recommended it. In 2011, a criminal court judge developed a boilerplate case management order that he and his peers could use to start setting deadlines for attorneys, depending on which of the four tracks a case belonged on. A decade ago, in 2013, Chief Judge Evans told a Sun-Times columnist that the court had "embraced" the recommendation to adopt the practice: "We have a differentiated case management system now."

But the system still wasn't universally adopted, and in 2015, a top judge who was pushing the concept retired. In 2018, yet another study recommended that judges be required to adopt differentiated case management, and yet again that recommendation wasn't followed, records and interviews show.

In January 2022 -- nearly nine years after stating that the court had embraced differentiated case management -- Evans gave a speech at a downtown civic club in which he touted the potential of the system.

"We have to try things that have not necessarily been fully positioned so far," he told the crowd.

Today there is still no court rule forcing judges to adopt differentiated case management. And many still haven't done so. After reviewing 20 randomly chosen murder cases that were opened in the first six months of 2022, the Tribune found no evidence of case management orders for the vast majority. In a random sample of 2023 murder cases, just about a third had them.

When the Tribune asked Evans why criminal court judges aren't all following the differentiated case management system, his office said in a statement that it "expected" the practice to be followed by judges assigned to the criminal division, but noted that "success ... depends on the cooperation of all parties."

TACKLING IT TOGETHER

Tighter deadlines won't matter much if courthouse players can't figure out how to get the work done by then. Figuring out how, experts have said, will require a much deeper, honest discussion about what each can and should do to speed up a process that is plagued with roadblocks and a culture of rationalizing delays instead of tackling them.

"Judges are slow to assume the bench because there is no organizational pressure to behave otherwise. Lawyers are likely late to court because they have learned that their tardiness will be accommodated. Cases are continued without complaint, in part because it suits the needs of the courtroom working group," one 2022 study stated. Coordinated efficiency efforts aren't unheard of in Cook County. Nearly 20 years ago, officials credited focused efforts by judges, prosecutors and public defenders for cutting a backlog of older cases by 30% in a little over a year. But the close collaboration waned as courthouse players came and went, even as news media regularly reported on court delays.

Compare that with what happened in New York.

In 2013, while The New York Times was gathering information for a harrowing story on Bronx court delays, the state's chief judge sent in more judges to halve backlogs, then went a step further.

In 2015, he joined New York City's mayor and others to form teams representing all the players -- judges, prosecutors, defense attorneys, police and city officials -- for "deep, analytic dives" to determine what issues were causing delays. A group led by judges then advocated for changes, in what one aide to the mayor of New York City told reporters was "an unusual moment in which every part of a complicated system ... have come together."

Meanwhile, by 2018, one study of Cook County found that level of collaboration was sorely lacking here.

"Unfortunately, no significant steps have been taken to date to create a system where all the necessary justice partners sit together on a regular basis to solve mutual problems," according to that study, by the National Center for State Courts.

In subsequent years, when players have collaborated on court issues, the focus has been on expunging minor marijuana convictions and reforming the bail system. More recently, the COVID-19 pandemic forced conversations on ways to better share evidence electronically and hold hearings by videoconference.

But there has been little coordinated effort by all the players to solve issues that experts, for decades, have recommended be tackled comprehensively, from evidence that still trickles in far too late to pretrial motions that linger for years to police who derail pretrial hearings by failing to show up. And without coordination, it's hard to answer another question: how many more workers each agency may need to do its part to limit delays.

"We live in an ecosystem that is wholly dependent upon everyone else in order to make this work efficiently," said Risa Lanier, second in command to Cook County State's Attorney Kim Foxx.

"I would love to have 50 more prosecutors," she said. "But the reality is, if I'm waiting on DNA testing, 50 more prosecutors aren't going to get the crime lab to get through their backlog."

A STATE TAKEOVER?

In their 2022 study, researchers from Northwestern, Loyola and George State universities suggested that Cook County may not be able to heal itself and that the state Supreme Court may need to take "operational control" to force fixes.

Under the state constitution, the Illinois Supreme Court has the responsibility to manage the lower-level courts. But unlike what happened in New York, Illinois' top justices largely have stayed hands off as the state's largest local court has descended into delays.

The last time someone seriously pushed the state Supreme Court to step in was in 2013. Citing "unacceptably long case processing times," Cook County Board President Toni Preckwinkle asked the court to send in one judge to start tackling case backlogs while also convening a "reform commission" to audit how the courts function.

The state Supreme Court did an audit, but most of it focused on Preckwinkle's complaints about how the county's probation department was run.

Deep in that audit, the state Supreme Court punted the problem of case delays back to Cook County. It "encouraged" Evans' office to "review current processes," look at data and "make a commitment" to address the problem.

Around that same time, New York's then-chief judge, Jonathan Lippman, stepped in with far more aggressive fixes for New York City's clogged courts. In an interview with the Tribune, Lippman said state leaders shouldn't abdicate their responsibility.

"There has to be accountability, and there can't be that accountability if the local courts or the localities do whatever they want in the justice system," he said.

Last year, the Illinois Supreme Court created standards for how long cases should take, starting with cases filed in January 2022. One standard was for 75% of all felonies to be completed in 18 months -- a goal that Evans' office said the county was on track to meet, although it didn't release any detailed data to support the assertion.

Under the new state rules, each circuit clerk was supposed to turn in detailed data on case timetables every three months, starting in May 2022. But as of February of this year, Cook County's circuit clerk had not sent any of it, according to a state Supreme Court spokesperson.

The state's chief justice, Mary Jane Theis, did not respond to a request for an interview; nor did her spokesperson directly address questions about whether the state's top judges should take charge of Cook County's criminal courts. Instead, her office issued a statement that asserted the county's "numbers are steadily improving," while declining to identify the improving numbers.

"The issue of timeliness in the court system is of the highest priority to the Court," the statement said.

The statement also asserted that Cook County Criminal Division judges were now "required" to use differentiated case management. When informed that judges often didn't do so and that no rules require it, the spokesperson referred additional questions to Evans.

Finally, the statement blamed delays mostly on the pandemic, even though people have been complaining about the problem for decades.

Barbara Ziegler is a volunteer who said she has been helping crime victims navigate Cook County's courts for two decades. In fall 2020, she aired her concerns about delays directly to the state's chief justice at the time, Anne Burke, who was doing a "listening tour" via Zoom.

"I think the most prevalent thing is the fact that these cases take so long," Ziegler said, drawing out the last two words for effect.

"These cases go on and on and on," she said, "and it's really very hard on the victims' families, and also on the defendants' families."

The moderator, attempting some lighthearted banter, noted that Evans and Burke were on the call and taking notes, and "they know where to find you." Ziegler said neither reached out afterward.

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Online: Read the entire series at chicagotribune.com/stalledjustice.

CAPTION: Photo: Above: Cook County sheriff's deputies watch as detainees board a bus from Cook County Jail to head to court appearances in October 2022. ; Photo: Detainees wait in a holding cell in the basement of the Leighton Criminal Court Building before their scheduled court appearances in October. ; Photo: Cook County Sheriff Tom Dart, shown at the Cook County Jail complex on April 4, is among the few politicians who have regularly complained about a problem that leaves some people lingering for a decade or more in his jail. ; Photo: Shelves of files line the wall in Courtroom 201 at the Leighton Criminal Court Building. ; Photo: People arrive at the Leighton Criminal Court Building in January. ; Photos by Brian Cassella | Chicago Tribune

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