

## **ABSTRACT**

Title: RACIAL DISPARITIES IN PRE-SENTENCING  
COURTROOM OUTCOMES

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The foundation of the American criminal justice system rests on the idea that all offenders should be treated equally before the law. However, prior research has shown that an offender's race may result in differential treatment. Despite extensive literature examining sentencing and race, very little attention has been given to the courtroom processes that occur after arrest but prior to sentencing (primarily executed at the discretion of the prosecutor). This study examines three of those pre-sentencing processes (dismissals, diversions, and charge reductions) that drastically affect the treatment an offender receives during later stages of the proceedings. Results indicate that minorities are significantly more likely to receive dismissals while being significantly less likely to receive diversions or charge reductions. Findings regarding geographic location and other variables are also discussed as well as limitations and suggestions for further research.

**RACIAL DISPARITIES IN PRE-SENTENCING COURTROOM OUTCOMES**

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## **RACIAL DISPARITIES IN PRE-SENTENCING COURTROOM OUTCOMES**

### **Introduction**

A society's criminal justice system exemplifies many of the social beliefs and values of a culture. "Criminal justice is symbolic in that the criminal law and its enforcement are expected to embody fundamental principles in society" (Hagan and Albonetti 1982: 329). A primary tenant of the American system involves the concept of equality before the law. "It establishes the principle that no person or class of persons may be subjected to discriminatory or arbitrary treatment. Justice is to be dispensed only with regard to those considerations explicitly embodied in law" (Miethe and Moore 1986). Racial differences certainly do not fall under legal considerations in the application of justice.

Apart from philosophical issues of racial equality, a fair and unbiased criminal justice system contains tangible benefits toward society. Tyler (1984) states that minorities who view the system as "just and impartial" will gain confidence in the system and outcomes will be enhanced – thus increasing their commitment to overall group norms and reducing willingness to break the law (Young 1991; Tyler 1984).

Years after the Civil Rights reform, questions still arise regarding the impact of an offender's race on criminal justice outcomes, especially involving racial disparities in sentencing. Such questions have not gone unaddressed among researchers. "Since the early 1970s sentencing research has focused exclusively on the concept of unwarranted disparity in sentencing" (Wellford 2007: 399). However, much of this prior research on the effect of race isolates the effect individual actors or sentencing guidelines have strictly on sentencing, ignoring or controlling for earlier case processes. The interconnected nature of the criminal justice system

makes such an omission highly significant. “The limits we have placed on ourselves in doing research on sentencing were appropriate as long as the question was whether guidelines work” (Wellford 2007: 400). “The simple conviction outcome used as the dependent variable in most quantitative sentencing research is the result of the discretion of all the actors in the system combined” (Bushway and Piehl 2007: 106). In order to fully understand the overall role of race in the justice process, the literature must be expanded in order to include these omitted steps of the system. Specifically, the literature must examine dismissals, diversions (allowing offenders to complete programs in exchange for dropping charges), and charge bargaining. Only once all factors that affect the role of race in sentencing can be accounted for can confident judgments be made regarding unwarranted disparity in the criminal justice system.

The prosecutor plays a vital role in many presentencing discretion points of the criminal justice system. The decision to prosecute, offer alternative-treatment diversions, and give charge reductions plays a role in determining the characteristics of which offenders receive certain sentences. However, “[d]espite the essential role of the prosecutor in the criminal sanctioning process, research on their decision-making behavior remains remarkably limited” (Shermer and Johnson 2009: 2). The current research attempts to address some of these shortcomings by examining characteristics of offenders whose charges are dismissed, receive diversions, and whose charges are reduced from felonies to misdemeanors through charge bargaining. By examining these early discretionary points, this research will contribute to a better understanding of any racial disparities that exist during the pre-sentencing phases of the courtroom process. This project builds on the prior literature by providing a concise summary of prior research on prosecutorial discretion in addition to a quantitative analysis of the role of race in receiving court dismissals, diversions, and charge reductions across various jurisdictions in the United States.

With a better understanding of these processes, the effects of prosecutorial discretion and its relation to race can be further analyzed and understood.

### **Literature Review**

The prosecutor in the American criminal justice system possesses great power over criminal cases. “Prior historical analyses indicate the American prosecutor enjoys independence and discretionary privilege unmatched in the world” (Albonetti 1987: 292). Prosecutors execute this discretionary privilege in a few discrete points during criminal justice proceedings. “The modern American prosecutor exercises unfettered discretion in three significant screening decisions: (1) The circumstances in which a criminal charge will be filed, (2) the level at which a criminal charge will be filed, and (3) when to discontinue prosecution” (Albonetti and Hepburn 1996: 63).<sup>1</sup> Many of these decisions are not driven by strict guidelines; instead the system relies on the prosecutor to use his or her judgment. The existing literature on each of these discretion points will be examined individually, starting with the initial charging and case dismissals, followed by diversions, and finishing with the charge bargaining process.

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<sup>1</sup>Of course, this list is not all-inclusive, as prosecutors also play a role at other points in the criminal justice system. Prior studies on other aspects of prosecutorial behavior also generally find racial differences among groups, lending support to the notion that a racial bias may exist in the prosecutor’s behavior. For example, studies that examine racial bias in prosecutorial-driven “downward departures” from sentencing guidelines show that blacks, Hispanics, and offenders with lower education levels were less likely to receive a lesser sentence (Mustard 2001; Spohn and Fornage 2009). Such effects may be exacerbated in counties where there is a higher percentage of minority population (Johnson, Ulmer, and Kramer 2008).



## Charge Rejections and Case Dismissals

The initial decision to press or reject charges remains one of the least visible and most important decisions made by the prosecutor. Despite recent changes to the criminal justice system designed to increase overall visibility and accountability (such as sentencing guidelines), prosecutors have avoided any such restrictions on the charging decision. Today we may actually know *less* about the charge/drop decision point than we did twenty years ago due to the discontinuation of large scale databases examining the topic.<sup>2</sup>

In the mid 1980s, two studies came out that rigorously examined the prosecutor's decision to bring or reject charges against offenders. The earlier study by Petersilia (1983) attempted to measure the charge/drop decision quantitatively on a large scale.

In order to study the charge/drop decision, Petersilia used a dataset from the California Offender-Based Transaction Statistics from 1980, which contained information on 190,000 offenders. She included race as two dichotomous variables (black/not black and Hispanic/not Hispanic), controlled for prior record, and included a dichotomous "violent offense" variable. She also included a model that conceptualized "charges dropped" to only include individuals who had no charges of any type filed against them; individuals charged with a misdemeanor were classified as having charges pressed against them.

She found that prosecutors were more likely to charge blacks and Hispanics with felony charges. However, when including individuals charged with misdemeanors in the outcome variables, Petersilia found that whites actually had a *greater* likelihood to be charged than blacks or Hispanics. In the sample, 20% of whites were released without any charges, compared to 27% of Hispanics and 32% of blacks.

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<sup>2</sup> Primarily, the discontinuation of the Prosecutor's Management Information System (PROMIS) in the early 1990s drastically limited the amount of available data on the subject.

Spohn, Gruhl, and Welch (1987) also examined the effect of race on the charging decision. Using data from the Los Angeles County Prosecutor's Management Information System (PROMIS), they took a random sample of 70,000 offenders arrested for felony offenses between 1977 and 1980. In order to avoid issues related to charge bargaining (where a prosecutor might file multiple charges intending to drop some later in exchange for a guilty plea), they limited their sample to offenders with only one charge.

To measure race, they coded the offender's ethnicities into two dichotomous variables: black and Hispanic. They included controls for age, gender, use of a weapon, offense severity, and prior criminal record. Finally, they conceptualized charge in two ways, including two outcome variables. The first outcome variable, charge rejected, indicated the prosecutor initially made the decision to drop the charges. The second outcome variable indicated if the charges were dropped at any point in the process. This variable includes decisions made by courtroom actors other than the prosecutor, and a charge dropped after the initial filing is usually done in an open court (increasing the visibility of the decision).

Spohn et al. found that whites have a significantly greater probability than blacks of having their charges rejected by the prosecutor before the formal filing of charges. However, once the charges reach the court, the researchers did not find a racial effect in dismissals. They attribute this finding to the greater visibility of the courtroom process.

The authors of both of these articles admit a few major weaknesses relevant to the proposed research. Despite the fact that Spohn et al. heavily emphasize the importance of accounting for strength of evidence (citing that 71% of cases were dropped due to lack of evidence), neither researcher includes controls for it, as individual qualitative case details are usually unavailable while using aggregate-level data. Additionally, Petersilia only examines

offenders with one charge against them in order to account for effect of charge bargaining. However, such a distinction excludes any prosecutorial effects among offenders who receive more than one charge, a common occurrence.

Spohn, Beichner, and Davis Frenzel (2001) also examine offender characteristics that result in the decision not to prosecute, although not on the scale of the prior two studies. Using all 140 sexual battery cases cleared by arrest in Miami in 1997, they did not find any significant offender racial effects; this lack of findings may be partially explained by the small sample size. In their dataset, minorities were slightly *more* likely to have their charges rejected.

Other research relevant to an offender's race and charging decisions has examined the victim's (rather than the offender's) race and the interactions between the two. "The value or sanctity of white lives may be seen by white-dominated communities or prosecutors to be higher than the value of black lives" (Paternoster 1984: 473). As such, a black offender victimizing a white individual may be seen as more heinous and morally offensive to the community. The existing research focuses mainly on the offenses of rape and murder.

LaFree (1980) used a sample of individuals charged with "forcible sex offenses" in a Midwestern city between 1970 and 1975. He found that offender race played a major role in courtroom outcomes. Black men raping white women only accounted for 23% of the total incidents reported and 23.6% of the overall arrests, but represented 31.1% of cases where felony charges were brought against the offender and 50% of cases with resulting sentences longer than 5 years. He concluded, "Compared to other defendants, blacks who assault white women receive more serious charges, are more likely to have their case processed as a felony...and receive longer sentences" (LaFree 1980: 852).

Victim and offender race also play a role in the likelihood of a prosecutor bringing capital charges against a defendant. Paternoster (1984) examined 1,800 cases of non-negligent homicide in South Carolina between 1977 and 1981. After controlling for various aggravating circumstances (such as torture of the victim), Paternoster found that blacks who kill whites are almost four and a half times more likely to receive a capital charge when compared to blacks who kill other blacks, while whites who kill blacks are no more likely to receive a capital charge than whites who kill other whites. Weiss, Lee, and Berk (1996) also examined the factors that affected the likelihood of receiving a capital charge, and similarly found that having a white or Asian victim resulted in a four times larger likelihood of receiving a capital charge.

Other studies have examined the charge/drop decision point without including any racial considerations. Albonetti (1986) found that the factors that affect charging involve the physical evidence present in each case, the relationship between victim and offender, and whether or not the criminal was arrested at the scene of the crime. Frazier and Haney (1996) also found other legally relevant factors that have an influence on the decision to press charges involve an offender's prior criminal history and the seriousness of the offense, as prosecutors dedicate more resources toward prosecuting more severe offenses.

Apart from quantitative studies, some researchers have focused on ethnographic studies and interviews with prosecutors in order to capture their subjective reasons for rejecting cases. For example, Frohmann (1991) found that prosecutors of sexual assault were heavily concerned "with maintaining a high conviction rate to promote an image of the 'community's legal protector'" (Frohmann 1991: 315). Due to this concern, prosecutors filed charges mainly for what they considered strong or winnable cases. Victim credibility factors heavily into the prosecutor's decision in these cases, as victims often comprise the majority of the available

evidence against an individual. Similarly, Schmidt and Steury (1989) found that seriousness of the offense, strength of evidence, and prior convictions also played a role in bringing charges against an offender.

Studies focusing on the effect of sex on prosecutor's case processing decisions also examine race variables in the context of gender. For example, Spohn and Spears (1997) found that females were more likely to have their charges rejected, although their results were based off of a sample containing a relatively small number of female defendants (648). Additionally, they found that white females were more likely than white males to have their charges rejected by the prosecutor, although there was no observed effect for black females when compared to black males or for white offenders when compared to black offenders. Similarly, Spears and Spohn (1997) focused on victim gender and the prosecutorial charging decision in rape cases, but also included a variable for race of the suspect. They found that the race of the suspect did not impact the charging decision, although they did not include a variable for a black offender victimizing a white woman or vice versa. The behavior of the victim at the time of the incident and the age of the victim did significantly affect the likelihood of an offender receiving charges, although, notably, strength of evidence did not significantly predict charging decisions.<sup>3</sup>

Due to the interconnected nature of the criminal justice system, studies that examine post-filing case dismissals are also germane to the decision to file charges against an individual. "If discrimination is concentrated in the earlier decision-making stages [such as dismissals], research which does not account for the processual nature of decision making or which analyses populations just at the later decision points will tend to produce findings of no discrimination" (Thomson and Zingraff 1981: 871). As such, the entire charging process must be examined, as merely examining one part may miss a bias during other parts of the process. Of course, the

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<sup>3</sup> Although "presence of physical evidence" was extremely close to significance, with a  $p < .053$ .

possibility exists that if prosecutor unjustly files charges against black and Hispanic offenders at a greater rate without legal merit during the low-visibility screening process, the courtroom dismissal phase will favor the minority defendants as a “correction” to the charging bias (such as that found in Spohn et al. 1987 and Petersilia 1983). Generally, however, little research has been done on the significant characteristics of offenders who receive post-filing case dismissals. The existing literature, done by Jordan et al. (2003) and Ryan et al. (2007), focuses on juveniles and sexual offenders.

Jordan et al. (2003) did not find any racial effects in the likelihood of offenders arrested for stalking receiving a court dismissal. They did, however, find a significant inverse relationship between criminal history and case dismissal.

Ryan et al. (2007) examined juvenile court outcomes tied to delinquents’ welfare status, including racial variables in their analysis. They found both African Americans and Hispanics were significantly less likely to have their cases dismissed in juvenile court. They did not, however, include a variable for prior record or gender, which may confound the results.

As previously mentioned, scarcity of data makes it difficult to directly examine both the charge/drop decision point and courtroom dismissals. The research literature, mainly focused on charging, has shown evidence that racial discrepancies exist in the prosecutorial decision to file charges. However, additional considerations affect the results individuals receive as they progress through the criminal justice process. Even if a prosecutor files charges against an individual, the diversion and charge bargaining process may drastically affect their experienced outcomes.

## **Court Diversions**

Another criminal justice proceeding that relies on the judgment of the prosecutor involves diverting offenders into treatment programs in exchange for the discontinuation of criminal proceedings. The decision to divert a case ends criminalization of the offender upon successful completion of the project. Thus, should racial disparities exist in the prosecutor's decision to offer a diversion (or the offender's decision to accept it) and the offenders later receive guilty dispositions, that group of offenders would exhibit a greater criminal history than the group participating in the diversion programs. I will examine the few available studies by looking first at research that focused on adult offenders, then juvenile offenders.

An example of such a diversion program began in 1989 in Pheonix, Arizona, where prosecution was deferred in order to offer a voluntary drug treatment for offenders without significant criminal histories. This process occurred after the initial decision to reject charges outright, and prosecution would cease after successful completion of the diversion program (Albonetti 1996).

Albonetti (1996) used a logistic regression to determine which variables accounted for significant variation in the dependent variable. Her findings showed that race did not affect the likelihood of receiving a diversion. She did find that younger defendants were more likely to receive a diversion than older defendants, and that increases in criminal history (measured through prior arrests), having a greater number of initial charges, and being male all decreased the likelihood of receiving a diversion. Using an interaction between race and prior record resulted in an interesting finding: minorities received a penalty during this phase of the process only if they did not have a prior record. Surprisingly, minorities with a prior record had a greater

likelihood of receiving a diversion. Albonetti attributes this finding to prosecutors having differing associations with ascribed and achieved status among different groups of offenders.

Engen et al. (2003) examined two diversion programs in Washington state from 1989-1991, one targeted toward first time offenders and one targeted toward sex offenders. Judges in Washington used the diversionary programs for 25% and 47% (respectively) of the cases in which the offenders were eligible. Using dichotomous dependent variables, the authors run a logistic regression and determine that males, minorities (blacks and Hispanics), and young offenders were significantly less likely to receive a diversion. Specifically, the odds of a minority receiving a diversion were only 30-70% of the odds for similar white offenders.

Apart from the Albonetti and Engen studies, court diversion research remains extremely sparse and has focused primarily on juvenile offenders. Studies examining diversion in juveniles have generally found that minorities are less likely to receive a pretrial diversion than whites (Leiber and Johnson 2008). Additionally, researchers usually find some form of anti-black bias in the court diversion process (e.g. Leiber and Stairs 1999; Leiber 1994<sup>4</sup>; Leiber, Johnson, Fox, & Lacks, 2007). Such results may not result from an anti-minority bias; similar to charge bargaining, minorities may voluntarily *choose* not to participate in diversions at a greater rate than white youths (Leiber and Stairs 1999).

Prior research has not uniformly found an anti-minority bias, however. Barrett, Katsiyannis, and Zhang (2006) actually found that minorities and males were *more* likely to be diverted than prosecuted in juvenile court using the South Carolina Department of Juvenile Justice Management data.

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<sup>4</sup> Although he found that Native American offenders actually received preferential treatment than blacks and whites.



Adding to the complexity of studying diversions involves the myriad processes different jurisdictions use in their diversion programs. Diversion may occur as a result of prosecutorial discretion, judicial discretion, or both. Additionally, diversion may occur before or after the prosecutor formally charges in court (Schmidt and Steury 1989). As such, research attempting to draw cross-county comparisons between prosecutorial discretion must remain extremely vigilant of these different processes. Given the relative scarcity of studies, it is difficult to draw conclusions about the existing relationship between race and diversions. Due to this fact, it is imperative for more research to be done on this topic due to the impact diversionary programs have on justice outcomes. Individuals not selected for diversionary backgrounds gain greater criminal histories, harming their chances for housing and employment while also increasing the severity of future sanctions.

### **Charge Bargaining**

In addition to the initial charging and diversion decisions, prosecutors also have a large amount of discretion in determining which charges to bring against an offender. “Prosecutors in American jurisdictions wield enormous ‘sentencing’ power because they have virtually unreviewable discretion to select the initial charges and decide which charges to drop as part of plea bargaining” (Frase 2000: 440 qtd. in Shermer and Johnson 2009). Sentencing research that focuses merely on the discretion of the judge and does not include a measure for actual charges brought against the offender may not capture any “hidden” racial discrepancies that may exist. Through the manipulation of charges, prosecutors have the ability to drastically increase or reduce final sentences, especially under sentencing guidelines. The research literature on discretion in sentencing generally chooses to control for the prosecutor’s involvement by

examining only offenders with similar final charges rather than measuring the effects of charging itself. Failing to account for the charging step allows courtroom actors to appear unbiased in the visible sentencing stage, while in reality minority offenders may be getting charged at different rates. Previous research on charging examined the “value” of each charge bargain as well as the effect charge bargaining has on the strict number of charges brought against an individual.

Initial research approached the subject of charge bargaining from a labeling theory perspective, choosing to examine society’s reaction to criminal offenders deemed as “deviant” to the community. Studies such as Bernstein et al. (1977) and Holmes et al. (1987) used independent variables such as criminal history, race, age, and sex to determine which offenders received bargains. These early studies used ordinal scales to determine the value of each charge bargain, assigning a numeric value to each level of felony/misdemeanor and then subtracting to determine the worth of each plea agreement. Perhaps due to the rough conceptualizations of bargain value, these studies found that black offenders generally fared the same as white offenders in the charge bargaining process.

Albonetti (1992) later examined the decision to reduce charges from the felony to the misdemeanor level. Her dataset (taken from 400 burglary and robbery charges in 1979-1980 Jacksonville, FL) includes the officer’s initial arrest charges. Her conceptualization of charge reduction focuses on the prosecutor’s initial filing: she codes cases as “reduced” when the officer elected to arrest an individual with felony level charges and the prosecutor filed charges at the misdemeanor level. Her study also did not find any direct racial effect; significant variables included case seriousness (measured by a dichotomous “Use of Weapon” variable), age, gender, and victim/offender relationship. Surprisingly, prior criminal history did not have an effect on

the likelihood of receiving a charge reduction, although being labeled a “habitual offender” did result in a significant higher probability of receiving felony charges.

Farnworth and Teske (1995) examined gender bias in criminal processing, finding that females were more likely to have the seriousness of their charges reduced and white females were more likely to receive such a charge reduction than black females. Ball (2006) focused rather on the strict number of charges and their resulting reduction as a result of charge bargaining. Simply examining the reduction in number of charges did not reveal any legally irrelevant offender characteristics playing a significant role. This conclusion, however, may have been marred by the fact that he merely looked at the *reduction* of the number of charges, rather than their value or resulting sentence, in a sample containing very few white or Hispanic offenders (Roughly 10% each). He did reaffirm the importance of offense seriousness and prior criminal history in his analysis.

Bushway and Piehl (2007) provide an excellent explanation of the legally relevant and irrelevant factors that play a role in the prosecutor’s decision to offer a charge bargain. In order to demonstrate the hydraulic nature of the criminal justice system, they chose to examine the value of charge bargains (expected sentence based on the charges – final sentence) in two counties. One county had strict mandatory sentencing guidelines and the other did not. They hypothesized that restricting the sentencing discretion of the judge would merely shift the decision to the prosecutor through the charge bargaining process.

Bushway and Piehl’s findings were consistent with their hypothesis that charge bargaining played a greater role in changing sentencing outcomes in the counties with guidelines after they incorporated controls into their data to control for differential offending. Interestingly (and more relevant to the proposed research), they also found that race, age, and gender had

more explanatory power in counties that limited judicial discretion. The guidelines, intended to ensure equal sentencing across demographic lines, merely shifted their consideration from the judge to the prosecutor. However, Bushway and Piehl do note that the characteristics that are relevant to the value of the charge bargain may not be the same as the characteristics that affect who receives a charge bargain.

Shermer and Johnson (2009) used the Federal Justice Statistics Program from fiscal year 2001 in order to examine the characteristics of defendants charged in federal courts who receive charge reductions, defined as a reduction in the statutory maximum between filing offense and final conviction offense. As expected, female offenders had a greater chance of receiving a charge reduction when compared to males. Surprisingly, they did not find any general racial or age effects, nor did prior history play a role in charge reductions. They also determined type of offense affects the likelihood of receiving a charge reduction, as offenders charged with property crimes had a greater likelihood of receiving a reduction than those offenders charged with violent offenses. This focus on offense type also did have some differences across racial lines when examining the interaction between offense type and race; minorities (including blacks and Hispanics in this case) were less likely to have their charges reduced for offenses involving weapons, while Hispanics (counter-intuitively) were *more* likely to receive a reduction for drug offenses (perhaps due to initial overcharging). Finally, they also determined that pretrial detention significantly reduced the likelihood of receiving a charge reduction.

Finally, one must note prosecutors engage in charge bargaining in order to induce guilty pleas from the offenders (Shermer and Johnson 2009). Due to the fact racial differentials exist in the probabilities of pleading guilty (e.g. Albonetti 1997 states that black defendants are less likely to plead guilty), the possibility exists prosecutors may alter their behavior due to this racial

differential, or, if racial favoritism is found, prosecutors may offer minorities defendants similar plea bargains but the offenders themselves chose to reject the plea. Thus, strict causality couched in racial bias in misdemeanor plea deals cannot be absolutely ascertained; racial differential in plea behavior may also play a role.

### **Hypotheses**

The existing literature forms the basis of my expectations for the current research. All of the examined prior research has revealed that racial discrepancies may be found when isolating the prosecutor's discretion points. However, many of these studies fail to include adequate control for legally relevant or irrelevant factors (e.g. Ryan et al. 2007), use extremely small samples (e.g. Spears and Spohn 1997), fail to compare multiple locations (e.g. Albonetti 1996), or use decades-old data (e.g. Spohn et al. 1987). Despite these limitations, the majority of the existing literature does indicate that race does affect many of the prosecutor's decisions. Both race of offender and race of victim appear to influence the decision to charge individuals (e.g. Petersilia 1983). Minority status also reduces the likelihood of receiving a pretrial diversion (e.g. Leiber and Johnson 2008), although the findings are mixed (Albonetti 1996). Prosecutors may also offer more lucrative charge bargains to white offenders (e.g. Bushway and Piehl 2007). These effects are found across multiple jurisdictions in all regions of the United States.

In total, 17 of 24 studies found that race affected the criminal justice process in some way. These 17 studies also included many of the more methodologically rigorous studies. For a full summary of the examined literature, see Table 1.

Although the exact impact of race varied by study, the presence of significant anti-minority findings in each category leads me to believe that one's minority status will also result

in negative outcomes in my study of dismissals, diversions, and charge bargaining.<sup>5</sup> Due to the presence of an anti-minority bias in the majority of studies and the consistent findings of an anti-minority bias in other areas of the criminal justice process,<sup>6</sup> I expect that whites will be favored over minorities in the dismissal, diversion, and charge bargaining process. Specifically, I anticipate the following:

- *Hypothesis 1: Whites have a greater likelihood than minorities of the prosecutor choosing to discontinue prosecution or having their charges dismissed.*
- *Hypothesis 2: Whites have a greater likelihood than minorities of receiving and accepting the option of a pretrial diversion.*
- *Hypothesis 3: Whites have a greater likelihood than minorities of receiving and accepting the option to plea felony charges down to a misdemeanor.*

Due to the fact that these anti-minority effects were found in all jurisdictions and regions of the country, I expect that the results will be consistent across regions when controlling for the geographic location of the sample.

- *Hypothesis 4: Whites will be consistently favored across jurisdictions when comparing the results of each geographic location.*

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<sup>5</sup> Of course, it must be noted that the findings were mixed in all three categories, as some studies did not show a racial effect. However, some studies were not able to include multiple control variables due to data constraints (e.g. Barrett, Katsiyannis, and Zhang 2006) and other studies showed racial effects when certain controls were added (e.g. Albonetti 1996 did not find racial effects overall, but did find minorities suffered when a race and prior record interaction was included).

<sup>6</sup> For example, many studies have shown an anti-minority bias in sentencing. See Mitchell (2005), Spohn and Holleran (2000), or Albonetti (1997).

## **Methodology**

### **Sample**

In order to examine offender characteristics which determine charge reductions, diversions, and court dismissals, this study uses the Bureau of Justice Statistics' State Court Processing Statistics (SCPS) from 2000, 2002, and 2004. The sample of the SCPS is collected by the Bureau of Justice Statistics. It includes all felony-level case filings in May in a stratified random sample from 40 of the United States' 75 most populous counties. The dataset contains information on 45,954 unique defendants, and includes demographic information as well as detailed charge and disposition content. Table 2 shows all variables with a brief description and coding. Table 3 shows the number of offenders in each variable, and Table 4 shows the number of offenders in each variable separated by race.

### *Strengths and Weaknesses*

The SCPS dataset contains a number of strengths that allow an excellent analysis of the various points of interest in the courtroom process. The dataset has extensive demographic information on each offender, allowing analysis of almost 46,000 unique individuals while controlling for race, gender, and age. The dataset also contains information on Hispanic ethnicity, allowing the research to account for any ethnic bias in addition to racial bias, a weakness of many other studies on anti-minority bias (e.g. Spohn and Spears 1997).

Unfortunately, Asian and Native American offenders remain drastically underrepresented in the dataset when compared to whites, blacks, and Hispanics, excluding them from the analysis.<sup>7</sup>

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<sup>7</sup> Due to their small numbers, any offender listed as Asian (826 offenders), Native American (106 offenders), or missing the ethnicity variable (1,083 offenders) will be dropped from the data set.

Another strength of the data is the inclusion of a cross-jurisdictional sample of offenders. The large scope of the data allows multiple regions and jurisdictions to be included in the analysis; the analysis is not based simply on a comparison between one or two counties. I ran models both controlling for state-specific fixed effects as well as models allowing a cross-regional comparison. Including these location controls prevents omitted local-level variables (such as specific law enforcement policies or pressure from politicians) from skewing the overall results. Due to the difficulty in capturing these local elements in a quantitative data set, many studies acknowledge the risks of omitting these variables while only examining one jurisdiction (e.g. Leiber and Stairs 1999). A cross-jurisdictional sample may provide support that any racial effects do not simply occur from unobservable location-specific omitted variables.

Finally, the SCPS data includes court disposition data for every offender who had felony charges filed against him or her, allowing a researcher to isolate offenders who pled guilty, were found guilty through trial, were diverted, or had their cases dismissed. This inclusion permits my sample to include offenders who had charges filed against them without eventually being found guilty – a key feature of the SCPS, as many other available data sets restrict their sample only to offenders sentenced for a crime.

A major weakness of the SCPS involves omitted variable bias. The dataset does not provide specific details on some legally relevant or irrelevant variables that affect case outcomes that exist in other datasets. Although this project cannot fully account for any omitted variable bias, the relevant variables missing are partially subjective in nature and generally not included in a quantitative data set. I include the considerations of these omitted variables and their effect on causality in my discussion. The inability to explain the mechanisms causing the disparities with complete certainty remains a weakness of the data, but simply demonstrating that a



relationship exists could form a foundation for future research that focuses on explanatory theories for such a disparity.

### *Missing Data*

Certain cases in the SCPS are missing data for some variables. The SCPS sample contains 5,247 cases (11.54% of the total observations) that were not adjudicated within a 1-year period of initial filing, and an additional 1068 (2.4%) cases where the adjudication was listed as “missing.” Black offenders are slightly overrepresented in these cases, accounting for 3148 (49.8%) of the cases. Following the lead of Bushway and Piehl (2007), I employed listwise deletion and did not include these cases in my analyses; all of the following descriptive statistics do not include these pending/missing cases. Removing these cases reduces the sample size to 39,639.

All missing data for the rest of the variables falls within +/- 4% of the overall racial sample proportions; there is no evidence of systematic omissions from the data (see Table 5 for descriptive statistics of missing variables). Additionally, most of the remaining variables (with the exceptions of public defender and probation/parole status) are only missing data for 4% or less of the total number of observations. I again employed listwise deletion and dropped the observations with missing data for the variables missing 4% or less of the total observations. Due to the small number of cases missing data, I do not anticipate this approach significantly affecting the coefficients or the standard errors. To account for public defender (missing data for 21% of observations) and probation/parole status (missing data for 7% of observations) I ran analyses with and without these two variables to determine if they significantly affect the impact

of an offender's race. I also ran a regression with a dichotomous control variable that represents cases with missing variables to ensure the missing data does not change the results of the model.

### **Dependent Variables**

The SCPS sample contains a dichotomous variable that indicates which charges were dismissed. It must be noted that the SCPS data does not differentiate between court dismissals (cases thrown out by the judge) and *nolle prosequi* (cases where the prosecutor elects to drop the charges post-filing). Due to this fact, the dismissal variable captures elements of judicial discretion. As such, any conclusions drawn about the actions of the prosecutor as a result of the findings of the dismissal variable must be examined with caution. Additionally, the dataset only captures individuals who had their charges dismissed after initial filing, so any offenders who had their charges rejected by the prosecutor will not appear in the sample. The dismissal variable is coded dichotomously, with a value of 1 indicating the offender had their charges dismissed after filing. For a full statistical description of all variables, see Table 3.

The SCPS dataset also includes an outcome variable for individuals who were "diverted" into special treatment programs. These programs usually require the completion of a type of counseling or treatment (such as anger management or drug rehabilitation) in exchange for dropping the charges upon successful completion of the program. In most jurisdictions, the prosecutor recommends diversion on a discretionary basis, although the judge may also elect to divert certain offenders into different specialized treatment courts.<sup>8</sup> These programs are voluntary, and the offender must accept the diversion in order to be entered into a specialized

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<sup>8</sup> The dataset also includes a variable that splits diversions into "prosecutorial diversion," "special treatment court," "other," and "deferred adjudication." "Prosecutorial diversion" will also be included as the outcome variable in a model.

program. In my project, the diversion variable is coded dichotomously, with a value of 1 indicating an offender was offered and accepted entry into a diversion program.

To investigate charge bargaining, this project examines which offenders were allowed to plea down to a misdemeanor after the initial filing of felony charges.<sup>9</sup> The failure to include the final number of charges makes the approach of looking at the difference between initial and final charges unfeasible.

The SCPS data contains 4,264 offenders whose final most serious charge fell at the misdemeanor level. Due to the fact that all offenders in the dataset initially had felony-level charges filed against them, the resulting misdemeanor charges indicate a reduction in severity at some point in the process. Guilty pleas accounted for 4,108 of the 4,264 misdemeanor charges (The remainder are accounted for by offenders who received multiple charges initially. These offenders later had their felony charges dismissed or were acquitted on the felony counts but still convicted for the misdemeanors). This variable is also coded dichotomously with a value of 1 indicating the offender was allowed to plead his or her felony charges down to a misdemeanor. In order to isolate charge bargaining, the comparison group only includes individuals who also entered guilty pleas but did not have their charges reduced to the misdemeanor level.<sup>10</sup> Only examining offenders who entered guilty pleas prevents including offenders who were offered a charge bargain but elected not to accept it.

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<sup>9</sup> Such a change in charges is worth investigating due to the resulting affect on subsequent arrests and sentences; many states give an increased "point score" to prior felony convictions as compared to misdemeanor convictions when determining the category an offender falls into under sentencing guidelines (the state of Florida's sentencing guidelines, set forth in 1995, is an example of such). Additionally, Welch et al. (1984) found that prior convictions predicts sentencing better than prior arrests, and that prior felony convictions has a slightly greater effect than prior convictions as whole. As such, felony convictions could have a significant impact on future criminal justice outcomes for members of various races if the reduction to a misdemeanor occurred with unequal propensity.

<sup>10</sup> Additionally, separate analyses will be run only involving offenders who initially only had one charge at the felony level filed against them to account for any effects due to overcharging with the intent to induce a guilty plea.

## **Independent Variable**

Race, the main independent variable of interest, contains offenders split into six categories: white, black, Hispanic, Native American, Asian, and missing. Of the 39,639 total offenders, the sample contains 11,841 (30%) white defendants, 16,152 (41%) black defendants, 9,631 (24%) Hispanic defendants, 106 (< 1%) Native American defendants, 826 (2%) Asian defendants, and 1,083 (3%) defendants with missing information on their race or ethnicity. I limit my analyses to only include black, white, and Hispanic offenders due to the low number of other races. Two mutually exclusive dichotomous variables are included for black and Hispanic offenders, with a 1 indicating an offender is a member of that ethnicity. An individual with 0 for both the black and Hispanic variables indicates the individual was originally included in the dataset as “white,” and comprises my comparison group. For a description of all variables by racial group, see Table 4.

## **Control Variables – Legally Relevant Variables**

Shermer and Johnson (2009) found that offense type played a significant role in determining charge reductions. As such, offense type is controlled for in the analyses. The dataset contains categorical information on type of offense for the most serious charge filed. Dichotomous variables type of offense include: murder, rape, robbery, assault, other violent, burglary, larceny-theft, motor vehicle theft, forgery, fraud, other property, drug sales, other drug, weapons, driving related, and other public order. Each variable is dichotomous and mutually exclusive, with a value of “1” indicating the offenders’ most serious charge fell into that offense category. Separating offenders into these detailed types of offense categories grants some measure of offense severity – murders are generally regarded as more serious offenses than

assaults, and assaults or robberies more serious than larcenies. For a detailed breakdown of type of offense by race, see Table 6. Consistent with prior literature, black offenders are overrepresented in the violent offense categories (see e.g. Hindelang 1978).

Other legally relevant control variables must also be included. Consistent with the research of Welch *et al* (1984), to measure prior record a prior felony convictions variable is included. The prior felony convictions variable is an ordinal variable which indicates number of prior convictions until 10 prior felony convictions, at which point a “10+” category is used (coded as “10”). Only 1.7% of offenders have 10+ prior felony convictions.

The number of initial charges also plays a role in charge bargaining, as the presence of a large number of charges may indicate an attempt by the prosecutor to make the charge bargain more “attractive” by dropping the additional charges. A dichotomous single-charge variable was created, with a value of “1” indicating the offender initially only had a single charge filed against them. For the charge bargaining analyses, separate models were included for offenders with only one initial charge at the felony level in order to account for the possibility of prosecutors overcharging in order to offer an incentive for accepting plea bargains.

At the time of arrest, 8,276 of the 45,954 offenders were on either probation or parole. Probation/parole status is a dichotomous variable with “1” indicating the offender was on probation/parole. An offender’s probation/parole status is relevant to the dependent variables as a prosecutor may be less likely to offer misdemeanor plea bargains or entry into diversion programs due to the stipulations of the prior sanctions against him or her.

### **Control Variables – Legally Irrelevant Variables**

Along with considerations of race, prior research has demonstrated that other legally irrelevant variables may play a role in the decisions of the courtroom actors. One such consideration involves the age of the offender, as younger offenders may be viewed as less culpable for their actions, while older offenders may benefit from increased familiarity with the criminal justice system. Following the example of Steffenmeier *et al* (1995), age was separated into four dichotomous categories (Under 20; 20-29; 30-39; and 40+) in order to account for any possible non-linear effects the age variable may contain.

The SCPS dataset contains 7,322 female offenders. Gender is a dichotomous variable with “1” indicating female and “0” indicating male.

Public defenders represented 18,931 of the offenders in the SCPS data. Public defender is also a dichotomous variable with “1” indicating an offender used a public defender. Such a variable may act as a proxy for low economic status, as demographic information on employment status/income for each offender is not included in the dataset. Consistent with Spohn and Holleran (2000), economic status may play a role in the severity of criminal justice outcomes.

Pretrial release status also impacts the likelihood of an individual having their charges dropped, and may also indicate relative offense severity. This variable, originally a categorical variable in the original data, was transformed into a dichotomous variable with “1” indicating pretrial release. The original variable also included a very small number of offenders (515) whose cases were dismissed after charges were filed but prior to the initial bail hearing; I included them under the pretrial release category. Due to their extremely small number, I do not anticipate their inclusion as impacting the significance of the results either way.

Jurisdiction may also affect the outcomes; significant differences in the way cases are handled for different races in a few of the counties represented in the study could skew the overall results. In order to account for any unmeasured variation as a result of geographic location, I included fixed-effects at the state level in my final models. Additionally, for cross-jurisdictional comparison purposes, I have split up the 42 counties represented into eight “region” variables. These region variables were created for sampling purposes, as many of the smaller states did not contain enough offenders to show significant effects without being grouped with other states. Four states (California/New York/Texas/Florida) contained noticeably more offenders than the other 15 states, with each of these four states accounting for more than 10% of the offenders in the sample. Dichotomous variables were created for these states due to the large number of offenders in each state. The remaining states were split up by geographic region, with each “region” variable accounting for roughly 10% of the overall sample. I ran separate regressions for each location to examine any regional effects in addition to running each state separately to ensure it was appropriately categorized within its region. See Table 7 for a breakdown of the states included in each region and the number of offenders by location.

## **Analysis**

The dependent variables of interest are all measured using a binary yes/no indicator. The dichotomous nature of these variables makes a logistic regression approach most appropriate. Logistic regression assumes an underlying latent continuous variable in order to avoid the violation of the assumptions of homoscedasticity, normality of the error term, and predictions greater than 1 or less than 0 that occur when an ordinary least squares regression uses a

dichotomous outcome variable (Long 1997). The inclusion of this latent variable results in the prediction of the log odds of an event occurring using the following formula:

$$\ln(p) = \beta_0 + \beta_1x_1 + \beta_2x_2 + \beta_3x_3 + \dots + \beta_kx_k + \varepsilon$$

In this formula,  $\ln(p)$  represents the log odds of the dependent variable occurring,  $\beta_0$  represents the intercept,  $\varepsilon$  represents the error, and  $\beta_1x_1$  through  $\beta_kx_k$  represents the change in the log odds for each included variable.

Logistic regressions require comparison groups in order to make inferences about the likelihood of different outcomes. I compared black and Hispanic offenders using white offenders as my comparison groups. However, the issue of which case dispositions to include in the comparison groups involves a slightly more complicated rationale.

Possible case disposition outcomes include: Dismissal, Acquittal, Divert-Defer, Guilty-Plea, Guilty-Trial, Other, Pending, and Missing. For the dismissal regression, the comparison group includes all of the remaining dispositions as comparison groups as offenders who did not have their cases dismissed. Such an approach contains possible temporal issues with the “Guilty-Plea” outcome and the “Divert-Defer” outcome. As offenders cannot have certain knowledge their case will be dismissed, an offender may enter a guilty plea in a case that would have later been dropped. Additionally, prosecutors may elect to use diversions in cases they know that the court will later dismiss. I ran the analysis with and without the offenders who received diversions and entered guilty pleas in my comparison group.

For the charge reduction dependent variable, the comparison group includes all offenders who entered a plea of guilty but still received felony-level charges. Using this comparison removes offenders who were not offered a plea deal or rejected the offer from the comparison group, ensuring I am only comparing offenders who were offered a plea deal involving a charge



reduction to other offenders who were offered a plea deal and were willing to plead guilty (as Albonetti [1990] has shown the willingness to plead guilty may differ across races). An additional analysis examines only offenders who initially received a single charge, to see if such results differ from offenders with multiple charges. Prosecutors may overcharge individuals in order to make the charge bargain seem more lucrative; only examining individuals with single-charges prevents overcharging practices from affecting the results.

The analysis of diversions only contains offenders found guilty or initially pleading guilty. Due to the fact that offenders must voluntarily comply with diversions, factually innocent offenders or offenders who have weak cases against them may elect to choose not to participate in the diversion. Additionally, as not all counties offer the option of diversions, I limited my sample only to counties with diversions. This step results in the loss of five counties and 4,211 offenders from my sample.

I ran multiple models containing different control variables, initially only including my independent variable of interest (race) and the dependent variables. The second model includes legally relevant control variables. Final models also include legally irrelevant control variables (such as gender) in addition to the geographic state controls.

## **Results**

### **Dismissals**

For full results of the dismissal analyses, see Table 8. The first hypothesis predicts that white offenders have a greater probability than minority offenders to have their charges discontinued by the prosecutor or dismissed. The sample contains 9,740 offenders who received

dismissals. Of those 9,740 offenders, 2,600 (27%) are white, 4,739 (49%) are black, and 2,022 (21%) are Hispanic. The total sample is comprised of 31% white offenders, 43% black offenders, and 25% Hispanic offenders.

After running a logistic regression, black offenders are 1.49 times more likely than white offenders to receive a dismissal and Hispanic offenders are .95 times more likely than white offenders to receive a dismissal. However, only the control for black offenders was significant at the .05 level. Although this initial regression provides evidence against my first hypothesis, it does not account for all the included legally relevant and irrelevant variables.

After accounting for the legally relevant variables, an offender's minority status actually shows a slightly increased effect, with black offenders receiving dismissals at 1.50 the rate of whites and Hispanic offenders receiving dismissals at .93 the rate of whites. Additionally, when legally relevant variables are added to the initial regression, the Hispanic variable gains significance at the .05 level. This gain may be explained by legally relevant variables that also correlate with race – for example, minority offenders have a slightly higher prior criminal history than white offenders, and having a prior history decreases the likelihood of receiving a dismissal. Controlling for prior criminal history allows a greater isolation of the effect of race.

Running the full model with the legally irrelevant and location controls also results in the finding that black offenders are 1.35 times more likely than white offenders to receive a dismissal and that Hispanic offenders are 1.36 times more likely than white offenders to receive a dismissal.<sup>11</sup> The Hispanic and black variables gain significance at the .01 level when extralegal

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<sup>11</sup> The switch from Hispanics from a negative to positive coefficient occurs as a result of including the control for the state of California and its large Hispanic population. Examined separately, California shows an insignificant effect for Hispanics, with a coefficient of .07. However, the number of Hispanic offenders in California impacts the results when it is not controlled – simply including a control for California in addition to the legally irrelevant variables changes the coefficient from -.01 to .23. Adding in the remaining states pushes the Hispanic coefficient to the final result of .31.

variables are added to the model. Thus, this model shows that black and Hispanic offenders receive dismissals at a significantly greater rate than white offenders. The final iteration explained 16% of the variance in dismissals.<sup>12</sup>

Consistent with the prior literature, the prior felony convictions, pretrial release, and probation/parole variables were all significant and in the expected direction. Older offenders did benefit slightly in the final model, with offenders over 40 receiving dismissals at a rate 1.14 times that of offenders aged 20-29.

Examining dismissals using the state/region variables produces similar outcomes (see Table 9 for racial coefficients by state). Black offenders are consistently favored throughout the country, with significant effects seen in 5 of 8 location-specific regressions accounting for slightly more than 70% of the total sample. The other three locations produced insignificant results. Hispanic offenders were significantly favored in 4 of 8 locations, with insignificant (although positive) results in the other half. Interestingly, Hispanic offenders were favored in the jurisdictions with the four smallest Hispanic populations. Explanation of variance ranged from a low of 4% to a high of 30%, with an average of 13%.

## **Diversions**

The second hypothesis also predicts an anti-minority bias in receiving pretrial diversions consistent with prior literature in that minorities will be less likely to receive (and accept) a pretrial diversion. Diversionary outcomes are considered less severe than trial outcomes due to the fact that they typically do not appear as criminal convictions on an individual's background check, giving them greater job and housing options, and reducing the number of "points" an

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<sup>12</sup> The models with guilty pleas and diverted outcomes omitted only resulted in minor changes to the OR and no changes in significance or direction of the race variables.

offender has under sentencing guidelines. In my sample, 3,317 offenders received diversions. This number includes 1,255 (38%) white offenders, 976 (29%) black offenders, and 880 (27%) Hispanic offenders.

Running a logistic regression with cases diverted as the dependent variable results in both race variables being significant and in the expected direction, with Hispanic offenders receiving diversions at .84 the rate of white offenders and black offenders only receiving diversions at an astounding .67 times the rate of whites (for full results, see Table 10). It initially appears white offenders are almost 1.33 times as likely as black offenders to receive a diversion.

Adding in the legally relevant variables actually increases the gap between white offenders and black offenders. The odds ratio for black offenders drops to .63, while the odds ratio for Hispanic offenders remains almost stable at .85. Both variables remain significant at the .01 level.

With the addition of the legally irrelevant and state location variables, the effect of the Hispanic race variable nearly disappears, failing to achieve significance at the .05 level.<sup>13</sup> Black offenders still receive diversions at a much smaller rate than white offenders, with an odds ratio of .69. Including the legally irrelevant variables increases the overall explained variance of this model to 26%. The results from this model indicate that black offenders are significantly less likely than white offenders to receive a diversion, with Hispanics treated roughly the same as white offenders.<sup>14</sup>

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<sup>13</sup> In this case, the loss of significance appears to result from the inclusion of the pretrial release variable. Running the regression without including the pretrial release control results in a significant coefficient of -.14 for Hispanics, equal to an odds ratio of .87.

<sup>14</sup> Examining diversions specifically listed as "Prosecutor Diversion" in the data set shows similar results for black offenders, with an overall odds ratio of .48. This finding is significant at the .01 level. Similar to the model for all diversions, the variable for Hispanic offenders does not obtain significance.

The outcomes for the control variables are roughly the same as those for dismissals. Once again, pretrial release significantly improves the likelihood of a positive outcome (in this case, receiving a diversion). Additionally, in this model young offenders (less than 20 years old) are more likely to receive a diversion, while older offenders (30 years or older) are less likely. Offenders with “Drug Sales” or “Other Drug” offenses against them were significantly more likely to receive a diversion, probably due to increased use of drug treatment programs. “Larceny-Theft,” “Forgery,” and “Fraud” were also more likely to be diverted. As expected, having a history of prior felony convictions, or being on probation/parole all significantly reduced an offender’s chances of receiving a diversion. No gender differences were observed.

Examining the likelihood of receiving a diversion by jurisdiction shows that white offenders are favored over black offenders in 5 out of 8 locations, comprising 75% of the total sample (see Table 11). Once again, the other three locations do not show contrary findings, but merely fail to achieve significance. The Hispanic variable fails to gain significance in any jurisdiction at the .05 level, although negative coefficients are obtained in 7 of the 8 location variables. The lack of significant Hispanic findings may partially be due to the relatively low number of Hispanics who received dismissals, with fewer than 500 occurring outside of California. Whites are significantly favored over Hispanics at the .1 level in two jurisdictions. Overall, explained variance ranged from a low of 10% to a high of 37%. The average explained variance was 20%.

### **Charge Reductions**

The third hypothesis also predicts an anti-minority bias in charge bargaining, in this case appearing as an increased likelihood for white offenders to receive a charge reduction from felony-level charges to misdemeanor-level charges after entering a guilty plea. To examine this

hypothesis, another logistic regression was run using white offenders as the comparison group. For full results for all models, see Table 12.

Unlike dismissals and diversions, running a logistic regression shows black offenders are not significantly more or less likely than white offenders to receive a charge reduction to a misdemeanor upon entering a guilty plea. However, Hispanic offenders are significantly less likely to receive such a reduction, receiving reductions from felonies to misdemeanors at approximately .79 the rate of whites.

Adding legally relevant variables into the model results in a slight decrease in the probability of Hispanic offenders receiving a reduction, decreasing the odds ratio from .79 to .77. Interestingly, black offenders are now significantly more likely than white offenders to receive a charge reduction, receiving reductions at 1.12 the rate of white offenders. A possible explanation for this change involves the fact that black offenders have a greater criminal history, are more likely to be on probation or parole, and usually commit more violent offenses than whites. When controlling for these factors, a black offender (comparable to a white offender) may be more likely to receive a misdemeanor charge if he or she has not already entered the criminal justice system.

The inclusion of the legally irrelevant variables and the location controls has a drastic impact on the results of the charge bargaining models. Black offenders actually face a penalty in the charge bargaining process after accounting for these variables, receiving a reduction to a misdemeanor at .84 the rate of whites.<sup>15</sup> The effect for Hispanics is moderated somewhat, with a

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<sup>15</sup> Similar to the effect of California on dismissals for Hispanics, this change is primarily driven by the inclusion of certain states (CA, NY, and TX) that show insignificant effects for black offenders when examined separately but impact the overall results when not controlled. Running the regression without the state controls results in a significant coefficient of .10. The coefficient gradually drops as each state control is added into the regression until the final coefficient of -.17 is obtained.

coefficient of  $-.19$  and an odds ratio of  $.83$ . These results suggest that minorities are less likely to receive and accept the offer to plea their charges down to the misdemeanor level.<sup>16</sup>

The reason for the drastic change is probably due to the positive (although insignificant) coefficient associated with black offenders in two of the larger jurisdictions, New York and California, containing approximately 40% of the total sample. This model accounts for 24% of the variation in the outcome variables.

Assaults have a greater chance of being reduced to a misdemeanor than all the other types of crimes. This result may be from the wide definition of assault – no physical contact needs to be made to charge someone with an assault, merely the threat of harm. As such, assault charges encompass a wide variety of crimes, as they include any perceived threat as well as any non-lethal violent acts. Despite the violent nature of assaults, this broad definition may lend itself to including less serious violations within the charge. Gender and age do not show any significant effects. The rest of the control variables are similar to diversions and dismissals, with pretrial release significantly increasing the likelihood of an offender receiving a reduction and a prior history of felony convictions and being on probation/parole reducing the odds of a reduction.

When examining individual regions, 4 of the 8 location variables showed a significant negative coefficient for black offenders. Two of the remaining regions showed no effect, while the other two locations showed an insignificant positive effect. Explanations of variance ranged from 8% to 49%, with an average explained variance of 16%.

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<sup>16</sup> Offenders with single charges were also examined. Neither racial control gained significance; this finding is most likely due to the rarity of offenders receiving single charges and misdemeanor convictions. The coefficient for black offenders dropped to  $-.11$  from  $-.17$ , while the coefficient for Hispanic offenders went to  $-.01$  from  $-.19$ .

## Discussion

- *Hypothesis 1: Whites have a greater likelihood than minorities of the prosecutor choosing to discontinue prosecution or having their charges dismissed.*

I did not find any evidence to support my first hypothesis, as black offenders were significantly *more* likely to receive dismissals while no significant effects were observed for Hispanics.<sup>17</sup> Although I was unable to control for some factors that are specific to each criminal event and factor into the decision to prosecute (such as the amount of evidence), the fact that the pro-black bias was repeatedly found across the geographic controls that comprised 70% of the data leads me to believe that such a result is indicative of a cross-jurisdictional trend rather than occurring from any omitted event-level variables. In the three geographic variables in which a pro-black bias was not found, contradictory results were not obtained – the black race variable merely did not achieve significance. This lack of significance may be explained partially due to the low number of African-Americans found in the Southwest variable (425 out of 3389 offenders) or perhaps due to a regional effect, as the other two geographic locations occurred in the South regional category or Texas.<sup>18</sup> Similarly, a significant anti-Hispanic bias was not found in any jurisdiction, with a pro-Hispanic bias found in Florida, the Northeast, and the Midwest.

- *Hypothesis 2: Whites have a greater likelihood than minorities of receiving and accepting the option of a pretrial diversion.*
- *Hypothesis 3: Whites have a greater likelihood than minorities of receiving and accepting the option to plea felony charges down to a misdemeanor.*

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<sup>17</sup> Again, the SCPS data does not differentiate between judicial dismissals and the election to cease prosecution, and no general descriptive statistics appear to exist for the prevalence of judicial dismissals. Due to this fact, this variable may have captured a significant amount of judicial (rather than prosecutorial) discretion.

<sup>18</sup> The South and Texas also had low explained variance for dismissals, with .05 and .10 respectively.



My second and third hypotheses were supported by the models, as white offenders were significantly more likely to receive a diversion than black offenders (including prosecutorial-specific diversions) and have their charges reduced to the misdemeanor level when compared to black or Hispanic offenders. Again, the finding for diversion was replicated across jurisdictions, with any geographic region that offered diversions to more than 200 offenders showing that blacks received and accepted diversions at a significant lower rate than whites. One region (the Midwest) showed a significant pro-minority bias that may be partially explained due to the low number of diversions offered, with only 198 total diversions. The remaining regions did not gain significance due to the low overall number of diversions in each location. Charge bargaining also followed a similar geographic pattern, with 5 of the 8 regions showing a negative coefficient for black offenders and Hispanic offenders. The effects of the remaining locations were not significant, although two regions showed a positive coefficient for each ethnic group.

Various explanations exist why minorities might be favored in dismissals but penalized during the diversionary and charge bargaining phase. Due to the fact that diversionary programs and charge bargaining are voluntary, minorities may simply not be willing to participate in the programs at the rates that white do.<sup>19</sup> Although no research has been done on attitudes toward diversionary programs across racial lines, studies have shown that minorities tend to have less trust in the criminal justice system (Hagan and Albonetti 1982) and that they are less likely to plead guilty (Albonetti 1990).

This potential unwillingness to engage in diversions or enter guilty pleas may also be directly responsible for the finding of the pro-black bias in the dismissal stage. White offenders with weak cases against them may get “filtered” out earlier during the plea bargaining or

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<sup>19</sup> This unwillingness may also be tied into criminal history, as certain diversionary programs require offenders fall beneath a certain number of convictions.

diversionary process, accounting for the increased number of cases dismissed against black offenders. In this case, diversions and plea bargains would actually appear to circumvent justice, if prosecutors should use these processes to achieve punishments and convictions against offenders whose cases would later be dismissed.

A similar alternative explanation instead focuses on actions of individuals other than the prosecutor involved in the process. If police were more willing to arrest black offenders than white offenders in situations where there was very little concrete evidence, dismissals would favor minorities (assuming a low level of scrutiny on the part of the prosecutor during the filing process). The other outcomes could still be explained by minorities simply being unwilling to participate due to their mistrust of the system. Oliver and Mendelberg's (2000) study supports such actions on the part of the police, as it found that individuals with lower levels of education show a greater proclivity in accepting negative stereotypes associated with race than those with higher education. In this case, prosecutors generally have attained a higher level of educational achievement than the arresting officers. Improper police practices in conjunction with the lower rate of minority guilty pleas could actually account for the lower level of misdemeanors as well. If the prosecutor knew the evidence against an offender was weak, he might additionally offer a more lucrative deal. "When the offer was too good, defense counsel took it as a sign something was wrong with the case and a better offer could be had if they waited and set it for trial" (Bowen 2009: 17). If a misdemeanor offer was below the "going rate" for the crime, the defense attorney's desire to take the case to trial coupled with the general unwillingness of minorities to plead guilty may account for the "penalties" during charge bargaining.

G.F. Cole's (1970) article supports an assertion that police practices may impact the actions of the prosecutor. Cole provides evidence of an exchange relationship where various

actors with the criminal justice system achieve their goals through bargaining with other groups. Under this system, the prosecutor must rely on the police to bring him or her properly investigated cases. Thus the prosecutor must balance the desire for successful prosecutions against the concerns that “rejections of too many cases [may] affect the morale, discipline, and workload of the force” (Cole 1970: 316).

Another explanation for whites receiving diversions or reductions at a greater rate than minorities may involve a possible racial bias on the part of the prosecutor. Similar to the research on racial proclivities toward pleading guilty, the theoretical framework of focal concerns theory provides an explanation for a cross-jurisdictional finding of a racial disparity that focuses on the attitudes and beliefs of the prosecutor.

Focal concerns theory is based on bounded rationality in order to explain the actions of courtroom actors, including the prosecutor. Under this theory, prosecutors make decisions based on a combination of available information and their own perceptions. They include such perceptions in their decisions due to the fact that they must act without certain and complete knowledge. Albonetti proposed this idea, stating, “In the situation of having incomplete knowledge, the actor attempts to reduce uncertainty by relying upon a rationality that is the product of habit and social structure” (Albonetti 1991: 249). As courtroom actors cannot possibly know which offenders will reoffend with any degree of certainty, they must rely on imperfect schemas to approximate rates of recidivating. When negative racial stereotypes unduly influence a courtroom actor, he or she produces an anti-minority bias in an attempt to reduce the uncertainty of future recidivism.<sup>20</sup>

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<sup>20</sup> The work of Hill et al. (1985) supports such an assertion with their etiology of bias theory, where individuals rely on typescripts linking social classes to certain types of behavior in order to reduce uncertainty and simplify decisions.

Thus, the prosecutor is driven by the need to reduce uncertainty in the decisions he or she must make daily while fulfilling his or her role in the criminal justice system. Without the knowledge of all possible alternatives, however, the prosecutor must rely on “due process requirements and ‘general routinized stock responses’ to a set of stimuli posed by each felony case” (Albonetti 1987: 294). As such, the stereotypical portrayals of offenders and the links between social classes and certain types of behavior lead to possible racial discrepancies in the actions of the prosecutor.

Prosecutors...are faced with uncertainty that may lead them to develop decision-making schema that incorporate past practices and reflect the subtle influences of social and cultural stereotypes in society. These stereotypes emerge through an attribution process that links prosecutorial concerns with community safety to individual characteristics like race, ethnicity, age, and gender (Shermer and Johnson 2009: 9-10)

Enhanced by the lack of accountability in prosecutorial decision making, prosecutors may rely on these conceptions and positive past practices to perpetuate social inequality (Shermer and Johnson 2009).

Steffenmeier, Ulmer, and Kramer expanded upon Albonetti’s initial work examining bounded rationality to create a new theory where courtroom actors form their decisions based on a few key considerations. They state that the criminal justice system punishes criminals according to three primary “focal concerns:” culpability of the offender and damage caused to victim, practical limitations, and protection of the community (Steffensmeier, Ulmer, and Kramer 1998). Courtroom actors use these concerns as a way to quickly classify each situation into schemas and thus guide their decisions within the context of the criminal justice system.

Under the focal concern of “protection of the community,” offenders perceived as more “dangerous” will receive more sanctions in the criminal justice system. Steffensmeier *et al* postulate that stereotypical characterizations of criminals based on race may play a role in

determining the threat of a particular offender. They state, “Hence, one might expect that [courtroom actors]...may share in the general stereotyping predominant in the community; and that racial attributions will...influence [courtroom actors]” (Steffenmeiser *et al* 1998: 768). If young, black males represent the “dangerous” class in society (Leiber and Johnson 2008), a finding of bias in the criminal justice system results from a commonly held notion that minority offenders pose a greater risk to the community.<sup>21</sup>

Diversions offer the perfect venue for prosecutors to act on these anti-minority stereotypes. Due to the fact diversions “emphasize purposive rationales like rehabilitation over the goal of proportional punishment, these alternatives actually require consideration of the kinds of subjective criteria that are likely to produce sentencing disparities” (Engen *et al* 2003: 125). Unlike the trial and dismissal process where matters of fact are concerned, prosecutors must consider the danger and blameworthiness of the offender prior to entering them into a diversionary program. These considerations mirror the prosecutor’s focal concerns, causing racial attributions to factor into the decision.

The large amount of unchecked prosecutorial discretion in charge bargaining also allows prosecutors to include extralegal characteristics when determining what charges to offer a defendant. “Commentators therefore characterize plea bargaining as prosecutors’ unilateral determination of the level of defendants’ criminal culpability and the appropriate punishment for defendants” (Ma 2002: 26). Once again, the perceptions of the offender enter into the decision making process. By allowing these discretion points to remain largely unchecked, the possibility exists that prosecutors allow societal-wide stereotypes to influence their decision making, resulting in the observed “penalty” for an offender’s minority status.

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<sup>21</sup> For empirical evidence that supports prosecutors acting upon stereotypes to protect the community, see Johnson and Betsinger (2009).

- *Hypothesis 4: Whites will be consistently favored across jurisdictions when comparing the results of each geographic location.*

Consistent with explanations that include cultural-wide attributions of racial stereotypes, the findings were generally uniform across geographic locations. There were almost no results that significantly differed from the other geographic locations for any of the three dependent variables – all locations were either significant and in the same direction or insignificant. The only exception was the Midwest region for black offenders in the analysis of diversions, which showed a significant positive effect but may be accounted for by the very small number of offenders who received diversions in the Midwest in the sample (198). For black offenders, significant findings for geographic locations were found for at least 4 of the 8 geographical controls for each variable. The Hispanic outcomes failed to gain significance in many of the region-specific models – possibly partially a sampling issue, as some of the regions contained very few Hispanic offenders.

Finally, I must emphasize the fact that these processes are extremely complex and decisions are based on a multitude of factors, many of which are not included by the SCPS or are unobservable in quantitative research. Despite the evidence that indicates an offender's race affects the process, it is very possible that this result is spurious and occurs due to one of these omitted variables and not as a result of any racial bias on the part of any actor. For example, although I include location variables for state and geographical region, the very neighborhood an offender lives in may affect the types of crimes committed and the willingness of bystanders to testify (both legally relevant considerations). The correlation between neighborhood and race would make a racial effect appear due to the omission of the neighborhood variable.<sup>22</sup> Although

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<sup>22</sup> Burgess' classic work (1925) on concentric zones in cities provides evidence of such a correlation between neighborhoods and race.

an offender's race changes the likelihood of each outcome, this change is not necessarily the result of legally irrelevant variables "corrupting" the criminal justice system.

### **Conclusion**

This project provides evidence that an offender's race (or, at the very least, an uncontrolled variable that correlates with an offender's race) significantly changes the expected outcomes during the pre-conviction phases of the trial process. Black and Hispanic offenders are more likely to have their cases dismissed, but also less likely to receive and accept the option of entering an alternative diversionary program. Black offenders are also less likely to receive a misdemeanor after entering a guilty plea. These relationships held despite controls for offense severity, offense type, gender, age, prior felony convictions, probation/parole status, location, and use of a public defender.

Although these points of discretion drastically affect which offenders later must be sentenced, only a fraction of the amount of research done on sentencing has focused on the dismissal/diversion points. Although sentencing guidelines have been implemented in an attempt to reform sentencing, "researchers argue that sentencing disparities persist under guidelines, in part, because these discretionary departure provisions are used in ways that disadvantage minority defendants" (Engen et al. 2001: 100). These processes may allow courtroom actors to circumvent the restrictions of the sentencing guidelines, continuing a pattern of racial disparity within the criminal justice system. "Claims of criminal injustice represent a significant form of conflict because they raise fundamental doubts about the operational meaning of principles (like equality before the law) on which American society is based" (Hagan and Albonetti 1982: 332).

The findings of a racial disparity within the pre-sentencing stages of the process were found in a large sample including multiple jurisdictions. Due to the number of separate courts and officials, explanations of this disparity must include a framework that encompasses the entire criminal justice system. Although local effects (such as pressure from politicians) undoubtedly play a role in the prosecutor's decision making, they do not explain the consistent finding that minorities are treated differently within the system. The focal concerns framework provides a societal-level explanation that drives prosecutors' behaviors through influential racial stereotypes and beliefs.

Of course, the inability to control for all of these jurisdictional and offense-specific events preclude any definitive conclusions regarding the exact reasons race affects these processes. In order to build on this initial study, further research must be done examining these points of discretion with a focus on explaining these racial disparities. Given the research on racial participation in the criminal justice system (e.g. Albonetti 1992), future research should first address any voluntary differences in the willingness of minorities to participate in the diversionary or charge bargaining process. The attention focal concerns gives to societal racial stereotypes should also be addressed through studies looking at prosecutor's attitudes regarding offenders and their resulting actions. Further steps must examine the reasons why minorities receive dismissals at a greater rate. Due to the extreme difficulty in obtaining quantitative data sets capturing many of the legally relevant variables involved in dismissals (such as strength of evidence), a qualitative approach may be best for further research.

This current research has many limitations due to the current state of data and limited prior interest in these prosecutorial points of discretion. Despite these shortcomings, this project contributes a multi-jurisdictional look at the racial disparities that still exist in the rarely



examined pre-sentencing courtroom outcomes. With greater scrutiny of these pre-sentencing processes, we can progress toward a truly “colorblind” criminal justice system.

**TABLE 1 - SUMMARY OF PRIOR LITERATURE**

<b>Study</b>	<b>Outcome</b>	<b>Multiple Jurisdictions?</b>	<b>Racial Effects</b>
Petersilia (1983)	Charge/Reject	No	Yes; Minorities more likely to receive felony charges
Spohn et al. (1987)	Charge/Reject; Dismissals	Yes*	Yes; Minorities more likely to receive charges
Spohn et al. (2001)	Charge/Reject	No	No; Sample contained 140 sex offenders
LaFree (1980)	Charge/Reject	No	Yes; More charges for minorities assaulting white women
Paternoster (1984)	Capital Charges	No	Yes; More capital charges for minorities killing whites
Weiss et al. (1996)	Capital Charges	No	Yes; More capital charges for minorities killing whites
Albonetti (1986)	Charge/Reject	No	Did not examine racial effects
Frazier and Haney (1996)	Charge/Reject	No	Did not examine racial effects
Frohmann (1991)	Charge/Reject	Yes**	Did not examine racial effects
Schmidt and Steury (1989)	Charge/Reject	No	Did not examine racial effects
Spohn and Spears (1997)	Charge/Reject	No	No
Spears and Spohn (1997)	Charge/Reject	No	No
Jordan et al. (2003)	Dismissals	No	No; Sample contained 300 sex offenders
Ryan et al. (2007)	Dismissals	No	Yes; Blacks/Hispanics less likely to have cases dismissed
Albonetti (1996)	Diversions	No	Mixed; Minorities with no prior record penalized
Engen et al. (2003)	Diversions	No	Yes; Minorities less likely to receive diversions
Leiber and Johnson (2008)	Diversions	No	Yes; Black offenders less likely to receive diversions
Leiber and Stairs (1999)	Diversions	No	Yes; Black offenders less likely to receive diversions
Leiber (1994)	Diversions	No	Yes; Black offenders less likely to receive diversions
Leiber et al. (2007)	Diversions	Yes***	Yes; Black offenders less likely to receive diversions
Barrett et al. (2006)	Diversions	No	Yes; Black offenders more likely to receive diversions
Bernstein et al. (1977)	Charge Bargaining	No	No
Holmes et al. (1987)	Charge Bargaining	Yes***	Yes; Minorities received better charge bargains in both locations

Albonetti 1992	Charge Bargaining	No	No
Farnworth and Teske (1995)	Charge Bargaining	No	Yes; Black females less likely to have charges reduced
Ball (2006)	Charge Bargaining	No	No; Very few white/Hispanic offenders in sample (< 10% each)
Bushway and Piehl (2007)	Charge Bargaining	Yes***	Yes; Whites received better charge bargains
Shermer and Johnson (2009)	Charge Bargaining	Yes*	Mixed; Racial differences existed when examining offense type + race

\* Multiple Jurisdictions

\*\* 4 District Attorney's offices in Midwestern City

\*\*\* Two-jurisdiction comparison

TABLE 2 - SUMMARY OF VARIABLES

<b>Variable</b>	<b>Coding</b>	<b>Description</b>
<i>Dependent Variables</i>		
Charges Dismissed	Dichotomous (0,1)	A value of 1 indicates an offender's charges were dismissed.
Charges Diverted	Dichotomous (0,1)	A value of 1 indicates an offender was selected for a diversion program.
Charges Reduced to Misdemeanor	Dichotomous (0,1)	A value of 1 indicates an offender's felony charges were reduced to the misdemeanor level.
<i>Independent Variables</i>		
Black	Dichotomous (0,1)	A value of 1 indicates a black offender.
Hispanic <sup>23</sup>	Dichotomous (0,1)	A value of 1 indicates a Hispanic offender.
White	Dichotomous (0,1)	Comparison group; 1 indicates a white offender.
<i>Control Variables</i>		
Gender	Dichotomous (0,1)	A value of 1 indicates the offender is female.
Age	Ordinal	Split into four groups: ≤ 19; 20-29; 30-39; 40+
Prior Felony Convictions	Continuous (Right-truncated)	Offenders with 10+ convictions listed as having 10

<sup>23</sup> The 2000, 2002, and 2004 SCPS data originally omitted the Hispanic variable in the "race" coding, choosing to include the other five categories and using a separate dichotomous variable for defendants of Hispanic descent. These racial and ethnic variables were combined into one race/ethnicity category that included Hispanics. The large majority of individuals currently coded as "Hispanic" originally fell into the "missing" racial category, accounting for 8,303 of the 9,631 Hispanics included in the sample. The other 1,086 were originally coded as "white." Only 121 of the 16,152 black defendants were coded as also being of Hispanic descent; I chose to include them as black defendants, as it was not clear which identity should take precedence. The extremely small number of defendants coded as both black and Hispanic lead me to believe this decision did not affect the results. No defendants were coded as Hispanic and Asian or Hispanic and Native American.

Pretrial Release	Dichotomous (0,1)	A value of 1 indicates an offender was released prior to trial.
Public Defender	Dichotomous (0,1)	A value of 1 indicates an offender used a public defender.
Number of Charges	Continuous	Indicates initial number of charges filed against an individual.
Probation/Parole Status	Dichotomous (0,1)	A value of 1 indicates an offender was on probation or parole at time of arrest.
Type of Offense	Dichotomous (0,1)	Set of 16 control variables: Murder, Rape, Robbery, Assault, Other Violent, Burglary, Larceny-Theft, Motor Vehicle Theft, Forgery, Fraud, Other Property, Drug Sales, Other Drug, Weapons, Driving Related, Other Public Order. All offense types are mutually exclusive, coded as the most serious offense at filing.
Location	Dichotomous (0,1)	Set of 19 state variables: Alabama, Arizona, California, Connecticut, Florida, Georgia, Hawai'i, Illinois, Indiana, Maryland, Michigan, New Jersey, New York, Ohio, Pennsylvania, Tennessee, Texas, Utah, and Virginia. Also split into 8 regional variables for individual analysis: California, Florida, New York, Texas, Northeast, Midwest, South, Southwest. See Table 7 for a full description of each region.

**TABLE 3 – DESCRIPTION OF DATA**

	N / Mean	% / S.D
TOTAL	39,639	100%
Dismissed	9,740	24.57%
Guilty Plea	25,062	63.23%
Guilty Plea w/Misdemeanor	3,617	9.12%
Diverted	3,317	8.37%
Female	7,322	18.47%
Age	31.16	10.54
Prior Felony Convictions	1.29	2.16
Pretrial Release	21,850	55.12%
Public Defender	18,931	47.76%
Number of Charges	2.26	1.63
Offenders with Single Charge	16,784	42.34%
On Probation/Parole	7,877	19.87%

**TABLE 4 – DESCRIPTION OF DATA BY RACE**

	Total	White	%	Black	%	Hispanic	%
TOTAL	39,639	11,841	30%	16,152	41%	9,631	24%
Dismissed	9,740	2,600	27%	4,739	49%	2,022	21%
Guilty Plea	25,062	7,620	30%	9,558	38%	6,501	26%
Misdemeanor	3,617	1,222	34%	1,567	43%	828	23%
Diverted	3,317	1,255	38%	976	29%	880	27%
Female	7,322	2,707	37%	2,984	41%	1,191	16%
Age	31.16*	32.71*	10.68*	31.11*	10.77*	29.28*	9.64*
Prior Fel. Conv.	1.29*	1.14*	2.05*	1.63*	2.4*	0.96*	1.78*
Pretrial Release	21,850	7,084	32%	8,807	40%	4,744	22%
Public Defender	18,931	5,201	27%	8,161	43%	4,660	25%
Number of Charges	2.26*	2.31*	1.67*	2.24*	1.66*	2.23*	1.52*
Single Charge	16,784	4,929	29%	7,114	42%	3,902	23%
On Prob./Parole	7,866	2,300	29%	3,153	40%	2,078	26%

Note: Percentages reflect demographics of each variable, not percent of overall sample.

**TABLE 5 - MISSING DATA**

	Total	%	White	%	Black	%	Hispanic	%
Female	24	< 1%	1	-	9	-	3	-
Age	490	1.24%	14	-	27	-	181	-
Prior Felony Convictions*	1529	3.86%	478	-	559	-	358	-
Pretrial Release*	1117	4.15%	437	-	472	-	155	-
Public Defender*	8302	20.94%	2555	31%	3401	41%	1905	23%
Time to Trial (Days)	1131	2.85%	381	-	369	-	266	-
Number of Charges	37	< 1%	13	-	10	-	14	-
On Probation/Parole*	2716	6.18%	743	27%	1064	39%	733	27%
Total	39,639	100%	11,841	30%	16,152	41%	9,631	24%

\* If examined by race, all variables missing for > 4% of the total sample fall within +/- 3% of the racial proportions for the total sample.

\* If examined by race, missing variables fall within +/- 3% of the racial proportions for the total sample.



**TABLE 6 - DESCRIPTION OF OFFENSES BY RACE**

	RACE					
	White	%	Black	%	Hispanic	%
Total	11841	30%	16152	41%	9631	24%
Murder	71	21%	176	52%	90	27%
Rape	203	32%	277	43%	163	25%
Robbery	432	18%	1378	58%	569	24%
Assault	1495	28%	2407	45%	1499	28%
Other Violent	663	37%	584	33%	542	30%
Burglary	1223	36%	1340	39%	853	25%
Larceny-Theft	1285	35%	1748	47%	660	18%
Motor Vehicle Theft	452	32%	440	31%	535	37%
Forgery	564	39%	637	44%	256	18%
Fraud	507	38%	594	44%	245	18%
Other Property	638	36%	833	46%	321	18%
Drug Sales	1571	22%	3836	54%	1755	25%
Other Drug	2972	34%	3439	40%	2247	26%
Weapons	229	19%	663	55%	310	26%
Driving Related	674	47%	346	24%	401	28%
Other Public Order	559	36%	602	39%	398	26%

**TABLE 7 - OFFENDERS BY STATE**

State	Total		White		Black		Hispanic	
California	12712	27.66%	3756	29.55%	2920	22.97%	4985	39.21%
Florida	4378	9.53%	1584	36.18%	2028	46.32%	754	17.22%
New York	4766	10.37%	932	19.56%	2340	49.10%	1308	27.44%
Texas	5090	11.08%	1583	31.10%	1803	35.42%	1632	32.06%
Northeast	4351	9.47%	697	16.02%	2992	68.77%	486	11.17%
Midwest	6112	13.30%	1848	30.24%	3815	62.42%	306	5.01%
South	4628	10.07%	1340	28.95%	2977	64.33%	207	4.47%
Southwest	3917	8.52%	1798	45.90%	425	10.85%	1166	29.77%

Northeast includes Connecticut, New Jersey, and Pennsylvania.

Midwest includes Ohio, Illinois, Indiana, and Michigan.

South includes Alabama, Georgia, Maryland, Tennessee, and Virginia.

Southwest includes Arizona, Hawai'i, and Utah.

**TABLE 8 - DISMISSALS**

	Model 1		Model 2		Final Model		
	$\beta$	OR	$\beta$	OR	$\beta$	Std. Err.	OR
Black	.40**	1.49**	.41**	1.50**	.30**	.03	1.35
Hispanic	-.06	.95	-.07*	.93*	.31**	.04	1.36
Prior Felony Convictions	-	-	-.02**	.98**	-.01*	.01	.99
On Probation/Parole	-	-	-.57**	.56**	-.09*	.04	.91
Murder	-	-	-.77**	.46**	-.62**	.18	.54
Rape	-	-	-.42**	.66**	-.47**	.11	.63
Robbery	-	-	-.38**	.68**	-.31**	.06	.73
Other Violent	-	-	-.26**	.77**	-.19**	.07	.83
Burglary	-	-	-.77**	.46**	-.66**	.06	.52
Larceny - Theft	-	-	-.71**	.49**	-.84**	.06	.43
Motor Vehicle Theft	-	-	-.58**	.56**	-.36**	.08	.70
Forgery	-	-	-.83**	.44**	-1.04**	.08	.35
Fraud	-	-	-.96**	.38**	-1.05**	.09	.35
Other Property	-	-	-.37**	.69**	-.50**	.07	.61
Drug Sales	-	-	-1.00**	.37**	-1.08**	.05	.34
Other Drug	-	-	-.70**	.49**	-.64**	.05	.53
Weapons	-	-	-.67**	.51**	-.65**	.09	.52
Driving Related	-	-	-1.47**	.23**	-1.64**	.10	.19
Other Public Order	-	-	-.37**	.69**	-.51**	.08	.60
Female	-	-	-	-	-.03	.04	-
Age < 20	-	-	-	-	-.11*	.04	.90
Age 30 - 39	-	-	-	-	.04	.03	-
Age > 39	-	-	-	-	.13**	.04	1.14
Public Defender <sup>24</sup>	-	-	-	-	.26**	.04	1.30
Pretrial Release	-	-	-	-	.37**	.03	1.45
Fixed Effects - State	-	-	-	-	See Note		

\* Significant at the .05 level

\*\* Significant at the .01 level

NOTE: Fixed effects for state were included in the final model but not reported.

<sup>24</sup> The coefficient for public defender should be interpreted with extreme caution due to the large number of missing observations. A control for missing observations was included in the final model. The coefficients for the racial variables were not significantly affected by omitting this variable.

**TABLE 9 - DISMISSALS BY REGION**

<u>State</u>	<u>Black</u>		<u>Hispanic</u>		<u>R<sup>2</sup></u>
	<u><math>\beta</math></u>	<u>OR</u>	<u><math>\beta</math></u>	<u>OR</u>	
California	.48**	1.61	.07	-	.04
Florida	.27**	1.31	.60**	1.82	.13
New York	.40**	1.49	.20	-	.25
Texas	-.14	-	.17	-	.10
Northeast	.51**	1.67	.54**	1.72	.07
Midwest	.28**	1.32	.49**	1.63	.09
South	.03	-	.64**	1.90	.05
Southwest	-.17	-	.00	-	.30
Total	.30**	1.35	.31**	1.36	.16

Northeast includes Connecticut, New Jersey, and Pennsylvania

Midwest includes Ohio, Illinois, Indiana, and Michigan

South includes Alabama, Georgia, Maryland, Tennessee, and Virginia

Southwest includes Arizona, Hawai'i, and Utah

Legally relevant and irrelevant variables (identical to the final general model) were included as controls but not reported.

\*Significant at the .05 level

\*\* Significant at the .01 level

**TABLE 10 - DIVERSIONS**

	Model 1		Model 2		Final Model		
	<u>β</u>	<u>OR</u>	<u>β</u>	<u>OR</u>	<u>β</u>	<u>Std. Err.</u>	<u>OR</u>
Black	-.40**	.67	-.46**	.63	-.37**	.06	.69
Hispanic	-.18**	.84	-.16**	.85	-.06	.06	-
Prior Felony Convictions	-	-	-.43**	.74	-.39**	.02	.68
On Probation/Parole	-	-	-.76**	.47	-.48**	.08	.62
Murder	-	-	None	-	None	-	-
Rape	-	-	-.34	.71	-.02	.24	-
Robbery	-	-	-.65**	.52	-.22	.16	-
Other Violent	-	-	-.37**	.69	-.30*	.15	1.35
Burglary	-	-	-.11	.90	.03	.11	
Larceny - Theft	-	-	.37**	1.45	.28**	.10	1.32
Motor Vehicle Theft	-	-	-.15	.86	-.05	.10	-
Forgery	-	-	.25*	1.28	.53**	.14	1.70
Fraud	-	-	.68**	1.97	.70**	.13	2.01
Other Property	-	-	-.30*	.74	.03	.15	-
Drug Sales	-	-	-.06	.94	.28**	.09	1.32
Other Drug	-	-	1.00**	2.72	1.18**	.08	3.25
Weapons	-	-	-.63**	.53	-.07	.21	.67
Driving Related	-	-	-.24	.79	-.40*	.16	.67
Other Public Order	-	-	.03	1.03	.15	.15	-
Female	-	-	-	-	.22**	.05	1.25
Age < 20	-	-	-	-	.36**	.07	1.43
Age 30 - 39	-	-	-	-	-.15*	.06	.86
Age > 39	-	-	-	-	-.22**	.06	.80
Public Defender	-	-	-	-	-.29**	.06	.75
Pretrial Release	-	-	-	-	1.11**	.06	3.03
Fixed Effects - State	-	-	-	-	See Note		

\* Significant at the .05 level

\*\* Significant at the .01 level

NOTE: Fixed effects for state were included in the final model but not reported.

**TABLE 11 - DIVERSIONS BY REGION**

State	Black		Hispanic		R <sup>2</sup>
	$\beta$	OR	$\beta$	OR	
California	-.45**	.64	-.05	-	.39
Florida	-.62**	.54	-.15	-	.14
New York	-.84	-	-1.30^	.27	.14
Texas	-.26**	.77	-.13	.88	.18
Northeast	.35	-	.02	-	.17
Midwest	.46*	1.58	-.15	-	.33
South	-.31*	.73	-.68^	.51	.10
Southwest	.22	-	-.23	-	.13
Total	-.37**	.69	-.05	-	.26

Northeast includes Connecticut, New Jersey, and Pennsylvania

Midwest includes Ohio, Illinois, Indiana, and Michigan

South includes Alabama, Georgia, Maryland, Tennessee, and Virginia

Southwest includes Arizona, Hawai'i, and Utah

Legally relevant and irrelevant variables (identical to the final general model) were included as controls but not reported.

\*Significant at the .05 level

\*\* Significant at the .01 level

^ Significant at the .1 level

**TABLE 12 - CHARGE REDUCTIONS**

	Model 1		Model 2		Final Model		
	$\beta$	OR	$\beta$	OR	$\beta$	Std. Err.	OR
Black	.04		.11*	1.12	-.17**	.05	.84
Hispanic	-.23**	.82	-.26**	.77	-.19**	.06	.83
Prior Felony Convictions	-	-	-.13**	.88	-.11**	.01	.90
On Probation/Parole	-	-	-.59**	.55	-.20**	.06	.82
Murder			-2.89**	.06	-3.07**	.73	.05
Rape	-	-	-1.03**	.36	-1.56**	.21	.21
Robbery	-	-	-.97**	.38	-1.27**	.12	.28
Other Violent	-	-	-.41**	.66	-.42**	.11	.66
Burglary	-	-	-.76**	.47	-.89**	.09	.41
Larceny - Theft	-	-	-.37**	.69	-.73**	.09	.48
Motor Vehicle Theft	-	-	-1.11**	.33	-.90**	.14	.41
Forgery	-	-	-.25*	.78	-.70**	.12	.50
Fraud	-	-	-.49**	.61	-.66**	.13	.52
Other Property	-	-	-.30**	.74	-.47**	.11	.63
Drug Sales	-	-	-1.01**	.36	-1.45**	.08	.23
Other Drug	-	-	-1.08**	.34	-1.21**	.08	.30
Weapons	-	-	-.69**	.50	-.78**	.13	.46
Driving Related	-	-	-.78**	.46	-1.06**	.12	.35
Other Public Order	-	-	.02	-	-.28*	.16	.76
Female	-	-	-	-	-.06	.06	-
Age < 20	-	-	-	-	-.09	.06	-
Age 30 - 39	-	-	-	-	.06	.05	-
Age > 39	-	-	-	-	.03	.06	-
Public Defender	-	-	-	-	.25**	.05	1.28
Pretrial Release	-	-	-	-	.54**	.05	1.72
Fixed Effects - State	-	-	-	-	See Note		

\* Significant at the .05 level

\*\* Significant at the .01 level

NOTE: Fixed effects for state were included in the final model but not reported.

**TABLE 13 - CHARGE REDUCTIONS BY REGION**

State	Black		Hispanic		R <sup>2</sup>
	$\beta$	OR	$\beta$	OR	
California	.00	-	-.22*	.80	.08
Florida	-.54**	.58	-.35	-	.15
New York	.11	-	.01	-	.49
Texas	.17	-	.38	-	.16
Northeast	-.37*	.69	-.42	-	.11
Midwest	-.36*	.70	-.90*	.41	.12
South	-.07	-	.16	1.17	.10
Southwest	-.61*	.54	-.90**	.41	.09
Total	-.17**	.84	-.19**	.83	.24

Northeast includes Connecticut, New Jersey, and Pennsylvania

Midwest includes Ohio, Illinois, Indiana, and Michigan

South includes Alabama, Georgia, Maryland, Tennessee, and Virginia

Southwest includes Arizona, Hawai'i, and Utah

Legally relevant and irrelevant variables (identical to the final general model) were included as controls but not reported.

\*Significant at the .05 level

\*\* Significant at the .01 level

^ Significant at the .1 level



## WORKS CITED

- Albonetti, Celesta A. "'Prosecutorial Discretion: The Effects of Uncertainty'." *Law & Society Review* 21.2 (1987): 291-313.
- Albonetti, Celesta A. "Race and the Probability of Pleading Guilty." *Journal of Quantitative Criminology* 6.3 (1990): 315-34.
- Albonetti, Celeste A. "An Integration of Theories to Explain Judicial Discretion." *Social Problems* 38.2 (1991): 247-66.
- Albonetti, Celesta A. "Charge Reductions: An Analysis of Prosecutorial Discretion in Burglary and Robbery Cases." *Journal of Quantitative Criminology* 8.3 (1992): 317-33.
- Albonetti, Celesta A., and John R. Hepburn. "The Effects of Defendants' Ascribed and Achieved Status Characteristics." *Journal of Quantitative Criminology* 12.1 (1996): 63-81.
- Albonetti, Celeste A. "Sentencing under the Federal Sentencing Guidelines: Effects of Defendant Characteristics, Guilty Pleas, and Departures on Sentence Outcomes for Drug Offenses, 1991-1992." *Law & Society Review* 31.4 (1997): 789-822.
- Albonetti, Celeste A. "Criminality, Prosecutorial Screening, and Uncertainty: Toward a Theory of Discretionary Decision Making in Felony Case Processings." *Criminology* 24.4 (1986): 623-44.
- Barrett, David E., Antonis Katsiyannis, and Dalun Zhang. "Predictors of Offense Severity, Prosecution, Incarceration, and Repeat Violations for Adolescent Male and Female Offenders." *Journal of Child & Family Studies* 15 (2006): 709-19.
- Bernstein, Ilene N., Edward Kick, Jan T. Leung, and Barbara Schulz. "Charge Reduction: An Intermediary Stage in the Process of Labelling Criminal Defendants." *Social Forces* 56.2 (1977): 362-84.
- Bowen, D.M. "Calling Your Bluff: How Prosecutors and Defense Attorneys Adapt Plea Bargaining Strategies to Increased Formalization." *Justice Quarterly* 26.1 (2009): 2-29.
- Bushway, Shawn D., and Anne Morrison Piehl. "Judging Judicial Discretion: Legal Factors and Racial Discrimination in Sentencing." *Law & Society Review* 35.4 (2001): 733-64.
- Cole, George F. "The Decision to Prosecute." *Law and Society Review* 4 (1970): 313-343.

- Crow, M. S., and W. Bales. "Sentencing Guidelines and Focal Concerns: The Effect of Sentencing Policy as a Practical Constraint on Sentencing Decisions." *American Journal of Criminal Justice* 30.2 (2006): 285-304.
- Crow, Matthew S. "The Complexities of Prior Record, Race, Ethnicity, and Policy: Interactive Effects in Sentencing." *Criminal Justice Review* 33.4 (2008): 502-23.
- Engen, Rodney L., Randy Gainey, Robert Crutchfield, and Joseph Weis. "Discretion and Disparity Under Sentencing Guidelines: The Role of Departures and Structured Sentencing Alternatives." *Criminology* 41.1 (2003): 99-130.
- Everett, Ronald S., and Roger A. Wojtkiewicz. "Difference, Disparity, and Race/ethnic Bias in Federal Sentencing." *Journal of Quantitative Criminology* 18.2 (2002): 189-211.
- Frazier, Patricia A., and Beth Haney. "Sexual Assault Cases in the Legal System: Police, Prosecutor, and Victim Perspectives." *Law & Human Behavior* 20.6 (1996): 607-28.
- Frohmann, Lisa. "Discrediting Victims' Allegations of Sexual Assault: Prosecutorial Accounts of Case Rejections." *Social Problems* 38.2 (1991): 213-26.
- Hagan, John, and Celesta A. Albonetti. "Race, Class, and the Perception of Criminal Injustice in America." *American Journal of Sociology* 88.2 (1982): 329-55.
- Hagan, J., C. Shedd, and M. R. Payne. "Race, Ethnicity, and Youth Perceptions of Criminal Justice." *American Sociological Review* 70.3 (2005): 381-407.
- Hawkins, Darnell F. "Beyond Anomalies: Rethinking the Conflict Perspective on Race and Criminal Punishment." *Social Forces* 65.3 (1987): 719-45.
- Holmes, Malcolm D., Howard C. Daudistel, and Ronald A. Farrell. "Determinants of Charge Reductions and Final Dispositions in Cases of Burglary and Robbery." *Journal of Research in Crime and Delinquency* 24.3 (1987): 233-54.
- Johnson, Brian D., and Sara Betsinger. "Punishing the "Model Minority": Asian-American Criminal Sentencing Outcomes in Federal District Courts." *Criminology* 47.4 (2009): 1001-046.
- Johnson, Brian D., J. T. Ulmer, and J. H. Kramer. "The Social Context of Guidelines Circumvention: The Case of Federal District Courts." *Criminology* 46.3 (2008): 737-83.

- Jordan, Carol E., T. K. Logan, and Robert Walker. "Stalking: An Examination of the Criminal Justice Response." *Journal of Interpersonal Violence* 18.2 (2004): 148-65.
- LaFave, Wayne R. "The Prosecutor's Discretion in the United States." *American Journal of Comparative Law* 18.3 (1970): 532-548.
- LaFree, Gary D. "The Effect of Sexual Stratification by Race on Official Reactions to Rape." *American Sociological Review* 45.5 (1980): 842-54.
- Leiber, Michael J. "A Comparison of Juvenile Court Outcomes for Native Americans, African Americans, and Whites." *Justice Quarterly* 11.2 (1994): 257-79.
- Leiber, Michael J., and Jayne M. Stairs. "Race, Contexts, and the Use of Intake Diversion." *Journal of Research in Crime and Delinquency* 36.1 (1999): 56-86.
- Leiber, Michael J., and J. D. Johnson. "Being Young and Black: What Are Their Effects on Juvenile Justice Decision Making?" *Crime & Delinquency* 54.4 (2008): 560-81.
- Leiber, Michael J., Joseph Johnson, Kristan Fox, and Robyn Lacks. "Differentiating among Racial/ethnic Groups and Its Implications for Understanding Juvenile Justice Decision Making." *Journal of Criminal Justice* 35.5 (2007): 471-84.
- Long, J. Scott. *Regression Models for Categorical and Limited Dependent Variables*. Thousand Oaks: Sage Publications, 1997.
- Miethe, Terance D., and Charles A. Moore. "Racial Differences in Criminal Processing: The Consequences of Model Selection on Conclusions about Differential Treatment." *The Sociological Quarterly* 27.2 (1986): 217-37.
- Mustard, David B. "Racial, Ethnic, and Gender Disparities in Sentencing: Evidence from the US Federal Courts." *Journal of Law and Economics* 44 (2001): 285-314.
- Oliver, Eric and Tali Mendelberg. "Reconsidering the Environmental Determinants of White Racial Attitudes." *American Journal of Political Science*, 44.3 (2000): 574-589
- Paternoster, Raymond. "Prosecutorial Discretion in Requesting the Death Penalty: a Case of Victim-Based Racial Discrimination." *Law and Society Review* 18.3 (1984): 437-78.
- Petersilia, Joan. "Racial Disparities in the Criminal Justice System." *Crime and Delinquency* 3.1 (1985): 15-34.

- Petersilia, Joan. Implementing New Ideas in Criminal Justice. R-2929-NIJ, The RAND Corporation. 1983.
- Piehl, Anne M., and Shawn D. Bushway. "Measuring and Explaining Charge Bargaining." *Journal of Quantitative Criminology* 23.2 (2007): 105-27.
- Schmidt, Janell, and Ellen H. Steury. "Prosecutorial Discretion in Filing Charges in Domestic Violence Cases." *Criminology* 27.3 (1989): 487-510.
- Scholhofer, Stephen J. "Criminal Justice Discretion as a Regulatory System." *Journal of Legal Studies* 17.1 (1988): 43-82.
- Shermer, Lauren O., and Brian D. Johnson. "Criminal Prosecution: Examining Prosecutorial Discretion and Charge Reductions in U.S. Federal District Courts." *Justice Quarterly* (2009): 1-37.
- Spears, Jeffrey, and Cassia Spohn. "The Effect of Evidence Factors and Victim Characteristics on Prosecutors' Charging Decisions in Sexual Assault Cases." *Justice Quarterly* 14.3 (1997): 501-24.
- Spohn, Cassia, and Robert Fornango. "U.S. Attorneys and Substantial Assistance Departures: Testing for Interprosecutor Disparity." *Criminology* 47.3 (2009): 813-46.
- Spohn, Cassia, and David Holloran. "The Imprisonment Penalty Paid by Young, Unemployed Black and Hispanic Male Offenders." *Criminology* 38.1 (2000): 281-306.
- Spohn, Cassia, John Gruhl, and Susan Welch. "The Impact of Gender and Ethnicity of Defendants on the Likelihood to Reject or Dismiss Felony Charges." *Criminology* 25.1 (1987): 175.
- Spohn, Cassia, and Jeffrey Spears. "Gender and Case Processing Decisions." *Women & Criminal Justice* 8.3 (1997): 29-57.
- Steffensmeier, Darrell, Jeffery Ulmer, and John Kramer. "The Interaction of Race, Gender, and Age in Criminal Sentencing: The Cost of Being Young, Black, and Male." *Criminology* 36.4 (1998): 763.
- Steffensmeier, Darrell, John Kramer, and Jeffrey Ulmer. "Age Differences in Sentencing." *Justice Quarterly* 12.3 (1995): 584-601.

- Ulmer, J. T., M. C. Kurlychek, and J. H. Kramer. "Prosecutorial Discretion and the Imposition of Mandatory Minimum Sentences." *Journal of Research in Crime and Delinquency* 44.4 (2007): 427-58.
- Tyler, Tom. "The Role of Perceived Injustice in Defendant's Evaluations of Their Courtroom Experience." *Law & Society Review* 18 (1984): 51-76.
- Wellford, Charles F. "Sentencing Reform." *Criminology & Public Policy* 6.3 (2007): 399-403.
- Weiss, Robert E., Richard A. Berk, and Catherine Y. Lee. "Assessing the Capriciousness of Death Penalty Charging." *Law and Society Review* 30 (1996): 607-26.
- Welch, Susan, John Gruhl, and Cassia Spohn. "Sentencing: the Influence of Alternative Measures of Prior Record." *Criminology* 22.2 (1984): 215-27.
- Young, Robert L. "Race, Conceptions of Crime and Justice, and Support for the Death Penalty." *Social Psychology Quarterly* 54.1 (1991): 67-75.