

CHARTING JUSTICE REFORM IN CHILE

A Comparison of the Old and New Systems
of Criminal Procedure

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Executive Summary

For the past four years, Chile has been replacing its old system of criminal justice with a new one intended to be more fair and effective. Gradually and methodically, the government has introduced new laws, practices, and institutions in 12 of the republic's 13 regions. Once the reforms reach the metropolitan region of Santiago in 2005, the transition will be complete. Until then, skilled and dedicated professionals in the remaining region continue to work in an old justice system that most Chileans believe is extremely sluggish, poor at prosecuting crime, and inhumane for both victims and offenders.

There are clear and serious problems in the old system of justice: victims wait a long time to see a judge and obtain help from state agencies. Defendants spend considerable time in jail, isolated from their families and often ignorant of the status of the proceedings against them.

The reforms respond to these and other problems. The new justice system is designed to be more agile and also more fair and humane. In place of an investigating judge, prosecutors should collaborate with police to investigate complaints quickly and thoroughly, resolve minor criminal offenses without placing defendants in custody, and take serious matters to judges who supervise the criminal proceedings and preside over open trials. Within the newly created Ministerio Público (Office of the Prosecutor) there are units created specifically to counsel and assist victims and witnesses who need special attention.

In design, the new system represents a vast improvement over the old way of handling criminal cases. But little is known about its actual impact, about whether the administration of justice has improved since 2000. But what is the reality? How is the administration of justice different in practice?

To answer those questions, the Division of Research of the Ministerio Público and the New York-based Vera Institute of Justice compared the way in which the old and new systems process cases—analyzing almost 7,000 cases begun in 2002, some in the old system, some in the new.

The results are encouraging. The new system of justice acts more swiftly and resolves more cases than the old system. Specifically, the new system resolves 95 percent of cases within a 15-month period, while the old system decides 87 percent. In cases where a suspect has been arrested and it is important to move quickly, the difference is particularly striking: a 91 percent completion rate in the new system compared with 73 percent in the old. The new system also produces a higher rate of convictions within 15 months. In cases involving an arrest, where there is often more information upon which to build a solid case, the new system produces a conviction in 36.4 percent of cases, while the conviction rate for this category of cases in the old system is just seven percent.

International comparisons are difficult, but in New York City, for example, the rate of conviction for a misdemeanor or felony following a felony arrest is 38 percent.

These findings measure only two aspects of the new justice system, but they indicate its value for victims and defendants, and for society as a whole.

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This report is also available in Spanish as, *Analizando el mejoramiento en la justicia: Un estudio empirico entre el nuevo y antiguo sistema penal en Chile*, and can be found at www.minpublico.cl.

Table of Contents

Introduction.....	1
Research Method	3
Findings.....	6
Agility in the Resolution of Cases.....	6
Conviction Rates.....	8
Comparing Other Outcomes and Systems.....	11
Summary of Findings	13
Interpreting the Findings.....	14
The Role of Research in the Reform of Criminal Justice	16

Introduction

In 1995, the government of Chile launched a long and ambitious project to make the system of criminal justice more effective and humane. At the time, there was wide agreement that the old rules of criminal law and procedure did not serve public interests. The President himself said that the old system of justice impeded socio-economic development, used force and punishment excessively and inequitably, was prone to corruption, and often tangled up the lives of victims and defendants in lengthy and secret proceedings.¹ In 1998, the Chilean Congress approved the creation of the Ministerio Público (Office of the Prosecutor). Two years later a new penal code was adopted and the National Public Defenders Office was created. Starting in 2000 these reforms began to be implemented in several regions of the country.

In 2005, metropolitan Santiago will introduce the reforms, completing the “installation” process. But already there is growing interest in modifying the new system.² The sweeping reforms that the government proposed in 1995 not only changed laws and procedures, they have created an appetite for continued reform and improvement. The national division of the Ministerio Público (MP) in Santiago has taken a leadership role in guiding the reform process, evaluating it, and communicating results to the public—creating special units and staff to undertake this work.

Today, there are a number of useful studies of the reform process, as well as critical evaluations of the new laws, but the essential differences between the old and new systems of justice are not yet well understood by the public.³ People who come to the MP for help don’t always know what to expect, and reports in the press can be confusing. Most important, there is not enough clear and objective information about the real value of the new system compared with the old one—the very information needed to sustain public commitment to the reform process.

Some people would rather forget the old system of justice. It isn’t just “old,” they say. It is “ancient,” and like a dinosaur, soon to be extinct. The MP takes a different view. There are skilled lawyers, judges, and administrators in Santiago who are trying to deliver justice. Many of them will work in the new system next year. They know a lot

¹ See “Mensaje de S.E. El Presidente de la Republica con el que inicia un proyecto de ley que establece un nuevo codigo de procedimiento penal,” 9 June 1995.

² See “Documento de la comisión nombrada para revisar y evaluar la marcha y funcionamiento del nuevo sistema de enjuiciamiento criminal,” 18 December 2003, www.pazciudadana.cl/sist_ju_reforma.php.

³ The daily work of Chilean prosecutors has been closely studied from a variety of perspectives. See Andrés Baytelman y Mauricio Duce, *Evaluación de la Reforma Procesal Penal: Estado de una Reforma en Marcha*, Santiago, Chile 2003, and the congressionally mandated Report of the Comision of Experts, “Documento de la comisión nombrada para revisar y evaluar la marcha y funcionamiento del nuevo sistema de enjuiciamiento criminal,” December 2003, www.pazciudadana.cl. The Ministerio Público published its own study of management (gestion) and line prosecutors work in “Evaluacion del trabajo de los fiscales adjuntos del Ministerio Público, *Boletin de jurisprudencia*, no. 11 (July 2002), 133-154. For a foreign assessment of the work of the new prosecution service, see A. Ritter and D. Achhammer, *Evaluacion de la Reforma Procesal Penal Chilena: Desde la Perspectiva del Sistema Aleman*, GTZ, 2003.

about how to administer law in a large city, and their understanding of the past can help to measure progress in the future.

People also say it is impossible to compare the two systems: they are like apples and oranges. The old and new systems *are* very different. They operate with different rules, resources, procedures, people, and institutions; they may even serve different values. Nevertheless, such comparisons are essential; the best benchmark of progress is the experience of the old system. Together with other agencies, the MP is beginning to develop a proper baseline for that kind of assessment.⁴

As the first product of that effort, this report addresses fundamental questions about what happens to cases when they enter the old and new systems. Do they linger or are they resolved in a reasonable amount of time, and are some cases dealt with more swiftly than others? The report also examines conviction rates, an important indicator of effectiveness—looking at differences among types of cases.

⁴ The MP has collaborated with the Ministry of Justice and other government and nongovernmental agencies to produce an annual compendium of justice statistics, *Anuario Estadístico Interinstitucional*.

Research Method

Ironically, in order to study the old system, we had to collect new information. The old system of justice was not well studied or measured—especially before the reintroduction of democracy in Chile, when it was closed to outside investigation.⁵ And because the objectives of the justice system were poorly defined, the government did not develop a transparent process for measuring productivity, effectiveness, efficiency, or fairness.

Only now is an empirical understanding of the old system of justice beginning to emerge. A recent study by the Catholic University of Valparaiso, for example, found that, on average, it takes more than 400 days to complete cases that go to trial in the old system. Another study found that while 87 percent of cases in the new system are concluded within one year, cases that go to trial in metropolitan Santiago typically “last two years.”⁶

Our method for measuring the workings of the old system was relatively simple. We selected two courts in Santiago—numbers 14 and 15—and reviewed the files of all cases that entered these courts in January and February 2002. These two courts belong to a larger jurisdiction in the metropolitan area of Santiago, a city of nearly six million. (The population for the jurisdiction that includes courts 14 and 15 is 1.5 million.) We tracked the development and progress of every criminal complaint referred to or initiated by these courts, collecting information on 1,900 cases. Then we coded basic information about these cases—most notably, the date of entry, the accusation and charge, whether and when there was an arrest, and outcome for cases resolved during the review period—and built a database upon which to analyze case processing patterns.

In order to collect information for the new system, we relied on the software program (*el sistema del apoyo a los fiscales* - SAF) which is used by *fiscales*, or prosecutors. Using SAF, we developed an analogous set of data from all cases entering the justice system in the cities of Temuco and Antofagasta in January and February 2002. The new system was implemented in Temuco, capital of the Araucania region (248,000 inhabitants), in December 2000 and in Antofagasta, the capital of the Antofagasta region (261,000 inhabitants), one year later. For these two cities combined, we analyzed nearly 5,000 cases.

Our approach did not yield identical samples, although we have no reason to suspect the findings are biased as a result. A robust research design would have addressed comparisons over time of “control” and “experimental” districts before and after the implementation of the reform. We were unable to fully develop this research design. Instead, we were able to collect data on relatively similar jurisdictions.

⁵ Also the non-governmental organization, PAZ Ciudadana, produced valuable analyzes of crime patterns, but not the processing of cases, www.pazciudadana.cl.

⁶ See “Reforma penal alcanza los niveles óptimos que fueron proyectados,” Ricardo Downey, *El Mercurio*, 11 June 2003.

As Table 1 below shows, patterns in reporting crime in Santiago are not significantly different from those in Antofagasta and Temuco. There is, however, a higher percentage of robbery, burglary, and theft cases in the sample from courts 14 and 15 in Santiago than in the case sample from Temuco and Antofagasta. And there is a substantially higher ratio of assault in the sample from Temuco and Antofagasta than in Santiago.

Table 1. All Cases Studied—Old and New Systems (January – February 2002)

<i>All Cases</i>	OLD SYSTEM		NEW SYSTEM	
	Courts 14 and 15		Antofagasta and Temuco	
Robbery*	646	34%	1438	29.3%
Assault	68	3.6%	605	12.3%
Theft	509	26.8%	811	16.5%
Homicide	4	0.2%	22	0.5%
Drugs and Alcohol	20	1%	137	2.8%
Other	653	34.4%	1896	38.6%
TOTAL	1900	100 %	4909	100%

* Throughout this report, “Robbery” includes nonviolent robbery (e.g. burglary of a house) as well as forms of robbery that involve intimidation and are thus classified as violent crimes.

Differences in the demographic, socio-economic, and criminological conditions in the communities from which the two samples are drawn probably explain much of the variation between them, but exploring that issue is beyond the scope of this study. Ideally, we would have compared case processing in Temuco and Antofagasta before and after the reforms were introduced, but collecting baseline data in these two regions was impossible. That kind of longitudinal investigation would reveal changes over time in the way the public experiences crime and how they relate to the justice system and is a worthy project for future research.

There are also differences between the two samples in the proportion of cases in which a suspect was arrested. Table 2 shows that 14.5 percent of cases in the old system involved an arrest. The proportion of cases involving an arrest in Antofagasta and Temuco is much smaller—just four percent.

Table 2. Arrest Cases Studied—Old and New System

Arrest Cases	OLD SYSTEM			NEW SYSTEM		
	Courts 14 and 15			Antofagasta and Temuco		
	Total	Arrests	%	Total	Arrests	%
Robbery*	646	81	12.5%	1438	65	4.5%
Assault	68	11	16.2%	605	11	1.8%
Theft	509	82	16.1%	811	35	4.3%
Homicide	4	2	50.0%	22	4	18.2%
Drugs and Alcohol	20	10	50.0%	137	26	19.0%
Others	653	89	13.6%	1896	57	3.0%
TOTAL	1900	275	14.5%	4909	198	4.0%

Given that police procedures in both systems are similar, there are two possible explanations to the differences in arrests as observed in Table 2. It could be that people have more faith in the new justice system—or perhaps merely higher expectations of it—and are more likely to report crimes, whether or not they can provide police with any information that might lead to an arrest. It also could be that the emphasis on “due process” (*proceso debido*) in the new system discourages unwarranted arrests of suspects in the initial phase of investigations.

Findings

We used the data to answer two questions: First, how agile are the old and new justice systems? In other words, how good are they at resolving cases in a reasonable amount of time? Second, how often do cases result in a conviction in a reasonable amount of time?

Agility in the resolution of cases

As an indicator of agility, we measured the proportion of cases resolved within 15 months.⁷ This is a substantial period of time, and it seems reasonable for both victims and defendants to expect a resolution in that period.

All cases. Overall, we found that the new system is somewhat more agile than the old one—resolving a higher proportion of cases within 15 months. As Table 3 below illustrates, 96 percent of cases referred to the local prosecution offices in Temuco and Antofagasta was resolved in some way within this time period, while the disposition rate in courts 14 and 15 in Santiago was 86.7 percent.

Table 3. Disposition Rate—All Cases

<i>All Cases</i>	OLD SYSTEM			NEW SYSTEM		
		Courts 14 and 15		Antofagasta and Temuco		
	Sample	# Closed < 15 months	%	Sample	# Closed < 15 months	%
Robbery*	646	599	92.7%	1438	1399	97%
Assault	68	59	86.7%	605	586	96.8%
Theft	509	464	91.1%	811	802	98.8%
Homicide	4	1	25.0%	22	22	100.0%
Drugs and Alcohol	20	8	40.0%	137	119	86.8%
Other	653	519	79.4%	1896	1803	95.1%
TOTAL	1900	1649	86.7%	4909	4730	96.4%

While both systems are good at resolving robberies, assaults, and theft within a reasonable amount of time, the systems perform quite differently for other types of crime. The new system is twice as likely to resolve crimes associated with drugs and alcohol within a 15-month period than the old system. And there is a stark difference in the resolution rate for homicide: all reported homicides in Temuco and Antofagasta were

⁷ We recorded a case as resolved if an authoritative decision of any kind—dismissal, release, conviction, acquittal—was made.

concluded within 15 months, while in Santiago, only one of the four reported cases of homicide had been resolved (25 percent).

The new system is also more balanced in terms of speed. In Antofagasta and Temuco, all types of offenses were disposed of at equally high rates (between 87 and 100 percent). In the old system, by contrast, the disposition rates range from 25 percent for homicide to 93 percent for robbery—suggesting that the old system has special difficulty with certain types of offenses.

Cases involving an arrest. We isolated cases in which a suspect had been arrested and examined the disposition rate. To make an arrest, police usually require at least some reliable information about the offense, and, therefore, the justice system should be able to proceed more quickly in these cases. These are also cases in which both victims and defendants are more invested in both a just and speedy resolution.

When the sample is restricted to cases involving an arrest, the new system is still more agile than the old one—resolving eight out of 10 cases within 15 months, compared with seven out of 10 cases in the old system (see Table 4).

Table 4. Disposition Rate—Arrest Cases

Arrests Only	OLD SYSTEM			NEW SYSTEM		
	Courts 14 and 15			Antofagasta and Temuco		
	Sample	# closed < 15 months	%	Sample	# closed < 15 months	%
Robbery*	81	62	76.5%	65	49	75.4%
Assault	11	8	72.7%	11	8	72.7%
Theft	82	62	75.6%	35	34	97.1%
Homicide	2	1	50.0%	4	4	100%
Drugs and Alcohol	10	1	10.0%	26	25	96.2%
Others	89	66	74.2%	57	47	82.5%
TOTAL	275	200	73%	198	167	84.3%

Once again, the most significant differences between the two systems are observed in drug and alcohol offenses and homicides. While all homicide cases in the new systems are resolved within a 15-month period, only half of the cases in the old system meet this criterion. For alcohol and drug offenses the case resolution figures of the new system are also greater than those of the old system (96.2 percent vs. 10 percent). It is also worth mentioning that both systems are equally agile at resolving cases of robbery—although

the disposition rates for arrest cases are mysteriously lower in both systems compared with the disposition rates for all robberies (compare Tables 3 and 4).⁸

Conviction Rates

All cases. For some observers of the new system, greater speed is cause for concern. Some worry, for example, that prosecutors are disposing of cases too quickly, using administrative measures such as *archivo provisional* or *principio de oportunidad* that do not require independent authorization by a judge.⁹ They wonder whether with judicial review, or more time and investigation, some of these cases might yield a different outcome, perhaps even a conviction. Does the new system obtain high levels of productivity at the expense of effectiveness and balance?

Using our samples, we compared the conviction rates in the two systems, based solely on those cases that resulted in a conviction *within 15 months*. It is important to note that this comparison likely underestimates the total conviction rate since some cases that stretch beyond 15 months culminate in a conviction, but it does indicate the ability of a justice system to produce a conviction within a reasonable amount of time.

In both the old and new systems, the conviction rates achieved within 15 months are not encouraging. The rate is very low in the old system—one percent, and merely low in the new system—seven percent (see Table 5).¹⁰ But it is important to remember that conviction rates in most criminal justice systems around the world *are* surprisingly low, particularly where citizens are encouraged to report crimes to the police, whether or not they have information that would help lead to an arrest.

In South Africa in 2000, for example, the ratio between the number of convictions and number of reported offenses was eight percent—a figure that led to concern about an “impunity gap” and serious criticism of the newly established national prosecution service. And yet, if each of the individuals convicted had committed more than one offense, which is likely, a much higher share of all crime than eight percent was in fact punished.¹¹

For every type of offense except homicide, the new system performs better than the old in terms of producing a conviction within a reasonable period of time.

⁸ The disposition rate for robbery, in cases where someone was arrested is much lower than in all other cases of robbery, both in the old and new systems. This is particularly true for *nonviolent* robbery. In the new system, 36 percent of these cases with arrested suspects (seven out of 19) were still open after 15 months. The lower speed of disposition for this particular kind of case diminishes the disposition rate for all arrest cases.

⁹ *Archivo provisional* or *principio de oportunidad* are forms of disposition that are roughly equivalent to dismissals without prejudice in the United States. A prosecutor does not require a judge’s consent to dispose of a case in this way.

¹⁰ If the 104 cases in the old system that had reached the summary stage at 15 months resulted in a conviction, the conviction rates in the old and new systems would be equal: seven percent.

¹¹ See the report “Prosecutors in the Front Line: Increasing the Effectiveness of Criminal Justice in South Africa,” www.npa.gov.za.

Table 5. Conviction Rates—All Cases closed < 15 months

<i>All Cases</i>	OLD SYSTEM			NEW SYSTEM		
	Courts 14 and 15			Antofagasta and Temuco		
	Sample	Convicted	%	Sample	Convicted	%
Robbery*	646	14	2.20%	1438	29	2.0%
Assault	68	0	0.0%	605	21	3.5%
Theft	509	2	0.40%	811	44	5.5%
Homicide	4	1	25.0%	22	3	13.6%
Drugs and Alcohol	20	0	0.0%	137	62	45.2%
Others	653	4	0.60%	1896	165	8.7%
TOTAL	1900	21	1.1%	4909	324	6.6%

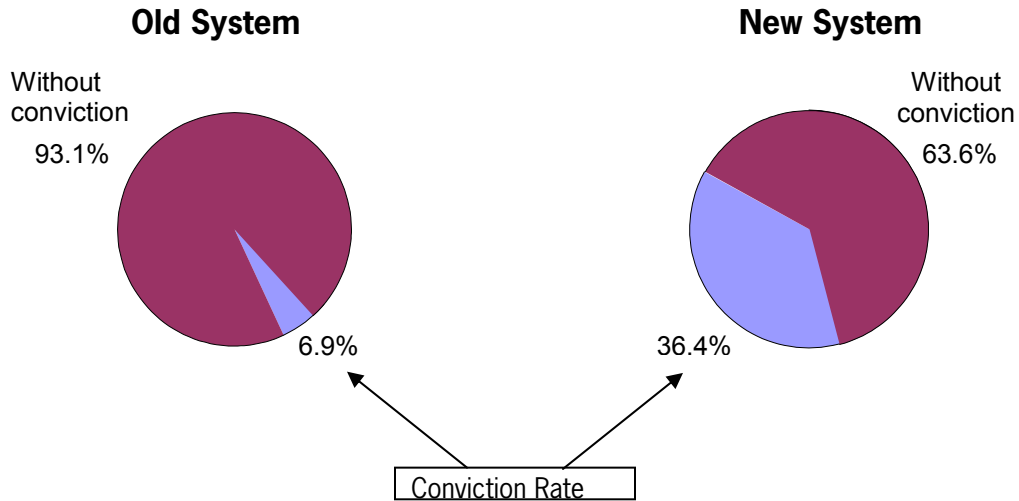
Arrest Cases. If we look only at cases in which someone was arrested, the conviction rates in both systems are more encouraging, but the new system still outperforms the old one.¹² Table 6 shows that the justice system in Antofagasta and Temuco produced a conviction within 15 months in about 36 out of 100 cases, while in Santiago the old system only produced seven. Figure 1 below shows this difference clearly.

Table 6. Conviction Rates—Arrest Cases

Table 6 <i>Arrests Only</i>	OLD SYSTEM			NEW SYSTEM		
	Courts 14 and 15			Antofagasta and Temuco		
	Sample	convicted	%	Sample	convicted	%
Robbery (all kinds)*	81	13	16.0%	65	22	33.8%
Assault	11	0	0%	11	2	18.2%
Theft	82	1	1.2%	35	14	40.0%
Homicide	2	1	50%	4	3	75%
Drugs and Alcohol	10	0	0%	26	15	57.7%
Others	89	4	4.5%	57	16	28.1%
TOTAL	275	19	6.9%	198	72	36.4%

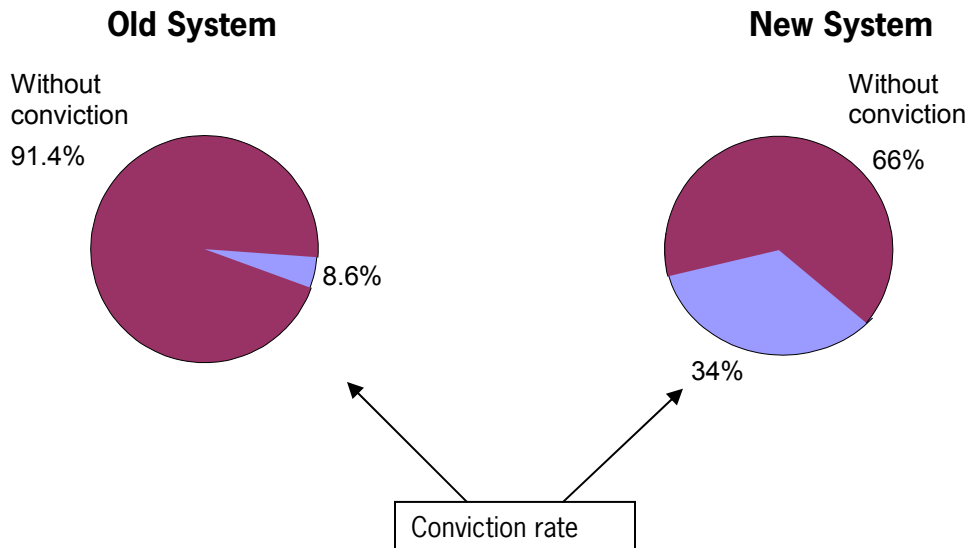
¹² Even if all arrest cases in the old system that had reached the summary stage at 15 months resulted in a conviction, the conviction rate would still be much lower than the conviction rate in the new system: 26 percent compared with 36.4 percent.

Figure 1. Conviction Rates—Arrest Cases, All Offenses



The difference between the two systems is greatest in drug and alcohol cases: 57.7 percent convicted in the new system, compared with zero percent in the old system. The difference is considerable in the case of theft and in the case of robbery. For instance, when considering all property offenses, we can see that the conviction rate in the new system is 36 percent versus 8.6 percent in the old system (see Figure 2).

Figure 2. Conviction Rates—Property Offenses Involving an Arrest



These data allow us to conclude that despite the fact that more people were arrested in the old system than in the new system, the old system produced fewer convictions. These

results also seem to imply that enhancing the elements of due process for suspects does not contradict the promotion of effective sanctions. On the contrary, our data suggest that the new system sanctions a higher proportion of defendants than the old system.

Comparing Other Outcomes and Systems

A conviction is not the only outcome of the judicial process, and it may not even be the most important one to compare. One might compare rates of release and acquittal, as well as decisions that occur during the judicial process—such as the choice to limit the freedom and mobility of the defendant in some way. Or one might try to monitor the due process guarantees for victims, suspects, and arrestees given the new emphasis on the perceptions and activities related to these actors in the new penal code. These are all possible topics for future research. Another way to gauge advances in justice is to measure assistance to victims and witnesses or dispositions short of conviction, such as conditional discharge and restorative agreements. These are outcomes introduced by the reforms in order to better meet the needs of victims, respond to the life circumstances of defendants, and serve the public interest.

It is important to keep in mind the practical limits of drawing comparisons between the old and new systems. The old system has no direct analogues for these outcomes, and it would take an elaborate methodology to make such comparisons possible.

It is even more difficult to make careful cross-national comparisons of the operation of criminal justice systems. Differences in the legal meaning of offenses such as “robbery” complicate the task. There are also different stages and sequences of proceedings, as well as different statuses assigned to people involved in the criminal justice system. And the data necessary to make such comparisons are typically collected by different government agencies using different counting and recording mechanisms. These differences must be kept in mind when analyzing statistics about the operation of other justice systems.

We analyzed the outcomes of felony arrests made in the five boroughs of New York City in 2002 (Table 7). Within 18 months, 18 percent of police arrests on felony charges resulted in a felony conviction. Another 20 percent of police arrests resulted in a conviction for a “misdemeanor,” an offense for which the maximum penalty is one year in jail. An additional 13 percent of arrests result in a conviction for an “infraction”—typically a violation of a local municipal ordinance.

Table 7. The Outcomes of Felony Arrests in New York City, 2002

# Arrests	# docketed (arraigned)	convicted of <i>felony</i>	convicted of <i>misdemeanor</i>	convicted of an <i>infraction</i>
107,321	88,631	19,006	21,234	14,371
		18%	20%	13%

Source: Criminal Justice Agency, New York, special report on the disposition of felony arrests, July 2004.

We think these data compare favorably to the 36.4 percent conviction rate for arrested suspects in the new system in Chile. We do not think it is responsible to include the number of arrests that result in a conviction for an “infraction” when calculating the rate of *criminal* convictions since most of these cases involve guilty pleas (a characteristic of the U.S. criminal justice system that is not part of the Chilean system of justice). We think the most responsible estimate for the rate of conviction in New York is 37.5 percent—one percent higher than the figure obtained for the new system in Chile.

Summary of Findings

In October 2001 the Ministry of Justice recommended “comparing and contrasting” (*comparar y homologar*) initial results of the reforms with the old justice system.¹³ This study examines two features of the administration of justice in both systems: agility, as measured by the ability to resolve cases within 15 months, and outcome, as measured by the ability to produce a conviction within 15 months. We based our analysis on a fairly large sample of cases, but from only one moment in time and from only a few courts. Future studies might use larger samples, draw cases from more courts, or compare the same community over time. Nevertheless, our findings are significant, and can be summarized as follows:

- The new justice system is more likely to resolve all cases in a reasonable amount of time (15 months) than the old system. While the new system is particularly agile in resolving homicides and drug and alcohol offenses, it is not much more agile than the old system when dealing with robberies.
- When a suspect has been arrested, the new justice system is even more agile than the old, with the difference between systems being greatest in homicides and drug and alcohol offenses.
- The new justice system is much more likely to produce a conviction in a reasonable amount of time in all cases than the old system. This observation has significant implications in terms of economic savings derived from a more timely use of resources. In addition, a shorter conviction time may carry a stronger deterrent message associated with the speed of punishment.
- When there is an arrest, the difference in conviction rates between the two systems is particularly striking. The new system of justice is much more likely than the old system to convict and punish someone who has been arrested in a reasonable amount of time (15 months) and even when no time limit is applied.

¹³ *Informe Comision de Evaluacion Reforma Procesal Penal*, 8 October 2001, 4.

Interpreting the Findings

This study objectively compares case processing patterns in two different systems of justice, but a comparison is not the same as an evaluation. An evaluation requires many more things, including a clear statement of objectives, a set of measures by which to assess the achievement of those objectives, and a list of expectations or norms by which to judge the results. The old system had no objectives or goals beyond the faithful implementation of the law. It was thus immune to evaluation from anything other than a higher court. Without objectives, of course, there can be no meaningful measures. And without measures, there can be no evaluation.

We are only at the beginning stages of developing ways to measure key aspects of the new justice system: speed, productivity, effectiveness, balance, and fairness. The standard we use in this study to measure the speed and rate with which cases are disposed is not ideal.¹⁴ In most cases, it does not take 15 months to reach a decision. In Santiago, nearly 50 percent of all cases of theft were resolved within a month. It may be reasonable to expect a justice system to close cases more quickly than within 15 months, especially in cases where defendants are detained. It also may also be beneficial to set higher expectations for swift resolution in other kinds of cases and for other reasons.

This study tests new units of measurement: the number and ratio of cases in which someone has been arrested.¹⁵ Using the proportion of arrested suspects clarifies and magnifies some of the key differences between the old and new systems. It also draws attention to the value a justice system can create by concentrating resources on cases in which there is more information and also a heightened need to respect individual rights. We did not examine differences between the ways the two systems handle cases with suspects that are known but not arrested or cases in which a suspect was placed in pre-trial detention. The use of those measures might reveal other important differences between the two systems.

Perhaps most important, we have not yet determined criteria by which to judge these results. For example, we cannot say whether the rate of conviction in the new system is too high or too low, only that it is substantially higher than in the rate in the old system. In the same vein, we cannot judge as “successful” or “satisfactory” the superior speed with which the new system produces dispositions and convictions.¹⁶ It certainly seems

¹⁴ An alternative and simpler measure of time is the number of days to disposition. That figure is both easily calculated and easily understood by the public. It is also easy to detect incremental improvement in state performance that has great social meaning.

¹⁵ Most international comparisons of justice systems do not distinguish between cases in which a suspect has been arrested and ones in which an arrest has not been made. For these reasons, many assessments of the rate of conviction suggest justice systems produce convictions in a small percentage of cases.

¹⁶ We also cannot tell from these data whether the new system is more efficient than the old. As the December 2003 report of the commission of experts observed, that judgment can only be made after comparing the means available to each system to accomplish their work, and taking into consideration differences in the degree of complexity of the cases. See “Documento de la comisión nombrada para revisar y evaluar la marcha y funcionamiento del nuevo sistema de unjuiciamiento criminal,” 18 December 2003, www.pazciudadana.cl.

good that the new system is faster, but that judgment requires agreement about what a “good” speed is and what speed a justice system can and *should* attain. In short, we have to evaluate the performance of the new system in terms of the kinds of results that are both possible and desirable, and that depends at least in part on what results matter more than others to the public.

Public beliefs about and expectations of the old system can serve as a measure by which to evaluate the performance of the new justice system. These beliefs and expectations have not been thoroughly studied, but the President’s claim that the old justice system impeded socio-economic development, used force and punishment excessively and inequitably, was prone to corruption, and often tangled up the lives of victims and defendants in lengthy and secret proceedings strongly suggests that people at all levels of society despised the old justice system and blamed it for many of Chile’s problems.

This study does not confirm or refute such deeply-held beliefs, yet the findings do suggest that the old system was not highly punitive. In fact, the old system looks quite ineffective at punishing people suspected of crime. A very small portion of those arrested are convicted, and most cases in which a suspect was not arrested or identified were dismissed.

Equally important, our findings suggest the old system was also not uniform in its workings. We uncovered differences in the way the old system handled certain offenses, and also variation across courts. The conviction rate for all cases referred to court 14 in Santiago, for example, is more than twice that of court 15 in the same city (1.8 percent compared with .7 percent). Judges are also capable of improving the performance of their courts. In court 13, for example, where we tested our data collection instrument, we discovered that in 1997, the conviction rate for all cases was approximately three percent; by 2002 and with a new judge, it was approximately six percent.

Another way to interpret the results is in terms of common theories about justice systems. For example, one theory suggests there is a tradeoff between speed and effectiveness, or between effectiveness and the protection of individual rights. Some say that a justice system must choose between “crime control” and “due process.” In Chilean public debates, this belief has taken the form of juxtapositions of those who call themselves *garantista* (people who privilege or prioritize due process) and those who are called *conservadores* (people for whom control and deterrence of crime are primary).

The findings of this report question the utility of that distinction. This study shows that at least in some cases, more effective prosecution helps advance rights of both defendants and victims. Especially when suspects are arrested or their liberty curtailed, the swift administration of justice is a right in whose protection both defendants and victims have an interest. In criminal justice, time matters to everyone.

The Role of Research in the Reform of Criminal Justice

Studies of the operation of a justice system play an important part in managing and improving it. Without objective information about current practices, administrators have little other than their own instincts to guide their decisions. The MP's Division of Research intends to continue close examination of the old and new justice systems in order to provide this crucial feedback.

This study raises a host of questions for further research and certainly does not answer all the questions the public might have about the reforms. For example, this study does not explore changes in the use of arrests or show how the new system responds to cases of less grave crime. Nor does it examine the frequency of pre-trial detention and the amount of time people spend in custody during the judicial process and following a conviction. Yet all of these topics are important to explore in the effort to create and sustain a balanced, fair, and effective system of justice.

This study also does not explore the impact of the judicial process on victims and witnesses. Other studies have shown high levels of satisfaction among people who are helped by the MP's special units for victims and witnesses, but we have not yet studied individuals who do not receive special assistance and we do not know how the judicial process and outcome affects victims and witnesses.¹⁷ Their experiences and assessments of the process might play an important role in shaping general public perceptions about the reforms.

Finally, future research should examine what the general public expects of the reforms and how their concerns about the old and new systems affect their assessments of the project to advance justice in Chile.

¹⁷ The Ministerio Público as well as some private organizations have published reports on this topic. See, for example, *Percepción y Satisfacción de los Usuarios de las Unidades Regionales de Atención a las Víctimas y Testigos sobre la atención entregada en la IV y IX regiones*, Santiago, 2002, and "Percepción y Opinión de Víctimas sobre la Atención y Protección brindada por el Ministerio Público", SUR Corporación de Estudios Sociales, 2003.