

The author(s) shown below used Federal funds provided by the U.S. Department of Justice and prepared the following final report:

Document Title: Prosecution and Racial Justice in New York County – Technical Report

Author(s): Besiki Luka Kutateladze, Nancy R. Andiloro

Document No.: 247227

Date Received: July 2014

Award Number: 2011-DJ-BX-0038

This report has not been published by the U.S. Department of Justice. To provide better customer service, NCJRS has made this Federally-funded grant report available electronically.

Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

Prosecution and Racial Justice in New York County

Technical Report

Report Submitted to the National Institute of Justice

Grant #: 2011-DJ-BX-0038

Besiki Luka Kutateladze, principal investigator

Nancy R. Andiloro, research associate

Prosecution and Racial Justice Program

Vera Institute of Justice

January 31, 2014

Requests for additional information about the research described in this report should be directed to besiki.kutateladze@islg.cuny.edu.

This study was supported by grant 2011-DJ-BX-0038 from the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. Points of view expressed in this report are those of the authors and do not necessarily represent the official position of the U.S. Department of Justice or the views of the district attorneys in participating jurisdictions.

Abstract

Minority overrepresentation in the criminal justice system is of great national concern. Prosecutors' discretion to file charges, change or reduce charges, plea bargain, and make sentencing recommendations is nearly unlimited. Despite this authority, prior research has not adequately examined the extent to which prosecutors may contribute to racial and ethnic disparities. Research on criminal case processing typically examines a single outcome from a particular decision-making point, making it difficult to draw reliable conclusions about the impact that factors such as defendants' race or ethnicity exert across successive stages of the justice system. Using a unique dataset from the New York County District Attorney's Office (DANY) that tracks a large sample of diverse criminal cases, this study assesses racial and ethnic disparity at multiple discretionary points of prosecution and sentencing. In addition to a large administrative dataset, randomly selected subsamples of misdemeanor marijuana and felony non-marijuana drug cases were chosen, and information on arrest circumstances and evidence factors was gathered from prosecutors' paper files to supplement our analyses. The study found that DANY prosecutes nearly all cases brought by the police with no marked racial or ethnic differences at case screening. For subsequent decisions, disparities varied by discretionary point and offense category. For all offenses combined, compared to similarly-situated white defendants, black and Latino defendants were more likely to be detained, to receive a custodial plea offer, and to be incarcerated; but they were also more likely to benefit from case dismissals. In terms of offense categories, blacks and Latinos were particularly likely to be held in pretrial detention for misdemeanor *person* offenses, followed by misdemeanor *drug* offenses. Blacks and Latinos were also most likely to have their cases dismissed for misdemeanor *drug* offenses. Disparities in custodial sentence offers as part of the plea bargaining process and ultimate

sentences imposed were most pronounced for *drug* offenses, where blacks and Latinos received especially punitive outcomes. Asian defendants appeared to have most favorable outcomes across all discretionary points, as they were less likely to be detained, to receive custodial offers, and to be incarcerated relative to white defendants. Asian defendants received particularly favorable outcomes for misdemeanor *property* offenses. The study concludes with a discussion of implications for DANY and the research community, as well as study limitations.

Executive Summary

This research project involved a partnership between the Vera Institute of Justice (Vera) and the New York County District Attorney’s Office (DANY). Vera and DANY conducted a study of DANY’s current practices, addressing the complex relationship between prosecutorial decision making and racial and ethnic justice. Minority overrepresentation in the criminal justice system is of great national concern. Prosecutors’ discretion to file charges, change or reduce charges, plea bargain, and make sentencing recommendations is nearly unlimited. Despite this authority, prior research has not adequately examined the extent to which prosecutors may contribute to racial and ethnic disparities. Researchers are rarely given access to the data necessary to investigate the relationship between race and ethnicity and prosecutorial outcomes and, in most jurisdictions, much of this information is not systematically captured. When data are available and shared, research is often conducted in isolation from prosecutorial practices, resulting in findings that are less useful to prosecutors concerned with ensuring the equitable treatment of defendants.

The research project described in this report aims to address these shortcomings by examining the extent to which defendants’ race and ethnicity influence prosecutorial decisions, including case acceptance for prosecution, bail determinations and pretrial detention, case dismissals at various points, reduced-charge offers and sentence offers as part of the plea bargaining process, and sentencing, while considering a host of other factors. The study was initiated by District Attorney Cyrus R. Vance, Jr. who, in 2009, even before taking office, expressed his strong support for analyzing the role that race plays in prosecutors' decisions regarding bail, charges, plea bargains, and sentences. As Mr. Vance said (2009) at the time: “The shame is not in finding that we have unconscious biases or that our current policies have a disproportionate racial impact –the shame lies in refusing to ask the questions and correct the problems” Accordingly, this study was carried out in close partnership with

DANY prosecutors and experts on prosecutorial discretion. Vera researchers worked within DANY for two years, collecting and analyzing a wide range of data.

Data and Analysis

The main source of data for this study was the administrative dataset generated by DANY's case-management systems. The dataset contained 222,542 cases disposed of in 2010-2011. It included all misdemeanors, violations, and infractions, and the following selection of felonies: drug offenses, weapons offenses, domestic violence, burglary, and robbery. All cases were selected using the most serious "screening charge," i.e., the top charge, determined by a reviewing assistant district attorney (ADA) at the Early Case Assessment Bureau (ECAB). Additionally, DANY provided data from its human resources department about prosecutors' race or ethnicity, gender, and caseload.

To learn about case processing at DANY, as well as how prosecutors record information electronically and in case files, we interviewed 16 ADAs of varied levels of experience and from different trial bureaus using a semi-structured qualitative questionnaire. These interviews also served as an opportunity to talk to ADAs about the study, including its research questions, data collection, analysis plans, and possible implications for DANY's policy and practice.

Because the DANY dataset did not contain information on many important factors, including charge bargaining, evidence or defendants' socio-economic characteristics, we collected additional information from 2,409 randomly selected paper files including drug offenses. Information was coded from case summary narratives initially written by a prosecutor reviewing a case, describing circumstances that lead to arrests, the evidence gathered, and specific details surrounding the first criminal court arraignment and subsequent hearings. Our focus on drug offenses was motivated by a number of considerations, including changes in the Rockefeller Drug Laws in 2009, previous research, and DANY's particular interest in this offense category.

To investigate racial and ethnic differences in criminal case processing, we reported percentages and estimated five multivariate logistic regression models to take into account various

factors influencing the outcomes of interest. The first model only included *race*; the second included race and other controls, except for *defense counsel* and *arrest neighborhood*, which were added to the third model to identify the contributions of both factors to the full model, and to serve as proxies to defendants' socio-economic status (SES); the fourth model excluded *prior prison sentence* to identify the contribution of *prior arrest*, while the fifth model was reversed, i.e., *prior arrest* was excluded, and included *prior prison sentence* to assess its unique contribution to predicting the outcomes. When predicting custodial sentence, in order to correct for selection bias caused by previous decision points, a sixth model was tested using the Heckman procedure. Finally, we split the analyses into person, property and drug offenses to examine racial differences across these offense categories.

Main Findings

The study revealed the following:

- Case acceptance for prosecution: DANY prosecutes nearly all cases brought by the police, including 94% felonies, 96% misdemeanors, and 89% of violations, and no marked racial or ethnic differences have been observed for this discretionary point. However, such high case acceptance rates are not necessarily indicative of the quality of arrests, given the case dismissal rates reported below.
- Pretrial detention: Greater percentages of black defendants were held in custody after arraignment, whether for felonies (61%) or misdemeanors (22%), followed by Latinos (56% and 15%, respectively), whites (43% and 10%, respectively) and Asians (28% and 3%, respectively). When controlling for the influence of other factors, including charge seriousness and prior record, compared to white defendants, blacks were 10% more likely (*odds ratio* = 1.48), Latinos 3% more likely (*odds ratio* = 1.14), and Asians 21% less likely (*odds ratio* = 0.41) to be detained. In other words, based on the predicted probabilities for each group, that take into account other factors, 29 out of every 100 black, 25 out of every 100 Latino, 24 out of every 100 white, and 14 out of every 100 Asian defendants were detained after arraignment (based on $N = 100,510$ cases analyzed).

Racial disparities in pretrial detention were particularly large for *misdemeanor person* offenses where blacks were 20% *more* likely than whites to be detained (*odds ratio* = 2.31), and in *misdemeanor property* offenses where Asians were 33% *less* likely than whites to receive this outcome. Note that race was not the strongest predictor of pretrial detention. Other factors, such as charge seriousness, prior record, offense type, defense counsel type, gender and prior bench warrant (which was later added to the analysis) were better predictors. Also note that this report does not directly examine prosecutors' bail or detention recommendations although, based on the pretrial detention decisions, prosecutorial recommendations can be inferred.

- Case dismissal: Compared to white defendants, blacks, Latinos, and Asians were more likely to have their cases dismissed at any point, whether for felonies or misdemeanors. A total of 5% of all cases accepted for prosecution were dismissed through an adjournment in contemplation of dismissal (ACD), an agreement to dismiss a case in 6-12 months if there is no subsequent arrest. After excluding ACD dismissals, 36% of the felonies analyzed (see Data and Analysis above), 18% of all misdemeanors, and only 5% of all violations were dismissed. In the full dataset provided by DANY, 10,923 (5%) of all cases prosecuted were flagged as domestic violence (DV) and these cases, regardless of race, had a much higher dismissal rate.

When ACDs and DV cases are excluded, 35% of felonies and 16% of misdemeanors were dismissed. For non-ACD, non-DV *felonies*, 38% Latinos, 35% blacks, 33% Asians and 32% whites had their case dismissed. For non-ACD, non-DV *misdemeanors*, 18% Latinos, 17% Asians, 15% blacks, and 12% whites had their case dismissed. Logistic regression analyses largely confirmed a lower probability of dismissal for whites: blacks and Latinos were 9% more likely (*odds ratio* = 1.42 for blacks and 1.41 for Latinos), and Asians 2% more likely (*odds ratio* = 1.10) to have their case dismissed, compared to similarly-situated whites. When put another way, 22 out of every 100 black, 22 out of every 100 Latino, 18 out of every 100 white, and 18 out of every 100 Asian defendants had their case dismissed (based on $N = 162,525$ cases analyzed). Race was not the

strongest predictor of case dismissals; detention status, offense type, and charge seriousness were better predictors. Note that these findings should be interpreted with an eye to the limitations described below (see Study Limitations). As for reasons for dismissals, the prosecution's inability to establish the elements of the crime was the chief reason for both *felonies* (consistent across racial groups), while for *misdemeanors*, it was the lack of speedy prosecution and *violations* were most likely to receive ACDs. ACD dismissals, which are statutorily-regulated and entail limited prosecutorial discretion, were more common for whites (2.2% of felonies, and 40.3% of misdemeanors) than for blacks (0.5% and 22.6%) and Latinos (1.1% and 28.4%).

- Plea bargaining - Charge offers: the study found limited evidence that in the drug sample (combined misdemeanor and felony samples), blacks were less likely to receive a reduced charge offer, even after controlling for many relevant factors, including arrest circumstances, evidence gathered, charge seriousness, and prior record. Overall, the strongest predictors of charge offers were change in plea offer (whether the initial plea offer differed from the final plea), prior prison sentence, the recovery of currency at the time of arrest, prior violent felony conviction and charge seriousness. For a sample of 1,153 *felony* drug cases, no statistically significant differences were found.
- Plea bargaining - Sentence offers: Blacks and Latinos are more likely to receive custodial sentence offers (including time served in pretrial detention), as opposed to non-custodial sentence offers which includes community service, probation and fine. The sentence offer analyses was conducted for (a) all misdemeanors in the dataset provided by DANY, (b) the random sample of 1,246 misdemeanor marijuana cases, and (c) the random sample of 1,153 felony non-marijuana drug cases.

For all misdemeanors, a greater percentage of blacks (47%) received custodial offers compared to Latinos (32%), whites (22%), and Asians (8%). After considering various factors, blacks were 13% more likely (*odds ratio* = 1.67) and Latinos 5% more likely (*odds ratio* = 1.21) to

receive custodial sentence offers; Asians however were 25% *less* likely (*odds ratio* = 0.33) as compared to white defendants. Racial disparities were particularly large for misdemeanor *drug* offenses, followed by misdemeanor *person* offenses, and least pronounced for misdemeanor *property* offenses. For all drug misdemeanors analyzed, black defendants were 27% (*odds ratio* = 3.29) and Latino defendants 18% more likely (*odds ratio* = 2.12) to receive a custodial sentence offer (which included time served in pretrial detention as an offer), as compared to similarly-situated white defendants. When “time served” was excluded from custodial sentence offers, the racial differences reported above increased only marginally.

Predicted probabilities for each group showed that 40 out of every 100 black, 36 out of every 100 Latino, 33 out of every 100 white, and 17 out of every 100 Asian defendants received a custodial sentence offer (based on $N = 93,588$ cases analyzed). Again, race was not the strongest predictor of custodial sentence offers. Other factors, such as prior record, offense type, defense counsel type, and misdemeanor charge seriousness were better predictors. These findings should be interpreted while also keeping in mind the data issues described below.

When examining sentence offers for the misdemeanor marijuana sample, black defendants were 19% more likely (*odds ratio* = 2.21) to receive a punitive sentence offer, while differences between whites and Latinos, and between whites and Asians were not statistically significant.

For the felony non-marijuana drug sample, although the difference between whites and blacks was not statistically significant, Latinos were 14% more likely (*odds ratio*=1.78) to receive a custodial sentence offer than whites. The exclusion of “time served” from the outcome did not noticeably change the results for either the misdemeanor or felony samples.

Prior arrest also influences sentence offers more than *prior prison sentences*. This significant influence of *prior arrest* on sentence offers is consistent with the DANY Plea Offer Guidelines which recommend more severe punishments for defendants with prior arrest history. The finding suggests that if these guidelines were based on *prior sentences*, as opposed to *prior*

arrest, much of the difference between black and white, and Latino and white defendants would have disappeared, at least in misdemeanor cases.

- Sentences imposed: For the full dataset, including felonies and misdemeanors, black defendants were significantly *more* likely, and Asian defendants significantly *less* likely, to be sentenced to custodial punishments, in comparison with white defendants. However, racial disparities in sentences imposed are not as large as in sentence offers described above. Simple percentages showed that blacks and Latinos were sentenced to custodial punishments at higher rates for *felonies* (61% blacks, 55% Latinos, 40% of whites, and 22% of Asians) as well as for *misdemeanors* (30% blacks, 20% Latinos, 16% whites, and 4% Asians). After controlling for the influence of a range of factors, blacks were 5% more likely (*odds ratio* = 1.25) and Asians 19% *less* likely (*odds ratio* = 0.44) to be sentenced to imprisonment. No statistically significant difference in sentences imposed was found between whites and Latinos. This pattern remains when applying the Heckman procedure to correct for selection bias caused by excluding dismissed cases at this stage.

Predicted probabilities for each racial group showed that 32 out of every 100 black, 30 out of every 100 Latino, 27 out of every 100 white, and 16 out of every 100 Asian defendants were imprisoned (based on $N = 100,035$ cases analyzed). Again, race was not the strongest predictor of custodial sentence imposed. Other factors, such as prior record, offense type, defense counsel type, and charge seriousness were better predictors. Here again, data limitations described below should be considered when interpreting these findings.

When broken down by offense categories, racial differences between whites and blacks were greatest for *misdemeanor person* offenses (blacks 15% more likely to be imprisoned; *odds ratio* = 1.89), *misdemeanor drug* offenses (blacks 15% more likely to be imprisoned; *odds ratio* = 1.85), and *felony drug* offenses (blacks 14% more likely to be imprisoned; *odds ratio* = 1.80). Asians received particularly favorable sentence outcomes for *property* offenses, whether for misdemeanors (31% less likely than whites; *odds ratio* = 4.32) or felonies (19% less likely than whites; *odds ratio*

= 2.86). Differences between whites and Latinos were relatively small, although Latinos were still more likely to be sentenced to imprisonment than similarly-situated whites, especially for *felony drug* (10% more likely; *odds ratio* = 1.50) and *felony property* offenses (5% more likely; *odds ratio* = 1.20).

- Prosecutor and Criminal Defense Characteristics: Prosecutors' caseload, gender, and race do not seem to influence discretionary points, except when predicting custodial sentence offers in *misdemeanor marijuana* cases where Asian and black prosecutors made more punitive offers, as compared to white prosecutors. The defense counsel type seems to matter much more: nearly all discretionary points we looked into show more favorable outcomes for defendants, regardless of race, if they were represented by private counsel, as opposed to the Legal Aid Society, the New York County Defender Services, the Neighborhood Defender Service, or counsel appointed under 18(b). Outcomes were particularly unfavorable for defendants represented by 18(b) counsel, particularly when it comes to pretrial detention and sentencing.

Study Strengths

The current study contributed to existing research on race and prosecution in a number of important ways. First, the study represents a rare effort to look into nearly every discretionary point, including case acceptance for prosecution, dismissals, pretrial detention, plea bargaining (reduced charge and custodial sentence offers), and sentencing outcomes, and provides strong evidence for the need to examine multiple discretionary points, given their interdependent nature. Second, the study examines important data on the evidentiary strength of cases involving drugs—including drug description, drug recovery by the police, and other arrest circumstances—and provides a unique descriptive review of these variables as well as multivariate analyses that take into account their combined influence. Third, using data collected from prosecutorial paper files, it looks closely into plea-to-a-lesser charge offers and sentence offers. Fourth, the study relied on a large dataset that permitted various analyses and enabled us to examine outcomes for Asian defendants as well.

Finally, because the project was funded under NIJ’s solicitation “Building and Enhancing Criminal Justice Research-Practitioner Partnerships” and because of Vera’s model of implementing research projects in close collaboration with stakeholders, this research was carried out with consistent support from our DANY colleagues, including executives, line prosecutors, and analysts. This cooperative model yielded a rich trove of knowledge about the office structure, case-processing nuances, data strengths and limitations, and the context of the findings. DANY provided their suggestions and criticisms throughout the project, which undoubtedly made the findings described in this report much more reliable and meaningful to practitioners.

Study Limitations

Despite its significant contributions described above, this research also has some important limitations. Examining them provides useful insight for improving future research on racial disparity in criminal case processing. Data for this study came from DANY’s case management systems. Although these systems capture a host of important variables, they were not built for research purposes, and therefore lack some important information. Unfortunately, the current study’s primary source of data has no reliable measures of the strength of the evidence. Usable indicators of evidentiary strength are notoriously difficult to capture and are seldom available in case management data. Consequently, a clear priority of future research on case processing outcomes is to collect improved measures of the quality of arrest and strength of evidence to examine how these might affect racial and ethnic disparity across stages of the justice system.

Furthermore, because DANY does not systematically capture victim information, we were not able to examine offender-victim dyads for violent offenses. Because the race of victims can partially explain racial disparity in case processing, future research on person offenses should strive to collect additional information on victim characteristics. Also, although we include proxies for defendants’ socioeconomic conditions, future work is needed that incorporates improved measures of defendant class status.

Criminal justice outcomes are often influenced by defendants' socio-economic characteristics. For certain discretionary points, and particularly for pretrial detention, defendants' employment and community ties can play an important role. To consider the effect of these characteristics, we included certain proxies, such as type of counsel, arrest neighborhood for the population dataset, and median household income for the drug samples. Furthermore, the analysis predicting plea offers for the drug felony sample explored the impact of defendants' marital status, employment, and education. However, the absence of more robust measures of socio-economic characteristics is a clear weakness of this study, which we hope future research will be able to address more successfully. It is our hope that prosecutors' offices will capture this information more systematically to enable more nuanced analyses.

An advantage of this study over others is its inclusion of Asian defendants. Our findings suggest that there are important racial differences in case processing that extends beyond white, black and Latino categories. Nonetheless, we were unable to differentiate among defendants using more refined categories of racial and ethnic identity. For example, important differences may exist within these broad racial and ethnic categories in terms of skin tone, language proficiency, and country of origin, citizenship or other elements of racial and ethnic identity. These types of refinements hold the potential to make important contributions in future work of unwarranted disparity in the justice system.

Although the findings of this study should have broad appeal, given DANY's size and prominence, it is also important to note that New York County is in many ways unique, which may limit the generalizability of our results to smaller and more racially and ethnically homogenous jurisdictions. Furthermore, our analyses included only five types of felonies (see Data and Analyses above), which makes it difficult to gauge how prosecutorial discretion is being exercised for other felony offenses, even within DANY. It is our hope that future studies will apply the conceptual and analytical approach developed here to other jurisdictions and examine a broader range of felony offenses.

Finally, although this study examines several important intermediate case processing decisions, it does not capture the initial behavior of law enforcement agents, who have substantial discretion in deciding which defendants to arrest, or post-sentencing decisions of correctional officers, who exercise important discretion over certain outcomes such as parole revocations. Police behavior can have important influences on prosecutorial decision making, and pronounced punishments can be altered by back-end sentencing adjustments. Although research on the criminal justice system has typically been divided into studies of policing, courts, and corrections, it may be time to begin examining the broader nexus among different domains of the system—for the pursuit of racial justice ultimately will require thoughtful examination of the many diverse and interrelated discretionary components of the formal criminal punishment process.

Policy Implications

This study assessed many significant prosecutorial discretionary points, some of which are fully under prosecutors' control, others are regulated by prosecutors although their decisions are guided by statutes or guidelines, and still others fall under the courts' purview but prosecutors contribute to the final case outcome. The findings, discussed above, suggest policy implications for DANY, particularly for two circumstances. In the case of other findings, we recommend further inquiry to determine how they might affect DANY policy and practice.

DANY prosecutes nearly all cases brought by the police, including 94% of *felonies*, 96% of *misdemeanors*, and 89% of *violations*. No marked racial or ethnic differences were observed for this discretionary point. Many of these cases, however, are subsequently dismissed (as reported in Main Findings above). Therefore, conducting a more thorough case screening and eliminating cases that are likely to be dismissed at later stages may help the office and the court system save resources required for handling these cases and minimize the possibility of unnecessary pretrial detention of defendants involved in these cases. However, identifying such cases at the initial screening is challenging, especially with legal and other pressures to screen cases quickly. One possible way to address

screening decisions would be to increase DANY's capacity to identify the most common characteristics that contribute to case dismissals, and act on these conclusions as early in case processing as reasonable. Another possible way could be to develop some type of predictive model that takes into account the most common characteristics that contribute to case dismissals. Such a model could be developed in partnership with researchers.

After controlling for the influence of factors such as charge seriousness and prior record, blacks were still more likely to be held in detention, followed by Latinos, whites, and Asians. Unfortunately, the analyses predicting pretrial detention did not take into account community ties, employment, and family information relevant to this decision-making point, and thinking about policy implications is particularly challenging for pretrial detention. Nevertheless, decreasing the case acceptance rate, as mentioned above, will likely have a more favorable impact on defendants of color, given that they are detained at higher rates.

Logistic regression analyses revealed that, compared to white defendants, blacks, Latinos, and Asians were more likely to have their case dismissed at any point. This finding raises the question of whether having higher dismissal rates for defendants of color should be viewed as an indicator of leniency, or simply serve as a mechanism for declining to prosecute cases that could have been rejected at screening. Accounting for police behavior which, as mentioned above, influences prosecutorial decision making, might shed some light on this seemingly positive finding for defendants of color.

Looking at both the misdemeanor marijuana and felony drug cases, black defendants were more likely to receive custodial sentence offers when compared to white defendants. Our analyses also revealed that prior arrest influences sentence offers more than prior prison sentences. This significant influence of prior arrest on sentence offers is consistent with the DANY Plea Offer Guidelines, which recommend more severe punishments for defendants with prior arrest history. The finding suggests that if these guidelines were based on prior sentences wherever appropriate, as opposed to prior arrest, much of the difference between black and white, and Latino and white defendants would have

diminished significantly, at least in misdemeanor cases. We recommend that DANY review and revise the guidelines with an eye to this finding.

While the imposition of sentences is generally the courts' prerogative, given that the vast majority of cases are disposed of through plea bargaining, the influence of prosecutors' decisions on sentencing recommendations and subsequent outcomes is significant. For the full dataset, including felonies and misdemeanors, black defendants were significantly more likely and Asian defendants significantly less likely to be sentenced to custodial punishments compared to white defendants. Of all racial groups, Asians were least likely to be sentenced to prison or jail. Ensuring more racial equity in the plea bargain process will have a direct impact on sentencing outcomes.

In addition to race-related findings, the study also yielded significant information about how criminal justice practitioners' characteristics influence case outcomes—findings that can have important policy implications. The study found that, although prosecutors' caseload, gender, and race do not seem to influence most discretionary points, nearly all discretionary points we looked into show a more favorable outcome for defendants, regardless of race, if they were represented by private counsel, as opposed to the Legal Aid Society, the New York County Defender Services, the Neighborhood Defender Service, or a counsel appointed under 18(b). Outcomes were especially punitive for defendants represented by 18(b) counsel, particularly with regard to pretrial detention and sentencing. This finding suggest a need for additional research that looks at the quality of legal representation as well as how prosecutors and other courtroom actors view different types of defense counsel, given that blacks and Latinos are much less likely to be represented by private counsel and much more likely to be represented by 18(b) counsel, with the former showing the most favorable and the latter the least favorable outcomes for defendants.

While these policy implications are preliminary, Vera and DANY hope to continue working toward developing a concrete set of recommendations based on this study and additional research.

Table of Contents

Acknowledgements.....	xxi
List of Figures.....	xxiii
List of Tables.....	xxvi
List of Appendixes.....	xxx
Part 1. Study Overview.....	1
1.1. Introduction.....	1
1.2. Review of Relevant Literature.....	6
1.3. Research Questions.....	14
1.4. New York County District Attorney’s Office.....	16
1.5. Case Processing and Discretionary Decisions at DANY.....	18
Part 2. Data Sources, Variables, and Analytical Strategy.....	24
2.1. Data Sources.....	24
2.1.A. DANY administrative dataset – Population data.....	24
2.1.B. DANY Human Resources information.....	26
2.1.C. Prosecutorial interviews.....	26
2.1.D. Sample of misdemeanor marijuana and felony drug cases.....	26
2.2. Variables.....	30
2.2.A. Independent Variable – Defendants’ Race and Ethnicity.....	30
2.2.B. Dependent Variables.....	31
2.2.C. Control Variables of Multivariate Analyses.....	33
2.3. Analytical Strategy.....	37
Part 3. Overview of Charges for Cases Accepted for Prosecution.....	41
3.1. Offense Types within Felonies and Misdemeanors.....	41
3.1.A. Felony Offenses.....	41
3.1.B. Misdemeanor Offenses.....	44

3.2. Drug Charges.....	51
3.2.A. Drug Overview for All Cases	51
3.2.B. Drug Overview for Cases with Top Drug Charge	55
3.3. Screening Charges by Offense Class Levels.....	57
3.3.A. Defendant Race within Each Offense Class Level.....	57
3.3.B. Offense Class Levels within Defendant Race.....	59
Part 4. Overview of the Defendant Population	61
4.1. Defendant Race	61
4.2. Defendant Gender	62
4.3. Defendant Age.....	64
4.4. Defendant Residence and Crime Occurrence Location	68
4.4.A. Defendant Residence	68
4.4.B. Crime Occurrence Location	71
4.4. Defendant Prior Record.....	73
Part 5. Prosecutor and Defense Counsel Characteristics.....	75
5.1. Prosecutor Characteristics	75
5.2. Defense Counsel Characteristics.....	78
Part 6. Discretionary Decisions.....	81
6.1. Case Acceptance for Prosecution.....	81
6.1.A. Mode of Case Screening by Defendant Race	83
6.1.B. Case Acceptance for Prosecution by Defendant Race	83
6.2. Pretrial Detention	85
6.2.A. Descriptive Overview of Detention Status	87
6.2.B. Multivariate Analyses of Detention Status	90
6.3. Case Dismissal	97
6.3.A. Descriptive Overview of Dismissed Cases.....	99
6.3.B. Reasons for Case Dismissal	102
6.3.C. Overview of Cases Dismissed at Arraignment	104

6.3.D. Multivariate Analyses of Case Dismissals	106
6.4. Plea Offers.....	114
6.4.A. Sentence Offer Analysis Based on the Population Data.....	117
6.4.B. Plea Offer Analysis Based on the Sample of Marijuana Misdemeanor Cases	132
6.4.C. Charge Offer and Sentence Offer Analyses based on the Sample of Non-Marijuana Felony Drug Cases	167
6.5. Sentencing	199
6.5.A. Descriptive Overview of Sentences Imposed.....	200
6.5.B. Disposition Type Separated by Felonies, Misdemeanors, and Violations.....	202
6.5.C. Multivariate Analyses of Sentence Outcomes	205
6.6. Charge Dynamic.....	211
Part 7. Conclusion	216
7.1. Why Does This Work Matter to New York City and Vera?	216
7.2. Implications for the New York County DA’s Office.....	217
7.3. Contribution to Research.....	223
7.4. Study Limitations and Suggestions Future Direction	228
References	231
Appendixes	239
Appendix A: Prosecutor Interview Instrument	240
Appendix B: Data Collected from the Drug Sample Case Files	242
Appendix C: Counts and Charges across Felony and Misdemeanor Cases.....	246

Acknowledgements

Dozens of people worked to make this project happen, and we want to apologize to anyone whom we may have neglected to name below.

First and foremost, on behalf of the Vera Institute of Justice, we would like to thank the New York County District Attorney Cyrus Vance, Jr. for agreeing to participate in the project and for providing unlimited access to his staff, administrative data, and case files. Chief of the Trial Division Karen Friedman-Agnifilo, Executive Assistant District Attorney Frederick Watts, Deputy Chief of the Trial Division Nitin Savur, Erin Duggan Kramer, Deputy Chief of Staff, the current and former analysts from DANY's Planning and Management Unit Andrew Bartholomew, Jourdan Janssen, Connor Concannon and Mary Altonji, and Dan Farley and Larry Williams from the Records Department all provided much-needed assistance throughout the project, and we are grateful for their efforts. We would also like to thank the chiefs of trial bureaus and assistant district attorneys who helped us with data collection.

At the National Institute of Justice, we want to thank our program officer Dr. Nadine Frederique for her support and encouragement, and anonymous reviewers who provided valuable feedback on this study.

This work would not have been possible without the guidance and support of Whitney Tymas, director of the Prosecution and Racial Justice Program (PRJ), PRJ research analyst Olivia Sideman, Vera Institute director and president Nicholas Turner, former director and president Michael Jacobson, vice-president and chief program officer Dan Wilhelm, former PRJ director Wayne McKenzie, and a dedicated and talented team of Verans, including Vincent Lau, Shelley Azumbrado, Siobhan Carney, Mary Crowley, Jim Parsons, Oren Root, Tina Chiu, Michael Mehler, Adair Iacono, and Monica San Juan, as well as our former Vera colleagues—

Alice Chasan, Angela Downes, Dara Young, Yolaine Menyard, Emily Turner, and Edward Liang.

The project was supported by our wonderful team of advisers and consultants, including Milwaukee District Attorney John Chisholm and a team of legal scholars and social scientists—Cassia Spohn, Brian Johnson, Marc Miller, and Ronald Wright—who helped with the launch of this project, reviewed methodology, and provided critical feedback on this report. We want to thank all of them for their outstanding support.

List of Figures

Figure 1. DANY Case Processing Chart with Five Discretionary Decisions

Figure 2. Drug Offense Sample Description

Figure 3. Percentage of Defendants in a Racial Category by Type of Drug Charge for Felonies ($N = 7,934$)

Figure 4. Percentage of Defendants in a Racial Category by Type of Drug Charge for Misdemeanors ($N = 43,367$)

Figure 5. Percentage of Defendants in a Racial Category by Type of Drug Charge for Violations ($N = 2,446$)

Figure 6. Top Drug Charge: Percentage of Defendants in a Racial Category by Type of Drug Charge for Felonies ($N = 5,243$)

Figure 7. Top Drug Charge: Percentage of Defendants in a Racial Category by Type of Drug Charge for Misdemeanors ($N = 35,541$)

Figure 8. Top Drug Charge: Percentage of Defendants in a Racial Category by Type of Drug Charge for Violations ($N = 2,446$)

Figure 9. Percentages and Counts of Felonies, Misdemeanors, and Violations by Race (percent within offense type)

Figure 10. Percentage of Felonies by Race and Gender ($N = 26,069$)

Figure 11. Percentage of Misdemeanors by Race and Gender ($N = 159,206$)

Figure 12. Percentage of Violations by Defendant Race and Gender ($N = 25,781$)

Figure 13. Percentage of Felony Defendants by Age Category and Race ($N = 26,069$)

Figure 14. Percentage of Misdemeanor Defendants by Age Category and Race ($N = 159,206$)

Figure 15. Percentage of All Violation Defendants by Age Category and Race ($N = 25,781$)

Figure 16. Percentage of all Felony Defendants by Race Residing within a New York City Borough ($N = 26,069$)

Figure 17. Percentage of all Misdemeanor Defendants by Race Residing within a New York City Borough ($N = 159,206$)

- Figure 18. Percentage of all Violation Defendants by Race Residing within a New York City Borough ($N = 25,781$)
- Figure 19. Percentage of all Felony Defendants by Race Arrested within a New York City Borough ($N = 26,069$)
- Figure 20. Percentage of all Misdemeanor Defendants by Race Arrested within a New York City Borough ($N = 159,206$)
- Figure 21. Detention Status after Arraignment for Felony Defendants within Race ($N = 26,069$)
- Figure 22. Detention Status after Arraignment for Misdemeanor Defendants within Race ($N = 159,206$)
- Figure 23. Plea Offer Types for Felonies within Race ($N = 409$)
- Figure 24. Plea Offer Types for Misdemeanors within Race ($N = 98,557$)
- Figure 25. Plea Offer Types for Violations within Race ($N = 14,987$)
- Figure 26. Percentage of Defendants with One, Two, Three, Four or Five Arrest Charges for the Misdemeanor Marijuana Sample
- Figure 27. Percentage of Defendants with One, Two, Three, Four or Five Screening Charges for the Misdemeanor Marijuana Sample
- Figure 28. Percentage of Defendants with One or Two Plea Charges for the Misdemeanor Marijuana Sample
- Figure 29. New York City Neighborhood of Arrest for the Misdemeanor Marijuana Sample (percent within race)
- Figure 30. Charge Offer Type for the Misdemeanor Marijuana Sample ($n = 1,256$) (percent within race)
- Figure 31. Sentence Offer Type for the Population of Misdemeanor Marijuana Cases ($n = 8,363$) (percent within race)
- Figure 32. Sentence Offer Type for the Misdemeanor Marijuana Sample ($n = 1,256$) (percent within race)
- Figure 33. Percentage of Defendants by Offense Level at Arrest for the Felony Drug Sample
- Figure 34. Percentage of Defendants by Offense Level at Screening for the Felony Drug Sample

Figure 35. Percentage of Defendants by Offense Level at Supreme Court Arraignment for the Felony Drug Sample

Figure 36. Percentage of Defendants by Offense Level at Plea or Trial Conviction for the Felony Drug Sample

Figure 37. New York City Neighborhood of Arrest for the Felony Drug Sample (percent within race) ($n = 1,152$)

Figure 38. Charge Offer Type for the Felony Drug Sample ($n = 1,153$) (percent within race)

Figure 39. Sentence Offer Type for Cases Disposed of Pre-Indictment for the Felony Drug Sample ($n = 376$) (percent within race)

Figure 40. Sentence Offer Type for Cases Disposed of Post-Indictment for the Felony Drug Sample ($n = 777$) (percent within race)

Figure 41. Disposition Type for Felony Defendants within Race ($N = 26,069$)

Figure 42. Disposition Type for Misdemeanor Defendants within Race ($N = 159,206$)

Figure 43. Disposition Type for Current Violation Defendants within Race ($N = 25,781$)

List of Tables

- Table 1. Glossary of Terms for Case Processing Chart (Figure 1)
- Table 2. Top Screening Felony Charges (percentages within race)
- Table 3. Top Screening Felony Charges (percentages within offense category)
- Table 4. Top Screening Misdemeanor Charges (percentages within race)
- Table 5. Top Screening Misdemeanor Charges (percentages within offense category)
- Table 6. Screening Charges – Counts ($N = 212,719$)
- Table 7. Screening Charges within Offense Category – Percentages ($N = 212,719$)
- Table 8. Screening Charges within Defendant Race – Percentages ($N = 212,719$)
- Table 9. Defendant Age by Offense Category and Race (Mean, Standard Deviation and Median)
- Table 10. Defendants with One or More Prior Arrest, Felony Arrest, Conviction, Felony Conviction, Prison Sentence, Jail Sentence and Non-Custodial Sentence within Race
- Table 11. Percentage of Assistant District Attorneys within DANY by Gender and ADA Race ($N = 647$)
- Table 12. Mean, *SD*, Median, Minimum, and Maximum ADA Years of Experience at DANY
- Table 13. Number of Cases Assigned within Trial Bureau and Mean Open Felony and Non-Felony Cases at Arraignment and Disposition
- Table 14. Defense Counsel Type within Offense Categories
- Table 15. Defense Counsel Type within Defendant Race Separated by Offense Category
- Table 16. Logistic Regression to Predict Custody Status at Arraignment (0 = not in custody, 1 = in custody)
- Table 17. Racial Differences in Odds Ratios by Crime Type for Logistic Regression Model Predicting Custody Status at Arraignment
- Table 18. Dismissals at Any Stage by Race, Offense Level and Domestic Violence ($N = 48,682$) (ACD/ACMs included)

- Table 19. Dismissals at Any Stage by Race, Offense Level and Domestic Violence ($N = 37,713$) (ACD/ACMs excluded)
- Table 20. Reasons for Dismissals of Felonies by Race ($N = 9,548$)
- Table 21. Reasons for Dismissals of Misdemeanors by Race ($N = 36,381$)
- Table 22. Reasons for Dismissals of Violations by Race ($N = 3,448$)
- Table 23. Frequency and Percentage of Felonies Dismissed at Arraignment ($N = 9,548$)
- Table 24. Frequency and Percentage of Misdemeanors Dismissed at Arraignment ($N = 35,940$)
- Table 25. Logistic Regression to Predict Case Dismissals (excludes ACD/ACMs) (0 = prosecuted, 1 = dismissed)
- Table 26. Racial Differences in Odds Ratios by Crime Type for Logistic Regression Model Predicting Case Dismissal
- Table 27. Frequency and Percentage of Guilty Pleas at and After Arraignment Made by Defendants with None, One, or Two or More Prior Arrests
- Table 28. Logistic Regression to Predict Custodial Sentence Offers for all Misdemeanors in the Case Population (0 = non-custodial offer, 1 = custodial offer)
- Table 29. Racial Differences in Odds Ratios by Crime Type for Logistic Regression Model Predicting Custodial Sentence Offer for all Misdemeanors in the Case Population
- Table 30. Defendants with One or More Prior Arrest, Felony Arrest, Conviction, Felony Conviction, Prison Sentence, Jail Sentence and Non-Custodial Sentence within Race – for the Misdemeanor Marijuana Sample
- Table 31. Defendant’s Activity Leading to Arrest for the Misdemeanor Marijuana Sample
- Table 32. New York City Neighborhood of Arrest for the Misdemeanor Marijuana Sample
- Table 33. Arrest Occurrence Location (Indoor, Outdoor or Inside Car) for the Misdemeanor Marijuana Sample
- Table 34. Police Officer’s Activity Leading to Arrest for the Misdemeanor Marijuana Sample (percent within race)
- Table 35. Police Officer’s Activity Leading to the Drug Recovery for the Misdemeanor Marijuana Sample (percent within race)

Table 36. Identification Procedure of Defendant as a Suspect for the Misdemeanor Marijuana Sample

Table 37. Defense Counsel Type for the Misdemeanor Marijuana Sample (percent within race)

Table 38. Logistic Regression to Predict Charge Offer for the Misdemeanor Marijuana Sample (0 = plea-to-a-lesser-charge offer or ACD, 1 = no reduced charge offer)

Table 39. Logistic Regression to Predict Charge Offer: Misdemeanor Marijuana and Felony Drug Cases Combined (0 = plea-to-a-lesser-charge offer, 1 = no reduced charge offer)

Table 40. Logistic Regression to Predict Custodial Sentence Offer for the Misdemeanor Marijuana Sample (0 = Non-custodial offer, 1 = Custodial offer)

Table 41. Plea Offers to a Lesser Charge for the Misdemeanor Marijuana Sample Broken Down by (1) Prior Arrest, (2) Offense Level and (3) Race ($n = 1,256$)

Table 42. Plea Offers to a Lesser Charge for the Misdemeanor Marijuana Sample Broken Down by (1) Prior Prison Sentence, (2) Offense Level and (3) Race ($n = 1,256$)

Table 43. Sentence Offers for the Misdemeanor Marijuana Sample Broken Down by (1) Prior Arrest, (2) Offense Level and (3) Race ($n = 1,256$)

Table 44. Sentence Offers for the Misdemeanor Marijuana Sample Broken Down by (1) Prior Prison Sentence, (2) Offense Level and (3) Race ($n = 1,256$)

Table 45. Defendants with One or More Prior Arrest, Felony Arrest, Conviction, Felony Conviction, Prison Sentence, Jail Sentence and Non-Custodial Sentence within Race for the Felony Drug Sample

Table 46. Defendant's Activity Leading to Arrest for the Felony Drug Sample (percent within race)

Table 47. New York City Neighborhood of Arrest for the Felony Drug Sample

Table 48. Arrest Occurrence Location for the Felony Drug Sample (Indoor, Outdoor or Inside Car)

Table 49. Police Officers' Activity Leading to Arrest for the Felony Drug Sample

Table 50. Police Officers' Activity leading to the Drug Recovery for the Felony Drug Sample (percent within race)

Table 51. Drug Type Recovered for the Felony Drug Sample

Table 52. Identification Procedure of Defendant as a Suspect for the Felony Drug Sample

Table 53. Evidence Gathered During and After Defendants' Arrest for the Felony Drug Sample

Table 54. Defense Counsel Type for the Felony Drug Sample

Table 55. Bail Reasons for the Felony Drug Sample (percent within race)

Table 56. Logistic Regression Predicting Charge Offers for the Felony Drug Sample

Table 57. Logistic Regression Predicting Custodial Sentence Offers for the Felony Drug Sample

Table 58. Sentence Offers for the Felony Drug Sample Broken Down by (1) Prior Arrest, (2) Offense Level and (3) Race

Table 59. Sentence Offers for the Felony Drug Sample Broken Down by (1) Prior Prison Sentence, (2) Offense Level and (3) Race

Table 60. Sentences Imposed by Offense Category and Race ($N = 120,424$)

Table 61. Logistic Regression to Predict Sentence Imposed (0 = non-custodial, 1 = custodial)

Table 62. Racial Differences in Odds Ratios by Crime Type for Logistic Regression Models Predicting Custodial Sentence Imposed

Table 63. Percentage of Charges that Change from Arrest to Screening within Race ($N = 211,056$)

Table 64. Percentage of Charges that Change from Screening to Disposition within Race ($N = 211,056$)

List of Appendixes

Appendix A: Prosecutor Interview Instrument

Appendix B: Data Collected from the Sample Case Files

Appendix C: Counts and Charges across Felony and Misdemeanor Cases

Part 1. Study Overview

1.1. Introduction

Despite being only 13% of the national population (U.S. Census Bureau, 2011), blacks comprised 28% of people arrested¹ (Federal Bureau of Investigation, 2011) and 38% of prison inmates (Carson & Sabol, 2012). Similarly, while persons of Hispanic and Latino origin (hereafter “Latino”) make up only 17% of the general population (U.S. Census Bureau, 2011), they represent 23% of prison inmates (Carson & Sabol, 2012). Although drawing direct comparisons is difficult because of varied definitions of race and ethnicity by different data agencies, there is no doubt that blacks and Latinos, and particularly those who are male, are overrepresented in the criminal justice system. The Bureau of Justice Statistics reports that in 2011 “black males were imprisoned at rates that ranged between 5 and 7 times the rates of white males...[and] Hispanic males were imprisoned at 2 to 3 times the rate of white males” (Carson & Sabol, 2012, p. 8).² Between 2001 and 2011, the imprisonment rate for black men has decreased from 3,535 to 3,023, while it increased for Latino men (from 1,177 to 1,238) and for white men (from 462 to 478) (see Harris and Beck, 2002, p. 12; Carson & Sabol, 2012, p. 8).³ This decrease however appears marginal, compared to the disparities that still prevail. Such disparities feed perceptions that the criminal justice system is unfairly punitive toward certain racial and ethnic groups.

Each of the principal actors in the criminal justice system—law enforcement, prosecutors, and judges—is vested with decision-making power. During each phase of contact

¹ The Uniform Crime Reports’ definition of “black” includes “black Hispanics.”

² Black females were imprisoned at between two and three times the rate of white females, while Latino females were imprisoned at between one and three times the rate of white females.

³ The rates are per 100,000 residents in each group in the general population.

with the system, therefore, people are affected by the quality of decision-making about their case dispositions. For example, law enforcement agencies' practices may introduce disparity by unfairly arresting certain racial groups, a practice known as racial profiling. Judges may inject bias at sentencing. In recent years, however, public scrutiny has led to efforts to curb bias in these areas. Within the last decade, an increasing number of federal lawsuits have sought to compel law enforcement agencies to end racial profiling, and several civil liberties organizations, including the American Civil Liberties Union (ACLU), continue to be active opponents of this practice. Most recently, in November 2013, Bill de Blasio won New York City's mayoral election promising to end discriminatory stop-and-frisk practices which, according to his campaign, unfairly target young men of color.

On the sentencing end, between the mid-1970s and late 1990s the federal government, as well as various states, has instituted sentencing guidelines and mandatory minimum sentences to circumscribe judicial discretion.⁴ Although New York's Rockefeller Drug Laws, enacted in 1973 and mandating long prison sentences for many drug offenders, was amended in 2009, mandatory sentencing laws are still prevalent in the US criminal justice system.

Of all these actors, prosecutors continue to exercise nearly unlimited discretion and are subject to little accountability. Prosecutors decide whether to file criminal charges in a case, what and how many offenses to charge, whether to offer a plea to a lesser charge or sentence, and what sentence to recommend if a defendant is convicted. Given that most criminal cases result in guilty pleas, prosecutorial discretion has important implications for the legitimacy of the U.S. criminal justice system.

⁴ The U.S. Sentencing Commission developed the Federal Sentencing Guidelines as a result of the Sentencing Reform Act of 1984. However the Supreme Court's 2005 decision in *United States v. Booker* made the guidelines advisory only, and not mandatory.

Despite the growing number of studies on race and prosecution (see Review of Relevant Literature, section 1.1), comparatively little empirical research exists about the functioning of prosecutorial offices and the extent of their contribution to the overrepresentation of blacks and Latinos in the criminal justice system. Most research devoted to examining racial disparities in the criminal justice system pertains to sentencing outcomes, probably because concerns about racial justice and socio-economic disparities in punishment were part of the motivation for adopting structured sentencing guidelines and determinate sentencing practices. The empirical evidence suggests that despite policies to curtail judicial discretion, racial and ethnic disparities persist (Spohn, 2000). At the same time, determinate sentencing policies have, in effect, transferred greater discretion to prosecutors, who are subject to minimal public oversight (Nagel & Schulhofer, 1992; Tonry, 1996). There has been comparatively little empirical research examining whether and the extent to which race and other legally irrelevant factors influence prosecutorial decision making and, in turn, contribute to racial and ethnic disparities in the criminal justice system (Spohn, Gruhl, & Welch, 1987; Piehl & Bushway, 2007).

The paucity of empirical research on prosecutorial decision making exists, in part, because of a disconnect between prosecutors and researchers. Prosecutor's offices rarely grant researchers access to the data necessary to investigate the relationship between race and prosecutorial outcomes. Furthermore, most jurisdictions do not systematically capture this information in a format conducive to analysis, even if they record data electronically. As a result, researchers typically do their work removed from prosecutorial practices, producing findings that have relatively little practical applicability for prosecutors concerned with ensuring the equitable treatment of defendants.

Some scholars have concluded that prosecutor's offices should initiate internal oversight measures as a mechanism for significant decision-making reform (Davis, 1998; Miller & Wright, 2008; Franklin, 2010). In practice, however, most jurisdictions do not have the capacity or research expertise to evaluate discretionary outcomes and identify whether racial disparities exist in prosecution.

The study was initiated by District Attorney Cyrus R. Vance, Jr. who, in 2009, even before taking office, expressed his strong support for analyzing the role that race plays in prosecutors' decisions regarding bail, charges, plea bargains, and sentences. As Mr. Vance said (2009) at the time: "The shame is not in finding that we have unconscious biases or that our current policies have a disproportionate racial impact—the shame lies in refusing to ask the questions and correct the problems." In 2011, the National Institute of Justice's funding provided the Vera Institute of Justice (Vera) an opportunity to fulfill Mr. Vance's commitment to this important cause. Subsequently, Vera partnered with the New York County District Attorney's Office (DANY), a highly prestigious and nationally influential prosecutorial office, in both research and a review of policies, to address unwarranted racial and ethnic disparity in case outcomes.

DANY investigates and prosecutes all crimes in the Borough of Manhattan in New York City. DANY is one of the largest and busiest in the country with more than 500 assistant district attorneys and 700 support staff members, handling approximately 100,000 cases annually. DANY is one of the nationally recognized leaders in criminal prosecution. For example, as one of the first offices to create specialized units including the nation's first Sex Crimes Unit, DANY set the standard for other prosecutor's offices around the country. In addition, under District Attorney Vance, the Office recently added the Cybercrime and Identity Theft Bureau, which

tackles new crimes spawned by advances in technology. The office also implemented a Conviction Integrity Program to ensure the accuracy of their convictions and promote the public's confidence in their work (for more on DANY, see section 1.6.).

Cyrus Vance, Jr. was elected district attorney in 2010 pledging to examine racial and ethnic equity in the office's decision making. As a step toward fulfilling this commitment, DANY agreed to partner with Vera on this project. Given the support for the project's goals of the office's senior management and its sophisticated electronic data-management capacity, there is every reason to believe that the research findings will have a continuing impact on DANY's policies and practices as well as providing a national model for other offices. This report, coupled with other results of the collaboration, aims to enhance fairness in the criminal justice system by better understanding the sources of existing racial and ethnic disparities.

1.2. Review of Relevant Literature

Politicians, policymakers, journalists, legal scholars, and social scientists have long debated the relationship between prosecutorial decision making and racial and ethnic justice. Despite the acknowledged importance of this subject, however, relatively little is known about the criteria that prosecutors take into account in making discretionary decisions; more to the point, there is relatively little research on the degree to which disparities can be attributed to prosecutorial decision making, particularly in the area of plea bargaining.

Overall, research on racial disparities has primarily focused on sentencing outcomes, with comparatively little empirical attention focused on earlier stages of case processing involving prosecutorial discretion (Free, 2001). The Vera Institute of Justice's 2012 review of empirical research on race, ethnicity, and prosecution yielded 34 empirical studies published between 1990 and 2011 in peer-reviewed journals (Kutateladze, Lynn & Liang, 2012). The studies reviewed looked into the decision to prosecute and file charges (Albonetti, 1987; Baumer et al. 2000; Beichner & Spohn, 2005; Frazier & Haney, 1996; Frederick & Stemen, 2012; Spears & Spohn, 1997; Spohn, Beichner, & Davis-Frenzel, 2001; Spohn & Holleran, 2001); the decision to reduce charges (Albonetti, 1992; Bishop & Frazier, 1984; Holmes, Daudistel, & Farrell, 1987; Shermer & Johnson 2009); the decision to pursue a mandatory minimum sentence (Ulmer, Kurlycheck, & Kramer, 2007); and the decision to dismiss charges once filed (Adams & Cutshall, 1987; Albonetti, 1987; Barnes & Kingsnorth, 1996; Baumer, Messner, & Felson, 2000; Myers, 1982; Wooldredge & Thistlethwaite 2004). However, the review showed that most studies (18 out of 34) examined the initial screening decision and only a handful of studies looked into other discretionary points, including case dismissals, charge reductions, or plea offers. There was not a single study that reviewed all discretionary points. Given that earlier case processing decisions

greatly influence final criminal dispositions (Piehl & Bushway, 2007), examining a single discretion point in a complex process may not account for disparities introduced at other discretionary stages. The present study addressed this shortcoming by looking into every discretionary point from initial screening to sentencing.

There is mixed evidence that race plays a role in discretionary prosecutorial outcomes.

The Vera Institute review (Kutateladze et al., 2012) concluded:

Overall, research finds that the effect of race and ethnicity on prosecutorial decision making is inconsistent, and it is not always blacks or Latinos/as who are treated more punitively. Some of this inconsistency stems from the fact that prosecutors' offices have varied practices that may influence the impact of race on case outcomes. Yet even within the same office, specific types of cases (for example, homicide versus possession of marijuana) are likely to be handled very differently, which in turn would increase or decrease the impact of race. Furthermore, researchers suggest that minorities receive both more severe and more lenient outcomes, depending at different stages of the case-processing continuum. (p. 7)

Some studies show that race matters (e.g., Frederick & Stemen, 2012; Free, 2002; Sorensen & Wallace, 1999; Ulmer et al., 2007); others find no direct effect of race or offender's other characteristics in the charging process (e.g., Albonetti, 1992; Franklin, 2010; Shermer & Johnson, 2009); and still others show charge reductions in favor of minority offenders (e.g., Holmes et al., 1987; Wooldredge & Thistlethwaite, 2004). The inconsistency of these findings suggests that further investigation of the direct and indirect effects of race and ethnicity, while controlling for legally relevant case characteristics (e.g., strength of the evidence, type and seriousness of the offense, and defendant's culpability) and legally irrelevant factors (e.g., defendant-victim relationship, defendant gender, defendant social status, and victim race, ethnicity, and gender) is necessary to determine the circumstances under which race and ethnicity influence discretionary prosecutorial outcomes.

As noted above, a number of studies found that race and ethnicity affect prosecutorial decision making. Free (2002) reviewed studies on presentence discretionary decisions including the decision to prosecute a case and the decision to seek the death penalty in capital-eligible cases. In reviewing 19 studies on the decision to seek the death penalty, Free (2002) found that race clearly affected prosecutors' decisions to seek the death penalty. Bernstein, Kick, Leung, and Schulz (1977) examined charge reductions for a small sample of robbery offenses in a metropolitan jurisdiction in New York State and found that minorities who pleaded guilty at later stages of trial received less significant charge reductions. More recently, Ulmer et al. (2007) found that prosecutors were almost twice as likely to seek mandatory sentences against Hispanic defendants as white defendants. Chen (2008) found that black defendants were more likely to be charged with and receive third-strike sentences than white defendants, particularly for offenses that can be prosecuted either as a felony or a misdemeanor.

Some studies find no effect of offender race or ethnicity in the charging process.⁵ In reviewing 24 studies of the initial decision to prosecute, Free (2002) found that the role of race was less clear; 15 of the 24 studies found no racial disparities. The Vera Institute's review (Kutateladze et al., 2012) found reported racial differences in 11 out of 18 studies focusing on *initial case screening*,⁶ 4 out of 5 studies on *pretrial release and bail procedure*,⁷ 2 out of 3 studies on *dismissal*,⁸ and 3 out of 5 studies on *charge reduction*.⁹ The review found only one study, by Albonetti (1990), which explicitly examined the impact of defendants' race on their

⁵ It is also possible that studies that found differences by race were more likely to be published, and thus are overrepresented in the peer-reviewed outlets.

⁶ When a reviewing prosecutor decides whether to accept a case for prosecution and, in some cases, how to charge the offense.

⁷ Whether a defendant is held in detention while the case is pending and whether a defendant is offered and/or awarded bail.

⁸ Whether a case or charge is dismissed at any point after initial screening by a prosecutor or a judge.

⁹ Whether the seriousness and/or the number of charges are reduced at any point after initial screening.

likelihood to plead guilty and found only limited evidence that blacks were less likely to plead guilty. In another study, Albonetti (1992) examined the decision to reduce initial charges in 400 burglary and robbery cases in Jacksonville, Florida, and found no evidence of racial or gender disparity. Kingsnorth, Lopez, and Wentworth (1998) found no effect at any decision point in a sample of sexual assault cases in Sacramento, California. Albonetti and Hepburn (1996) examined diversion of felony drug cases in Maricopa County, Arizona and observed no direct effect of race but found male offenders were less likely to be diverted.

However, findings of no difference by race do not necessarily imply the absence of discrimination. For example, if police arrests involve racial selectivity, a finding of no differences in dismissal rates could imply a failure to correct the bias introduced by the police. Spohn and Spears (1996) found that sexual assault cases involving black defendants and white victims were more likely to be dismissed, but noted that their result could suggest prosecutors may be more willing to pursue weaker cases at initial screening.

Some studies report minority defendants were more likely than white defendants to receive charge reductions or dismissals. In a sample of burglary and robbery cases resolved by guilty pleas in Delaware County, Pennsylvania, and Pima County, Arizona, Holmes et al. (1987) found that being black increased the likelihood of a charge reduction in Delaware County and that Mexican-origin defendants in Pima County received more favorable charge reductions. Wooldredge and Thistlethwaite's (2004) study of misdemeanor assaults in Cincinnati, Ohio, reported African American offenders were less likely to be charged and fully prosecuted than similarly situated white offenders. Most researchers interpret these counterintuitive results as suggesting that blacks and Latinos are more likely than whites to be arrested on weak evidence

and that this, in turn, leads to a greater likelihood of charge reduction during the plea-bargaining process (see, e.g., Petersilia, 1983).

Previous research also suggests that charge-processing outcomes vary by offense type (Albonetti, 1997; Mustard, 2001; Steffensmeier, Ulmer, & Kramer, 1998; Wright & Engen, 2006). Most recently, Shermer and Johnson (2009) examined charging and sentencing outcomes in all federal cases terminated in 2001 and found that property crimes were more than twice as likely as violent crimes to receive charge reductions. Race and ethnicity emerged as strong predictors for *weapons* offenses, where blacks and Latinos were less likely to have their initial charges reduced. Latinos, however, were 20 percent more likely to have their charges reduced for *drug* offenses. In general, charge reductions were more likely to occur in cases involving more serious crimes, cases with more filing charges, and cases involving acceptance of responsibility and pretrial release.

A report commissioned by the Wisconsin Sentencing Commission concluded that racial disparities, when present, were typically found in *sentence types* (prison versus probation), with racial disparity increasing as offense severity decreased—thus highlighting the importance of analyzing less serious offenses where criminal justice actors have discretion (Mayrack, 2007).

Victim characteristics also appear to matter. LaFree (1980) found that black men who assaulted white women received more serious charges, were more likely to have their cases filed as felonies, and received longer sentences in state penitentiaries. Spohn and Holleran (2001) also report that when the perpetrator was a stranger, sexual assault cases involving white victims were more likely to elicit charges. In an empirical study of Detroit prosecutors' decisions to file charges in sexual assault cases, Spohn and Spears (1996) found that victim characteristics such as age (child, or adolescent/adult), moral character, and behavior at the time of the incident were

the *only* significant predictors of initial charging decisions. The Vera Institute of Justice's unpublished report (Kutateladze & Turner, 2011) also found that in a large mid-Western jurisdiction, domestic violence cases involving black defendants and white victims were more likely to be prosecuted compared to cases involving white defendants and white victims, black defendants and black victims, and white defendants and black victims. While victim's race appears to influence case outcomes, most DA's offices do not systematically capture this information, which makes victims' race-based analyses particularly difficult to conduct (this limitation also applies to this study).

The limitations of existing research make findings difficult to generalize. Meaningful comparisons between studies are problematic because of the lack of uniformity in the operationalization of variables measuring race and ethnicity; whereas some researchers simply differentiate between whites and non-whites, with all racial minorities lumped into the non-white category (e.g., Patterson and Lynch, 1991; Pyrooz, Wolfe & Spohn, 2011), others include separate variables for blacks, Latinos, and whites. Studies limited to one stage of processing may also mask disparities originating at other stages, which makes it particularly important to examine multiple discretion points. Also, as a number of the studies reviewed above show, aggregating data from a variety of offenses may mask racial differences in criminal processing. Failure to control for victim race and/or evidentiary strength may also produce misleading results. For example, Myers and Hagan (1979) found that defendant and victim race were only significant predictors in the decision to prosecute *after* controlling for measures of evidence.

Also, the existing research mainly focuses on the treatment of blacks, and to a lesser extent of Latinos, and provides very little insight into the treatment of other racial and ethnic groups, particularly Asians. Only two known studies focused on Asians, the first one examining

sentencing outcomes for Asian defendants (Johnson & Betsinger, 2009),¹⁰ and the second one assessing the likelihood of Asian victims to support prosecution (Kingsnorth & MacIntosh, 2004). Therefore, the existing research tells us very little about the treatment of Asians, and more specifically whether they are more or less likely, compared to other racial groups, to be prosecuted, to have their case dismissed, to be detained, to be released on bail, or to receive punitive plea offers.

With a few exceptions (e.g., Frederick & Stemen, 2012; Spohn & Fornango, 2009), existing studies also do not take into account the effect of prosecutor characteristics and organizational constraints such as prosecutor caseload (Free, 2001) and rarely consider the impact of the type of criminal defense used (e.g., institutional provider, court-appointed or private) when testing hypotheses of racial disparity.

Furthermore, none of the studies focuses explicitly on plea offers to a lesser charge and custodial sentence offers (versus non-custodial alternatives), although a handful of studies described above looked into both charge reductions (e.g., Farnworth, Teske & Thurman, 1991; O’Neill-Shermer & Johnson, 2010) and sentencing outcomes (e.g., Hartley, Maddan & Spohn, 2007). Given that most cases are disposed through plea bargaining, the importance of examining the impact of race on plea offers cannot be overstated. It is not a lack of interest in plea bargaining, however, but perhaps the absence of systematic and recent data, that makes the current state of research inadequate to reliably suggest whether, and to what extent, defendants’ race matters in the plea-bargaining process.

¹⁰ These authors analyzed 165,632 cases from 88 federal districts eligible for discounts and examined whether Asian Americans were more likely to receive substantial assistance departures (SAD) (as well as be incarcerated and get a longer prison sentence) compared to white, black, Hispanic, and “other” offenders. The study concluded that Asian offenders were much more likely to receive a substantial assistance departure than white, black, and Hispanic offenders, even across offense categories such as violent crimes, drug crimes, and fraud cases. This finding is important, because SAD reduces the likelihood of incarceration as well as the final sentence length.

Finally, existing studies do not typically provide crucial information about the structure and case-processing specifics of individual jurisdictions from which data have been taken, nor do they suggest that practitioners' input have been gathered when designing studies and interpreting findings, which raises questions about their applicability. Given that criminal case processing in general, and in prosecutor's offices in particular, is extremely nuanced yet insufficiently and inconsistently documented, eliciting advice from practitioners ensures not only more accurate data and analyses but findings that are meaningful to policy and practice. Close collaborations with specific jurisdictions provide researchers with a more complete understanding of the discretionary decision-making process and the range of factors that may influence outcomes. Findings will therefore be more meaningful because they will have accurately considered actual office practice.

The present research overcomes some of these shortcomings by: (a) looking into a wide range of offenses, including minor offenses; (b) focusing on a large urban jurisdiction with sufficient sample size; (c) using recent data; (d) comparing the treatment of blacks and Latinos, but also Asians, with that of white defendants; (e) gathering data on evidence (particularly in drug offenses); (f) examining the impact of prosecutor (caseload, gender and race), defense counsel (institutional provider versus court-appointed versus private counsel), and arresting police officer (specialization) characteristics on case outcomes; (g) analyzing multiple discretionary points, from screening through sentencing, and principally focusing on plea offers; and (h) eliciting practitioners' feedback on data collection, analyses, and the contextualization of findings.

1.3. Research Questions

Research, policy debate, and public discourse on racial and ethnic disparity have emphasized that minority groups, particularly blacks and Latinos, are treated more harshly than whites by the criminal justice system (Spohn, 2000). Therefore, the main research question of this study is to what extent prosecutorial discretion contributes to unwarranted racial and ethnic disparities in case outcomes. More specifically, we looked into (a) case acceptance for prosecution, (b) pretrial detention and bail determination, (c) case dismissal, (d) plea bargaining, including charge and sentence offers, and (e) sentencing to test the following hypotheses:

Hypothesis 1: Blacks and Latinos are *more* likely to have their cases accepted for prosecution than similarly situated white defendants. Initial screening is the earliest discretionary decision made by prosecutors who decide whether to accept a case for prosecution or decline to prosecute, and if they choose to accept it, then how to charge an offense. Case acceptance for prosecution will be viewed as a more punitive outcome for the obvious reason that, if a case is prosecuted, defendants are more likely to be held in detention, be convicted and sentenced to custodial punishments. It must be noted, however, that blacks and Latinos may also be less likely to have their cases accepted if reviewing prosecutors are correcting for biased decisions made by arresting police officers (Petersilia, 1983). Finally, there should be no marked difference in case acceptance between white and Asian defendants.

Hypothesis 2: Blacks and Latinos are *more* likely to be held in pretrial detention. Pretrial release decisions are made by judges at Criminal court arraignment, which typically occurs within 24 hours of arrest. Judges may release defendants on their own recognizance (ROR), set bail or remand defendants into custody (for more, see section 6.2: Pretrial Detention). While it is ultimately within judges' purview to make detention decisions and set the bail amounts,

prosecutors have the opportunity to make bail recommendations based on the facts of the case, the defendant's criminal history, input from victims, employment status, and community ties. Pretrial detention is a form of punitiveness in itself—given that a defendant is held in custody before his conviction which, among others, may result in a loss of employment and the destruction of family ties—but it may also contribute to the imposition of custodial sentences because judges and prosecutors may view those in detention as more dangerous. While we hypothesize that blacks and Latinos may be more likely to be held in detention, we do not expect to observe marked difference in pretrial detention between white and Asian defendants.

Hypothesis 3: Blacks and Latinos are less likely to have cases dismissed. Dismissals may occur as the result of a motion to dismiss brought by the defendant, the prosecution, or by the Court's own accord. Judges may dismiss charges against a defendant throughout the course of a case. For *misdemeanors*, prosecutors may unilaterally dismiss charges throughout the life of a case, while *felonies* after indictment may only be dismissed with judicial and supervisory approval (see section 6.3: Case Dismissal). A lower rate of dismissal will be used as one of the measures of punitiveness. Consistent with a theoretical argument that blacks and Latinos are treated more harshly, they might be less likely to have their cases dismissed. We do not expect to observe a marked difference in case dismissals between white and Asian defendants.

Hypothesis 4: Blacks and Latinos are less likely to receive a plea offer to a lesser charge and more likely to receive custodial sentence offers. DANY adheres to the so-called “best-offer-first” approach, in which ADAs are encouraged to make the best possible offer first to save investigative resources and increase defendants' likelihood to accept the plea. The best offer may

include a request to plead guilty to a lesser charge.¹¹ If a defendant does not accept the first offer, it is possible that the next offer, if made, will include a higher charge, or include the same charge with a more punitive sentence. Offers may also include sentencing recommendations. These can include: a recommendation of jail time, time served in pretrial detention, restitution, fine, and community service, among others (for more, see section 6.4). Custodial plea offers and offers including time served will be considered as more punitive sentence offers, although they may not always be perceived as such. For example, some defendants may view a fine and community service as a less desirable outcome compared to time served. There should be no noticeable difference in plea and sentence offers between white and Asian defendants.

Hypothesis 5: Blacks and Latinos are more likely to be sentenced to custodial punishments. Previous research suggests that these minority groups are more likely to be sentenced to imprisonment and longer prison terms (Hartley et al., 2007; Mayrack, 2007; Steffensmeier & Demuth, 2000). Although sentences are imposed by courts, given that most cases result in guilty pleas, the prosecutors' role in sentencing is significant. As for Asians, we expect that they are *less* likely to receive custodial sentences and longer sentences, compared to all racial groups, including whites. Previous research suggests that relative to other minority groups, Asians benefit from more positive and less stigmatizing stereotypes in society, which may contribute to more lenient sentencing outcomes for them (Johnson & Betsinger, 2009).

1.4. New York County District Attorney's Office

This study was conducted in partnership with the New York County District Attorney's Office (DANY), a highly prestigious and nationally influential prosecutor's office which

¹¹ Prosecutors do not recommend a plea to the charge. They either recommend plea offers to a lesser charge or sentences upon a plea to the charge. No offer means that prosecutors are playing hard-ball. From a defendant's perspective, the absence of an offer is a punitive response.

investigates and prosecutes all crimes in the borough of Manhattan in New York City, covering over 1.6 million people. Led by Cyrus Vance, Jr., DANY is one of the largest and busiest prosecutor's offices in the country with more than 500 assistant district attorneys and 700 support staff members, handling more than 100,000 cases annually.

DANY is nationally recognized as a leader in criminal prosecution. For example, as one of the first offices to create specialized units including the nation's first Sex Crimes Unit, DANY set the standard for other prosecutorial offices around the country to follow. In addition, under District Attorney Vance, the office added the Cybercrime and Identity Theft Bureau, which tackles new crimes spawned by advances in technology. The office also implemented a Conviction Integrity Program to ensure the accuracy of their convictions and promote the public's confidence in their work.

The DANY Structure

DANY's work is divided among the Trial Division, Investigation Division, and Appeals Bureau. The Trial and Investigation Divisions are subdivided into specialized bureaus and units.

The Trial Division's work focuses on prosecuting misdemeanor and felony crimes. It comprises six trial bureaus and several specialized bureaus and units. Each of the trial bureaus is staffed by approximately 50 assistant district attorneys (ADAs) of varying levels of experience,¹² as well as a bureau administrator, investigative analysts, and paralegals. Felony cases in the Trial Division are prosecuted vertically, which means they are assigned to ADAs who are responsible

¹² First-year ADAs receive comprehensive training, after which they start handling misdemeanor prosecutions in Criminal court. These prosecutions include misdemeanor assault, driving while intoxicated, drug possession, and theft offenses. As assistants gain experience, they start handling more serious felony cases in Supreme Court, including homicides, shootings, stabbings, sexual assaults, burglaries, assaults, drug and gun possession, robberies, and other types of violent crime.

for these cases until their final disposition by trial or plea. Misdemeanor cases are assigned to an ADA at random, depending on who is working in ECAB at the time of intake.

The Investigation Division focuses on white-collar and organized-crime prosecutions and conducts investigations that target individuals and entities to prevent and identify international money laundering, investment and securities fraud schemes and cybercrime and computer security threats. Given DANY's geographic jurisdiction, the office can bring cases addressing criminal conduct anywhere in the United States or internationally that make use of New York's financial institutions. The division also investigates and prosecutes more traditional cases of fraud and corruption, including construction fraud, mortgage fraud, organized crime, tax fraud, public benefit fraud in housing, Medicaid, and public assistance, as well as medical insurance fraud and environmental crimes.

The DANY Appeals Bureau attorneys provide New York's appellate courts and all federal courts with written and oral analyses of legal and factual issues to ensure that convictions that resulted from the DANY prosecution are upheld in higher courts.

1.5. Case Processing and Discretionary Decisions at DANY

In New York County, after defendants are arrested, police bring cases to DANY's Early Case Assessment Bureau (ECAB), where ADAs then decide whether to accept cases for prosecution or to decline to prosecute. In addition to deciding whether to prosecute, ADAs also decide what charges to bring against a defendant. Charges may increase or decrease in seriousness, as compared to arresting charges, although the former is less common. Defendants are then brought before judges for arraignment, which typically occurs within 24 hours of arrest. At arraignment, defendants are informed of pending charges, and judges decide whether to detain defendants or release them, either on bail or their own recognizance. As shown in Figure

2, arraignments occur in criminal court, where a case can be pled out, dismissed, or processed in one of two fashions: *misdemeanors* and *violations* are tracked to all purpose parts of the criminal court, while *felonies* are forwarded to the grand jury.

Misdemeanors may result in guilty pleas at arraignment, followed by sentencing. If a defendant does not plead guilty at arraignment, the case is forwarded for motions and hearings. Motions may be made for many purposes including discovery, case dismissal, or suppression of evidence (physical evidence, defendant's statements, or witness identifications). If the court grants a motion to dismiss, the case ends. Alternatively, defendants may plead guilty and be sentenced, or go to trial. At trial, the prosecution and defense present evidence before a judge or jury to determine whether the defendant is guilty beyond a reasonable doubt of the criminal charges brought against him. The trial may result in the defendant's acquittal and release, or conviction and sentencing.

Felonies are presented to the grand jury, unless a defendant waives this right. The grand jury hears evidence presented by prosecutors and may indict a defendant on felony charges. If a grand jury finds that the evidence is not legally sufficient to support an indictment, it dismisses some or all charges against a defendant. If an indictment is issued, a case is forwarded to the Supreme Court for arraignment. Here, a defendant may plead guilty and be sentenced, or plead not guilty and have his or her case moved to a Supreme Court Calendar Part and calendared, or scheduled, for motions and hearings. If a case is not dismissed or the defendant has not pled guilty and been sentenced, a defendant goes to trial, which results in either acquittals or convictions and sentencing.

In *misdemeanor* cases, a judge can dismiss the case at criminal court arraignment, or thereafter. *Felonies* can also be dismissed by the grand jury. Prosecutors must have judicial

approval to dismiss a case once it has been indicted. Guilty pleas can be made at multiple stages. Defendants can plead guilty to *misdemeanors*: (1) at criminal court arraignment, (2) in an all purpose part, (3) at motions and hearings, or (4) in a trial part. They can plead guilty to *felonies*: (1) at criminal court arraignment, (2) at Supreme Court arraignment, (3) in a Supreme Court calendar part, or (4) at motions and hearings, or (4) in a trial part. While plea offers are made by prosecutors, which may include agreed-upon sentencing recommendations, judges must approve all guilty pleas.

The following figure provides an illustration of case processing and discretionary points. The figure is followed by a glossary of terms used in the figure.

Figure 1. DANY Case Processing Chart with Five Discretionary Decisions

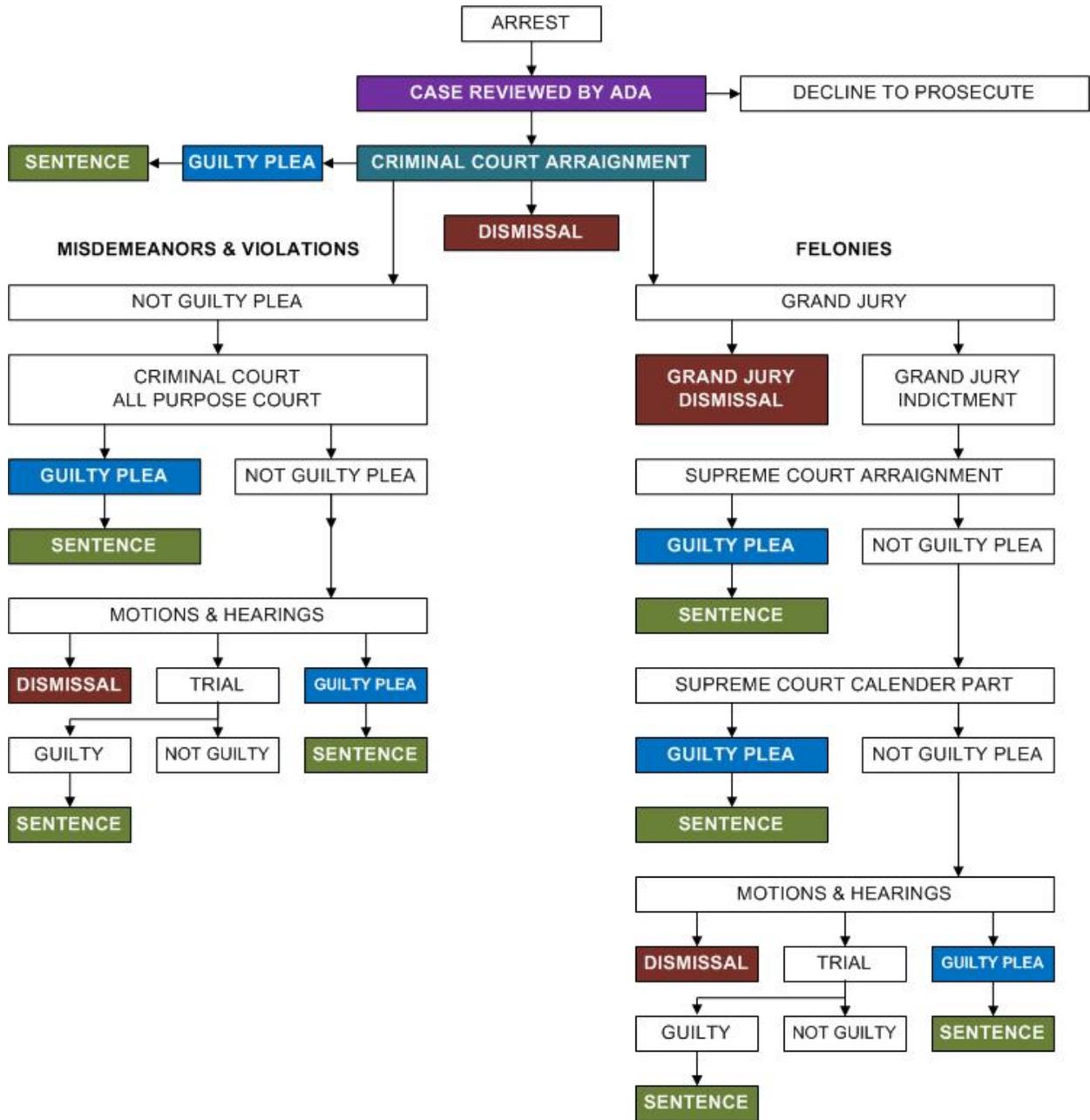


Table 1. Glossary of Terms for Case Processing Chart (Figure 1)

Term	Explanation
Arrest	The defendant is taken into custody of law enforcement. In order for an arrest to be lawful, the arresting officer must have probable cause to believe a crime has been committed. ¹³
Case Reviewed by ADA	An ADA in ECAB will review the facts of a case with an arresting officer, and on occasion with a complainant or other witnesses. The ADA will evaluate whether the arrest and any seizure of property was lawful, and will then draw up a complaint for the highest provable charge.
Criminal court Arraignment	Defendants, whether charged with a misdemeanor or felony, will be arraigned initially in Criminal court. At arraignment, defendants are notified of pending charges and bail is set. In New York City the majority of arraignments occur within 24 hours of arrest.
Decline to Prosecute	A prosecutor may decline to prosecute a case when, for example, there is insufficient evidence or further investigation is necessary.
Guilty Plea	A disposition in which the defendant admits to his or her culpability on a particular charge. Pleas may have an agreed-upon sentencing recommendation. Judges must approve all guilty pleas.
Sentence	A judge may impose a custodial punishment, requiring incarceration, or a non-custodial punishment such as probation. New York Penal Law provides maximum and minimum custodial and non-custodial sentences for each class of crime. ¹⁴
Dismissal	A judge's or a prosecutor's decision to remove charges against a defendant.
Misdemeanors & Violations	A misdemeanor is a crime for which the maximum custodial sentence is one year of imprisonment. A violation is a crime for which the maximum custodial sentence is 15 days of imprisonment. ¹⁵
Felonies	A crime for which a custodial sentence of more than one year may be imposed. ¹⁶
Criminal court All Purpose Court	The Court authorized to hear cases involving misdemeanors and violations.
Not Guilty Plea	The defendant does not admit to criminal charges against him. Case proceeds through court process.
Motions & Hearings	Motions may include motions for discovery, motions to dismiss, or motions to suppress evidence, including improperly seized physical

¹³ New York Criminal Procedure Law Articles 120, 130.

¹⁴ New York Criminal Penal Law Articles 50, 60, 70.

¹⁵ New York Penal Law Article 10.00(3),(4).

¹⁶ New York Penal Law Article 10.03(5).

Term	Explanation
Trial	evidence, defendant's statements or identifications of the defendant by witnesses. The presentation of evidence before a judge or jury to determine whether the defendant is guilty beyond a reasonable doubt of the criminal charges brought against him.
Grand Jury	Unless the defendant consents, all felony cases must be presented to the grand jury. The grand jury hears evidence presented by the prosecutor and may recommend felony charges.
Grand Jury Indictment	A grand jury may recommend filing felony charges, or an indictment, if it finds the prosecutor's evidence is legally sufficient and provides reasonable cause to believe the defendant has committed the crime. ¹⁷
Grand Jury Dismissal	If a grand jury finds that the evidence is not legally sufficient to support an indictment, it may remove charges against a defendant. ¹⁸
Supreme Court ¹⁹ Arraignment	After an indictment has been filed Criminal court no longer has jurisdiction over a defendant. The defendant will be arraigned on felony charges in the Supreme Court, which hears felony cases. Bail may also be reviewed at arraignment.
Supreme Court Calendar Part	The courtroom to which a felony case will be sent after Supreme Court arraignment.

¹⁷ New York Criminal Procedure Law Article 190.65.

¹⁸ New York Criminal Procedure Law Article 190.75.

¹⁹ Unlike in other jurisdictions, the Supreme Court in New York is the trial level court, while the state's highest appeals court is called the Court of Appeals.

Part 2. Data Sources, Variables, and Analytical Strategy

2.1. Data Sources

2.1.A. DANY administrative dataset – Population data

The main source of data for this study was the administrative dataset generated by the New York County District Attorney’s Office’s (DANY) case-management systems and provided by DANY’s Planning and Management Office. Vera and DANY created a data-sharing agreement when applying for funding from the National Institute of Justice in 2011.²⁰

The dataset included 222,542 cases disposed of in 2010-2011.²¹ The dataset includes all misdemeanors ($N = 165,791$, i.e., 74% of the entire dataset), violations ($N = 27,303$, 12%), and infractions²² ($N = 391$, 0.2%), and the following selection of felonies²³ ($N = 27,704$, 12%): drug offenses²⁴ (among felonies, $N = 6,085$, 22%), weapons offenses²⁵ ($N = 1,880$, 7%), domestic violence²⁶ ($N = 1,746$, 6%), burglary²⁷ ($N = 1,595$, 6%), and robbery²⁸ ($N = 3,521$, 13%). The report’s sections are broken down by (a) felonies, (b) misdemeanors and (c) violations identified

²⁰ The agreement was one of the requirements of the solicitation and it was submitted to NIJ with the proposal in February 2011.

²¹ DANY views cases as disposed if they are: declined (to prosecute); dismissed; in the pre-sentencing phase (i.e., defendants plead guilty, or went on trial and were convicted or acquitted); and pseudo-disposed (i.e., defendants are given an Adjournment in Contemplation of Dismissal (ACD) or an Adjournment in Contemplation of Dismissal in cases involving marijuana (ACM).

²² For the most part, because of their small number, infractions are excluded from analyses throughout the report. Cases for 1,289 (0.6%) defendants are those where the decision was made to decline to prosecute.

²³ As a result of the small sample size, felonies involving hate crimes ($N = 43$, 0.2%) or terrorism ($N = 1$) are not included throughout the report. Further, 12,833 (46%) felony cases provided by DANY did not fall under these specific categories (e.g., gambling, forgery, or fraud).

²⁴ These are cases flagged in the DANY dataset as drug offenses handled by DANY as opposed to the Office of the Special Narcotics Prosecutor (OSNP). This report does not include cases handled by OSNP. Drug cases between DANY and OSNP are divided at random with each office handling roughly half of all drug offenses committed in New York County.

²⁵ These are cases flagged in the DANY dataset as “weapons offenses.” These cases exclude Robbery in the first degree (New York Penal Law, §160.15) and Robbery in the second degree (§160.15) where weapons were used, because such cases are flagged as robberies.

²⁶ There are cases flagged in the DANY dataset as domestic violence. They may include a wide range of offenses including sexual assault.

²⁷ New York Penal Law, Article 140: Burglary and Related Offenses.

²⁸ New York Penal Law, Article 160: Robbery.

at case screening. The original dataset included cases flagged as “out of state warrants.” These were later excluded from all analyses. Also, defendants for whom race and ethnicity information was missing ($N = 2,827$, 1.3%) were excluded from the analyses, and missing values are reported throughout. Finally, victims’ race and ethnicity information was unavailable for 93% of cases with victims, which made any analyses based on this variable impossible.

All cases were selected using the most serious “screening charge”, i.e., the top charge, determined by a reviewing assistant district attorney (ADA) at the Early Case Assessment Bureau (ECAB).²⁹ We decided not to select cases by an “arrest charge” because it is not representative of a formal charging decision by a prosecutor. Also, a “plea” or “conviction” charge was not selected because many cases do not make it to these later stages. The original dataset included 1,350 cases that, for one reason or another,³⁰ bypassed ECAB and, since the main data intake occurs in ECAB, information is not recorded for these cases. Therefore, these cases were also excluded from all analyses.

The study offers a case-level, as opposed to charge-level analysis, which means that many cases in the dataset have multiple charges and/or counts. The information on multiple charges and counts is also captured and reported when appropriate. Also, some defendants have several distinct cases, as they were arrested in connection with multiple incidents within the 24-month period analyzed. Therefore, any reference to “defendants” should be interpreted as “case defendants.”

²⁹ According to the 2011 “Introduction to ECAB and Arraignment Manual,” when drafting a complaint, ADAs are advised to “charge the highest provable charge” and “make sure that the most serious charge is on the top” of the complaint. This is an internal document.

³⁰ For example, in a meeting with the ECAB supervisor, we were told that some cases may be brought to ADAs by NYPD if they specialize in specific types of cases.

2.1.B. DANY Human Resources information

The original administrative dataset did not include information on prosecutors' characteristics. Therefore, DANY also provided data from its human resources department about prosecutors' race or ethnicity, gender, level of experience,³¹ and caseload at criminal court arraignment. ADA variables were of interest to us because of their possible impact on case outcomes as demonstrated by past research (e.g., Frederick & Stemen, 2012; Free, 2001; Spohn & Fornango, 2009).

2.1.C. Prosecutorial interviews

To learn about case processing at DANY, as well as how prosecutors record information electronically and in case files, we interviewed 16 ADAs of varied levels of seniority and from different trial bureaus using a semi-structured qualitative questionnaire (see Appendix A). These interviews also served as an opportunity to talk to these ADAs about the study, including its research questions, data collection, analysis plans, and possible implications for DANY policy and practice. It is important to note that the information generated as part of the interviews and discussions are not a part of research findings—our main goal was to learn about case processing and how to collect additional data from paper files and structure our analyses—yet they provided many useful summaries that can help better understand this study and contextualize our findings.

2.1.D. Sample of misdemeanor marijuana and felony drug cases

As is common for databases within prosecutors' offices, the administrative dataset provided to us by DANY did not contain many important data items relevant to doing research on race and its influence on case outcomes, particularly items for plea offers made or evidence obtained to determine the strength of a case. To overcome this limitation, we decided to

³¹ Measured as the number of years working at DANY.

randomly sample drug offenses—*misdemeanor marijuana* cases and *felony non-marijuana drug* cases—from the administrative dataset provided by DANY to gather additional information from ADAs’ paper files.

Our focus on drug offenses was motivated by a number of considerations. First, given that the Rockefeller Drug Laws were significantly amended in 2009,³² prosecution of drug-related offenses gained greater attention from the public, politicians, researchers, and criminal justice professionals, including our partners at DANY. Second, drug offenses and particularly misdemeanor marijuana offenses offered relative simplicity, unlike more complex cases involving victims, in which it was not possible to collect reliable data on evidentiary strength because of marked inconsistencies in the ways that prosecutors record information on evidence. There is not much variation in the type of evidence gathered; they all typically involve drugs obtained through police searches or undercover investigations and do not involve civilian witnesses for whom collecting relevant factors (measuring witness cooperation, criminal history, etc.) was not possible. Third, because DANY does not systematically record victims’ race information, it seemed prudent to select an offense category for which victims are not present.

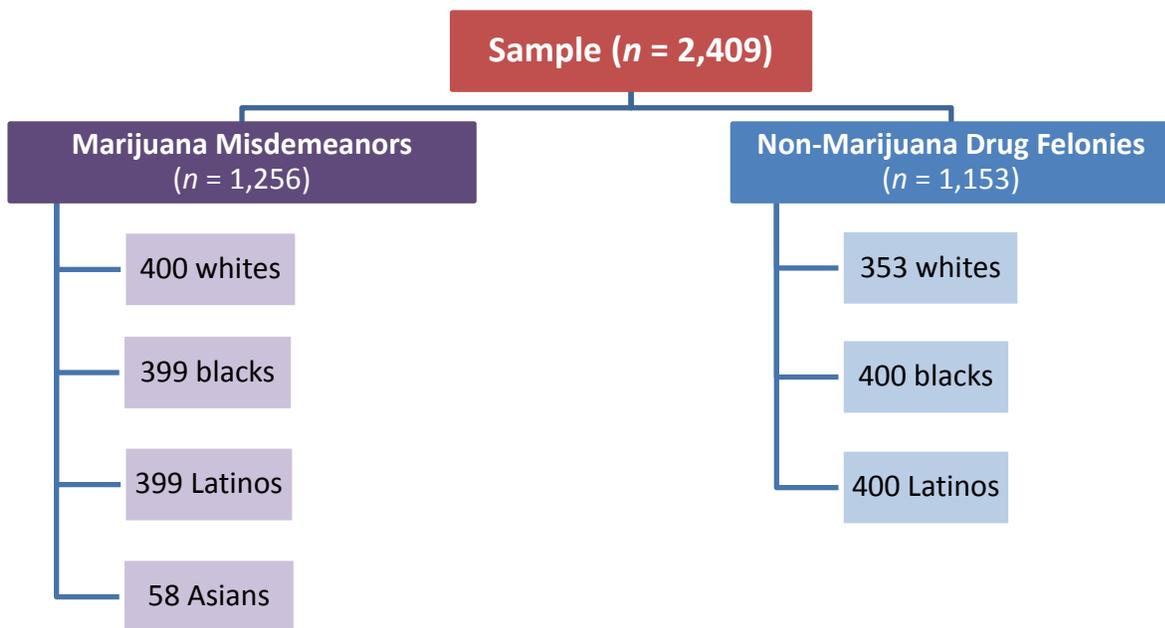
The misdemeanor marijuana sample included 1,256 out of 8,363 total cases in the dataset provided by DANY (i.e., 15% of all cases with any of the following top charge: New York Penal Law, §221.10; §221.15; §221.35; §221.40). This provided a subsample large enough to perform statistical analysis, but small enough to get the data collection completed in a reasonable amount of time. The sample was stratified by defendants’ race and ethnicity to include 400 whites, 399

³² The Rockefeller Drug Laws are the statutes dealing with the sale and possession of narcotics in the New York State Penal Law, named under Governor Nelson Rockefeller who signed them in 1973. The statutes carried a minimum of 15 years to life in prison, and a maximum of 25 years to life in prison for *selling* two ounces (57 g) or more of heroin, morphine, opium, cocaine, or cannabis, or *possessing* four ounces (113 g) or more of the same substances. In April 2009, these statutes were revised to remove the mandatory minimum sentences and to allow judges to sentence individuals convicted of drug offenses to treatment or to shorter prison terms.

blacks, 399 Latinos, and 58 Asians (see Figure 2). White defendants were oversampled to ensure groups of comparable sizes, and all 58 Asians identified in the full dataset (population data) were included.

All selected cases were disposed of as guilty pleas. The sample excluded cases disposed of as adjournments in contemplation of dismissal (commonly known as ACDs)³³ because these cases are sealed upon dismissal and not accessible for review. The only cases available for review were those that are disposed of as guilty plea convictions or as trial convictions. Furthermore, because only 10 out of the entire sample of misdemeanor marijuana cases resulted in trials and convictions, we focused only on cases disposed of as guilty pleas.

Figure 2. Drug Offense Sample Description³⁴



³³ ACD is an agreement between the district attorney's office and the defense to have a case adjourned with a view to dismissal in a six-month or one-year period, if there has been no arrest for a new offense. See New York Criminal Procedure - Article 170 - §170.55 Adjournment in Contemplation of Dismissal, and §170.56 Adjournment in Contemplation of Dismissal in Cases Involving Marijuana.

At the DANY, ACDs in cases involving marijuana are referred to as ACM. However, we will be using “ACD” throughout the report to avoid confusion.

³⁴ When reporting descriptive summaries, sampling weights were incorporated to account for the differential probabilities of sampling by race. Both sample exclude defendants under 16 years of age.

Next we selected felony drug cases that do not include the sale or possession of marijuana as the top charge. There were 3,723 such cases in the full dataset, from which we randomly sampled 1,153 cases (i.e., 31% of all cases). Similar to the misdemeanor sample, the felony sample was stratified by defendants' race and ethnicity to the extent it was possible to include the groups of comparable sizes. All 353 whites in the full dataset were included in the analyses, while black and Latino defendants were under-sampled. Asian defendants were excluded from this sample because there were only 31 cases with Asian defendants, insufficient for a multivariate statistical analysis.

The source of information in the felony sample varies depending on whether these cases are disposed of pre-indictment or post-indictment (see Figure 1, section 1.5).³⁵ If a case is indicted, then plea offer information from Supreme Court Arraignment (until the defendant pleads guilty or is convicted at trial) is available from a case jacket of paper files. The case jacket contains information on most events occurring at each trial date. Data on drug weight and other evidence gathered throughout the life of a case are also available in these paper files. If a case is disposed pre-indictment, then all available information is stored electronically in, what is known as, the "criminal court files."

Information was coded from case summary narratives initially written by a prosecutor reviewing a case, describing circumstances that lead to arrests, the evidence gathered, and specific details surrounding the first criminal court arraignment and subsequent hearings. The three main paper forms that researchers relied upon were:

1. "**ADA Datasheet**", detailing the events of the case (what occurred that led to the arrest of the defendant, according to the arresting officer);

³⁵ The felony sample included 777 indicted cases (67% of the sample).

2. **The NYPD arrest report**, detailing search procedures, and specific evidence gathered (such as pre-recorded buy money); and
3. **The Voluntary Disclosure Form (VDF)**, completed by ADAs for a grand jury’s review. VDFs include information on defendants’ statements,³⁶ eyewitness identifications (typically by a police officer in a “buy and bust operation”), video or audio recordings, search warrants, drug paraphernalia,³⁷ currency recovery³⁸ (recorded in an attempt to show that the defendant was selling drugs), and the type of drug and its amount,³⁹ provided by the laboratory report.

All information from paper files was collected following a strict protocol which was pretested with a smaller sample of cases prior to its finalization. All data collection staff received training and the inter-rater reliability test was implemented to ensure the consistency in data entry.⁴⁰

2.2. Variables

2.2.A. Independent Variable – Defendants’ Race and Ethnicity

The primary independent variable of interest is defendants’ race or ethnicity (hereafter “race”), which is measured using dummy variables for white, black, Latino, Asian, and “other” defendants, with whites the omitted reference category.⁴¹ The classification of racial categories

³⁶ Statements include anything the defendant said, unless it is a pure assertion of constitutional rights.

³⁷ Paraphernalia related to the sale of drugs, including scales and razorblades with residue.

³⁸ Included only if found off of the individual defendant, or if it is a search warrant and is found in the car or house. It does not include if the currency was found on another person.

³⁹ Note that drug weight information was missing for 52% of case files reviewed.

⁴⁰ Multiple researchers were entering complex information from the felony drug paper case files. Inter-rater reliability was, therefore, assessed. Based on a random sample of cases, inter-rater agreement was found to be high, with *kappa* ranging from .9 to 1 for most items where it was possible calculate. An intra-class correlation was also calculated to compare the relationship between the total score (adding all items together) for two raters. This was also found to be high ($r = .98$). However, the recording method of drug recovery, currency recovery, defendant statement, and detention status at arraignment were less consistent among these researchers (with *kappa* $< \sim .6$).

⁴¹ The “Asian” group combines “Asian,” “Chinese,” and “Oriental” categories as they are reported in police reports. “Other” includes “American Indian” ($N = 357$) and those designated as “Other” in the DANY database. Defendant racial and ethnic categorization is based on arresting police officers’ perception, so although it may differ from self-identification, it is appropriate for examining differences tied to the implicit bias in racial perceptions of court actors.

closely follows DANY's approach. "White" includes all reported non-Latino whites, and "black" includes all reported non-Latino blacks. The "Latino" group combines all reported black-Latinos and white-Latinos.⁴² The "Asian" group combines three categories originally listed in the official arrest report completed by police officers; they are "Asian," "Chinese," and "Oriental." The "Other" group also includes defendants reported as "American Indian" ($N = 357$), which comprises 0.1% of the total sample. While statistics for the "Other" group are reported in tables and figures throughout the report, due to their small numbers, they are not discussed in the report narratives.⁴³

Defendants' race information is based on arresting police officers' perception. While it may not be entirely accurate in identifying race to understand actual racial differences, it is relevant when attempting to understand differences involving *perceived* classifications of race. Further, these racial classifications perceived by police officers and recorded in the arrest report are transferred to documents prepared by prosecutors and court documents, and follow the defendant through the system.

2.2.B. Dependent Variables

This study examines five dependent variables for the full dataset (i.e., population data) and two dependent variables for the misdemeanor and felony drug samples.

For the full dataset, the first dependent variable is *Case Acceptance*, which captures the ADA's initial screening decision; it is coded 1 if the ADA files charges and 0 if the case is rejected for prosecution. The second dependent variable is *Pretrial Detention*, which is coded 0

Racial classifications as recorded in arrest reports are transferred to subsequent court documents that follow the defendant through the system.

⁴² The term "Latino" is used throughout the report, although the DANY data system uses "Hispanic."

⁴³ Highest percentages and means are bolded in tables. However, when those designated as "Other" have the highest percentage, they are not in bold, since it could lead to misleading conclusions, given the small number in this group.

for defendants who are released (on bail or on their own recognizance) and 1 for those who are detained.⁴⁴ The third dependent variable is *Case Dismissal*, which measures whether the case is dismissed by the prosecutor or judge at any stage of criminal case processing.⁴⁵ It is coded 1 for cases that are dismissed and 0 for cases that are not. Dismissals exclude ACDs. The fourth dependent variable is *Custodial Plea Offer*, which measures whether defendants receive custodial sentence offers for misdemeanor offenses (i.e., an offer for a sentence to jail (coded 1)) or non-custodial sentence offers (i.e., an offer that involves community service, fine or conditional discharge (coded 0)).⁴⁶ The final dependent variable is *Incarceration Sentence*, which captures whether a judge imposes a custodial (coded 1) or non-custodial (coded 0) sentence.

Our interviews with DANY prosecutors (see subsection 2.1.C) made it clear that two distinct types of offers—*charge offers* and *sentence offers*—are used in the plea bargaining process. Charge offers consist of “pleas to the current charge” (i.e., no charge offer) and “pleas to a lesser charge” with the former coded 1 and the latter coded 0. Sentence offers consist of custodial and non-custodial sentence recommendations, with the former coded 1 and the latter

⁴⁴Although judges make detention decisions and set bail amounts, prosecutors routinely make bail recommendations. In New York County, second-year ADAs represent the prosecutor’s office at arraignment, though they often have guidance on bail requests from more experienced attorneys and requested bail amounts are generally guided by established practice.

⁴⁵ Case dismissal is identified at disposition and therefore includes dismissal at any case processing stage after arraignment. Judges may dismiss charges against a defendant throughout the course of a case. Dismissals may occur as the result of a motion brought by the defendant, the prosecution, or by the court’s own accord. Whereas prosecutors can unilaterally dismiss charges for misdemeanors throughout the life of a case, felonies require judicial approval. Among other reasons, dismissals may result from new evidence, speedy trial problems, or adjournment in contemplation of dismissal (ACD), in which the case is adjourned for six months to a year and is dismissed contingent upon noncriminal involvement on the part of the defendant.

⁴⁶ All plea bargaining agreements must be approved by the judge. Plea offers for defendants with zero or one prior arrest are determined with reference to DANY’s Plea Offer Guidelines, which are based on the highest pending charge and the defendant’s arrest history. The guidelines do not make specific recommendations for defendants with two or more prior arrests, but they do recommend increasing sentences for defendants re-arrested on the same or similar offenses. Supervising prosecutors make plea recommendations when assigning felony cases to junior ADAs and must sign off on initial offers made in felony and non-domestic violence misdemeanor cases. DANY follows a so-called “best offer first” approach in which the most favorable plea offers for the defendant are given at arraignment; prosecutors can make plea offers at any point before a trial verdict, but offers become less favorable with subsequent adjournments.

coded 0. Custodial offers typically include jail or prison time (of one year or less for misdemeanors) and non-custodial offers include some combination of fines, restitution, and/or community service. The lack of variance in sentence length prevented us from examining sentence offers continuously.

2.2.C. Control Variables of Multivariate Analyses

The analyses of the three datasets described earlier (section 2.1) included somewhat different sets of control variables, described separately in this section.

For the full dataset (population data), we controlled for the defendant's age and sex: age is a continuous variable measured in years and sex is a dichotomous variable coded 1 for male defendants and 0 for female defendants.

Several additional variables are included to control for the legal characteristics of the offense. This includes the number of charges at initial screening and the number of individual criminal counts; each is measured as a continuous variable. We also include the statutory severity of the offense, which captures the seriousness of the top charge with a series of dummy variables for five felony categories (class A, B, C, D and E felonies) and two misdemeanor categories (class A and class B misdemeanors); class B misdemeanor, the least serious, serves as the reference category. In addition, we control for type of offense, which is measured with dummy variables for *person*, *property* and *drug* offenses, with "other offenses" as the reference category.⁴⁷ The criminal history of the defendant is measured using two dichotomous variables, one capturing the number of *prior arrests* and the other the number of *prior prison sentences*.⁴⁸

⁴⁷ Because the specific types of felony offenses overlapped closely with statutory severity levels (e.g. all 1st Degree Robberies are Class A Felonies), it was not possible to include both in the model. We therefore examine statutory severity levels along with broader offense categories consisting of person, property and drug offenses.

⁴⁸ Among prior record variables (see section 4.4), the correlation between *prior arrest* and *prior prison sentence* was the weakest, $r = .27$.

We include both indicators of prior record to reflect the fact that arrests are a common measure of criminal history and that prior work suggests previous incarcerations are particularly important determinants of criminal punishment (Welch, Gruhl, & Spohn, 1984).

Finally, although no direct measures of social class are available in the data, two proxy variables are included that at least partially capture the socioeconomic backgrounds of defendants. The first is the type of defense counsel, which includes separate categories for private attorney (the reference group), court appointed attorney (commonly referred to as an 18(b)) attorney), and three public defender groups unique to New York City: the Legal Aid Society, the New York County Defender Services (NYCDS) and the Neighborhood Defender Service (NDS).⁴⁹ The second socioeconomic proxy is the neighborhood where the arrest occurred, which is captured with five variables consisting of Harlem/Morningside Heights, midtown to financial district—West, midtown to financial district—East, and outside Manhattan, with Upper West Side (UWS) and Upper East Side (UES), the two most affluent areas in New York County, combined as the reference category.⁵⁰ Although additional variables were collected and examined, including the demographic and caseload characteristics of ADAs,

⁴⁹ Court appointed panel attorneys (pursuant to Article 18(b) of the County Law) have provided legal services to indigent defendants within the Bronx and New York County Criminal courts since 1966. They are private attorneys who are compensated for representing indigent clients and they are assigned matters when a conflict prohibits institutional providers, such as The Legal Aid Society, from providing representation (see <http://www.courts.state.ny.us/courts/ad1/committeesandprograms/18b/index.shtml>).

Established in 1876, the Legal Aid Society is a private, not-for-profit legal services organization (the oldest and largest in the nation) dedicated to providing quality legal representation to low-income New Yorkers. The Society handles about 300,000 matters annually (see <http://www.legal-aid.org/en/las/aboutus/ourmission.aspx>). The New York County Defender Services (NYCDS) is a not-for-profit law firm which was founded in 1997 and has since defended 1/4 of a million indigent people charged with crimes in Manhattan (see <http://nycds.org/>). The Neighborhood Defender Service of Harlem (NDS) provides innovative, community-based, holistic public defense practice since 1991 to residents of upper Manhattan (see <http://www.ndsny.org/index.html>).

⁵⁰ Additional data on defendants' addresses confirmed that a large majority of the arrests were made in the neighborhoods where defendants resided. However, the address data had significant missing values, precluding more specific geographical units from being used in the regression analyses.

missing data and limited contributions to model fit in the full dataset (the population data analyses) resulted in the exclusion of these variables from final models.

For the misdemeanor marijuana sample, additional evidence-related variables are examined as well, which capture important situational elements of the arrest. The defendant's behavior at the time of arrest is measured with three dummy variables identifying if the defendant was (a) observed using drugs, (b) involved with a sale of drugs (includes both being observed buying and selling drugs), or (c) other activity (e.g., observed drugs, or defendant was stopped for reasons unrelated to drug activity)⁵¹ at the time of arrest, with "using drugs" the omitted reference category. An additional dummy variable captures whether the arrest resulted from targeted police officer activity or from a street encounter, with the latter the reference category.⁵² The method of drug recovery is captured with three dummy variables separating drugs recovered (a) through a physical search of the defendant, (b) through non-search techniques (e.g. in plain sight), and (c) through other means (e.g. a search warrant). "Physical search" serves as the omitted reference category for these three variables. Furthermore, we included in the analysis whether money was recovered during the arrest (a dichotomous variable, with "currency recovered" coded 1). Finally, witness identifications are captured with an additional dummy variable coded 1 for cases with a witness.⁵³ The location of the arrest is captured with a dummy variable coded 1 for arrests made outdoors and 0 for arrests made

⁵¹ Specifically, the "other" category includes: whether just drugs (and not a sale) were spotted; whether a warrant was executed for a search of drugs; whether a predicate stop was made (i.e., the police officer stopped the defendant for reasons other than drugs); or whether "furtive movements" were made (i.e., deemed suspicious by police officers, which usually includes descriptions of the defendant running away or fidgeting).

⁵² Targeted police office activity includes: (1) *undercover buy and bust* (undercover officer buys or attempts to buy narcotics from defendant or those with whom defendant is arrested); (2) *observation point* (one police officer is observing area from a fixed location and when he sees suspicious activity radios to his field team; the team conducts actual stops, investigations and arrests); (3) *vertical sweep* (vertical patrol of building, either NYCHA (public) housing or private homes participating in the Trespass Affidavit Program); and (4) *prior investigation*.

⁵³ In misdemeanor marijuana cases, this typically involves the testimony of an undercover police officer involved in a buy and bust operation.

indoors. Arrests made by specialized narcotics police officers are identified with a dummy variable coded 1 as well.

In addition to the *prior arrest* and *prior prison sentence*, per DANY's recommendation, we also captured and controlled for *prior violent felony conviction*, the inclusion of which did not pose a multicollinearity problem.⁵⁴

Unlike the full dataset, the misdemeanor sample (as well as the felony sample described next) included the characteristics of the prosecuting attorney: race, gender, and caseload. Race of the prosecutor is coded with dummy variables for black, Latino and Asian prosecutors, with white prosecutors the omitted category, and gender is captured with a dichotomous variable scored 1 for male prosecutors and 0 for female prosecutors. Prosecutorial caseload is a continuous variable capturing the number of open cases assigned to the prosecutor at the time of the criminal court arraignment.

For the felony sample, the variables and the coding scheme used are identical to the methods described for the misdemeanor marijuana sample above. Additional evidence and defendant demographic information, however, was gathered to determine the extent to which these variables influence plea offer decisions. Data on whether the defendant is employed, married, or reached a high school level education (all coded as 1) or not (coded 0); the type of drug recovered by police was crack cocaine, an opiate (e.g., heroin), other type (all coded as 1) or powder cocaine (coded as 0 being the reference category); the mode in which the arresting officer obtained the drug as evidence (i.e., via a non-search, a search, which includes search

⁵⁴ For the misdemeanor sample – *prior arrest* and *prior prison sentence*, $r = 0.22$; *prior arrest* and *prior violent felony conviction*, $r = 0.07$; and *prior prison sentence* and *prior violent felony conviction*, $r = 0.37$. For the felony sample – *prior arrest* and *prior prison sentence*, $r = 0.24$; *prior arrest* and *prior violent felony conviction*, $r = 0.07$; and *prior prison sentence* and *prior violent felony conviction*, $r = 0.37$.

incident to a lawful arrest (SILA) coded as 1 or an undercover recovered the drug through a buy and bust coded as 0 as the reference category).

A series of dichotomous variables were created to identify the type of evidence information recorded by DANY. These include whether: an additional drug was recovered; pre-recorded buy money (PRBM) recovered from an undercover buy and bust operation; empty bags found; other drug sale paraphernalia found; matching bags found; video or audio recordings available; weapon was recovered; the location or defendant were known as being associated with drug activity; and eyewitness made a positive identification (usually from an undercover officer in drug cases). More specific information on bail recommendations were also recorded, including the amount requested by an ADA and the amount of bail set in bond and cash (in US dollars). Finally, the drug weight in grams, as reported in the lab report, was also controlled for.

2.3. Analytical Strategy

Throughout the report, findings are reported in simple percentages and, wherever appropriate, in a series of multivariate logistic regression models. We ran five models: the first only included *race*; the second included race and other controls, except for *defense counsel* and *arrest neighborhood*, which were added to the third model to identify the contributions of both factors to the full model, and to serve as proxies to defendants' socio-economic status (SES)⁵⁵; the fourth model excluded *prior prison sentence* to identify the contribution of *prior arrest*, while the fifth model was reversed, i.e., *prior arrest* was excluded, and included *prior prison sentence* to assess its unique contribution to predicting custodial status. Note that while initial analyses also included ADA characteristics (*experience, caseload, race, and gender*), these

⁵⁵ While arrest neighborhood is a proxy for defendants' SES, our data show that the vast majority of defendants were charged with crimes committed within their areas of residence. We did not include the *home area* variable in the analyses of the full dataset because of a high percentage of missing values. For the drug samples, we were able to use *the median household income in defendant's zipcode*, which is a stronger proxy for defendants' income.

factors were eventually excluded from the analyses of the full dataset due to, primarily, missing data issues but also because of their weak predictions of the outcome. The ADA-level variables were however explored for the misdemeanor marijuana and felony samples (see subsection 2.2.C).

As discussed in additional detail below, the first dependent variable, *Case Acceptance*, lacked sufficient variation so regression analyses are not reported for that outcome. In addition, the sentence offer analyses for the full dataset (population data) were limited to misdemeanor cases because plea bargains for felony cases were seldom made at arraignment and were therefore not reliably recorded in the data. Final sentencing outcomes in felony cases may therefore reflect important elements of prosecutorial plea bargaining discretion as well as judicial sentencing discretion.

This study reviews and analyzes data from multiple stages of case processing. It is therefore appropriate, from a statistical perspective, to consider how circumstances in the earlier stages of case processing affect later decision points. A failure to control for these earlier events can lead to a comparison of incomparable cases (e.g., cases rejected at their initial screening might be different from those considered for plea offers at arraignment), leading to potentially biased estimates. Therefore, we controlled for detention status after arraignment when examining sentencing recommendations and sentencing outcomes. Additionally, when predicting custodial sentences imposed, we also corrected for selection bias caused by case dismissals using the Heckman procedure⁵⁶ (Heckman, 1979), which has also been applied to other criminological studies (e.g., Bushway, Johnson and Slocum, 2007). Despite the importance of this

⁵⁶ The *heckprobit* command in STATA was used to specify a probit model with sample selection using maximum likelihood estimation. For consistency, probit coefficients were converted to logits and odds ratios for interpretation.

consideration, however, such statistical controls are inappropriate for the remaining discretionary decisions analyzed for the following reasons.

First, although the *initial case screening* always occurs before dismissals, pretrial detention, and plea offers, due to DANY's high case acceptance rate (96% of all cases screened are accepted for prosecution), this variable does not contain sufficient variation to serve as a meaningful control. Also, as shown in Figure 1 (see section 1.5), case dismissals, pretrial detention, and plea offers can occur at multiple stages of the process. In fact, there is no one temporal sequence for these decision points because, for example, a case can be dismissed before or after a plea offer has been made and, with the current dataset, it is difficult to ascertain what portion of cases were dismissed after plea bargains. It makes sense to think of arrest, prosecution and sentencing, for example, as a clear sequence for case processing, but as for pretrial detention status, case dismissal and plea offers, the sequence is decidedly unclear.

Furthermore, although criminal justice decisions may influence one another, this is likely to be the case for only specific discretionary points, for example, the initial screening decision may influence prosecutors' decision to dismiss a case. If at the initial screening, a non-meritorious case was accepted, with the expectation that additional evidence would be gathered later, such weak cases would be more likely to be dismissed. Currently, this report links the initial screening and case dismissal by hypothesizing that the high dismissal rate for blacks and Latinos (see section 6.3) might be explained by the acceptance for prosecution of a high proportion of weaker cases involving these defendants. However, given the lack of variation at initial screening, testing this hypothesis will require additional data gathering and research.

Another example of interdependency of two discretionary points is charging decision and sentencing recommendations. If the prosecutors think that the defendant was undercharged either

at initial screening or later stages, they may choose to make more punitive sentencing recommendations for this particular defendant, as compared to other defendants whom they view as appropriately charged. It would be important, in future studies, to capture and control for the prosecutorial perceptions of “undercharging” when looking into plea offers, which was not possible at this stage.

Part 3. Overview of Charges for Cases Accepted for Prosecution

3.1. Offense Types within Felonies and Misdemeanors

The dataset includes 222,542 cases disposed of in 2010-2011. These are all cases brought to DANY by the police for the initial case screening. They include 152,017 misdemeanors (68.3%), 40,958 felonies (18.4%), 25,404 violations (11.4%), 2,819 infractions (1.3%), and 1,344 cases with “unknown” charges (0.6%).

Following the review of a case by an ADA, there were 212,719 cases (95.6% of all cases screened) accepted for prosecution, including 159,206 misdemeanors, 26,069 felonies, 25,781 violations, 313 infractions, and 1,350 “unknown” charges. Because charges can be modified at this stage and some felonies, for example, can be reduced to misdemeanors, reporting percentages of cases accepted within each offense category will not be appropriate. Cases that were declined for prosecution ($N = 9,823$, 4.4% of total cases)⁵⁷ are excluded from further analysis. As noted earlier, the dataset includes all misdemeanors, violations and infractions disposed of in the two-year period. However, for purposes of the current study, it consists of only those felonies which were flagged by DANY as robbery, weapons, burglary, drugs, and domestic violence cases.

3.1.A. Felony Offenses

Table 2 summarizes cases at screening that are flagged by DANY when a defendant’s most serious charge involves robbery, weapons, burglary, drugs and domestic violence (DV). These are mutually exclusive categories so, for example, defendants charged with robbery are

⁵⁷ This includes 6,523 (4.3%) of misdemeanors, 1,609 (3.9%) of felonies, 1,592 (6.3%) of violations, and 99 (3.5%) of infractions.

identified under the robbery category, and not the weapon category. Cases are broken down by race and reported for *felonies* only.

Table 2. Top Screening Felony Charges (percentages within race)

	White		Black		Latino		Asian		Other	
	#	%	#	%	#	%	#	%	#	%
Robbery	179	14.4	2,064	28.6	1,049	21.0	38	21.7	2	20.0
Weapons	106	8.5	1,019	14.1	566	11.3	7	4.0	1	10.0
Burglary	250	20.2	716	9.9	552	11.0	34	19.4	4	40.0
Drugs	520	41.9	2,587	35.8	2,228	44.6	44	25.1	1	10.0
DV	185	14.9	840	11.6	603	12.1	52	29.7	2	20.0
Total N	1,240	100%	7,226	100%	4,998	100%	175	100%	10	100%

Note: Numbers in **bold** indicate the greatest percentage within a racial group. Excludes cases not accepted for prosecution as there was no screening charge produced if cases were declined, and cases for which defendants' race was not recorded. Includes only cases flagged as "felonies" at screening. The "Other" race category includes defendants identified as "American Indian" in the NYPD database as well as those only known as "Other", which could be a combination of racial categories.

For *felonies*, a greater percentage of defendants from all racial groups, except for Asians, are charged with drug offenses. Apart from drug offenses, whites were more likely to have burglary charges (20% of all white felony defendants) while blacks and Latinos were more likely to have robbery charges (29% and 21% respectively, within each racial group). Asians, on the other hand, were most likely to have DV as their top charge (30%) (see Table 2).

As mentioned earlier, the selection of felonies included cases with top charge being robberies (50% class C felonies), non-robbery weapons offenses (65% class D felonies), burglaries (62% class D felonies), drug offenses (73% class B felonies) and domestic violence (52% class D felonies) offenses. For robberies ($N = 3,332$), the vast majority of cases involved black defendants (62.0%), with nearly a third of all robberies attributable to Latinos (32%), and much fewer robberies to whites (5%) and Asians (1%). For weapons offenses (excluding robberies), we observed the same trend: the majority of cases with a top "weapons" charge involved black defendants (60%), a third of them Latinos (33%), and the remaining cases

involved whites (6%) and Asians (less than 1%). Differences by race were much less marked but still noticeable for *burglaries*, where blacks still had the highest percentage of burglary charges (46%).

Furthermore, among all cases with top felony *drug* charges (also see Figures 3-8 for more details on drug offenses), blacks and Latinos were involved in nearly 90% of cases. Finally, the racial breakdown for DV cases was similar to that for drug felony offenses, with blacks involved in half of all DV cases, Latinos in a third, whites in 11% and Asians 3% of all DV cases. Also, compared to other offenses, Asians had a relatively greater percentage of cases in this offense category, 3% for DV as compared to 2% for burglary, 1% for robbery and less than 1% for weapons and drugs (see Tables 3).

Table 3. Top Screening Felony Charges (percentages within offense category)

	New York County General Population	Robbery		Weapons		Burglary		Drugs		DV	
	%	#	%	#	%	#	%	#	%	#	%
White	47.9	179	5.4	106	6.2	250	16.1	520	9.7	185	11.0
Black	18.5	2,064	61.6	1,019	60.0	716	46.0	2,587	48.1	840	49.9
Latino	25.6	1,049	31.3	566	33.3	552	35.5	2,228	41.4	603	35.9
Asian	11.8	38	1.1	7	0.4	34	2.2	44	0.8	52	3.1
Other	-	2	0.1	1	0.1	4	0.3	1	0	2	0.1
Total <i>N</i>	n/a	3,332	100%	1,699	100%	1,556	100%	5,380	100%	1,682	100%

Note: Excludes cases not accepted for prosecution as there was no screening charge produced if cases were declined, and cases for which defendants' race was not recorded. This table includes only cases flagged as "felonies." There were *n* = 248 felony cases involving marijuana that were excluded from the table. Data on the racial breakdown of New York County's general population came from the U.S. Census. Because the racial groups overlap, the overall percent exceeds 100%.

According to the US Census, in 2011, 47.9% of the population of New York County was non-Hispanic white, 25.6% persons of Hispanic or Latino origin, 18.5 % black, and 11.8% Asian. While these percentages cannot be directly compared with the percentages of racial groups in the study's felony defendant population due to the inconsistent definition of racial

categories, they do provide a better picture of overrepresentation of blacks and, to a lesser extent, Latinos in the defendant population. The same is true with misdemeanors described next.

3.1.B. Misdemeanor Offenses

Tables 4 and 5 represent counts and percentages for specific misdemeanor offenses (both class A and B) grouped in 35 offense categories based on the penal law articles (PL art.) and broken down by race. Percentages and counts are reported both within race (Table 4) and within offense category (Table 5). The ten most common offense categories were: (1) *Other offenses related to theft*, PL §165 ($N = 27,112$; 21.0% of all misdemeanors); (2) *Offenses involving marijuana*, PL §221 ($N = 22,355$; 17.3%); (3) *Larceny*, PL §155 ($N = 18,584$; 14.4%); (4) *Controlled substances offenses*, PL §220 ($N = 13,316$; 10.0%); (5) *Assault and related offenses*, PL §120 ($N = 10,790$; 8.4%); (6) *Burglary and related offenses*, PL §140 ($N = 10,161$; 7.5%); (7) *Escape and other relating to custody*, PL §205 ($N = 4,927$; 3.8%); (8) *Firearms and other dangerous weapons*, PL §265 ($N = 4,693$; 3.6%); (9) *Criminal mischief and related offenses*, PL §145 ($N = 3,456$; 2.7%); and (10) *Offenses against public order*, PL §240 ($N = 2,941$; 2.3%)

Among whites and Latinos, *Offenses involving marijuana* were most common (19% and 22%, respectively) while *Other offenses related to theft* were most common among blacks (21%) and particularly among Asians (40%) (see Table 4).

Within the 10 major offense categories noted above, black defendants were represented in greater percentages across most, including *Controlled substances offenses* (56%), *Burglary and related offenses* (53%), *Escape and other relating to custody* (53%), *Other offenses related to theft* (49%), *Larceny* (47%), *Firearms and other dangerous weapons* (43%), *Assault and related offenses* (43%) an *Offenses against public order* (42%), while Latinos had the highest

percentages for *Offenses involving marijuana* (42%, compared to 40% for Blacks (2nd highest)) and *Criminal mischief and related offenses* (35%, compared to 32% for Blacks (2nd highest)).

There were three offense categories for which whites were represented in greater percentages compared to all other racial groups. This included *Offenses involving computers* (67% of $N = 9$), *Arson* (50% of $N = 4$) and *Licensing and other provisions relating to firearms* (50% of $N = 2$). Note however that these offense categories contained very few cases. Asians were not represented in greater percentages in any of the 35 offense categories. However, within offense category, Asians had relatively greater percentages, compared to other offense categories, for *Prostitution offenses* (29% of $N = 823$), *Offenses involving computers* (22% of $N = 9$) and *Offenses related to unauthorized recording* (20% of $N = 433$) (see Tables 4 and 5 for more).

Table 4. Top Screening Misdemeanor Charges (percentages within race)

Offenses		White		Black		Latino		Asian		Other		Total
Name	Penal Law	#	%	#	%	#	%	#	%	#	%	#
Conspiracy	§105	0	0	0	0	2	0	0	0	0	0	2
Criminal Facilitation	§115	2	0	21	0	12	0	0	0	0	0	34
Assault and Related Offenses	§120	1,718	9.1	4,704	7.8	3,895	8.9	446	8.1	27	13.7	10,790
Strangulation and Related Offenses	§121	0	0	2	0	0	0	0	0	0	0	2
Sexual Offenses	§130	95	0.5	277	0.5	370	0.8	51	0.9	2	1.0	795
Kidnapping, Coercion and Related Offenses	§135	22	0.1	59	0.1	52	0.1	5	0.1	0	0	138
Burglary and Related Offenses	§140	1,088	5.7	5,412	8.9	3,504	8.0	150	2.7	7	3.6	10,161
Criminal Mischief and Related Offenses	§145	966	5.1	1,130	1.9	1,214	2.8	140	2.5	6	3.0	3,456
Arson	§150	2	0	0	0	2	0	0	0	0	0	4
Larceny	§155	3,313	17.5	8,857	14.6	5,351	12.2	1,032	18.8	31	15.7	18,584
Offenses Involving Computers	§156	6	0	1	0	0	0	2	0	0	0	9
Welfare Fraud	§158	1	0	2	0	0	0	2	0	0	0	3
Other Offenses Related to Theft	§165	3,202	16.9	13,307	21.9	8,328	19.0	2,218	40.3	57	28.9	27,112
Forgery and Related Offenses	§170	273	1.4	684	1.1	624	1.4	86	1.6	2	1.0	1,669
Offenses Involving False Written Statements	§175	8	0	11	0	6	0	1	0	0	0	26
Criminal Diversion of Prescription Medications and Prescriptions	§178	17	0.1	43	0.1	90	0.2	0	0.0	0	0.0	150
Other Frauds	§190	87	0.5	447	0.7	195	0.4	19	0.3	1	0.5	749
Official Misconduct and Obstruction of Public Servants Generally	§195	181	1.0	563	0.9	410	0.9	60	1.1	3	1.5	1,217

Offenses		White		Black		Latino		Asian		Other		Total
Name	Penal Law	#	%	#	%	#	%	#	%	#	%	#
Bribery Involving Public Servants and Related Offenses	§200	0	0	1	0	0	0	0	0	0	0	1
Escape and Other Offenses Relating to Custody	§205	716	3.8	2,648	4.4	1,422	3.2	137	2.5	4	2.0	4,927
Perjury and Related Offenses	§210	4	0	8	0	2	0	0	0	0	0	14
Other Offenses Relating to Judicial and Other Proceedings	§215	285	1.5	1,085	1.8	870	2.0	46	0.8	5	2.5	2,291
Controlled Substances Offenses	§220	1,894	10.0	7,496	12.4	3,784	8.6	131	2.4	11	5.6	13,316
Offenses Involving Marijuana	§221	3,512	18.6	9,031	14.9	9,440	21.5	347	6.3	25	12.7	22,355
Gambling Offense	§225	20	0.1	197	0.3	246	0.6	57	1.0	0	0.0	520
Prostitution Offenses	§230	133	0.7	257	0.4	181	0.4	239	4.3	1	0.5	811
Obscenity and Related Offenses	§235	0	0	0	0	1	0	0	0	0	0	1
Offenses Against Public Order	§240	522	2.8	1,244	2.1	1,063	2.4	106	1.9	6	3.0	2,941
Offenses Against Public Sensibilities	§245	100	0.5	379	0.6	174	0.4	17	0.3	2	1.0	672
Offenses Against the Right to Privacy	§250	0	0	0	0	2	0	0	0	0	0	2
Offenses Related to Children, Disabled Persons and Vulnerable Elderly Persons	§260	100	0.5	497	0.8	512	1.2	22	0.4	0	0.0	1,131
Firearms and Other Dangerous Weapons	§265	619	3.3	2,002	3.3	1,939	4.4	98	1.8	7	3.6	4,693
Other Offenses Related to Public Safety	§270	36	0.2	34	0.1	49	0.1	3	0.1	0	0	122
Offenses Related to Unauthorized Recording	§275	3	0	264	0.4	78	0.2	88	1.6	0	0	433
Licensing and Other Provisions Relating to Firearms	§400	1	0	0	0.0	1	0	0	0	0	0	2
Overall % Total N	n/a	18,926	100%	60,663	100%	43,819	100%	5,501	100%	197	100%	129,106

Table 5. Top Screening Misdemeanor Charges (percentages within offense category)

Offenses		White		Black		Latino		Asian		Other		Total N (Total % = 100)
Name	Penal Law	#	%	#	%	#	%	#	%	#	%	
Conspiracy	§105	0	0.0	0	0.0	2	100.0	0	0.0	0	0.0	2
Criminal Facilitation	§115	2	5.7	21	60.0	12	34.3	0	0.0	0	0.0	35
Assault and Related Offenses	§120	1,718	15.8	4,704	43.2	3,895	35.8	446	4.1	27	0.2	10,790
Strangulation and Related Offenses	§121	0	0.0	2	100	0	0.0	0	0.0	0	0.0	2
Sexual Offenses	§130	95	11.7	277	34.2	370	45.6	51	6.3	2	0.2	795
Kidnapping, Coercion and Related Offenses	§135	22	15.8	59	42.4	52	37.4	5	3.6	0	0.0	138
Burglary and Related Offenses	§140	1,088	10.6	5,412	52.9	3,504	34.2	150	1.5	7	0.1	10,161
Criminal Mischief and Related Offenses	§145	966	27.6	1,130	32.3	1,214	34.7	140	4.0	6	0.2	3,456
Arson	§150	2	50.0	0	0.0	2	50.0	0	0.0	0	0.0	4
Larceny	§155	3,313	17.6	8,857	47.1	5,351	28.5	1,032	5.5	31	0.2	18,584
Offenses Involving Computers	§156	6	66.7	1	11.1	0	0.0	2	22.2	0	0.0	9
Welfare Fraud	§158	1	33.3	2	66.7	0	0.0	0	0.0	0	0.0	3
Other Offenses Related to Theft	§165	3,202	11.7	13,307	48.7	8,328	30.5	2,218	8.1	57	0.2	27,112
Forgery and Related Offenses	§170	273	16.0	684	40.1	624	36.6	86	5.0	2	0.1	1,669
Offenses Involving False Written Statements	§175	8	27.6	11	37.9	6	20.7	1	3.4	0	0.0	26
Criminal Diversion of Prescription Medications and Prescriptions	§178	17	11.1	43	28.1	90	58.8	0	0.0	0	0.0	150
Other Frauds	§190	87	11.4	447	58.5	195	25.5	19	2.5	1	0.1	749
Official Misconduct and Obstruction of Public Servants Generally	§195	181	14.7	563	45.7	410	33.3	60	4.9	3	0.2	1,217

Offenses		White		Black		Latino		Asian		Other		Total N (Total % = 100)
Name	Penal Law	#	%	#	%	#	%	#	%	#	%	
Bribery Involving Public Servants and Related Offenses	§200	0	0.0	1	100.0	0	0.0	0	0.0	0	0.0	1
Escape and Other Offenses Relating to Custody	§205	716	14.4	2,648	53.3	1,422	28.6	137	2.8	4	0.1	4,927
Perjury and Related Offenses	§210	4	28.6	8	57.1	2	14.3	0	0.0	0	0.0	14
Other Offenses Relating to Judicial and Other Proceedings	§215	285	12.3	1,085	46.9	870	37.6	46	2.0	5	0.2	2,291
Controlled Substances Offenses	§220	1,894	14.1	7,496	55.9	3,784	28.2	131	1.0	11	0.1	13,316
Offenses Involving Marijuana	§221	3,512	15.6	9,031	40.1	9,440	41.9	347	1.5	25	0.1	22,355
Gambling Offenses	§225	20	3.8	197	37.5	246	46.8	57	10.8	0	0.0	526
Prostitution Offenses	§230	133	16.2	257	31.2	181	22.0	239	29.0	1	0.1	823
Obscenity and Related Offenses	§235	0	0.0	0	0.0	1	100	0	0.0	0	0.0	1
Offenses Against Public Order	§240	522	17.6	1,244	42.0	1,063	35.9	106	3.6	6	0.2	2,941
Offenses Against Public Sensibilities	§245	100	14.7	379	55.8	174	25.6	17	2.5	2	0.3	672
Offenses Against the Right to Privacy	§250	0	0.0	0	0.0	2	100	0	0.0	0	0.0	2
Offenses Related to Children, Disabled Persons and Vulnerable Elderly Persons	§260	100	8.8	497	43.7	512	45.0	22	1.9	0	0.0	1,131
Firearms and Other Dangerous Weapons	§265	619	13.2	2,002	42.6	1,939	41.3	98	2.1	7	0.1	4,665
Other Offenses Related to Public Safety	§270	36	29.3	34	27.6	49	39.8	3	2.4	0	0.0	122
Offenses Related to Unauthorized Recording	§275	3	0.7	264	60.6	78	17.9	88	20.2	0	0.0	433
Licensing and Other Provisions Relating to Firearms	§400	1	50.0	0	0.0	1	50.0	0	0.0	0	0.0	2
Total # and Overall %	n/a	18,926	14.5	60,663	46.6	43,819	33.6	5,501	4.2	197	0.2	130,246 (100%)

3.2. Drug Charges

This section reviews drug offenses by drug type. First, it provides frequencies for all offenses that included drug offense as at least one of the top five charges among all cases disposed by DANY in 2010-2011. Second, it will focus only on those cases in which drug offenses were the top charge.

3.2.A. Drug Overview for All Cases

Screening charges by drug type were coded mainly according to a drug's psychopharmacological properties. Therefore, marijuana, cocaine (includes crack/cocaine), hallucinogens (e.g., LSD), heroin (an opiate), other (Non-Heroin) opiates, and amphetamines/methamphetamines were coded separately. Drugs designated in the "Other Drugs" category are mostly made up of prescription medication (e.g., Vicodin) and drug combinations (e.g., cocaine/heroin).

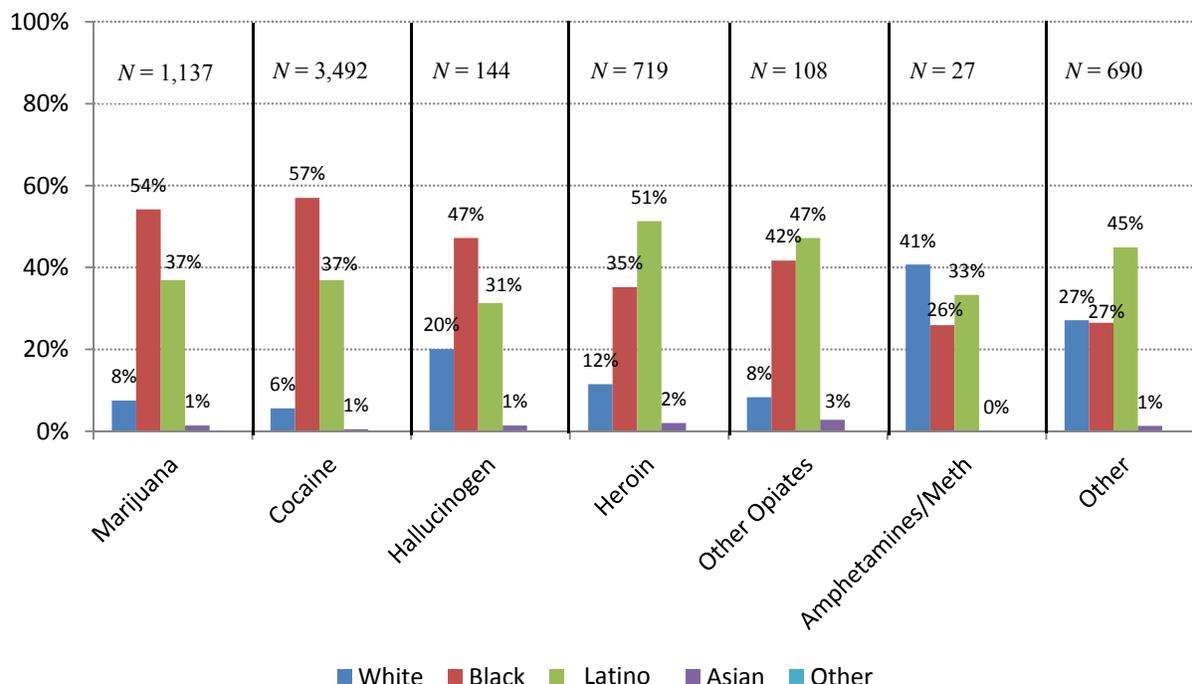
Figures 3-5 summarize the type of drugs of which defendants were in possession at the time of arrest ($N = 51,334$). It includes all cases, felonies misdemeanors, and violations that involve drugs, regardless of whether a drug charge was the "top charge" ($N = 18,551$). There were 31,868 cases involving marijuana, 14,133 cases with cocaine, 2,262 cases with heroin, 947 cases with hallucinogens, 251 cases with "other opiates", and 81 cases with amphetamines and methamphetamines. A total of 1,792 cases involve "other drugs" not listed above⁵⁸.

For *felonies* (as shown in Figure 3), blacks make up the majority of cases involving marijuana (54%), cocaine (57%), and hallucinogen (47%); Latinos make up the majority of cases involving heroin (51%), "other opiates" (47%), and "other drugs" (45%); and whites comprise

⁵⁸ Cases in which drug type is unknown is $N = 4,406$ ($N = 3,953$ are for cases in which the drug charge was not the "top charge").

the majority of cases involving amphetamines/methamphetamines (41%). A total of 5,243 (66%) cases where drugs were obtained at the time of arrest involved drugs as the “top charge” (see subsection 3.2.B).

Figure 3. Percentage of Defendants in a Racial Category by Type of Drug Charge for Felonies (N = 7,934)⁵⁹

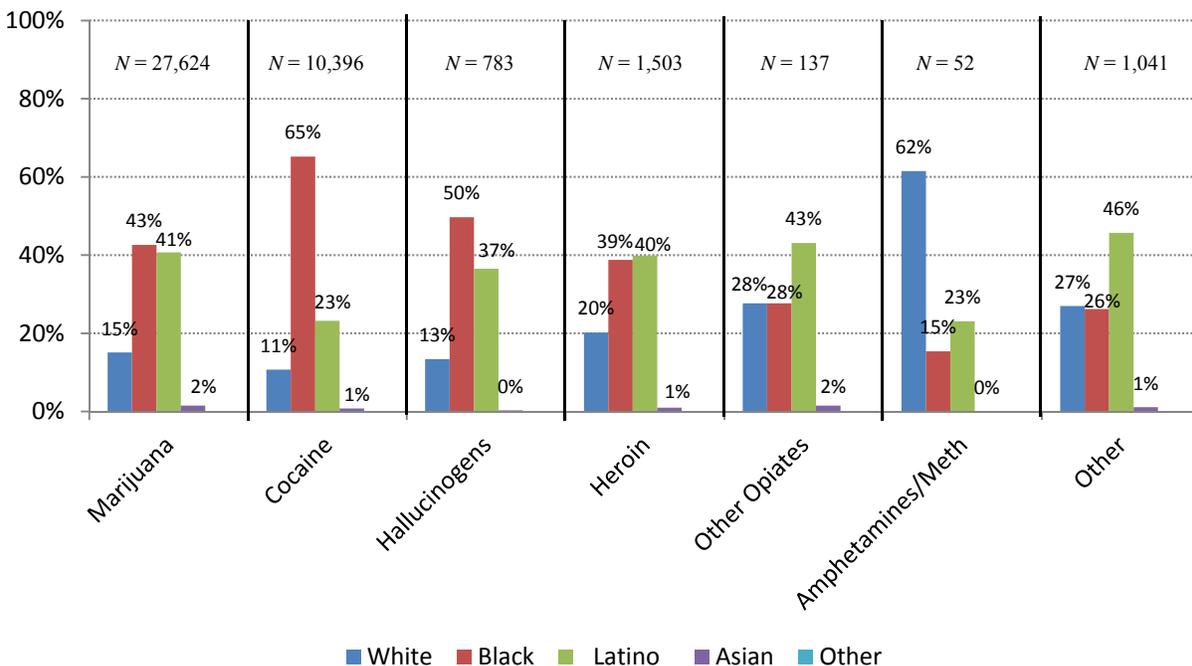


We find a similar trend in the racial breakdown of *misdemeanors* by drug type. As shown in Figure 4, we find that blacks represent the greatest percentage of defendants for whom cases involve marijuana (43%), cocaine (65%), and hallucinogens (50%). Latinos, once again, represent the greatest proportion of cases involving heroin (40%), other opiates (43%), and other drug (46%) drug types. Whites make up the majority of cases involving

⁵⁹ Information on race was missing for 89 cases (0.01%). Information on drug type is either not applicable or unavailable for 15831 cases (20.0%).

amphetamines/methamphetamines (62%). A total of 35,541 (82%) cases where drugs were obtained at the time of arrest involved drugs as the “top charge” (see subsection 3.2.B).

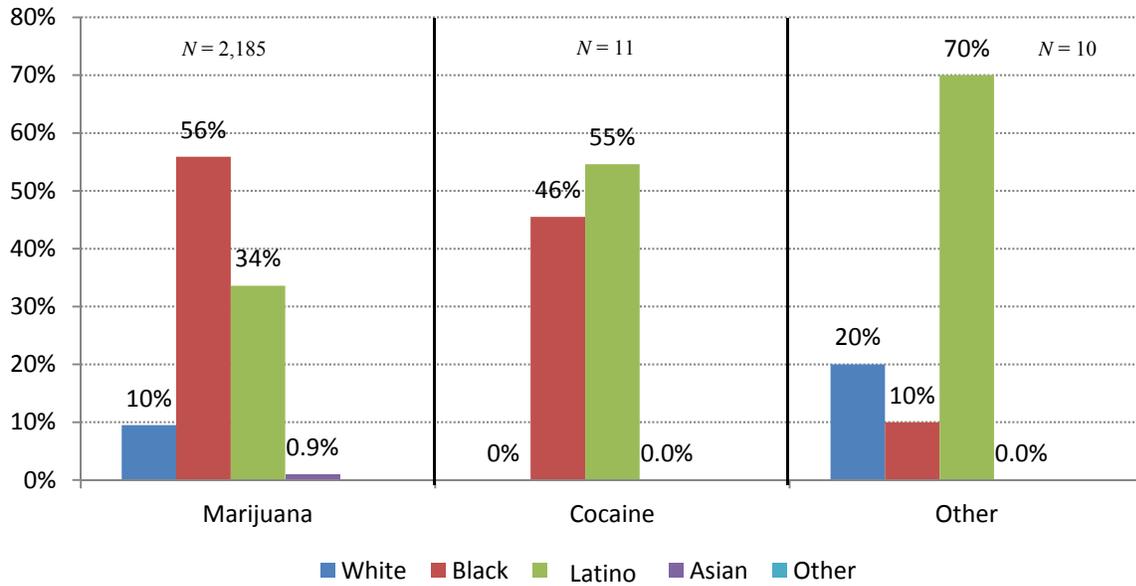
Figure 4. Percentage of Defendants in a Racial Category by Type of Drug Charge for Misdemeanors (N = 43,367)⁶⁰



For *violations*, the majority of offenses involve marijuana (N = 2,185), out of which blacks make up the greatest percentage of cases (56%), compared to Latinos (34%), whites (10%) and Asians (0.9%). There were only 11 violations involving cocaine and 10 involving other drugs, therefore percentages for this category should be interpreted with caution (see Figure 5). A total of 1,909 (78%) cases where drugs were obtained at the time of arrest involved marijuana (not other controlled substances) as the “top charge” (again, see subsection 3.2.B).

⁶⁰ Information on race was missing for 389 cases (0.01%). Information on drug type is unavailable for 1,442 cases (3.4%).

Figure 5. Percentage of Defendants in a Racial Category by Type of Drug Charge for Violations (N = 2,446)⁶¹



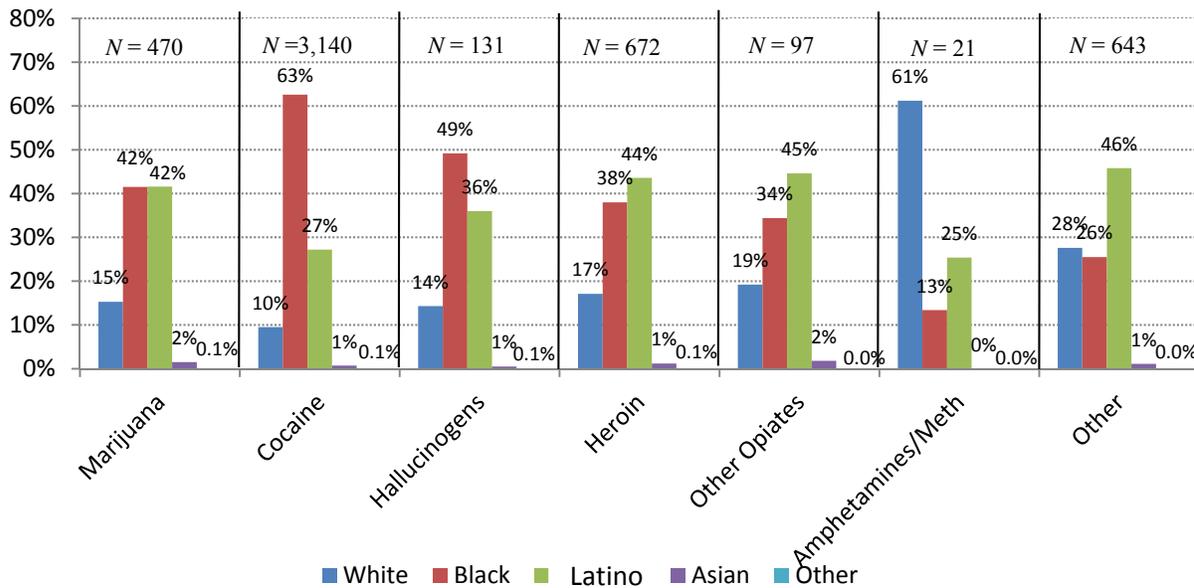
⁶¹ Information on race was missing for 184 cases (0.08%). Information on drug type is unavailable for cases (91.6%). Row by column cells are zero for Heroin, Other Opiates, Hallucinogens, and Amphetamine/Methamphetamine drug categories, and were subsequently excluded from the figure.

3.2.B. Drug Overview for Cases with Top Drug Charge

This section provides an overview of cases with a *top drug charge* for felonies ($N = 5,653$), misdemeanors ($N = 35,934$) and violations ($N = 1,920$).

For *felonies*, among cases with the top charge involving *amphetamines and methamphetamines*, whites make up the majority (61%), compared to Latinos (25%), blacks (13%), and Asians (0%). Among cases involving *cocaine*, the majority involved blacks (63%), compared to 27% Latinos, 10% whites, and 1% Asians. Among cases involving *heroin*, the majority involved Latinos (44%), compared to 38% blacks, 17% whites, and 1% Asians (see Figure 6).

Figure 6. Top Drug Charge: Percentage of Defendants in a Racial Category by Type of Drug Charge for Felonies ($N = 5,243$)⁶²

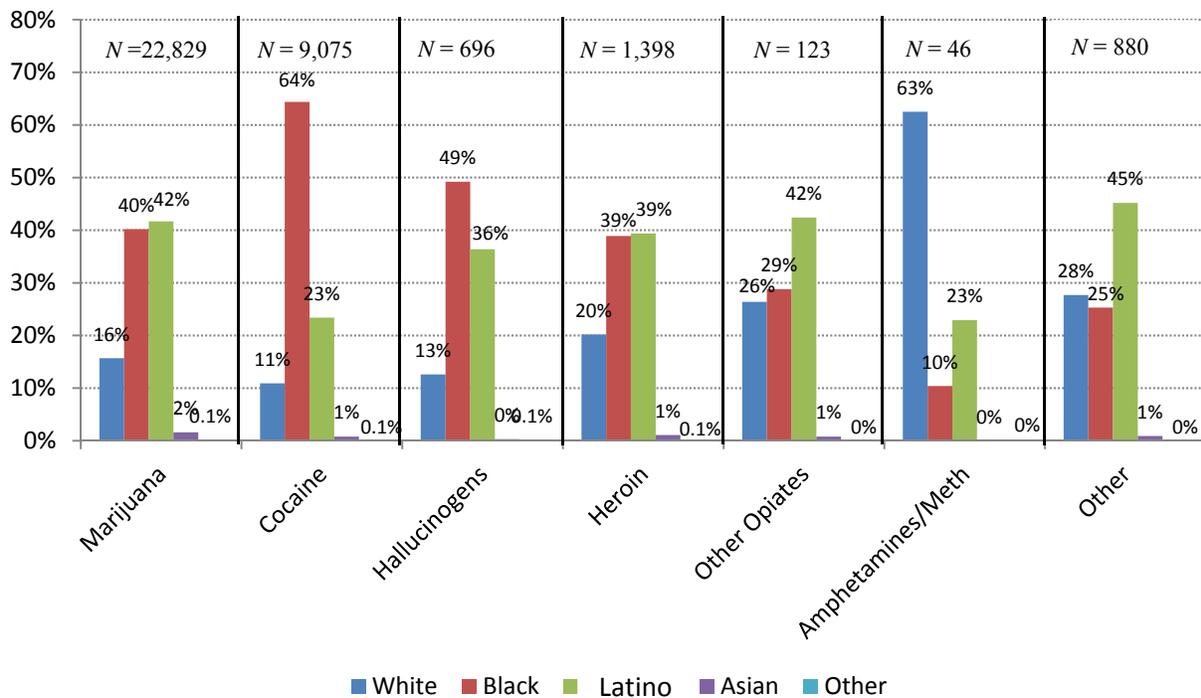


A similar trend emerges for *misdemeanors*, in which racial groups were overrepresented in specific drug categories. Among cases with the top charge involving *amphetamines and*

⁶² Information on race was missing for 24 cases. Drug information is unknown for 288 cases (0.1%).

methamphetamines, whites make up the majority (63%), compared to Latinos (23%), blacks (10%), and Asians (0%). Among cases involving *cocaine*, the majority of cases involved black (64%), compared to 23% Latinos, 11% whites, and 1% Asians. Among cases involving *heroin*, the majority involved Latinos (39%) and blacks (39%), with much smaller percentages for whites (20%) and Asians (1%) (see Figure 7).

Figure 7. Top Drug Charge: Percentage of Defendants in a Racial Category by Type of Drug Charge for Misdemeanors ($N = 35,541$)⁶³

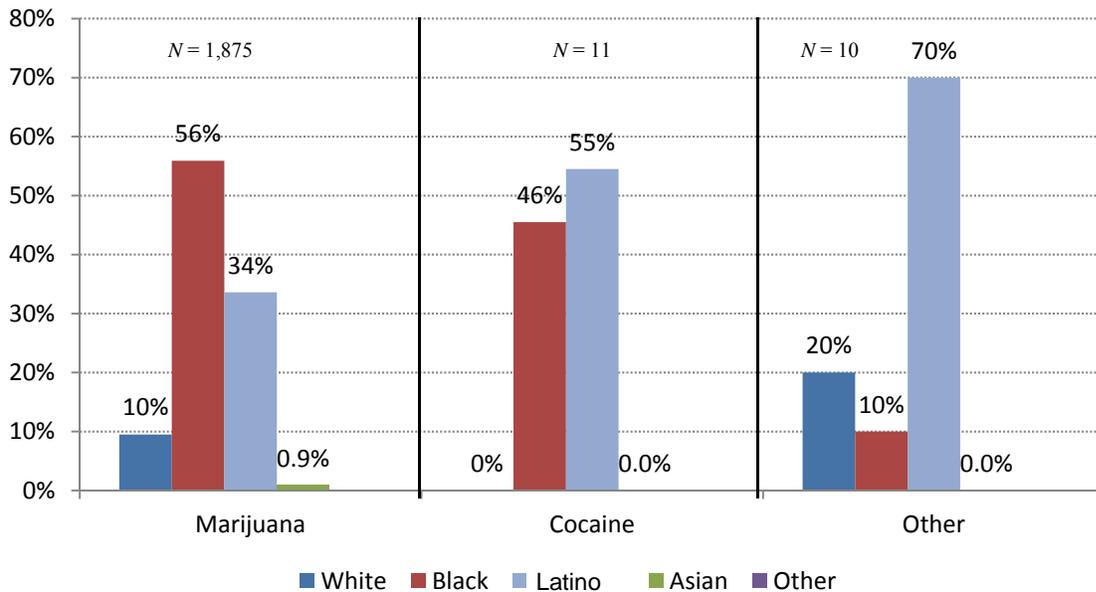


For *violations*, nearly all charges involved marijuana as the “top charge” ($N = 1,890$), with the majority reporting only marijuana obtained as evidence ($N = 2,185$). Only 11 cases involve cocaine, 3 involve hallucinogens, and 10 involve “other” drugs. Among all charges involving

⁶³ Information on race was missing for 232 cases (0.01%). Information on drugs is unavailable for 262 cases (0.01%).

marijuana, the greatest percentage of cases involved blacks (54%), followed by Latinos (35%) and whites (10%) (see Figure 8).

Figure 8. Top Drug Charge: Percentage of Defendants in a Racial Category by Type of Drug Charge for Violations (N = 2,446)⁶⁴



3.3. Screening Charges by Offense Class Levels

3.3.A. Defendant Race within Each Offense Class Level

This section reviews offense class levels by defendants’ race. It breaks down percentages by felonies (Class A-E), misdemeanors (Class A-B), violations, and infractions.

Of the 222,542 cases analyzed (i.e., flagged as disposed in 2010-2011), DANY’s Early Case Assessment Bureau (ECAB) accepted 212,719 (96%) cases for prosecution. Among them, with the exception of Latinos charged with class A felonies, a greater percentage of black defendants is involved with cases, regardless of whether the cases are felonies, misdemeanors, or

⁶⁴ Information on race was missing for 128 cases (0.05%). Information on drugs is unavailable for 53 (0.02%). Row by column cells are at or near zero for Heroin ($n = 3$), Other Opiates, Hallucinogens, and Amphetamine/Meth drug categories and were excluded from the figure.

violations. Tables below show counts (Table 6) and percentages (Table 7) of cases organized by the top screening charges and broken down by race. The percentages of black and Latino defendants are particularly high in *felony* cases and *misdemeanor* cases compared to percentages across the other racial groups. A particularly large percentage of Latinos, compared to other racial groups, are charged with an A Felony: about 58% of all A Felony charges involve Latino defendants (see Tables 3).

Out of 26,069 *felonies* accepted for prosecution, 50% involve black ($N = 13,124$), 34% involve Latino ($N = 8,917$), and 12% involve white ($N = 3,018$) defendants. Only 3% of felony cases accepted for prosecution involve Asian defendants ($N = 788$).

Out of 159,206 *misdemeanor* cases accepted for prosecution, 46% involve black ($N = 72,592$), 33% Latino ($N = 53,075$), 15% white ($N = 23,907$), and 5% Asian ($N = 7,532$) defendants.

Table 6. Screening Charges – Counts ($N = 212,719$)

	White (#)	Black (#)	Latino (#)	Asian (#)	Other (#)	Unknown (#)	Total (#)
A - Felony	35	148	270	10	-	4	467
B - Felony	376	2,988	2,180	56	1	21	5,622
C - Felony	357	2,184	1,362	98	9	30	4,040
D - Felony	1,412	5,244	3,461	312	20	103	10,552
E - Felony	838	2,560	1,644	257	8	81	5,388
All Felonies	3,018	13,124	8,917	788	38	239	26,069
A - Misdemeanor	19,436	61,400	43,221	6,857	238	1,618	132,770
B - Misdemeanor	4,471	11,192	9,854	675	31	213	26,436
All Misdemeanors	23,907	72,592	53,075	7,532	269	1,831	159,206
Violation	3,268	12,843	8,668	535	46	421	25,781
Infraction	36	122	121	6	-	28	313
Total N	30,226	98,676	70,779	8,806	353	2,512	211,369

Note: Excludes cases not accepted for prosecution (decline to prosecute; $N = 9,823$) as there was no screening charge produced if cases were declined. Charge information is unknown for 1,350 (0.6%). Class A Misdemeanors include unclassified (UNC) misdemeanors.

Table 7. Screening Charges within Offense Category – Percentages (N = 212,719)

	White (%)	Black (%)	Latino (%)	Asian (%)	Other (%)	Unknown (%)	Total (%)
A – Felony	7.5	31.7	57.8	2.1	0.0	0.9	100%
B – Felony	6.7	53.1	38.8	1.0	0.0	0.4	100%
C – Felony	8.8	54.1	33.7	2.4	0.2	0.7	100%
D – Felony	13.4	49.7	32.8	3.0	0.2	1.0	100%
E – Felony	15.6	47.5	30.5	4.8	0.1	1.5	100%
All Felonies	11.6	50.3	34.2	3.0	0.1	0.9	100%
A – Misdemeanor	14.6	46.2	32.6	5.2	0.2	1.2	100%
B – Misdemeanor	16.9	42.3	37.3	2.6	0.1	0.8	100%
All Misdemeanors	15.0	45.6	33.3	4.7	0.2	1.1	100%
Violation	12.7	49.8	33.6	2.1	0.2	1.6	100%
Infraction	11.5	39.0	38.7	1.9	0.0	8.9	100%
Total %	14.3	46.7	33.5	4.2	0.2	1.2	100%

Note: Excludes cases not accepted for prosecution (decline to prosecute; N = 9,823) as there was no screening charge produced if cases were declined. Class A Misdemeanors include unclassified (UNC) misdemeanors. Charge information is unknown for 1,350 (0.6%) cases.

3.3.B. Offense Class Levels within Defendant Race

This section summarizes the percentage of defendants within each racial group charged with *felonies* (Class A-E), *misdemeanors* (Class A-B), *violations* and *infractions*. Table 8 provides a summary of top charges within defendants’ race.

Overall, a greater percentage of black defendants are charged with *felonies*, and a greater percentage of Asians are charged with *misdemeanors*. A greater percentage of blacks are charged with *felonies* (13.3%), compared to Latinos (12.6%), whites (10.0%) and Asians (8.2%).

However, a greater percentage of Latinos have more serious *felony* charges, including *Class A* (0.4%) and *Class B* (3%) *felonies*.

Similar percentages of white, black, and Latino defendants are charged with *misdemeanors*. Approximately 62-67% of each racial group had an *A misdemeanor* top charge.

Differences are more noticeable for *B misdemeanors*, in which greater percentages of both white and Latino defendants (14%) are involved.

A greater percentage of Asians are charged with an *A misdemeanor* (78%), and a smaller percentage are charged with a *B misdemeanor* (8%) compared to all other racial groups.

Table 8. Screening Charges within Defendant Race – Percentages (N = 212,719)

	White (%)	Black (%)	Latino (%)	Asian (%)	Other (%)	Unknown (%)	Total (%)
A - Felony	0.1	0.1	0.4	0.1	0.0	0.1	0.2
B - Felony	1.2	3.0	3.1	0.6	0.3	0.8	2.6
C - Felony	1.2	2.2	1.9	1.1	2.5	1.1	1.9
D - Felony	4.6	5.3	4.9	3.5	5.7	3.8	5.0
E - Felony	2.8	2.6	2.3	2.9	2.3	3.0	2.5
All Felonies	10.0	13.3	12.6	8.2	10.8	9.4	12.2
A - Misdemeanor	63.8	61.9	60.8	77.6	67.4	59.7	62.4
B - Misdemeanor	14.7	11.3	13.9	7.6	8.8	7.9	12.4
All Misdemeanors	79.1	73.6	75.0	85.6	76.2	72.8	74.8
Violation	10.8	13.0	12.2	6.1	13.0	15.5	12.1
Infraction	0.1	0.1	0.2	0.1	0.0	1.0	0.1
Total %	100%	100%	100%	100%	100%	100%	100%

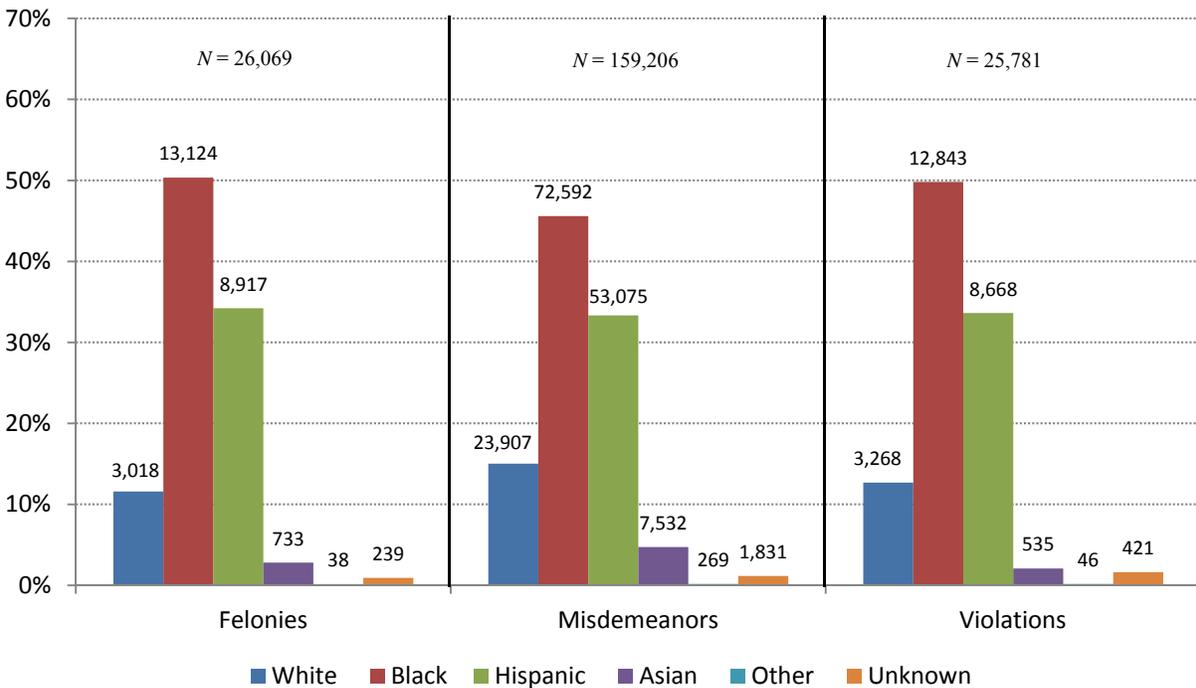
Note: Excludes cases not accepted for prosecution (decline to prosecute; N = 9,823) as there was no screening charge produced if cases were declined. Charge information is unknown for 1,350 cases. Class A Misdemeanors includes unclassified (UNC) misdemeanors.

Part 4. Overview of the Defendant Population

4.1. Defendant Race

This section provides a summary of *felonies*, *misdemeanors* and *violations* (see Figure 9) by race. These figures refer to only cases accepted for prosecution and excluding infractions. Nearly half of all felonies, misdemeanors and violations involve black defendants, and about a third involves Latinos.

Figure 9. Percentages and Counts of Felonies, Misdemeanors, and Violations by Race (percent within offense type)



4.2. Defendant Gender

This section provides a summary of defendant gender broken down by race and separated into *felonies* ($N = 26,069$, see Figure 10), *misdemeanors* ($N = 159,206$, see Figure 11) and *violations* ($N = 25,781$, see Figure 12), referring only to cases accepted for prosecution and excluding infractions.

For *felonies*, a male-to-female ratio is identical for white and black defendants (both are 20% female). A smaller percentage of Latinos are female (15%). A greater percentage of Asian defendants are female (26%).

Among *misdemeanors*, again, the percentage of females is the smallest among Latinos (15%) and greatest among Asians (37%). Similar percentages of whites and blacks are female (19% and 18%, respectively).

As for *violations*, percentages across all racial groups are consistently small for female defendants (2-8%). Yet, here again, a greater percentage of Asians are female (8%) as compared to other racial groups.

Figure 10. Percentage of Felonies by Race and Gender (N = 26,069)⁶⁵

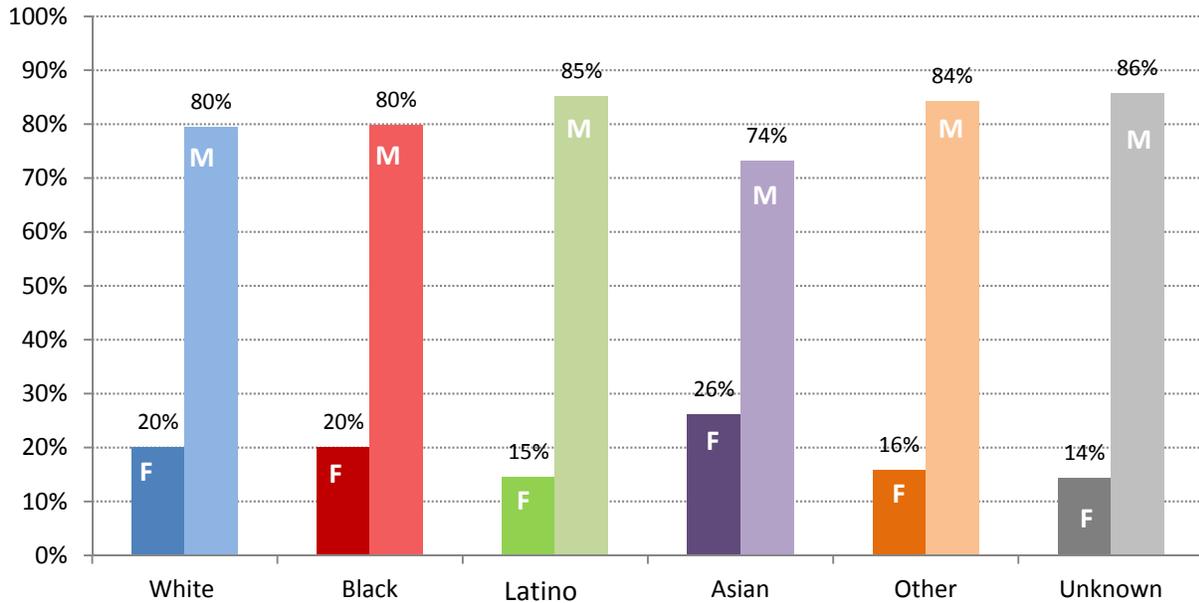
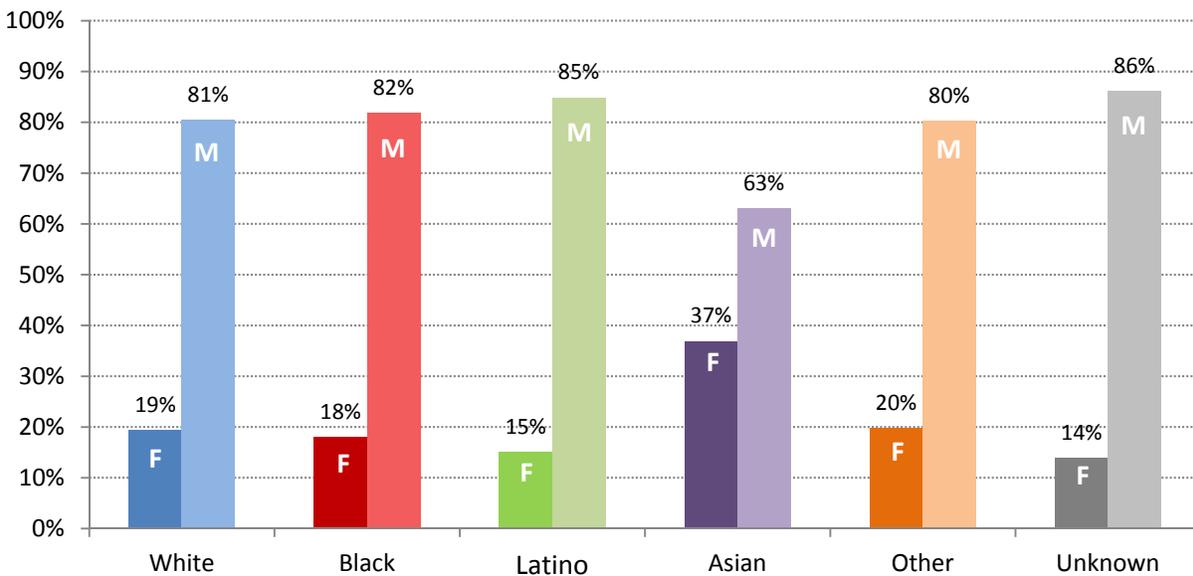


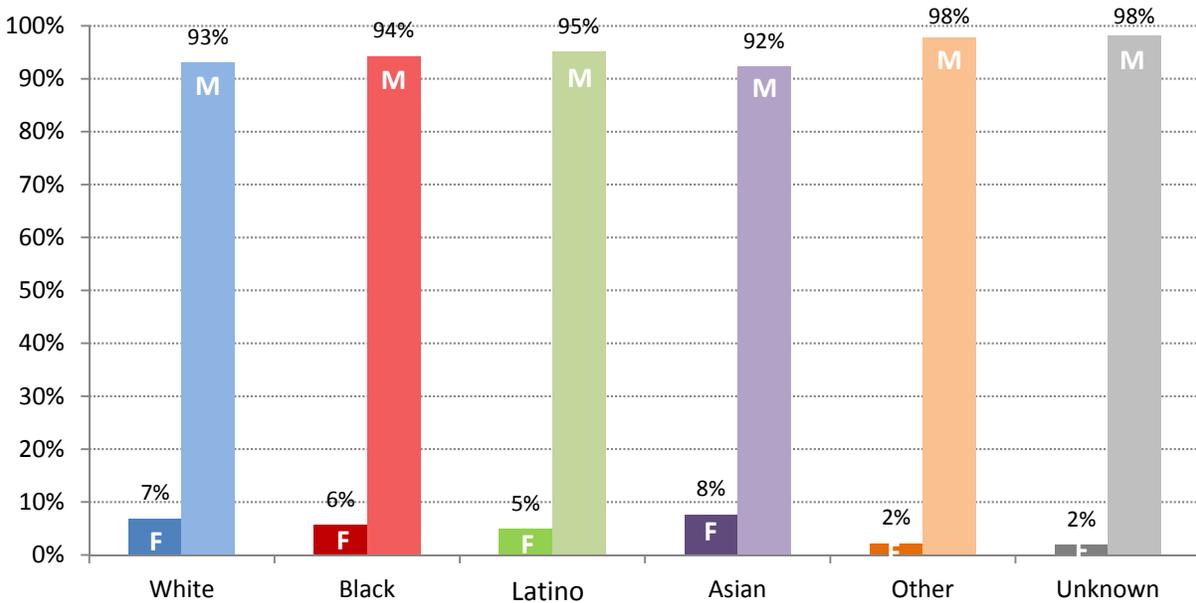
Figure 11. Percentage of Misdemeanors by Race and Gender (N = 159,206)⁶⁶



⁶⁵ F = Female; M = Male. Percentages are shown within each racial category. There are 3,008 Whites; 13,107 Blacks; 8,883 Latinos; 728 Asians; and 32 are identified as “Other”. Information is missing on defendants’ gender for N = 124 (0.005%).

⁶⁶ F = Female; M = Male. Percentages are shown within each racial category. There are 23,879 Whites; 72,535 Blacks; 45,038 Latinos; 7,527 Asians; and 269 are identified as “Other”. Information is missing on gender for N = 242 (0.00%).

Figure 12. Percentage of Violations by Defendant Race and Gender (N = 25,781)⁶⁷



4.3. Defendant Age

This section reports a breakdown of defendants by racial group and within *felonies* (Figure 13), *misdemeanors* (Figure 14), and *violations* (Figure 15). Additionally, it provides information on the average age of defendants by racial group and offense category (Table 9). Figures reported in this section refer to cases accepted for prosecution and excludes infractions.

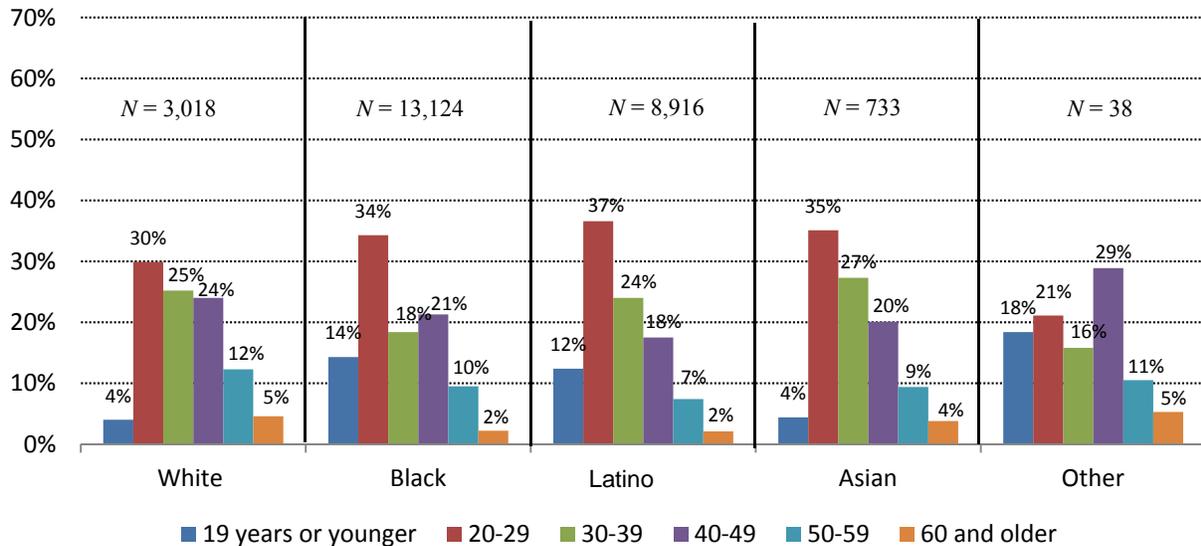
For all races, felony and misdemeanor defendants are noticeably younger than violation defendants. For *felonies*, white and Asian defendants tend to be older when compared to blacks and Latinos. On average, whites are 36 years of age, Asians 34, while blacks and Latinos are an average of 32 and 31 years, respectively.

Compared to blacks (14%) and Latinos (12%), a smaller percentage of whites and Asians are 19 years of age or younger (4% for both groups). Also, a greater percentage of Asians are

⁶⁷ Percentages are shown within each racial category. There are 3,268 Whites; 12,837 Blacks; 8,243 Latinos; 494 Asians; and 45 are identified as “Other”. Information is missing on gender for N = 167 (0.01%).

reportedly in the 30-39 year category (27%), relative to all other racial groups, particularly to black defendants (18%). For all racial groups combined, the highest percentage of defendants are between 20 and 29 years of age (33%), and the lowest percentage of defendants are 60 and above (3%).

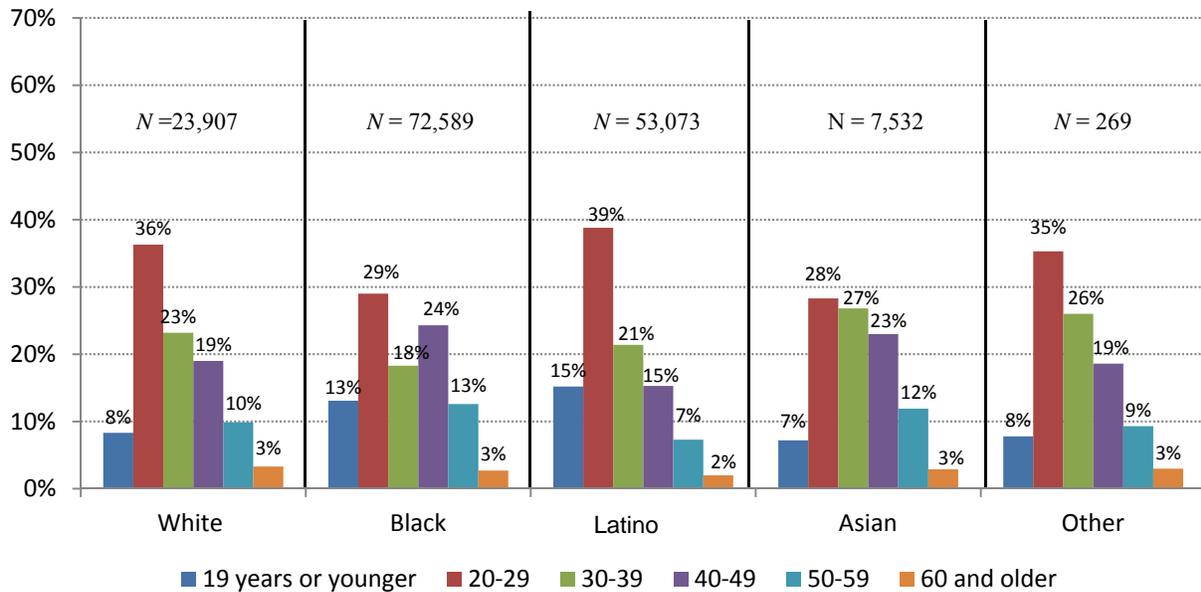
Figure 13. Percentage of Felony Defendants by Age Category and Race (N = 26,069)⁶⁸



For *misdemeanors*, Latinos tend to be the youngest, on average (31 years old), and Asians the oldest (36 years old). In comparison with felonies, greater percentages of whites (8%), Latinos (15%) and Asians (7%) are 19 years of age and younger, which suggests that young white, Latino and Asian defendants are more likely to be charged with misdemeanors, while young black defendants are more likely to be charged with felonies (see Figure 14).

⁶⁸ Total Ns are shown within race. There are 3,160 (12.1%) defendants who are 19 years old or younger; 9,007 (34.6%) between 20 and 29 years old; 5,566 (21.4%) between 30 and 39 years old; 5,265 (20.2%) between 40 and 49 years old; 2,374 (9.1%) between 50 and 59 years old; and 649 (2.5%) 60 years old and older. Information is missing on race 239 (0.9%) and defendant age for 48 cases.

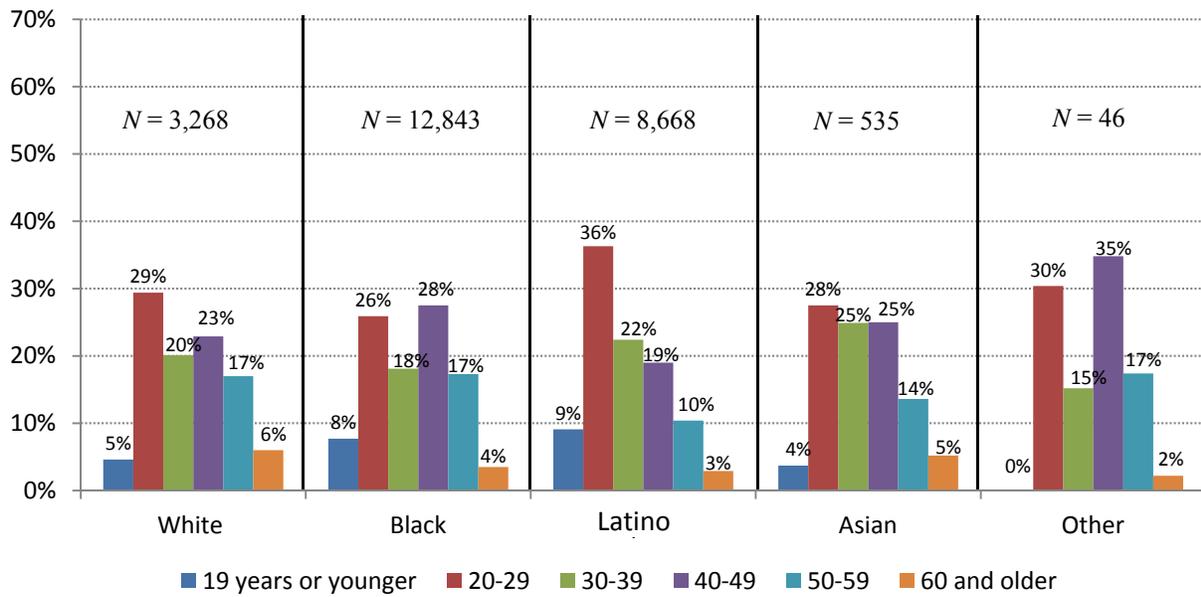
Figure 14. Percentage of Misdemeanor Defendants by Age Category and Race (N = 159,206)⁶⁹



For *violations*, age difference is less apparent within all racial groups except for Latinos. On average, Latinos are younger (34 years old), with 36% in the 20-29 age category, and 9% in the 19-or-younger category. These percentages are much smaller for all other racial groups (see Figure 15).

⁶⁹ Total Ns are shown within race. There are 20,294 (12.7%) defendants who are 19 years old or younger; 53,203 (33.4%) between 20 and 29 years old; 32,756 (20.6%) between 30 and 39 years old; 32,410 (20.4%) between 40 and 49 years old; 16,437 (10.3%) between 50 and 59 years old; and 4,075 (2.6%) 60 years old and older. Information is missing on race for 1,831 (1.2%) and defendant age for 31 cases.

Figure 15. Percentage of All Violation Defendants by Age Category and Race (N = 25,781)⁷⁰



⁷⁰ Total Ns are shown within race. There are 1,985 (7.7%) defendants who are 19 years old or younger; 7,725 (30.0%) between 20 and 29 years old; 5,144 (20.0%) between 30 and 39 years old; 6,179 (24.0%) between 40 and 49 years old; 3,805 (14.8%) between 50 and 59 years old; and 939 (3.6%) 60 years old and older. Information is missing on race for 421 (1.6%) and defendant age for 4 cases.

Table 9. Defendant Age by Offense Category and Race (Mean, Standard Deviation and Median)⁷¹

Felonies (<i>N</i> = 26,069)			
	Mean	<i>SD</i>	Median
White	35.56	12.37	34
Black	31.78	12.31	29
Latino	30.78	11.42	28
Asian	34.12	12.08	32
Other	30.24	13.39	29

Misdemeanors (<i>N</i> = 159,206)			
	Mean	<i>SD</i>	Median
White	33.71	12.32	31
Black	34.52	13.04	33
Latino	30.88	11.85	28
Asian	35.52	12.02	34
Other	33.59	12.04	31

Violations (<i>N</i> = 25,781)			
	Mean	<i>SD</i>	Median
White	37.93	13.45	37
Black	37.56	12.94	38
Latino	33.82	12.43	31
Asian	37.66	12.57	35
Other	39.54	11.77	41

4.4. Defendant Residence and Crime Occurrence Location

4.4.A. Defendant Residence⁷²

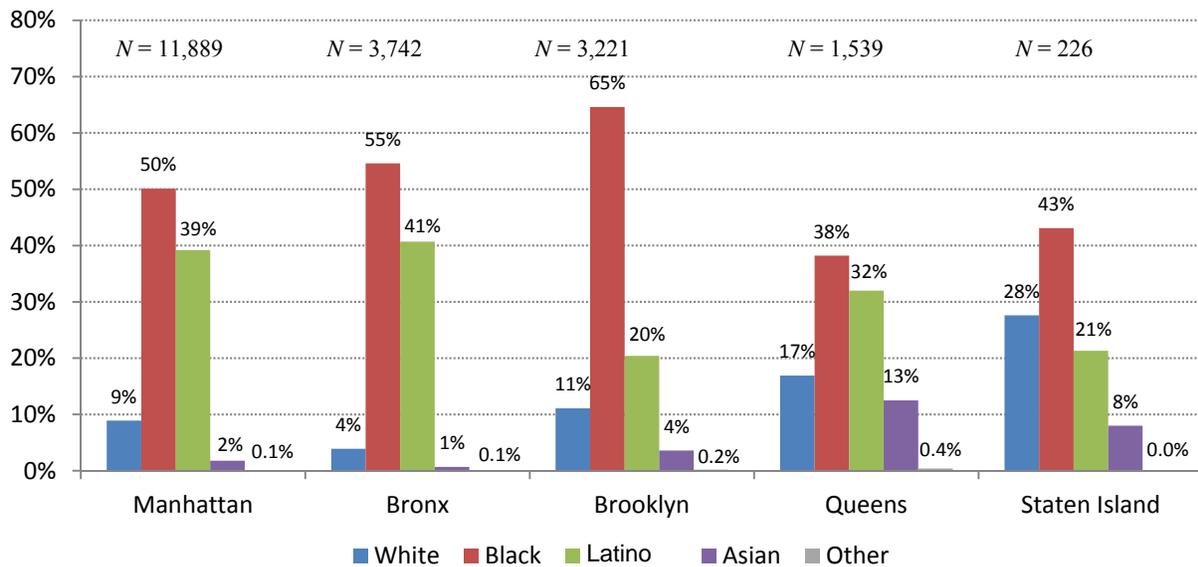
Overall, among defendants residing in the New York City area, 43% reside in Manhattan, 14% in the Bronx, 12% in Brooklyn, 7% in Queens, and 1% in Staten Island. Among Manhattan residents, 48% of defendants are black, 38% are Latino, 11% are white, and 3% are Asian. This trend remains across the remaining four boroughs, where the majority of defendants residing in each borough are black and Latino.

⁷¹ Information is missing on defendant age for 83 (0.0003%) cases. Information is missing on screening charge for 1,350 (0.6%). Race is unknown for 2,414 (0.01%) cases.

⁷² Residency information is collected from NYPD arrest reports.

Figures 16-18 provide summaries of defendants residing in each NYC borough by race and offense category. *Felony* defendants residing in Manhattan are primarily black (50%) and Latino (39%), followed by whites (9%) and Asians (2%). For defendants residing in the Bronx, the trend is the same. For defendants residing in Brooklyn, a substantially greater percentage of defendants are black (65%), followed by Latino (20%), white (11%) and Asian (4%). The majority of defendants who reside in Queens are black (38%) and Latino (32%), then white (17%) and Asian (13%). The majority of defendants residing in Staten Island are black (43%) and white (28%), followed by Latino (21%) and Asian (8%). Among *misdemeanors* and *violations*, patterns are similar to the above, with exception to misdemeanor defendants living in Staten Island; the difference among blacks (38%), whites (34%), and Latinos (24%) decreases considerably in this area.

Figure 16. Percentage of all Felony Defendants by Race Residing within a New York City Borough (N = 26,069)⁷³



⁷³ Home borough for N = 5,452 (20.9%) of the sample is unknown. Race is unknown for N = 239 (0.9%) cases.

Figure 17. Percentage of all Misdemeanor Defendants by Race Residing within a New York City Borough (N = 159,206)⁷⁴

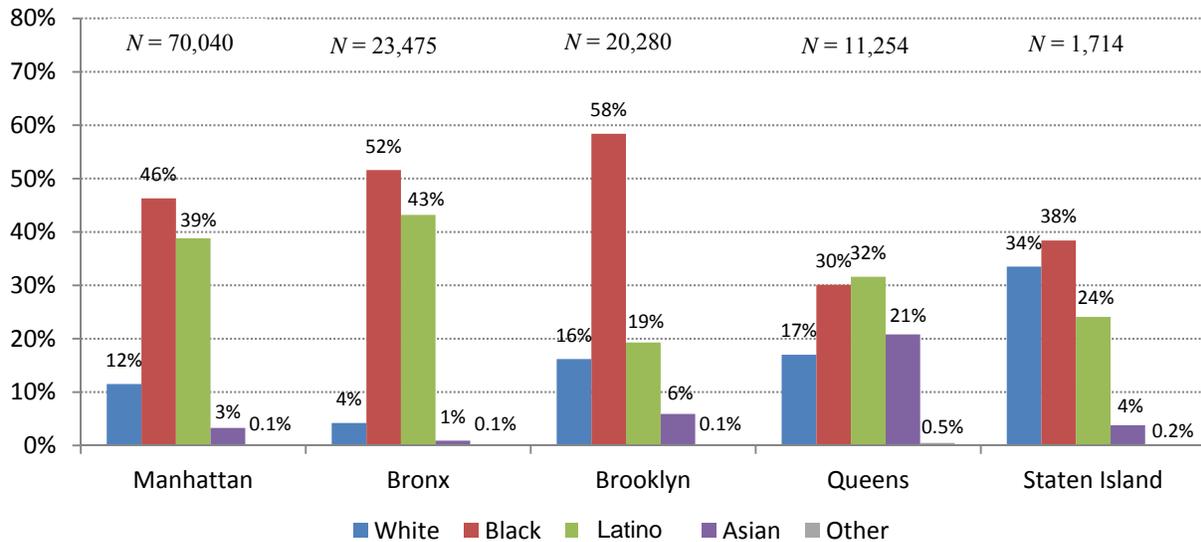
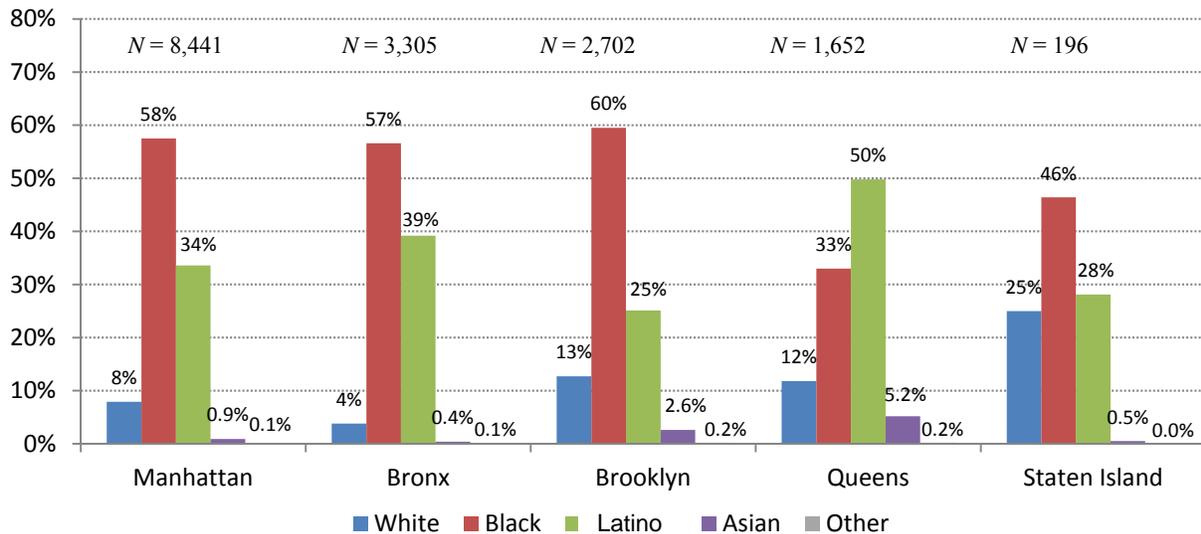


Figure 18. Percentage of all Violation Defendants by Race Residing within a New York City Borough (N = 25,781)⁷⁵



⁷⁴ Home borough for N = 32,443 (20.4%) of the sample is unknown. Race is unknown for N = 1,831 (1.2%) cases.

⁷⁵ Home borough for N = 9,485 (36.8%) of the sample is unknown. Race is unknown for N = 421 (1.6%) cases.

4.4.B. Crime Occurrence Location

Given the geographic scope of DANY's jurisdiction, the vast majority of cases reviewed by the office are for crimes that occur in Manhattan. Therefore, it is no surprise that the vast majority of cases in DANY's database are for crimes occurring in Manhattan (99.9%), while less than 1% of crimes occur in each of the remaining four boroughs (Bronx, Brooklyn, Queens, and Staten Island).

Figures below summarize defendants who were arrested in Manhattan, the Bronx, Brooklyn, Queens and Staten Island for crimes involving felonies (Figure 19) and misdemeanors (Figure 20). Some differences can be seen across offense categories; however given very small numbers of cases for all boroughs other than Manhattan, the percentages provided below should be interpreted with caution.

For *felonies* reportedly committed in Manhattan, half of all defendants are black (51%) and about a third are Latinos (34%). A similar trend is observed for *misdemeanors*. As for *violations*, all arrests for all racial groups were made in Manhattan, and therefore no figure is provided.

Figure 19. Percentage of all Felony Defendants by Race Arrested within a New York City Borough (N = 26,069)⁷⁶

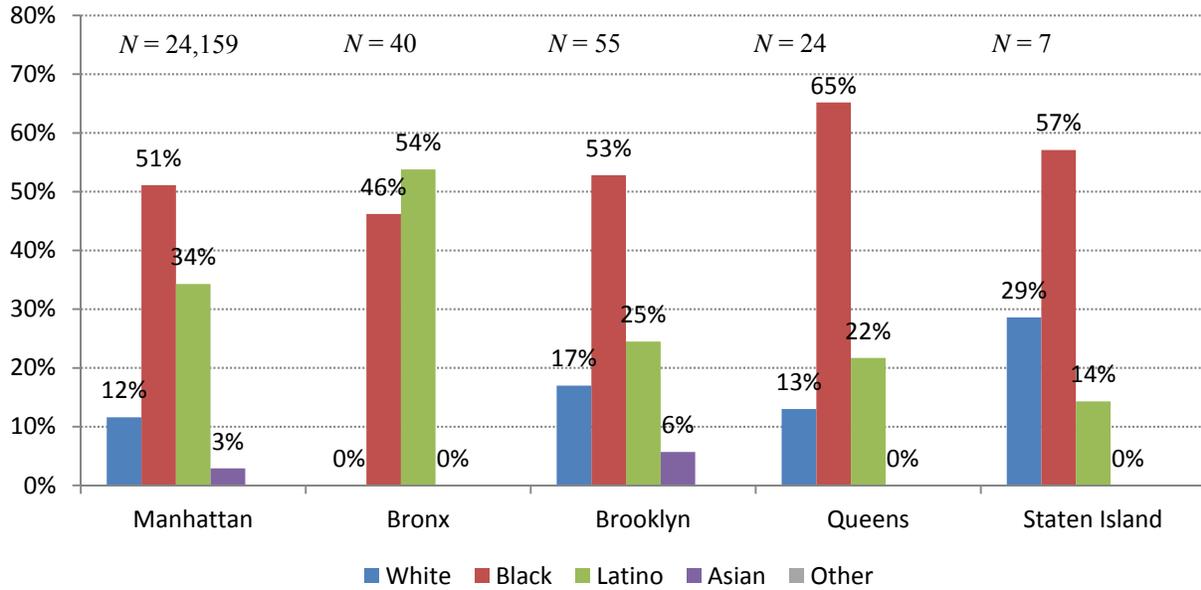
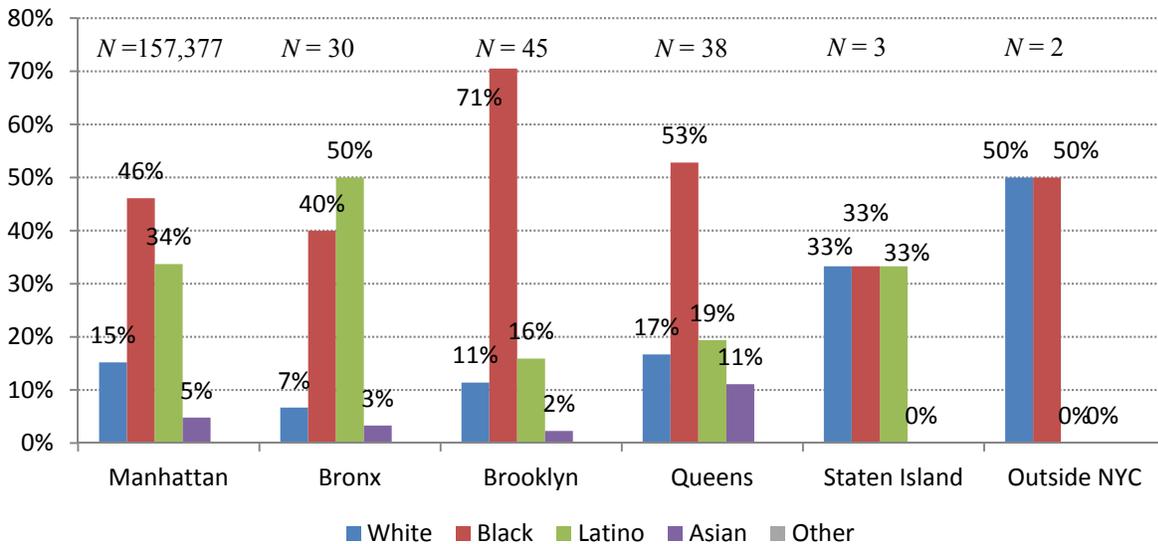


Figure 20. Percentage of all Misdemeanor Defendants by Race Arrested within a New York City Borough (N = 159,206)⁷⁷



⁷⁶ Borough where the incident took place was not provided for N = 1,784 (0.07%) of cases. Race is unknown for N = 175 (0.01%) cases.

⁷⁷ Occurrence borough for N = 1,711 (0.01%) of the sample is unknown. Race is unknown for N = 1,717 (0.01%) cases. Two criminal events occurred outside of NYC.

4.4. Defendant Prior Record

In the criminal justice system, defendants' prior record influences nearly every discretionary decision, including a decision to prosecute, release on bail, reduce charges and impose custodial sentences. Therefore, the importance of the prior record for the analyses of discretionary prosecutorial decisions cannot be overstated. Furthermore, given that it is not only defendants' prior convictions but also their prior arrests that is being considered by prosecutors (e.g., in the plea bargaining process), collecting data on every type of prior record was essential.⁷⁸ The percentages reported below show marked disparities among racial groups but they nevertheless should be interpreted with caution given that differences in priors among racial groups do not necessarily represent differences in their criminal activity levels.

Overall, a greater percentage of black defendants have a prior arrest, felony arrest, conviction, felony conviction, prison sentence, jail sentence and non-custodial sentence when compared to other racial groups. This is true for all black defendants, whether they are currently charged with felonies, misdemeanors or violations. On average, blacks had more prior arrests ($M = 5.05$) and incarceration ($M = 2.50$), compared to Latinos (2.53 and 0.92, respectively), whites (1.90 and 0.83, respectively), and Asians (0.85 and 0.23, respectively).

Among current *felony* and *misdemeanor* defendants, nearly twice as many blacks have a prior arrest as whites, and nearly three times as many as Asians. Latinos are also more likely to have a prior arrest relative to both whites and Asians; however, when compared to blacks, the data suggest that they are less likely to have a prior arrest, and this is true across all offense categories.

⁷⁸ Unfortunately, for the full dataset, we were not able to gather data on whether defendants' prior record was for a violent felony. This information, however, is included for the misdemeanor marijuana and felony drug samples (see section 6.4).

For prior *felony* arrests, the differences by race are more striking compared to *any* prior arrest. Blacks are two-to-three times more likely to have felony arrests when compared with whites, and three-to-five times more likely when compared to Asians. Although percentages are smaller for Latinos, they are noticeably more likely to have prior felony arrests in comparison to whites or Asians.

Black defendants are also considerably more likely to have a prior conviction and prior custodial or non-custodial sentence. The difference in terms of prior prison sentence is particularly large between blacks and Asians: blacks are about 12-to-15 times more likely to have a prior prison sentence.

Table 10. Defendants with One or More Prior Arrest, Felony Arrest, Conviction, Felony Conviction, Prison Sentence, Jail Sentence and Non-Custodial Sentence within Race

	Any Prior Arrest (%)	Prior Felony Arrest (%)	Any Prior Conviction (%)	Prior Felony Conviction (%)	Prior Prison Sentence (%)	Prior Jail Sentence (%)	Prior Non-Custodial Sentence (%)	Total N
Felonies (N = 26,069)								
White	34.2	20.8	29.7	9.8	5.2	15.2	25.5	3,018
Black	57.0	40.1	51.3	23.7	15.2	29.0	44.8	13,124
Latino	51.9	34.5	44.5	17.8	10.3	20.9	39.2	8,917
Asian	22.6	11.5	16.4	2.3	1.1	4.5	15.3	733
Other	21.1	13.2	23.7	5.3	2.6	7.9	21.1	38
Misdemeanors (N = 159,206)								
White	25.0	11.9	21.3	5.0	2.8	11.6	20.1	23,907
Black	57.9	34.2	52.6	18.8	12.2	31.3	49.1	72,592
Latino	45.8	24.3	37.8	11.4	6.3	16.7	34.8	53,075
Asian	20.3	7.2	14.6	1.4	0.7	3.3	14.0	7,532
Other	33.8	16.0	26.0	4.5	1.9	11.9	24.9	269
Violations (N = 25,781)								
White	44.3	18.9	41.9	7.0	3.5	23.2	40.1	3,268
Black	68.8	39.2	66.6	21.9	13.9	42.4	63.3	12,843
Latino	44.9	22.3	41.2	10.6	6.1	20.7	38.8	8,668
Asian	29.0	9.3	25.6	3.7	1.3	11.6	23.9	535
Other	52.2	17.4	45.7	15.2	2.2	26.1	45.7	46
Total N								208,565

Note: Race information for 2,491 (1.2%) cases is unknown.

Part 5. Prosecutor and Defense Counsel Characteristics

5.1. Prosecutor Characteristics

Previous research provides very little evidence about the extent to which prosecutorial characteristics influence case outcomes (see Literature Review) although researchers often argue that these characteristics matter (e.g., Free, 2001). To account for the effect of prosecutor characteristics and organizational constraints such as prosecutor caseloads, we collected additional data from DANY's human resources department, and the findings below represent descriptive statistics of these data.⁷⁹ More specifically, the tables and figure below show percentages broken down by Assistant District Attorneys' (ADA) race (Figure 23), race and gender (Table 11), race and ADA years of experience at DANY (Table 12), and ADA caseload by trial bureau⁸⁰ (Table 13).

There were 647 ADAs who were assigned cases from the dataset. Among them, three quarters were white (77%) but split nearly evenly by gender (50% females). When looking within each racial group of ADAs, there were more Latino *male* ADAs (60%) and more black and Asian *female* ADAs (59% and 64%, respectively) (see Table 11).

As for years of experience at DANY, both white and black ADAs appeared to have longer experience (white: $M = 11.00$, $SD = 9.20$; black: $M = 10.77$, $SD = 8.24$), followed by Latinos ($M = 10.12$, $SD = 8.76$), and Asians ($M = 7.78$, $SD = 4.65$) (see Table 12).

ADAs assigned to cases are typically those from the six main bureaus of the office's Trial Division, which handles most felony and misdemeanor cases; they are known as bureaus # 30, 40, 50, 60, 70, and 80, although other DANY departments are represented in the dataset. Within

⁷⁹ These characteristics are later included in multivariate models (see Part 5).

⁸⁰ For a description of DANY's organizational structure, see section 1.4. New York County District Attorney's Office.

theses six main trial bureaus, ADAs, on average, have between 7.2 and 9.2 open post-arraignment *felony* cases to process. At disposition, open *felony* cases for an ADA increases, with a range between 9 and 11, on average. Non-felony cases range from 80 to 87 within the same six main trial bureaus after arraignment, and at disposition open non-felony cases range from 115 to 130, on average (see Table 13).

Table 11. Percentage of Assistant District Attorneys within DANY by Gender and ADA Race (N = 647)

	Female # (%)	Male # (%)	Total # (%)
White	241 (49.4)	247 (50.6)	488 (100%)
Black	41 (58.6)	29 (41.4)	70 (100%)
Latino	16 (40.0)	24 (60.0)	400 (100%)
Asian	25 (64.1)	14 (35.9)	39 (100%)
Total	323	314	637

Note: Data for 10 ADAs are not available.

Table 12. Mean, SD, Median, Minimum, and Maximum ADA Years of Experience at DANY

	Mean	SD	Median	Min	Max	N
White	11.00	9.20	8.07	0.22	41.26	331
Black	10.77	8.24	7.91	0.85	30.30	49
Latino	10.12	8.76	7.22	1.96	32.24	27
Asian	7.78	4.65	7.27	1.00	21.25	22
Total						429

Note: Race information is unavailable for 10 ADAs. Information on years at DANY is not available for 209 (32.3%) ADAs.

Table 13. Number of Cases Assigned within Trial Bureau and Mean Open Felony and Non-Felony Cases at Arraignment and Disposition by Bureau

Bureau	Total Cases Assigned 2010-2011 (N)	ADA Open Felony Cases ARC (Mean)	ADA Open Felony Cases DSP (Mean)	ADA Open Non-Felony Cases ARC (Mean)	ADA Open Non-Felony Cases DSP (Mean)
Trial Bureau 30	19,131	9.24	11.43	82.17	121.74
Trial Bureau 40	16,689	7.38	9.13	82.11	118.85
Trial Bureau 50	17,550	7.19	8.97	82.28	117.77
Trial Bureau 60	18,081	8.38	10.28	87.37	129.62
Trial Bureau 70	17,504	7.33	8.83	81.29	115.20
Trial Bureau 80	17,299	7.57	9.33	80.25	114.63
Appeals Bureau	5	1.40	0.40	49.80	51.00
Crimes Against Revenue	39	2.54	2.79	7.77	7.79
Family Violence Unit	508	7.15	7.61	49.04	60.22
Career Criminal Program	11	1.27	0.00	2.00	0.73
Special Prosecutions Bureau	363	5.68	5.60	16.65	21.97
Domestic Violence Bureau	4	2.25	3.25	41.00	69.50
Executive Division	43	3.77	5.02	121.00	133.70
Firearm Trafficking Unit	11	1.82	2.09	0.18	0.00
Homicide Investigation Unit	129	6.90	8.14	30.81	37.79
Identity Theft Unit	92	11.42	10.93	37.25	46.88
Labor Racketeering Unit	87	2.99	5.10	16.77	21.30
Major Economic Crimes	216	9.43	7.88	15.46	18.10
Official Corruption Unit	37	7.62	6.08	20.95	26.68
Rackets Bureau	122	6.71	5.14	7.45	11.84
Sex Crime Unit	62	4.65	5.95	57.42	91.15
Special Litigations	99	6.66	5.25	95.19	110.24
Violent Crime Enterprises	102	7.37	10.45	43.13	57.44
Vehicular Crimes Unit	227	6.88	8.96	110.71	121.94
Welfare Fraud Unit	2	2.00	0.50	0.00	0.00

5.2. Defense Counsel Characteristics

In New York City, defendants are usually represented by private counsel, counsel appointed under 18(b), or institutional providers, including the Legal Aid Society, the New York County Defender Services, and the Neighborhood Defender Service of Harlem.

The name “appointed under 18(b),” comes from Article 18(b) of the County Law, which regulates the provision of legal services to indigent defendants within the Bronx and New York County Criminal courts under the *Assigned Counsel Plan*. The Plan provides compensation to private attorneys for representing indigent clients charged with criminal offenses. Attorneys are assigned matters by the Court and the Administrator's office when a conflict exists prohibiting the institutional providers, such as The Legal Aid Society, from providing representation. Panel attorneys are screened and certified to the Panel by the Central Screening Committee.⁸¹

The Legal Aid Society is a private, not-for-profit legal services organization, which is also the oldest and largest in the country. It offers legal representation to low-income defendants in New York County. The Society handles 300,000 individual cases and matters annually and provides legal services in three areas: the Civil, Criminal and Juvenile Rights Practices.⁸²

New York County Defender Services (NYCDS) is another not-for-profit law firm which has defended more than a million indigent defendants in New York County since 1997, when it was founded.⁸³

The Neighborhood Defender Service of Harlem (NDS) provides community-based criminal defense services to residents of upper Manhattan. Initiated by Vera in 1990,⁸⁴ NDS

⁸¹ For more, visit <http://www.courts.state.ny.us/courts/ad1/committees&programs/18b/index.shtml>

⁸² For more, visit <http://www.legal-aid.org/en/las/aboutus/ourmission.aspx>

⁸³ For more, visit <http://nycds.org/>

⁸⁴ For more on Vera's history developing NDS, see *A short history of Vera's work on the judicial process*, available from <https://intranet.vera.org/system/files/Judicial-2006.pdf>

clients are typically represented by a team that includes criminal and civil attorneys, social workers, investigators, paralegals, law school and social work interns, and pro bono attorneys.⁸⁵

The tables below (Tables 14 and 15) summarize the types of defense counsel involved in the cases selected for this study (full dataset). For *felonies*, the majority of defendants are represented by Legal Aid (53%), and this is also true for *misdemeanors* (72%) and *violations* (82%). Broken down by race, the majority of *felony* defendants are represented by Legal Aid, with blacks most likely to be represented by this agency. Specifically, 49% of whites, 55% of blacks, 51% of Latinos, and 47% of Asians are represented by Legal Aid.

Among *misdemeanor* defendants, a greater percentage of blacks are represented by Legal Aid (74%) than any other group. Further, 68% of whites, 72% Latinos, and 71% of Asians are represented by Legal Aid. The numbers are even further skewed toward Legal Aid among *violation* defendants, with whites (83%), blacks (82%), Latinos (83%), and Asians (82%) being relatively equally represented by Legal Aid.

Table 14. Defense Counsel Type within Offense Categories

	Legal Aid (%)	Appointed under 18B (%)	NY Defender Service (%)	Private Counsel (%)	Neighborhood Defender Services (%)	Total # (%)
Felonies	52.6	18.7	17.2	9.4	2.0	23,768 (100%)
Misdemeanors	72.2	7.6	11.8	5.1	3.3	148,909 (100%)
Violations	82.4	2.8	12.5	1.3	0.9	24,831 (100%)
Total #	140,481	16,484	24,739	10,232	5,572	197,508

Note: Information is missing on Defense Counsel Type ($N = 13,548$, 6.4%).

⁸⁵ For more, visit <http://www.ndsny.org/index.html>

Table 15. Defense Counsel Type within Defendant Race Separated by Offense Category

	Legal Aid (%)	Appointed under 18B (%)	NY Defender Service (%)	Neighborhood Defender Services (%)	Private Counsel (%)	Total # (%)
Felonies (N = 26,069)						
White	49.1	13.8	15.0	0.4	21.6	2,679 (100%)
Black	54.8	19.7	17.7	2.6	5.2	12,109 (100%)
Latino	50.9	19.0	17.6	1.8	10.7	8,107 (100%)
Asian	47.1	19.1	12.3	0.4	21.0	675 (100%)
Other	58.6	0.0	31.0	0.0	10.3	29 (100%)
Net Total						23,599
Misdemeanors (N = 159,206)						
White	68.3	6.5	8.2	1.0	16.1	22,294 (100%)
Black	73.6	7.7	13.0	3.9	1.8	67,915 (100%)
Latino	72.2	8.0	12.3	3.9	3.6	49,651 (100%)
Asian	71.4	7.5	7.9	0.7	12.5	7,158 (100%)
Other	72.8	4.8	10.8	1.6	10.0	250 (100%)
Net Total						147,268
Violations (N = 25,781)						
White	82.9	1.7	12.1	0.4	2.9	3,180 (100%)
Black	82.1	3.0	13.0	1.1	0.9	12,418 (100%)
Latino	82.7	3.0	12.2	0.9	1.2	8,418 (100%)
Asian	81.7	3.3	11.7	0.6	2.7	520 (100%)
Other	88.6	0.0	11.4	0.0	0.0	44 (100%)
Net Total						24,580
Total N						195,447

Note: Information is missing on Defense Counsel Type (N = 13,548, 6.4%) and defendant race (N = 2,491, 1.2%).

Part 6. Discretionary Decisions

6.1. Case Acceptance for Prosecution

SECTION SUMMARY

For all races combined, misdemeanors have the greatest percentage of case acceptance (96%), followed by felonies (94%) and violations (89%), and no noticeable differences have been observed for this discretionary point. Because nearly all cases were accepted for initial prosecution, we were unable to model this outcome. The high case acceptance rate may reflect several factors. There may be informal case filtering processes that precede initial case acceptance that are not captured in our data, or the rate may reflect DANY's intentional efforts to maintain a positive relationship with the New York Police Department by initially prosecuting the majority of arrests. Some prior work also suggests that different courthouse cultures develop their own unique case processing norms over time (Eisenstein & Jacob, 1977; Stanko, 1981-82), so DANY's high acceptance rate may simply reflect the cultural norms of this jurisdiction. This explanation seems to be consistent with DANY's use of multiple post case-screening stages as a downstream mechanism for filtering out non-meritorious cases (see Figure 1) —whereas DANY had very high initial acceptance rates, it also experienced relatively high case dismissal rates.

The earliest discretionary decision made by prosecutors is whether to accept a case for prosecution or decline to prosecute. They also decide how to charge an offense (see section 6.6). This section describes the modes of case screening within the DANY (subsection 6.1.A) and differences by race in case issuance (subsection 6.1.B). The method of screening (e.g., in-person, phone or online) affects who screens a case, how a case is handled before arraignment, and the length of time a defendant must wait before he is brought before a judge.

The majority of cases are screened by ADAs in the Early Case Assessment Bureau (ECAB). Minor crimes and violations that result in the issuance of desk appearance tickets (DAT)⁸⁶ are typically screened by paralegals. ADAs review the facts of the case with an arresting officer via telephone. In certain serious cases, particularly those involving domestic violence, an arresting officer may bring a defendant into ECAB to be questioned by the ADA. Occasionally, an ADA may also contact the complainant or other civilian witnesses.

After reviewing the case file, ADAs evaluate whether the arrest and any searches and seizures were lawful, and decide whether to draw up a complaint or decline to prosecute a case. Complaints are drawn for the highest provable charge.

All DANY bureaus screen cases. Trial bureaus cycle their junior ADAs through ECAB; they can have up to a one-month rotation for misdemeanors and a six-day rotation for felonies. A felony supervisor is also assigned to ECAB on a rotational basis. Prior to case screening, a supervisor reviews all *felony* cases and some domestic violence cases and then assigns them to an ADA. Assignments are based on ADAs' previous experience with similar cases. The assigned ADA will typically be responsible for a case from screening through disposition and sentencing⁸⁷ (i.e., vertical prosecution). *Misdemeanors* are randomly assigned to ADAs and are not reviewed by supervisors.

Conversations with ADAs and reviews of internal DANY policy suggest that the presumption in ECAB is that charges will be accepted if they meet the standard of legal sufficiency—the existence of evidence to support each element of an alleged charge (Jacoby,

⁸⁶ The use of DATs allow eligible defendants (determined using a checklist) to bypass arraignment. ECAB then has a month to process DAT cases, rather than just the 24 hours between arrest and arraignment. Police officers may issue DATs in lieu of arrest, or a defendant may be issued a DAT after being taken into custody.

⁸⁷ Although an assigned attorney does not personally appear at arraignments, he or she will make bail recommendations.

Mellon, Ratledge & Turner, 1982). This legal sufficiency standard is relatively easy to meet and may contribute to the high acceptance rates shown below.

6.1.A. Mode of Case Screening by Defendant Race

ECAB uses different screening procedures depending on the nature of a case. *Expedited Arrest Processing* (EAP) is reserved for lower-level misdemeanor crimes (e.g., jumping a turnstile). *Desk Appearance Tickets* (DAT) are processed by paralegals for minor crimes and violations, while more serious crimes involving domestic violence and felonies are screened *In-Person*⁸⁸ by ADAs. *Telephone* screening⁸⁹ is used for some cases, as an attempt to save time and money.

Most cases in 2010-11 were processed in ECAB via telephone (58%), followed by DATs (23%), Non-NYPD EAP (13%), In-Person (4%), and NYPD EAP Online (i.e., speaking to someone live or via telephone) (0.1%).

6.1.B. Case Acceptance for Prosecution by Defendant Race

For all races combined, misdemeanors have the greatest percentage of case acceptance (96%), followed by felonies (94%) and violations (89%), and no noticeable differences have been observed for this discretionary point. Given that the vast majority of cases were accepted for prosecution, the data lacked sufficient variance to perform multivariate regression analyses. However, such high case acceptance rates, not common in other jurisdictions Vera has worked in,⁹⁰ are not necessarily indicative of the quality of arrests, given that a large percentage of cases is subsequently dismissed (see section 6.3).

⁸⁸ DANY refers to *In-Person* screening mode as “Online Live.”

⁸⁹ DANY refers to *Telephone* screening mode as “Online Telephone.”

⁹⁰ Vera’s work in other jurisdictions showed that, although case issuance rates vary by offense type, in 2009-2010, case acceptance rates ranged from approximately 68% in Milwaukee, Wisconsin (for all offenses) to 80% in Mecklenburg County, North Carolina (for drug offenses).

6.2. Pretrial Detention

SECTION SUMMARY

Previous research has examined extensively racial and ethnic disparity in pretrial detention decisions (Chiricos and Bales, 1991; Demuth, 2003; Nagel, 1982; Schlesinger, 2005; Spohn, 2009; Wooldredge, 2012), which are consequential not only because they are themselves a form of punishment (Free, 2002) but also because they affect the likelihood of pleading guilty (Patterson & Lynch, 1991) and the final sentences that are imposed (Spohn & Holleran, 2006; Spohn, 2009). Our study confirmed previous findings that racial disparities are pronounced for this discretionary point. It showed strong evidence that blacks and, to a lesser extent, Latinos were significantly more likely than whites to be detained at arraignment. For *felonies*, a greater percentage of black defendants were detained (61%), followed by Latinos (56%), Asians (28%), and whites (43%). For *misdemeanors*, a similar pattern emerged. Custodial status after arraignment for *violations* reveals a different trend; a greater percentage of Asians remain in custody (13%), while Latinos were least likely to be detained (5%). The inclusion of legal and extralegal controls in logistic regression models reduced, but did not eliminate, these differences: the odds of being detained were 48% greater for blacks and 14% greater for Latinos, compared to whites. Among all racial groups, Asians were clearly the least likely to be detained after arraignment. In other words, based on the predicted probabilities for each group, that take into account other factors, 29 out of every 100 black, 25 out of every 100 Latino, 24 out of every 100 white, and 14 out of every 100 Asian defendants were detained after arraignment (based on $N = 100,510$ cases analyzed).

A criminal court arraignment typically occurs within 24 hours of arrest,⁹¹ after a complaint has been filed and the defendant has been interviewed by his attorney,⁹² and the defendant's criminal history is available. The presiding judge decides whether to release or to hold the defendant in custody while his case is pending. Judges may release defendants on their own recognizance (ROR), set bail, or remand defendants into custody.⁹³ Defendants receiving RORs are not required to post bail, although the judge may set conditions for their release.⁹⁴ Bail acts as a form of collateral that the defendant forfeits if he fails to appear in court.⁹⁵ In certain serious felony cases, a judge may determine that release is inappropriate and that the defendant must remain in custody pending the disposition of charges.⁹⁶ While it is ultimately within a judge's purview to make a detention decision and set the bail amount,⁹⁷ prosecutors have the opportunity to make bail recommendations based on the facts of the case, the defendant's criminal history, input from victims, and the defendants' employment status and community ties.⁹⁸ This section will show differences by race in detention status at arraignment.

Second-year ADAs represent the prosecutor's office at an arraignment. In cases in which the screening ADA is also the prosecuting ADA (i.e., in all felonies and some misdemeanor domestic violence cases), the screening ADA will make a bail recommendation on the DA

⁹¹ In 2011, average arrest to arraignment time in Manhattan was 24.21 hours. <http://www.courts.state.ny.us/courts/nyc/criminal/AnnualReport2011.pdf>. While New York's Criminal Procedure Law, requires only that arraignment occur "without unnecessary delay" (New York Criminal Procedure Law Article 170.55), the Court of Appeals held in *People ex rel Michele Maxian on Behalf of Damon Roundtree, et. al. v. Brown*, 77 N.Y.2d 422 (1991) that a delay in arraignment of more than 24 hours without explanation is presumptively an "unnecessary delay" within the meaning of Article 140.15(1).

⁹² If a defendant is indigent, a public defender is appointed prior to arraignment.

⁹³ When a defendant is remanded, he must remain in custody until the disposition of a case and is not afforded the opportunity to post bail.

⁹⁴ New York Criminal Procedure Law Article 500.10(2).

⁹⁵ New York Criminal Procedure Law Article 500.10(3).

⁹⁶ New York Criminal Procedure Law 500.13(4). Generally judges may only remand a defendant charged with a felony. New York Criminal Procedure Law Articles 530.20, 530.40.

⁹⁷ A judge's decision whether to release, remand, or set bail is guided by considerations set forth in New York Criminal Procedure Law Article 510.30(2).

⁹⁸ Information about a defendant is collected through interviews conducted by the Criminal Justice Agency, a nonprofit corporation that makes bail recommendations using objective evaluations of risk of flight. CJA was founded as the Vera Institute of Justice's first demonstration project in 1961, becoming independent in 1977.

datasheet for the arraigning ADA. ADAs will almost always follow these recommendations at arraignment because the screening ADAs are more senior and more knowledgeable about specific cases. However, for all other non-domestic violence misdemeanor cases, the arraigning ADA will make the bail recommendations. The decision about the amount of bail to request, as opposed to whether or not to request bail at all, is generally guided by established prosecutorial practice within DANY.

In addition to making bail recommendations, prosecutors inform the defendant and the court of charging decisions and provide various notices to the defendant. Such notices include whether the case will go to the grand jury,⁹⁹ whether the defendant has made statements to the police, and whether any witnesses have identified the defendant. Prosecutors also often make plea offers at arraignments (see 5.4. Plea Offers). Defendants charged with *misdemeanors* and *violations* must enter a plea of guilty or not guilty at arraignment; those charged with felonies are not required to do so.

6.2.A. Descriptive Overview of Detention Status

This section describes which defendants remain in custody after criminal court arraignment based on the nature of the criminal offense (i.e., felonies, misdemeanors, violations; see Table 22) and summarizes specific detention status following arraignment (i.e., ROR, jail, bail, and remand) as documented by DANY and separated by felonies and misdemeanors (see Figures 24 and 25). Because most defendants charged with a *violation* received ROR, this figure is not provided.

⁹⁹ All felony cases must be presented to the grand jury, unless the defendant waives this right. Defendants indicted by the grand jury will be re-arraigned in New York State Supreme Court, which handles felony cases.

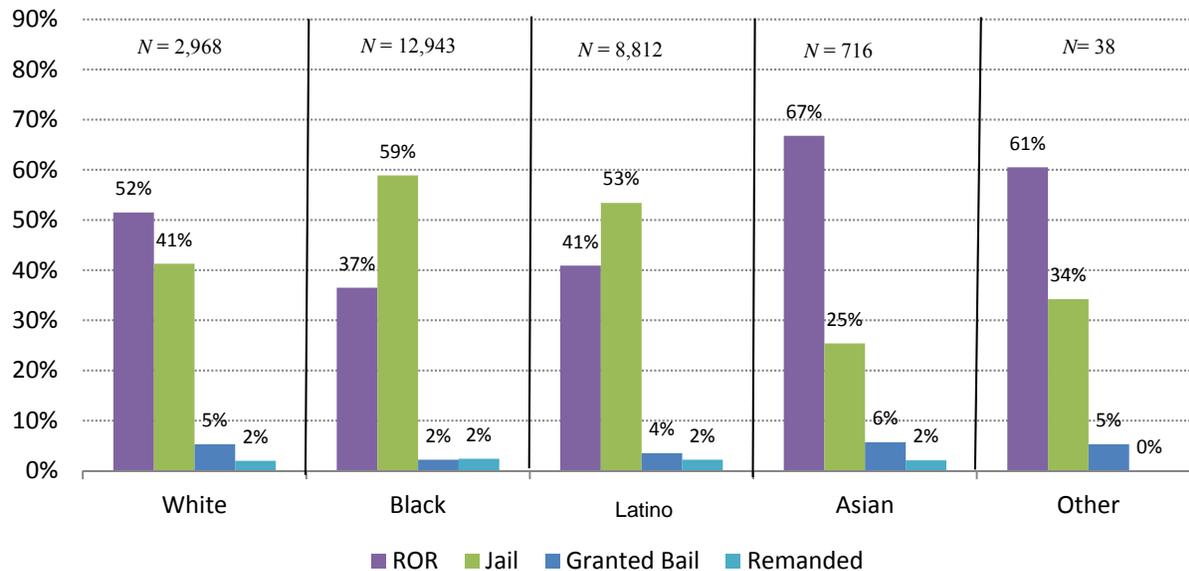
For *felony* defendants, a greater percentage of black defendants are held in custody after arraignment (61%) than any other racial group, with Latinos following closely behind (56%). A smaller percentage of Asians are held in custody (28%) when compared to all racial groups. Among white defendants, 43% are held in custody.

Similar findings emerge from the data on *misdemeanors*: a greater percentage of black (23%) and a smaller percentage of Asians (3%) than any other racial group remain in custody. Custodial status after arraignment for *violations* reveals a different trend; a greater percentage of Asians remain in custody (13%), while Latinos are least likely to be held (5%).

Figures 21 and 22 provide a breakdown of specific status following arraignment for *felony* and *misdemeanor* defendants. Among *felony* cases, a greater percentage of Asians (67%) are released without bail when compared to whites (52%), blacks (37%), and Latinos (41%). A greater percentage of blacks (59%) and Latinos (53%) are in jail as compared to the other racial groups (see Figure 21).

Figure 21. Detention Status after Arraignment for Felony Defendants within Race (N = 26,069)¹⁰⁰

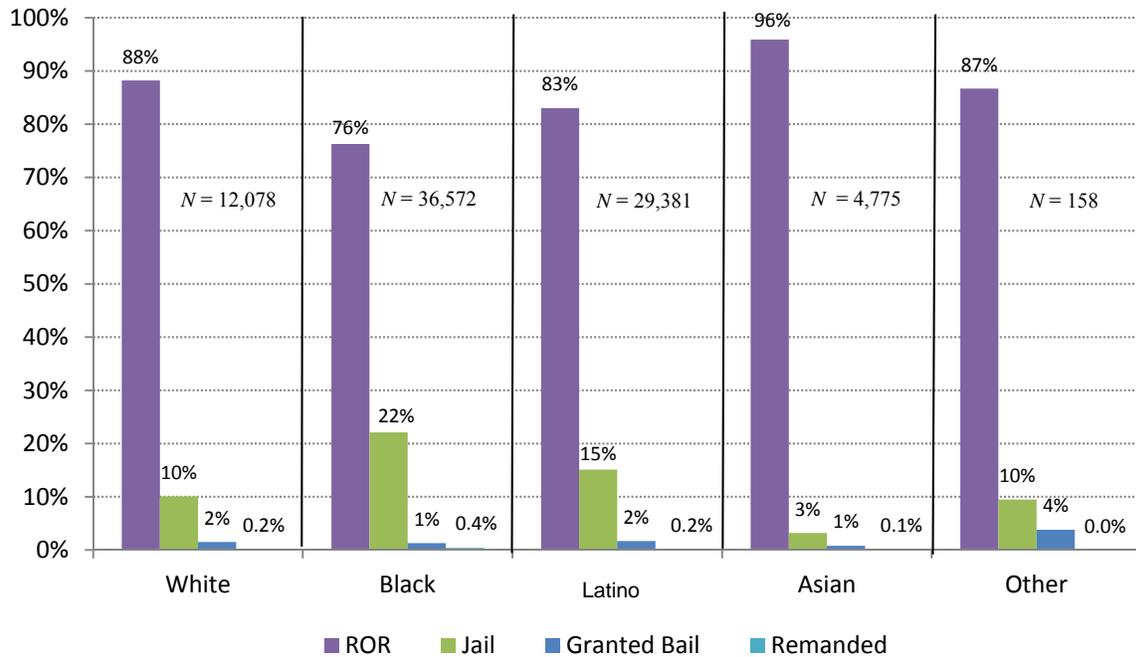
¹⁰⁰ Detention status is N/A for 316 (1.2%) cases. Information on detention status is unknown for N = 46 (0.2%) cases. Race is unknown for N = 239 (0.9%) of the sample. The Fugitive category was excluded from the figure because of zero cell values.



For *misdemeanor* cases, most defendants are released with no conditions, i.e., released on recognizance (overall, 82%). However, a greater percentage of Asians are released on recognizance (96%) and a smaller percentage held in jail (3%), compared to all other racial groups. Blacks, on the other hand, are particularly less likely to be released on recognizance (only 76%), and particularly likely to be held in pretrial detention (22%).

Figure 22. Detention Status after Arraignment for Misdemeanor Defendants within Race (N = 159,206)¹⁰¹

¹⁰¹ Note: Detention status is N/A for 68,139 (42.8%) cases. Information on detention status is unknown for N = 6,951 (4.4%) cases. Race is unknown for N = 1,831 (1.2%) of the sample. Because of zero cell values, the Fugitive category was excluded from the figure.



6.2.B. Multivariate Analyses of Detention Status

This section describes the results of multivariate regression analyses to gauge the impact of defendants’ race on their likelihood to be held in custody following their arraignment, while holding constant other legally relevant and irrelevant factors (see Table 16). We ran five models: the first only included *race*; the second included race and other controls, except for *defense counsel* and *arrest neighborhood* (included in models 2-5), which were added to the third model to identify the contributions of both factors to the full model, and to serve as proxies to defendants’ socio-economic status (SES)¹⁰²; the fourth model excluded *prior prison sentence* to identify the contribution of *prior arrest*, while the fifth model was reversed, i.e., *prior arrest* was excluded, and included *prior prison sentence* to assess its unique contribution to predicting custodial status. Note that initial analyses also included ADA characteristics (*experience*,

¹⁰² While arrest neighborhood is a proxy for defendants’ SES, our data show that the vast majority of defendants were charged with crimes committed within their areas of residence. We did not include the *home area* variable in the analyses because of a high percentage of missing values.

caseload, race, and gender), but these factors were eventually excluded due to, primarily, missing data issues but also because of their weak predictions of the outcome.

For the race variable, we chose “white” as the reference category to examine how other racial groups were treated in comparison to white defendants. This choice was motivated by a long-running scholarly discourse about the differential treatment of minorities compared to whites (see section 1.2: Review of Relevant Literature). Next we controlled for whether defendants were charged (top charge) with a class A misdemeanor, class E felony, class D felony, class C felony, class B felony or class A felony, each of them compared with class B misdemeanor (reference category); dummy variables for charges identified as *person, property*, or *drug* crimes; number of charges at screening; number of counts at screening; defendants’ age (in years); defendants’ age and gender (“female” as reference category); defendants’ detention status after criminal court arraignment (1 = detained); and defendants’ having at least one prior arrest or prior prison sentence (1 = Yes). For the defense counsel variable, we chose private counsel as the reference category and created four separate dichotomous variables for Legal Aid, 18(b), New York County Defender Services, and the Neighborhood Defender Service of Harlem (each coded as “1”).¹⁰³ Finally for arrest neighborhood, we chose Upper East and West Sides as the reference category and four dummy variables identifying arrests in Harlem, Manhattan West Side from Midtown to the Financial District, Manhattan East Side from Midtown to the Financial District, and areas outside of the boroughs of New York City.

¹⁰³ Note that New York City’s Criminal Justice Agency (CJA) provides defendant background information and community ties ratings to the arraignment judge. To help the judge make more informed release decisions, CJA interviews arrested defendants held in police detention to determine their ties to the community and then verifies the information by contacting defendants’ families and friends. Unfortunately, however, while employment and community ties information is essential for the determination of release, these data items were not systematically captured and were unavailable to us at the time of data collection.

Table 16. Logistic Regression to Predict Custody Status at Arraignment (0 = not in custody, 1 = in custody)

Predictor	Model 1:	Model 2:	Model 3:	Model 4:	Model 5:
	<i>With Race Only</i>	<i>With Race, No "SES"</i>	<i>With Race & "SES"</i>	<i>Prior Prison Excluded</i>	<i>Prior Arrest Excluded</i>
	Odds Ratio (Standard Error ¹⁰⁴)				
Black	2.396 (0.09)***	1.551 (0.08)***	1.478 (0.04)***	1.631 (0.05)***	1.921 (0.07)***
Latino	1.615 (0.16)***	1.163 (0.07)*	1.144 (0.05)**	1.212 (0.07)***	1.393 (0.08)***
Asian	0.342 (0.01)***	0.453 (0.01)***	0.411 (0.00)***	0.394 (0.01)***	0.410 (0.01)***
Other	0.825 (0.21)	0.787 (0.15)	0.842 (0.16)	0.838 (0.16)	0.940 (0.18)
Age	-	1.015 (0.00)***	1.018 (0.00)***	1.024 (0.00)***	1.020 (0.00)***
Male	-	1.995 (0.15)***	2.018 (0.14)***	2.163 (0.15)***	2.411 (0.18)***
A misdemeanor	-	2.253 (0.66)**	2.171 (0.65)**	2.272 (0.68)**	2.053 (0.65)*
E felony	-	10.268 (3.08)***	10.444 (3.19)***	10.571 (3.25)***	9.316 (3.17)***
D felony	-	10.077 (2.94)***	10.190 (3.04)***	10.615 (3.17)***	9.018 (2.96)***
C felony	-	21.586 (7.80)***	22.803 (7.71)***	23.084 (7.92)***	18.469 (6.89)***
B felony	-	21.289 (5.11)***	21.280 (5.00)***	21.581 (5.19)***	17.495 (4.45)***
A felony	-	118.311 (30.87)***	165.359 (34.6)***	168.328 (34.49)***	102.032 (22.79)***
Person crime	-	2.000 (0.09)***	2.004 (0.10)***	2.019 (0.11)***	2.041 (0.10)***
Property crime	-	1.859 (0.05)***	1.824 (0.04)***	1.946 (0.06)***	2.112 (0.07)***
Drug crime	-	1.978 (0.17)***	2.053 (0.15)***	2.218 (0.12)***	2.614 (0.15)***
# of Charges at screening	-	1.274 (0.06)***	1.290 (0.06)***	1.292 (0.06)***	1.278 (0.06)***
# of Counts at screening	-	1.015 (0.01) [†]	1.016 (0.01)*	1.015 (0.01)*	1.016 (0.01)*
Prior arrests	-	3.875 (0.42)***	3.815 (0.42)***	4.431 (0.52)***	-
Prior prison sentence	-	3.637 (0.40)***	3.505 (0.38)***	-	5.141 (0.86)***
Legal aid	-	-	2.408 (0.25)***	2.467 (0.24)***	2.754 (0.38)***
18(b)	-	-	3.110 (0.55)***	3.236 (0.58)***	3.484 (0.71)***
NY Defender Service	-	-	2.867 (0.37)***	2.985 (0.37)***	3.388 (0.56)***
Neighborhood Defender Service	-	-	2.118 (0.26)***	2.163 (0.26)***	2.603 (0.48)***
Harlem	-	-	0.916 (0.01)***	0.904 (0.01)***	0.922 (0.01)***
West (midtown to downtown)	-	-	1.102 (0.03)***	1.076 (0.03)**	0.977 (0.02)
East (midtown to downtown)	-	-	1.100 (0.03)***	1.098 (0.03)***	0.997 (0.02)
Outside NYC	-	-	1.066 (0.04)	1.042 (0.04)	0.927 (0.03)**
Constant	0.202 (0.01)***	0.004 (0.00)***	0.002 (0.00)***	0.001 (0.00)***	0.002 (0.00)***
<i>Pseudo R²</i>	0.026	0.279	0.292	0.274	0.249
<i>-2 Log-likelihood</i> ¹⁰⁵	121,566.20	89,827.74	82,675.73	84,712.12	87,709.33

¹⁰⁴ Robust standard errors were calculated to account for clustering that occurs by *arrest neighborhood*.

¹⁰⁵ Smaller values of the -2 log-likelihood statistic indicate better-fitting statistical models. Different models can be compared by looking at the difference between their -2 log-likelihoods.

Table 16. Logistic Regression to Predict Custody Status at Arraignment (0 = not in custody, 1 = in custody)

	Model 1: <i>With Race Only</i>	Model 2: <i>With Race, No "SES"</i>	Model 3: <i>With Race & "SES"</i>	Model 4: <i>Prior Prison Excluded</i>	Model 5: <i>Prior Arrest Excluded</i>
<i>Number of observations</i>	108,450	108,280	100,510	100,510	100,510

*** $p \leq .001$, ** $p \leq .01$, * $p \leq .05$, † $< .10$.

The analyses suggest that defendants' race predicts the likelihood that they will be held in pretrial detention following their arraignment. Consistent with our hypothesis predicting more punitive treatment of minority defendants (see section 1.2, hypothesis 2), as well as previous research supporting this hypothesis (see section 1.2), all five models presented in Table 16 provided strong evidence that, compared to white defendants, blacks and, to a lesser extent, Latinos, were significantly *more likely* to be held in custody, even after controlling for the influence of other variables, including legally relevant factors such as charge seriousness and prior record.

When controlling for the influence of other factors, including charge seriousness and prior record, compared to white defendants, blacks were 10% *more likely* (*odds ratio* = 1.48), Latinos 3% *more likely* (*odds ratio* = 1.14), and Asians 21% *less likely* (*odds ratio* = 0.41) to be detained.¹⁰⁶ In other words, based on the predicted probabilities for each racial group, that take into account the same factors (see Table 16), 29 out of every 100 black, 25 out of every 100 Latino, 24 out of every 100 white, and 14 out of every 100 Asian defendants were detained after arraignment (based on $N = 100,510$ cases analyzed).

Furthermore, many other control variables also served as significant predictors of the outcome.¹⁰⁷ Defendants were particularly more likely to be detained following their arraignment, when:

- their top charge included a serious offense (compared to defendants with a class B misdemeanor charge, defendants charged with a class A misdemeanor were 19% more

¹⁰⁶ We used Hanushek and Jackson's (1977) formula for calculating differences in probabilities from odds ratios: $(\text{odds}/\text{odds} + 1) - .50$.

¹⁰⁷ DANY also provided data on "prior bench warrants" which correlated highly with the prior arrest variable. Replacing the prior arrest variable with the prior bench warrant variable did not result in marked changes.

likely (*odds ratio* = 2.17), and those charged with a class A felony 50% more likely (*odds ratio* = 165.36) to be detained);

- the charge was identified as either a person, property, or drug crime (as opposed to “other” offenses);
- they had more charges at screening and, to a lesser extent, more counts;
- they were older;
- they were male (17% more likely to be detained than similarly-situated female defendants (*odds ratio* = 2.02));
- they had prior arrests (29% more likely than those without prior arrest; *odds ratio* = 3.82), and prior prison sentences (28% more likely than those without prior prison sentence; *odds ratio* = 3.51); and
- they were represented by institutional providers, as compared to private counsel, and especially likely to be held in custody if represented by 18(b) counsel (26% more likely to be detained (*odds ratio* = 3.11), compared to similarly-situated defendants represented by private counsel).

Table 17. Racial Differences in Odds Ratios by Crime Type for Logistic Regression Model Predicting Custody Status at Arraignment

Crime Type	Offense Category	Compared to whites:	% difference in odds (direction of relation)
Person (<i>n</i> = 14,623)	Felony	Black	40.9 ↑*
		Latino	20.9 ↑*
		Asian	89.5 ↓*
	Misdemeanors	Black	131.1 ↑*
		Latino	57.5 ↑*
		Asian	97.9 ↓*
Property (<i>n</i> = 29,544)	Felony	Black	34.5 ↑*
		Latino	8.5 ↑*
		Asian	106.2 ↓*
		Black	37.3 ↑*

Crime Type	Offense Category	Compared to whites:	% difference in odds (direction of relation)
Drug (n = 16,685)	Misdemeanor	Latino	23.7 ↑*
		Asian	403.4 ↓*
	Felony	Black	54.8 ↑*
		Latino	9.2 ↑
		Asian	19.9 ↓
	Misdemeanor	Black	72.1 ↑
Latino		15.6 ↑	
Asian		42.9 ↓	

We performed additional analyses for each crime type (*person*, *property*, and *drug*) and offense category (*felonies* and *misdemeanors*) separately (see Table 17). In the interest of space, only odds ratios for race are reported and discussed. Findings reveal that the general pattern of racial disparities was relatively consistent for person, property, and drug offenses, though the magnitude of these racial differences varied in important ways. Racial disparities in pretrial detention were particularly large for *misdemeanor person* offenses where blacks were 20% more likely than whites to be detained (*odds ratio* = 2.31) and in *misdemeanor property* offenses where Asians were 33% less likely than whites to receive this outcome (*odds ratio* = 5.03). When predicting custody status among drug crimes, we found again that black defendants are particularly likely to be held in detention relative to white defendants for both *felony* and *misdemeanor drug* offenses (*odds ratios* = 1.55 and 1.72, respectively), while Asians are less likely to be detained (*odds ratios* = 1.20 and 1.43, respectively)

The multivariate analyses described above largely confirm what was shown by reviewing simple percentages (see subsection 6.2.A). The greater percentages of all black defendants were held in custody after their arraignment, whether it was for *felonies* (61% of all blacks) or *misdemeanors* (22%), followed by Latinos (56% and 15%, respectively), whites (43% and 10%, respectively), and Asians (28% and 3%, respectively). When grouping all offenses together, and

controlling for the effect of other factors, blacks were still more likely to be in detention, followed by Latinos, whites, and Asians. When interpreting these findings, it is important to note that because the data were unavailable, these analyses did not take into account housing, employment, family, and other socio-economic factors that may explain some of the disparities reported above.

6.3. Case Dismissal

SECTION SUMMARY

Earlier studies found mixed results of the influence of race on case dismissals: one study found no differences by race (Spohn & Horney, 1993); another found evidence of favorable treatment of African American defendants (Wooldredge & Thistlethwaite, 2004); and the last one showed the opposite effect of race (Franklin, 2010). Despite these mixed results, earlier we hypothesized that blacks and Latinos would be less likely to have their case dismissed. This hypothesis however was not supported by the analyses. Overall, 49,621 out of 212,719 (23%) cases accepted for prosecution have been dismissed at some point in the case process; from this, a total of 11,113 (22% of all dismissed cases) cases were dismissed as ACDs, i.e., these cases were successfully dismissed in 6-to-12 months following the ACD disposition. Unfortunately, due to data limitations, we were not able to distinguish among the dismissals brought by defendant, the prosecution, or court's own accord. After excluding ACD dismissals, 36% *felonies*, 18% of *misdemeanors* and 5% of *violations* were dismissed. Domestic violence cases had particularly high dismissal rate: half of all felonies and 63% misdemeanors were dismissed. After controlling for legal and extralegal factors, it was found that the odds of a case dismissal were 42% greater for blacks, 41% greater for Latinos, and

10% greater for Asians, relative to whites. When put another way, 22 out of every 100 black, 22 out of every 100 Latino, 18 out of every 100 white, and 18 out of every 100 Asian defendants had their case dismissed (based on $N = 162,525$ cases analyzed). This finding was unexpected, but consistent with some prior research (Petersilia, 1983), and raises the question of whether higher dismissal rates for defendants of color should be viewed as an indicator of leniency, or simply as a mechanism for declining cases which would have been rejected at initial screening. Another possibility is that police are more willing to arrest blacks and Latinos even when there is insufficient evidence to support prosecution. This is consistent with the fact that defendants with more serious prior records also had higher likelihoods of case dismissal, which may reflect the fact that law enforcement officials view some defendants as “the usual suspects” and, as a result, are willing to arrest in cases with marginal evidence for prosecution.

Given DANY’s high case acceptance rate at screening, which ranges from 89% for violations to 94% for misdemeanors and 96% for felonies (see section 6.1.), dismissals serve as an important mechanism for discontinuing the prosecution of non-meritorious cases. This section analyzes differences among racial groups in case dismissals, using both descriptive and multivariate statistical methods, and examines various reasons for dismissal.

Judges may dismiss charges against a defendant throughout the course of a case. Dismissals may occur as the result of a motion to dismiss¹⁰⁸ brought by the defendant, the prosecution, or by the court’s own accord. For *misdemeanors*, prosecutors may unilaterally dismiss charges throughout the life of a case, while *felonies* after indictment may only be dismissed with judicial and supervisory approval. Prosecutors may dismiss cases when further investigation reveals new evidence or information that changes an ADA’s perception of the case.

¹⁰⁸ The defendant can move to dismiss a complaint or indictment as technically defective, for not being supported by sufficient evidence, in the interest of justice or because of a violation of the right to a speedy trial.

However, prosecutors we spoke with (see subsection 1.2.C: Prosecutor Interviews), most often mentioned speedy trial problems when discussing reasons why a case might be dismissed.¹⁰⁹

Under Criminal Procedure Law (section 180.80), prosecutors have only six days after arrest to bring felony charges to the grand jury for an indictment. This is the period in which prosecutors will perform the most investigation and will have to confer with their supervisors. If insufficient information is gathered to warrant an indictment, charges may be dismissed or reduced to a misdemeanor. Dismissals may also occur as the result of an adjournment in contemplation of dismissal (ACD).¹¹⁰ Under an ACD, the case against a defendant is adjourned for six months (for non-marijuana, non-family offense cases) or a year (for marijuana or family offenses).¹¹¹ If the defendant commits no additional crimes, all pending charges are dismissed and all records are sealed.¹¹² ACDs are offered to defendants in lieu of a plea agreement, and defendants are not required to enter a guilty plea.

6.3.A. Descriptive Overview of Dismissed Cases

Overall, 49,621 out of 212,719 (23.3%) cases accepted for prosecution have been dismissed at some point in the case process. Among this 49,621 dismissed cases, a total of 11,113 (22.4%) were dismissed as ACDs, i.e., these cases were successfully dismissed in 6-to-12 months following the ACD disposition. In other words, ACD dismissals account for 5.2% of all cases accepted for prosecution.

Felonies have a markedly higher dismissal rate as compared to less serious offenses. After excluding ACD dismissals, 9,415 *felonies* (36.3% of all felonies analyzed), 27,618 (18.4%)

¹⁰⁹ New York Criminal Procedure Law Article 30.30 requires that misdemeanors be brought to trial within 90 days and felonies within six months.

¹¹⁰ DANY refers to ACDs as “pseudo dispositions.” Not all ACD dispositions result in dismissals. In this section, ACDs refer to cases ultimately dismissed.

¹¹¹ New York Criminal Procedure Law Article 170.55. ACDs in marijuana cases are also referred as ACMs.

¹¹² New York Criminal Procedure Law Article 215.40.

misdemeanors, and 1,236 (5.2%) *violations* were dismissed. These percentages also include domestic violence cases.

In the full dataset provided by DANY, 10,923 (4.9%) of all cases prosecuted were flagged as domestic violence (DV). These cases have a much higher dismissal rate. After excluding ACDs, half of all DV felonies (50.7% of 839 cases) were dismissed, as compared to a third (35.2% of 8,576) of non-DV felonies. A total of 5,368 (63.1%) of DV misdemeanors (excluding ACDs) were dismissed, as compared to only 22,250 (15.7%) of non-DV misdemeanors. Out of 41 DV violations, 20 (48.8%) were dismissed, as compared to only 1,216 (5.2%) of non-DV violations dismissed. Overall, it was found that a greater percentage of DV cases are dismissed relative to non-DV cases. Such a high dismissal rate for DV cases may be due to the challenges associated with victim-witness cooperation in these cases.

When we split the analyses by (a) *person*, (b) *property*, and (c) *drug* offenses, because person offenses also includes DV cases, a markedly greater percentage of person offenses was dismissed: 57.7% as compared to only 19.4% of property offenses and 22.0% of drug offenses dismissed. After excluding ACDs, the percentage of dismissals decreased only marginally for *person* offenses (from 57.7% to 56.5%), although the decrease was much greater for *property* (from 19.4% to 15.2%) and *drug* offenses (from 22.0% to 14.6%).

When looking into the percentages for DV *felony* dismissals by race (see Tables 18 and 19), a particularly large percentage of Asian defendants had their case dismissed (64% when including ACDs and 59% excluding), followed by blacks, Latinos and whites. For DV *misdemeanors*, case dismissals were greater among blacks (67% when including ACDs and 66% excluding). Since violations include only a small number of DV cases, they should be interpreted with caution.

For non-DV cases, a greater percentage of Latinos had their case dismissed for *felonies* (38% when including ACDs and 38% excluding) as well as *misdemeanors* (23% when including ACDs and 18% excluding), as compared to blacks, Asians and whites, although the difference for non-DV cases is less pronounced than for DV cases (see Tables 18 and 19).

Table 18. Dismissals at Any Stage by Race, Offense Level and Domestic Violence (N = 48,682) (ACD/ACMs included)

	DV/ Non-DV	White (%)	Black (%)	Latino (%)	Asian (%)	Other (%)	Total N
Felonies	DV	48.6	53.9	49.6	63.5	-	875
	Non-DV	32.6	34.7	37.7	33.9	61.1	8,581
Misdemeanors	DV	57.1	67.0	64.9	58.9	35.3	5,719
	Non-DV	18.2	19.0	23.0	21.7	24.6	30,216
Violations	DV	20.0	57.1	52.9	-	-	22
	Non-DV	13.9	11.5	14.4	17.9	10.9	3,269
Total N							48,682

Note: Includes percentages for all case accepted for prosecution. Information on charge offense category at screening is missing for N = 1,350 (2.8%) of total cases, 140 of these are dismissed. Offenses identified as infractions (N = 313) are excluded. Race is unknown for N = 2,708 (6.8%) defendants.

Table 19. Dismissals at Any Stage by Race, Offense Level and Domestic Violence (N = 37,713) (ACD/ACMs excluded)

	DV/ Non-DV	White (%)	Black (%)	Latino (%)	Asian (%)	Other (%)	Total N
Felonies	DV	46.9	52.9	48.8	58.7	-	835
	Non-DV	32.1	34.6	37.5	32.5	61.1	8,488
Misdemeanors	DV	53.8	65.8	63.4	56.0	35.3	5,345
	Non-DV	11.7	15.4	17.6	16.9	19.8	21,921
Violations	DV	20.0	55.0	50.0	-	-	20
	Non-DV	3.4	5.6	4.1	4.2	-	1,104
Total N							37,713

Note: Excludes N = 10,969 ACD/ACM dismissals. Frequencies for DV felonies involving defendants identified in the “other” category are small (N = 2). Information on charge offense category at screening is missing for N = 1,350 (0.6%) of total cases, 140 of these are dismissed. Offenses identified as infractions (N = 308) are excluded. Race is unknown for N = 2,567 (6.8%) defendants.

6.3.B. Reasons for Case Dismissal

Cases may be dismissed for a wide range of reasons, and their level of importance can vary based on the seriousness of an offense. For *felonies*, the primary reason for a case dismissal is the prosecution’s *inability to establish an element of the crime*: 49% of all felony cases examined were dismissed for this reason. For non-DV cases, there were no marked differences by race, although a smaller percentage of Asians had their case dismissed for this reason. For DV cases, greater racial differences were observed with the greatest percentage of blacks (59%) and the smallest percentage of Asians (33%) had their cases dismissed for this reason.

The second most common reason for dismissal of felony cases was *the lack of speedy prosecution*. For non-DV cases, there were small differences by race. For DV cases, however, the greatest percentage of Asians (15%) and the smallest percentage of Latinos (7%) had their cases dismissed for this reason.

Table 20. Reasons for Dismissals of Felonies by Race (Percentages within Race) (N = 9,548)

Dismissal Reasons	DV/Non-DV	White (%)	Black (%)	Latino (%)	Asian (%)	Other (%)	Unknown (%)	Total N
Unable to establish element of crime	DV	45.6	58.9	56.9	33.3	-	100.0	493
	Non-DV	48.9	49.3	48.1	45.5	54.6	43.2	4,217
Lack of speedy prosecution	DV	7.8	10.2	7.0	15.2	-	-	79
	Non-DV	8.9	10.4	11.0	9.1	-	13.6	902
Covered (combined with other cases)	DV	3.3	2.0	3.0	3.0	-	-	22
	Non-DV	2.8	2.2	1.7	5.2	4.6	-	184
ACD/ACM dismissal	DV	6.7	4.2	3.0	18.2	-	-	40
	Non-DV	2.2	0.5	1.1	6.1	-	-	93
Defendant died	DV	-	0.4	1.0	-	-	-	5
	Non-DV	1.7	0.8	0.8	0.4	-	-	76
Other Reason	DV	36.7	24.3	29.08	30.3	-	-	240
	Non-DV	35.5	36.9	35.2	33.8	40.9	40.2	3,197
Total N		1,014	4,719	3,436	264	22	92	9,548

Note: “Other” dismissal reason categories include: Clayton motion granted (N = 6); Civilian wit fail (N = 10); Defective indictment/information/count (N = 5); DNA evidence (N = 1); Dismissed-Do not seal (N = 62); Def already serving time (N = 1); For extradition (N = 0); Removal to family court (N = 9); Insufficient GJ minutes (N = 0); Interest of justice (N = 17); No controlled substance (N = 3); Def found unfit (N = 14); Transfer - another court/tribunal (N = 2); Unlawful search and seizure (N = 1); Witness credibility contradicted (N = 0); Other - Not specified (N = 3,203); and Unknown (N = 103). Information on race is unknown for 92 (1.0%) cases. There were N = 5 cases dismissed because of bench warrants.

For misdemeanors, *the lack of speedy prosecution* was the main reason for case dismissal: 35% of cases were dismissed for this reason. This was followed by ACD/ACM dismissals and the *prosecutions' inability to establish an element of the crime*, each accounting for 24% of cases dismissed. When looking at percentages within race, greatest racial differences were observed for ACD/ACM dismissals and the *prosecutions' inability to establish an element of the crime*, as reported below.

Table 21. Reasons for Dismissals of Misdemeanors by Race (Percentages within Race) (N = 36,381)

Dismissal Reasons	DV/ Non-DV	White (%)	Black (%)	Latino (%)	Asian (%)	Other (%)	Unknown (%)	Total N
Unable to establish element of crime	DV	53.0	55.6	55.1	57.9	33.3	52.0	3,166
	Non-DV	17.2	18.7	17.9	17.5	16.1	16.6	5,545
Lack of speedy prosecution	DV	13.7	23.6	23.2	17.8	50.0	16.0	1,273
	Non-DV	27.6	40.2	38.9	36.7	37.1	29.7	11,540
Covered (combined with other cases)	DV	4.6	2.5	1.8	1.3	16.7	8.0	141
	Non-DV	1.7	4.6	3.5	3.9	1.6	6.7	1,158
ACD/ACM dismissal	DV	12.7	5.0	6.3	11.2	-	8.0	376
	Non-DV	40.3	22.6	28.4	26.9	24.2	21.9	8,387
Defendant died	DV	0.3	0.2	0.3	-	-	-	14
	Non-DV	0.8	0.5	0.4	-	-	0.7	146
Other Reason	DV	15.6	13.2	13.3	11.9	-	16.0	774
	Non-DV	12.4	13.4	10.9	15.1	21.0	24.5	3,861
Total N		4,784	15,645	13,706	1,732	68	446	36,381

Note: "Other" includes: Clayton motion granted (N = 446); Civilian wit fails (N = 128); Defective indictment/informt/count (N = 85); DNA evidence (N = 0); Dismissed-Do not seal (N = 33); Def already serving time (N = 15); For extradition (N = 6); Removal to family court (N = 1); Insufficient GJ minutes (N = 1); Interest of justice (N = 1); No controlled substance (N = 12); Def found unfit (N = 227); Transfer - another court/tribunal (N = 0); Unlawful search and seizure (N = 0); Witness credibility contradicted (N = 1); Other - Not specified (N = 3,667); and Unknown (N = 5). Information on race is missing for 446 (1.2%) cases. Information on dismissals is missing for 4 (0.01%) cases. There were N = 6 cases dismissed because of bench warrants.

Dismissal reasons for *violations* involve primarily dismissals of ACDs, with the greatest percentage of Asians (79%) to have their cases dismissed for this reason, followed by 73% for whites, 69% for Latinos, and 47% for blacks. The greatest percentage of blacks had their cases dismissed for "other reason" (28%), followed by 17% white, 17% Latino, and 8% Asian

defendants (see Table 22). Because the number of DV cases was small ($N = 22$), we refrained from the disaggregation of findings by DV versus non-DV cases.

Table 22. Reasons for Dismissals of Violations by Race ($N = 3,448$)

Dismissal Reasons	White (%)	Black (%)	Latino (%)	Asian (%)	Other (%)	Unknown (%)	Total N
Unable to establish element of crime	2.0	5.6	3.0	2.1	0.0	7.6	143
Lack of speedy prosecution	6.4	17.3	9.9	8.3	0.0	2.5	422
Covered (combined with other cases)	0.7	1.5	0.7	2.1	0.0	10.8	53
ACD dismissal	73.1	46.9	69.1	79.2	100.0	29.9	2,023
Defendant died	0.7	0.4	0.4	0.0	0.0	0.7	159
Other Reason	17.1	28.3	16.9	8.3	0.0	48.5	648
Total N (%)	454 (100%)	1,483 (100%)	1,254 (100%)	96 (100%)	5 (100%)	157 (100%)	3,448

Note: “Other” includes: Clayton motion granted ($N = 18$); Civilian wit fails ($N = 0$); Defective indictment/informt/count ($N = 19$); DNA evidence ($N = 0$); Dismissed-Do not seal ($N = 0$); Def already serving time ($N = 0$); For extradition ($N = 1$); Removal to family court ($N = 0$); Insufficient GJ minutes ($N = 1$); Interest of justice ($N = 0$); No controlled substance ($N = 0$); Def found unfit ($N = 11$); Transfer - another court/tribunal ($N = 0$); Unlawful search and seizure ($N = 0$); Witness credibility contradicted ($N = 0$); and Other - Not specified ($N = 564$). Information on race is missing for 157 (4.6%) cases. There were $N = 7$ cases dismissed because of bench warrants.

6.3.C. Overview of Cases Dismissed at Arraignment

Tables 23 and 24 report the frequency and percentage of *felonies* and *misdemeanors* dismissed at arraignment (4% and 16%, respectively, of all cases chosen for prosecution), broken down by race. Since there was no flag in the database for cases that were dismissed at this point, cases were selected by subtracting the screening date from the disposition date, and any cases that were disposed within 24 hours were used as a proxy for cases dismissed at arraignment. Although using the arrest date instead of the arraignment date would result in a more accurate

identification of cases dismissed at arraignment, this information was missing for 60% of case defendants.

Among *felony* cases, very few cases, overall, are dismissed following criminal court arraignment ($N = 11$), therefore these percentages are reported but not interpreted. Among all cases dismissed, a substantial majority of cases involve black defendants (49%), with Latino defendants following (36%). A surprisingly small percentage of total case dismissals involve white (11%) and Asian defendants (3%) (see Table 23).

Table 23. Frequency and Percentage of Felonies Dismissed at Arraignment ($N = 9,548$)

	Dismissed		Dismissed at Arraignment	
	%	N	%	Total N
White	10.6	1,014	0.2	2
Black	49.4	4,719	0.1	5
Latino	36.0	3,437	0.1	4
Asian	2.8	264	0.0	0
Other	0.2	22	0.0	0
Total	100%	9,456	0.4%	11

Note: Race is unknown for $N = 92$ (1.0%) cases.

Among *misdemeanor* cases, marginally larger percentages of cases were dismissed at arraignment relative to felony cases. The majority of cases dismissed at arraignment involve Asian defendants (0.6%), followed by blacks (0.5%), whites (0.4%), and Latinos (0.2%) (see Table 24).

Table 24. Frequency and Percentage of Misdemeanors Dismissed at Arraignment ($N = 35,940$)

	Dismissed		Dismissed at Arraignment	
	%	N	%	Total N
White	13.2	4,784	0.4	18
Black	43.0	15,645	0.5	71
Latino	37.7	13,706	0.2	34
Asian	4.8	1,732	0.6	10
Other	0.2	68	1.5	1
Total N	100%	35,935	3.2%	134

Note: Race is unknown for $N = 446$ (1.2%) cases.

6.3.D. Multivariate Analyses of Case Dismissals

This section describes the results of multivariate logistic regression analyses to gauge the impact of defendants' race on the likelihood of having their *case dismissed at any point in the case process*, while controlling for the effect of other legally relevant and irrelevant factors (see Table 25). We ran five models: the first included only *race*; the second model included race and other controls, except for *defense counsel type* and *arrest neighborhood*, which were added to the third model to examine their contributions to the full model and to serve as proxies for the crime areas' and defendants' socio-economic status (SES);¹¹³ the fourth model excluded *prior prison sentence* to look at the impact of the *prior arrest*, while the fifth model was reversed, i.e., it excludes *prior arrest*, to assess the unique contribution of *prior prison sentence* in predicting case dismissals. Cases disposed of as ACD/ACMs and ultimately dismissed ($N = 11,113$, 5.2%) are processed statutorily and do not necessarily reflect individual ADAs' discretion. These cases were therefore excluded from the analyses below.

Here again, for the race variable, we chose "white" as the reference category to examine other racial groups' likelihood to have their case dismissed, as compared to white defendants. Additional variables in the analyses include: *top charge seriousness* (with a class A misdemeanor, class E felony, class D felony, class C felony, class B felony or class A felony, each of them compared with class B misdemeanor, the reference category); *number of charges at screening*; *number of counts at screening*; defendants' *age* (in years); defendants' *gender* ("female" as reference category); defendants' detention status after criminal court arraignment (1 = detained); dummy variables for the presence of charges identified as *person*, *property*, or *drug*

¹¹³ While arrest neighborhood is a proxy for defendants' SES, our data show that the vast majority of defendants were charged with crimes committed within their areas of residence. We did not include the *home area* variable in the analyses because of a high percentage of missing values.

crimes (1 = yes); *defense counsel type* (“private” as reference category); *arrest neighborhood* (with “Upper West Side” and “Upper East Side” combined as a reference category and proxies for higher socio-economic status areas; included in models 2-5); *at least one prior arrest* (models 2-4); and *at least one prior prison sentence* (models 2, 3, and 5).¹¹⁴ Furthermore, because ADA variables had many missing values and did not serve as important predictors, they were excluded from the analyses. Finally, to determine whether the effects of race and ethnicity vary by offense type, we partition the data by person offenses, property offenses, and drug offenses, and run separate models on each type of offense (see Table 26).¹¹⁵ We also ran separate analyses excluding DV cases because of a high dismissal rate for this offense category (see previous section).

¹¹⁴ Because of these variables were positively skewed (most defendants had either no priors or just one prior), they were dichotomized.

¹¹⁵ Person offenses – New York Penal Law §120.00 – 135.75; property offenses - §140.00 – 165.74; and drug offenses - §220.00 – 221.55. All other offenses were grouped as the “other” category.

Table 25. Logistic Regression to Predict Case Dismissals (excludes ACD/ACMs) (0 = not dismissed, 1 = dismissed)

Predictor	Model 1:	Model 2:	Model 3:	Model 4:	Model 5:
	<i>With Race Only</i>	<i>With Race, No "SES"</i>	<i>With Race & "SES"</i>	<i>No Prior Prison</i>	<i>No Prior Arrest</i>
	Odds Ratio (Standard Error ¹¹⁷)				
Black	1.388 (0.10)***	1.545 (0.10)***	1.422 (0.08)***	1.428 (0.08)***	1.532 (0.09)***
Latino	1.610 (0.16)***	1.584 (0.10)***	1.411 (0.08)***	1.414 (0.08)***	1.489 (0.09)***
Asian	1.287 (0.07)***	1.027 (0.04)	1.101 (0.02)***	1.100 (0.02)***	1.115 (0.02)***
Other	1.820 (0.12)***	1.557 (0.11)***	1.358 (0.04)***	1.357 (0.04)***	1.408 (0.05)***
Age	-	1.003 (0.00)	0.999 (0.00)	0.999 (0.00)	0.999 (0.00) †
Male	-	1.057 (0.05)	1.038 (0.05)	1.042 (0.05)	1.093 (0.05)
Defendant detained	-	0.335 (0.00)***	0.337 (0.00)***	0.338 (0.00)***	0.347 (0.00)***
A misdemeanor	-	1.300 (0.11)**	1.262 (0.08)***	1.266 (0.08)***	1.238 (0.08)**
E felony	-	2.188 (0.10)***	1.854 (0.09)***	1.860 (0.09)***	1.834 (0.09)***
D felony	-	2.070 (0.11)***	1.715 (0.04)***	1.722 (0.04)***	1.691 (0.05)***
C felony	-	3.204 (0.14)***	2.583 (0.11)***	2.588 (0.11)***	2.530 (0.10)***
B felony	-	2.052 (0.10)***	1.622 (0.10)***	1.630 (0.10)***	1.585 (0.10)***
A felony	-	1.452 (0.16)***	1.295 (0.09)***	1.296 (0.09)***	1.206 (0.08)**
Person crime (including DV)	-	3.503 (0.37)***	3.450 (0.38)***	3.454 (0.38)***	3.486 (0.39)***
Property crime	-	1.106 (0.15)	1.055 (0.18)	1.058 (0.18)	1.099 (0.19)
Drug crime	-	1.041 (0.08)	0.908 (0.08)	0.912 (0.08)	0.977 (0.09)
# of charges at screening	-	0.868 (0.01)***	0.852 (0.01)***	0.852 (0.01)***	0.851 (0.01)***
# of counts at screening	-	1.000 (0.00)	1.002 (0.00)	1.002 (0.00)	1.002 (0.00)
Prior arrest	-	1.314 (0.00)***	1.421 (0.01)***	1.434 (0.02)***	-
Prior prison sentence	-	1.019 (0.01)†	1.093 (0.02)***	-	1.225 (0.04)***
Legal Aid	-	-	0.851 (0.08) †	0.851 (0.08) †	0.880 (0.09)
18(b)	-	-	1.347 (0.07)***	1.350 (0.07)***	1.394 (0.08)***
NYCDS	-	-	0.850 (0.07) †	0.851 (0.07) †	0.890 (0.08)
NDS	-	-	1.193 (0.13)	1.193 (0.13)	1.263 (0.15)*

¹¹⁶ Note that odds ratios are not the measures of relative risk, and they typically exaggerate the effect size compared to relative risk. If the odds ratio is greater than 1.0, then a comparison group (in this case, blacks, Latinos, and Asians), are more likely to receive the plea-to-the-charge recommendation, and if the value is less than 1.0, then they are less likely to receive this recommendation. Cases dismissed as ACD/ACMs were excluded from the analysis.

¹¹⁷ Robust standard errors were calculated to account for clustering that occurs by *arrest neighborhood*.

Table 25. Logistic Regression to Predict Case Dismissals (excludes ACD/ACMs) (0 = not dismissed, 1 = dismissed)

	Model 1: <i>With Race Only</i>	Model 2: <i>With Race, No "SES"</i>	Model 3: <i>With Race & "SES"</i>	Model 4: <i>No Prior Prison</i>	Model 5: <i>No Prior Arrest</i>
Predictor	Odds Ratio (Standard Error ¹¹⁷)				
Harlem	-	-	1.089 (0.01)***	1.088 (0.01)***	1.092 (0.01)***
West (midtown to downtown)	-	-	0.773 (0.01)***	0.772 (0.01)***	0.750 (0.01)***
East (midtown to downtown)	-	-	0.866 (0.01)***	0.866 (0.01)***	0.843 (0.01)***
Outside NYC	-	-	0.772 (0.01)***	0.771 (0.01)***	0.746 (0.01)***
Constant	0.272 (.01)***	0.323 (.02)***	0.388 (0.01)***	0.380 (0.01)***	0.390 (0.01)***
<i>Pseudo R²</i>	0.0035	0.2585	0.2648	0.2647	0.2617
<i>-2 Log-likelihood</i> ¹¹⁸	178,462	131,035	119,645	119,656	120,149
<i>Number of Observations</i>	174,358	173,555	162,525	162,525	162,525

*** $p \leq .001$, ** $p \leq .01$, * $p \leq .05$, † $p < .10$.

¹¹⁸ Smaller values of the -2 log-likelihood statistic indicate better-fitting statistical models. Different models can be compared by looking at the difference between their -2 log-likelihoods.

Earlier we hypothesized that blacks and Latinos would be *less* likely to have their cases dismissed (Hypothesis 3, section 1.3), and although the analyses suggest that defendants' race predicts the likelihood of their case dismissal at any point of case processing, the results are not consistent with our hypothesis. In fact, all five models provided evidence of a greater likelihood of dismissals for black, Latino, and Asian defendants. Consistent with the findings based on simple percentages (see subsection 6.3.A. and 6.3.C), multivariate logistic regression analyses showed that all racial groups, and particularly blacks and Latinos, were significantly *more* likely to have their cases dismissed, compared to similarly-situated white defendants.

When looking at the full model (model 3), and after taking into account a host of factors listed in Table 25, the odds of case dismissal were 42% greater for black, 41% greater for Latino, and 10% greater for Asian defendants, relative to whites. If converted to predicted probabilities from odds ratios, blacks and Latinos were 9% more likely (*odds ratio* = 1.42 for blacks and 1.41 for Latinos), and Asians 2% more likely (*odds ratio* = 1.10) to have their case dismissed compared to similarly-situated whites.¹¹⁹ When put another way, 22 out of every 100 black, 22 out of every 100 Latino, 18 out of every 100 white, and 18 out of every 100 Asian defendants had their case dismissed (based on $N = 162,525$ cases analyzed).

This finding raises a question of whether having higher dismissal rates for defendants of color should be viewed as an indicator of leniency; or simply as a mechanism for declining cases which could have been rejected at screening (see section 6.1). Another possible explanation might be the influence of victims' race on the outcome: if most crimes are intra-racial, minority victims—who might be less willing to cooperate with law enforcement—may contribute to the higher odds of case dismissal. However, because victims' race information was not

¹¹⁹ We used Hanushek and Jackson's (1977) formula for calculating differences in probabilities from odds ratios: $(\text{odds}/\text{odds} + 1) - .50$.

systematically captured in the dataset, we were not able to test this relationship. When we analyzed a subsample of non-domestic violence cases, we saw a marginal decrease in the odds of case dismissal: from 42% to 35% difference in odds for blacks, and from 41% to 34% for Latinos as compared to whites. For Asians, however, the difference in odds increased from 10% to 12%. While this analysis suggests that DV cases—where victims’ willingness to cooperate is especially important—increase differences in case dismissals, additional research is needed to fully gauge the relationships among victims’ cooperation, defendants’ race, and case dismissal.

To return to our main analysis (see Table 25), before adding *arrest neighborhood* and *defense counsel* variables to the model (model 2), racial differences between white and Latino defendants, and between white and black defendants were even greater (58% and 55% greater odds, respectively), thus suggesting that adding *arrest neighborhood* and *defense counsel*, two proxies for SES, minimized the differences observed in model 2. Results also showed that if the arrest was made outside Upper West Side and Upper East Side, the case was *less* likely to be dismissed (although for arrests made in Harlem, the odds are slightly greater for a case dismissal). Further, relative to private counsel, defendants represented by Legal Aid or New York County Defender Services (NYDS) are less likely to have their case dismissed (although these relationships are marginally significant, $p < .10$), while those represented by 18(b) counsel are significantly more likely. The removal of prior record variables from the analyses (see models 4 and 5) did not change the effect of race on case dismissals drastically, although some evidence still prevails that a case is less likely to be dismissed if a defendant served a prior prison sentence, and even more so when he had a prior arrest.

Overall, in addition to defendants’ race, there were other significant predictors to this outcome. Cases were particularly likely to be dismissed when the defendant:

- was not detained following criminal court arraignment;
- was charged with person offenses (DV cases included);
- faced charges greater than a class B misdemeanor;
- had fewer charges at screening (number of counts did not seem to matter);
- had priors (prior arrest predicted dismissals more than prior sentences); and
- was represented by a counsel appointed under 18(b), as compared to a private counsel.

Table 26. Racial Differences in Odds Ratios by Crime Type for Logistic Regression Model Predicting Case Dismissal

Crime Type	Offense Category	Compared to whites:	% difference in odds (direction of relation)
Person (n = 14,373)	Felony	Black	19.5 ↑
		Latino	34.5 ↑
		Asian	9.2 ↓
	Misdemeanor	Black	46.2 ↑*
		Latino	39.4 ↑*
		Asian	27.7 ↑*
Property (n = 61,436)	Felony	Black	37.7 ↑*
		Latino	13.1 ↑
		Asian	11.1 ↑
	Misdemeanor	Black	33.6 ↑*
		Latino	43.9 ↑*
		Asian	3.3 ↓
Drug (n = 34,840)	Felony	Black	31.0 ↑
		Latino	38.5 ↑*
		Asian	9.8 ↓
	Misdemeanor	Black	53.1 ↑*
		Latino	89.7 ↑*
		Asian	33.1 ↑*

To supplement the main analyses controlling for charge seriousness and crime type, separate logistic regression models were run by crime type (*person*, *property*, and *drug*) and for each offense category (*felonies* and *misdemeanors*) separately (see Table 26). Consistently across

offense type and relative to white defendants, black and Latino defendants were more likely to benefit from case dismissals. Disparities were more apparent for *misdemeanor drug* crimes where the difference in odds for case dismissal for blacks (53%), Latinos (90%) and Asians (33%) were greater relative to whites.

6.4. Plea Offers

SECTION SUMMARY

Overall, there has been comparatively little contemporary research that examines the influence of race and ethnicity on prosecutorial decision making, particularly when it comes to the process of plea bargaining (Spohn, Gruhl, & Welch, 1987; Piehl & Bushway, 2007; Shermer & Johnson, 2010). Moreover, although prior research consistently emphasizes the importance of evidentiary issues in prosecutorial decision making (Albonetti, 1989; Frederick & Stemen, 2012; Spears & Spohn, 1996), researchers often lack quality information on the strength and type of evidence against a defendant. To address these limitations, we focused on plea-bargaining outcomes while incorporating unprecedented data on evidence collected from paper case files. Two vital components of the plea bargaining process—*custodial sentence offers* and *reduced charge offers*—were examined. The sentence offer analyses was conducted for (a) the population of misdemeanors in the dataset provided by DANY, (b) the random sample of 1,246 misdemeanor marijuana cases, and (c) the random sample of 1,153 felony non-marijuana drug cases. The charge offer analysis was performed for the two latter samples only because the population data did not include this information. Consistent with our hypothesis of more punitive plea offers for blacks and Latinos, overall, blacks, and to a lesser extent Latinos, were substantially less likely to receive reduced charge offers, and far more likely to receive custodial sentence offers. Although differences between white and Asian defendants were generally much smaller, in the aggregate, Asian defendants tended to have the most favorable plea outcomes.

The vast majority of prosecutions end in a plea bargain. Plea bargains require a defendant to admit culpability on a particular charge, either the highest charged offense or a lower charge. Plea offers include offers to a lesser charge, what will be referred as **Charge Offer**, and sentencing recommendations, or **Sentence Offer**. Charge and sentence offers are made by the prosecutor, and all agreements must be approved by the presiding judge. Prosecutors can make plea offers at any point before a trial verdict, but the most favorable plea offers for the defendant are generally made at arraignment, with offers becoming less favorable with subsequent adjournments.

Four main factors arose in conversations with ADAs (see subsection 1.2.C) and in reviewing DANY policy as influencing the type of initial plea offer an ADA will make: a defendant's record (especially with respect to for custodial sentences); the severity of the charges; a defendant's pre-trial custodial status; and the strength of the prosecution's case, which includes a wide range of evidentiary factors.

Plea offers for defendants with one or no prior arrests are determined with reference to DANY's Plea Offer Guidelines.¹²⁰ No guidelines exist for defendants with two or more prior arrests. In such cases plea bargaining is left to the ADA's discretion. Because of this distinction, this section will separate plea offers by defendants' criminal histories, in order to examine whether increased discretion in making plea offers results in differences across racial groups in the types of plea offers made. Additionally, guidelines are generally not used post-arraignment, and do not exist for felony or misdemeanor domestic violence cases.

The guidelines' recommendations are based on the *highest pending charge* (top charge) and the defendant's *arrest history*, which make these two factors particularly important for

¹²⁰ ADAs may deviate from the guidelines with approval from their supervisor, if it can be obtained.

consideration when exploring disparities in plea offers by race. The guidelines suggest that pleas to a lesser charge should be reserved for defendants with no prior arrests, while on subsequent arrests defendants should plead guilty to the top charge. While the guidelines do not make specific recommendations for defendants with two or more prior arrests, they do recommend increasing sentences for defendants re-arrested on the same or similar offenses.¹²¹ Supervising prosecutors will also make plea recommendations when assigning *felony* cases to junior ADAs. Supervising prosecutors must sign off on initial offers made in *felony* and non-domestic violence *misdemeanor* cases. The ECAB supervisors make initial offer recommendations for rookie ADAs.

In this section, we present three sets of analyses and findings. First, sentence offers have been examined with the full dataset (subsection 6.4.A), which includes all cases disposed in 2010-2011 but excludes many important variables, particularly those relevant to strength of evidence, which are potentially relevant to sentence offer decisions (not available in the dataset provided by DANY). The section provides a descriptive overview of sentence offers in the criminal court arraignment process (6.4.A.i) and guilty pleas at and post-arraignment (6.4.A.ii) and offers the results of multivariate analyses for *custodial sentence recommendations* (Sentence Offer). Second, based on the data collected from 1,256 marijuana misdemeanor case files, we looked into two types of plea bargaining outcomes— (a) *plea to a lesser charge* (Charge Offer) and (b) *custodial sentence recommendations* (Sentence Offer) —while considering a range of evidentiary and other factors, including prior record and charge seriousness (the two factors emphasized in the DANY Plea Guidelines, as described above). These findings are described in

¹²¹ Under DANY's general recidivist misdemeanor program, repeat offenders in 11 categories of misdemeanors, including trespassing, shoplifting, marijuana sales, and prostitution are targeted for prosecution and increased sentence recommendations.

subsection 6.4.B; this section also provides rare accounts of arrest and drug recovery circumstances in New York County. Third, we collected similar data for 1,153 non-marijuana drug felony case files (subsection 6.4.C) and examined the same outcomes as for the misdemeanor sample.

The first and second series of the analyses (full dataset and misdemeanor sample, respectively) include both descriptive statistics and multivariate regression analyses. For the full dataset, we ran regression models for *custodial sentence recommendations* (Sentence Offer) to examine racial differences in receiving custodial versus non-custodial sentence recommendations; however, because the information on *plea-to-a-lesser-charge offers* (Charge Offer) was missing for most cases for the two-year period analyzed, we were not able to explore this important discretionary decision for the full dataset.¹²² For the felony sample, because of missing data issues and our inability to provide reliable estimates for missing values, we omitted regression analyses; nevertheless, subsection 5.4.C offers rich and rare descriptive findings of various aspects of felony drug cases, including arrest circumstances and the description of drugs recovered at the time of arrest.

6.4.A. Sentence Offer Analysis Based on the Population Data

6.4.A.i. Overview of Initial Sentence Offers in Criminal court Arraignment

This section provides an overview of the types of initial sentence offers made by ADAs in criminal court arraignments. These offers include (a) prison or jail (custodial), (b) community service, (c) fine, (d) time served, and (e) “other,” which combines plea offer types with small

¹²² DANY’s data collection efforts with respect to plea offers to a lesser charge significantly improved in 2012-2013, which may make it possible to conduct plea offer analyses in the future.

frequencies (Conditional Discharge/ CASES,¹²³ Conditional Discharge/StopLift Program,¹²⁴ Conditional Discharge/Treatment Intervention Program, Treatment Readiness Program¹²⁵, and other offers not specified in the DANY database).

Out of 409 felony cases with sentence offers across the five *felony* types (i.e., drugs, weapons, domestic violence, burglary, and robbery)¹²⁶, 65% included jail or prison, 14% community service, 11% “other” offers, 7% time served, 3% a fine, and 0.2% the Treatment Readiness Program.

For *misdemeanor* cases ($N = 98,557$), 36% included jail or prison, 22% community service, 15% “other” offers, 13% a fine, 11% time served, and 2% the Treatment Readiness Program.

For *violations* ($N = 14,987$), 55% of sentence offers were for time served, 17% for “other”, 14% for jail or prison, 7% for community service, 6% for a fine, and 0.2% for the Treatment Readiness Program.

Figure 23 shows a summary of percentages of *felony* sentence offers for defendants within race. A greater percentage of black defendants received custodial offer (74%), followed by Latinos (63%), whites (51%), and Asians (13%). Asian defendants were particularly likely to receive community service offers (56%), compared to Latinos (15%), whites (14%), and blacks (9%).

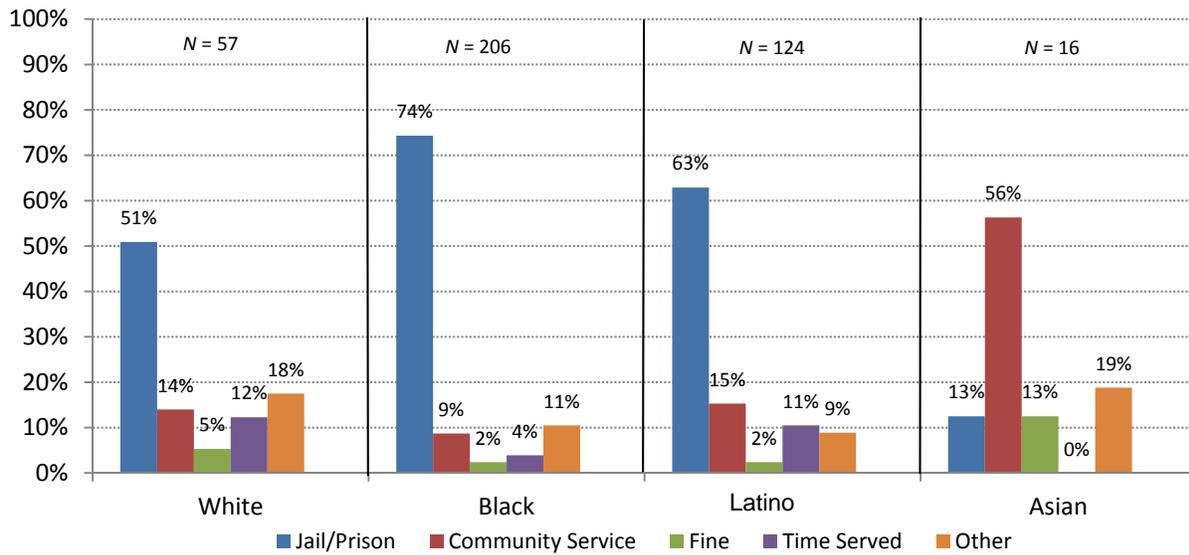
¹²³ CASES is the Center for Alternative Sentencing and Employment Services and involves a selection of innovative programs for youths and adults with special needs in New York City courts. It provides mental health and substance abuse treatment and addresses factors such as lack of education and unemployment to assist youths and adults in their re-integration into society.

¹²⁴ StopLift is a program focused on rehabilitating shop-lifters.

¹²⁵ Treatment Readiness Program is a type of drug program, usually reserved for defendants charged with misdemeanor drug offenses.

¹²⁶ These 409 cases represent the total number with plea offer information available for felonies at criminal court arraignment. The small sample is likely due to the fact that plea offers are rarely made for felonies at arraignment. ADAs typically defer an offer until after a felony is indicted.

Figure 23. Plea Offer Types for Felonies within Race (N = 409)¹²⁷



Similar to the *felony* findings, for *misdemeanors*, greater percentages of blacks and Latinos have custodial sentence offers (see Figure 24). When analyzing percentages within race for *misdemeanors*, a greater percentage of black defendants received offers of jail or prison (47%) compared to Latinos (32%) and whites (22%), and a substantially smaller percentage of Asians received custodial offers (8%). Conversely, a markedly greater percentage of Asians received sentence offers with community service (39%), when compared to whites (23%), Latinos (22%), or blacks (20%).

¹²⁷ Missing information on race for 6 cases (1.5%).

Figure 24. Plea Offer Types for Misdemeanors within Race (N = 98,557)¹²⁸

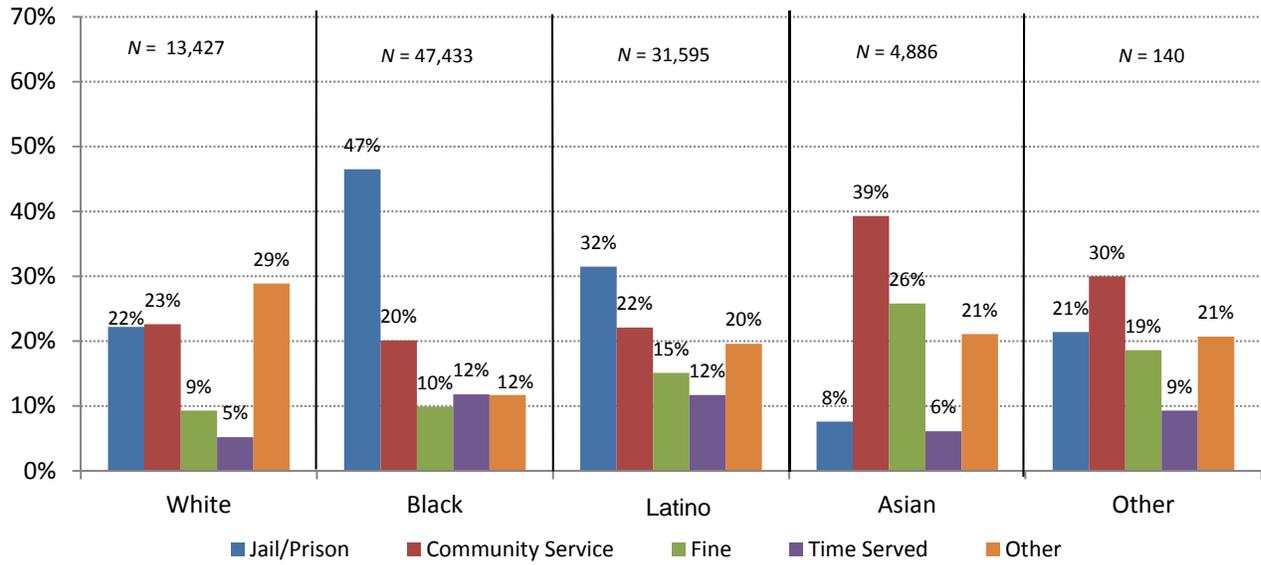
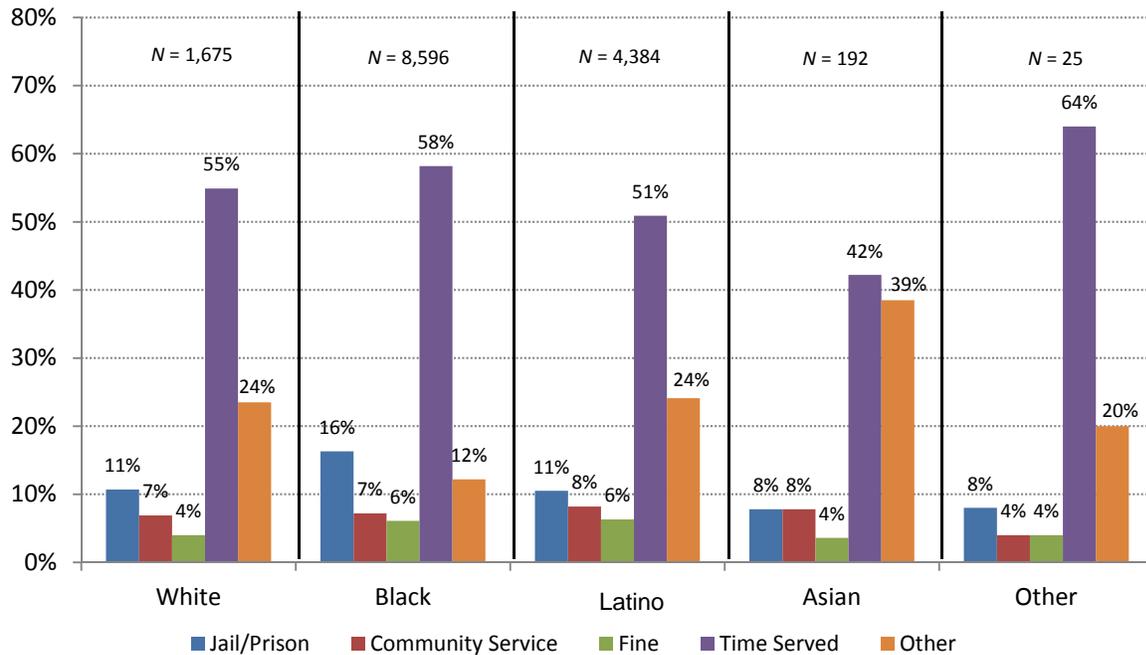


Figure 25 shows plea offers made for *violations* within race. Overall, the majority of plea offers made were for time served (white: 55%; black: 58%; Latino: 51%), although a smaller percentage of Asian defendants received offers of this type (42%).

¹²⁸ Missing information on race for 1,076 cases (1.1%).

Figure 25. Plea Offer Types for Violations within Race (N = 14,987)¹²⁹



6.4.A.ii. Overview of Guilty Pleas at and Post-Arraignment

While DANY’s guidelines make plea recommendations for defendants with one or no previous arrests, they do not cover defendants with longer criminal histories. Plea offers are left to the discretion of the prosecuting ADA when the defendant has more than one prior arrest. In order to examine what impact this increase in discretion has, this section disaggregates data by defendants’ arrest record.

Table 27 shows the frequencies and percentages of guilty pleas made by defendants, broken down by race and defendants’ number of prior arrests.

For *felonies*, and among defendants with no prior arrest, a marginally greater percentage of whites had their cases disposed through prosecutorial plea offers (55% for whites, 53% for Asians, 52% for blacks, and 51% for Latinos). A greater difference was observed among

¹²⁹ Missing information on race for 115 cases (0.8%).

defendants with one prior arrest (for any offense), with 67% of cases involving white defendants disposed by plea (as compared to 53% for Asians, 52% for blacks, and 51% for Latinos). Among defendants with two or more arrests, the differences in rates of final disposition by plea were slightly greater, with whites again having the highest percentage (72% for whites, 67% for Asians, 66% for blacks, and 64% for Latinos). Overall, regardless of their prior record, whites were more likely to have their case disposed of as a guilty plea. However, we did not find noticeable differences by race in terms of pleas at arraignment versus post arraignment. Nearly all felony defendants, regardless of their race, enter guilty pleas after arraignment.

For *misdemeanors*, the percent differences were more noticeable, and whites are no longer most likely to have their case disposed by guilty plea for all three prior record categories, as was the case for felonies. Among defendants with no prior arrest, a greater percentage of blacks had their cases disposed of as guilty pleas (49%), closely followed by Asians (47%), then by Latinos (45%) and then by whites (43%). There were almost no differences among defendants with one prior arrest, and whites, once again, had a greater percentage of guilty plea dispositions among the defendants with two or more arrests (82% of whites, 76% for blacks, 66% for Latinos, and 66% for Asians). Furthermore, compared to blacks with no prior arrest, whites with no prior arrest were more likely to enter guilty pleas after their arraignment (69% of whites as opposed to 62% of blacks).

Finally, for *violations*, racial differences in case disposition by guilty plea were striking. For example, among defendants with no prior arrest, 38% of blacks, 22% of whites, 20% of Latinos, and 8% of Asians had their case disposed by guilty plea. These differences decrease among defendants with a prior record, although Asians were still least likely to have cases disposed by guilty pleas.

Table 27. Frequency and Percentage of Guilty Pleas at and After Arraignment Made by Defendants with None, One, or Two or More Prior Arrests

Prior Arrests		Pleas at Arraignment (%)	Pleas After Arraignment (%)	Guilty Pleas # (%)	% of all Cases Disposed of as Guilty Pleas	Total Cases Disposed (%)
Felonies (N = 26,069)						
White	None	3.1	96.9	1,134 (100%)	55.3	1,986 (100%)
	One	0.8	99.2	246 (100%)	66.7	369 (100%)
	Two or More	3.4	96.6	477 (100%)	72.1	662 (100%)
Black	None	1.3	98.7	2,969 (100%)	52.0	5,639 (100%)
	One	1.8	98.2	1,076 (100%)	58.7	1,084 (100%)
	Two or More	2.9	97.1	3,746 (100%)	66.3	5,650 (100%)
Latino	None	1.6	98.4	2,203 (100%)	51.4	4,284 (100%)
	One	1.0	99.0	798 (100%)	59.3	1,345 (100%)
	Two or More	2.8	97.2	2,108 (100%)	64.1	3,287 (100%)
Asian	None	4.0	96.0	302 (100%)	53.3	567 (100%)
	One	1.9	98.1	52 (100%)	61.9	84 (100%)
	Two or More	5.5	94.5	55 (100%)	67.1	82 (100%)
Other	None	0.0	100.0	11 (100%)	36.7	30 (100%)
	One	0.0	100.0	1 (100%)	33.3	3 (100%)
	Two or More	0.0	100.0	1 (100%)	20.0	5 (100%)
Misdemeanors (N = 159,206)						
White	None	31.1	68.9	7,703 (100%)	43.0	17,923 (100%)
	One	41.7	58.3	1,194 (100%)	61.9	1,930 (100%)
	Two or More	58.3	41.7	3,310 (100%)	81.7	4,052 (100%)
Black	None	37.6	62.4	15,045 (100%)	49.3	30,526 (100%)
	One	46.5	53.5	5,659 (100%)	61.2	9,253 (100%)
	Two or More	57.9	42.1	25,076 (100%)	76.4	32,809 (100%)
Latino	None	33.4	66.6	12,854 (100%)	44.7	28,745 (100%)
	One	39.2	60.8	3,896 (100%)	55.0	7,084 (100%)
	Two or More	50.7	49.3	11,523 (100%)	66.8	17,246 (100%)
Asian	None	32.5	67.5	2,834 (100%)	47.2	6,004 (100%)
	One	33.3	66.7	408 (100%)	59.9	681 (100%)
	Two or More	39.7	60.3	556 (100%)	65.6	847 (100%)
Other	None	26.6	73.4	79 (100%)	44.4	178 (100%)
	One	28.6	71.4	14 (100%)	45.2	31 (100%)
	Two or More	46.3	53.7	41 (100%)	68.3	60 (100%)
Violations (N = 27,303)						
White	None	85.1	14.9	397 (100%)	21.8	1,819 (100%)
	One	89.3	10.7	205 (100%)	62.9	326 (100%)
	Two or More	90.1	9.9	892 (100%)	79.4	1,123 (100%)
Black	None	83.8	16.2	1,532 (100%)	38.3	4,003 (100%)
	One	85.5	14.5	963 (100%)	63.3	1,521 (100%)
	Two or More	89.4	10.6	5,803 (100%)	79.3	7,319 (100%)
Latino	None	86.3	13.7	963 (100%)	20.2	4,775 (100%)
	One	85.7	14.3	518 (100%)	57.4	903 (100%)
	Two or More	87.0	12.9	2,153 (100%)	72.0	2,990 (100%)
Asian	None	71.0	29.0	31 (100%)	8.2	380 (100%)
	One	87.5	12.5	16 (100%)	42.1	38 (100%)
	Two or More	95.0	5.0	80 (100%)	68.4	117 (100%)

Other	None	100.0	0.0	4 (100%)	18.2	22 (100%)
	One	33.3	66.7	3 (100%)	50.0	6 (100%)
	Two or More	100.0	0.0	17 (100%)	94.4	18 (100%)

Note: Information on case disposition is missing for 15 cases. Information on race is missing for 2,491 (1.2%) cases.

6.4.A.iii. A Multivariate Analysis of Sentence Offers

Earlier we hypothesized that minority defendants would receive more punitive plea offers (see Hypothesis 4, section 1.3). Here we will describe the test of this hypothesis using multivariate logistic regression analyses on custodial sentence offers, which take into account the influence of other important factors, including charge seriousness and prior record.

In addition to *charge offer*, which we were able to analyze only for a sample of misdemeanor marijuana offenses (see subsection 6.4.B) and not for the full dataset (Population Data), plea offers also include sentencing recommendations. These recommendations can be: a recommendation of jail time, time served in pretrial detention, restitution, fine, and community service, among others. Custodial plea offers and offers including time served will be considered as more punitive sentence offers, although they may not always be perceived as such by defendants. This outcome variable—*sentence offer*— is measured at criminal court arraignment and, for the most part, ADAs do not have an offer ready at this stage for felony cases and for more serious misdemeanor cases; therefore we opted to exclude felony cases and only focused on class A and B misdemeanors.

To compare sentence offers for similarly-situated white versus black, Latino, and Asian defendants, we ran five models: the first one included only *race*; the second model included race and other controls, except for *defense counsel* (“private counsel” as reference) and *arrest neighborhood* (Upper West and East Side as the reference), which were added to the third model to examine the contribution of these variables to the full model (Model 3), as well as serve as

proxies to socio-economic status (SES)¹³⁰; the fourth model excluded the *prior prison sentence* to look at the impact of the *prior arrest*, while the fifth model was reversed, i.e., instead of the *prior arrest*, it included the *prior prison sentence*.

In our discussions with the DANY office and based on prosecutor interviews (see subsection 1.2.C), we have learned that ADAs' decisions with respect to plea offers, including sentence offers, can be influenced by the following four main factors: a defendant's record (especially custodial versus non-custodial sentences, or violent prior or not); the severity of the charges; a defendant's pre-trial custodial status; and the evidentiary strength of the prosecution's case. Unfortunately, however, while we were able to control for priors, including prior arrest (1 = yes) and prior prison sentence (1 = yes) as well as charge seriousness (0 = class B misdemeanor) and detention status (1 = detained), we were not able to gather data on evidentiary strength¹³¹.

Additionally, the analyses took into account the *number of charges* at screening; *number of counts* at screening; defendants' *age* (in years); defendants' *gender* ("female" as reference category); and crime type (person, property, or drug crimes) (see Table 28).

¹³⁰ While arrest neighborhood is a proxy for defendants' SES, our data show that the vast majority of defendants were charged with crimes committed within their areas of residence. We did not include the *home area* variable in the analyses because of a high percentage of missing values.

¹³¹ DANY does not systematically capture evidence information for each case in their electronic database.

Table 28. Logistic Regression to Predict Custodial Sentence Offers for all Misdemeanors in the Case Population (0 = non-custodial offer, 1 = custodial offer)

Predictor	Model 1:	Model 2:	Model 3:	Model 4:	Model 5:
	<i>With Race Only</i>	<i>With Race, No "SES"</i>	<i>With Race & "SES"</i>	<i>No Prior Prison</i>	<i>No Prior Arrest</i>
	Odds Ratio (Standard Error ¹³²)				
Black	3.041 (0.23)***	1.698 (0.12)***	1.666 (0.09)***	1.810 (0.09)***	2.278 (0.18)***
Latino	1.614 (0.29)**	1.212 (0.11)*	1.212 (0.10)*	1.269 (0.13)*	1.499 (0.14)***
Asian	0.288 (0.02)***	0.354(0.02)***	0.330 (0.02)***	0.315 (0.01)***	0.341 (0.02)***
Other	0.963 (.09)	0.912 (0.31)	0.920 (0.32)	0.885 (0.29)	1.106 (0.45)
Age	-	1.030 (0.00)***	1.030 (0.00)***	1.036 (0.00)***	1.036 (0.00)***
Male	-	1.473 (0.05)***	1.427 (0.06)***	1.536 (0.05)***	1.802 (0.15)***
Defendant detained	-	1.112 (0.01)***	1.105 (0.01)***	1.106 (0.01)***	1.117 (0.01)***
A misdemeanor	-	1.988 (0.63)*	1.966 (0.60)*	2.036 (0.61)*	1.872 (0.62)†
Person crime	-	5.661 (1.39)***	5.473 (1.32)***	5.319 (1.37)***	5.168 (0.91)***
Property crime	-	2.807 (0.29)***	2.743 (0.29)***	2.821 (0.28)***	3.247 (0.36)***
Drug crime	-	3.837 (0.79)***	3.864 (0.67)***	4.015 (0.61)***	4.860 (1.00)***
# of charges at screening	-	1.097 (0.06)†	1.109 (0.06)†	1.115 (0.06)*	1.089 (0.05)*
# of counts at screening	-	1.097 (0.03)***	1.089 (0.03)***	1.086 (0.03)***	1.105 (0.03)***
Prior arrest	-	5.723 (0.67)***	5.769 (0.67)***	6.626 (0.78)***	-
Prior prison sentence	-	4.461 (0.48)***	4.460 (0.48)***	-	6.740 (1.13)***
Legal aid	-	-	2.042 (0.35)***	2.067 (0.33)***	2.863 (0.71)***
18(b)	-	-	3.325 (0.58)***	3.415 (0.58)***	4.604 (1.10)***
NY Defender Service	-	-	2.938 (0.31)***	3.002 (0.30)***	4.425 (0.79)***
Neighborhood Defender Service	-	-	1.551 (0.19)***	1.581 (0.19)***	2.402 (0.49)***
Harlem	-	-	0.996 (0.01)	0.973 (0.01)***	1.012 (0.00)***
West (midtown to downtown)	-	-	1.189 (0.02)***	1.140 (0.02)***	1.031 (0.01)***
East (midtown to downtown)	-	-	1.028 (0.02)	1.013 (0.02)	0.940 (0.02)***
Outside NYC	-	-	1.101 (0.04)*	1.070 (0.04)†	0.926 (0.03)**
Constant	0.286 (0.03)***	0.005 (0.00)***	0.002 (0.00)***	0.002 (0.00)***	0.002 (0.00)***
<i>Pseudo R</i> ²	0.0456	0.296	0.3032	0.2812	0.2256
<i>-2 Log-likelihood</i> ¹³³	121,901.64	88,370.65	86,155.79	88,879.66	95,748.18
<i>Number of observations</i>	97,472	95,113	93,588	93,588	93,588

***p< .001, ** p< .01, * p< .05, †< .10.

¹³² Robust standard errors were calculated to account for clustering that occurs by *arrest neighborhood*.

¹³³ Smaller values of the -2 log-likelihood statistic indicate better-fitting statistical models. Different models can be compared by looking at the difference between their -2 log-likelihoods.

Consistent with our hypothesis, the logistic regression models showed that for *misdemeanors*, black and Latino defendants were more likely to receive custodial sentence offers than similarly-situated white defendants. Before considering other factors, blacks were 25% more likely (*odds ratio* = 3.04) than whites to receive custodial sentence offers (see Model 1 in Table 28). When considering all controls (Model 3), blacks were still 13% more likely (*odds ratio* = 1.67) and Latinos 5% more likely (*odds ratio* = 1.21) to receive custodial sentence offers; Asians however were 25% less likely to receive this outcome (*odds ratio* = 0.33).¹³⁴ Note that adding SES proxies did not decrease the probability of receiving custodial sentence offers (they were excluded from Model 2 but included in Model 3). Predicted probabilities for each group showed that 40 out of every 100 black, 36 out of every 100 Latino, 33 out of every 100 white, and 17 out of every 100 Asian defendants received a custodial sentence offer (based on $N = 93,588$ cases analyzed).

To gauge whether time served offers contributed to the differences reported above, we replicated the full model (Model 3 in Table 28) while removing “time served in pretrial detention” from the custodial sentence offer analysis. Removing these cases increased the differences reported above, although only slightly. When considering jail sentence offers only (excluding “time served”), blacks were 14% (*odds ratio* = 1.77, $p < 0.001$) and Latinos 5.3% (*odds ratio* = 1.24, $p < 0.05$) more likely to receive a punitive offer; Asians, on the other hand, were 28% less likely (*odds ratio* = 0.28, $p < 0.001$).

The differences reported in the full model increased markedly when we removed *prior arrest* from the analyses (odds were 128% greater for blacks, and 50% greater for Latinos, see

¹³⁴ We used Hanushek and Jackson’s (1977) formula for calculating probabilities from odds ratios: $(\text{odds}/\text{odds} + 1) - .50$.

Model 5), which was not so much the case when we removed *prior prison sentence* (see Model 4). This influence of *prior arrest* on sentence offers is consistent with the DANY Plea Offer Guidelines, described earlier, and suggests that if these guidelines were based on *prior sentences*, as opposed to *prior arrest*, much of the difference between black and white, and between Latino and white defendants would have decreased, at least in misdemeanor cases.

Hypothesis 4 (see section 1.3) also suggests that there would be no noticeable difference in sentence offers between white and Asian defendants, which was not supported by this study. In fact, Asians were 25% less likely to receive custodial sentence offers than white defendants, and the difference was fairly consistent across the five models, including or excluding *prior arrest* and *prison sentence*. Turning back to the guidelines question, while considering *prior prison sentence*—instead of *prior arrest*—can potentially decrease disparities with respect to blacks and Latinos, it is unlikely to have any effect on the disparities between white and Asian defendants (*odds ratio* = 0.33 for Model 3; 0.32 for Model 4; and 0.34 for model 3).

The analyses also suggested that defendants were most likely to receive custodial sentence offers when they:

- were charged with either a person, property, or drug crime (as compared to “other” offenses)
- were charged with a class A misdemeanor (the odds were 97% greater when compared to those charged with a class B misdemeanor);
- had more counts at screening (the odds increased by 9% for each additional count; number of charges at screening had a marginal effect, with odds of a custodial sentence offer being 11% greater for each additional charge);
- were detained following criminal court arraignment (the odds were 11% greater)

- were older (each additional year in their age increased the odds by 3%);
- were male (the odds were 43% greater, as compared to female defendants);
- had a prior arrest (the odds were 477% greater, when compared with those without a prior arrest);
- had a prior prison sentence (the odds were 346% greater, when compared with those without a prior prison sentence);
- were represented by the Legal Aid Society (odds were 104% greater compared to those represented by private counsel), by counsel appointed under 18(b) (odds were 233% greater compared to those represented by a private counsel), by the New York County Defender Services (odds were 194% greater compared to those represented by a private counsel), or by the Neighborhood Defender Service (odds were 55% greater compared to those represented by a private counsel);
- were arrested on the Westside of midtown to downtown of Manhattan (odds were 19% greater relative to the Upper West Side and Upper East Side)

The analyses showed that, while defendants' race was an important predictor of a custodial sentence offer in misdemeanor cases, even after taking into account all the factors listed in Table 28, it did not influence this outcome as much as some other variables, particularly *prior arrest*, *prison sentence*, and *defense counsel*. With respect to defense counsel, the models provide evidence to argue that defendants are receiving more punitive sentence offers if they are not represented by private counsel, and that the offer is particularly punitive if they are represented by counsel appointed under 18(b). In fact, after considering all factors listed above, defendants who are represented by 18(b) counsel are 27% more likely (*odds ratio* = 3.33) to receive a custodial sentence offer than those represented by a private lawyer.

One can argue that, in the absence of socio-economic variables in these models, not only do the *defense counsel* variables suggest the variation in the quality of legal representation by different types of agencies, but they also serve as proxies for defendants' income (with affluent defendants more likely to be represented by a private lawyer, especially in misdemeanor cases). Differences in outcomes for defendants with and without private counsel can be more easily understood if we assume that more affluent defendants are more likely to hire a private counsel. However, socio-economic variations do not explain the difference in sentence offers among defendants represented by different institutional providers, with counsel appointed under 18(b) and those from the New York County Defender Services achieving the least favorable outcomes for their clients. It is possible that some of these differences are attributable to prosecutors' perceptions of different defenders, and we hope future research will focus on this important topic.

Table 29. Racial Differences in Odds Ratios by Crime Type for Logistic Regression Model Predicting Custodial Sentence Offer for all Misdemeanors in the Case Population

Crime Type	Offense Category	Compared to whites:	% difference in odds (direction of relation)
Person (n = 625)	Felony	Black	-
		Latino	-
		Asian	-
	Misdemeanor	Black	187.8 ↑*
		Latino	47.2 ↑
		Asian	24.2 ↓
Property (n = 37,877)	Felony	Black	-
		Latino	-
		Asian	-
	Misdemeanor	Black	75.9 ↑*
		Latino	28.5 ↑*
		Asian	306.1 ↓*
Drug (n = 23,505)	Felony	Black	-
		Latino	-
		Asian	-
		Black	229.4 ↑*

	Misdemeanor	Latino	112.2 ↑*
		Asian	35.6 ↓

After running separate logistic regression models for *person*, *property*, and *drug* cases (for misdemeanors only), we saw that racial disparities were greatest for misdemeanor *drug offenses* where black defendants were 27% (*odds ratio* = 3.29) and Latinos 18% more likely (*odds ratio* = 2.12) to receive a custodial sentence offer, as compared to similarly-situated white defendants. The findings for Asian defendants were less consistent but in general suggested they were *less* likely to receive custodial sentence offers, relative to white defendants, particularly for misdemeanor *property offenses*.

Unfortunately, while informative, the regression models described above did not take into account other important variables, some of which might have explained the disparities found. For example, as a result of missing data, we were not able to control for charge offer, the evidentiary strength of a case, victim information, or ADA characteristics. Also, we did not have reliable sentence offer information for felonies. Because the analyses presented above were based on the administrative data provided by DANY and did not include some important variables that may be explaining the variation in the outcome, it was necessary to collect data from paper files. This process is described in the next section.

6.4.B. Plea Offer Analysis Based on the Sample of Marijuana Misdemeanor Cases

6.4.B.i. Overview of the Misdemeanor Sample Selection

This section reviews findings on the sample of 1,256 misdemeanor marijuana cases disposed in 2010-2011. Our focus on drug offenses was motivated by a number of considerations. First, given that the Rockefeller Drug Laws were significantly amended in 2009 (see subsection 1.4.D), prosecution of drug-related offenses gained greater attention from the

public, politicians, researchers and criminal justice professionals, including our partners at DANY. Second, unlike more complex cases involving victims, in which it was not possible to collect reliable data on evidentiary strength due to marked inconsistencies with which prosecutors record information on evidence, drug offenses and particularly misdemeanor marijuana offenses offered relative simplicity. There is not much variation in the type of evidence gathered; they all typically involve drugs obtained through police searches or undercover investigations and do not involve civilian witnesses for whom collecting relevant factors (measuring witness cooperation, criminal history, etc) was not possible. Third, because DANY does not systematically record victims' race information, it seemed prudent to select an offense category for which victims are not present. Finally, existing research suggests that racial disparity exists within drug cases (see Review of Relevant Literature).

We selected a random sample of 1,256 marijuana cases stratified by defendants' race/ethnicity (see Misdemeanor Sample Description). The sample excludes cases disposed as *Adjournments in Contemplation of Dismissal* (commonly known as ACDs)¹³⁵ because these cases are typically sealed and not accessible for research. The only cases available for review are those that are disposed as guilty plea convictions or as trial convictions. Furthermore, because only 10 out of the entire sample of misdemeanor marijuana cases ($n = 1,256$) resulted in trials and convictions, we focused only on cases disposed as guilty pleas. The main purpose of data collection from paper case files was to look more closely into plea (to a lesser charge) and

¹³⁵ ACD is an agreement between the District Attorney's office and the defense to have a case adjourned with a view to dismissal in a six-months or one-year period, if no arrest for a new offense has been made. See New York Criminal Procedure - Article 170 - §170.55 Adjournment in Contemplation of Dismissal, and §170.56 Adjournment in Contemplation of Dismissal in Cases Involving Marijuana. At the DANY, ACDs in cases involving marijuana are referred to as ACM. However, we will be using ACD throughout the report to alleviate any confusion.

sentence offers, and the selected sample is particularly appropriate for these analyses. Finally, the sample excludes defendants under 16 years of age.

The following sections will review the sample characteristics and answer two main questions:

1. *Does defendants' race influence their likelihood to receive a plea offer to a lesser charge?*

The DANY adheres to the so called “best-offer-first” approach, in which ADAs are encouraged to make the best possible offer first to save investigative resources and increase defendants’ likelihood to accept the plea. The best offer may include a request to plead guilty to a lesser charge or a plea-to-the-charge recommendation. If a defendant does not accept the first offer, it is possible that the next offer, if made, will include a higher charge, or include the same charge with a more punitive sentence. For example, if a defendant does not accept the plea-to-the-charge recommendation, then the next recommendation may include four days of community service, instead of two days, as initially proposed.

2. *Does defendants' race influence their likelihood to receive a custodial sentence offer (versus a non-custodial offer)?*

Offers may also include sentencing recommendations. These can include: a recommendation of jail time, time served in pretrial detention, restitution, fine, and community service, among others. Custodial plea offers and offers including time served will be considered as more punitive sentence offers, although they may not always be perceived as such. For example, some defendants may view a fine and community service as a less desirable outcome compared to time served (Wood & May, 2003).

6.4.B.ii. Misdemeanor Sample Description

The sample consisted of 400 white (31.8%), 399 black (31.8%), 399 Latino (31.8%) and 58 Asian (4.6%) defendants (total $n = 1,256$). The sample includes all Asian defendants from the population of data, and blacks and Latinos were under sampled to create groups of comparable sample sizes.

Gender, Age, Residence Borough:

Males were 94.3% of the sample (white – 94.0%, black – 94.5%, Latino – 94.7% and Asian – 93.1%). Defendants’ age ranged from 16 to 77, with a mean age of 31.3 years, and median age of 29 years. On average, black defendants were older ($M = 33.7$), compared to whites ($M = 31.8$), Latinos ($M = 29.1$) and Asians ($M = 26.7$). The majority of defendants (60.1%) resided in Manhattan (white – 49.7%, black – 58.6%, Latino – 72.5% and Asian – 37.8%).

Employment and Income:

While 54.6% of the defendants were not employed, 38.3% had a job (white – 44.1%, black – 37.8%, Latino – 35.2% and Asian – 25.0%) and 7.1% were students (white – 5.4%, black – 7.2%, Latino – 8.2% and Asian – 10.7%).¹³⁶ Asian and white defendants resided in relatively affluent areas (the *median* of the median household income in their zip code were \$54,339 and \$52,931, respectively), compared to Latinos and blacks (\$35,932 and \$34,663, respectively).

Prior Record:

There were marked differences in defendants’ prior record. While overall most defendants had at least one prior arrest ($M = 4.2$, $SD = 7.2$), on average, blacks had more prior arrests ($M = 6.1$, $SD = 10.2$), compared to Latinos ($M = 4.3$, $SD = 5.6$), Asians ($M = 2.5$, $SD = 4.6$) and whites ($M = 2.3$, $SD = 4.5$). The same was true with respect to prior prison sentence (black, $M = 0.16$, $SD =$

¹³⁶ These percentages are based only on 784 (62.3%) of cases for which data were available. Data on employment are missing for 37.7%.

0.4; Latino, $M = 0.11$, $SD = 0.4$; white, $M = 0.05$, $SD = 0.3$; and Asian, $M = 0.05$, $SD = 0.2$) and prior violent felony convictions (black, $M = 0.16$, $SD = 0.4$; Latino, $M = 0.14$, $SD = 0.4$; white, $M = 0.05$, $SD = 0.2$; and Asian, $M = 0.03$, $SD = 0.2$). The table below describes all prior record variables by race.

Table 30. Defendants with One or More Prior Arrest, Felony Arrest, Conviction, Felony Conviction, Prison Sentence, Jail Sentence and Non-Custodial Sentence within Race – for the Misdemeanor Marijuana Sample

	Any Prior Arrest (%)	Prior Felony Arrest (%)	Any Prior Conviction (%)	Prior Felony Conviction (%)	Prior Violent Convictions (%)	Prior Prison Sentence (%)	Prior Jail Sentence (%)	Prior Non-Custodial Sentence (%)
White	50.0	20.8	41.0	7.8	4.5	3.8	17.0	18.8
Black	77.8	45.6	74.3	27.2	13.8	13.5	43.6	47.9
Latino	77.7	42.1	64.9	21.6	11.3	9.5	29.6	32.6
Asian	56.9	20.7	44.8	6.9	3.4	5.2	13.8	17.2

Charges:

Overall, blacks were charged with fewer offenses but they were more likely to be charged with a Class A misdemeanor, instead of a Class B misdemeanor. A greater percentage of blacks (18.2%) were charged with a Class A misdemeanor, compared to Asians (15.5%), Latinos (14.5%) and whites (12.8%).

On average, whites and Asians had slightly more charges at both screening and case disposition (white, $M = 1.5$ screening charges & $M = 1.9$ disposition charges; Asian, $M = 1.6$ screening charges & $M = 2.1$ disposition charges), compared to Latinos ($M_s = 1.4$ & 1.8, respectively) and blacks ($M = 1.4$ & 1.6, respectively). A greater percentage of black defendants had just one arrest charge (76.1%), followed by Latinos (73.9%), whites (67.0%) and Asians (55.2%).¹³⁷ At screening, the highest percentage of Latinos had only one charge (70.2%),

¹³⁷ Given that all cases are selected by top charge, all other charges are less serious than marijuana misdemeanor.

although similar to that of black defendants (69.3%). At disposition, the highest percentage of blacks (43.4%) had only one charge.

Figure 26. Percentage of Defendants with One, Two, Three, Four or Five Arrest Charges for the Misdemeanor Marijuana Sample

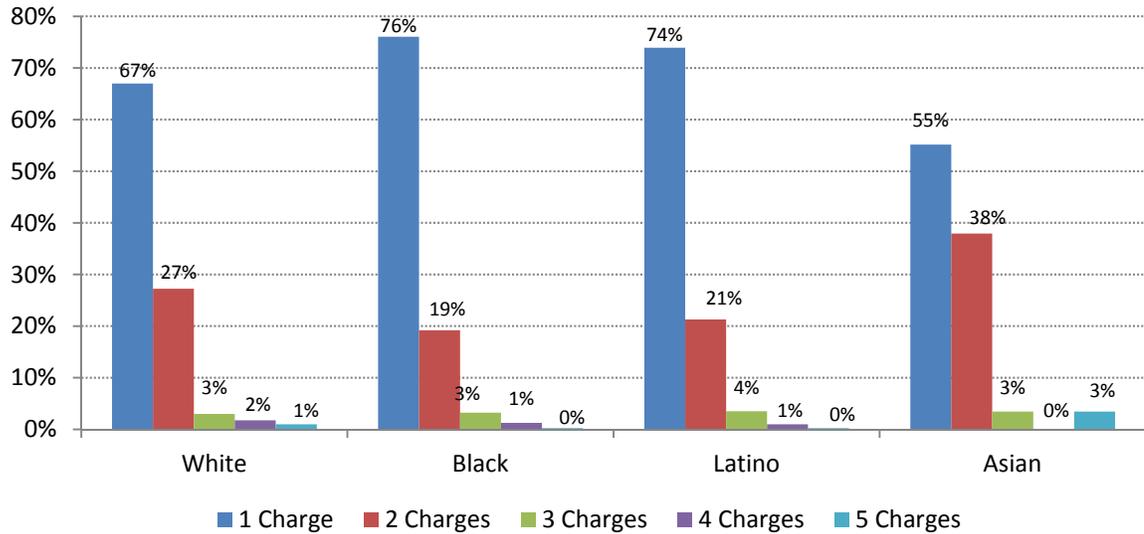


Figure 27. Percentage of Defendants with One, Two, Three, Four or Five Screening Charges for the Misdemeanor Marijuana Sample

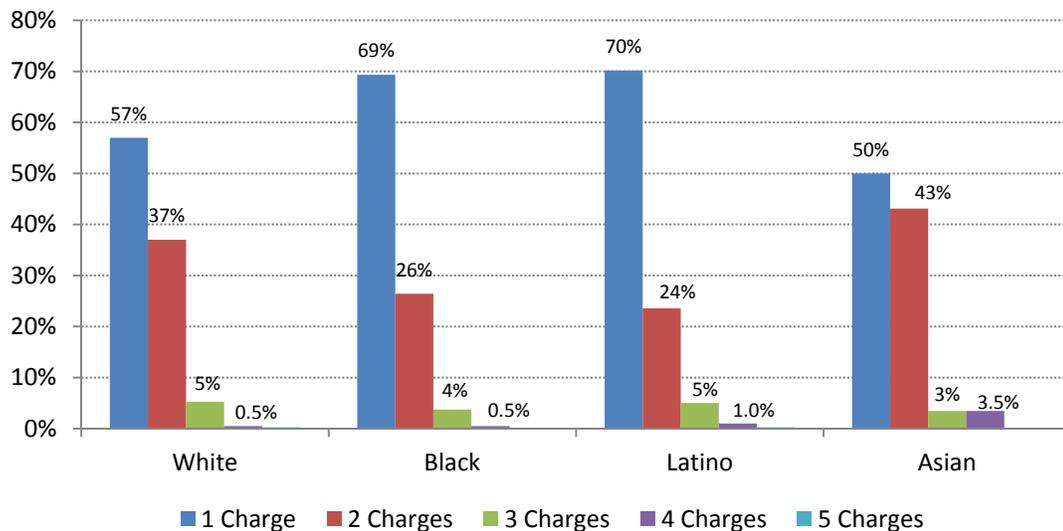
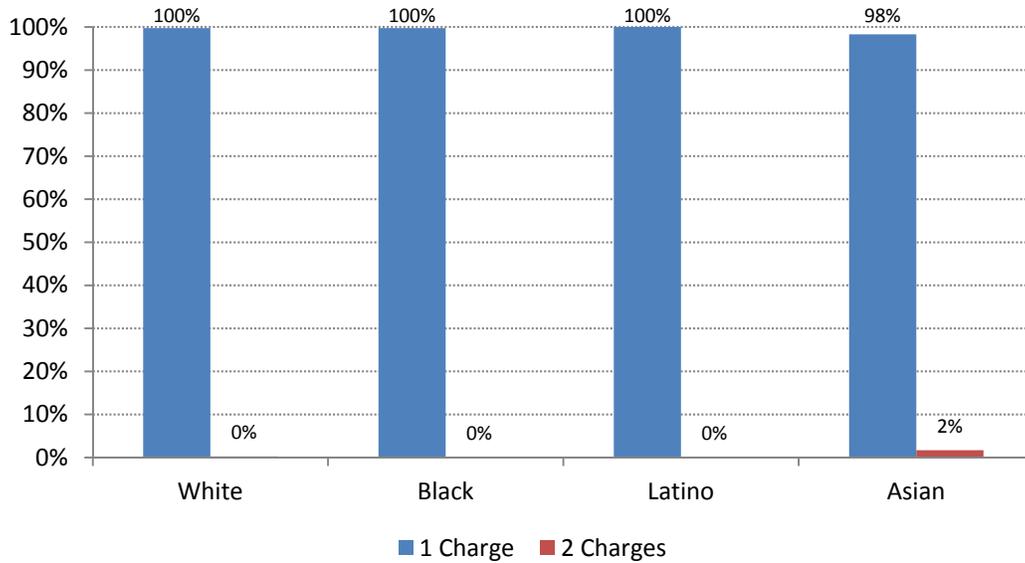


Figure 28. Percentage of Defendants with One or Two Plea Charges for the Misdemeanor Marijuana Sample



Arrest Circumstances:

Data show important differences about defendants’ activities at the time of arrest as well as police activities leading to arrest. While a greater percentage of whites were described as using drugs at the time of arrest (44% whites, 33% Asians, 32% blacks and 22 Latinos), Latinos were described as most likely to be *buying* drugs (27% Latinos, 19% Asians, 19% whites and 17% blacks) and blacks were described as most likely to be *selling* drugs (15% blacks, 12% Latinos, 12% Asians and 9% whites). Finally, greater percentages of Latinos (26%) and blacks (23%) were described as possessing, but not in the process of using drugs, compared to Asians (19%) and whites (18%) (see Table 31).

Table 31. Defendant’s Activity Leading to Arrest for the Misdemeanor Marijuana Sample¹³⁸

	Observe Drug Use (%)	Observe Sale - Buyer (%)	Observe Sale - Seller (%)	Observe Sale - Other Role (%)	Observe Drugs - No use (%)	Predicate Stop (%)	Furtive Movements (%)	Other (%)
White	43.9	18.6	8.8	1.3	18.0	7.5	0.5	1.8
Black	32.1	17.2	15.4	2.3	22.6	3.9	1.8	4.6
Latino	21.9	26.6	12.3	2.0	25.6	7.3	2.0	2.3
Asian	32.8	19.0	12.1	0	19.0	6.9	0	10.3

In terms of the drug amount, there were no differences by race. The vast majority of blacks (89%), whites (88%), Latinos (86%) and Asians (74%) had less than 3.5 grams (1/8 oz.) of marijuana.¹³⁹ Furthermore, there were no marked differences with regard to whether currency was recovered or not, although blacks were slightly more likely to have currency recovered (11.6%), compared to Latinos (9.8%), whites (7.5%) and Asians (6.9%).¹⁴⁰ Among those who had currency recovered, on average, whites had much larger amounts recovered ($M = \$1,000$, $median = \$260$), compared to that for Latinos ($M = \$374$, $median = \$138$), blacks ($M = \199, $median = \$93$) and Asians ($M = \143, $median = \$115$). Finally, nearly equal percentages of defendants from different racial groups made statements at the time of arrest (33% of whites, 33% of blacks and 33% of Latinos), although Asians were more likely to make statements (41%).¹⁴¹

¹³⁸ This table explains what leads the police officer to think that something is going on. Categories:

- Observe Use – if the officer sees the defendant in the act of ingesting the drugs.
- Observe Sale–Buyer – the officer observes a buy, which might be either hand to hand or exchange of small objects.
- Observe Sale–Seller – same as observe buy but reverse.
- Observe Drugs – did the police see drugs but no activity (characteristic packaging of drugs etc., but not just seeing the corner of a zip lock bag).
- Predicate Stop – the initial reason for the stop is something besides drugs.
- Furtive Movements – any movements or behavior that look suspicious. The notes can read “acting suspiciously”, “strange moves”, or “looking nervous.”

¹³⁹ Note that drug weight information was missing for 41.4% of case files reviewed.

¹⁴⁰ Included only if found off of the individual defendant, or if it is a search warrant and is found in the car or house. It does not include if the currency was found on another person.

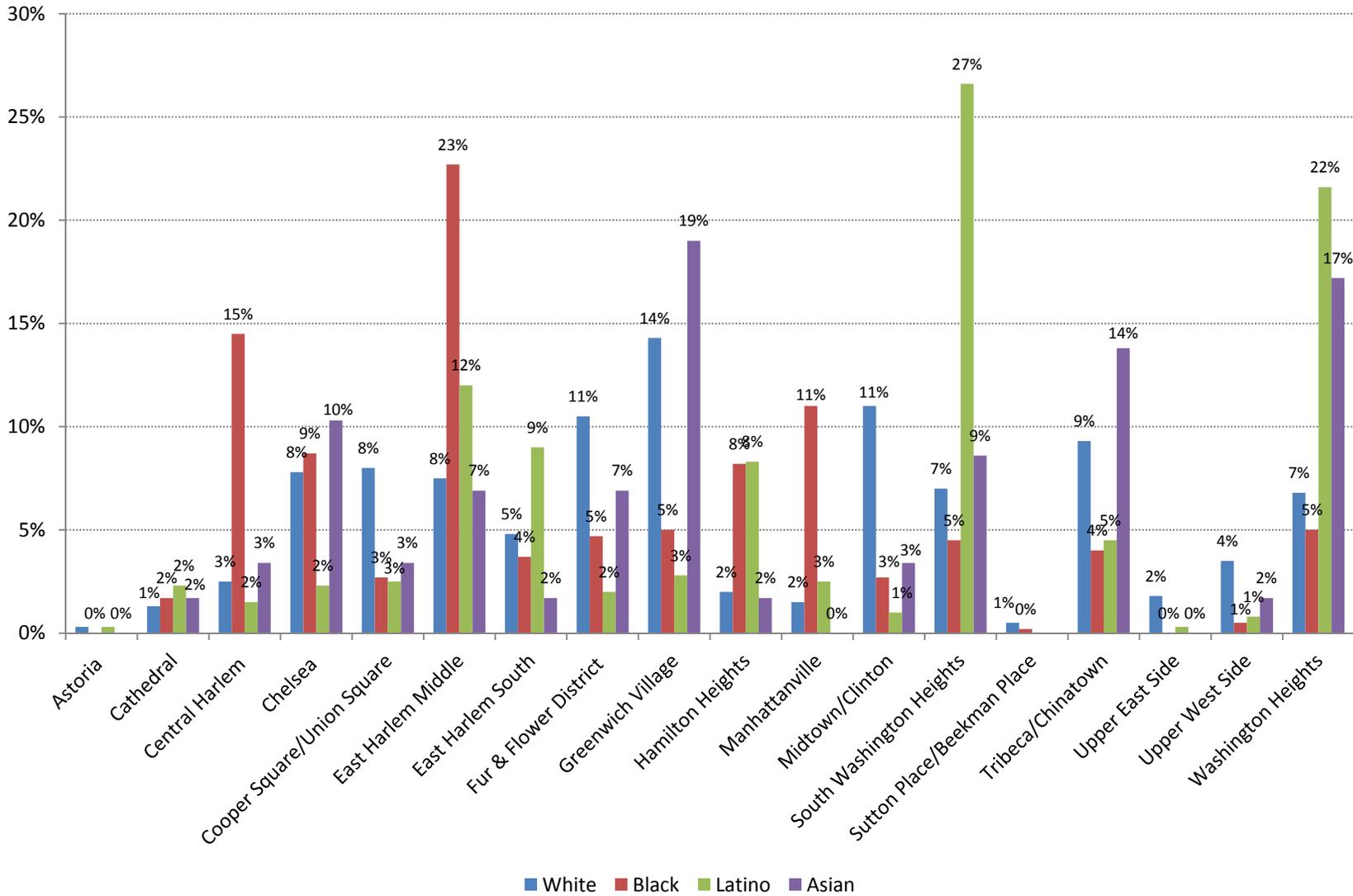
¹⁴¹ Statements include anything the defendant said, unless it is a pure assertion of constitutional rights.

The sample consisted of cases for which arrests were mainly made in Manhattan. The highest percentages of whites and Asians were arrested in Greenwich Village (14% and 19%, respectively), the highest percentage of blacks in East Harlem- Middle (23%), and the highest percentage of Latinos in South Washington Heights (27%) (see Table 32 and Figure 29).

Table 32. New York City Neighborhood of Arrest for the Misdemeanor Marijuana Sample

	<i>n</i>	White (%)	Black (%)	Latino (%)	Asian (%)
Astoria	2	0.3	0	0.3	0
Cathedral	22	1.3	1.8	2.3	1.7
Central Harlem	76	2.5	14.5	1.5	3.4
Chelsea	80	7.8	8.5	2.3	10.3
Cooper Square/Union Square	55	8.0	2.8	2.5	3.4
East Harlem Middle	173	7.5	22.8	12.0	6.9
East Harlem South	71	4.8	3.8	9.0	1.7
Fur & Flower District	73	10.5	4.8	2.0	6.9
Greenwich Village	99	14.3	5.0	2.8	19.0
Hamilton Heights	75	2.0	8.3	8.3	1.7
Manhattanville	60	1.5	11.0	2.5	0
Midtown/Clinton	60	11.0	2.5	1.0	3.4
South Washington Heights	157	7.0	4.5	26.6	8.6
Sutton Place/Beekman Place	3	0.5	0.3	0	0
Tribeca/Chinatown	79	9.3	4.0	4.5	13.8
Upper East Side	8	1.8	0	0.3	0
Upper West Side	20	3.5	0.5	0.8	1.7
Washington Heights	143	6.8	5.0	21.6	17.2
Total	1,256	100.0	100.0	100.0	100.0

Figure 29. New York City Neighborhood of Arrest for the Misdemeanor Marijuana Sample (percent within race)



The majority of defendants, regardless of race, was arrested outdoors. Compared to other groups, a greater percentage of blacks was arrested indoors (10%), and a smaller percentage of blacks was arrested in a car (6%; see Table 33).

Table 33. Arrest Occurrence Location (Indoor, Outdoor or Inside Car) for the Misdemeanor Marijuana Sample ¹⁴²

	Indoor (%)	Outdoor (%)	Inside Car (%)	Total (%)
White	5.3	83.7	11.1	100
Black	10.3	84.1	5.5	100
Latino	8.3	80.7	11.1	100
Asian	8.8	77.2	14.0	100

The vast majority of arrests happened as a result of a street encounter with the police (68.9%), whereby the police officer came into contact with defendants randomly in public. Whites appeared particularly likely to be arrested as a result of street encounters with the police (79%), while arrests of black defendants occurred as a result of undercover police officers attempting to buy drugs (10% of blacks, as compared to 6% Latinos, 5% Asians and 4% Whites). Asians were particularly likely to be arrested as a result of an “observation point” and prior investigation (24% and 5%, respectively). Finally, the greatest percentage of “vertical sweep” arrests was among Latino defendants (3%; see Table 34).

¹⁴² The location of a defendant when an arresting officer first became interested.

Table 34. Police Officer’s Activity Leading to Arrest for the Misdemeanor Marijuana Sample (percent within race)¹⁴³

	Street Encounter (%)	Undercover B&B (%)	Observation Point (%)	Prior Investigation (%)	Vertical Sweep (%)	Responding to Call (%)	Confidential Informant (%)	Other (%)	Not Known (%)
White	78.5	4.3	10.3	2.3	0.8	1.3	0	1.8	1.0
Black	65.9	9.5	14.3	1.5	1.3	1.3	0.3	4.0	2.0
Latino	63.9	5.8	22.8	1.0	3.0	1.0	0.3	1.8	0.5
Asian	58.6	5.2	24.1	5.2	1.7	1.7	0	3.4	0

Drugs were recovered on white defendants more often when they had drugs in open view (42%) , while for black defendants, it was after an attempt to drop or hide the drugs (23%), and for Latino defendants, after a search not specified as search incident to arrest (SILA) (25%; see Table 35).

¹⁴³ This table explains how the police went about arresting the defendant.

Categories:

- *Street Encounter* – the police officer is in public, and comes into contact with defendant randomly.
- *Undercover B&B* – undercover officer buys or attempts to buy narcotics from defendant or those with whom defendant is arrested.
- *Observation Point* – one PO is observing area from a fixed location. When he sees suspicious activity radios to his field team; the team conducts actual stops, investigations and arrests.
- *Prior Investigation* – An investigation into the defendant or other individuals related to the case began prior to the arrest. Arrest occurred as a result of investigation.
- *Vertical Sweep* – vertical patrol of building, either NYCHA (public) housing or private homes participating in the Trespass Affidavit Program.
- *Responding to Call* – police officer comes into contact with defendant as a result of a civilian complaint or radio run from another officer.
- *Confidential Informant* – police officer obtained information from a confidential informant who led him to target the defendant, area where defendant was encountered or group that defendant was with.
- *Other* – specific information is recorded about origination of a police officer’s involvement, but does not fit into any of the other listed categories.

Table 35. Police Officer’s Activity Leading to the Drug Recovery for the Misdemeanor Marijuana Sample (percent within race)¹⁴⁴

	Open View (%)	Search (not SILA) (%)	Attempt to Hide/Drop (%)	Voluntary Def. Produce (%)	SILA (%)	Undercover Recovered (%)	Pat Down– Stop and Frisk (%)	On Other (%)	Other (%)	Not Known (%)	No Drugs Found (%)
White	42.3	21.3	18.8	1.8	5.8	5.5	0.8	1.0	0.8	2.3	0
Black	31.6	21.1	23.3	1.0	5.3	9.8	0.8	4.3	0.8	2.0	0.3
Latino	34.6	24.8	21.3	1.3	3.0	6.0	0.3	7.8	0.3	0.5	0.3
Asian	36.2	22.4	17.2	3.4	3.4	10.3	0	3.4	3.4	0	0

Among a small percentage of cases which included information about defendants’ identification by a witness, which in most cases was a police officer in a “buy and bust” operation, a greater percentage of Latinos (25%) and Asians (22%) were identified through “show-ups”, i.e., when a suspect is individually shown to a witness (also includes descriptions of a “confirmatory ID”), compared to blacks (17%) and whites (14%; see Table 36).

Table 36. Identification Procedure of Defendant as a Suspect for the Misdemeanor Marijuana Sample

	No ID (%)	Line-up (%)	Show-up	Not Known (%)	Total (%)
White	85.0	0.5	14.3	0.3	100
Black	82.5	0.3	16.8	0.5	100
Latino	73.2	1.5	25.3	0	100
Asian	75.9	0	22.4	1.7	100

¹⁴⁴ The table explains how the drugs came to be in the possession of the arresting officer once the individual was stopped. Categories:

- *Open View* – this means that the drugs were just out in plain view or visible in the defendant’s hand.
- *Search* – when something is on the defendant’s body but disclosed, including in a closed hand.
- *Defendant attempt to hide/drop* – defendant drops drug on the ground in an attempt to hide it. If police have seen the defendant interacting with the drugs and the defendant tries to get rid of them by leaving them in the open and walking away.
- *Voluntary Def Produce* – defendant actually pulls the drug out (not when the police officer asks if the defendant has drugs and then searches him).
- *SILA* – search incident to lawful arrest – selected when the file actually says “SILA”, or if it says “arrested” and then the search happens.
- *Undercover Recovered* – if the undercover got it during the buy and bust.
- *Pat down – stop & frisk*
- *On other* – if it is found on the other person, or the other person is the one who attempts to hide it or drop it.

Criminal Defense:

The majority of defendants were represented by the Legal Aid Society (65.8%), followed by the New York County Defender Services (15.0%), counsel appointed under 18(b) (12.3%), the Neighborhood Defender Service of Harlem (4.0%), and private counsel (2.9%; see Table 37).

Table 37. Defense Counsel Type for the Misdemeanor Marijuana Sample (percent within race)

	Legal Aid (%)	Appointed under 18B (%)	NY Defender Services (%)	Neighborhood Defender Service (%)	Private Counsel (%)	Not known/ Not represented (%)
White	65.0	11.8	10.3	1.0	4.3	7.8
Black	60.4	11.5	16.5	5.8	1.3	4.5
Latino	59.4	11.3	14.3	5.0	2.3	7.8
Asian	53.4	10.3	19.0	0	5.2	12.1

6.4.B.iii. Charge Offer: Plea-to-a-lesser-Charge

To return to the first of the two main questions posed earlier, we wanted to examine whether in misdemeanor marijuana sample cases, defendants’ race influences their likelihood to receive reduced charge offers. We coded a plea-to-a-lesser charge offer as “0” and no such offer as “1” in the logistic regression analyses described below and shown in Table 41. We controlled for relevant factors for which data were available, as described below.

We ran five models. The first included only *race* to show the contribution of this predictor on the charge offer recommendation without controlling for any other explanation. The second model included *race* and other control variables; variables for which may also be predicting charge offer, such as criminal justice factors like the charge imposed on defendants at screening, which may limit the offer ADAs are legally allowed to make. The third model adds *median household income* to the list of control variables to examine what this does to the contribution of *race* to the outcome. This is also useful to isolate the impact of defendants’ financial status (“median household income in their home zip code” was used as a proxy) from

their race and to address a common criticism that outcomes are often driven by socio-economic factors rather than race (i.e., it is defendants' socio-economic status, and not necessarily their race, that triggers disparities in the criminal justice system). The fourth and fifth models excludes *prior arrest* (Model 4) and then excludes both prior prison sentence and prior violent felony convictions (Model 5) to assess how these factors influence *race* and its contribution to the outcome. Essentially, our goal was to examine the outcome of charge offer in every possible way to measure the impact on race and its contribution to the model.

For the race variable, we chose “white” as the reference category to examine how other racial groups were treated in comparison to white defendants. This choice was motivated by a long-running discourse about the differential treatment of minorities, compared to whites. Next we controlled for: whether defendants were charged (top charge) with a Class A (coded as “1”) or Class B misdemeanor (coded as “0” being the reference category); the number of screening charges (a positive continuous value, with an increase in value denoting an increase in number of charges); and whether the plea offer was changed between the initial offer and the final plea (coded as “1” indicating that the plea *did* change) or not (coded as “0” being the reference category). We also controlled for defendant’s age (continuous) and gender (male = “1”) and the median household income in defendants’ resident zip code (in one thousand US dollars).

For prior record, while we had a choice of various prior arrest and conviction variables (see Table 30), due to high multicollinearity among these variables, we chose to include the *number of prior arrests*, the *number of prior prison sentences* and the *number of prior violent felony convictions*. These variables were positively continuous (i.e., an increase in the value is equivalent to an increase in the number of arrests, sentences or convictions).

The models also controlled for defendants' activity leading to arrest (see Table 31). It examines the influence that the observed drug *use* (coded as "0" being the reference category) has on the plea offer decision compared to the observed drug *sale* (coded as "1"), or to some "other" circumstance, which includes "observe drug but not use", "predicate stop", "furtive movements" and "other" (all combined and coded as "1"). Additionally, the model controlled for the police activity that ultimately led to the drug recovery (see Table 34) with possible categories being "non-search" (coded as "0" being the reference category) or "search" (coded as "1"), or "other" (coded as "1"). Furthermore, we included variables on: whether currency was recovered (coded as "1") or not (reference category); whether the offense occurred out of doors (coded as "1") or indoors and in a car (coded as "0" being the reference category); and whether a defendant was identified by a witness (most commonly by police officer in so-called undercover buy and busts; coded as "1") or not (coded as "0" being reference category).

Finally, for the criminal justice professionals' characteristics, we included in the model: ADA case load at the time of criminal court arraignment (a positive continuous variable), their gender and race ("white" reference category); whether the arrest was made by a narcotics police officer¹⁴⁵ (coded as "1") or not (coded as "0" being the reference category); and whether a defendant was represented by an institutional provider (coded as "1" to include NY Defender Services, Neighborhood Defender Service, and Legal Aid), 18(b) (also coded as "1"), or a private counsel (coded as "0", being the reference category).

¹⁴⁵ Narcotics officers are police officers who specialize in preventing illegal drug use and distribution.

Figure 30. Charge Offer Type for the Misdemeanor Marijuana Sample (n = 1,256) (percent within race)

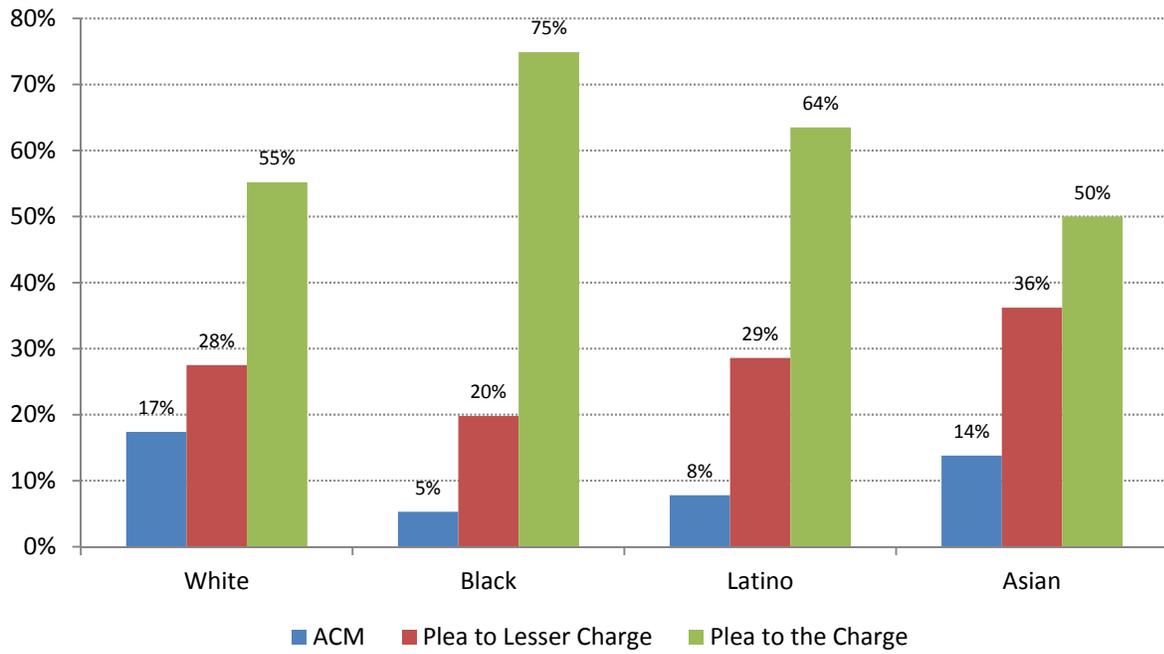


Table 38. Logistic Regression to Predict Charge Offer for the Misdemeanor Marijuana Sample (0 = plea-to-a-lesser-charge offer, 1 = no reduced charge offer)¹⁴⁶

Predictor	Model 1:	Model 2:	Model 3:	Model 4:	Model 5:
	<i>With Race Only</i>	<i>With Race, No SES</i>	<i>With Race & SES</i>	<i>No Prior Prison or Violent Convictions</i>	<i>No Prior Arrest</i>
	Odds Ratio (Standard Error of Coefficient ¹⁴⁷)				
Defendant Race (1 = Black)	2.400 (.38)***	1.459 (.29) †	1.317 (.28)	1.481 (.32) †	1.624 (.30)**
Defendant Race (1 = Latino)	1.409 (.22)*	0.976 (.20)	0.883 (.18)	0.975 (.20)	1.143 (.22)
Defendant Race (1 = Asian)	0.808 (.22)	0.897 (.30)	0.913 (.34)	0.861 (.28)	0.894 (.31)
Screening Charge Category and Class (1 = A misdemeanor)	-	2.173 (.59)**	2.157 (.59)**	2.137 (.59)**	2.368 (.63)***
Number of Charges at Screening (positive continuous)	-	1.028 (.14)	1.031 (.14)	1.039 (.14)	1.028 (.13)
Plea Offer Changed btw Initial Offer and Final Plea (1=Yes)	-	6.473 (1.0)***	6.550 (1.0)***	6.472 (1.0)***	6.835 (1.0)***
Defendant Age (in years)	-	1.043 (.01)***	1.042 (.01)***	1.044 (.01)***	1.046 (.01)***
Defendant Gender (1 = Male)	-	1.291 (.38)	1.329 (.39)	1.411 (.42)	1.417 (.42)
Median Household Income in D's Zip Code (in thousands)	-	-	0.995 (.003) †	0.995 (.003) †	0.994 (.003)*
Prior Arrest (positive continuous)	-	1.181 (.05)***	1.178 (.05)***	1.197 (.06)***	-
Prior Prison Sentence (positive continuous)	-	3.291 (1.8)*	3.356 (1.9)*	-	4.143 (2.1)**
Prior Violent Felony Conviction (positive continuous)	-	2.189 (.79)*	2.256 (0.8)*	-	2.779 (.90)**
D's Activity Before Arrest (1 = Observed sale)	-	1.299 (.30)	1.275 (.29)	1.282 (.29)	1.227 (.27)
D's Activity Before Arrest (1 = Other)	-	1.323 (.31)	1.319 (.31)	1.384 (.32)	1.318 (.31)
Means of drug recovery (1 = Non-search (e.g., Open))	-	1.593 (1.2)	1.505 (1.2)	1.710 (1.3)	1.317 (1.0)
Means of drug recovery (1 = Other (e.g., Search warrant))	-	2.352 (1.8)	2.229 (1.8)	2.566 (2.0)	1.759 (1.4)
Currency Recovered (1= Yes)	-	3.843 (1.9)**	3.792 (1.9)**	3.839 (1.9)**	4.062 (2.1)**
Offense Occurrence Location (1 = Outdoor)	-	0.935 (.24)	0.960 (.26)	0.964 (.25)	1.080 (.28)
Identification of Defendant (1 = ID was made)	-	0.736 (.14) †	0.743 (.15)	0.731 (.14)	0.731 (.14)
Number of ADAs' Open Cases at ARC	-	0.999 (.001)	0.999 (.001)	0.999 (.001)	1.000 (.001)
ADA Gender (1 = Male)	-	1.130 (.21)	1.132 (.20)	1.132 (.20)	1.143 (.21)
ADA Race (1 = Black)	-	0.909 (.19)	0.942 (.19)	0.954 (.19)	0.998 (.19)
ADA Race (1 = Latino)	-	1.263 (.42)	1.294 (.43)	1.415 (.48)	1.131 (.35)
ADA Race (1 = Asian)	-	1.543 (.45)	1.523 (.44)	1.607 (.43)	1.360 (.41)
Narcotics Officer made Arrest (1 = Yes)	-	0.970 (.21)	0.984 (.21)	0.985 (.20)	1.025 (.21)
Defense Counsel Type (1 = Institutional Provider)	-	1.426 (.76)	1.353 (.75)	1.380 (.78)	1.368 (.74)

¹⁴⁶ Note that odds ratios are not the measures of relative risk, and they typically exaggerate the effect size compared to relative risk. If the odds ratio is greater than 1.0, then a comparison group (in this case, blacks, Latinos and Asians), are more likely to receive the plea-to-the-charge recommendation, and if the value is less than 1.0, then they are less likely to receive this recommendation.

¹⁴⁷ Robust standard errors were calculated to account for clustering that occurs for data entered for median household income. Since this variable was created based on the zip code in which the defendants live, many cases are assigned the same value on annual income and so variation across defendants is underestimated. Robust standard errors adjust for this underestimation.

Table 38. Logistic Regression to Predict Charge Offer for the Misdemeanor Marijuana Sample (0 = plea-to-a-lesser-charge offer, 1 = no reduced charge offer)¹⁴⁶

	Model 1: <i>With Race Only</i>	Model 2: <i>With Race, No SES</i>	Model 3: <i>With Race & SES</i>	Model 4: <i>No Prior Prison or Violent Convictions</i>	Model 5: <i>No Prior Arrest</i>
Predictor	Odds Ratio (Standard Error of Coefficient ¹⁴⁷)				
Defense Counsel Type (1 = 18(b))	-	2.138 (1.2)	1.986 (1.2)	2.241 (1.4)	1.928 (1.1)
Constant	-	0.022 (.02)***	0.032 (.03)***	0.023 (.02)***	0.037 (.04)***
<i>Pseudo R²</i>	.0237	.2949	.2976	.2828	.2615
<i>-2 Log-likelihood</i> ¹⁴⁸	1,591.28	973.64	969.94	990.36	1,019.78
<i>Number of Observations</i>	1,246	1,091	1,091	1,091	1,091

***p ≤ .001, ** p ≤ .01, * p ≤ .05, † < .10.

¹⁴⁸ Smaller values of the -2 log-likelihood statistic indicate better-fitting statistical models. Different models can be compared by looking at the difference between their -2 log-likelihoods.

Table 39. Logistic Regression to Predict Charge Offer: Misdemeanor Marijuana and Felony Drug Cases Combined (0 = plea-to-a-lesser-charge offer, 1 = no reduced charge offer)¹⁴⁹

Predictor	Model 1: <i>With Race Only</i>	Model 2: <i>With Race & SES</i>
	Odds Ratio (Standard Error of Coefficient)	Odds Ratio (Standard Error of Coefficient)
Defendant Race (1 = Black)	1.864 (.20)***	1.474 (.17)***
Defendant Race (1 = Latino)	1.465 (.16)***	1.301 (.33)
Defendant Race (1 = Asian)	1.108 (.30)	0.724 (.24)
Screening Charge Category and Class (1 = A misdemeanor)	-	1.866 (.10)***
Screening Charge Category and Class (1 = D felony)	-	0.164 (.04)***
Screening Charge Category and Class (1 = C felony)	-	0.202 (.03)***
Screening Charge Category and Class (1 = B felony)	-	0.178 (.03)***
Screening Charge Category and Class (1 = A felony)	-	0.269 (.11)***
Number of Charges at Screening (positive continuous)	-	1.031 (.05)
Plea Offer Changed btw Initial Offer and Final Plea (1=Yes)	-	4.567 (.30)***
Case was Indicted (1 = Yes)	-	1.048 (.54)
Sentence was Run Concurrent to Another Sentence (1 = Yes)	-	3.007 (.79)***
Defendant Age (in years)	-	1.016 (.003)***
Defendant Gender (1 = Male)	-	1.190 (.21)
Arrest Neighborhood (1 = Harlem/Morningside Heights & North)	-	0.809 (.06)**
Arrest Neighborhood (1 = Midtown to Financial District - West)	-	0.856 (.03)***
Arrest Neighborhood (1 = Midtown to Financial District - West)	-	1.355 (.04)***
Arrest Neighborhood (1 = Outside Manhattan)	-	0.652 (.07)***
Prior Arrest (positive continuous)	-	1.044 (.01)***
Prior Prison Sentence (positive continuous)	-	1.291 (.07)***
D's Activity Before Arrest (1 = Observed sale)	-	1.343 (.09)***
D's Activity Before Arrest (1 = Other)	-	1.327 (.19)*
Means of drug recovery (1 = Non-search (e.g., Open))	-	1.268 (.29)
Means of drug recovery (1 = Other (e.g., Search warrant))	-	1.203 (.28)
Currency Recovered (1= Yes)	-	1.875 (.25)***
Offense Occurrence Location (1 = Outdoor)	-	0.897 (.08)
Identification of Defendant (1 = ID was made)	-	1.283 (.24)
Narcotics Officer made Arrest (1 = Yes)	-	1.241 (.21)
Defense Counsel Type (1 = Legal Aid)	-	0.825 (.20)
Defense Counsel Type (1 = 18(b))	-	0.990 (.18)
Defense Counsel Type (1 = NY Defender Service)	-	1.171 (.37)

¹⁴⁹ Note that odds ratios are not the measures of relative risk, and they typically exaggerate the effect size compared to relative risk. If the odds ratio is greater than 1.0, then a comparison group (in this case, blacks, Latinos and Asians), are more likely to receive the plea-to-the-charge recommendation, and if the value is less than 1.0, then they are less likely to receive this recommendation.

Table 39. Logistic Regression to Predict Charge Offer: Misdemeanor Marijuana and Felony Drug Cases Combined (0 = plea-to-a-lesser-charge offer, 1 = no reduced charge offer)¹⁴⁹

Predictor	Model 1: <i>With Race Only</i>	Model 2: <i>With Race & SES</i>
	Odds Ratio (Standard Error of Coefficient)	Odds Ratio (Standard Error of Coefficient)
Defense Counsel Type (1 = Neighborhood Defender Service)	-	1.235 (.33)
Constant	0.903 (.07)	0.219 (.05)***
<i>Pseudo R²</i>	.0116	.1987
<i>-2 Log-likelihood</i>	2,993.93	2,149.16
<i>Number of Observations</i>	2,208	1,970

*** $p \leq .001$, ** $p \leq .01$, * $p \leq .05$, † $< .10$.

When examining the misdemeanor sample, we did not find statistically significant differences among racial groups when predicting charge offers. Although the odds ratios for black defendants, compared to whites, are quite large for all five models described in Table 38 (range from *odds ratio* = 1.46 for Model 2, to *odds ratio* = 1.62 for Model 5), the full model (Model 3) is not statistically significant, and Models 2 and 4 are only marginally significant. Only Model 5 (excluding prior arrest) showed that black defendants were 12% more likely to receive a plea-to-the-charge offer, at a statistically significant level (*odds ratio* = 1.62, $p < .01$).¹⁵⁰

We also noticed the relatively large standard errors of the regression coefficients, which indicate a lack of statistical power for detecting a statistically significant effect if one exists. In an attempt to support this argument, we combined the data from the misdemeanor case sample with the data collected from the felony drug case sample (described in subsection 5.4.C.) and ran regression analyses similar to Model 3 in Table 38 and reported in Table 39.¹⁵¹ The analyses of the misdemeanor and felony sample cases combined reveal that black defendants are 10% more likely to receive the plea-to-the-charge offer than similarly-situated white defendants, and this result is statistically significant (*odds ratio* = 1.47, $p = .001$). No statistically significant difference in odds was detected for Latinos and Asians compared to whites, even in the combined misdemeanor-felony sample.

Results from Model 3 (based on Table 38) of the misdemeanor marijuana sample for the remaining predictors are reported below. It is important to note that when “median household

¹⁵⁰ We used Hanushek and Jackson’s (1977) formula for calculating differences in probabilities from odds ratios: $(\text{odds}/\text{odds} + 1) - .50$.

¹⁵¹ Due to missing cases in the felony drug sample (19%) and not found to be missing completely at random, results should be interpreted with caution.

income” is excluded, the odds of “race” increase; the same occurs when “prior prison sentence” and “prior violent convictions” and, in particular, “prior arrest” are excluded from the model.¹⁵²

The analyses somewhat confirm the common notion that defendants’ socio-economic characteristics contribute to criminal justice outcomes, and if such characteristics are not considered, then the effect of race becomes particularly pronounced. When “median household income” was excluded from the analysis (see Table 38, Model 2), black defendants became even *less* likely to receive reduced charge offers.

The models included important control variables, many of which also served as statistically significant predictors of charge offer. Prosecutors are *least* likely to make a plea-to-a-lesser-charge offer, when:

- defendants’ top charge was a class A misdemeanor, rather than a class B misdemeanor (18% less likely);
- plea offer changed between an initial offer and the final plea (38% less likely);
- defendants were older;
- they lived in a poorer area (i.e., as the median household income in defendants’ zip code decreases, they were more likely to receive a punitive plea offer, $p = .10$);
- they had prior arrests, and particularly if they had served a prison sentence or been convicted of a violent felony offense in the past; and
- currency was recovered at the time of arrest.

¹⁵² This suggests a suppression effect may be occurring, with SES and prior record being possible suppressors.

Overall, the strongest predictors of plea offer are: (a) the plea offer change between the initial offer and the final plea¹⁵³ (*odds ratio* = 6.55, $p < .001$); (b) currency recovery (*odds ratio* = 3.79, $p < .01$); (c) prior prison sentence (*odds ratio* = 3.36, $p < .05$); (d) prior violent felony conviction (*odds ratio* = 2.26, $p < .05$); and the top screening charge was a class A as opposed to a class B misdemeanor (*odds ratio* = 2.16, $p < .01$).

In other words, defendants are particularly *less* likely to receive a reduced-charge offer when they received multiple offers, had been in prison in the past, had a violent felony conviction in the past, and currency was recovered from them at the time of arrest, after taking into account all variables in Table 38. While defendants' race does not serve as an equally strong predictor of charge offers, the analyses still suggested that, compared to white defendants, black defendants are *more* likely to receive more punitive outcomes (as they were less likely to receive a plea-to-a-lesser charge offer).

Interestingly, the "ADA's case load" does not seem to have an effect on the type of charge offers made (*odds ratio* = 0.999, $p > .05$), nor does other ADA characteristics, including their gender or race. Furthermore, "defense counsel" does not serve as a statistically significant predictor of charge offers. Finally, an arresting police officers' search procedure or other arrest circumstances of the case (e.g., arrest location, or whether identification was made by an eyewitness) do not seem to influence charge offers.

¹⁵³ This confirms the DANY's so called "best-offer-first" approach, in which ADAs are encouraged to make the best possible offer first to save investigative resources and increase defendants' likelihood to accept the plea. Therefore, if there are changes in plea offers, every additional offer will likely be more punitive.

6.4.B.iv. Sentence Offer: Custodial Sentence

The second question we intend to answer is: *does defendants' race influence their likelihood to receive a custodial sentence offer (versus a non-custodial offer) in misdemeanor marijuana cases?* When looking at simple percentages, a greater percentage of all defendants was offered a jail sentence (38%), followed by a fine (25%), time served (13%), conditional discharge/community service (12%) and ACD (7%).¹⁵⁴ When broken down by race, blacks were more likely to receive custodial sentence offers (52%), compared to Latino (37%), white (26%) and Asian (24%) defendants. Blacks were also the *least* likely to receive offers including fines: while only 17% of black defendants were made this offer, 33% of Asians, 30% of whites and 27% of Latinos received “fine” offers. Finally, there were no marked differences among racial groups in terms of receiving offers of “time served in detention,” although a slightly greater percentage of whites received “time served” (15%; see Figures 31 and 32).

For the purposes of running a multivariate logistic regression, we dichotomized this outcome of sentence offers into “custodial” versus “non-custodial” offers. As mentioned earlier in this section, “custodial sentence offers” also included offers of time served in pretrial detention. Both “time served” and “jail offers” are technically custodial offers, with the only difference being that the former included a period of incarceration before the offer, and then later after the offer. They are both viewed as more punitive sentence offers, compared to non-custodial alternatives (e.g., fine, conditional discharge/community service, etc.). Nevertheless, we ran two sets of analyses with the first one including “time served” in a custodial sentence

¹⁵⁴ Note that the sample only included misdemeanor marijuana cases disposed as guilty pleas. The population from which the sample was selected had much greater percentage of “no offers/unknowns” (see Figure 34 – Sentence Offer Type for Population). Based on the full dataset, we were not able to distinguish whether the missing information was because there were no plea offers, or because it was in fact missing. One of the advantages of collecting additional data from paper files was to verify the information on sentence offers and fill this gap. As you can see in Figure 35 – Sentence Offer Type for Sample, almost all defendants received some type of plea offer.

offer, and the second one excluding it. Because the number of defendants who received the “time served” offer was small ($n = 160$, 13% of the entire sample across all four racial groups¹⁵⁵), it was not possible to run a separate analysis of “time served.”

Here again, we ran five models and controlled for a host of variables listed in Table 40. The first model included only “race” as a predictor of sentence offer, the second model added control variables without “median household income”, the third model had all available controls added and the fourth and fifth model exclude prior prison sentence/prior violent felony conviction and prior arrest, respectively.¹⁵⁶ We compared the first two models to examine the contribution of “race” to predicting the sentence offer, while Models 3-5 were meant to assess how the influence of race changes as each social (“median household income”) or criminal justice (prior record) factor is removed. The analyses included similar control variables as with the “plea offer types” models described above.

¹⁵⁵ The sample was particularly small for Asian defendants ($n = 7$).

¹⁵⁶ Please see the rationale for composing these five models in the previous section on plea offers.

Figure 31. Sentence Offer Type for the Population of Misdemeanor Marijuana Cases ($n = 8,363$) (percent within race)

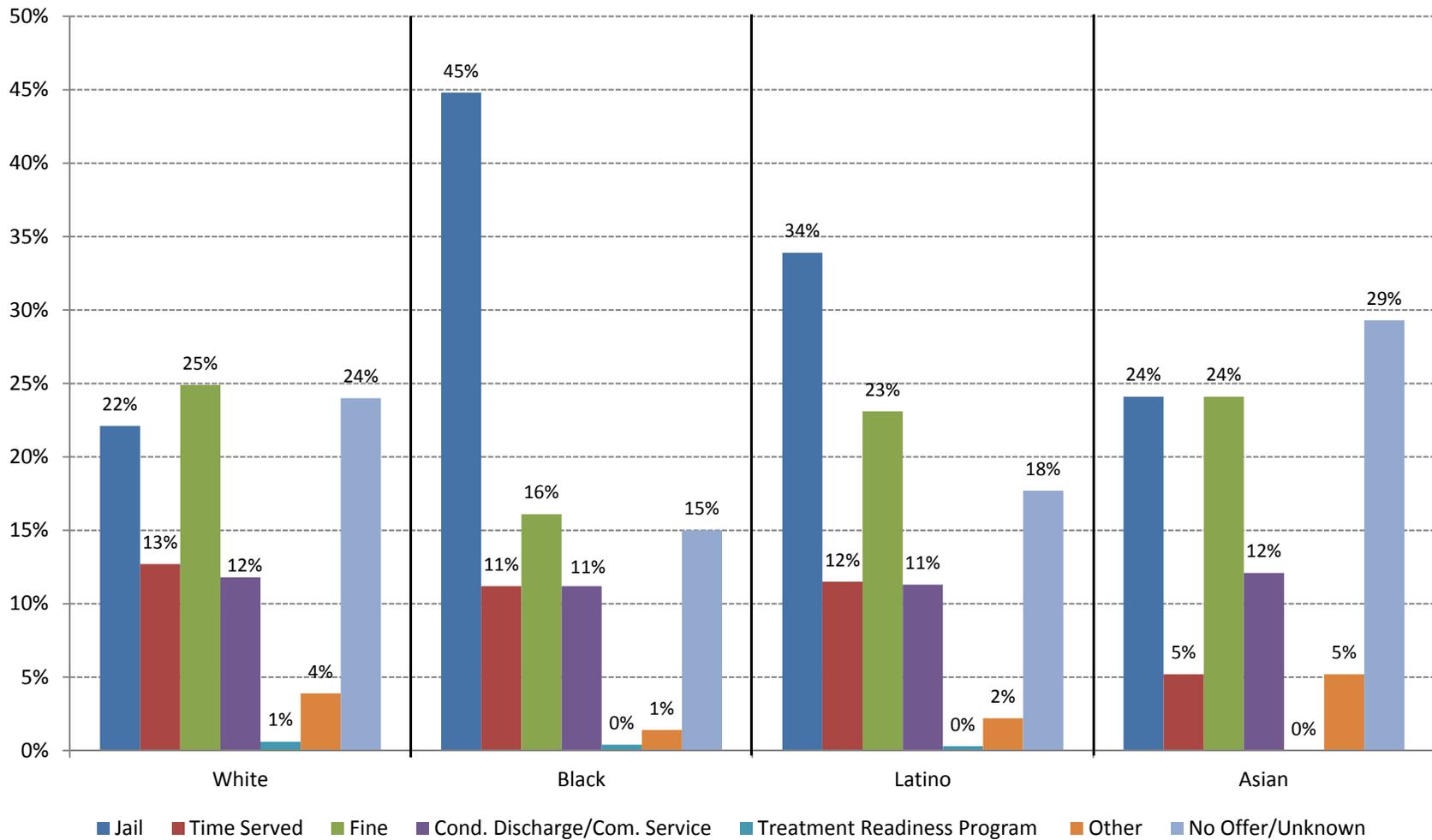


Figure 32. Sentence Offer Type for the Misdemeanor Marijuana Sample ($n = 1,256$) (percent within race)

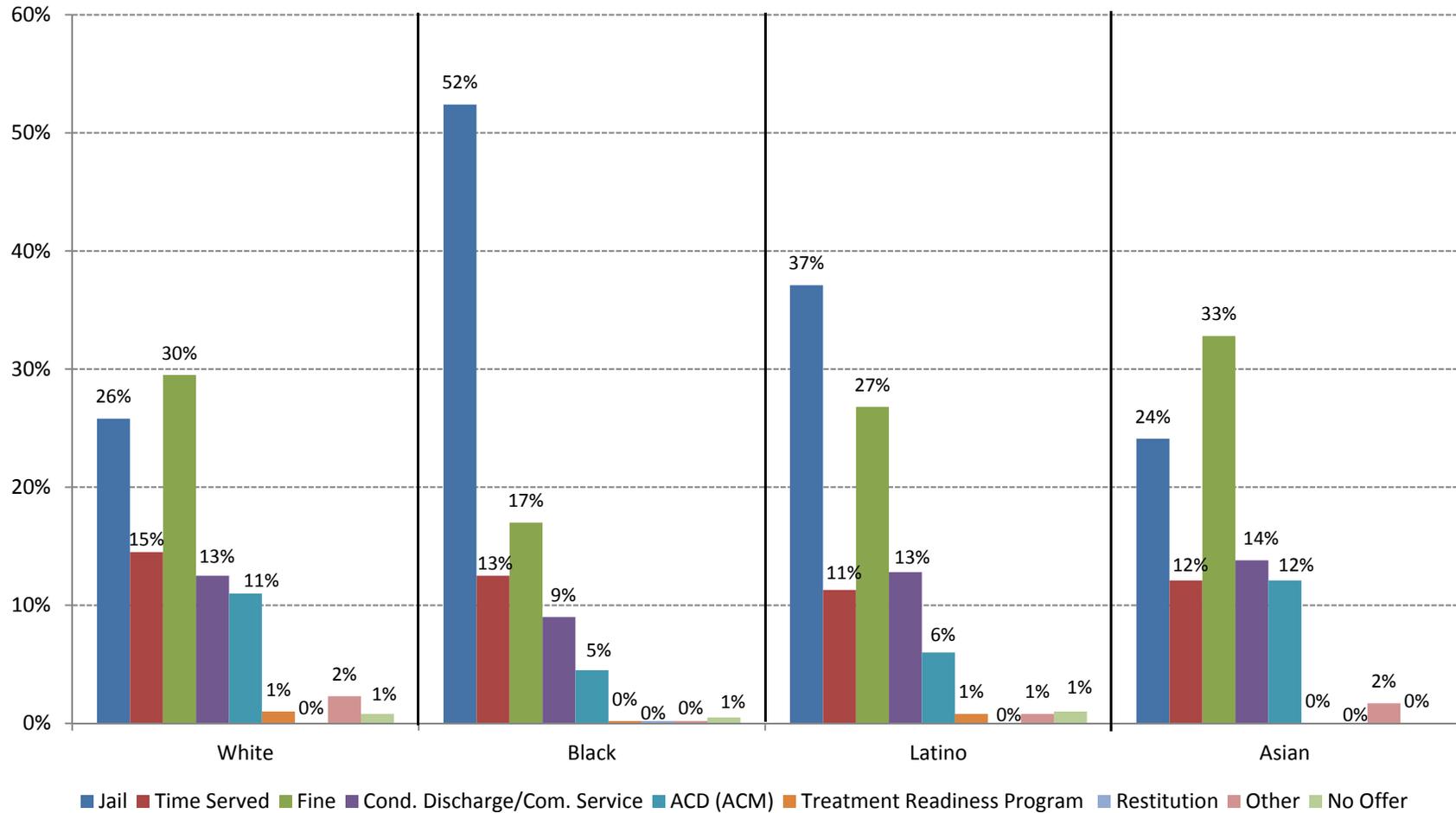


Table 40. Logistic Regression to Predict Custodial Sentence Offer for the Misdemeanor Marijuana Sample (0 = Non-custodial offer, 1 = Custodial offer, including “time served”)

Predictor	Model 1:	Model 2:	Model 3:	Model 4:	Model 5:
	<i>With Race Only</i>	<i>With Race, No SES</i>	<i>With Race & SES</i>	<i>No Prior Prison</i>	<i>No Prior Arrest</i>
	Odds Ratio (Standard Error of Coefficient)				
Defendant Race (1 = Black)	3.312 (.54)***	2.533 (.54)***	2.214 (.45)***	2.299 (.47)***	2.698 (.50)***
Defendant Race (1 = Latino)	1.732 (.26)***	1.593 (.37)*	1.409 (.32)	1.457 (.34)	1.852 (.39)**
Defendant Race (1 = Asian)	0.919 (.30)	1.293 (.58)	1.218 (.53)	1.256 (.54)	1.260 (.54)
Screening Charge 1 Offense Category and Class (1 = A Misdemeanor)	-	3.304 (1.1)***	3.247 (1.1)***	3.245 (1.0)***	3.557 (1.1)***
Number of Charges at Screening (positive continuous)	-	0.989 (.14)	1.002 (.15)	1.003 (.14)	1.009 (.13)
Plea Offer Changed Between Initial Offer and Final Plea (1 = Yes)	-	40.909 (12.6)***	40.551 (12.3)***	41.592 (12.4)***	37.152 (9.6)***
Defendant Age (in years)	-	1.032 (.01)**	1.031 (.01)**	1.035 (.01)**	1.039 (.01)***
Defendant Gender (1 = Male)	-	1.371 (0.76)	1.462 (.80)	1.513 (.83)	1.303 (.64)
Median Household Income in D’s Zip Code (in thousands)	-	-	0.993 (.003)*	0.993 (.003)*	0.992 (.004)*
Prior Arrest (positive continuous)	-	1.187 (.03)***	1.185 (.03)***	1.188 (.03)***	-
Prior Prison Sentence (positive continuous)	-	1.992 (.58)*	1.952 (.57)*	-	2.325 (.63)**
Prior Violent Felony Convictions	-	0.829 (.22)	0.824 (.22)	-	1.078 (.28)
	-	1.644 (.43)†	0.633 (.43)†	1.599 (.42)†	1.579 (.38)†
AO Activity Before D’s Arrest (1 = Targeted)	-				
D’s Activity Before Arrest (1 = Observed Sale)	-	0.821 (.29)	0.810 (.28)	0.794 (.26)	0.761 (.24)
D’s Activity Before Arrest (1 = Other)	-	0.929 (.22)	0.935 (.22)	0.928 (.21)	0.966 (.22)
Currency Recovered (1 = Yes)	-	1.846 (.64)†	1.789 (.62)†	1.832 (.61)†	1.797 (.64)
Offense Occurrence Location (1 = Outdoor)	-	1.402 (.31)	1.449 (.31)†	1.439 (.31)†	1.808 (.37)**
Identification of Defendant (1 = ID was made)	-	0.866 (.28)	0.875 (.23)	0.878 (.28)	0.893 (.26)
Number of ADAs’ Open Cases at ARC	-	1.003 (.001)***	1.003 (.001)**	1.003 (.001)**	1.003 (.001)***
ADA Gender (1 = Male)	-	0.970 (.17)	0.947 (.17)	0.935 (.16)	0.965 (.16)
ADA Race (1 = Black)	-	1.808 (.54)*	1.904 (.58)*	1.942 (.59)*	1.850 (.52)*
ADA Race (1 = Latino)	-	1.714 (.67)	1.769 (.70)	1.767 (.69)	1.449 (.55)
ADA Race (1 = Asian)	-	2.170 (.67)*	2.156 (.67)*	2.192 (.65)**	1.662 (.52)
Narcotics Officer made Arrest (1 = Yes)	-	1.011 (.23)	1.045 (.24)	1.031 (.24)	1.037 (.22)
Defense Counsel Type (1 = Institutional Provider)	-	1.510 (1.2)	1.453 (1.1)	1.510 (1.1)	1.210 (.73)
Defense Counsel Type (1 = 18(b))	-	2.977 (2.3)	2.852 (2.1)	3.009 (2.3)	2.315 (1.4)
Constant	0.363 (.05)***	0.000 (.000)***	0.001 (.001)***	0.000 (.001)***	0.001 (.001)***
<i>Pseudo R²</i>	0.0427	0.4333	0.4369	0.4327	0.3826
<i>-2 Log-likelihood</i>	1547.31	830.00	824.72	830.93	904.27
<i>Number of Observations</i>	1,207	1,086	1,086	1,086	1,086

*** $p \leq .001$, ** $p \leq .01$, * $p \leq .05$, † $< .10$.

After controlling for the effect of variables listed in Table 40 above (see Model 3), defendants' race emerged as a statistically significant predictor of a custodial sentence offer (which includes time served) as opposed to non-custodial offers (which includes fine, conditional discharge/community service, a treatment readiness program, and restitution). The latter outcome is viewed as less punitive compared to a custodial sentence offer.

Black defendants were 19% more likely (*odds ratio* = 2.21) to receive a punitive sentence offer, while differences between whites and Latinos, and between whites and Asians were not statistically significant. The difference in sentence offers between Latinos and whites is not statistically significant (for Models 3 and 4), although prior to controlling for “median household income,” Latinos were 11% more likely to receive a punitive sentence offer (*odds ratio* = 1.59, $p < .05$). The odds ratios for race change quite a bit and are increased when prior arrest is excluded from the model, suggesting a strong influence of this predictor on custodial sentence offers and its suppression of the influence of race on the outcome.

Here again, similar to the charge offer analysis, defendants' socio-economic characteristics appear to contribute to their sentence offers. When “median household income” was excluded from the analysis (see Model 2), blacks became even *more* likely to receive a custodial sentence offer (*odds ratio* increased to 2.53), and the difference between whites and Latinos became statistically significant.

The regression models included important control variables, many of which also served as predictors of the outcome. Defendants are most likely to receive custodial sentence offers (i.e., a more punitive outcome), when:

- The plea offer changed between the initial offer and final plea;
- their top charge was a class A misdemeanor as opposed to a class B misdemeanor;

- defendants are older;
- they live in a poorer area (i.e., as the median household income in their zip code area *decreases*, they are more likely to receive a custodial offer);
- they have prior arrests, and particularly if they had served a prison sentence in the past (however a prior prison sentence seem to matter much more on the plea offer (see previous section), as opposed to the sentence offer);
- arrest was a result of a non-targeted police activity ($p < .1$, marginally significant);¹⁵⁷
- currency was recovered ($p \leq .1$, marginally significant) although the effect of this variable was more pronounced for charge offers (see Table 38);
- offense occurred outdoors (as opposed to indoors or inside a car) ($p \leq .1$, marginally significant);¹⁵⁸
- ADA had more open cases at arraignment; and
- ADA was black or Asian (compared to white ADAs who made less punitive sentence offers).

Overall, the strongest predictors of a custodial sentence offer were: (a) the plea offer change between the initial offer and the final plea (*odds ratio* = 40.55, $p < .001$); (b) the top screening charge was a class A as opposed to a class B misdemeanor (*odds ratio* = 3.25, $p < .001$); and (c) the case involved a black defendant (*odds ratio* = 2.21, $p < .01$). However, it is notable that the influence of the “plea offer change between the initial offer and the final plea” was particularly pronounced for the sentence offer outcome, while defendants’ prior record (and particularly their

¹⁵⁷ Note that this variable was not included in the plea offer analyses because it did not contribute in the better-predicting model.

¹⁵⁸ The effect of the offense location (indoor versus outdoor) was reversed for the plea offer outcome. As described in the previous section, when the offense occurred indoors or inside a car, defendants were *more* likely to receive the plea-to-the-charge recommendation and *less* likely to receive a plea offer to a lesser charge or ACD.

prior prison sentence) mattered much less for these analyses, compared to the charge offer analyses (see previous section).

The analyses described above included “time served” as a custodial offer. Although simple percentages of “time served” (see Figure 32) did not show any marked differences, we replicated the sentence offer analysis described above (Table 40, Model 3) but excluded “time served” from the outcome. Differences between white and black defendants did not change noticeably: the odds of receiving a custodial offer were 122% greater for blacks (*odds ratio* = 2.22, $p < .001$), which excluded offers of time served. Differences between whites and Latinos and whites and Asians were, again, non-significant.

Finally, to return to the main question of this section, defendants’ race seems to influence their sentence offer more than their charge offer types (plea-to-a-lesser charge or not). After controlling for the contribution of the variables listed above, the findings we observed based on simple percentages continued to hold subsequent to multivariate analyses: white defendants were noticeably *less* likely to receive custodial sentence offers in marijuana misdemeanor cases compared to black defendants.

6.4.B.v. Plea Offers by Race, Prior Record and Offense Level

In an effort to clarify the interplay among certain main predictors of both charge and sentence offer outcomes, conditional probabilities for punitive charge and sentence offers were calculated among all racial groups identified in the misdemeanor marijuana sample conditioned on two of the main predictors revealed in the regression models reported above. Tables 41 and 42 explain the probability within race of a plea-to-a-lesser-charge offer in the event that the

defendants have a prior arrest (or not) or have previously served a prison sentence (or not).¹⁵⁹

Each category is also compared with the charge imposed on the defendant at screening. A similar breakdown occurs for custodial sentence offers, as shown in Tables 41 and 42. Major differences are reported below. Conditional probabilities for cells in which frequencies are less than three were not reported.

For charge offers broken down by prior arrest and offense level (Table 41), percentages vary by race differently depending on the seriousness of the charge. A greater percentage of Asians with at least one prior arrest and an A misdemeanor charge is given no reduced charge offers (i.e., plea-to-the-charge recommendation; 100%), compared to whites (96%), blacks (93%) and Latinos (83%). However, a different trend emerges among defendants with prior arrest and B misdemeanor charges; a greater percentage of whites (60%) received reduced charge offers, and a greater percentage of blacks received no offers (76%).

Among defendants with no prior arrest and an A misdemeanor charge, a substantially greater percentage of whites received reduced charge offers (80%), while a greater percentage of blacks received no offers (91%). A similar trend is found among defendants with no prior arrest and a B misdemeanor charge, although the differences across race are not as substantial: 59% of whites received reduced charge offers and 55% of blacks received no offer.

¹⁵⁹ While also found to be a strong predictor of both charge and sentence offer, due to the relatively small number of defendants previously convicted of a violent felony ($n = 120, 9.5\%$), this breakdown was excluded from these calculations.

Table 41. Plea Offers to a Lesser Charge for the Misdemeanor Marijuana Sample Broken Down by (1) Prior Arrest, (2) Offense Level and (3) Race (n = 1,256)

Prior Record	Offense Level	Plea Offer Type	White		Black		Latino		Asian	
			#	%	#	%	#	%	#	%
Prior Arrest	A Misdemeanor	Lesser Charge	1	4.2	4	6.6	8	17.0	0	0.0
		No offer	23	95.8	57	93.4	39	83.0	7	100
	B Misdemeanor	Lesser Charge	70	59.8	60	24.0	92	35.4	13	50.0
		No offer	104	40.2	190	76.0	168	64.6	13	50.0
No Prior Arrest	A Misdemeanor	Lesser Charge	5	80.0	1	9.1	2	28.6	0	0.0
		No offer	20	20.0	10	90.9	5	71.4	2	100
	B Misdemeanor	Lesser Charge	102	58.6	35	45.5	42	51.9	16	69.6
		No offer	72	41.4	42	54.5	39	48.1	7	30.4

As for charge offer by prior prison sentence, offense level and race (Table 42), overall, defendants with a prior prison sentence regardless of the current misdemeanor charge level are not generally given reduced charge offers. There is more variation by race among defendants with prior prison sentences: a greater percentage of blacks charged with either an A or B misdemeanor are given plea-to-the-charge offers compared to other racial groups (A misdemeanor: 92%; B misdemeanor: 68%)

Table 42. Plea Offers to a Lesser Charge for the Misdemeanor Marijuana Sample Broken Down by (1) Prior Prison Sentence, (2) Offense Level and (3) Race (n = 1,256)

Prior Record	Offense Level	Plea Offer Type	White		Black		Latino		Asian	
			#	%	#	%	#	%	#	%
Prior Prison Sentence	A Misdemeanor	Lesser Charge	0	0.0	0	0.0	1	25.0	0	0.0
		No offer	5	100	12	100	3	75.0	2	100
	B Misdemeanor	Lesser Charge	0	0.0	4	10.0	3	9.0	0	0.0
		No offer	10	100	38	90.0	29	91.0	1	100
No Prior Prison Sentence	A Misdemeanor	Lesser Charge	6	14.0	5	8.0	9	18.0	0	0.0
		No offer	38	86.0	55	92.0	41	82.0	7	100
	B Misdemeanor	Lesser Charge	172	51.0	91	32.0	131	42.0	29	60.0
		No offer	166	49.0	194	68.0	178	58.0	19	40.0

Tables 43 and 44 turn to custodial sentence offers broken down by defendants' prior arrest or prior prison sentence records, offense level and race. A greater of percentage of white defendants with at least one prior arrest and an A misdemeanor charge is given custodial offers

(88%), while a greater percentage of equally situated Latino defendants is given non-custodial offers (57%) compared to other racial groups.

However, looking at defendants with prior arrest and a B misdemeanor charge, a greater percentage of blacks is given a custodial offer (54%), and a greater percentage of whites is given a non-custodial offer (70%). The same trends are seen among defendants with no prior arrests with exception to those charged with an A misdemeanor, where a greater percentage of Latinos is given a custodial offer (57%), although blacks follow close behind (55%; see Table 43).

Table 43. Sentence Offers for the Misdemeanor Marijuana Sample Broken Down by (1) Prior Arrest, (2) Offense Level and (3) Race (*n* = 1,256)

Prior Record	Offense Level	Sentence Offer Type	White		Black		Latino		Asian	
			#	%	#	%	#	%	#	%
Prior Arrest	A Misdemeanor	Custodial	22	88.0	52	85.2	27	42.6	6	85.7
		Non-custodial	3	12.0	9	14.8	20	57.4	1	14.3
	B Misdemeanor	Custodial	50	30.1	129	54.2	102	40.5	5	19.2
		Non-custodial	116	69.9	109	45.8	150	59.5	21	80.8
No Prior Arrest	A Misdemeanor	Custodial	10	38.5	6	54.5	4	57.1	1	50.0
		Non-custodial	16	61.5	5	45.5	3	42.9	1	50.0
	B Misdemeanor	Custodial	21	12.3	23	30.7	14	18.7	2	9.5
		Non-custodial	150	87.7	52	69.3	61	81.3	19	90.5

As for charge offers, there is less variation for custodial offers among defendants with a prior prison sentence and an A misdemeanor charge. However, moving to defendants charged with a B misdemeanor, a greater percentage of blacks received custodial offers (75%), and a greater percentage of whites received non-custodial offers (40%), compared to other racial groups. The same goes for defendants with no prior prison sentence charged with both A and B misdemeanors (A misdemeanors: 77% of blacks given custodial offers; B misdemeanors: 80% of whites given non-custodial offers; see Table 44).

Table 44. Sentence Offers for the Misdemeanor Marijuana Sample Broken Down by (1) Prior Prison Sentence, (2) Offense Level and (3) Race (n = 1,256)

Prior Record	Offense Level	Sentence Offer Type	White		Black		Latino		Asian	
			#	%	#	%	#	%	#	%
Prior Prison Sentence	A Misdemeanor	Custodial	5	100	12	100	3	75.0	2	100.0
		Non-custodial	0	0.0	0	0.0	1	25.0	0	0.0
	B Misdemeanor	Custodial	6	60.0	30	75.0	22	69.0	1	100.0
		Non-custodial	4	40.0	10	10.0	10	31.0	0	0.0
No Prior Prison Sentence	A Misdemeanor	Custodial	27	59.0	46	77.0	28	56.0	5	71.0
		Non-custodial	19	41.0	14	23.0	22	44.0	2	29.0
	B Misdemeanor	Custodial	65	20.0	122	45.0	94	32.0	6	9.0
		Non-custodial	262	80.0	151	55.0	201	68.0	40	91.0

6.4.C. Charge Offer and Sentence Offer Analyses based on the Sample of Non-Marijuana Felony Drug Cases

6.4.C.i. Overview of the Felony Sample Selection

This section reviews findings on the sample of 1,153 felony drug cases that do not include the sale or possession of marijuana as the top charge disposed in 2010-2011. As mentioned in the misdemeanor sample description (6.4.B.i.), our focus on drug offenses was motivated by a number of considerations, including the need to examine prosecutorial discretion following the changes to the Rockefeller Drug Laws, amended in 2009. Further, drug offenses allow us to examine racial disparity while including evidentiary strength of a case, without the complexities that arise with data collected when victims are involved, which can be inconsistent and therefore unreliable. These inconsistencies in recording victim information extends to the recording of victims' race, therefore the best decision seemed to be to select an offense category for which victims are not present. Finally, existing research suggests that racial disparity exists within drug cases (see section 1.2.).

We selected a random sample of 1,153 felony drug cases, disposed as guilty plea convictions or as trial convictions, stratified by defendants' race. We focused on cases disposed by guilty plea or trial conviction because the main purpose of data collection from paper case

files was to look more closely into charge and sentence offers. Finally, the sample excluded defendants under 16 years of age.

Among cases that are charged as felonies at screening, the DANY office records information differently depending on whether these cases are indicted (see Figure 2) or disposed pre-indictment, although the majority of felony cases are ultimately indicted. Among the 1,153 felony cases randomly chosen for review, 777 were indicted. If a case is disposed pre-indictment, then all available information is stored electronically in what is known as the criminal court files. If a case is indicted, then plea offer information from Supreme Court Arraignment until the defendant pleads guilty or is convicted at trial is only available through the paper file, where a case jacket records most events occurring at each trial date. Data on drug weight and other evidence gathered throughout the life of a case is also available in these paper files.

This section provides descriptive summaries of defendants, charges, arrest circumstances, drugs recovered, evidence collected, and the defense counsel. It also examines differences by race in receiving (a) *plea-to-a-lesser charge offers* (versus no offers) and (b) *custodial sentence offers* (versus non-custodial sentence offers) (both of these questions are fully described in subsection 5.4.B.).

6.4.C.ii. Felony Sample Description

The sample consisted of 353 white (30.6%), 400 black (34.7%) and 400 Latino (34.7%; total $n = 1,153$) defendants, and it includes all white defendants from the population of data. Blacks and Latinos were under-sampled to create groups of comparable sample sizes. Since there were so few Asian defendants in the population sample charged with felony drug crimes ($n = 3$), Asians were excluded from the analyses.

Gender, Age and Residence Borough:

Males were 87.2% of the sample (white – 83.9%, black – 88.5%, and Latino – 88.8%).

Defendants’ age ranged from 16 to 78, with a mean age of 35.5 years, and median age of 34 years. On average, white defendants were slightly older ($M = 36.5$, $SD = 11.4$), compared to blacks ($M = 36.0$, $SD = 12.9$), but both are older than Latinos ($M = 34.2$). The majority of defendants (60.6%) resided in Manhattan (white – 44.0%, black – 66.8% and Latino – 69.9%).

Employment and Area Income:

While 53.9% of the defendants were not employed, 29.7% had a job (white – 44.2%, black – 26.3% and Latino – 29.9%) and 6.6% were reportedly students (white – 4.8%, black – 10.1% and Latino – 6.6%).¹⁶⁰ Whites resided in relatively affluent areas (the median of the median household income in their zip code was \$62,644), compared to blacks (median = \$36,188) and Latinos (median = \$36,741).

Prior Record:

As with the misdemeanor marijuana sample, there were differences in defendants’ prior record. On average, blacks had more prior arrests ($M = 5.1$, $SD = 6.5$), compared to Latinos ($M = 3.0$, $SD = 4.5$), and whites ($M = 2.4$, $SD = 4.8$). The same was true with respect to prior prison sentence (black, $M = 0.38$, $SD = 0.8$; Latino, $M = 0.26$, $SD = 0.7$; and white, $M = 0.11$, $SD = 0.4$) and prior violent felony offense (black, $M = 0.20$, $SD = 0.3$; Latino, $M = 0.12$, $SD = 0.4$; white, $M = 0.06$, $SD = 0.3$). Table 45 describes prior record variables by race.

Table 45. Defendants with One or More Prior Arrest, Felony Arrest, Conviction, Felony Conviction, Prison Sentence, Jail Sentence and Non-Custodial Sentence within Race for the Felony Drug Sample

	Any Prior Arrest (%)	Prior Felony Arrest (%)	Any Prior Conviction (%)	Prior Felony Conviction (%)	Prior Violent Felony Offense (%)	Prior Prison Sentence (%)	Prior Jail Sentence (%)	Prior Non-Custodial Sentence (%)
White	48.7	32.9	48.7	17.0	5.4	7.6	24.9	44.5
Black	78.3	63.0	76.8	41.3	14.8	25.3	48.0	69.0
Latino	63.0	45.3	61.5	27.0	9.8	17.0	30.3	55.8

¹⁶⁰Data on employment are missing for 9.9% of the sample.

Charges:

Overall, unlike the misdemeanor marijuana sample, there is little difference in the number of charges each defendant faces but, similar to the misdemeanor data, blacks were more likely to be charged with a Class B felony, then a less serious Class C or D felony. A greater percentage of blacks (84.0%) were charged with a Class B Felony, compared to Latinos (72.3%) and whites (54.1%). Figures below summarize the charges imposed at arrest (Figure 33), screening (Figure 34), Supreme Court arraignment (Figure 35) in the event that the case is indicted, and conviction by trial or plea (Figure 36).

Overall, when compared to black and Latino defendants, white defendants are charged with less serious crimes at arrest, consequently leading to less serious charges at screening, Supreme Court arraignment and at the time the defendant pleads guilty or is convicted at trial. At arrest, whites are more likely to be charged with a class D felony (drug possession or sale; 29%) compared to blacks (13%) and Latinos (14%). A greater percentage of blacks (77%) and Latinos (70%) are charged with a class B felony compared to whites (57%).

At screening, the same trend emerges, whereby a greater percentage of white defendants are charged with a D felony (37%; blacks, 13%; Latinos, 14%) and a markedly greater percentage of blacks are charged with a more serious B felony (84%; Latinos, 72%; whites, 54%).

As for Supreme Court arraignment, following an indictment of a case, a greater percentage of white defendants have their cases disposed pre-indictment (49%) followed by Latino (33%) and black (31%) defendants. Among defendants whose cases are indicted, a greater percentage of white defendants are charged with a less serious D felony at Supreme Court (14%)

followed by Latinos (9%) and blacks (4%). A greater percentage of blacks are charged with a B felony (61%) when compared to Latino (49%) and white (31%) defendants.

Turning to charges to which defendants ultimately plead guilty or are convicted at trial, a greater percentage of whites plead to a violation charge (13%; 7% Latinos; 4% blacks) as well as an A misdemeanor (40%; 28% blacks; 27% Latinos). Turning to more serious charges, a greater percentage of blacks plead to a B felony (42%) – the charge initially most likely to be imposed among this group – compared to Latinos (34%) and whites (20%).

Figure 33. Percentage of Defendants by Offense Level at Arrest for the Felony Drug Sample

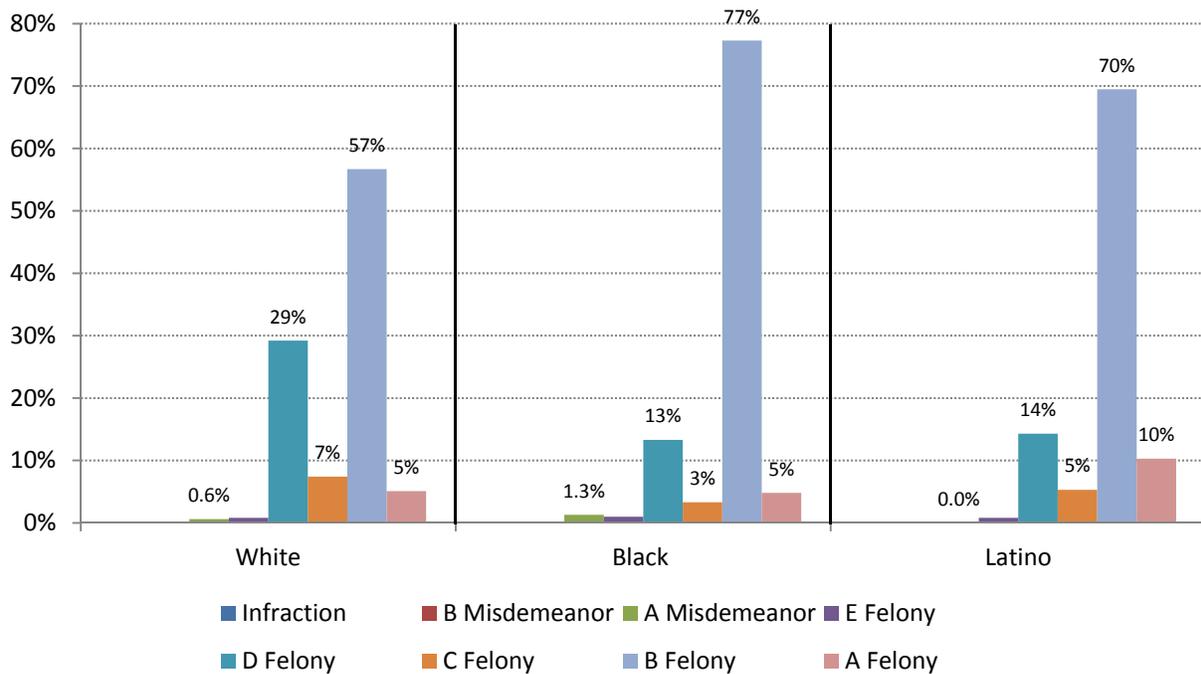


Figure 34. Percentage of Defendants by Offense Level at Screening for the Felony Drug Sample

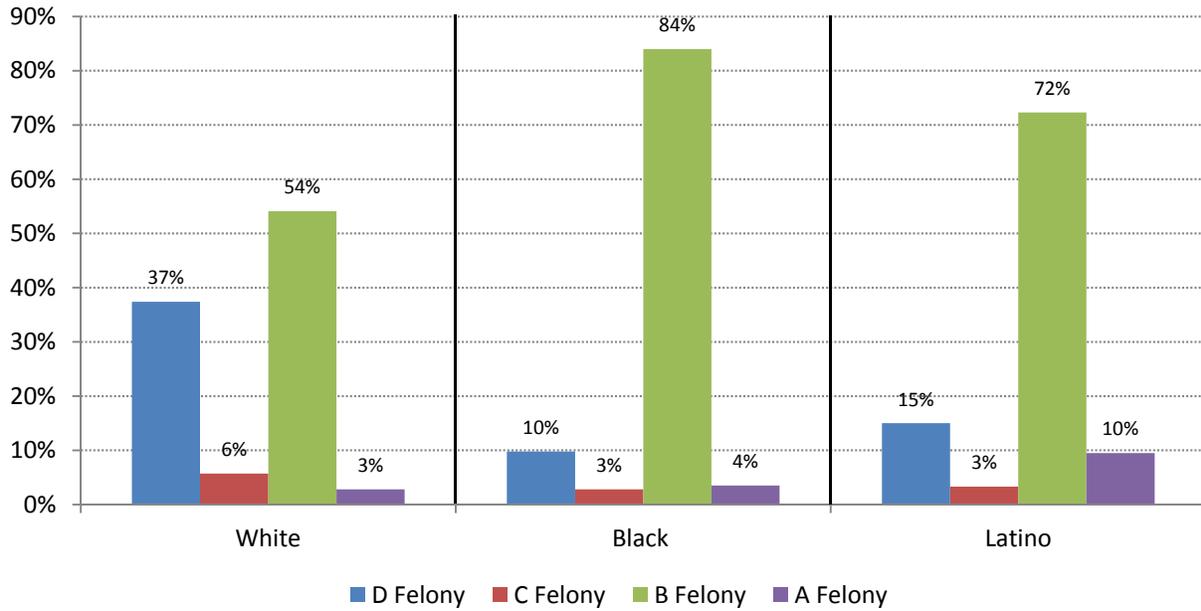


Figure 35. Percentage of Defendants by Offense Level at Supreme Court Arraignment for the Felony Drug Sample

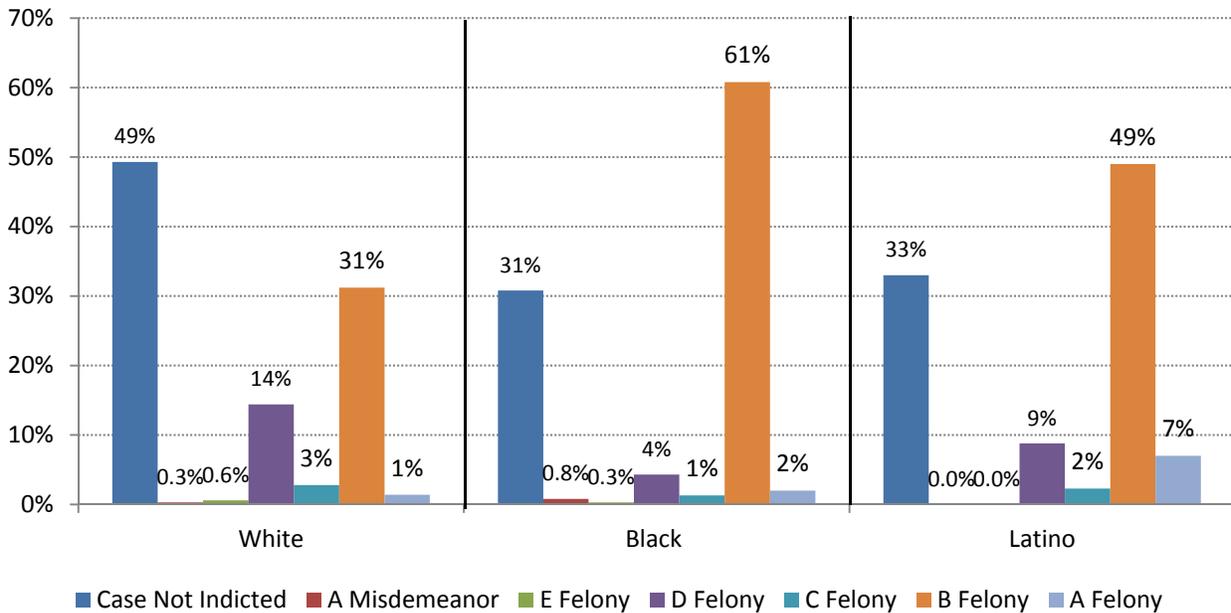
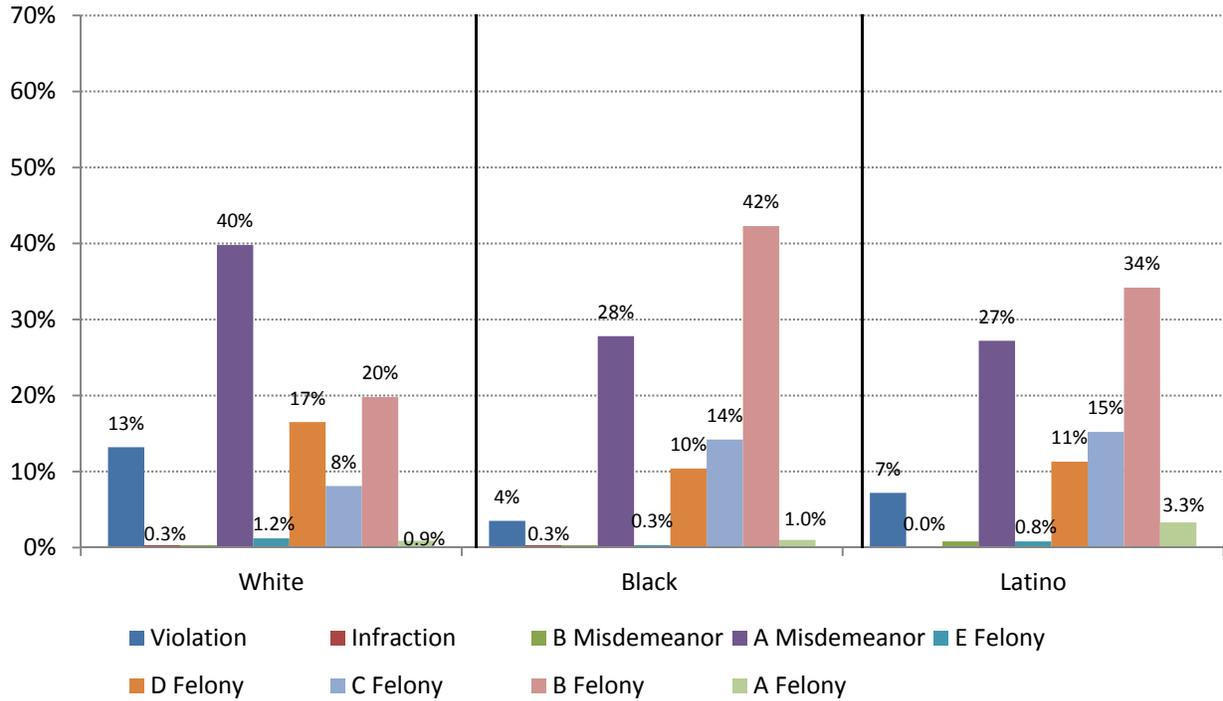


Figure 36. Percentage of Defendants by Offense Level at Plea or Trial Conviction for the Felony Drug Sample



Arrest Circumstances:

Overall, defendants were most frequently reported to be observed selling drugs, contributing with a drug sale in some other role, such as acting as a lookout or steerer¹⁶¹, or police officers made a predicate stop (most likely a traffic stop) that led to recovery of a drug. A greater percentage of whites were observed using drugs (4% whites, 2% Latinos, and 2% blacks), while a greater percentage of blacks were observed selling drugs (49% blacks, 45% Latinos, 44% whites). A greater percentage of whites were stopped for another reason other than drugs (17% whites, 14% Latinos, 12% blacks; see Table 46).

¹⁶¹ A steerer is typically defined as someone who is with the seller, but does not actually sell the drugs. Their role is sometimes to identify interested buyers and “steer” them towards the seller.

Table 46. Defendant’s Activity Leading to Arrest for the Felony Drug Sample (percent within race)¹⁶²

	Observe Drug Use (%)	Observe Sale - Buyer (%)	Observe Sale - Seller (%)	Observe Sale – Other Role (%)	Observe Drugs – No use (%)	Predicate Stop (%)	Furtive Move-ments (%)	Attempt Sale (%)	Other (%)
White	4.0	3.4	43.5	13.1	5.4	16.5	5.4	1.7	7.1
Black	2.0	2.5	49.1	13.4	3.8	11.6	5.0	2.5	10.1
Latino	2.3	1.8	45.0	10.3	6.3	13.8	5.3	2.3	13.3

In terms of the drug amount, there were some marked differences by race. The aggregate drug weight measured was far greater for Latino defendants ($M = 158$ grams, $SD = 963$) compared to black ($M = 24$ grams, $SD = 129$) and white ($M = 12$ grams, $SD = 33$) defendants.¹⁶³ Among those who had currency recovered ($n = 689$), on average, Latinos had larger amounts recovered ($M = \$1,671$, $median = \$155$), compared to that for whites ($M = \$1,418$, $median = \$121$) and blacks ($M = \724, $median = \$110$).

As mentioned previously, cases handled by DANY are for arrests mainly made in Manhattan. A greater percentage of whites were arrested in Chelsea (22%), while a greater percentage of blacks in Manhattanville (also known as West Harlem; 23%), and the greatest percentage of Latinos in South Washington Heights (14%; see Table 47 and Figure 37).

¹⁶² This table explains what leads the police officer to think that something is going on.

Categories:

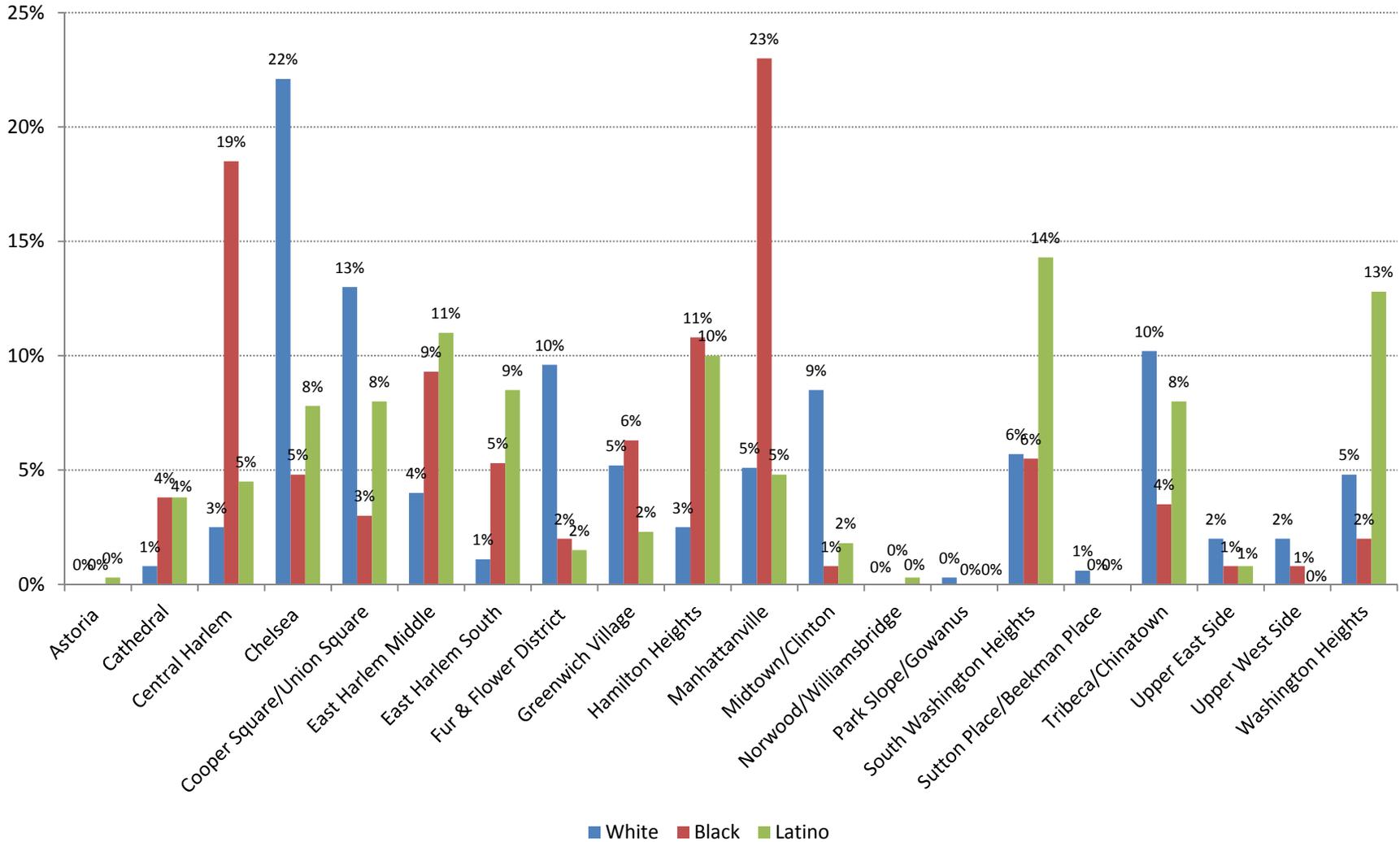
- Observe Use – if the officer sees the defendant in the act of ingesting the drugs.
- Observe Sale–Buyer – the officer observes a buy, which might be either hand to hand or exchange of small objects.
- Observe Sale–Seller – same as observe buy but reverse.
- Observe Drugs – did the police see drugs but no activity (characteristic packaging of drugs etc., but not just seeing the corner of a zip lock bag).
- Predicate Stop – the initial reason for the stop is something besides drugs.
- Furtive Movements – any movements or behavior that look suspicious. The notes can read “acting suspiciously”, “strange moves”, or “looking nervous.”

¹⁶³ Note that drug weight information was missing for 52% of case files reviewed.

Table 47. New York City Neighborhood of Arrest for the Felony Drug Sample

	<i>n</i>	White (%)	Black (%)	Latino (%)
Astoria	1	0	0	0.3
Cathedral	33	0.8	3.8	3.8
Central Harlem	101	2.5	18.5	4.5
Chelsea	128	22.1	4.8	7.8
Cooper Square/Union Square	90	13.0	3.0	8.0
East Harlem Middle	95	4.0	9.3	11.0
East Harlem South	59	1.1	5.3	8.5
Fur & Flower District	48	9.6	2.0	1.5
Greenwich Village	52	5.1	6.3	2.3
Hamilton Heights	92	2.5	10.8	10.0
Manhattanville	129	5.1	23.0	4.8
Midtown/Clinton	40	8.5	0.8	1.8
Norwood/Williamsbridge	1	0	0	0.3
Park Slope/Gowanus	1	0.3	0	0
South Washington Heights	99	5.7	5.5	14.3
Sutton Place/Beekman Place	2	0.6	0	0
Tribeca/Chinatown	82	10.2	3.5	8.0
Upper East Side	13	2.0	0.8	0.8
Upper West Side	10	2.0	0.8	0
Washington Heights	76	4.8	2.0	12.8
Total	1,152	100.0	100.0	100.0

Figure 37. New York City Neighborhood of Arrest for the Felony Drug Sample (percent within race) (n = 1,152)



As described in Table 48, a greater percentage of white arrests (24) occurred indoors, compared to blacks (21.6%) and Latinos (22.4%). A markedly greater percentage of black defendants was arrested outdoors (70.6%), followed by Latinos (61.1%) and whites (59.2%).

Table 48. Arrest Occurrence Location for the Felony Drug Sample (Indoor, Outdoor or Inside Car)¹⁶⁴

	Indoor (%)	Outdoor (%)	Inside Car (%)	Total (%)
White	24.4	59.2	16.4	100
Black	21.6	70.6	7.9	100
Latino	22.4	61.1	16.5	100

The majority of arrests happened as a result of an “undercover buy and bust” (32%). However, as with the misdemeanor drug sample, when comparing with other racial groups, whites seem more likely to be arrested as a result of street encounters with the police (30%), while arrests of black defendants occurred as a result of a buy and bust (36% of blacks, as compared to 31% Latinos and whites) and for both blacks and Latinos, an “observation point” (10% of blacks and Latinos compared to 8% whites) is more likely, but a smaller percentage were arrested by an officer responding to a complaint call (4% of blacks and Latinos compared to 11% whites). A greater percentage of Latino defendants were arrested as a result of a prior investigation (15% of Latinos, compared to 11% blacks and 6% whites), or a “vertical sweep” (3% Latinos, compared to 1% blacks and 0.3% whites; see Table 49) by public housing authority.

¹⁶⁴ The location of a defendant when an arresting officer first became interested.

Table 49. Police Officers’ Activity Leading to Arrest for the Felony Drug Sample¹⁶⁵

	Street Encounter (%)	Undercover B&B (%)	Observation Point (%)	Prior Investigation (%)	Vertical Sweep (%)	Responding to Call (%)	Confidential Informant (%)	Other (%)	Total (%)
White	30.3	30.6	8.2	6.2	0.3	11.0	0	0.8	100
Black	24.7	35.5	10.1	11.3	1.0	3.8	0.5	1.0	100
Latino	24.3	30.5	9.5	15.3	2.5	4.3	0.5	1.5	100

Table 50 summarizes police officers’ activity that led to the initial drug recovery. While overall, drugs were primarily recovered by an undercover officer in a “buy and bust” operation, when compared to other racial groups, drugs were recovered on white defendants more often in an encounter not described as a “search incident to a lawful arrest” (SILA) (23%), while for black defendants, it was more often an undercover officer recovering the drug (38%) and, among Latino defendants, drugs were more likely to be recovered after a search warrant was executed (9%).

¹⁶⁵ This table explains how the police went about arresting the defendant.

Categories:

- *Street Encounter* – the police officer is in public, and comes into contact with defendant randomly.
- *Undercover B&B* – undercover officer buys or attempts to buy narcotics from defendant or those with whom defendant is arrested.
- *Observation Point* – one PO is observing area from a fixed location. When he sees suspicious activity radios to his field team; the team conducts actual stops, investigations and arrests.
- *Prior Investigation* – An investigation into the defendant or other individuals related to the case began prior to the arrest. Arrest occurred as a result of investigation.
- *Vertical Sweep* – vertical patrol of building, either NYCHA (public) housing or private homes participating in the Trespass Affidavit Program.
- *Responding to Call* – police officer comes into contact with defendant as a result of a civilian complaint or radio run from another officer.
- *Confidential Informant* – police officer obtained information from a confidential informant who led him to target the defendant, area where defendant was encountered or group that defendant was with.
- *Other* – specific information is recorded about origination of a police officer’s involvement, but does not fit into any of the other listed categories.

Table 50. Police Officers’ Activity leading to the Drug Recovery for the Felony Drug Sample (percent within race)¹⁶⁶

	Open View (%)	Search (not SILA) (%)	Attempt to Hide/Drop (%)	Voluntary Def. Produce (%)	SILA (%)	Undercover Recovered (%)	Pat Down (%)	On Other (%)	Search Warrant Executed	Other (%)	No Drugs Found (%)
White	8.8	23.0	3.4	0.6	11.9	32.7	0	15.6	2.6	1.2	0.3
Black	5.0	10.6	7.1	0.8	11.3	38.0	1.5	15.6	6.5	2.8	0.8
Latino	6.0	14.8	7.3	1.3	9.3	32.3	0.3	16.5	9.3	2.9	0.5

The drug recovered most by police officers was cocaine/crack (59%), but a greater percentage of blacks possessed or sold cocaine (77%) compared to Latinos (59%) and whites (38%). A greater percentage of whites were found with hallucinogens (e.g., LSD; 6% whites, 3% Latinos and 2% blacks), amphetamines (13% whites, 8% Latinos and 2% blacks), opiates (e.g., heroin; 30% whites, 25% Latino and 16% blacks), and prescription medication (e.g., Xanax, coded as “Other”; 38% whites, 15% Latinos and 5% blacks). Some drugs recovered at the time of arrest were later found to be a non-controlled substance (3%), usually following analysis by a drug laboratory (see Table 51).

¹⁶⁶ The table explains how the drugs came to be in the possession of the arresting officer once the individual was stopped. Categories:

- Open View – this means that the drugs were just out in plain view or visible in the defendant’s hand.
- Search – when something is on the defendant’s body but disclosed, including in a closed hand.
- Defendant attempt to hide/drop – defendant drops drug on the ground in an attempt to hide it. If police have seen the defendant interacting with the drugs and the defendant tries to get rid of them by leaving them in the open and walking away.
- Voluntary Def Produce – defendant actually pulls the drug out (not when the police officer asks if the defendant has drugs and then searches him).
- SILA – search incident to lawful arrest – selected when the file actually says “SILA”, or if it says “arrested” and then the search happens.
- Undercover Recovered – if the undercover got it during the buy and bust.
- Pat down – stop & frisk
- On other – if it is found on the other person, or the other person is the one who attempts to hide it or drop it.

Table 51. Drug Type Recovered for the Felony Drug Sample

	Hallucino gen (%)	Ampe tamines (%)	Cocaine/ Crack (%)	Opiates (%)	Marijuana (%)	Other (%)	Non- Controlle d Substance (%)	No Drugs Found (%)	Total (%)
White	5.6	13.0	37.7	30.0	13.9	37.7	3.7	0.3	100
Black	1.8	2.0	77.3	15.8	19.1	5.3	3.8	0.5	100
Latin o	2.5	8.3	59.3	25.0	17.6	15.1	2.3	0	100

The majority of cases did not report an identification of the defendant by an eyewitness (56%), but for those cases that reported an identification, which most often was a police officer in a “buy and bust” operation, a greater percentage of blacks (45%) were identified through “show-ups”, i.e., when a suspect is individually shown to a witness (also includes descriptions of a “confirmatory ID”), compared to Latinos (38%) and whites (34%; see Table 52).

Table 52. Identification Procedure of Defendant as a Suspect for the Felony Drug Sample

	No ID (%)	Line-up (%)	Photo Array	Show-up	Total (%)
White	65.3	0.3	0	34.4	100%
Black	54.1	0.8	0.3	44.8	100%
Latino	61.1	0.3	0.3	38.4	100%

Note: Information on identification procedure is unknown for $n = 82$ (7%) cases.

Evidence:

One advantage of reviewing paper files from felony drug cases is that more detailed information regarding the evidence collected during the investigation of a case is more likely to be recorded and stored in ADA files. Table 53 below summarizes most evidence—excluding drug weight and the specific amount of currency recovered¹⁶⁷—said to have been recovered and usually listed in what is known as voluntary disclosure forms prepared for a grand jury by the prosecution. Most recorded evidence pertains to statements made by defendants¹⁶⁸ and whether any currency is

¹⁶⁷ Included only if found off of the individual defendant, or if it is a search warrant and is found in the car or house. It does not include if the currency was found on another person.

¹⁶⁸ Statements include anything the defendant said, unless it is a pure assertion of constitutional rights.

recovered, regardless of the amount (most often recorded in an attempt to show that the defendant was selling drugs). For the most part, there seem to be no marked differences across racial groups, although a greater percentage of Latinos are found with currency (66%) compared to blacks (62%) and whites (54%), a greater percentage of blacks are found with drug sale paraphernalia (11%), such as scales or razor blades (i.e., with residue) and are video/audio recorded (17%) compared to Latinos (Paraphernalia, 8%; Recordings, 15%) and whites (Paraphernalia, 6%; Recordings, 12%). Latinos are more likely to be reported as being known to police officers (8%) compared to blacks (6%) and whites (3%).

Table 53. Evidence Gathered During and After Defendants’ Arrest for the Felony Drug Sample

	PRBM Recovered (%)	Currency Recovered (%)	D Made a Statement (%)	Empty Bags Found (%)	Drug Sale Paraphernalia (%)	Video/Audio Recordings (%)	Known Drug Location (%)	D Known to AO (%)	Weapon was Recovered (%)
White	25.7	53.8	68.6	7.6	5.9	11.6	3.7	2.8	4.0
Black	27.5	62.3	65.1	10.1	11.3	17.1	3.8	6.0	5.0
Latino	24.5	66.3	60.0	9.8	8.0	15.3	5.0	8.3	6.3

Criminal Defense:

The majority of defendants were represented by the Legal Aid Society¹⁶⁹ (46%), followed by counsel appointed under 18(b)¹⁷⁰ (26%), the New York County Defender Services¹⁷¹ (16%), private counsel (9%), and the Neighborhood Defender Service of Harlem¹⁷² (NDS; 1%).

¹⁶⁹ The Legal Aid Society is a private, not-for-profit legal services organization, the oldest and largest in the nation, dedicated since 1876 to providing quality legal representation to low-income New Yorkers. The Society handles 300,000 individual cases and matters annually and provides a comprehensive range of legal services in three areas: the Civil, Criminal and Juvenile Rights Practices. For more, visit <http://www.legal-aid.org/en/las/aboutus/ourmission.aspx>

¹⁷⁰ Pursuant to Article 18(b) of the County Law, the Assigned Counsel Plan has been providing legal services to indigent defendants within the Bronx and New York County Criminal courts since 1966. The Plan provides compensation to private attorneys for representing indigent clients charged with criminal offenses. Attorneys are assigned matters by the Court and the Administrator's office when a conflict exists prohibiting the institutional providers, such as The Legal Aid Society, from providing representation. Panel attorneys are screened and certified to the Panel by the Central Screening Committee. For more, visit <http://www.courts.state.ny.us/courts/ad1/committees&programs/18b/index.shtml>

¹⁷¹ New York County Defender Services (NYCDS) is a not-for-profit law firm which was founded in 1997 and has defended 1/4 of a million indigent people charged with crimes in Manhattan since then. For more, visit <http://nycds.org/>

¹⁷² The Neighborhood Defender Service of Harlem (NDS) provides innovative, community-based, holistic public defense practice since 1991 to residents of upper Manhattan. NDS clients are represented by a team that includes criminal and civil

Looking within race (Table 54), a slightly greater percentage of blacks are represented by Legal Aid (49%), counsel appointed under 18(b) (29%) and NDS (2%) compared to whites (Legal Aid: 44%; 18(b): 26%; NDS: 0.3%) and Latinos (Legal Aid: 43%; 18(b): 23%; NDS: 1.5%). A greater percentage of Latinos are represented by private counsel (13%), followed closely by whites (11%), then blacks (3%).

Table 54. Defense Counsel Type for the Felony Drug Sample

	Legal Aid (%)	Appointed under 18B (%)	NY Defender Services (%)	Neighborhood Defender Service (%)	Private Counsel (%)	Not known/Not represented (%)	Total (%)
White	45.6	26.3	15.0	0.3	10.5	2.3	100
Black	49.0	28.5	14.5	2.3	2.8	3.0	100
Latino	43.0	22.8	18.0	1.5	12.8	2.0	100

Bail Recommendations and Reasons

We also looked into bail recommendations made by ADAs and broken down by race. On average, the amount of bail recommended is greatest among Latino defendants ($M = 24,550$, $median = 10,000$), followed by black ($M = 18,265$, $median = 10,000$) and white ($M = 12,965$, $median = 8,000$) defendants. ADAs also make recommendations to release the defendant (i.e., ROR) or to remand the defendant directly into the custody of department of corrections.

Although these recommendations occur less often than a recommendation for a bail amount, ADAs are most likely to make ROR recommendations at criminal court arraignment for white defendants (3%), compared to Latinos (1%) and blacks (0.5%). On the other hand, a greater percentage of Latinos are recommended for remand (4%), compared to blacks (2%) and whites (1%). The percentages of defendants that are actually released on recognizance are much greater

attorneys, social workers, investigators, paralegals, law school and social work interns, and pro bono attorneys. For more, visit <http://www.ndsny.org/index.html>

($n = 284$, 25%), but whites are more likely to be released (35%) than either Latinos (25%) or blacks (16%).

For those ADAs who record the reasoning behind their bail recommendations ($n = 1,039$), we broke it down into four main themes that were cited (see Table 55). The majority of ADAs cited the defendant’s criminal history as the reason for the bail amount recommended (68%), with the greatest percentage being among blacks (78%; 65% Latinos; 60% whites). The circumstances of the current case (e.g., seriousness of the charge) was cited most often among Latinos (46%), followed by whites (45%) and blacks (38%). Finally, the defendant being a flight risk (e.g., a low CJA score, defendant lives out of state) was a theme cited the most for black defendants (24%; 17% Latinos; 18% whites).

Table 55. Bail Reasons for the Felony Drug Sample (percent within race)

	Flight Risk (%)	Circumstances of Current Case (%)	Criminal Record & Probation/Parole Violations (%)	Recent Arrest(s)/ On Probation/Parole (%)
White	18.2	44.9	59.9	19.9
Black	23.6	37.8	77.9	23.6
Latino	17.3	46.3	65.0	21.0

Note: Information on bail recommendation is not available for $n = 30$ (3%) cases.

6.4.C.iii. Charge Offer: Plea-to-a-Lesser Charge

First of the two main question posed at the beginning of this section is: *does defendants’ race influence their likelihood to receive plea-to-a-lesser-charge offers?* Similar to the misdemeanor marijuana sample, we tested this by coding a plea-to-a-lesser charge offer and as “0” and no offer as “1” in the logistic regression analysis reported below and shown in Table 56. Many factors were available to us as statistical controls. They are described in detail below.

It became clear early in the process that ADAs record information inconsistently depending on whether a case is indicted. Felonies are presented to the grand jury, unless a

defendant waives this right. The grand jury hears evidence presented by prosecutors and may indict a defendant on felony charges. Sometimes, a case may be disposed of prior to presentation to a grand jury; for example, a defendant may accept an early plea offer and the charge reduced to a misdemeanor. All cases that are brought up as felony charges must go to grand jury or be waived through the indictment process. Information on cases following indictment is kept separately from pre-indictment which required a second series of data collection and case file reviews, and took an exorbitant amount of time to complete; the review was expected to take three to four months but resulted in a six-month effort to obtain all the information. Moreover, if a case was not indicted, information on the case was less likely to be recorded. This was the case particularly for plea offer information, which, for felonies is less likely to be decided at criminal court arraignment, and was not recorded at a later pre-indictment hearing. Also, the exact drug weight on the drug(s) recovered was not obtained because, since the case was disposed of, it was not necessary to send the drug to the lab for proper analysis. As a result, missing data on variables of interest was an issue and required use of a missing data technique. Multiple imputation was determined to be the most appropriate method, taking into account both modeling and sampling uncertainty.¹⁷³

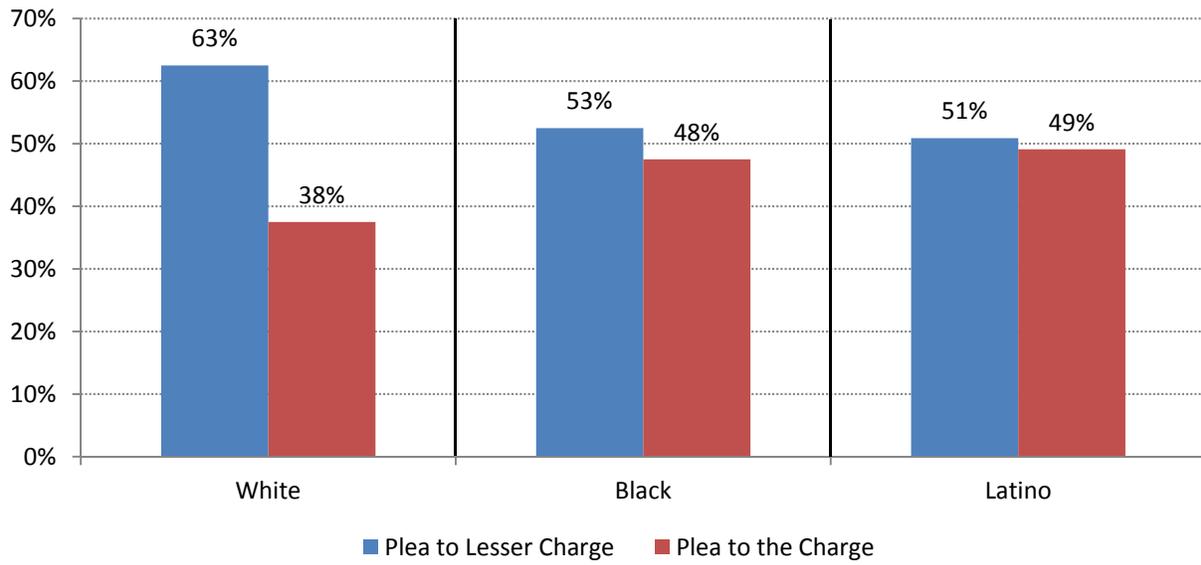
The models that were run and the coding scheme used for each control variable are identical to the methods described for the misdemeanor marijuana sample (see subsection 6.4.B.). Additional evidence and defendant demographic information, however, was gathered to determine the extent to which these variables influence plea offer decisions. Data on whether the

¹⁷³ Preliminary analyses of missing data patterns were performed using the *Missing Values Analysis* add-on for SPSS 18. Multiple imputation was subsequently implemented using the *mi impute* command within STATA12 (commercially available from StataCorp). We created $m = 60$ multiply imputed datasets and analyzed using logistic regression within STATA's *mi estimate* environment, which pools estimates from these multiple datasets using specific rules proposed by Rubin (1987).

defendant is employed, married, or reached a high school level education (all coded as “1”) or not (coded “0”); the type of drug recovered by police was crack cocaine, an opiate (e.g., heroin), other type (all coded as “1”) or powder cocaine (coded as “0” being the reference category); the mode in which the arresting officer obtained the drug as evidence (i.e., via a non-search, a search, which includes SILA coded as “1” or an undercover recovered the drug through a buy and bust coded as “0” as the reference category). A series of dichotomous variables were created to identify the type of evidence information recorded by DANY. These were whether an additional drug was recovered; pre-recorded buy money (PRBM) recovered from an undercover buy and bust operation; empty bags found; other drug sale paraphernalia found; matching bags found; video or audio recordings; weapon was recovered; the weight of the drugs recovered in grams (as reported in the lab report); the location or defendant were known as being associated with drug activity; eyewitness made a positive identification (usually from an undercover officer in drug cases). More specific information on bail recommendations were also recorded, including the amount requested by an ADA and the amount of bail set in bond and cash (in US dollars).

First, Figure 38 below shows a breakdown of charge offers by race. Among white defendants, the majority are given plea-to-a-lesser charge recommendations (63%) compared to blacks (53%) and Latinos (51%) who are more evenly split between a plea-to-a-lesser charge and no offer.

Figure 38. Charge Offer Type for the Felony Drug Sample ($n = 1,153$) (percent within race)¹⁷⁴



¹⁷⁴ Information on charge offer is missing for $n = 194$ (17%) cases. Because this missing data problem was exacerbated by the missing values for potential control variables (e.g., prior record or evidence), we omitted multivariate regression analyses for this outcome. For the results of the multivariate analyses for the sample of misdemeanor marijuana cases, see subsection 6.4.B.

Table 56. Logistic Regression Predicting Charge Offers for the Felony Drug Sample

Predictor	Model 1:	Model 2:	Model 3:	Model 4:	Model 5:
	<i>With Race Only</i>	<i>With Race, No SES</i>	<i>With Race & SES</i>	<i>No Prior Prison or Violent Convictions</i>	<i>No Prior Arrest</i>
	Odds Ratio (Standard Error of Coefficient)				
Black	1.588 (0.30)*	1.155 (0.24)	1.226 (0.26)	1.266 (0.27)	1.180 (0.25)
Latino	1.631 (0.23)***	1.129 (0.23)	1.159 (0.24)	1.205 (0.24)	1.145 (0.24)
Defendant age (in years)	-	0.990 (0.01)	0.990 (0.01)	0.994 (0.01)	0.989 (0.01)
Male	-	1.300 (0.33)	1.290 (0.34)	1.338 (0.34)	1.298 (0.34)
Employed or student	-	0.791 (0.14)	0.763 (0.13)	0.778 (0.14)	0.766 (0.13)
Married	-	0.446 (0.20)†	0.437 (0.20)†	0.458 (0.21)†	0.445 (0.21)†
Education – high school or below	-	0.880 (0.22)	0.909 (0.23)	0.952 (0.24)	0.918 (0.23)
Detained after arraignment	-	1.904 (0.33)***	1.948 (0.34)***	2.003 (0.34)***	1.890 (0.32)***
C felony	-	0.707 (0.37)	0.699 (0.36)	0.656 (0.33)	0.700 (0.36)
B felony	-	0.994 (0.25)	0.977 (0.25)	0.942 (0.24)	0.964 (0.24)
A felony	-	0.720 (0.37)	0.655 (0.33)	0.611 (0.31)	0.657 (0.32)
Prior arrest (positive continuous)	-	0.975 (0.02)	0.977 (0.02)	0.983 (0.01)	-
Prior prison sentence (positive continuous)	-	1.412 (0.20)*	1.419 (0.20)*	-	1.367 (0.19)*
Prior violent felony convictions (positive continuous)	-	0.664 (0.16)†	0.659 (0.16)†	-	0.668 (0.18)†
Plea offer changed between initial offer and final plea	-	2.693 (0.46)***	2.727 (0.47)***	2.750 (0.47)***	2.729 (0.47)***
AO observed drug sale	-	1.392 (0.81)	1.402 (0.83)	1.476 (0.87)	1.367 (0.80)
AO observed other activity (e.g., Def stopped for traffic violation)	-	1.679 (0.96)	1.708 (0.99)	1.743 (1.00)	1.672 (0.97)
Drug recovered via a non-search	-	1.610 (0.72)	1.668 (0.74)	1.554 (0.68)	1.629 (0.72)
Drug recovered via search (including SILA)	-	1.418 (0.61)	1.445 (0.62)	1.401 (0.59)	1.413 (0.60)
Narcotics officer made arrest	-	1.254 (0.26)	1.262 (0.27)	1.229 (0.26)	1.254 (0.27)
Drug was crack cocaine	-	0.939 (0.21)	0.965 (0.22)	0.995 (0.22)	0.943 (0.21)
Drug was an opiate (e.g., heroin)	-	1.045 (0.26)	1.102 (0.28)	1.122 (0.28)	1.115 (0.28)
Drug was of another type (e.g, hallucinogen)	-	0.714 (0.19)	0.735 (0.19)	0.732 (0.19)	0.737 (0.19)
Additional drug recovery	-	1.026 (0.19)	1.023 (0.19)	1.020 (0.19)	1.024 (0.19)
Pre-recorded buy money recovered	-	1.648 (0.41)*	1.636 (0.41)†	1.656 (0.42)*	1.643 (0.41)*
Currency recovered	-	1.444 (0.24)*	1.424 (0.24)*	1.418 (0.23)*	1.437 (0.24)*
Empty bags found	-	1.701 (0.57)	1.700 (0.58)	1.674 (0.56)	1.714 (0.58)
Drug sale paraphernalia	-	0.714 (0.29)	0.726 (0.29)	0.673 (0.27)	0.728 (0.29)
Matching bags	-	1.295 (0.32)	1.331 (0.33)	1.346 (0.33)	1.351 (0.34)
Video/audio recordings	-	2.161 (0.53)**	2.193 (0.54)***	2.166 (0.52)**	2.187 (0.53)**
Weapon was recovered	-	0.692 (0.29)	0.705 (0.29)	0.703 (0.29)	0.711 (0.30)
Drug weight (in grams)	-	1.000 (0.00)	1.000 (0.00)	1.000 (0.00)	1.000 (0.00)
Known drug location	-	0.708 (0.29)	0.749 (0.31)	0.791 (0.33)	0.789 (0.33)
D known to arresting officer	-	1.308 (0.50)	1.269 (0.49)	1.239 (0.46)	1.209 (0.46)

Table 56. Logistic Regression Predicting Charge Offers for the Felony Drug Sample

Predictor	Model 1:	Model 2:	Model 3:	Model 4:	Model 5:
	<i>With Race Only</i>	<i>With Race, No SES</i>	<i>With Race & SES</i>	<i>No Prior Prison or Violent Convictions</i>	<i>No Prior Arrest</i>
	Odds Ratio (Standard Error of Coefficient)				
Eyewitness identification	-	1.202 (0.29)	1.240 (0.30)	1.225 (0.29)	1.220 (0.29)
Bail request (in thousands of dollars)	-	1.000 (0.00)**	1.000 (0.00)**	1.000 (0.00)**	1.000 (0.00)**
Bail set (bond)	-	0.999 (0.00)†	1.000 (0.00)†	1.000 (0.00)†	1.000 (0.00)†
Bail set (cash)	-	1.000 (0.00)	1.000 (0.00)	1.000 (0.00)	1.000 (0.00)
18(b)	-	-	0.984 (0.17)	0.997 (0.17)	0.982 (0.17)
Private counsel	-	-	1.581 (0.45)	1.555 (0.43)	1.612 (0.46)†
Median household income in D's Zip Code (in thousands)	-	-	1.002 (0.00)	1.002 (0.00)	1.002 (0.00)
ADA male	-	0.960 (0.18)	0.974 (0.19)	0.953 (0.18)	0.973 (0.19)
ADA black	-	1.004 (0.31)	1.033 (0.33)	1.039 (0.33)	1.035 (0.33)
ADA Latino	-	1.495 (0.49)	1.508 (0.50)	1.458 (0.47)	1.496 (0.49)
ADA Asian	-	0.994 (0.34)	0.997 (0.34)	1.013 (0.33)	0.972 (0.33)
ADA # of open cases at arraignment	-	1.003 (0.00)***	1.003 (0.00)***	1.003 (0.00)***	1.003 (0.00)***
Constant	0.661 (.08)***	0.142 (0.13)*	0.114 (0.11)*	0.095 (0.09)**	0.117 (0.11)*
<i>Pseudo R²</i>	0.0087	0.1890	0.1919	0.1866	0.1898
<i>Number of observations</i>	1,148	1,134	1,134	1,134	1,134

The analyses suggest that defendants' race does not significantly predict the likelihood of receiving a reduced charge offer recommendation relative to a plea-to-the-charge offer. Although the odds ratios predicting charge offer for black defendants compared to white defendants was relatively high (range from *odds ratio* = 1.180 for Model 3 to *odds ratio* = 1.588 for Model 1), all conditional models (Models 2-5) reported non-significant results. The results of the full model (Model 3) for the remaining predictors are reported below (see Table 56).

Somewhat unexpectedly, additional socio-economic information of the defendant such as employment status, marital status, education, and median household income, did not significantly predict charge offers. Perhaps more surprising was the few number of evidence factors that significantly predict charge offer. Only three were identified: PRBM recovery¹⁷⁵ (*odds ratio* = 1.64, $p < 0.1$, approaching statistical significance), currency recovery (*odds ratio* = 1.42, $p < .05$) and video-audio recordings saved (*odds ratio* = 2.19, $p < .001$). In other words, defendants are more likely to receive a plea-to-the-charge offer (i.e., no offer) if PRBM was recovered on their person, if any currency was recovered (regardless of the amount), and especially if a video or audio recording was obtained.

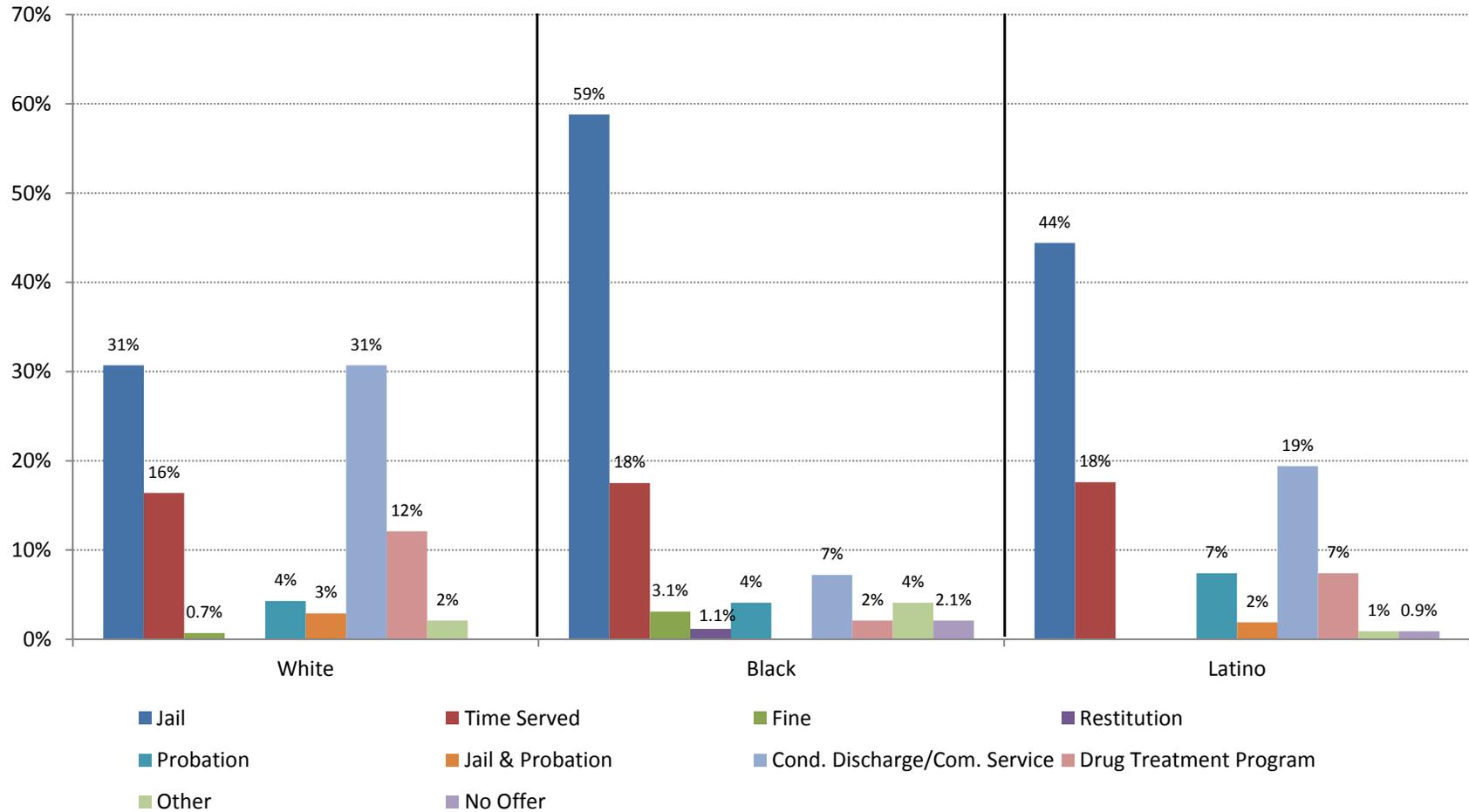
¹⁷⁵ Note: this is the recovery of pre-recorded buy money in an undercover buy and bust.

6.4.C.iv. Sentence Offer: Custodial Sentence Offers

The second question we intend to answer is whether defendants' race affects the likelihood to receive a custodial sentence offer. First, it is important to note that specific sentence offers were split according to whether the offer was given before the case was indicted—usually after criminal court arraignment but before presentation of the case to the Grand Jury—or whether it was given post-indictment. Among cases that were disposed pre-indictment ($n = 376$), blacks (59%) and Latinos (44%) were more likely to receive custodial punishment offers, compared to whites (31%). Whites, on the other hand, were more likely to receive conditional discharge or community service (31%), compared to blacks (7%) and Latinos (19%). Also, there were no noticeable differences by race in receiving the offers including time served (18% for blacks and Latinos each, 16% for whites). Finally, an offer to a drug treatment program occurs more often among white defendants (12%) than either Latino (7%) or black (2%) defendants, although overall drug treatment offers are not very common for felonies (see Figure 39).

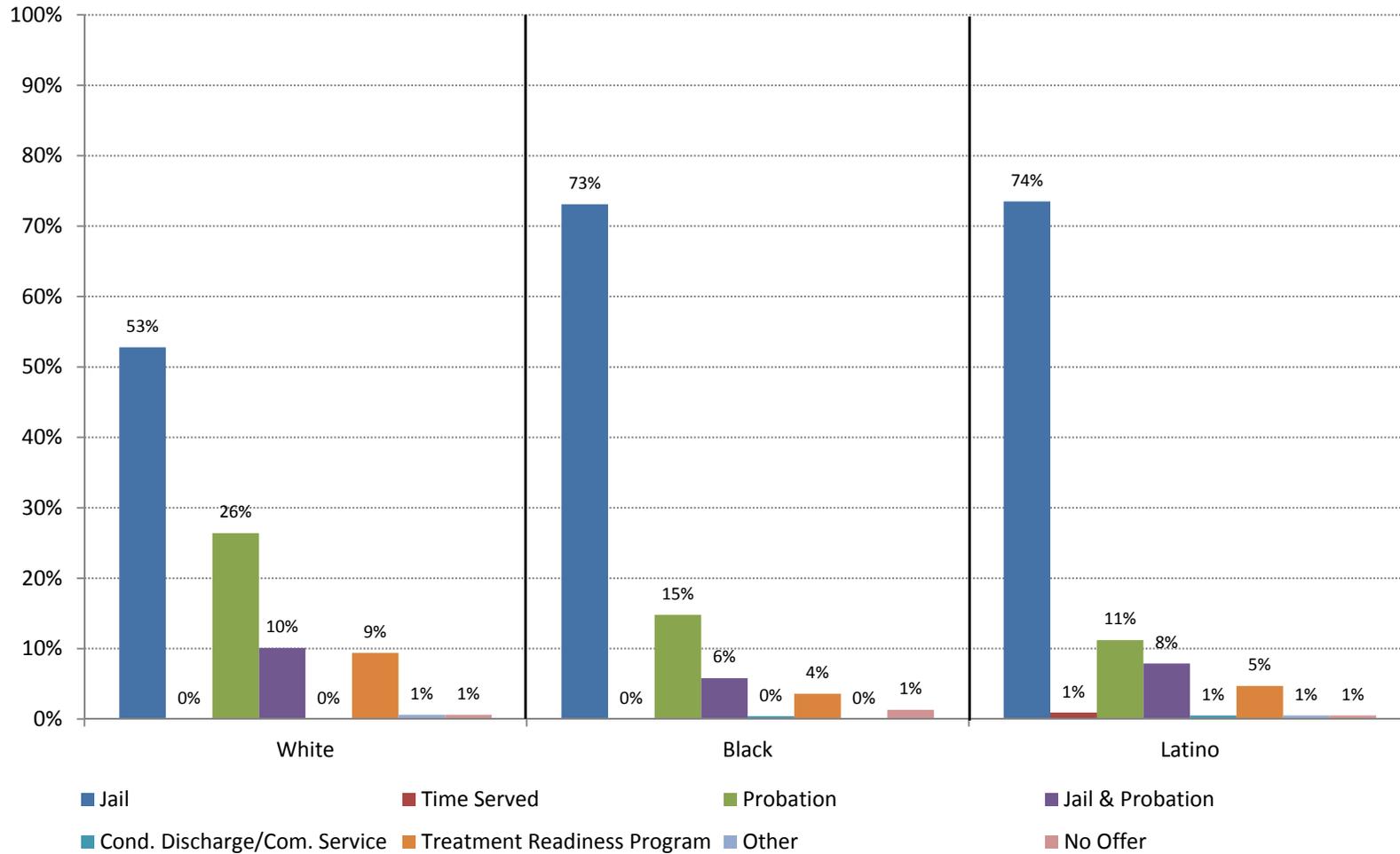
Among cases that are ultimately indicted by a grand jury, overall, most cases are given a custodial offer, but a greater percentage of Latino and black defendants (74% and 73%, respectively) are given jail offers when compared to white defendants (53%). Further, a greater percentage of whites receive a probation offer (26%) than either blacks (15%) or Latinos (11%; see Figure 40).

Figure 39. Sentence Offer Type for Cases Disposed Pre-Indictment for the Felony Drug Sample ($n = 376$) (percent within race)¹⁷⁶



¹⁷⁶ Information on sentence offer is missing for $n = 18$ (2%) cases. A total of $n = 13$ (1%) cases were disposed at criminal court arraignment.

Figure 40. Sentence Offer Type for Cases Disposed Post-Indictment for the Felony Drug Sample ($n = 777$) (percent within race)¹⁷⁷



¹⁷⁷ Information on sentence offer is missing for $n = 197$ (17%) cases.

Table 57. Logistic Regression Predicting Custodial Sentence Offers for the Felony Drug Sample (0 = Non-custodial offer, 1 = Custodial offer, including “time served”)

Predictor	Model 1:	Model 2:	Model 3:	Model 4:	Model 5:
	<i>With Race Only</i>	<i>With Race, No SES</i>	<i>With Race & SES</i>	<i>No Prior Prison or Violent Convictions</i>	<i>No Prior Arrest</i>
	Odds Ratio (Standard Error of Coefficient)				
Black	3.073 (0.69)***	1.455 (0.41)	1.267 (0.40)	1.395 (0.45)	1.446 (0.42)
Latino	2.518 (0.42)***	1.914 (0.48)**	1.775 (0.48)*	1.827 (0.49)*	1.827 (0.49)*
Defendant age (in years)	-	1.035 (0.01)***	1.034 (0.01)***	1.036 (0.01)***	1.039 (0.01)***
Male	-	1.809 (0.49)*	1.825 (0.49)*	1.952 (0.52)*	1.701 (0.44)*
Employed or student	-	0.709 (0.15)	0.759 (0.15)	0.759 (0.15)	0.751 (0.15)
Married	-	0.967 (0.54)	0.980 (0.57)	0.993 (0.57)	0.961 (0.55)
Education – high school or below	-	1.675 (0.41)*	1.567 (0.39)†	1.631 (0.40)*	1.533 (0.37)†
Detained after arraignment	-	7.318 (1.62)***	7.332 (1.65)***	7.673 (1.70)***	7.930 (1.75)***
C felony	-	0.278 (0.14)**	0.276 (0.14)**	0.272 (0.14)**	0.284 (0.14)**
B felony	-	0.753 (0.20)	0.774 (0.21)	0.788 (0.21)	0.774 (0.20)
A felony	-	1.148 (0.71)	1.383 (0.89)	1.332 (0.86)	1.350 (0.89)
Prior arrest (positive continuous)	-	1.127 (0.03)***	1.126 (0.03)***	1.141 (0.03)***	-
Prior prison sentence (positive continuous)	-	1.486 (0.35)†	1.483 (0.35)†	-	1.689 (0.40)*
Prior violent felony convictions	-	1.671 (0.63)	1.721 (0.66)	-	1.923 (0.72)†
Plea offer changed between initial offer and final plea	-	4.686 (0.98)***	4.698 (1.02)***	4.619 (0.99)***	4.428 (0.95)***
AO observed drug sale	-	0.690 (0.36)	0.654 (0.35)	0.695 (0.37)	0.705 (0.37)
AO observed other activity (e.g., Def stopped for traffic violation)	-	0.674 (0.35)	0.630 (0.34)	0.693 (0.38)	0.669 (0.35)
Drug recovered via a non-search	-	3.595 (2.17)*	3.338 (1.98)*	3.287 (1.92)*	3.628 (2.11)*
Drug recovered via search (including SILA)	-	5.354 (3.06)**	5.082 (2.86)**	5.155 (2.90)**	5.317 (2.96)**
Narcotics officer made arrest	-	0.891 (0.22)	0.882 (0.22)	0.887 (0.21)	0.912 (0.23)
Drug was crack cocaine	-	1.282 (0.35)	1.205 (0.33)	1.238 (0.33)	1.349 (0.37)
Drug was an opiate (e.g., heroin)	-	1.404 (0.41)	1.256 (0.36)	1.259 (0.35)	1.179 (0.32)
Drug was of another type (e.g. hallucinogen)	-	0.723 (0.19)	0.683 (0.18)	0.689 (0.18)	0.666 (0.17)
Additional drug recovery	-	1.013 (0.23)	1.027 (0.24)	1.015 (0.23)	1.011 (0.23)
Pre-recorded buy money recovered	-	1.351 (0.42)	1.363 (0.42)	1.381 (0.42)	1.329 (0.40)
Currency recovered	-	1.614 (0.34)*	1.671 (0.34)*	1.722 (0.35)**	1.580 (0.31)*
Empty bags found	-	1.284 (0.39)	1.889 (0.48)	1.139 (0.47)	1.183 (0.50)
Drug sale paraphernalia	-	1.298 (0.67)	1.247 (0.64)	1.226 (0.63)	1.197 (0.63)
Matching bags	-	1.004 (0.39)	0.959 (0.38)	1.019 (0.41)	0.947 (0.38)
Video/audio recordings	-	3.073 (0.89)***	3.004 (0.90)***	2.946 (0.88)***	2.975 (0.87)***
Weapon was recovered	-	2.045 (1.03)	1.973 (0.96)	1.929 (0.93)	1.883 (0.89)
Drug weight (in grams)	-	1.000 (0.00)	1.000 (0.00)	1.000 (0.00)	1.000 (0.00)
Known drug location	-	1.659 (0.81)	1.501 (0.74)	1.564 (0.74)	1.301 (0.66)

Table 57. Logistic Regression Predicting Custodial Sentence Offers for the Felony Drug Sample (0 = Non-custodial offer, 1 = Custodial offer, including “time served”)

Predictor	Model 1:	Model 2:	Model 3:	Model 4:	Model 5:
	<i>With Race Only</i>	<i>With Race, No SES</i>	<i>With Race & SES</i>	<i>No Prior Prison or Violent Convictions</i>	<i>No Prior Arrest</i>
	Odds Ratio (Standard Error of Coefficient)				
D known to arresting officer	-	1.010 (0.54)	1.064 (0.58)	1.019 (0.55)	1.223 (0.66)
Eyewitness identification	-	1.284 (0.39)	1.234 (0.38)	1.233 (0.38)	1.289 (0.39)
Bail request (in thousands of dollars)	-	1.000 (0.00)	1.000 (0.00)	1.000 (0.00)	1.000 (0.00)
Bail set (bond)	-	1.000 (0.00)	1.000 (0.00)	1.000 (0.00)	1.000 (0.00)
Bail set (cash)	-	1.000 (0.00)	1.000 (0.00)	1.000 (0.00)	1.000 (0.00)
18(b)	-	-	0.874 (0.19)	0.890 (0.19)	0.894 (0.19)
Private counsel	-	-	0.490 (0.18)*	0.510 (0.18)†	0.462 (0.17)*
Median household income in D’s Zip Code (in thousands)	-	-	0.995 (0.00)	0.995 (0.00)	0.995 (0.00)
ADA male	-	1.022 (0.24)	1.001 (0.25)	0.958 (0.23)	1.007 (0.24)
ADA black	-	0.905 (0.32)	0.874 (0.31)	0.937 (0.33)	0.874 (0.31)
ADA Latino	-	1.431 (0.55)	1.400 (0.54)	1.387 (0.52)	1.382 (0.51)
ADA Asian	-	1.555 (0.62)	1.571 (0.64)	1.553 (0.62)	1.553 (0.60)
ADA # of open cases at arraignment	-	1.002 (0.00)	1.002 (0.00)	1.002 (0.00)	1.002 (0.00)
Constant	0.978 (0.18)	0.004 (0.00)***	0.007 (0.01)***	0.006 (0.01)***	0.008 (0.01)***
<i>Pseudo R²</i>	0.0412	0.3964	0.4023	0.3939	0.3839
<i>Number of observations</i>	1,148	1,134	1,134	1,134	1,134

To gauge the influence of race on sentence offers in the felony sample, we replicated the misdemeanor analyses described above (see subsection 6.4.B) and added a host of evidence variables not available for the misdemeanor sample. As shown in Table 57, before controlling for other factors, both blacks and Latinos were significantly more likely to receive a more punitive sentence offer: blacks being 25% more likely (*odds ratio* = 3.07) and Latinos 22% more likely (*odds ratio* = 2.52) to receive a custodial offer, including “time served”.¹⁷⁸ When adding control variables, however, only the difference between whites and Latinos remained statistically significant with much of the difference explained by other factors. In the full model (Model 3), Latino defendants became 14% more likely (*odds ratio* = 1.78) to receive a punitive offer as compared to similarly-situated white defendants.¹⁷⁹ Overall, compared to the charge offers, disparities are much more pronounced for sentence offers, whether for the felony or the misdemeanor sample.

A host of control variables also served as significant predictors of the outcome.

Defendants were *more* likely to receive a custodial sentence offers when, they:

- are older (*odds ratio* = 1.03);
- are male (*odds ratio* = 1.83);
- are detained after arraignment (*odds ratio* = 7.33);
- have a prior arrest (*odds ratio* = 1.13);
- were given multiple offers before pleading guilty (*odds ratio* = 4.70);

¹⁷⁸ We used Hanushek and Jackson’s (1977) formula for calculating probabilities from odds ratios: (odds/odds + 1) - .50.

¹⁷⁹ Running a separate full model with “time served” excluded from the outcome slightly decreased the regression coefficients and made them statistically non-significant (for blacks *odds ratio* = 1.11, $p > 0.5$; for Latinos *odds ratio* = 1.69, $p > 0.5$).

- had drugs recovered via a non-search (*odds ratio* = 3.34) or search (*odds ratio* = 5.08) relative to an undercover recovery;
- had currency recovered (*odds ratio* = 1.67); and
- were recorded via an audio or video device (*odds ratio* = 3.00)

Defendants were significantly less likely to receive a custodial offer if they:

- were charged with a less serious class C felony (*odds ratio* = 0.28); and
- were represented by private counsel (*odds ratio* = 0.49).

Looking at defendants with prior arrest by current offense and race, overall, custodial sentence offers are more common as the current charge becomes more serious, regardless of prior arrests. However, there appear to be differences by race (see Tables 58 and 59). First, among defendants with at least one prior arrest, whites charged with A, B or C felonies are less likely to receive a custodial offer (A felony: 75%; B felony: 70%; C felony: 40%) than blacks (A felony: 100%; B felony: 79%; C felony: 60%) or Latinos (A felony: 91%; B felony: 80%; C felony: due to small sample in this cell, this should not be interpreted). Latinos charged with a D felony appear more likely to receive custodial sentence offers (79%) than either whites (69%) or blacks (65%).

Second, among defendants with no prior arrests, white defendants charged with B or D felonies appear less likely to receive custodial sentence offers (B felony: 33%; D felony: 27%) compared to black (B felony: 64%; D felony: 33%) and Latino (B felony: 50%; D felony: 45%) defendants.

Table 58. Sentence Offers for the Felony Drug Sample Broken Down by (1) Prior Arrest, (2) Offense Level and (3) Race

Prior Record	Offense Level	Sentence Offer Type	White		Black		Latino	
			#	%	#	%	#	%
Prior Arrest	A Felony	Custodial	3	75.0	8	100	10	90.9
		Non-custodial	1	25.0	0	0	1	9.1
	B Felony	Custodial	51	69.9	169	79.3	137	80.1
		Non-custodial	22	30.1	44	20.7	34	19.9
	C Felony	Custodial	2	40.0	3	60.0	1	20.0
		Non-custodial	3	60.0	2	40.0	4	80.0
	D Felony	Custodial	45	69.2	17	65.4	23	79.3
		Non-custodial	20	30.8	9	34.6	6	20.7
No Prior Arrest	A Felony	Custodial	3	75.0	1	33.3	13	76.5
		Non-custodial	1	25.0	2	66.7	4	23.5
	B Felony	Custodial	28	32.9	33	63.5	37	50.0
		Non-custodial	57	67.1	19	36.5	37	50.0
	C Felony	Custodial	1	8.3	1	20.0	3	50.0
		Non-custodial	11	91.7	4	80.0	3	50.0
	D Felony	Custodial	16	27.1	3	33.3	9	45.0
		Non-custodial	43	72.9	6	66.7	11	55.0

Note: Information on sentence offer is missing for $n = 188$ (16%) cases.

Table 59 shows sentence offers by defendants' prior prison sentence, offense level and race. Here we will report only percentages for which there were at least 10 cases across all racial groups. Among defendants with a prior prison sentence and a B-felony charge, whites appear less likely to receive a custodial sentence offer (83%) when compared to black (94%) and Latino (93%) defendants. A different trend emerges among defendants with at least one prior prison sentence charged with a D felony: blacks appear less likely to receive a custodial offer (71%) than whites (100%) or Latinos (90%). Among defendants with no prior prison sentence, whites charged with A, B, C or D felonies appear less likely to receive custodial offers (A felony: 71%; B felony: 47%; C felony: 18%; D felony: 45%) compared to blacks (A felony: 80%; B felony: 70%; C felony: 38%; D felony: 54%) and Latinos (A felony: 81%; B felony: 66%; C felony: 30%; D felony: 59%).

Table 59. Sentence Offers for the Felony Drug Sample Broken Down by (1) Prior Prison Sentence, (2) Offense Level and (3) Race

Prior Record	Offense Level	Sentence Offer Type	White		Black		Latino	
			#	%	#	%	#	%
Prior Prison Sentence	A Felony	Custodial	1	100	1	100	2	100
		Non-custodial	0	0.0	0	0	0	0
	B Felony	Custodial	10	83.3	63	94.0	40	93.0
		Non-custodial	2	16.7	4	6.0	3	7.0
	C Felony	Custodial	0	0	1	50.0	1	100
		Non-custodial	0	0	1	50.0	0	0
	D Felony	Custodial	10	100	5	71.4	9	90.0
		Non-custodial	0	0.0	2	28.6	1	10.0
No Prior Prison Sentence	A Felony	Custodial	5	71.4	8	80.0	21	80.8
		Non-custodial	2	28.6	2	20.0	5	19.2
	B Felony	Custodial	69	47.3	139	70.2	134	66.3
		Non-custodial	77	52.7	59	29.8	68	33.7
	C Felony	Custodial	3	17.6	3	37.5	3	30.0
		Non-custodial	14	82.4	5	62.5	7	70.0
	D Felony	Custodial	51	44.7	15	53.6	23	59.0
		Non-custodial	63	55.3	13	46.4	16	41.0

Note: Information on sentence offer is missing for $n = 188$ (16%) cases.

6.5. Sentencing

SECTION SUMMARY

To date, the vast majority of research on racial and ethnic disparity has focused on final sentencing outcomes (Crawford, Chiricos, & Kleck, 1998; Johnson, 2003; Kramer & Steffensmeier, 1993; Peterson & Hagan, 1984; Spohn, Gruhl, & Welch, 1981; Spohn & Holleran, 2006; Steen, Engen, & Gainey, 2005; Steffensmeier, Ulmer, & Kramer, 1998; Zatz, 1984). Collectively, this work suggests that although legally-relevant factors exert the strongest influence on punishment, significant disadvantages remain for black and Latino defendants net of legal considerations (Spohn, 2000; Zatz, 2000). Our findings are consistent with those found in the literature. For *felonies*, a greater percentage of blacks (61%) are sentenced to jail/prison compared to Asians (22%), whites (40%), and Latinos (55%). A greater percentage of Asians (49%) receive a conditional discharge sentence, followed by 33% of whites, 19% of Latinos, and 17% of blacks. Among *misdemeanors*, a greater percentage of black defendants are sentenced to jail (30%) compared to other racial groups. A smaller percentage of Asians are sentenced to jail (4%), while a greater percentage are given a sentence of conditional discharge (42%), when compared to other racial groups. Findings from a multiple logistic regression analysis showed blacks were significantly more likely to receive a custodial sentence (*odds ratio* = 1.25), and Asians were significantly less likely (*odds ratio* = 0.44), relative to whites. While statistically significant, these relationships are not as strong as for those found when predicting charge and sentence plea offers (see section 6.4). Predicted probabilities for each racial group showed that 32 out of every 100 black, 30 out of every 100 Latino, 27 out of every 100 white, and 16 out of every 100 Asian defendants were imprisoned (based on $N = 100,035$ cases analyzed).

While sentencing decisions are ultimately made by judges, prosecutors influence these outcomes through charging decisions and sentencing recommendations made as part of plea bargains. Because the majority of cases end with plea bargains and judges rarely deviate from sentence recommendations in this context, prosecutors can exercise significant control over sentencing outcomes through plea offers. Similarly, because New York’s Penal Law dictates mandatory minimums and maximums for each class of crime,¹⁸⁰ prosecutors’ charging decisions may determine the range within which a judge can sentence a defendant.¹⁸¹ Possible sentences include a term of imprisonment, probation, conditional discharge¹⁸² and fines or restitution. In this section you will see the frequency with which defendants are sentenced to each type of punishment by race and offense type.

6.5.A. Descriptive Overview of Sentences Imposed

Information on sentencing at case disposition is summarized in Table 60. Although sentencing depends, to a great extent, on offense type, but both blacks and Latinos tend to be most likely to be sentenced to jail or prison and less likely to be sentenced to a conditional discharge or time served when compared across racial groups.

Felony defendants, overall, have a greater percentage of jail or prison sentences (55%) or sentences of conditional discharge (20%). Looking within race, a smaller percentage of Asians are sentenced to jail/prison (22%) compared to whites (40%), blacks (61%), and Latinos (55%),

¹⁸⁰ New York Penal Law Articles 60, 65, and 70.

¹⁸¹ The defendant’s prior criminal history will also influence sentencing outcomes. For example, defendants convicted of a second felony must be sentenced to state prison, while those convicted of a third violent felony offense face a mandatory life sentence. New York Penal Law Articles 70.06, 70.08.

¹⁸² Conditional discharges allow the court to impose certain conditions on the defendant’s release without requiring the same extent of supervision as probation. Conditions may include community service, participation in a treatment program, avoiding contact with certain people or restitution. If the defendant fails to meet the conditions set by the court, the sentence may be revoked and the defendant resentenced. New York Penal Law Article 65.05.

with a greater percentage of black defendants sentenced to jail/prison across groups. Asians (49%) have the greatest percentage of conditional discharge sentences, followed by 33% of whites, 19% of Latinos, and 17% of blacks.

Overall, the majority of current *misdemeanor* defendants is sentenced to conditional discharge (33%), followed by jail or prison (24%) or required to pay a fine or restitution (21%), but the groups are also relatively evenly split between jail and time served (22%). Looking within race, a greater percentage of black defendants are sentenced to jail (30%), but also the most likely to be given a sentence of time served (26%) when compared to other racial groups. Blacks have the smallest percentage across groups of being sentenced a fine or restitution amount (14%). Further, among Asians, a smaller percentage are sentenced to jail (4%), and a greater percentage are given a sentence of conditional discharge (42%), when compared to whites (38%), Latinos (35%), and blacks (30%).

The majority of *violation* defendants are sentenced to time served (74%), followed by conditional discharge (15%), and there seems to be less variation across racial groups. A smaller percentage of Latino defendants are sentenced to time served (73%) across all groups, followed by 74% of blacks, and 75% of whites and Asians (with rounding error). Blacks (15%) have the smallest percentage of conditional discharge sentences, as compared to Latinos (16%), Asians (17%), and whites (18%), although the differences are slight.

Table 60. Sentences by Offense Category and Race (N = 120,424)

	Jail/ Prison (%)	Conditional Discharge (%)	Time Served (%)	Probation/ Parole (%)	Fine/ Restitution (%)	Other (%)	Total N
Felonies							
White	39.9	32.6	10.1	13.9	3.1	0.3	1,821
Black	60.9	16.5	8.0	13.5	1.1	0.1	7,909
Latino	55.4	19.5	7.8	15.8	1.5	0.1	5,146
Asian	21.9	48.7	8.8	11.2	9.2	0.2	411
Other	23.1	46.2	15.4	7.7	7.7	0.0	13
Net Total N	8,483	3,106	1,254	2,178	260	19	15,300
Misdemeanors							
White	15.8	37.8	17.4	0.5	28.4	0.02	12,207
Black	29.7	30.2	25.9	0.3	13.9	0.02	45,926
Latino	19.7	35.2	20.7	0.4	24.0	0.0	28,381
Asian	4.2	42.0	9.4	0.2	44.2	0.0	3,796
Other	14.1	37.8	17.8	0.7	29.6	0.0	135
Net Total N	21,367	30,096	20,275	290	18,409	8	90,445
Violations							
White	3.9	17.6	74.5	0.0	4.0	0.0	1,497
Black	6.1	14.5	74.0	0.0	5.4	0.0	8,317
Latino	5.4	15.5	72.5	0.0	6.6	0.0	3,656
Asian	5.5	17.2	75.0	0.0	2.3	0.0	128
Other	4.2	12.5	79.2	0.0	4.2	0.0	24
Net Total N	773	2,062	10,033	0	753	1	13,622
Total N	30,623	35,264	31,562	2,468	19,422	28	119,367

Note: Information is missing on race for 2,491 (1.2%) cases. Sentencing information is N/A for 89,353 (42.0%) cases. Sentencing is unknown for 1,210 (0.6%) cases.

6.5.B. Disposition Type Separated by Felonies, Misdemeanors, and Violations

The figures below (Figures 41-43) provide information on the reasons cases that were screened were disposed, broken down by race across separate offense categories. Possible categories were coded as Guilty by Plea, Case Dismissed, Decline to Prosecute (DP), ACD, Convicted (i.e., following trial), and those designated as other in the DANY database. Because of small frequencies for some disposition types, these categories were re-coded into the Other Disposition Type category, which now includes ACM, Jury Disagreed, Mistrial Declared, and Psychologically Unfit as reasons for case disposition.

Figure 41 summarizes dispositions for *felony* cases, and patterns remain consistent across racial groups. However, whites have a slightly greater percentage of entering a guilty plea (59%) when compared to blacks (56%), Latinos (54%), and Asians (54%). A slightly greater percentage of Latino defendants have their case disposed as a dismissal (36%), as compared to whites (32%), blacks (34%), and Asians (35%).

Figure 41. Disposition Type for Felony Defendants within Race (N = 26,069)¹⁸³

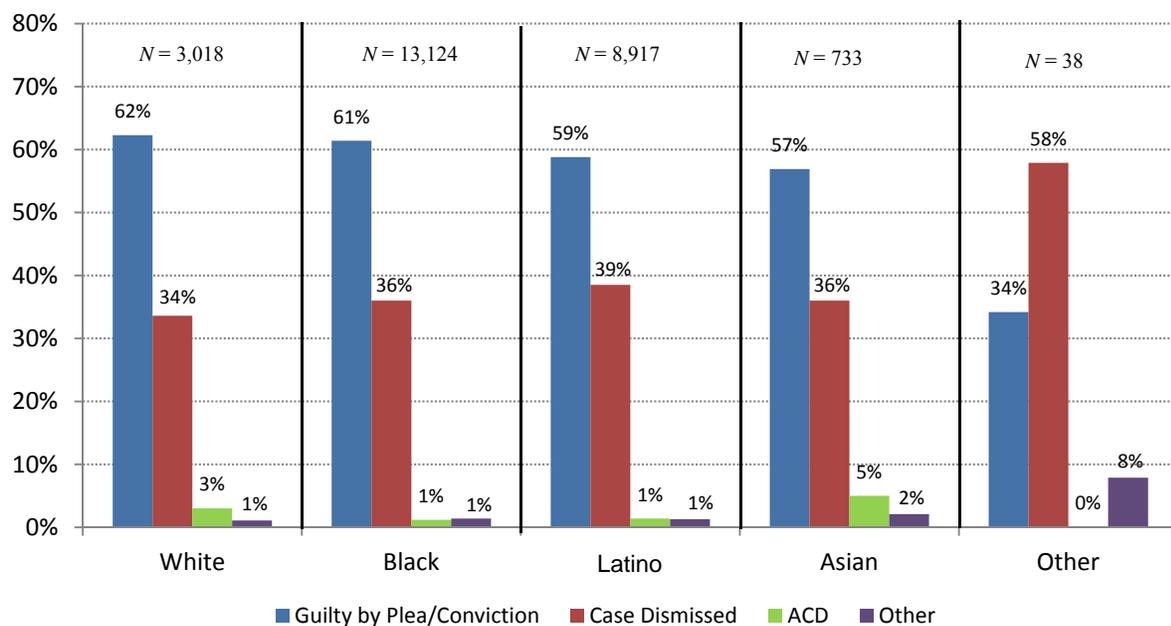


Figure 42 shows a summary of case dispositions for current *misdemeanor* defendants and reveals similar patterns as seen for felony cases. The majority of cases are disposed of with a guilty plea (55%) and this pattern remains across racial groups. However, among black defendants, a greater percentage pleads guilty (63%) as compared to whites (51%), Latinos (53%), and Asians (51%). A smaller percentage of white defendants are least likely to have their case disposed as a dismissal (20%) compared to any other racial group. Further, as expected

¹⁸³ Information is missing on race for 239 (0.9%) cases. The Other Disposition type category includes the following indicators: ACM, Acquitted, Jury Disagreed, Mistrial, Psychologically Unfit, and Case Reopened. A total of N = 9,823 (27.4%) cases were declined for prosecution.

based on the summaries above, very small percentages of defendants, regardless of race, were convicted by trial (they are included in the “Other” category) or had their case declined for prosecution (not shown in the Figure).

Figure 42. Disposition Type for Misdemeanor Defendants within Race (N = 159,206)¹⁸⁴

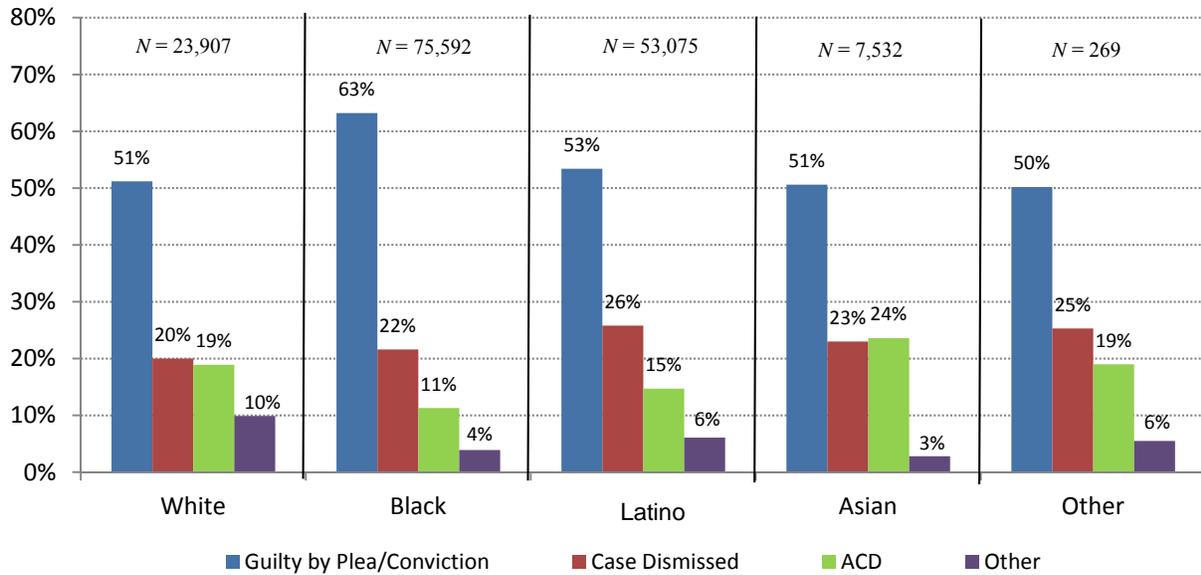
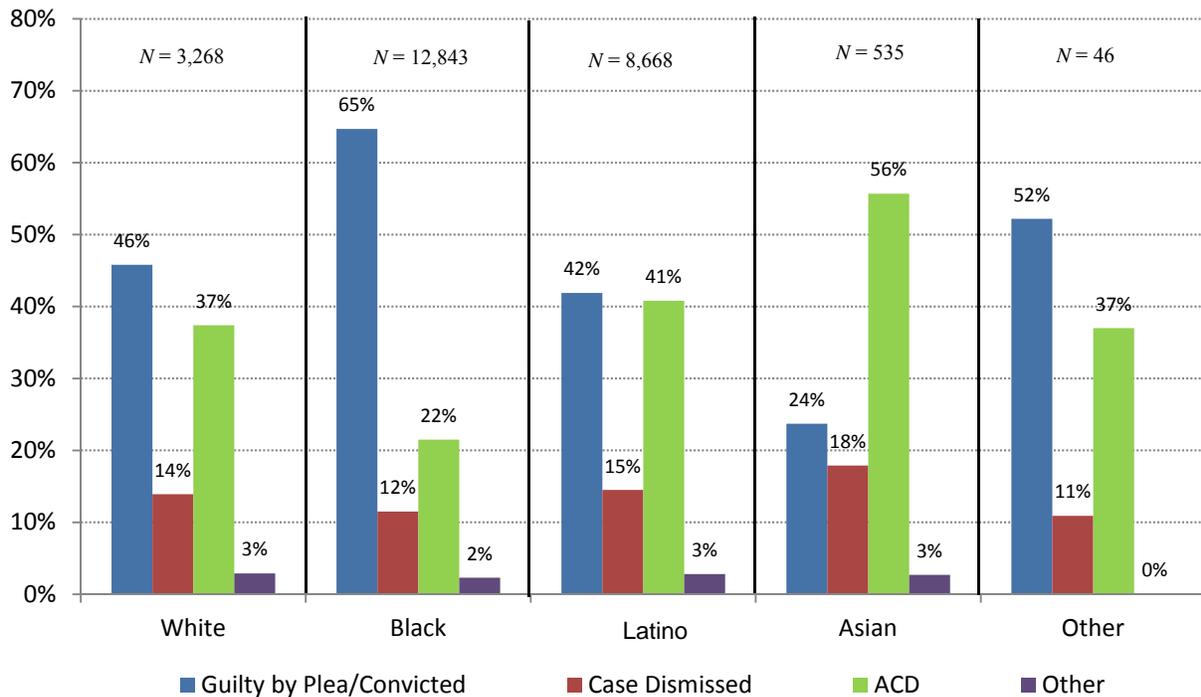


Figure 43 provides a breakdown of *violation* case dispositions by race. Patterns across race are more varied than those of felony cases, whereby cases for black defendants are disposed primarily via a guilty plea (65%), as compared to whites (46%), Latinos (42%), and Asians (24%). For Latinos, cases are relatively split between a guilty plea and ACD (41%), and for Asians, the majority of cases are ACDs (56%).

¹⁸⁴ Information is missing on race for 1,831 (1.2%) cases. The Other Disposition type category includes the following indicators: ACM, Acquitted, Jury Disagreed, Mistrial, Psychologically Unfit, and Case Reopened. A total of N = 9,823 (6.2%) cases were declined for prosecution.

Figure 43. Disposition Type for Current Violation Defendants within Race (N = 25,781)¹⁸⁵



6.5.C. Multivariate Analyses of Sentence Outcomes

Previous research suggests that blacks and Latinos are more likely to be sentenced to imprisonment and longer prison terms (Carson & Sabol, 2012; Hartley et al., 2007; Mayrack, 2007; Steffensmeier & Demuth, 2000) and that Asians benefit from more positive and less stigmatizing stereotypes in society, which may contribute to more lenient sentencing outcomes for them (Johnson & Betsinger, 2009). Relying on these studies and also considering the vast overrepresentation of people of color in the country’s prisons and jails, we hypothesized that, in comparison with similarly situated white defendants, blacks and Latinos are *more* likely and Asians *less* likely to be sentenced to custodial punishments (see Hypothesis 5, in section 1.3:

¹⁸⁵ Information is missing on race for 421 (1.6%) cases. The Other Disposition type category includes the following indicators: ACM, Acquitted, and Case Reopened. A total of N = 9,823 (2.8%) cases were declined for prosecution.

Research Questions). While this hypothesis was largely confirmed by descriptive findings shown above, we ran a series of multivariate regression models to provide a fuller account of sentence outcomes. Similar to the analyses of earlier discretionary decisions described in this section, the first model included only *race*; the second model included race and other controls, except for *defense counsel* and *arrest neighborhood*, which were added to the third model (full model); the fourth model excluded the *number of prior prison sentences* to look at the impact of the *number of prior arrests*, while the fifth model instead excluded the *number of prior arrests*. A sixth model was included to correct for selection bias caused by case dismissals in earlier stages (Heckman, 1979) as described above (see *Analytical Strategy*, section 2.3.).

Also while most cases result in plea bargaining, and we already showed strong evidence that blacks and Latinos are more likely to receive custodial sentence offers, we nevertheless decided to run multivariate analyses for sentences *imposed* (as opposed to sentences offered) mainly because the regression analyses described earlier focus on sentence offers based only on misdemeanors (for population 5.4.A.iii, and for sample data 5.4.B.iv). The sentence outcome analyses described here include all misdemeanors as well as select felonies (see Table 61).

Table 61. Logistic Regression to Predict Sentence Imposed (0 = non-custodial, 1 = custodial)¹⁸⁶

	Model 1: <i>With Race Only</i>	Model 2: <i>With Race, No “SES”</i>	Model 3: <i>With Race & “SES”</i>	Model 4: <i>No Prior Prison</i>	Model 5: <i>No Prior Arrest</i>	Model 6: <i>Full Model Using Heckman</i>
Predictor	Odds Ratio (Standard Error of Coefficient) ¹⁸⁷					
Black	1.847 (0.09)***	1.225 (0.05)***	1.245 (0.04)***	1.332 (0.03)***	1.523 (0.04)***	1.300 (0.03)***
Latino	1.277 (0.17) [†]	0.998 (0.07)	1.014 (0.06)	1.052 (0.02)*	1.160 (0.03)***	1.028 (0.04) 0.490 (0.04)***
Asian	0.333 (0.03)***	0.457 (0.03)***	0.441 (0.03)***	0.430 (0.08)***	0.414 (0.08)***	0.877 (0.19) 1.021 (0.00)***
Other	0.751 (0.25)	0.933 (0.23)	0.921 (0.30)	0.903 (0.08)	0.955 (0.09)	1.508 (0.08)**
Age	-	1.014 (0.00)***	1.014 (0.00)***	1.018 (0.00)***	1.018 (0.00)***	1.043 (0.01)*
Male	-	1.445 (0.23)*	1.448 (0.22)*	1.539 (0.06)***	1.662 (0.07)***	2.515 (0.18)** 9.283 (0.21)***
Defendant detained	-	1.082 (0.02)***	1.078 (0.02)***	1.078 (0.01)***	1.111 (0.02)***	9.102 (0.20)***
A misdemeanor	-	2.245 (0.67)**	2.233 (0.64)**	2.292 (0.10)***	2.072 (0.10)***	16.97 (0.26)***
E felony	-	7.658 (2.65)***	7.331 (2.54)***	7.544 (0.79)***	6.500 (0.55)***	14.23 (0.17)***
D felony	-	7.785 (2.71)***	7.396 (2.49)***	7.761 (0.86)***	6.755 (0.66)***	41.96 (0.07)***
C felony	-	13.98 (6.44)***	13.72 (6.10)***	13.96 (1.95)***	11.68 (1.42)***	1.411 (0.05)***
B felony	-	11.93 (3.35)***	11.44 (3.14)***	11.73 (0.89)***	10.11 (0.66)***	1.447 (0.04)***
A felony	-	39.38 (1.21)***	39.21 (2.89)***	39.28 (9.0)***	26.87 (6.77)***	1.829 (0.08)***
Person crime	-	1.945 (0.12)***	1.903 (0.12)***	1.909 (0.25)***	2.042 (0.30)***	1.439 (0.01)***
Property crime	-	1.716 (0.10)***	1.670 (0.10)***	1.734 (0.15)***	1.972 (0.21)***	1.006 (0.00)**
Drug crime	-	1.968 (0.23)***	2.016 (0.18)***	2.132 (0.22)***	2.473 (0.28)***	
# of charges at screening	-	1.375 (0.01)***	1.385 (0.02)***	1.385 (0.04)***	1.378 (0.04)***	
# of counts at screening	-	1.007 (0.00)*	1.006 (0.00)**	1.005 (0.00) [†]	1.006 (0.00) [†]	

¹⁸⁶ Note that odds ratios are not the measures of relative risk, and they typically exaggerate the effect size compared to relative risk. If the odds ratio is greater than 1.0, then a comparison group (in this case, blacks, Latinos and Asians), are more likely to receive the plea-to-the-charge recommendation, and if the value is less than 1.0, then they are less likely to receive this recommendation.

¹⁸⁷ Robust standard errors were calculated to account for clustering that occurs for *defense counsel type*. Many defendants are assigned the same type of counsel to handle their cases and so variation across defendants is underestimated. Robust standard errors adjust for this underestimation.

Table 61. Logistic Regression to Predict Sentence Imposed (0 = non-custodial, 1 = custodial)¹⁸⁶

	Model 1: <i>With Race Only</i>	Model 2: <i>With Race, No "SES"</i>	Model 3: <i>With Race & "SES"</i>	Model 4: <i>No Prior Prison</i>	Model 5: <i>No Prior Arrest</i>	Model 6: <i>Full Model Using Heckman</i>
Predictor	Odds Ratio (Standard Error of Coefficient) ¹⁸⁷					
Prior arrest	-	3.255 (0.32)***	3.340 (0.35)***	3.739 (0.18)***	-	4.072 (0.08)***
Prior prison sentence	-	2.439 (0.18)***	2.415 (0.19)***	-	3.108 (0.06)***	2.786 (0.60)***
Legal aid	-	-	1.249 (0.04)***	1.270 (0.03)***	1.509 (0.04)***	1.265 (0.03)***
18(b)	-	-	1.611 (0.03)***	1.669 (0.03)***	1.958 (0.02)***	1.554 (0.02)***
NY Defender Service	-	-	1.435 (0.07)***	1.474 (0.04)***	1.786 (0.04)***	1.525 (0.03)***
Neighborhood Defender Service	-	-	1.131 (0.05)**	1.151 (0.03)***	1.438 (0.04)***	1.134 (0.03)**
Harlem	-	-	0.976 (0.01)***	0.962 (0.02)	0.977 (0.02)	1.001 (0.00)
West (midtown to downtown)	-	-	1.155 (0.02)***	1.125 (0.02)***	1.054 (0.02)**	1.181 (0.02)***
East (midtown to downtown)	-	-	1.073 (0.02)***	1.064 (0.02)***	1.019 (0.02)	1.103 (0.01)***
Outside NYC	-	-	1.244 (0.04)***	1.224 (0.06)***	1.107 (0.05)*	1.316 (0.02)***
Constant	0.297 (0.01)***	0.008 (0.00)***	0.006 (0.00)***	0.004 (0.00)***	0.006 (0.00)***	0.003 (0.10)***
<i>Pseudo R²</i> ¹⁸⁸	0.0177	0.1860	0.1906	0.1776	0.1546	0.1990
<i>-2 Log-likelihood</i> ¹⁸⁹	128,424.91	104,786.11	99,170.62	100,760.97	103,576.95	280,338
<i>Number of Observations</i>	106,739	105,703	100,035	100,035	100,035	128,909

***p ≤ .001, ** p ≤ .01, * p ≤ .05, † < .10.

¹⁸⁸ This pseudo R² is calculated the Cox and Snell index of goodness of fit, which has maximum value of .75, when the variance is at the maximum .25.

¹⁸⁹ Smaller values of the -2 log-likelihood statistic indicate better-fitting statistical models. Different models can be compared by looking at the difference between their -2 log-likelihoods.

The findings confirm Hypothesis 5: compared to white defendants, blacks were *more* likely to be sentenced to custodial punishments, while Asians were *less* likely. Simple percentages, described in subsection 5.5.A, showed that blacks and Latinos were sentenced to custodial punishments more frequently for *felonies* (61% blacks, 55% Latinos, 40% of whites, and 22% of Asians) as well as for *misdemeanors* (30% blacks, 20% Latinos, 16% whites, and 4% Asians). For all cases combined, after controlling for the effects of the variables listed in Table 61 (Model 3), black defendants were 6% more likely than similarly-situated white defendants to be sentenced to imprisonment (*odds ratio* = 1.25). While the difference between Latinos and whites were small and statistically non-significant, Asians were 19% *less* likely than whites to receive a custodial punishment (*odds ratio* = 0.44).¹⁹⁰ A similar pattern of results remain after using the Heckman correction of selection bias; while blacks were significantly more likely to receive custodial punishment (*odds ratio* = 1.30) and Asians less likely (*odds ratio* = 0.49) relative to whites, the relationship between Latinos and whites was still statistically non-significant. Predicted probabilities for each racial group showed that 32 out of every 100 black, 30 out of every 100 Latino, 27 out of every 100 white, and 16 out of every 100 Asian defendants were imprisoned (based on $N = 100,035$ cases analyzed). Based on this analysis and most discretion points analyzed earlier, Asians appear to receive the most advantageous treatment across the prosecutorial process.

Overall, custodial punishments were most likely to be imposed when a defendant:

- had more serious charges, and particularly if they had previously been convicted for felonies;
- had more charges and charge counts;

¹⁹⁰ We used Hanushek and Jackson's (1977) formula for calculating probabilities from odds ratios: $(\text{odds}/\text{odds} + 1) - .50$.

- was older;
- was male;
- had at least one prior arrest or prior prison sentence;
- was not represented by private counsel, and particularly likely when represented by counsel appointer under 18(b); and
- was arrested outside Upper West Side and Upper East Side, except for Harlem where arrests were most likely to lead to a prison or jail sentence.

Table 62. Racial Differences in Odds Ratios by Crime Type for Logistic Regression Models Predicting Custodial Sentence Imposed

Crime Type	Offense Category	Compared to whites:	% difference in odds (direction of relation)
Person (n = 4,969)	Felony	Black	31.9 ↑*
		Latino	43.9 ↑
		Asian	93.3 ↑*
	Misdemeanor	Black	89.3 ↑*
		Latino	32.3 ↑
		Asian	51.8 ↓*
Property (n = 38,820)	Felony	Black	41.7 ↑*
		Latino	19.6 ↑*
		Asian	186.1 ↓*
	Misdemeanor	Black	9.2 ↑*
		Latino	0.2 ↓
		Asian	317.9 ↓*
Drug (n = 21,747)	Felony	Black	80.1 ↑*
		Latino	49.6 ↑*
		Asian	18.1 ↑
	Misdemeanor	Black	84.7 ↑*
		Latino	10.9 ↑
		Asian	92.4 ↓*

To supplement the main analyses controlling for charge seriousness and crime type, separate logistic regression models were run by crime type (*person*, *property* and *drug*) and for

each offense category (*felonies* and *misdemeanors*) separately (see Table 62). Consistently across both crime type and offense category and relative to white defendants, black and Latino defendants were more likely to be sentenced to jail or prison, while Asians are generally less likely relative to whites. This is also consistent with what was found for custodial sentence plea offers. Disparities were more apparent for black and Asian defendants. For *felony person crimes*, the odds for custodial sentence is greatest for Asians (93% greater) and for *misdemeanor person crimes*, the odds are greatest for blacks (89% greater) relative to whites. The findings for Asian defendants were less consistent but in general suggested they were also less likely to be sentenced to jail or prison, in particular, they are least likely to be sentenced to jail or prison for *felony* (odds are 186% fewer) and *misdemeanor* (odds are 318% fewer) *property crimes* relative to whites.

6.6. Charge Dynamic

Prosecutors have nearly unfettered discretion when making charging decisions. While these decisions are guided by the facts of a case, and in some instances the defendant's criminal history, the final decision as to whether and how to charge a defendant rests entirely with prosecutors. For example, certain misdemeanors can, but do not have to be bumped up to felonies on the basis of a defendant's criminal history. ECAB ADAs, in consultation with an ECAB supervisor, decide whether to bring felony or misdemeanor charges. As discussed above, charging decisions have a direct influence on sentencing outcomes, as a result of the New York Penal Law's mandatory maximum and minimum sentences for all classes of offenses.

At screening, ECAB ADAs initially determine how a defendant will be charged and will typically draw up a complaint for the most serious provable charge. The number and seriousness of charges brought may increase or decrease between arrest and screening, based on a number of

factors, including, for example, the ADA's assessment of the strength of available evidence or a defendant's credibility. Similarly, prosecuting ADAs may change the severity or number of charges post-arraignment. For *felonies* this is particularly likely to occur during the six-day period between arrest and indictment, when the majority of an ADA's investigation is performed. The third circumstance that commonly leads to a change in charges is a plea bargain (see section 6.4). Less commonly, investigations may produce different types of information that could lead an ADA to change charges. Technical information is unlikely to be available within the arrest-to-indictment period, so lab results (e.g., drugs, DNA, etc.) may lead to changes in charges post-indictment. Further, it may take time for the extent of a victim's injuries to be ascertained, or a victim may die after the six-day period, changing an assault or attempted murder charge to murder. In addition, prosecutors may learn new information about a defendant during this period, either through defense counsel or through meetings with the defendant or the defendant's family. Such conversations may demonstrate that a defendant shows remorse, or is enrolled in school, or is the sole provider for his or her family, all of which may lead a prosecutor to mitigate charges. This section examines whether the seriousness of charges changes between arrest, initial screening, and disposition. Results will be separated according to the offense category recorded at screening. Therefore, the screening charge is the demarcation point for all tables displayed below.

Overall, the data suggest that, although white and Asian defendants are more likely to have their misdemeanor charges increased at screening, these defendants seem more likely to have their charges ultimately decreased at case disposition compared to black and Latino defendants.

For *felonies* at screening, reviewing ADAs were not likely to change charges brought by the police (see Table 63). However, white and Asian defendants were more likely to have their misdemeanor arrest charges increased to a felony at screening (6% for both groups, with rounding error) than either black (4%) or Latino (5%) defendants.

For those charged with a *misdemeanor* at screening, Asians were most likely to have their charges decreased from a felony at arrest (10%), followed by blacks and Latinos (9% in both groups), and whites (8%).

For *violations* at screening, a greater percentage of black defendants was first charged with misdemeanors at arrest (15%) when compared to whites (9%), Latinos (13%), and Asians (9%). Some defendants charged with felonies at arrest were ultimately charged with violations at case screening; the greatest percentage being among Latino defendants (1%), then black (1%), white (0.8%), and Asian (0.6%) defendants.

Table 63. Percentage of Charges that Change from Arrest to Screening within Race (N = 211,056)

Felonies at Screening (N = 26,069)				
	Felonies at Arrest (%)	Misdemeanors at Arrest (%)	Violations at Arrest (%)	Total N (%)
White	94.2	5.8	0.00	3,011 (100%)
Black	95.7	4.3	0.01	13,089 (100%)
Latino	95.3	4.6	0.01	8,876 (100%)
Asian	94.3	5.7	0.00	733 (100%)
Other	92.1	7.9	0.00	38 (100%)
Net Total	24,549	1,190	8	25,747

Misdemeanors at Screening (N = 159,206)				
	Felonies at Arrest (%)	Misdemeanors at Arrest (%)	Violations at Arrest (%)	Total N (%)
White	8.2	90.7	1.0	23,451 (100%)
Black	9.2	89.7	1.1	71,632 (100%)
Latino	9.3	89.6	1.1	52,164 (100%)
Asian	10.4	88.7	0.9	7,449 (100%)
Other	7.5	92.1	0.4	265 (100%)
Net Total	14,148	139,138	1,675	154,961

Table 63. Percentage of Charges that Change from Arrest to Screening within Race (N = 211,056) cont.

Violations at Screening (N = 25,781)				
	Felonies at Arrest (%)	Misdemeanors at Arrest (%)	Violations at Arrest (%)	Total N (%)
White	0.8	8.7	90.5	3,267 (100%)
Black	1.1	14.9	84.0	12,834 (100%)
Latino	1.2	12.9	85.9	8,665 (100%)
Asian	0.6	9.3	89.9	534 (100%)
Other	0.0	4.3	95.7	46 (100%)
Net Total	276	3,366	21,704	25,346
Total N	38,973	143,694	23,387	206,054

Note: Information on arrest charge is missing for 5 cases. Race is unknown for N = 2,491 (1.2%) cases. Defendants charged with an infraction at arrest (N = 2,506, 1.2%) are excluded from this table.

Next we examined charge changes from screening to disposition (see Table 64). Charges brought to DANY as felonies are very likely to remain felonies (although they can change from one felony level to another). However, whites and Asians are more likely to have their charges decreased to misdemeanors at disposition (10% for both groups) than either blacks (8%) or Latinos (8%).

For *misdemeanors* at screening, most charges are disposed as a misdemeanor, with no noticeable differences across racial groups. It is essentially the same pattern for *violation* charges at screening; most cases are disposed as a violation charge.

Table 64. Percentage of Charges that Change from Screening to Disposition within Race (N = 211,056)

Felonies at Screening (N = 26,069)				
	Felonies at DSP (%)	Misdemeanors at DSP (%)	Violations at DSP (%)	Total N (%)
White	90.3	9.7	0.1	2,920 (100%)
Black	92.0	7.9	0.1	12,770 (100%)
Latino	92.0	8.0	0.1	8,649 (100%)
Asian	90.1	9.6	0.3	700 (100%)
Other	92.1	5.3	2.6	38 (100%)
Net Total	23,002	2,051	24	25,077

Misdemeanors at Screening (N = 159,206)				
	Felonies at DSP (%)	Misdemeanors at DSP (%)	Violations at DSP (%)	Total N (%)
White	0.2	99.6	0.1	17,195 (100%)
Black	0.2	99.7	0.1	61,917 (100%)
Latino	0.2	99.7	0.1	42,362 (100%)
Asian	0.1	99.8	0.0	5,548 (100%)
Other	1.0	99.0	0.0	205 (100%)
Net Total	272	126,823	132	127,227

Violations at Screening (N = 25,781)				
	Felonies at DSP (%)	Misdemeanors at DSP (%)	Violations at DSP (%)	Total N (%)
White	-	0.1	99.9	1,993 (100%)
Black	-	0.1	99.9	9,849 (100%)
Latino	-	0.1	99.9	4,972 (100%)
Asian	-	0.4	99.6	226 (100%)
Other	-	0.0	100	29 (100%)
Net Total		14	17,055	17,069
Total N	23,274	128,888	17,211	169,373

Note: There is no charge information at disposition for N = 30,112 (1.4%) cases. Race is unknown for N = 2,491 (1.2%) cases. Defendants charged with an infraction at disposition (N = 37, 0.02%) are excluded from this table.

Part 7. Conclusion

7.1. Why Does This Work Matter to New York City and Vera?

The collaboration of the New York County District Attorney's Office and the Vera Institute of Justice represents an ideal context for a study of this nature.

New York County, or Manhattan as it is commonly called, is home to fewer than 1.6 million people and is the most densely populated county in the United States while being the smallest of the five boroughs of New York City. Manhattan is also one of the world's wealthiest places, yet it encompasses the greatest income inequality by race of New York City's five boroughs: median income for Latino and black households is one-third that of white households¹⁹¹ and, as this study suggests, low income is associated with more punitive case outcomes. New York City is also the epicenter of the ongoing controversy surrounding police stop-and-frisk practices, which highlights racial tensions and the need for law-enforcement to achieve race-neutral decision making. Moreover, recent changes in the Rockefeller Drug Laws¹⁹² generated much interest among policymakers, practitioners, and researchers in the possible impact of these changes on overrepresentation of blacks and Latinos in the criminal justice system. Finally, New York County's selection as a study site was also motivated by DANY's commitment to achieve greater equality in case outcomes. As discussed in the introduction, the project was in many ways the consequence of District Attorney Vance's pledge to examine racial and ethnic equity in the office's decision making when he ran for office in 2009.

¹⁹¹ Based on the U.S. Census Bureau 2010 American Community Survey, the median household income for whites (excluding Hispanics/Latinos) is \$94,945, for Asians - \$63,820, for Hispanics/Latinos - \$32,104, and for blacks - \$31,802.

¹⁹² The Rockefeller Drug Laws are the statutes dealing with the sale and possession of narcotics in the New York State Penal Law, named under Governor Nelson Rockefeller who signed them in 1973. The statutes carried a minimum of 15 years to life in prison, and a maximum of 25 years to life in prison for *selling* two ounces (57 g) or more of heroin, morphine, opium, cocaine, or cannabis, or *possessing* four ounces (113 g) or more of the same substances. In April 2009, these statutes were revised to remove the mandatory minimum sentences and to allow judges to sentence individuals convicted of drug offenses to treatment or to shorter sentences.

For its part, the Vera Institute of Justice brought a unique set of skills and expertise to the project. Not only is Vera staffed by experts in racial justice, prosecution, sentencing and social science research, but it also carries the legacy of racial justice work tracing back to the early 1960s, when the Institute implemented the Manhattan Bail Project, which showed that many people accused of committing a crime can be relied on to appear in court and without having to post bail or be held in pretrial detention, which had significant implications for defendants of color.¹⁹³

The present study represents the collective vision of numerous people who pooled their expertise in criminal justice practice and research methods to help produce meaningful findings. In our interpretation of meaningful, we include *objectivity*, i.e., findings represent actual case processing decisions, and *relevance*, i.e., while contributing to the body of research and our understanding of the phenomenon, both are helpful in thinking about how to improve existing prosecutorial policies and practices. We address our efforts to ensure the study's objectivity throughout the report (and review the study limitations in section 6.4). In the next two sections, we will address relevance, both with respect to DANY (section 6.2) and the research community (section 6.3).

7.2. Implications for the New York County DA's Office

The study looked at all significant prosecutorial discretionary points, some of which are fully under prosecutors' control (e.g., case acceptance for prosecution), others are regulated by

¹⁹³ The Manhattan Bail Project initiated institutional reforms in federal and state courts across the country, culminating in the adoption of the federal Bail Reform Act of 1966. In New York, the same basic system of interviewing defendants, testing their community ties, making release recommendations, and monitoring the results is continued today by the Criminal Justice Agency, a private organization created by the city government and Vera in 1977. For more see, *A short history of Vera's work on the judicial process*, available from <https://intranet.vera.org/system/files/Judicial-2006.pdf>

prosecutors although their decisions are guided by statutes or guidelines (e.g., as discussed in section 5.4., DANY has internal plea guidelines), and still others fall under the courts' prerogative but prosecutors contribute to decision making (e.g., pretrial detention or sentencing). The findings, discussed below, in two instances suggest policy implications for DANY. In the case of other findings, we recommend further inquiry to determine how they might affect DANY policy and practice.

The study found:

Case acceptance for prosecution: DANY prosecutes nearly all cases brought by the police, including 94% of felonies, 96% of misdemeanors, and 89% of violations. No marked racial or ethnic differences were observed for this discretionary point. However, such high case acceptance rates are not necessarily indicative of the quality of arrests, given the dismissal rates reported above. Therefore, conducting a more thorough case screening and eliminating cases that are likely to be dismissed at later stages may help the office and the court system save resources required for handling these cases and minimize the possibility of unnecessary pretrial detention of defendants. However, identifying such cases at the initial screening is challenging, especially with legal and other pressures to screen cases quickly. One possible way to address screening decisions would be to increase DANY's capacity to identify the most common characteristics that contribute to case dismissals, and act on these conclusions as early in case processing as reasonable. Another possible way could be to develop some type of predictive model that takes into account the most common characteristics that contribute to case dismissals. Such a model could be developed in partnership with researchers.

Pretrial detention: Greater percentages of black defendants were held in custody after arraignment, whether for felonies (61%) or misdemeanors (22%), followed by Latinos (56% and

15%, respectively), whites (43% and 10%, respectively) and Asians (28% and 3%, respectively). When controlling for the influence of other factors, including charge seriousness and prior record, compared to white defendants, blacks were 10% *more* likely (*odds ratio* = 1.48), Latinos 3% *more* likely (*odds ratio* = 1.14), and Asians 21% *less* likely (*odds ratio* = 0.41) to be detained.

Racial disparities in pretrial detention were particularly large for *misdemeanor person* offenses where blacks were 20% *more* likely than whites to be detained (*odds ratio* = 2.31) and in *misdemeanor property* offenses where Asians were 33% *less* likely than whites to receive this outcome (*odds ratio* = 5.03). Unfortunately, the analyses of pretrial detention did not take into account community ties, employment, and family information relevant to this decision-making point, and thinking about policy implications is particularly challenging for pretrial detention. Nevertheless, decreasing the case acceptance rate, as mentioned above, will likely have a more favorable impact on defendants of color, given that they are detained at higher rates.

Case dismissal: Compared to white defendants, blacks, Latinos, and Asians were more likely to have their cases dismissed at any point, whether for felonies or misdemeanors. A total of 5% of all cases accepted for prosecution were dismissed through an adjournment in contemplation of dismissal (ACD). After excluding ACD dismissals, 36% of all felonies analyzed, 18% of all misdemeanors, and only 5% of all violations have been dismissed. In the full dataset provided by DANY, 10,923 (5%) of all cases prosecuted were flagged as domestic violence (DV) and these cases, regardless of race, had a much higher dismissal rate.

When ACDs and DV cases are excluded, 35% of felonies and 16% of misdemeanors were dismissed. For non-ACD, non-DV *felonies*, 38% Latinos, 35% blacks, 33% Asians and 32% whites had their case dismissed. For non-ACD, non-DV *misdemeanors*, 18% Latinos, 17%

Asians, 15% blacks, and 12% whites had their case dismissed. Logistic regression analyses largely confirmed a more punitive outcome—a lower probability of dismissal—for whites: blacks and Latinos were 9% more likely (*odds ratio* = 1.42 for blacks and 1.41 for Latinos), and Asians 2% more likely (*odds ratio* = 1.10) to have their case dismissed compared to similarly-situated whites. These findings raise the question of whether having dismissal rates for defendants of color should be viewed as an indicator of leniency, or simply serve as a mechanism for declining to prosecute cases that could be rejected at screening. While case rejection at initial screening has greater advantages than dismissals for both the defendant and the criminal justice system, dismissing cases even after they are accepted for prosecution still provides an opportunity to identify and correct potential racial biases earlier in the process.

Plea bargaining - Charge offers: the study found limited evidence that in the drug sample (combined misdemeanor and felony samples), blacks were less likely to receive a reduced charge offer, even after controlling for many relevant factors, including arrest circumstances, evidence gathered, charge seriousness, and prior record. Overall, the strongest predictors of charge offers were change in plea offer (whether the initial plea offer differed from the final plea), prior prison sentence, the recovery of currency at the time of arrest, prior violent felony conviction and charge seriousness. For a sample of 1,153 *felony drug* cases, no statistically significant differences were found.

Plea bargaining - Sentence offers: Blacks and Latinos are more likely to receive custodial offers (including time served in pretrial detention), as opposed to non-custodial sentence offers which includes jail, probation and fine. The sentence offer analyses was conducted for (a) all misdemeanors in the dataset provided by DANY, (b) the random sample of 1,246 misdemeanor marijuana cases, and (c) the random sample of 1,153 felony non-marijuana drug cases.

For all misdemeanors, a greater percentage of blacks (47%) received custodial offers compared to Latinos (32%), whites (22%), and Asians (8%). After considering various factors, blacks were 13% more likely (*odds ratio* = 1.67) and Latinos 5% more likely (*odds ratio* = 1.21) to receive custodial sentence offers; Asians however were 25% *less* likely to receive this outcome (*odds ratio* = 0.33) as compared to white defendants. Racial disparities were particularly large for misdemeanor *drug* offenses, followed by misdemeanor *person* offenses, and least pronounced for misdemeanor *property* offenses. For all drug misdemeanors analyzed, black defendants were 27% (*odds ratio* = 3.29) and Latino defendants 18% more likely (*odds ratio* = 2.12) to receive a custodial sentence offer (which included time served in pretrial detention as an offer), as compared to similarly-situated white defendants. When “times served” was excluded from the custodial sentence offers, the racial differences reported above increased, although only marginally.

When examining sentence offers for the misdemeanor marijuana sample, black defendants were 19% more likely (*odds ratio* = 2.21) to receive a punitive sentence offer, while differences between whites and Latinos, and between whites and Asians were not statistically significant.

For the felony non-marijuana drug sample, although the difference between whites and blacks was not statistically significant, Latinos were 14% more likely (*odds ratio*=1.78) to receive a custodial sentence offer. The exclusion of “time served” from the outcome did not change the results noticeably for either the misdemeanor or felony samples.

Prior arrest also influences sentence offers more than *prior prison sentences*. This significant influence of *prior arrest* on sentence offers is consistent with the DANY Plea Offer Guidelines which recommend more severe punishments for defendants with prior arrest history.

The finding suggests that if these guidelines were based on *prior sentences*, as opposed to *prior arrest*, much of the difference between black and white, and Latino and white defendants would have disappeared, at least in misdemeanor cases. We recommend that DANY review and revise the guidelines with an eye to this finding.

Sentences imposed: For the full dataset, including felonies and misdemeanors, black defendants were significantly *more* likely, and Asian defendants significantly *less* likely, to be sentenced to custodial punishments, in comparison with white defendants. However, racial disparities in sentences imposed are not as large as in sentence offers described above. Simple percentages showed that blacks and Latinos were sentenced to custodial punishments at higher rates for *felonies* (61% blacks, 55% Latinos, 40% of whites, and 22% of Asians) as well as for *misdemeanors* (30% blacks, 20% Latinos, 16% whites, and 4% Asians). After controlling for the influence of a range of factors, blacks were 5% more likely (*odds ratio* = 1.25) and Asians 19% *less* likely (*odds ratio* = 0.44) to be sentenced to imprisonment. No statistically significant difference in sentences was found between whites and Latinos.

Racial differences between whites and blacks were greatest for *misdemeanor person* offenses (blacks 15% more likely to be imprisoned; *odds ratio* = 1.89), *misdemeanor drug* offenses (blacks 15% more likely to be imprisoned; *odds ratio* = 1.85), and *felony drug* offenses (blacks 14% more likely to be imprisoned; *odds ratio* = 1.80). Asians received particularly favorable sentence outcomes for *property* offenses, whether for misdemeanors (31% less likely than whites; *odds ratio* = 4.32) or felonies (19% less likely than whites; *odds ratio* = 2.86). Differences between whites and Latinos were relatively small, although Latinos were still more likely to be sentenced to imprisonment than similarly-situated whites, especially for *felony drug*

(10% more likely; *odds ratio* = 1.50) and *felony property* offenses (5% more likely; *odds ratio* = 1.20).

Prosecutor and criminal defense characteristics: In addition to race-related findings, the study also yielded significant information about how criminal justice practitioners' characteristics influence case outcomes—findings that can have important policy implications. The study found that, although prosecutors' case load, gender, and race do not seem to influence most discretionary points, nearly all discretionary points we looked into show a more favorable outcome for defendants, regardless of their race, if they were represented by private counsel, as opposed to the Legal Aid Society, the New York County Defender Services, the Neighborhood Defender Service, or a counsel appointed under 18(b). Outcomes were especially punitive for defendants represented by 18(b) counsel, particularly with regard to pretrial detention and sentencing. This finding suggest a need for additional research that looks at the quality of legal representation as well as how prosecutors and other courtroom actors view different types of defense counsel, given that blacks and Latinos are much less likely to be represented by private counsel and much more likely to be represented by 18(b) counsel, with the former showing the most favorable and the latter the least favorable outcomes for defendants.

7.3. Contribution to Research

The current study investigated racial and ethnic disparity across multiple punishment domains using data on misdemeanors and felonies submitted for filing decisions to the New York County DA's Office (DANY). There is mixed evidence that race influences prosecutorial decisions (see Free, 2002; Kutateladze et al., 2012). As discussed in the review of relevant literature (see section 1.2), some studies show that race matters (e.g., Frederick & Stemen, 2012; Free, 2002; Sorensen & Wallace, 1999; Ulmer et al., 2007); others find no direct effect of race or

offender's other characteristics in the charging process (e.g., Albonetti, 1992; Franklin, 2010; Shermer & Johnson, 2009); and still others show charge reductions in favor of minority offenders (e.g., Holmes et al., 1987; Wooldredge & Thistlethwaite, 2004). The present study addresses the inconsistency of these findings by determining the circumstances—discretion points and offense categories—under which defendants' race and ethnicity influence their criminal justice outcomes.

Earlier we hypothesized that black and Latino defendants would be significantly disadvantaged across sequential stages of case processing. Conditional support was found for this expectation. The vast majority of all cases were accepted for initial prosecution in New York County, so racial differences could not be examined in detail for this outcome. Of the remaining discretionary points in the system, strong evidence emerged for racial disparity in pretrial detention, plea offers, and the use of incarceration. Black and Latino defendants were significantly disadvantaged for each of these outcomes. Unexpectedly, though, they had higher odds than white defendants of case dismissal.

This finding, which is consistent with some prior research (Petersilia, 1983), raises a question of whether higher dismissal rates for defendants of color should be viewed as an indicator of leniency, or simply as a mechanism for declining cases which would have been rejected at screening had the initial screening process been more thorough. It may be that police are more willing to arrest blacks and Latinos than whites in cases where there is insufficient evidence to support prosecution. Further evidence of this is the fact that defendants with more serious prior records had higher likelihoods of case dismissal. Like our finding of higher dismissal rates for blacks and Latinos, this may reflect the fact that law enforcement officials view some offenders as “the usual suspects” and, as a result, are willing to arrest these suspects

even when the evidence against them is relatively weak. An alternative explanation is that cases involving black and Latino defendants had higher dismissal rates because victims or witnesses in these cases were less likely than victims or witnesses in cases involving white defendants to appear for pretrial proceedings; our finding that cases processed in Harlem had higher dismissal rates than those processed in more affluent areas of the city adds credence to this possibility. Given that we do not have reliable data on why cases were dismissed (although prosecutors we spoke with mentioned a lack of evidence and speedy trial constraints), these explanations are highly speculative. There clearly is a need for additional research designed to identify the reasons that cases are dismissed and to determine if these reasons vary by the defendant's race or prior criminal history.

Our findings of both harsher and more lenient treatment for blacks and Latinos highlight the importance of examining multiple discretionary points in the justice system. As Albonetti (1990) and others have recognized, "Research on the criminalization process has indicated an interdependence across decisions. ... Decision making at one stage of court processing affects subsequent decisions, either limiting choices of action and/or creating an operational context within which punitive sanctions are imposed." (p. 315). If we had examined only case dismissals, as some prior work has done (Albonetti, 1987; Barnes & Kingsnorth, 1996; Spohn et al., 2001), we would have concluded that blacks and Latinos were treated more leniently than whites; this explanation could have been misleading, given our finding that they received significantly more severe dispositions for other outcomes. The importance of examining multiple outcomes is confirmed by our finding that pretrial detention had a strong and statistically significant effect on the likelihood of a custodial plea offer and the likelihood of incarceration. Race, in other words, had both direct effects on pretrial detention, custodial sentence plea offers and sentence type and

indirect effects on custodial plea offers and sentence type through pretrial detention. Consistent with this, we found evidence that black defendants are receiving the most punitive outcomes, followed by Latinos defendants, white defendants, and Asian defendants.

The study contributed to existing research on race and prosecution in a number of ways. Here we will summarize what we deem most noteworthy. First, the study represents a rare effort to look into nearly every discretionary point, including case acceptance for prosecution, charging, dismissals, pretrial detention, plea bargaining, and sentencing outcomes, and provides strong evidence for the need to examine multiple discretionary points, given their interdependent nature. This consideration is particularly essential for research on racial disparity, not only because of the high stakes of an inaccurate interpretation of any single factor that could lead to accusations of discriminatory practices, but also because apparent advantages for one group at a given discretionary point may take on a different meaning when examined in conjunction with a prior case-processing decision. For example, as this study shows, higher dismissal rates for black and Latino defendants could be interpreted as more lenient treatment of these groups (see section 6.3), unless they are placed in the context of the DANY office's overall high case acceptance rate for prosecution (see section 6.1), which suggests that dismissal rates for black and Latino defendants could result from more aggressive arrest practices and the initial acceptance of weaker cases for prosecution for these groups.

Second, the study includes important data on the evidentiary strength of cases involving drugs, including their description, drug recovery by the police, and other arrest circumstances (see subsections 6.4.B and 6.4.C) and provides a unique descriptive review of these variables as well as multivariate analyses that take into account their combined influence.

Third, previous research on race and prosecution was primarily focused on initial screening decisions and only a handful of researchers managed to look into plea-bargaining practices. This can probably be explained by the lack of appropriate data: prosecutors' offices usually have better statistics on initial screening and sentencing outcomes than on what is happening between these two points, and this is particularly true for plea offers. While DANY's full dataset provided some information about the plea-bargaining process, and we were able to look into custodial versus non-custodial sentence offers for misdemeanors¹⁹⁴ (see subsection 6.4.A), the project involved an eight-month process of data collection from a sample of misdemeanor marijuana and non-marijuana felony drug cases that resulted in an unprecedented dataset enabling us to look more closely into plea-to-a-lesser charge as well as sentence offers (see subsections 6.4.B and 6.4.C).

Fourth, the study relied on a large dataset that permitted various analyses and enabled us to look at Asian defendants alongside white, black, and Latino defendants. While the racial disparity discourse has mainly been focused on the treatment of blacks in comparison with whites, the present study offers a unique lens into the treatment of all major racial and ethnic groups.

Finally, because the project was funded under NIJ's solicitation "Building and Enhancing Criminal Justice Research-Practitioner Partnerships" and because of Vera's model of implementing research projects in close collaboration with stakeholders, this study was carried out with consistent support from our DANY colleagues, including executives, line prosecutors, and analysts (see the *Partnership Report* accompanying this report). This cooperative model yielded a rich trove of knowledge about the office structure, case-processing nuances, data

¹⁹⁴ DANY started capturing data more systematically on plea offers to a reduced charge in 2012-2013. Because we analyzed data for cases disposed in 2010-2011, analyzing charge offer decisions for the full dataset was not possible.

strengths and limitations, and the context of the findings. DANY provided their suggestions and criticisms throughout the project, which undoubtedly made the findings described in this report much more reliable and meaningful to practitioners.

7.4. Study Limitations and Suggestions Future Direction

Despite the significant contributions of this study to the field of research on race and prosecutorial decision making, it was constrained by a number of challenges which we hope future research will be able to address more effectively. Because we have noted many of these issues throughout the report, we will summarize only the most significant ones here.

Most importantly, the case-management system that provided the main dataset for the study was not built for research purposes. Specifically, it did not capture information that would have been valuable in studying the influence of defendants' race on case outcomes, and as such lacked data on many important variables as well as values for the variables it included. While our analyses benefitted from the acquisition of a very large number of cases—the population of all cases disposed in 2010-2011—we, nevertheless found that some data important for this research were missing. Ultimately, we were able to identify many reasons for missing data. For example, information on charges, plea offers, detention status, case disposition type, and sentencing would not be applicable for cases that were initially declined for prosecution or dismissed following criminal court arraignment. Additionally, information on sentencing would not be applicable for cases that were disposed as adjournments in contemplation of dismissal (ACDs) which are cases that, technically, do not have a sentence, but are considered disposed by DANY. In a number of cases, there was some prior investigation that occurred by police officers who then contacted prosecutors directly, bypassing the screening process in ECAB. These cases were identified and re-coded. Despite accounting for a large portion of the missing data, some

cases remained with unexplained missing values. We hope that future analyses of prosecutorial data will offer greater attention to the causes and estimations of missing values.

Furthermore, because DANY does not systematically capture victims' race information, we were not able to run any analyses to account for this important factor.¹⁹⁵ Future research should include both descriptive and multivariate analyses of victim-offender interactions to explore the degree of punitiveness toward inter- versus intra-racial offenses, and particularly cases that include black offenders and white or Asian victims.

Criminal justice outcomes are often influenced by defendants' socio-economic characteristics. For certain discretionary points, including pretrial detention, defendants' employment, and community ties can play an important role. As this study demonstrated, defendants' ability to hire a private attorney can also minimize their chances of pretrial detention or custodial sentence outcomes. To consider the effect of socio-economic characteristics, we included certain proxies (e.g., type of counsel, or the median household income in defendants' zip code); however the absence of more precise measures of income, education, or employment is a clear weakness of this study, which we hope future research will be able to address more successfully. In this study, we also tried to separate the effect of race versus income on case outcomes by adding and removing the median household income variable—a technique that provided a better understanding of the relationship of race and income on case outcome. It is our great hope that future studies will dedicate significant attention to this topic.

Finally, the study does not include the analyses of cases prosecuted in the summons appearance part (SAP), an exercise of discretion by the police. Therefore, this research does not shed light on the potential racial and ethnic disparity in the treatment of defendants that leads

¹⁹⁵ Victims' race information was unavailable for 93% of cases with victims.

some to be prosecuted by DANY through the process described in this study, and others adjudicated in SAP which tends to be a less punitive part of the criminal court. We hope future research will be able to look into this potential area of disparity.

References

- Adams, K., & Cutshall, C. (1987). Refusing to prosecute minor offenses: The relative influence of legal and extralegal factors. *Justice Quarterly*, 4, 595–609.
- Albonetti, C. A. (1986). Criminality, prosecutorial screening, and uncertainty: Toward a theory of discretionary decision making in felony case processing. *Criminology*, 24(4), 623–644.
- Albonetti, C. A. (1987). Prosecutorial discretion: The effects of uncertainty. *Law and Society Review*, 21(2), 291–313.
- Albonetti, C.A. (1990). Race and probability of pleading guilty. *Journal of Quantitative Criminology*, 6(4), 315-334.
- Albonetti, C. A. (1992). Charge reduction: An analysis of prosecutorial discretion in burglary and robbery cases. *Journal of Quantitative Criminology*, 8(3), 317–333.
- Albonetti, C. A. (1997). Sentencing under the federal sentencing guidelines: Effects of defendant characteristics, guilty pleas, and departures on sentence outcomes for drug offenses, 1991–1992. *Law and Society Review*, 31(4), 789–822.
- Albonetti, C. A., & Hepburn, J. (1996). Prosecutorial discretion to defer criminalization: The effects of defendant's ascribed and achieved status characteristics. *Journal of Quantitative Criminology*, 12(1), 63–81.
- Baldus, D., Pulaski, C., & Woodworth, G. (1983). Comparative review of death sentences: An empirical study of the Georgia experience. *Journal of Criminal Law & Criminology*, 74(3), 661-753.
- Barnes, C., & Kingsnorth, R. (1996). Race, drugs, and criminal sentencing: Hidden effects of the criminal law. *Journal of Criminal Justice*, 24(1), 39–55.
- Baumer, E. P. (2013). Reassessing and redirecting research on race and sentencing. *Justice Quarterly*, 30, 231-261.
- Baumer, E., Messner, S., & Felson, R. (2000). The role of victim characteristics in the disposition of murder cases. *Justice Quarterly*, 17(2), 281–307.
- Beichner, D., & Spohn, C. (2005). Prosecutorial charging decisions in sexual assault cases: Examining the impact of a specialized prosecution unit. *Criminal Justice Policy Review*, 16(4), 461–498.
- Bernstein, I., Kick, E., Leung, J., & Schulz, B. (1977). Charge reduction: An intermediate stage in the process of labeling criminal defendants. *Social Forces*, 56, 362–384.
- Bishop, D., & Frazier, C. (1984). The effect of gender on charge reduction. *Sociological Quarterly*, 25(3), 385–396.

Black, D. J., & Reiss A.J., Jr. (1970). Police control of juveniles. *American Sociological Review*, 35, 63-77.

Brennan, P. K. (2006). Sentencing female misdemeanants: An examination of the direct and indirect effects of race/ethnicity. *Justice Quarterly*, 23, 60-95.

Bushway, S. D., Johnson, B. D., & Slocum, L. (2007). Is the magic still there? The use of the Heckman two-step correction for selection bias in Criminology. *Journal of Quantitative Criminology*, 23, 151-178.

Carson, E.A., & Sabol, W.J. (2012). *Prisoners in 2011*. Bureau of Justice Statistics.

Chen, E. Y. (2008). The liberation hypothesis and racial and ethnic disparities in the application of California's three strikes law. *Journal of Ethnicity in Criminal Justice* 6(2), 83-102.

Chiricos, T. G. & Bales, W. D. (1991). Unemployment and punishment: An empirical assessment. *Criminology*, 29, 701-724.

Cohen, J. (1988). *Statistical power analysis for the behavioral sciences*. Hillside, NJ: Lawrence Erlbaum Associates.

Cohen, T. H., & Kyckelhahn, T. (2010). Felony defendants in large urban counties, 2006. Retrieved February 14, 2013, from Office of Justice Programs, Bureau of Justice Statistics web site: <http://bjs.ojp.usdoj.gov/index.cfm?ty=pbdetail&iid=2193>.

Cole, S. R., & Ananth, C. V. (2001). Regression models for unconstrained, partially or fully constrained continuation odds ratios. *International Journal of Epidemiology*, 30(6), 1379-1382.

Crawford, C., Chiricos, T., & Kleck G. (1998). Race, racial threat, and sentencing of habitual offenders. *Criminology*, 36, 481-512.

Davis, A. J. (1998). Prosecution and race: The power and privilege of discretion. *Fordham Law Review*, 67, 13-67.

Demuth, S. (2003). Racial and ethnic differences in pretrial release decisions and outcomes: A comparison of Hispanic, black, and white felony arrestees. *Criminology*, 41, 873-908.

Eisenstein, J. & Jacob, H. (1977). *Felony Justice: An Organizational Analysis of Felony Courts*. Boston, MA: Little, Brown.

Farnworth, M., Teske, R.H.C., & Thurman, G. (1991). Ethnic, racial and minority disparity in felony court processing. In M. J. Lynch & E.B. Paterson (Eds.), *Race and Criminal Justice* (pp. 54-70). New York: Harrow and Heston.

Federal Bureau of Investigation. (2010). Uniform Crime Reports, Crime in the United States 2011. Table 43: Arrests, by race, 2011. Retrieved February 13, 2013, from Federal Bureau of Investigation, Criminal Justice Information Services Division web site: <http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2011/crime-in-the-u.s.-2011/tables/table-43>

Franklin, T. W. (2010). Community influence on prosecutorial dismissals: a multilevel analysis of case and county level factors. *Journal of Criminal Justice*, 38(4), 693-701.

Frazier, P. A., & Haney, B. (1996). Sexual assault cases in the legal system: Police, prosecutor, and victim perspectives. *Law and Human Behavior*, 20(6), 607-628.

Frederick, B., & Stemen, D. (2012). *The anatomy of discretion: An analysis of prosecutorial decision making – technical report*. Vera Institute of Justice.

Free, D. (2001). Racial bias and the American criminal justice system: Race and presentencing revisited. *Critical Criminology*, 10(3), 195-223.

Free, M., Jr. (2002). Race and pre-sentencing decisions in the United States: A summary and critique of the research. *Criminal Justice Review*, 27(2), 203-232.

Hanushek, E. A., & Jackson, J. (1977). *Statistical Methods for Social Scientists*. New York: Academic Press.

Harrison, P.M., & Beck, A.J. (2002). *Prisoners in 2001*. Bureau of Justice Statistics.

Hartley, R., Maddan, S., & Spohn, C. (2007). Prosecutorial discretion: An examination of substantial assistance departures in federal crack cocaine and powder cocaine cases. *Justice Quarterly*, 24(3), 382-407.

Heckman, J. J. (1979). Sample selection bias as a specification error. *Econometrica*, 47, 153-161.

Holmes, M. D., Daudistel, H. C., & Farrell, R. A. (1987). Determinants of charge reductions and final dispositions in cases of burglary and robbery. *Journal of Research in Crime and Delinquency*, 24(3), 233-254.

Jacoby, J.E., Mellon, L.R., Ratledge, E.C. & Turner, S.H. (1982). *Prosecutorial decisionmaking: A national Study*. Washington, DC: National Institute of Justice.

Johnson, B. D. (2003). Racial and ethnic disparities in sentencing departures across modes of conviction. *Criminology*, 41, 449-490.

Johnson, B., & Betsinger, S. (2009). Punishing the “model minority”: Asian-American criminal sentencing outcomes in federal district courts. *Criminology*, 47(4), 1045-1090.

- Kingsnorth, R. F., Lopez, J., & Wentworth, J. (1998). Adult sexual assault: The role of racial/ethnic composition in prosecution and sentencing. *Journal of Criminal Justice*, 26(5), 359–371.
- Kingsnorth, R. F., & MacIntosh, R.C. (2004). Domestic violence: Predictors of victim support for official action. *Justice Quarterly*, 21(2), 301-328.
- Kramer, J. & Steffensmeier, D. (1993). Race and imprisonment decisions. *The Sociological Quarterly*, 34 (2), 357-376.
- Kutateladze, B., Lynn, V., & Liang, E. (2012). Do race and ethnicity matter in prosecution? Vera Institute of Justice. Retrieved February 14, 2012, from the Vera Institute of Justice web site: <http://www.vera.org/pubs/do-race-and-ethnicity-matter-prosecution-review-empirical-studies>
- Kutateladze, B., & Turner, E. (2011). *An analysis of racial disparity in prosecution of domestic violence cases in a large urban mid-Western jurisdiction*. Vera Institute of Justice. Unpublished report.
- LaFree, G. D. (1980). The effect of sexual stratification by race on official reactions to rape. *American Sociological Review*, 45(5), 842–854.
- Lin, J. (2010). Parole revocation in the era of mass incarceration. *Sociology Compass*, 4, 999-1010.
- Lynch, M. (1990). Racial bias and criminal justice: Definitional and methodological issues. In B. MacLean & D. Milovanovic (Eds.), *Racism, empiricism, and criminal justice* (pp.35-42). Vancouver, Canada: Collective Press.
- Mayrack, B. R. (2007). Race & sentencing in Wisconsin: Sentence and offender characteristics across five criminal offense areas. Retrieved February 23, 2011, from Wisconsin Sentencing Commission Web site: <http://wsc.wi.gov/docview.asp?docid=11696>.
- Miller, M. L., & Wright, R. F., (2008). The black box. *Iowa Law Review*, 94, 125-96.
- Motivans, M. (2006). Federal criminal justice trends, 2003. Retrieved February 23, 2011, from Office of Justice Programs, Bureau of Justice Statistics web site: <http://bjs.ojp.usdoj.gov/index.cfm?ty=pbdetail&iid=856>.
- Mustard, D. B. (2001). Racial, ethnic, and gender disparities in sentencing: Evidence from U.S. federal courts. *Journal of Law and Economics*, 44(1), 285–314.
- Myers, M. A. (1982). Common law in action: The prosecution of felonies and misdemeanors. *Sociological Inquiry*, 52(1), 1–15.
- Myers, M., & Hagan, J. (1979). Private and public trouble: Prosecutors and the allocation of court resources. *Social Problems*, 26(4), 439-451.

Nagel, I. H. (1982). Legal/extra-legal controversy: Judicial decisions in pretrial release. *Law and Society Review*, 17, 481-515.

Nagel, I., & Schulhofer, S. J. (1992). A tale of three cities: An empirical study of charging and bargaining practices under the federal sentencing guidelines. *Southern California Law Review*, 66, 501-579.

O'Neill-Shermer, L., & Johnson, B.D. (2010). Criminal prosecutions: Examining prosecutorial discretion and charge reductions in U.S. Federal District Courts. *Justice Quarterly*, 27(3), 394-430.

Paternoster, R., Brame, R., Bacon, S., Ditchfield, A., Beckman, K., & Frederique, N. (2003). An empirical analysis of Maryland's death sentencing system with respect to the influence of race and legal jurisdiction. Department of Criminology, University of Maryland, College Park, MD. *Unpublished Manuscript*.

Patterson, E. B., & Lynch, M.J. (1991). Bias in formalized bail procedures. In M. J. Lynch & E. B. Patterson (Eds.), *Race and Criminal Justice* (pp. 36-53). New York: Harrow and Heston.

Petersilia, J. (1983). *Racial disparities in the criminal justice system*. Santa Monica, CA: Rand.

Peterson, R. D. & Hagan, J. (1984). Changing conceptions of race: Towards an account of anomalous findings of sentencing research. *American Sociological Review*, 49, 56-70.

Piehl, A., & Bushway, S. (2007). Measuring and explaining charge bargaining. *Journal of Quantitative Criminology*, 23(2), 105-125.

Sabol, W. J., & West, H.C. (2010). Prisoners in 2009. Retrieved February 23, 2011, from Office of Justice Programs, Bureau of Justice Statistics web site:
<http://bjs.ojp.usdoj.gov/index.cfm?ty=pbdetail&iid=2232>.

Sandefur, G., Meier, A., & Hernandez, P. (1999). Families, social capital, and educational continuation. Center for Demography and Ecology, University of Wisconsin-Madison. CDE Working Paper No. 99-19.

Schlesinger, T. (2005). Racial and ethnic disparity in pretrial criminal processing. *Justice Quarterly*, 22 (2), 170-192.

Shermer, L.O., & Johnson, B.D. (2009). Criminal Prosecutions: Examining Prosecutorial Discretion and Charge Reductions in U.S. Federal District Courts. *Justice Quarterly*, 27(3), 394-430.

Sorensen, J., & Wallace D. (1999). Prosecutorial discretion in seeking death: an analysis of racial disparity in the pretrial stages of case processing in a midwestern county. *Justice Quarterly*, 16(3), 559-578.

- Spears, J., & Spohn, C. (1997). The effect of evidence factors and victim characteristics on prosecutors' charging decisions in sexual assault cases. *Justice Quarterly*, 14(3), 501–524.
- Spohn, C. (2000). Thirty years of sentencing reform: The quest for a racially neutral sentencing process. In J. Horney (Ed.), *Criminal justice 2000: Vol. 3. Policies, processes, and decisions of the criminal justice system* (pp. 427-501). Washington, DC: National Institute of Justice.
- Spohn, C. (2009). *How do Judges Decide?: The Search for Fairness and Justice in Punishment*. Thousand Oaks, CA: SAGE Publications Inc.
- Spohn, C., Beichner, D., & Davis-Frenzel, E. (2001). Prosecutorial justifications for sexual assault case rejection: Guarding the “gateway to justice.” *Social Problems*, 48(2), 206–235.
- Spohn, C., & Cederblom, J. (1991). Race and disparities in sentencing: A test of the liberation hypothesis. *Justice Quarterly*, 8, 305–327.
- Spohn, C., Gruhl, J., & Welch, S. (1987). The impact of ethnicity and gender of defendants on the decision to reject or dismiss felony charges. *Criminology*, 25(1), 175–191.
- Spohn, C., & Fornango, R. (2009). U.S. attorneys and substantial assistance departures: Testing for interprosecutor disparity. *Criminology*, 47(3), 813–846.
- Spohn, C., & Holleran, D. (2001). Prosecuting sexual assault: A comparison of charging decisions in sexual assault cases involving strangers, acquaintances, and intimate partners. *Justice Quarterly*, 18(3), 651–688.
- Spohn, C., & Spears, J. (1996). The effect of offender and victim characteristics on sexual assault case processing decisions. *Justice Quarterly*, 13(4), 649–679.
- Stanko, E. A. (1981-1982). The impact of victim assessment on prosecutors' screening decisions: The case of the New York County District Attorney's Office. *Law and Society Review*, 16(2) 225-39.
- Steen, S., Engen, R. L., & Gainey, R. R. (2005). Images of danger and culpability: Racial stereotyping, case processing, and criminal sentencing. *Criminology*, 43(2), 435-468.
- Steffensmeier, D., & Demuth, S. (2000). Ethnicity and sentencing outcomes in U.S. federal courts: Who is punished more harshly? *American Sociological Review*, 65(5), 705–29.
- Steffensmeier, D., Ulmer, J. T., & Kramer, J. (1998). The interaction of race, gender, and age in criminal sentencing: The punishment cost of being young, black, and male. *Criminology*, 36(4), 763–797.
- Tonry, M. (1996). *Sentencing matters*. New York, NY: Oxford University Press.

Ulmer, J. T., Kurlychek, M. C., & Kramer, J. H. (2007). Prosecutorial discretion and the imposition of mandatory minimum sentences. *Journal of Research in Crime and Delinquency*, 44(4), 427–458.

United States v. Armstrong, 517 U.S. 456, 470 (1996).

U.S. Census Bureau, State and County Quick Facts 2011. Retrieved February 14, 2013, from the United States Census Bureau website: <http://quickfacts.census.gov/qfd/states/00000.html>

Vance, C., Jr. (2009, August 4). Prosecutorial racial bias review. *The Huffington Post*. Retrieved from <http://www.huffingtonpost.com>.

Wood, P.B., May, D.C. (2003). Racial differences in perceptions of the severity of sanctions: A comparison of prison with alternatives. *Justice Quarterly*, 20(3), 605-631.

Wooldredge, J. (2012). Distinguishing race effects on pre-trial release and sentencing decisions. *Justice Quarterly*, 29 (1), 41-75.

Wooldredge, J., & Thistlethwaite, A. (2004). Bilevel disparities in court dispositions for intimate assault. *Criminology*, 42(2), 417–456.

Wright, R., & Engen, R. L. (2006). The effects of depth and distance in a criminal code on charging, sentencing, and prosecutor power. *North Carolina Law Review*, 84, 1935–1982.

Zatz, M. S. (1984). Race, ethnicity, and determinate sentencing. *Criminology*, 22(2), 147-171.

Appendixes

Appendix A: Prosecutor Interview Instrument

Informed Consent for Prosecutorial Interviews

Prosecution and Racial Justice in New York City

Interviewer: Besiki Kutateladze

Name of Trial Bureau: _____

Date: ___ / ___ / ___

Oral consent was given: Yes _____ No _____

Signature of interviewer who administered consent: _____

Instructions for the interviewer (in italics)

Read the following text to the interviewee:

“Vera Institute of Justice, in partnership with DANY, is conducting interviews as part of a National Institute of Justice funded project and would like to ask you to participate.

Interview results will be used to inform Vera’s data-collection activities, data analyses, and interpretation. Your responses will not be included in any of the reports resulting from this project.

This interview is confidential. We will not record your name or anything that will identify you on the questionnaire. You do not have to answer any of the questions and you may stop the interview at any time. Withdrawal from or refusal to participate in the study will involve no penalty. All non-identifiable data collected as a part of the project will be archived with the National Archive of the Criminal Justice Data (NACJD) at the end of the project.

The interview will take approximately 20-30 minutes.

Do you have any questions or concerns related to participation?” If yes, answer the question or address the concern raised. You should contact your supervisor if you are not confident in your answer.

“You can also direct questions that arise in the future to Besiki Kutateladze, the principal researcher, at (212) 376-3032 or bkutateladze@vera.org. I will also give you a copy of this form to keep.

Would you like to participate?”

If yes, check “Yes,” sign the consent form (see above) and proceed to the interview.

If no, end interview, and say, “Thank you for your time.”

Section 1: Office Structure and Case Processing

(Break it down by: Felonies, Misdemeanors and Violations)

1. What factors influence initial case screening decisions?
2. Under what circumstances and at what stage are cases/charges most likely to be dismissed? What is the role of prosecution in case/charge dismissals?
3. What is the role of prosecution in pretrial release, bail and ROR determinations?
4. Can you describe how the office decides to increase or decrease a charge? At what stage is this most likely to occur?
5. Which factors does your office consider to determine whether to make custodial versus non-custodial plea offers (probation, fine, etc)?
6. How often initial and final plea offers differ? Is there any initial plea offer assessment, which is not communicated with a defendant?

Section 2: Data Entry from Case Files

1. What evidence information is recorded in case files?
 - a. Who records it?
 - b. At what stage is this information recorded?
 - c. Where in case files—i.e., in which particular document—is this information recorded?
2. What evidence information relevant to decision making is not recorded in cases files?
3. Is information on initial versus final plea offers recorded in case files? If so, where?
4. Is the plea offer communication between an ADA and a defense counsel recorded in case files? If so where?

Appendix B: Data Collected from the Drug Sample Case Files

Variable Label	Misdemeanor Marijuana	Felony Drug
1. Police officer activity when first observed the crime (categorical)	X	X
2. Defendant(s)' activity when police officer first observed the crime (categorical)	X	X
3. First/Second methods police officer used to recover drugs (categorical)	X	X
4. Type of drug recovered by police officer (categorical)		X
5. Weight of drug alleged by police officer (weight in grams)	X	X
6. Aggregate weight of drug from the lab report (weight in grams)		X
7. Cost of the drug per unit (in US dollars)		X
8. Description of the drug (categorical)	X	X
9. Additional drug was recovered (Y/N)	X	X
10. Pre-recorded buy money was recovered (Y/N)		X
11. Currency was recovered (Y/N)	X	X
12. Amount of currency recovered (in US dollars)	X	X
13. Defendant made a statement(s) (Y/N)	X	X
14. Someone other than the defendant or police officers made a statement(s) (Y/N)		X
15. Procedure used to identify the defendant (categorical)	X	X

16. There are empty bags (Y/N)		X
17. There is drug sale paraphernalia (Y/N)		X
18. There are matching bags (Y/N)		X
19. There are video or audio recordings from the event (Y/N)		X
20. The location of arrest was a previously known drug location (Y/N)		X
21. The defendant was previously known to the police officer(s) (Y/N)		X
22. There is a weapon(s) in the case (Y/N)		X
23. The initial observation was inside or outside or in a car (categorical)	X	X
24. The amount requested for bail (in US dollars)		X
25. The amount set for bond (in USD)		X
26. The amount set for cash bail (in USD)		X
27. The first-sixth reasons given for bail (categorical)		X
28. Defendant is detained between Criminal court arraignment and indictment (Y/N)		X
29. Defendant is detained between Supreme Court arraignment and disposition (Y/N)		X
30. Defense counsel arguments 1-2 (categorical)		X
31. The case was indicted (Y/N)	N/A	X
32. The case was brought in for "queen for a day" (Y/N)	N/A	X
33. Screening ADA's bureau (numeric)	X	X

34. Case ADA's bureau (numeric)	X	X
35. Type of plea offer at arraignment (categorical)	X	X
36. Type of plea offer initially made pre-indictment/post-indictment (categorical)	N/A	X
37. Number of custodial years initially offered pre-indictment/post-indictment	N/A	X
38. Number of years of supervision initially offered pre-indictment/post-indictment	N/A	X
39. Offer made by judge (Y/N)	X	
40. Plea offers made at different court dates (Y/N)	X	
41. Final sentence is different from original post-indictment plea offer (Y/N)	X	X
42. Reasons 1-5 charge was reduced from a felony to a misdemeanor (Y/N)	N/A	X
43. The case was diverted (Y/N)		X
44. The arresting officer(s) is a narcotics/housing officer(s) (Y/N)	X	X
45. The defendant is employed (categorical)	X	X
46. The defendant is married or in a common-law marriage (Y/N)	X	X
47. Defendant's years of education		X
48. Defendant's home address/city/borough/zip code (string)	X	X

Appendix C: Counts and Charges across Felony and Misdemeanor Cases

The tables below provide a descriptive summary of charges by race for felony and misdemeanor cases. Information on charges 1 through 5 was provided by DANY's Planning and Management office.

Overall, there is more disparity in the mean number of charges at arrest and screening than there is at case disposition, with blacks having the highest mean overall, and Asians with the fewest number of charges, on average. However, what is most interesting to note is that, for all groups, the mean number of charges increases substantially from arrest and screening to case disposition; by as much as 50%. Reasons for this increase must be further explored.

Among *felony* cases, at arrest, blacks have the greatest mean number of charges ($M = 2.26$, $SD = 1.20$), followed by whites ($M = 2.21$, $SD = 1.19$), Latinos ($M = 2.20$, $SD = 1.18$), and Asians ($M = 2.04$, $SD = 1.12$). At screening, it is both blacks ($M = 2.19$, $SD = 1.12$) and whites ($M = 2.19$, $SD = 1.13$) who have the greatest mean number of charges but to a lesser degree than at arrest, followed by Latinos ($M = 2.15$, $SD = 1.12$), and Asians ($M = 2.04$, $SD = 1.08$). At disposition, a similar divide as at screening can be seen between whites and blacks, and Latinos and Asians. Both white ($M = 2.48$, $SD = 1.30$) and black ($M = 2.48$, $SD = 1.27$) defendants reportedly have the same mean number of charges at disposition, with Latino defendants ($M = 2.42$, $SD = 1.28$) close behind, followed by Asians ($M = 2.33$, $SD = 1.33$).

Table A. Mean, Standard Deviation (SD), and Median Number of Felony Charges at Arrest, Screening, and Case Disposition (N = 26,069)

Charges at Arrest				
	Mean	SD	Median	Total N
White	2.21	1.19	2	3,018
Black	2.26	1.20	2	13,124
Latino	2.20	1.18	2	8,917
Asian	2.04	1.12	2	733
Other	1.87	0.87	2	38

Charges at Screening				
	Mean	SD	Median	Total N
White	2.19	1.13	2	3,018
Black	2.19	1.12	2	13,124
Latino	2.15	1.12	2	8,917
Asian	2.04	1.08	2	733
Other	2.05	1.09	2	38

Charges at Disposition				
	Mean	SD	Median	Total N
White	2.48	1.30	2	3,018
Black	2.48	1.27	2	13,124
Latino	2.42	1.28	2	8,917
Asian	2.33	1.33	2	733
Other	2.39	1.33	2	38

Note: Race is unknown for N = 239 (0.9%).

Among *misdemeanor* cases, a different pattern emerges. Overall, white defendants have a greater mean number of charges at arrest and screening, followed by a marked drop at disposition. For blacks, Latinos, and Asians, the mean number steadily increases from arrest to screening, with a slight decrease similar to arrest numbers at disposition.

At arrest, whites have the greatest mean number of charges ($M = 1.76$, $SD = 0.86$), followed by blacks ($M = 1.72$, $SD = 0.83$), Latinos ($M = 1.70$, $SD = 0.82$), and Asians ($M = 1.58$, $SD = 0.77$). At screening, whites again have the greatest mean number of charges ($M = 1.84$, $SD = 0.80$), with blacks ($M = 1.81$, $SD = 0.78$) and Latinos ($M = 1.81$, $SD = 0.80$) following closely behind, and finally Asians ($M = 1.63$, $SD = 0.73$). At disposition, it is blacks with the greater mean number of charges ($M = 1.73$, $SD = 1.08$), then Latinos ($M = 1.67$, $SD = 1.16$), whites ($M = 1.57$, $SD = 1.23$), and Asians ($M = 1.55$, $SD = 1.16$).

Table B. Mean, *SD*, and Median Number of Misdemeanor Charges at Arrest, Screening, and Case Disposition (*N* = 159,206)

Charges at Arrest				
	Mean	<i>SD</i>	Median	Total <i>N</i>
White	1.76	0.86	2	23,907
Black	1.72	0.83	2	72,592
Latino	1.70	0.82	2	53,075
Asian	1.58	0.77	1	7,532
Other	1.66	0.81	1	269

Charges at Screening				
	Mean	<i>SD</i>	Median	Total <i>N</i>
White	1.84	0.80	2	23,907
Black	1.81	0.78	2	72,592
Latino	1.81	0.80	2	53,075
Asian	1.63	0.73	2	7,532
Other	1.74	0.75	2	269

Charges at Disposition				
	Mean	<i>SD</i>	Median	Total <i>N</i>
White	1.57	1.23	2	23,907
Black	1.73	1.08	2	72,592
Latino	1.67	1.16	2	53,075
Asian	1.55	1.16	2	7,532
Other	1.62	1.18	2	269

Note: Race is unknown for *N* = 1,831 (1.1%).

Just as the mean number of charges for felonies, the mean number of felony charge *counts* also seems to increase steadily for all racial groups from arrest to disposition, although a slight drop in mean number of counts at screening can be seen for Asians. White defendants consistently maintain the greater mean number of counts over time (Overall *M* = 3.04), followed by Asians (Overall *M* = 2.98), blacks (Overall *M* = 2.91), and Latinos (Overall *M* = 2.75). Although there is quite a bit of variation around these means (see *SDs* and Min and Max in Table C).

Table C. Defendant Mean, *SD*, Median, Minimum, and Maximum Number of Felony Charge Counts at Arrest, Screening, and Case Disposition

Charges at Arrest						
	Mean	<i>SD</i>	Median	Min	Max	Total <i>N</i>
White	2.86	4.37	2	0	121	3,018
Black	2.84	3.71	2	0	119	13,124
Latino	2.70	3.74	2	0	111	8,917
Asian	2.89	5.72	2	1	73	733
Other	2.00	1.16	2	1	5	38

Charges at Screening						
	Mean	<i>SD</i>	Median	Min	Max	Total <i>N</i>
White	2.94	4.47	2	1	89	3,018
Black	2.77	3.73	2	1	145	13,124
Latino	2.60	3.17	2	1	95	8,917
Asian	2.71	3.46	2	1	41	733
Other	2.31	1.56	2	1	8	38

Charges at Disposition						
	Mean	<i>SD</i>	Median	Min	Max	Total <i>N</i>
White	3.31	5.40	2	0	180	3,018
Black	3.13	4.65	2	0	198	13,124
Latino	2.94	3.61	2	0	120	8,917
Asian	3.33	10.99	2	0	286	733
Other	3.16	4.10	2	1	26	38

Note: Race is unknown for $N = 239$ (0.9%).

Table D shows that white defendants have the greater mean number of charge counts for misdemeanors at arrest ($M = 1.86$, $SD = 1.69$) and screening ($M = 1.94$, $SD = 1.91$), then dropping off at disposition ($M = 1.65$, $SD = 2.01$). Although the mean number of charge counts remains fewer than white, black, and Latino defendants, the number of charge counts for Asians increases, on average, from arrest ($M = 1.72$, $SD = 2.85$) to screening ($M = 1.77$, $SD = 2.59$), then decreases at disposition ($M = 1.66$, $SD = 2.49$). Mean counts among black defendants, on average, remain steady from arrest ($M = 1.81$, $SD = 1.63$), screening ($M = 1.87$, $SD = 1.26$), to disposition ($M = 1.80$, $SD = 1.47$). The mean number of charge counts among Latinos increases, from arrest ($M = 1.78$, $SD = 1.39$) to screening ($M = 1.91$, $SD = 2.39$), but then at disposition, the

mean number drops to approximately the same as at arrest ($M = 1.76$, $SD = 2.53$), although with more variability.

Table D. Defendant Mean, *SD*, Median, Minimum, and Maximum Number of Misdemeanor Charge Counts at Arrest, Screening, and Case Disposition

Charges at Arrest						
	Mean	<i>SD</i>	Median	Min	Max	Total <i>N</i>
White	1.86	1.69	2	0	87	23,907
Black	1.81	1.63	2	0	177	72,592
Latino	1.78	1.39	2	1	145	53,075
Asian	1.72	2.85	1	1	190	7,532
Other	1.71	0.92	1	1	7	269

Charges at Screening						
	Mean	<i>SD</i>	Median	Min	Max	Total <i>N</i>
White	1.94	1.91	2	1	116	23,907
Black	1.87	1.26	2	1	108	72,592
Latino	1.91	2.39	2	1	363	53,075
Asian	1.77	2.59	2	1	108	7,532
Other	1.78	0.83	2	1	6	269

Charges at Disposition						
	Mean	<i>SD</i>	Median	Min	Max	Total <i>N</i>
White	1.65	2.01	2	0	116	23,907
Black	1.80	1.47	2	0	109	72,592
Latino	1.76	2.53	2	0	364	53,075
Asian	1.66	2.49	2	0	108	7,532
Other	1.70	1.38	2	0	11	269

Note: Race is unknown for $N = 1,831$ (1.1%).

Race and Prosecution in New York County
Report Submitted to the National Institute of Justice