

# RACE AND PROSECUTION IN BROWARD COUNTY, FLORIDA

**A Research Report by the  
Prosecutorial Performance Indicators (PPIs).**

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**NOVEMBER 2022**

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# SUMMARY FINDINGS AND RECOMMENDATIONS

This report measures the scope and magnitude of racial and ethnic disparities in prosecutorial outcomes in the Broward State Attorney's Office, Florida, during 2021.

The data suggest that, compared to Hispanic and White defendants, Black defendants are:

- Least likely to have their case filed for prosecution, especially for felony charges;
- Most likely to have their top charge reduced in severity at filing, as well as increased in severity;
- Most likely to have their case dismissed, whether charged with a felony or a misdemeanor;
- Least likely to have their felony charge reduced after filing; and
- Most likely to receive custodial and time-served-only sentences upon conviction, as compared to non-custodial sentences.
- Especially more likely to receive custodial sentences than White defendants in negotiated pleas, as compared to open pleas.

Compared to similarly situated Black and White defendants, Hispanic defendants are:

- Least likely to experience charge changes at filing;
- Most likely to have their case pursued for prosecution;
- Most likely to have their felony charges reduced at disposition; and
- Least likely to receive jail and prison sentences upon conviction.

With these results at hand, we make the following recommendations:

The Broward State Attorney's Office should establish a racial and ethnic equity committee that identifies and reviews cases that contribute to differential plea outcomes. The committee should investigate the factors that may have triggered more custodial plea offers for Black defendants. For example, grand theft represents the largest category of felony property offenses in Broward County in 2021. It is possible that responses to grand theft may vary by neighborhood or business type, which can generate disparities. Black defendants charged with grand theft may also be viewed as more dangerous and culpable. The State Attorney's Office should eliminate any possibility of inconsistent pleas offers due to misperceptions.

The committee should examine existing plea negotiation policies to determine their possible unwarranted contributions to racial disparities. Even policies that appear race-neutral may be disproportionately affecting defendants of color. The committee should organize workshops with line prosecutors where individuals with lived experience, academics, and policymakers discuss issues of systemic bias and pathways to racial disparity (e.g., diversion program requirements and fees). Furthermore, the committee should consult with other prosecutor's offices, criminal justice experts, and researchers to adopt equitable, data-informed plea guidelines.

The committee should explore non-custodial options beyond existing diversion alternatives. This may include community-based and restorative justice programming, many of which have shown positive public safety and cost-saving effects in other jurisdictions. Cases can be referred to these community partners, which will provide accountability outside of incarceration.

Black defendants appear to be benefiting from screening and dismissal decisions. While the office already conducts thorough case screening, additional efforts are needed to eliminate dismissible cases at filing. Higher rejection and dismissal rates for Black defendants raise questions about the quality and merit of cases brought to the office. To achieve fully equitable screening and disposition outcomes, the committee should adopt specific and mutually exclusive filing and disposition codes, which do not rely on broad categories (e.g., improbability of conviction or lack of evidence). Whether prosecutors decide to file or reject a case, they should systematically record the primary and secondary reasons for their decision. Examining disposition reasons will allow the office to determine why Black defendants have their cases dropped at a higher rate.

Finally, the committee should continue monitoring trends in all areas of prosecutorial decision making on a monthly basis, whether the disparities have been found or not. This report provides a single snapshot in time, but these trends must be monitored to see if disparities are increasing or decreasing, and act accordingly.





This report was made possible due to the generous support of the **John D. and Catherine T. MacArthur Foundation** and the **Charles and Lynn Schusterman Family Philanthropies**. We would like to thank the **Broward County State Attorney's Office** for their commitment to examining and addressing racial and ethnic disparities in prosecutorial decision making. We are especially grateful to the local community members who took their time to offer insightful suggestions about implementing racial and ethnic disparity analyses during listening sessions with the State Attorney.

### **Suggested Citation**

Prosecutorial Performance Indicators (2022). Race and prosecution in Broward County, Florida. Florida International University.



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# INTRODUCTION

## What The Project Is About

This work is implemented in partnership between the Broward County State Attorney's Office and the Prosecutorial Performance Indicators (PPIs).

PPIs is a research and technical assistance project which aims to promote more effective, just, and transparent decision making in prosecution. It is a bipartisan effort to be smart on crime, to think about new ways to maximize public safety, to enhance fairness, and to create a new system of accountability to the public. It involves 20 forward-thinking prosecutors across the nation working with researchers at Florida International University and Loyola University Chicago to take a new look at prosecutorial performance and decision making.

Improving prosecution is impossible without data. Data takes center stage in the project, because it tells prosecutors what problems are the biggest threats to community well-being, and it points to ways to tackle those problems. Data helps measure the overall impact of prosecutors' work, and it alerts them that a policy or practice is working well or needs to be changed.

Unfortunately, most prosecutors' offices lack the ability to collect, analyze, and apply data to these ends. Many offices do not record the data they need. Others are missing the staff and knowledge necessary to analyze their data. Still other offices—probably most—do not have the ability and commitment to use data to guide their decisions and reforms. This project focuses on helping partner offices and other interested jurisdictions overcome these hurdles.

One of the explicit goals of the project is to identify possible racial and ethnic disparities at various stages of case processing across offense categories, and to work with stakeholders to develop specific solutions to reduce them.

## What The Report Is About

This report represents a joint effort by the Prosecutorial Performance Indicators (PPIs) and the Broward County State Attorney's Office to measure the presence, nature and scope of racial and ethnic disparities across multiple points of prosecutorial decision making.

The fair and just treatment of people of color at all stages of the criminal justice system is of significant importance to communities of color, practitioners, and scholars alike. Central to this discourse is a recognition of the discretionary power that prosecutors wield in shaping the outcomes of criminal cases. This includes, among other things, the decision to file or drop a case, amend the severity and number of charges, and dispose of criminal cases through plea bargaining.

This report focuses on the outcomes of prosecutorial decision making in Broward County, Florida. Specifically, using data from 2021, it assesses the extent to which racial and ethnic disparities exist across the following five decision points in criminal case processing:

- (1) Case filing for prosecution;
- (2) Charge changes at filing;
- (3) Disposition type;
- (4) Charge changes at disposition; and
- (5) Sentencing.

We encourage the reader to interpret the results while recognizing that criminal case processing can trigger disparate outcomes for people of color for a number of different reasons. Some of these reasons, such as defense attorney role and judicial discretion, are beyond the immediate control of prosecutors. At the same time, our partners are keenly aware that prosecutors can and should play a vital role in uncovering and addressing racial and ethnic disparities in the criminal justice system, and this report stems from that awareness.

The intent of this report is to prompt discussion and raise questions, rather than provide definitive answers. We also want to stress that the findings presented throughout this report cannot be used to support or refute possible racial and ethnic biases. Our methodology simply does not permit that.

Rather than serving as an end point, we view this report as a starting point from which to engage in meaningful discussions concerning policies and procedures that can ameliorate racial and ethnic disparities in case outcomes. Furthermore, given that prosecutorial decision making does not operate in a vacuum, certain findings direct attention to ways district attorney's offices, the defense bar, law enforcement agencies, and the judiciary can galvanize future reform efforts. Even more importantly, continued efforts to engage with communities of color will be critical for increasing public trust in and cooperation with the criminal justice system.

# DATA

Data for this report came from the Broward State Attorney's Office's case management system. The dataset includes information for all cases resolved by the Office in 2021. 30,699 cases were presented for filing (10,802 felonies and 19,897 misdemeanors), 23,517 cases were filed and subsequently disposed (6,743 felonies and 16,774 misdemeanors), and 15,200 cases resulted in a conviction and sentence (4,696 felonies and 10,504 misdemeanors).

## Race and Ethnicity

Information on defendants' race is recorded by law enforcement, usually at the time of arrest, and stored in the Office's case management systems. Hispanic ethnicity is included as a racial category, however, a preliminary assessment suggested that Hispanic ethnicity is underreported in the dataset. Therefore, we use two methods to identify Hispanic defendants. First, defendants are classified as "Hispanic" if the Office's case management system identifies them as such. Second, for the remaining "non-Hispanic" individuals in the dataset, defendants are identified as "Hispanic" if their surnames match the U.S. Census Bureau's Hispanic Surname List, meaning that at least 75% of individuals in the United States with that surname self-identify as Hispanic.

|          | All Cases | Cases Filed and Disposed | Cases Sentenced |
|----------|-----------|--------------------------|-----------------|
| Asian    | 0.02%     | 0.02%                    | 0.04%           |
| Black    | 50.60%    | 49.01%                   | 46.80%          |
| Hispanic | 13.08%    | 13.28%                   | 13.84%          |
| White    | 33.59%    | 34.70%                   | 36.46%          |
| Missing  | 2.71%     | 2.98%                    | 2.86%           |
|          | N=30,699  | N=23,517                 | N=15,200        |

## Defining a Case

This report offers a case-level as opposed to charge-level analysis, which means that many cases in the dataset involve multiple charges and/or counts. Information on multiple charges and counts is captured and accounted for when appropriate. Also, some defendants had more than one case disposed of within the 12-month period analyzed. Cases at each stage of the prosecution process (Filing, Disposition, Sentencing) are tracked by the most serious charge at that stage.

## Decision Points

This report presents results for the following five decision points: (1) Case filing for prosecution; (2) Charge changes at filing; (3) Disposition type; (4) Charge changes at disposition; and (5) Sentencing. A description of each decision point is provided at the beginning of each section.



## Accounting for Legal and Non-Legal Factors

In addition to descriptive statistics, results are also presented as expected rates per 1,000 cases for White, Black, and Hispanic defendants for each outcome, after accounting for defendant and case characteristics. The rates are predicted probabilities calculated following logistic or multinomial logistic regressions. Factors accounted for by these analyses are presented above each expected rate table.

## Offense Categories

Results are provided for all offenses together, and then broken down into person, property, and drug offenses separately. Public order and traffic offenses, which are the largest but most diverse category, are not analyzed as their own offense type. Next, felonies and misdemeanors are analyzed separately due to their varied case processing challenges and race effects.



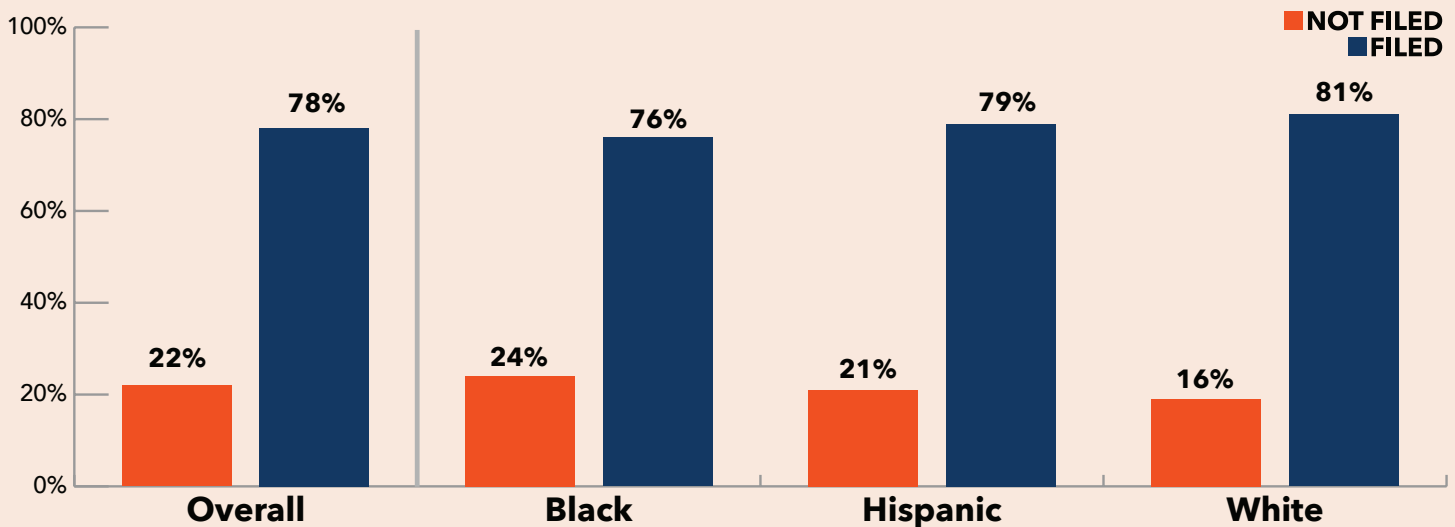
# PART 1: CASE FILING FOR PROSECUTION

## What is case filing?

When a criminal case is referred for prosecution to the State Attorney's Office by law enforcement, a prosecutor reviews the available evidence and case merits, and decides whether to approve the case and bring charges against the defendant ("case filed") or to decline to prosecute ("not filed").

Overall, 78% of referred felonies and misdemeanors were filed for prosecution in 2021.

When examining percentages by defendant race/ethnicity, small differences are observed. Specifically, a lower percentage of cases involving Black defendants (76%) and a higher percentage of cases involving White defendants were filed (81%). The percentage of cases filed against Hispanic defendants fell in between these two numbers. Note that these percentages do not account for differences in case or defendant characteristics.



Numbers in the three tables below represent the expected rate of filing per 1,000 cases for White, Black, and Hispanic defendants after taking into account the influence of: (1) offense severity, (2) offense type, (3) charge counts, (4) whether the case originated with an arrest, (5) prior cases, (6) prior convictions, (7) defendant gender, and (8) defendant age. Results for person offenses also take into account (9) number of victims. Results for drug offenses also control for (10) drug type, and (11) whether the offense involved possession or sale/trafficking/manufacturing.

Consistent with the basic percentages above, overall and for person and drug offenses, **White defendants were most likely to have their cases filed for prosecution**. Overall, we would expect 791 out of every 1,000 cases involving White defendants to result in the case being filed. Expected rates for Hispanic and Black defendants are 780 and 774, respectively.

Black defendants have the lowest probability of case filing overall (774 per 1,000) and for person (520 per 1,000) and property (790 per 1,000) offenses, while Hispanics have the lower probability of case filing for drug offenses (747 per 1,000).

## FELONY & MISDEMEANOR FILING RATE

|                 | All Presented Cases           | Person Offenses | Property Offenses | Drug Offenses |
|-----------------|-------------------------------|-----------------|-------------------|---------------|
| White           | <b>791 out of 1,000 cases</b> | <b>531</b>      | 832               | <b>767</b>    |
| Black           | 774 out of 1,000 cases        | 520             | 790               | 754           |
| Hispanic        | 780 out of 1,000 cases        | 527             | <b>838</b>        | 747           |
| Number of Cases | 29,794                        | 7,815           | 5,901             | 2,605         |

For felonies, White defendants are consistently most likely to have their case filed for prosecution. Black defendants are consistently least likely to have their case filed. The Black-to-White difference in case filing is the largest for property offenses: per each 1,000 case, 63 more cases are filed against White defendants as compared to similarly situated Black defendants. It is possible that this discrepancy is the reflection of the varied quality of felony cases brought to the State Attorney's Office by local law enforcement.

## FELONY FILING RATE

|                 | All Presented Cases           | Person Offenses | Property Offenses | Drug Offenses |
|-----------------|-------------------------------|-----------------|-------------------|---------------|
| White           | <b>736 out of 1,000 cases</b> | <b>636</b>      | <b>791</b>        | <b>784</b>    |
| Black           | 691 out of 1,000 cases        | 591             | 728               | 758           |
| Hispanic        | 716 out of 1,000 cases        | 625             | 777               | 765           |
| Number of Cases | 10,706                        | 3,606           | 3,377             | 2,023         |

For misdemeanors, while Whites continue to be most likely to have their case filed for prosecution overall, this outcome is largely driven by public order and traffic offenses. Black defendants are most likely to have their case filed for person and drug offenses, and Hispanics are most likely to have their case filed for person offenses. This marked variation by offense severity and type emphasizes the importance of examining and addressing racial disparities by offense categories.

## MISDEMEANOR FILING RATE

|                 | All Presented Cases           | Person Offenses | Property Offenses | Drug Offenses |
|-----------------|-------------------------------|-----------------|-------------------|---------------|
| White           | <b>823 out of 1,000 cases</b> | 443             | 893               | 682           |
| Black           | 820 out of 1,000 cases        | <b>460</b>      | 871               | <b>742</b>    |
| Hispanic        | 820 out of 1,000 cases        | 446             | <b>919</b>        | 664           |
| Number of Cases | 19,029                        | 4,209           | 2,524             | 580           |

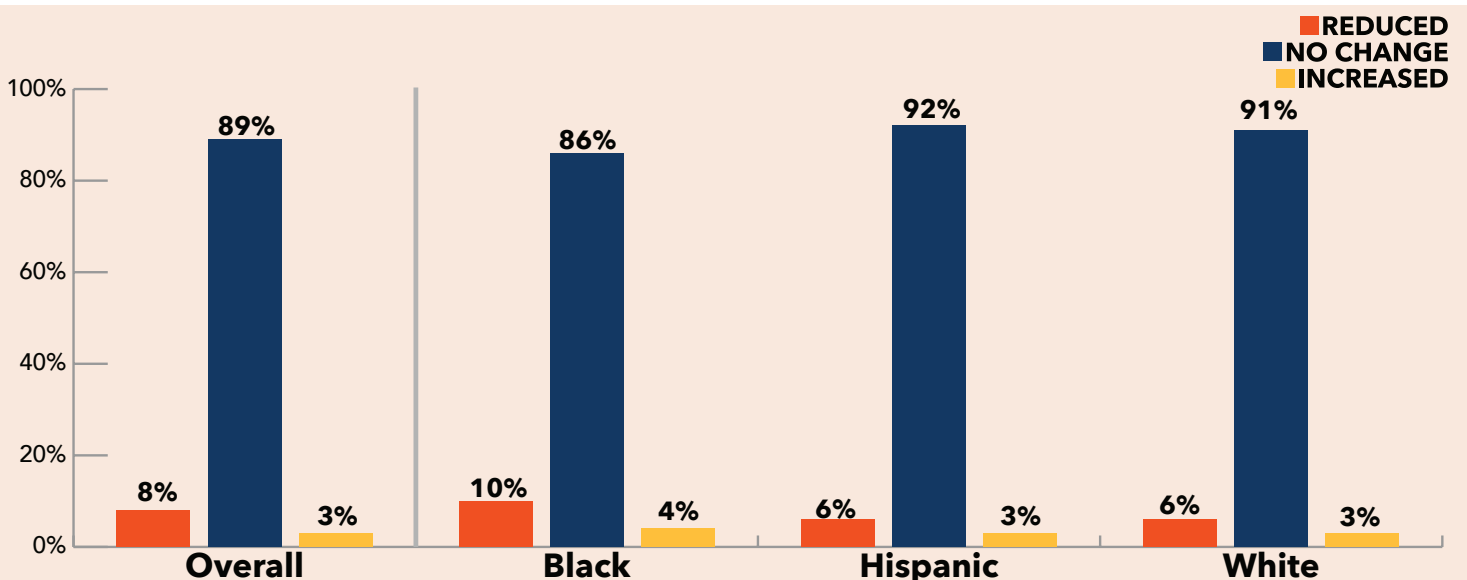
# PART 2: CHARGE CHANGES AT FILING

## What are charge changes at filing?

When a prosecutor decides to charge a case, that prosecutor must also decide whether to file the exact charges that were referred by the police or to alter the charges. In this analysis, changes in charge severity from arrest to charging are determined by the severity level of the top arrest charge and the top filed charge. The top filed charge may be less severe than the top arrest charge (“reduced”); the top filed charge may be more severe than the top arrest charge (“increased”), or the charge severity may stay the same (“no change”).

Overall, in 8% of filed cases in 2021, charges were reduced in severity at filing, and in 3% of cases, charge severity increased. There was no change in charge severity in 89% of filed cases, suggesting that in nine out of every ten filed cases, prosecutors accept the charges determined by law enforcement.

When examining percentages by defendant race/ethnicity, we observe that **Black defendants are most likely to have their top charge reduced in severity** at the case filing stage. Black defendants are also most likely to have their top charge severity increased, although the difference across racial groups in charge increases is very small. Combined with the results from case filing (Part 1), one can conclude that Black defendants are least likely to have cases filed for prosecution, and when filed, they are most likely to have their charge severity reduced. This seemingly favorable outcome should be interpreted with caution. Without knowing about possible variation in the quality of cases by defendant race and ethnicity brought to the Office, any assumptions of preferential treatment would be only hypothetical. Moreover, these observations are made based on basic percentages which do not account for other factors (for those, please see expected rates per 1,000 cases following the bar chart below).



Charge changes are extremely rare in cases referred as misdemeanors, so the following charge change analyses focus on felonies only. Numbers in the table below represent the expected rate of each outcome—charge reduction, no change, and charge increase—per 1,000 felony cases for White, Black, and Hispanic defendants after taking into account the influence of: (1) offense severity, (2) offense type, (3) charge counts, (4) whether the case originated with an arrest, (5) prior cases, (6) prior convictions, (7) attorney type (private attorney, public defender, or pro se), (8) defendant gender, and (9) defendant age. Results for person offenses also take into account (10) number of victims. Results for drug offenses also control for (11) drug type, and (12) whether the offense involved possession or sale/trafficking/manufacturing.

Similar to what was observed with simple percentages above, overall, **Black defendants are most likely to have their charges reduced as well as increased in severity in felony cases.**

Overall, we would expect 217 out of every 1,000 felony cases involving Black defendants to have the top charge reduced at filing. Expected rates for White and Hispanic defendants are 199 and 191, respectively. White defendants, however, are most likely to have charges reduced for person (219 per 1,000) and drug (210 per 1,000) offenses.

Hispanic defendants experience the greatest likelihood of charge stasis, meaning that their top charges are least likely to decrease or increase as prosecutors make initial charging decisions at filing.

As noted earlier, increases in charge severity are much less common than decreases across all racial/ethnic groups. Charge increases are particularly rare for felony drug offenses, for which evidentiary factors are generally less complicated than those for person or property offenses (e.g., victim-witness testimonies might be crucial for prosecution). Black defendants are most likely to have their top charge increased in severity across all felonies together (32 per 1,000) and also for person offenses (64 per 1,000). The Black-White gap in charge increases is most pronounced for person offenses: we would expect 64 out of every 1,000 cases involving Black defendants to have the top charge increased at filing, but only 33 out of every 1,000 cases involving White defendants to experience a similar increase.

## FELONY CHARGE CHANGES

|                             | All Filed Cases               | Person Offenses | Property Offenses | Drug Offenses |
|-----------------------------|-------------------------------|-----------------|-------------------|---------------|
| <b>Reduction in Charges</b> |                               |                 |                   |               |
| White                       | 199 out of 1,000 cases        | <b>219</b>      | 118               | <b>210</b>    |
| Black                       | <b>217 out of 1,000 cases</b> | 188             | <b>161</b>        | 208           |
| Hispanic                    | 191 out of 1,000 cases        | 119             | 120               | 189           |
| <b>No Change in Charges</b> |                               |                 |                   |               |
| White                       | 777 out of 1,000 cases        | 748             | <b>857</b>        | 777           |
| Black                       | 751 out of 1,000 cases        | 748             | 813               | 785           |
| Hispanic                    | <b>784 out of 1,000 cases</b> | <b>829</b>      | 852               | <b>811</b>    |
| <b>Increase in Charges</b>  |                               |                 |                   |               |
| White                       | 25 out of 1,000 cases         | 33              | 25                | <b>14</b>     |
| Black                       | <b>32 out of 1,000 cases</b>  | <b>64</b>       | 26                | 8             |
| Hispanic                    | 25 out of 1,000 cases         | 52              | <b>28</b>         | 8             |
| Number of Cases             | 7,568                         | 2,189           | 2,544             | 1,555         |

# PART 3: DISPOSITION TYPE

## What is disposition type?

We examined four primary types of case disposition for criminal cases that have been filed for prosecution.

First, we look at how often prosecutors decided to pursue cases to ensure defendants' conviction, whether through guilty plea or trial. A small percentage of such cases may end up in defendants' acquittal (which we do not examine separately due to their rarity).

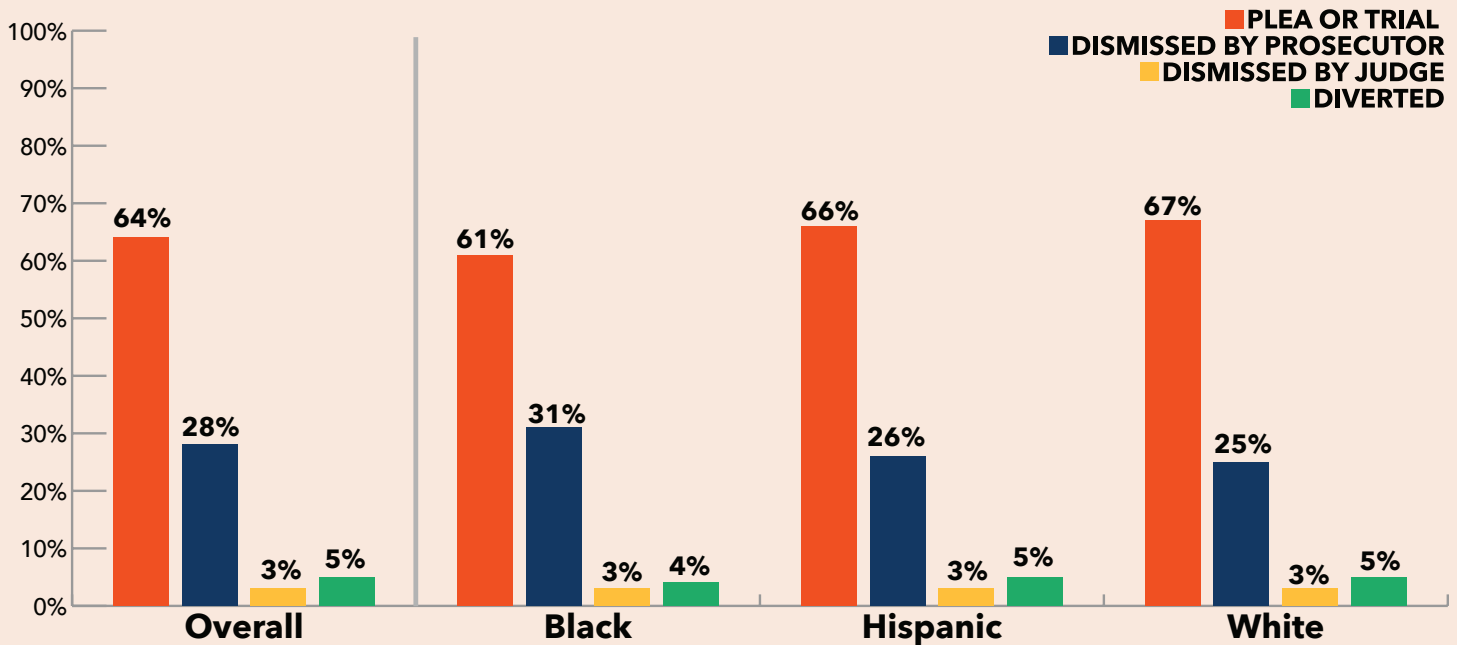
Second, the prosecutorial decision to dismiss all charges on a given case is analyzed. Prosecutorial dismissals may occur due to insufficient evidence or in the interest of justice (e.g., prosecution of such cases does not improve public safety).

Third, judicial dismissals are also examined. Judges may dismiss cases, albeit less frequently than prosecutors do, for administrative reasons (e.g., case processing deadlines) or legal reasons (e.g., evidence was obtained through illegal search).

Fourth, cases may also conclude with a defendant being diverted to a local program. Diversion programs are run by prosecutors, courts, law enforcement, faith-based, educational, or health agencies, and they help people charged with a crime — generally a first-time, nonviolent offense — to address the causes underlying the behavior that led to an arrest. Most diversion programs require payment of fees by the participant. Other requirements of diversion programs may include educational courses aimed at preventing future offenses, restitution to victims, and completion of community service hours. Upon completion of a diversion program, charges against the defendant are generally dismissed.

In the majority of cases, prosecutors try to ensure defendants' conviction. Overall, for 64% of filed cases, prosecutors obtained a guilty plea or took the case to trial. The second most common disposition outcome is prosecutorial dismissal, which, in 2021, occurred in 28% of cases. Cases were disposed of through diversion or judicial dismissal very rarely (5% or less).

**Racial and ethnic differences at this stage of case processing are minimal**, especially when it comes to judicial dismissals and diversion. The most notable finding is a **higher percentage of prosecutorial dismissals for Black defendants**—31%, as compared to Hispanic (26%) and White (25%) defendants. Combined with the results from the previous sections, one may conclude that Black defendants are less likely than White and Hispanic defendants to have their case accepted for prosecution, more likely to have their top charge reduced in severity, and, now, more likely to have their case dismissed. These findings raise the important question of whether the Office can do more thorough case screening to identify and reject non-meritorious cases involving Black defendants early, so that unnecessary case filing and pretrial detention are avoided when the case is not appropriate for prosecution anyway.



Numbers in the table below represent the expected rates of each outcome per 1,000 cases for White, Black, and Hispanic defendants after taking into account the influence of: (1) offense severity, (2) offense type, (3) charge counts, (4) whether the case originated with an arrest, (5) prior cases, (6) prior convictions, (7) attorney type (private attorney, public defender, or pro se), (8) defendant gender, and (9) defendant age. Results for person offenses also take into account (10) number of victims. Results for drug offenses also control for (11) drug type, and (12) whether the offense involved possession or sale/trafficking/manufacturing.

After controlling for the factors above, Hispanics emerged as the most likely group for which prosecutors decided to pursue conviction through plea or trial in the case. Overall, we would expect 675 out of every 1,000 cases involving Hispanic defendants to have this outcome. Comparable expected rates for White and Black defendants are 667 and 600, respectively. Hispanic defendants also have the highest expected rates for property (856 out of 1,000) and drug (705 out of 1,000) offenses specifically.

When it comes to prosecutorial dismissals, similar to what was observed in descriptive percentages above, **Black defendants are markedly more likely to have their case dismissed.** We would expect 316 out of every 1,000 cases involving Black defendants to be dismissed by the prosecutor (as compared to 258 for White and 253 for Hispanic defendants). This relatively high dismissal rate for Black defendants is also observed for person (511 out of 1,000) and property (107 out of 1,000) offenses, but not for drug offenses, for which Whites were the most likely racial group to have their case dismissed (276 out of 1,000). A higher dismissal rate for Black defendants is present for both felonies and misdemeanors, when analyzed separately (see p.16).

No noticeable differences were found for judicial dismissals, which occurred rarely.

Turning to diversion placement, Black defendants were more likely to experience this outcome, although overall diversion numbers are fairly small and this difference should be interpreted with caution. Overall, we would expect 50 out of 1,000 cases involving a Black defendant to result in diversion. White and Hispanic defendants appear less likely to have their case conclude with diversion (43 out of 1,000 for White defendants, and 38 out of 1,000 for Hispanic defendants).

After separating the results into felonies versus misdemeanors (see p. 17), we see that the overall higher diversion rate for Black defendants is attributable to misdemeanor diversion. For felonies, Hispanics experienced the greatest likelihood of diversion. But again, diversion placements—especially for felonies—occurred infrequently in 2021.

## FELONY AND MISDEMEANOR DISPOSITION TYPES

|  | All Disposed Cases            | Person Offenses | Property Offenses | Drug Offenses |
|--|-------------------------------|-----------------|-------------------|---------------|
| <b>Outcome 1: Guilty Plea and Trial</b>                    |                               |                 |                   |               |
| White  | 667 out of 1,000 cases        | 520             | 844               | 660           |
| Black  | 600 out of 1,000 cases        | 428             | 833               | 704           |
| Hispanic   | <b>675 out of 1,000 cases</b> | 495             | 856               | <b>705</b>    |
| <b>Outcome 2: Prosecutorial Dismissal (Nolle Prosequi)</b> |                               |                 |                   |               |
| White  | 258 out of 1,000 cases        | 447             | 99                | <b>276</b>    |
| Black  | <b>316 out of 1,000 cases</b> | <b>511</b>      | <b>107</b>        | 239           |
| Hispanic   | 253 out of 1,000 cases        | 475             | 77                | 196           |
| <b>Outcome 3: Administrative / Judicial Dismissal</b>      |                               |                 |                   |               |
| White  | 33 out of 1,000 cases         | 24              | 31                | 23            |
| Black  | 34 out of 1,000 cases         | <b>26</b>       | 35                | 24            |
| Hispanic   | <b>34 out of 1,000 cases</b>  | 23              | <b>37</b>         | <b>37</b>     |
| <b>Outcome 4: Post-Filing Diversion</b>                    |                               |                 |                   |               |
| White  | 43 out of 1,000 cases         | <b>10</b>       | 26                | 40            |
| Black  | <b>34 out of 1,000 cases</b>  | 6               | 25                | 33            |
| Hispanic   | 38 out of 1,000 cases         | 7               | <b>30</b>         | <b>61</b>     |
| Number of Cases  | 22,674                        | 4,432           | 4,369             | 1,796         |



## FELONY DISPOSITION TYPES

|  | All Disposed Cases            | Person Offenses | Property Offenses | Drug Offenses |
|--|-------------------------------|-----------------|-------------------|---------------|
| <b>Outcome 1: Guilty Plea and Trial</b>                    |                               |                 |                   |               |
| White  | 771 out of 1,000 cases        | 649             | 847               | 799           |
| Black  | 774 out of 1,000 cases        | 596             | 856               | <b>844</b>    |
| Hispanic   | <b>808 out of 1,000 cases</b> | <b>669</b>      | <b>893</b>        | 833           |
| <b>Outcome 2: Prosecutorial Dismissal (Nolle Prosequi)</b> |                               |                 |                   |               |
| White  | 186 out of 1,000 cases        | 316             | <b>118</b>        | <b>135</b>    |
| Black  | <b>189 out of 1,000 cases</b> | <b>374</b>      | 110               | 94            |
| Hispanic   | 140 out of 1,000 cases        | 289             | 61                | 73            |
| <b>Outcome 3: Administrative / Judicial Dismissal</b>      |                               |                 |                   |               |
| White  | 32 out of 1,000 cases         | <b>34</b>       | 32                | 23            |
| Black  | 25 out of 1,000 cases         | 25              | 27                | 23            |
| Hispanic   | <b>31 out of 1,000 cases</b>  | 31              | <b>39</b>         | <b>25</b>     |
| <b>Outcome 4: Post-Filing Diversion</b>                    |                               |                 |                   |               |
| White  | 12 out of 1,000 cases         | 2               | 3                 | 42            |
| Black  | <b>13 out of 1,000 cases</b>  | 5               | 8                 | 39            |
| Hispanic   | 21 out of 1,000 cases         | <b>12</b>       | <b>8</b>          | <b>69</b>     |
| Number of Cases  | 6,657                         | 2,066           | 2,315             | 1,371         |

\*Cannot estimate due to infrequency of disposed misdemeanor drug offenses.

## MISDEMEANOR DISPOSITION TYPES

|  | All Disposed Cases            | Person Offenses | Property Offenses | Drug Offenses |
|--|-------------------------------|-----------------|-------------------|---------------|
| <b>Outcome 1: Guilty Plea and Trial</b>                    |                               |                 |                   |               |
| White  | 620 out of 1,000 cases        | 376             | 838               | *             |
| Black  | 524 out of 1,000 cases        | 310             | 806               | *             |
| Hispanic   | <b>622 out of 1,000 cases</b> | 314             | 820               | *             |
| <b>Outcome 2: Prosecutorial Dismissal (Nolle Prosequi)</b> |                               |                 |                   |               |
| White  | 292 out of 1,000 cases        | 594             | 79                | *             |
| Black  | <b>370 out of 1,000 cases</b> | 657             | <b>106</b>        | *             |
| Hispanic   | 297 out of 1,000 cases        | <b>668</b>      | 90                | *             |
| <b>Outcome 3: Administrative / Judicial Dismissal</b>      |                               |                 |                   |               |
| White  | 33 out of 1,000 cases         | 13              | 31                | *             |
| Black  | <b>38 out of 1,000 cases</b>  | <b>27</b>       | <b>45</b>         | *             |
| Hispanic   | 35 out of 1,000 cases         | 15              | 37                | *             |
| <b>Outcome 4: Post-Filing Diversion</b>                    |                               |                 |                   |               |
| White  | 55 out of 1,000 cases         | <b>16</b>       | 52                | *             |
| Black  | <b>68 out of 1,000 cases</b>  | 6               | 44                | *             |
| Hispanic   | 46 out of 1,000 cases         | 3               | <b>53</b>         | *             |
| Number of Cases  | 15,959                        | 1,908           | 2,054             | 425           |

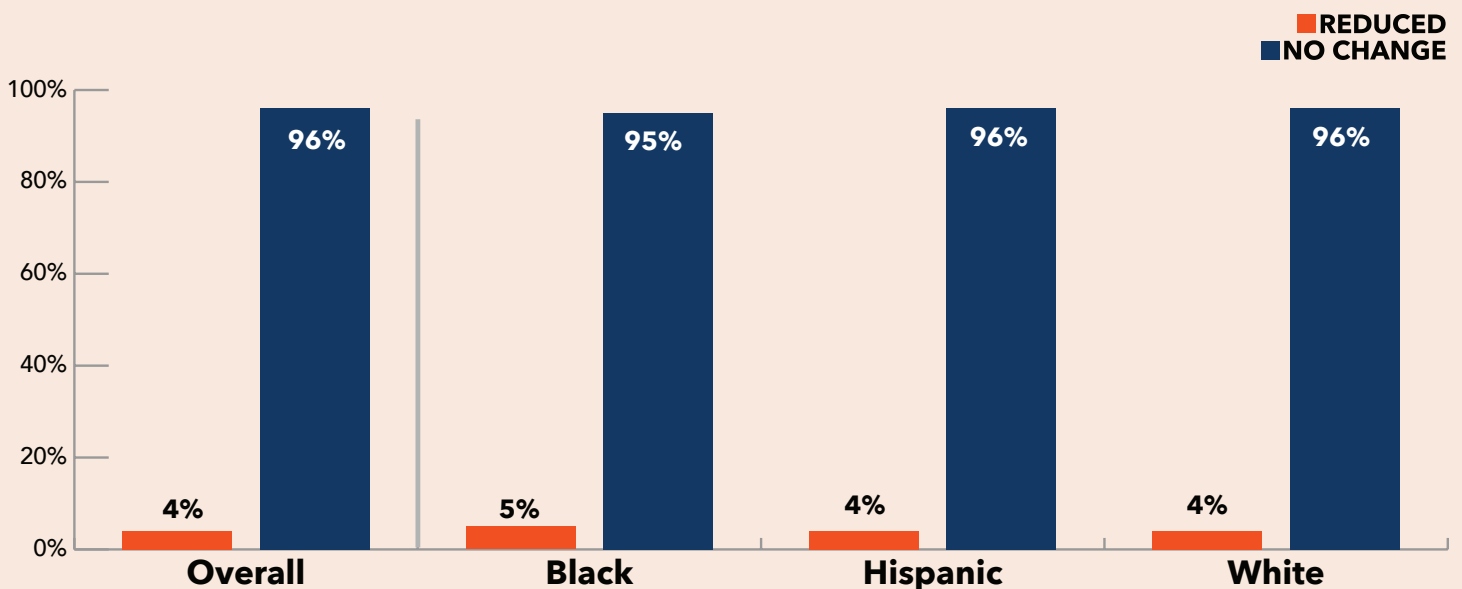
\*Cannot estimate due to infrequency of disposed misdemeanor drug offenses.

# PART 4: CHARGE CHANGE AT DISPOSITION

## What is charge change at disposition?

In addition to changing charges as filing (Part 2), prosecutors may also change charges after filing and before the final disposition. This may occur due to plea bargaining or newly uncovered evidence, among other reasons. In this analysis, changes in charge severity are again determined by the top charge. Charge increases are very uncommon at this stage. Therefore, only two categories—“reduced” and “no change” are reported. Also, not all cases that experience charge reduction result in conviction. A small percentage of these cases are also dismissed.

In more than 95% of filed cases, the severity of the top charge remain unchanged. Based on simple percentages, **there are no marked differences in charge reductions post-filing among racial and ethnic groups**. The limited number of charge changes at this stage may indicate that charge reductions are not an important plea-bargaining chip, and that prosecutors honor the charges determined at filing.



Charge reductions are also especially rare among misdemeanors. Therefore, the following analyses focuses only on felony charge reductions that occur after filing. Felonies may be reduced to lower-level felonies, or to misdemeanors.

Numbers in the next table represent the expected rates of each outcome per 1,000 cases for White, Black, and Hispanic defendants after taking into account the influence of: (1) offense severity, (2) offense type, (3) charge counts, (4) whether the case originated with an arrest, (5) prior cases, (6) prior convictions, (7) attorney type (private attorney, public defender, or pro se), (8) defendant gender, and (9) defendant age. Results for person offenses also take into account (10) number of victims. Results for drug offenses also control for (11) drug type, and (12) whether the offense involved possession or sale/trafficking/manufacturing.

After accounting for these factors, overall, Hispanic (108 out of 1,000) and White (106 out of 1,000) defendants are more likely to have their felony charges reduced in severity than similarly situated Black defendants (100 out of 1,000).

When examining charge reductions by offense type, it becomes apparent that the three racial/ethnic groups have higher likelihood of charge reduction for difference offense types. Hispanic defendants are most likely to experience a felony charge reduction for person offenses (186 out of 1,000); Black defendants are most likely to experience it for property offenses (82 out of 1,000); and White defendants are most likely to experience it for drug offenses (65 out of 1,000). Although charge reductions are not common, they occur more frequently for person offenses than for property and drug offenses.

## FELONY CHARGE REDUCTIONS

|                 | All Disposed Cases            | Person Offenses | Property Offenses | Drug Offenses |
|-----------------|-------------------------------|-----------------|-------------------|---------------|
| White           | 106 out of 1,000 cases        | 179             | 61                | <b>65</b>     |
| Black           | 100 out of 1,000 cases        | 153             | <b>82</b>         | 53            |
| Hispanic        | <b>108 out of 1,000 cases</b> | <b>186</b>      | 62                | 42            |
| Number of Cases | 6,707                         | 2,078           | 2,320             | 1,368         |

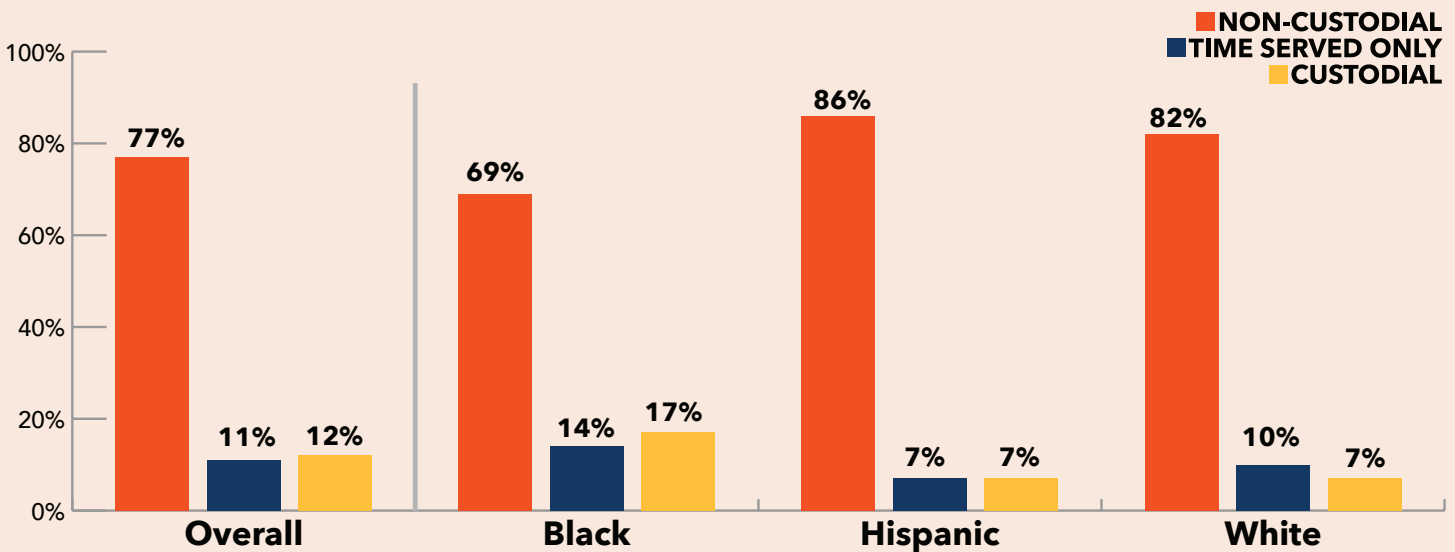
# PART 5: SENTENCING

## What is sentencing?

Cases resulting in a guilty plea or trial conviction are sentenced by a judge to (a) jail or prison term, (b) time served while in pretrial detention, or (c) non-custodial sentences such as probation, fine, court fees and community service. The following analyses are performed on “sentenced” cases. Custodial sentences include any jail or prison sentence that is longer than credit for time served.

Overall, in 77% of criminal cases for which a sentence was imposed, defendants received a non-custodial sentence. The remaining 23% of cases are split in half: 12% custodial and 11% time-served-only sentences.

**A much greater percentage of Black defendants, as compared to Hispanic and White defendants, received custodial and time-served-only sentences.** Specifically, 17% of Black defendants but only 7% of Hispanic or White defendants were sentenced to a prison or jail term. A higher rate of pretrial detention for Black defendants is also suggested by their higher likelihood of receiving time-served-only sentences. Approximately 14% of Black defendants received time-served-only sentences, as compared to 10% of White defendants and 7% of Hispanic defendants.



This sentencing discrepancy might be explained by Black defendants' lengthier prior records and/or more severe charges. Therefore, we conducted additional analyses to account for these and other legal and non-legal factors that might be influencing the sentencing outcome.

Numbers in the three tables that follow represent the expected rates of each outcome per 1,000 cases for White, Black, and Hispanic defendants after taking into account the influence of: (1) offense severity, (2) offense type, (3) charge counts, (4) whether the case originated with an arrest, (5) charge changes from arrest to filing, (6) whether the case was disposed via plea or trial (7) charge changes from filing to disposition, (8) prior cases, (9) prior convictions, (10) attorney type (private attorney, public defender, or pro se), (11) defendant gender, and (12) defendant age. Results for person offenses also take into account (13) number of victims. Results for drug offenses also control for (14) drug type, and (15) whether the offense involved possession or sale/trafficking/manufacturing.

Accounting for these factors does not wash away the racial/ethnic differences observed in the basic percentages above. Overall, **Black defendants are more likely to receive a jail/prison sentence or time-served-only sentences than similarly situated Hispanic and White defendants. Hispanic defendants are most likely to receive non-custodial sentences.** These trends hold across offense types.

For custodial sentences, we would expect 128 out of every 1,000 cases involving Black defendants to receive a jail/prison sentence (as compared to 115 for White and 107 for Hispanic defendants). The greatest gap in custodial sentences is found for property offenses between Black (200 out of 1,000) and Hispanic (147 out of 1,000) defendants. These findings suggest that Black defendants are most, and Hispanic defendants least, disadvantaged when it comes to custodial sentences.

## FELONY AND MISDEMEANOR SENTENCE TYPES

|                               | All Sentenced Cases           | Person Offenses | Property Offenses | Drug Offenses |
|-------------------------------|-------------------------------|-----------------|-------------------|---------------|
| <b>Non-Custodial Sentence</b> |                               |                 |                   |               |
| White                         | 795 out of 1,000 cases        | 573             | 688               | 652           |
| Black                         | 773 out of 1,000 cases        | 530             | 674               | 561           |
| Hispanic                      | <b>823 out of 1,000 cases</b> | <b>591</b>      | <b>747</b>        | <b>695</b>    |
| <b>Time Served Sentence</b>   |                               |                 |                   |               |
| White                         | 90 out of 1,000 cases         | 149             | <b>129</b>        | 121           |
| Black                         | <b>99 out of 1,000 cases</b>  | <b>167</b>      | 125               | <b>185</b>    |
| Hispanic                      | 70 out of 1,000 cases         | 140             | 106               | 69            |
| <b>Custodial Sentence</b>     |                               |                 |                   |               |
| White                         | 115 out of 1,000 cases        | 277             | 182               | 227           |
| Black                         | <b>128 out of 1,000 cases</b> | <b>303</b>      | <b>200</b>        | <b>254</b>    |
| Hispanic                      | 107 out of 1,000 cases        | 269             | 147               | 236           |
| Number of Cases               | 14,296                        | 1,704           | 3,687             | 1,165         |

To further explore racial/ethnic differences in sentencing, we analyzed the expected rates for felonies and misdemeanors separately. These analyses first show that Black defendants are the most likely group to receive a sentence of time served only among both felonies (116 out of 1,000 cases) and misdemeanors (91 out of 1,000 cases) compared to White and especially Hispanic defendants overall.

Results also show that the higher likelihood of custodial sentences for Black defendants stems primarily from felony sentencing, with less consistent disparity among misdemeanors. **Black defendants are distinctly more likely to receive custodial sentences than similarly situated Hispanic and White defendants across all felonies, including person, property, and drug offenses.** The racial gap between Black and the two other groups is especially large for person and property offenses.

Because the Black-White gap is largest for felony person offenses (an extra 79 incarceration sentences per 1,000 for Black defendants), we further examined specific charges within this category. The analyses do account for charge severity, but the most frequent charges are: carrying concealed firearms (11.2%), aggravated assault with a deadly weapon (6.9%), battery on a law enforcement officer (5.7%), resisting arrest with violence (5.7%), and robbery with a firearm or deadly weapon (4.7%). Black defendants charged with these crimes may be viewed as more culpable and dangerous, resulting in a greater likelihood of incarceration.

An equally large gap was observed between Black and Hispanic defendants' sentences for felony property crimes (an extra 79 incarceration sentences per 1,000 for Black defendants). The most frequent felony property charges are: grand theft (22.96%), felony petit theft (13.5%), burglary of an unoccupied conveyance (10.5%), grand theft of an automobile (10.5%), and burglary of a dwelling (6.6%). Black defendants charged with these crimes may be viewed as more culpable than similarly situated Hispanic defendants.

## FELONY SENTENCE TYPES

|                               | All Sentenced Cases           | Person Offenses | Property Offenses | Drug Offenses |
|-------------------------------|-------------------------------|-----------------|-------------------|---------------|
| <b>Non-Custodial Sentence</b> |                               |                 |                   |               |
| White                         | 578 out of 1,000 cases        | 504             | 587               | 627           |
| Black                         | 535 out of 1,000 cases        | 420             | 544               | 537           |
| Hispanic                      | <b>634 out of 1,000 cases</b> | 493             | <b>673</b>        | <b>670</b>    |
| <b>Time Served Sentence</b>   |                               |                 |                   |               |
| White                         | 98 out of 1,000 cases         | 94              | 69                | 126           |
| Black                         | <b>116 out of 1,000 cases</b> | <b>100</b>      | <b>99</b>         | <b>188</b>    |
| Hispanic                      | 69 out of 1,000 cases         | 97              | 50                | 76            |
| <b>Custodial Sentence</b>     |                               |                 |                   |               |
| White                         | 324 out of 1,000 cases        | 401             | 344               | 247           |
| Black                         | <b>349 out of 1,000 cases</b> | <b>480</b>      | <b>357</b>        | <b>274</b>    |
| Hispanic                      | 296 out of 1,000 cases        | 410             | 278               | 254           |
| Number of Cases               | 4,671                         | 1,019           | 1,876             | 1,071         |

## MISDEMEANOR SENTENCE TYPES

|                               | All Sentenced Cases           | Person Offenses | Property Offenses | Drug Offenses |
|-------------------------------|-------------------------------|-----------------|-------------------|---------------|
| <b>Non-Custodial Sentence</b> |                               |                 |                   |               |
| White                         | 897 out of 1,000 cases        | 691             | 790               | *             |
| Black                         | 890 out of 1,000 cases        | 687             | 810               | *             |
| Hispanic                      | <b>913 out of 1,000 cases</b> | <b>770</b>      | <b>822</b>        | *             |
| <b>Time Served Sentence</b>   |                               |                 |                   |               |
| White                         | 86 out of 1,000 cases         | 229             | <b>189</b>        | *             |
| Black                         | <b>91 out of 1,000 cases</b>  | <b>270</b>      | 157               | *             |
| Hispanic                      | 69 out of 1,000 cases         | 191             | 159               | *             |
| <b>Custodial Sentence</b>     |                               |                 |                   |               |
| White                         | 17 out of 1,000 cases         | <b>81</b>       | 21                | *             |
| Black                         | <b>19 out of 1,000 cases</b>  | 42              | <b>34</b>         | *             |
| Hispanic                      | 18 out of 1,000 cases         | 39              | 19                | *             |
| Number of Cases               | 9,521                         | 685             | 1,811             | 94            |

\*Cannot estimate due to infrequency of time served only and custodial sentences.

To better pinpoint the location of racial differences in felony sentencing, the State Attorney's Office requested supplemental analyses. We examined the racial gap in negotiated and open pleas separately. Negotiated pleas are plea deals made between the Office and the defendant. Open pleas are typically made by the defendant in front of a judge with limited prosecutorial involvement.

Accounting for the same battery of legal and non-legal sentencing factors, the table below shows that **Black defendants are the most likely group to receive a custodial sentence or time-served-only sentence in both negotiated and open pleas.** However, the Black-White gap in custodial sentences is larger (an extra 63 custodial sentences per 1,000 cases) in negotiated pleas as compared to open pleas.

When comparing Black and Hispanic defendants, the gap is larger in open pleas (an extra 48 custodial sentences out of 1,000 cases) as compared to negotiated pleas. Custodial sentences occur about twice as often in negotiated pleas as in open pleas. We are unable to estimate differences within specific offense types due to the small number of felony negotiated pleas.



## FELONY SENTENCE TYPES

|                               | <b>Negotiated Plea</b>        | <b>Open Plea</b>              |
|-------------------------------|-------------------------------|-------------------------------|
| <b>Non-Custodial Sentence</b> |                               |                               |
| White                         | <b>407 out of 1,000 cases</b> | 620 out of 1,000 cases        |
| Black                         | 342 out of 1,000 cases        | 586 out of 1,000 cases        |
| Hispanic                      | 391 out of 1,000 cases        | <b>690 out of 1,000 cases</b> |
| <b>Time Served Sentence</b>   |                               |                               |
| White                         | 83 out of 1,000 cases         | 101 out of 1,000 cases        |
| Black                         | <b>84 out of 1,000 cases</b>  | <b>125 out of 1,000 cases</b> |
| Hispanic                      | 69 out of 1,000 cases         | 69 out of 1,000 cases         |
| <b>Custodial Sentence</b>     |                               |                               |
| White                         | 510 out of 1,000 cases        | 279 out of 1,000 cases        |
| Black                         | <b>573 out of 1,000 cases</b> | <b>289 out of 1,000 cases</b> |
| Hispanic                      | 540 out of 1,000 cases        | 241 out of 1,000 cases        |
| Number of Cases               | 944                           | 3,722                         |

# PART 6: SUMMARY OF RESULTS

Racial and ethnic differences in prosecution and sentencing prevail, although not for every decision point, and it is not always Black and Hispanic defendants who are disadvantaged.

The 2021 data suggest that in Broward County, **Black** defendants are:

- Least likely to have their case filed for prosecution, especially for felony charges;
- Most likely to have their top charge reduced in severity at filing, as well as increased in severity (although the latter occurs rarely for all racial/ethnic groups);
- Most likely to have their case dismissed, whether charged with a felony or a misdemeanor;
- Least likely to have their felony charge reduced after filing; and
- Most likely to receive custodial sentences upon conviction, as well as time-served-only sentences, as compared to non-custodial sentences.
- Especially more likely to receive custodial sentences than White defendants in negotiated pleas, as compared to open pleas.

While Black defendants may receive some advantage at earlier stages of case processing, they are disadvantaged at sentencing. This disadvantage is greatest when they are convicted of felony person and property offenses, and it occurs following both negotiated and open pleas.

Decision-making patterns and outcomes for Hispanic defendants follow a different trajectory, suggesting that case processing dynamics are not the same for different groups of color. Based on the same 2021 data, **Hispanic** defendants are:

- Least likely to experience charge changes at filing;
- Most likely to have their case pursued for prosecution;
- Most likely to have their felony charges reduced at disposition; and
- Least likely to receive jail and prison sentences upon conviction.

Altogether, these findings demonstrate the importance of evaluating racial and ethnic disparities in prosecutorial decision making by offense type, decision point, and racial/ethnic group.

ProsecutorialPerformanceIndicators.org

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### **About Florida International University**

Florida International University is Miami's public research university. Designated as an R1 institution, FIU emphasizes research as a major component in its university mission. FIU is among the top 10 largest universities in the nation. Of its 54,000 students, 67% are Hispanic, and 12% are Black. This project is housed in the Department of Criminology and Criminal Justice, and the Jack D. Gordon Institute for Public Policy, which are part of the Steven J. Green School of International and Public Affairs.

### **About Loyola University Chicago**

Loyola University Chicago is one of the nation's largest Jesuit, Catholic Universities. Loyola's mission is to expand knowledge in the service of humanity through learning, justice, and faith. This includes a profound commitment to the poor, to issues of social responsibility and justice, and to service that promotes truth and care for others. This project is housed in the Department of Criminal Justice and Criminology, and the Center for Criminal Justice Research, Policy, and Practice.