



UNCOVERING RACIAL DISPARITIES IN WASHTENAW COUNTY'S LEGAL SYSTEM

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Prosecutor Transparency Project demonstrates importance of in-depth review of legal system data

INTRODUCTION

The criminal legal system should provide accountability for people who threaten public safety, respect the rights of crime victims and defendants, and treat people fairly regardless of their race, ethnicity, or socioeconomic status. However, in Washtenaw County, there is evidence that people of color have different encounters with the legal system than white people.

As part of the Prosecutor Transparency Project, the University of Michigan analyzed cases referred to the Washtenaw County Prosecutor's Office from 2017 to 2022. That analysis found the **largest racial disparity** occurred in requests to file charges received by the prosecutor's office from local law enforcement. Black people appear in 49.9% of requests for charges between 2017 and 2022 but make up only 12.2% of county residents. By comparison, white people appear in 47.8% of requests for charges and make up 70% of the county's population. This suggests the demographic composition of the cases that come into the prosecutor's office are a significant driver of previously observed racial disparities in Washtenaw County's criminal legal system.

The analysis also points to **some evidence of racial disparities** in the following areas:

- The prosecutor's office was 0.7 percentage points more likely to authorize charges for defendants of color than for white defendants in similar circumstances between 2017 and 2022, which was largely driven by a disparity in 2019;
- Defendants of color were charged with crimes having maximum sentences 2.15 months longer than white defendants in similar circumstances between 2017 and 2022, which was driven by disparities in 2018 and 2020;
- Among eligible defendants, white people were more likely to be designated as habitual offenders, which means longer maximum sentences; and
- Defendants of color faced 0.05 more charges per case on average than white defendants in similar circumstances between 2017 and 2022.

The analysis did not find evidence of racial disparities in the following areas:

- In acceptance into a pre-plea diversion program, nor
- In granting Holmes Youthful Trainee Act (HYTA) status, which allows young defendants to avoid a criminal record.

Data limitations make it impossible to construct a reliable analysis of a representative sample of plea bargains in the Washtenaw County Prosecutor's Office. The preliminary analysis of plea-bargaining decisions that was conducted, however, did not find evidence of racial disparities.

The Prosecutor Transparency Project demonstrates the ways data collection and analysis can help identify disparities in the criminal legal system and inform action to promote equity, fairness, and harm reduction. To allow for a better understanding of the impact of decisions made at each stage in the criminal legal system, more prosecutors' offices, law enforcement departments, and courts need to participate in transparent data sharing and analysis.

COMMITMENT TO PROSECUTOR TRANSPARENCY

In August 2020, the Citizens for Racial Equity in Washtenaw released a report that examined publicly available data on criminal cases, looking for evidence of racial disparities in charging and sentencing. The CREW report documented the total number of charges and convictions for defendants of color compared to white defendants and compared those outcomes to the racial demographics of the county's population as a whole. CREW found Washtenaw County's legal system is more likely to charge and convict people of color than white people.

The CREW report generated widespread interest in expanded data transparency in the criminal system. Leading up to the 2020 election, Eli Savit campaigned on bringing transparency and a focus on racial equity to the prosecutor's office. After he was elected that November and took office in January 2021, he

partnered with the American Civil Liberties Union of Michigan and the University of Michigan’s Law School and Poverty Solutions initiative to launch the Prosecutor Transparency Project, with support from the Vital Projects Fund.

The Prosecutor Transparency Project sought to identify disparities in prosecutorial decision-making, and it does not claim to reach conclusions about other potential drivers of racial disparities in the criminal legal system.

A CLOSER LOOK AT THE ANALYSIS

The Prosecutor Transparency Project analyzed case level data for nearly 35,000 requests for charges filed by Washtenaw County law enforcement agencies with the prosecutor’s office from January 2017 through September 2022. The cases included misdemeanors and felonies involving adults. Data collected on defendants’ race are based on police documentation at the time of arrest. For comparison, the CREW report reviewed 3,600 felony cases filed between 2013 and 2019.

U-M’s analysis for the Prosecutor Transparency Project focused on four areas of prosecutorial decision-making:

1. Authorizing charges and charging decisions,
2. Habitual offender designations,
3. Plea bargaining decisions, and
4. Diversion and deferral opportunities.

5. Researchers looked for evidence of racial disparities in the total number of white people compared to people of color that experienced a certain outcome, and they compared cases with similar characteristics like severity of the underlying criminal charge, gender and age of the defendant, prior convictions, and whether the defendant was detained after their arrest.

Controlling for those characteristics allows for the strongest “apples-to-apples” comparison to see whether a person’s race is a significant factor in the way they experience the criminal legal system. This summary will focus on racial disparities that exist when comparing cases with similar circumstances, and a more detailed overview of the analysis is available here.

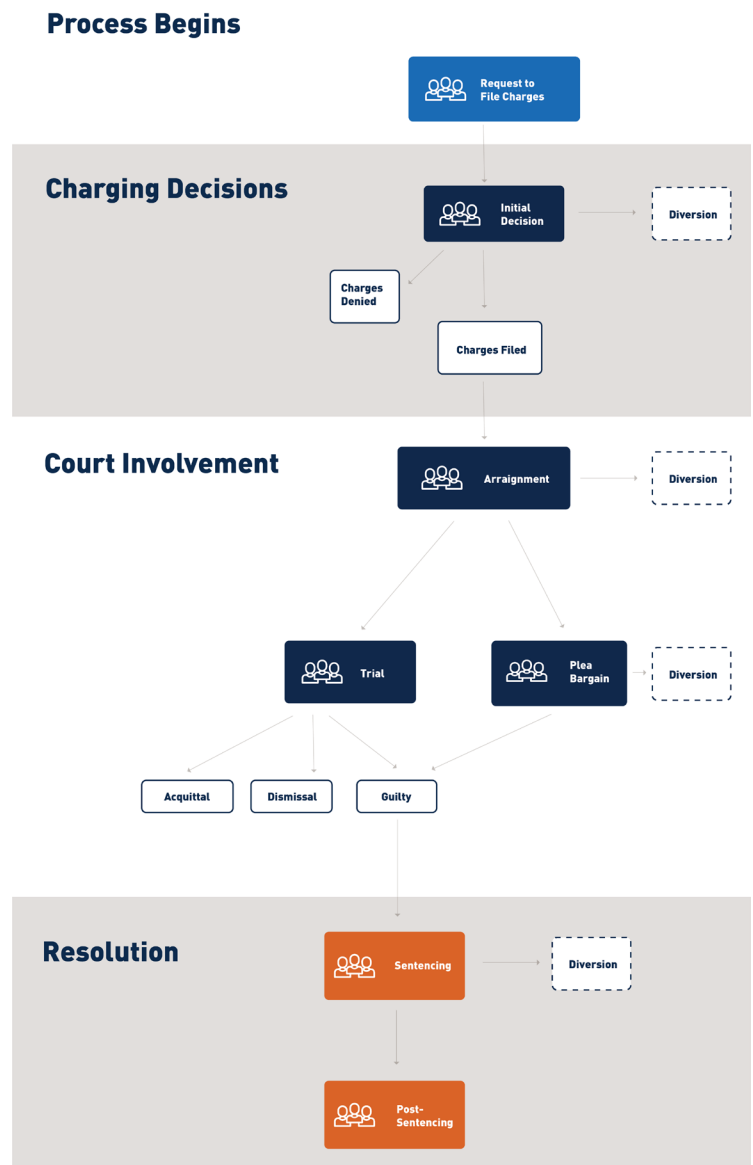
While the Prosecutor Transparency Project offers the most comprehensive review to date of outcomes related to prosecutorial decision-making in Washtenaw County, it is also important to note what the analysis cannot tell us. The data do not explain why racial disparities may exist.

Keep reading to see how people move through the criminal legal system and take a closer look at what the analysis revealed about racial disparities in the four stages of prosecutorial decision-making.

NAVIGATING THE LEGAL SYSTEM

The criminal legal system – from arrest to verdict and sentencing – involves numerous steps that span several departments and institutions. Policing practices; access to legal representation; ability to post bail; decisions made by attorneys, judges, and juries; sentencing guidelines; and incarceration practices all affect how people experience the criminal legal system.

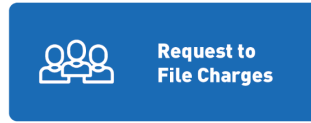
FIGURE 2: LEGAL SYSTEM FLOWCHART



Even if the individual decision makers in the legal system do not act on their personal biases, the policies and procedures in place can still advantage certain groups while disadvantaging others.

Process Begins

After making an arrest, law enforcement submits a request to file charges against the person to the prosecutor's office.



Charging Decisions



The prosecutor's initial decision is how to respond to the request to file charges.

- Denying charges ends the prosecution.
- Filing charges includes deciding the severity and number of charges to file.
- Diversion deviates from traditional criminal processes and may include alternative approaches to rehabilitation.



Also, a variety of factors — including socioeconomic status, mental health, exposure to domestic violence, and access to education and job opportunities, stable housing, and health care — are linked to involvement in the criminal legal system, which may explain why there are more charges against people who live in certain areas or share other characteristics. Systemic inequities like segregation and discrimination in the home-buying process influence who experiences these social determinants of crime.

Court Involvement

Arraignment is when the defendant is formally notified of the charges filed against them. The defendant can decide to go to trial or negotiate a plea bargain.



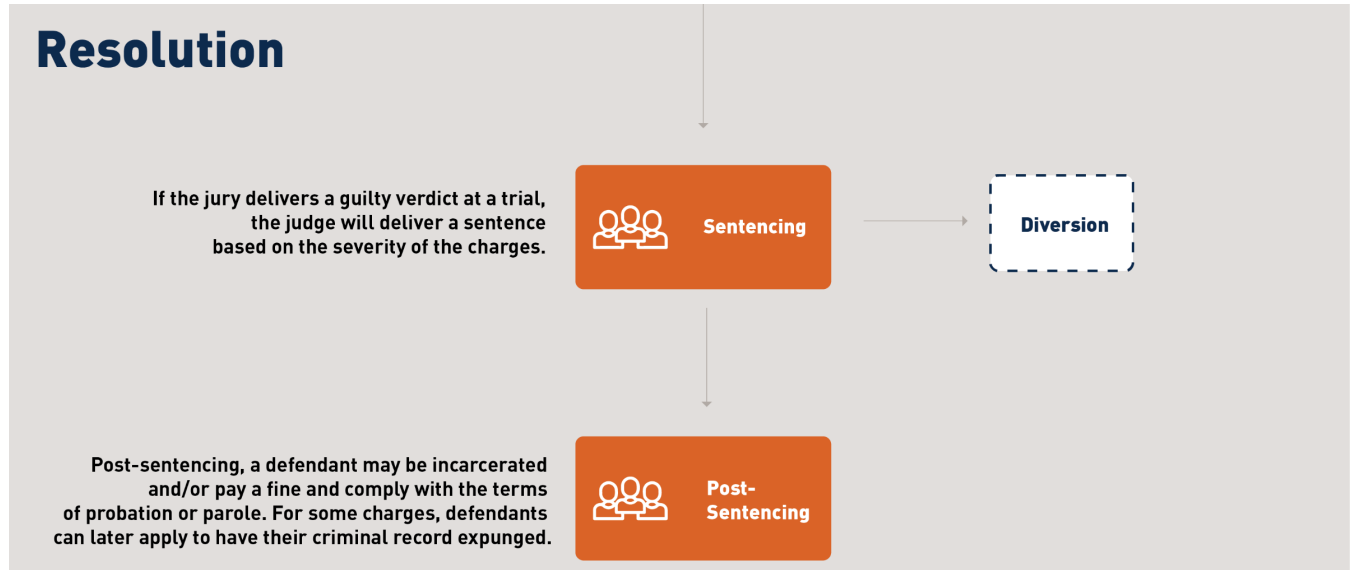
Trial allows the defense and prosecutor to make their case before a jury. The jury can decide to acquit, dismiss the charges, or find the defendant guilty.



Plea bargains can be used to negotiate an admission of guilt to a less severe charge or sentence.



This makes it difficult to point to a specific point in the criminal legal system as the cause of disparate outcomes. Where disparities do exist, it can be challenging to determine whether a decision point amounts to unequal treatment or whether it is reproducing and perhaps exacerbating disparities introduced earlier in the arrest and prosecution process. More data collection and analysis of every step of the legal process is needed to identify where disparate effects are the most significant.



CHARGING DECISIONS

The decision to charge someone with a crime has consequences for the defendant, even if they take a plea deal or are found not guilty. A person who is charged with a crime must expend time and resources on court proceedings, and may have to disclose to employers, landlords, or others that they have been charged with a crime. Unequal treatment at this point in the legal system has a domino effect, compounded by later stages of the system.

The U-M analysis looks at four junctures where disparities can arise in charging decisions:

1. Requests for charges submitted by the police to the prosecutor’s office;
2. Charging approvals by the prosecutor’s office;

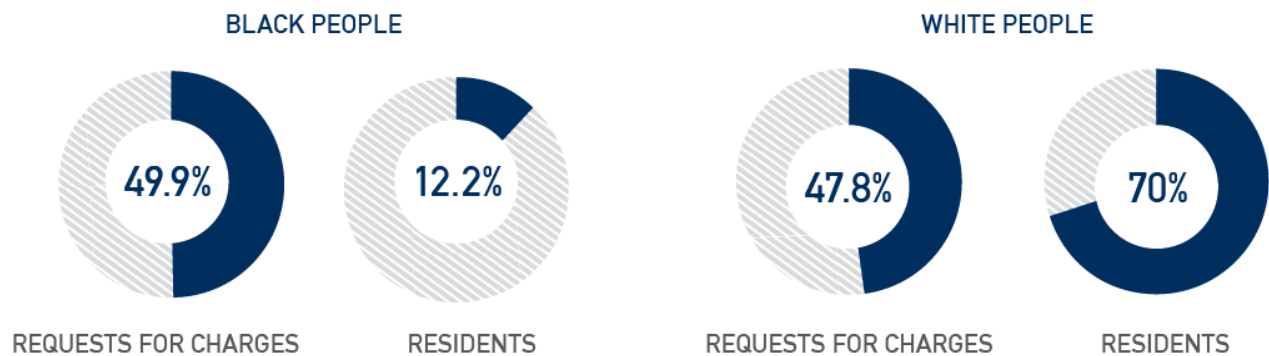
3. Vertical charging, which refers to the severity of the charges filed; and
4. Horizontal charging, which refers to the number of charges filed.

Are there disparities in the requests for charges submitted to the prosecutor’s office?

Of nearly 35,000 requests for charges submitted by police to the prosecutor’s office, 52.2% include a defendant of color, despite people of color making up only 30% of the county’s population. Black people appear in 49.9% of warrant requests but make up only 12.2% of county residents.

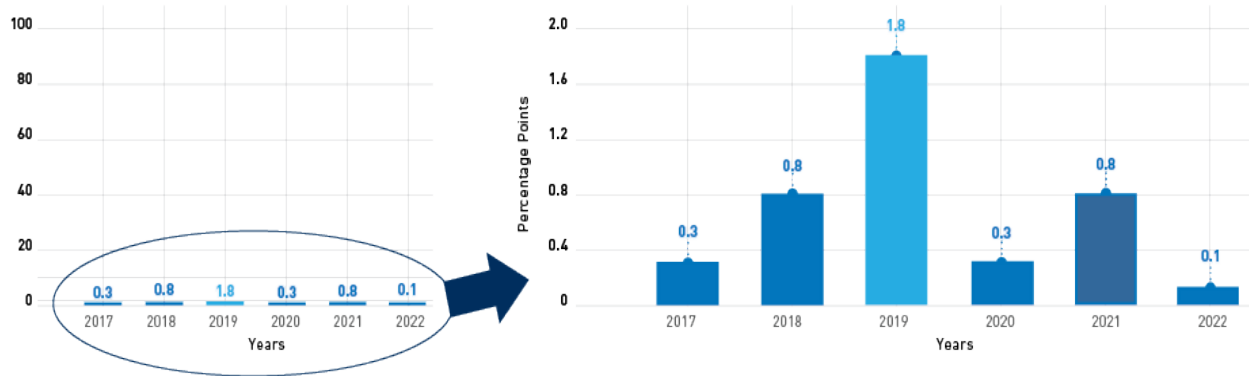
This suggests racial disparities are largely “baked in” by the time cases reach the Washtenaw County Prosecutor’s Office.

FIGURE 3: REQUESTS FOR CHARGES



The chart shows the percentage of requests for charges submitted by police to the prosecutor’s office from 2017 to 2022 that involved Black people and white people, compared to the demographics of Washtenaw County residents.

FIGURE 4: CHARGING APPROVALS



These charts show the percentage point difference in likelihood that criminal charges are brought against a person of color compared to a white person in similar circumstances in a given year. Positive percentage points mean defendants of color are more likely to face charges than white defendants. Only 2019 is statistically significant. The chart on the left shows the small differences in percentage points at a scale of 100%, and the chart on the right zooms in to take a closer look at the differences between years.

Are there disparities in the charges approved by the prosecutor’s office?

A prosecutor’s first discretionary action is whether to approve or deny a request for charges; if the prosecutor’s office approves the request, the office files charges, and if it declines charges, the prosecution effectively ends.

The analysis found the Washtenaw County Prosecutor’s Office was 0.7 percentage points more likely to authorize charges for defendants of color than for white defendants in similar circumstances between 2017 and 2022. There was a statistically significant disparity in 2019, and the disparity shrinks to essentially zero in 2020, 2021, and 2022.

Are there disparities in vertical charging?

Once a prosecutor decides to authorize charges, the next step is to determine which criminal charges to file with the court. The way prosecutors exercise their discretion at this stage can lead to disparities in conviction rates and punishment. More serious crimes are more difficult to prove, and they come with a higher risk of a longer sentence for defendants. A prosecutor may decide to charge someone with a more serious crime because they believe the evidence supports the charge. A prosecutor also may file a more serious charge as a way to pressure a defendant into agreeing to a guilty plea, and implicit bias may affect decision-making.

Racial disparities in vertical charging occur when prosecutors charge defendants of color with more serious crimes than they do similarly situated white defendants. For example, there’s a range of felony assault charges a prosecutor could choose to file, including:

- assault with intent to murder (which carries the potential for a life sentence),
- assault with intent to do great bodily harm (a potential maximum 10-year sentence), or
- felonious assault (a potential maximum four-year sentence).

Similarly situated defendants would both face charge requests for assault with intent to murder, and the prosecutor has discretion to file the charge as requested or file a less severe charge like assault with intent to do great bodily harm.

FIGURE 5: VERTICAL CHARGING

2.15 months



average additional length of the maximum sentence for charges brought against defendants of color compared to white defendants in similar circumstances from 2017 to 2022.

Similar circumstances includes severity of the underlying criminal charge, gender and age of the defendant, prior convictions, and whether the defendant was detained after their arrest.

Of course, such decisions frequently are not purely discretionary (and in many cases may not be discretionary at all). A prosecutor who receives a request for assault with intent to murder may conclude that the evidence simply does not support the conclusion that a defendant intended to commit murder. The prosecutor therefore may be ethically bound to file a lesser charge, since that is what the evidence provides. This analysis does not analyze case-level decisions – and whether evidence requires certain charging determinations. It instead presents an aggregate, quantitative analysis of charging determinations.

The analysis found Washtenaw County defendants of color were charged with crimes having maximum sentences 2.15 months longer than white defendants in similar circumstances between 2017 and 2022. Examined annually, the disparities are statistically significant in only two years: 2018 (3.03 months longer for defendants of color) and 2020 (2.62 months longer for defendants of color).

Are there differences in horizontal charging?

Prosecutors can exercise discretion at the charging stage by charging a defendant with more counts; the number of counts is referred to as horizontal charging. Horizontal charging can raise the number of convictions in three ways:

1. It forces the defendant to cover more territory in their defense,
2. It can influence a judge’s sentencing discretion, and
3. It can reduce the likelihood that a jury will acquit a defendant on all charges.

As with vertical charging determinations, horizontal charging determinations may be an exercise of discretion (deciding three counts is “enough,” even if the evidence would support a fourth charge). Or it could be dictated by the evidence. Again, this analysis does not analyze case-level decisions – and whether evidence requires certain charging determinations. It instead presents an aggregate, quantitative analysis of charging determinations.

The analysis found people of color faced 0.05 more charges per case between 2017 and 2022 compared to white people in similar circumstances. When the data are examined annually, the differences are statistically significant only in 2018 (0.07 more charges per case for defendants of color), 2019 (0.06 more charges per case for defendants of color), and 2022 (0.07 more charges per case for defendants of color).

HABITUAL OFFENDER DESIGNATION

When the Washtenaw County Prosecutor’s Office files initial charges in a case, it has the option to designate the defendant as a habitual offender, which can result in increasing the length of the sentence. In 2021, Savit directed assistant prosecuting

FIGURE 6: HORIZONTAL CHARGING

on average, defendants of color faced



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additional charges per case

compared to white defendants in similar circumstances from 2017 to 2022.

Similar circumstances include severity of the underlying criminal charge, gender and age of the defendant, prior convictions, and whether the defendant was detained after their arrest.

attorneys to seek habitual offender designation only when the maximum sentence for the immediate offense would not adequately ensure public safety. Accordingly, habitual offender designations declined significantly beginning in 2021.

To examine racial disparities in this area, the analysis focused on data prior to 2021. When looking only at defendants who were eligible for habitual offender designation, the analysis found white people were more likely to receive the designation, a result largely driven by data from 2019.

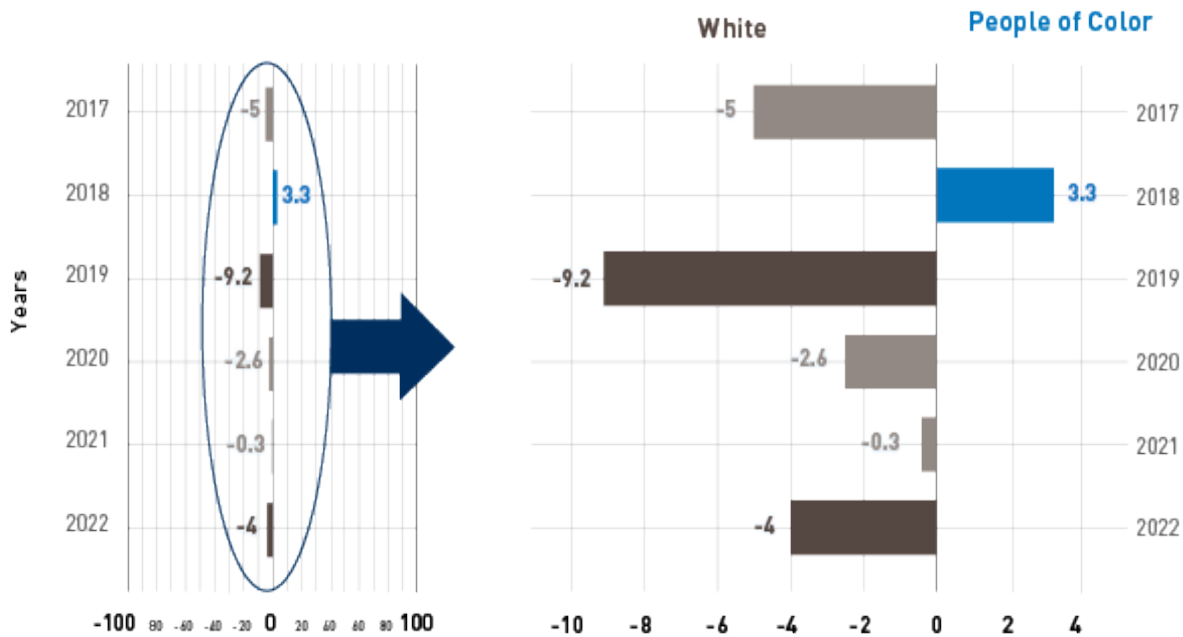
PLEA BARGAINING

Plea bargains nearly always result in conviction on at least one charge, so differences in when plea bargains are used can have a big impact on creating racial disparities in legal outcomes. However, it is challenging to study this part of the criminal legal system because there is no single point where a plea decision is made, and information is not available on how prosecutors decide to offer pleas.

Also, the defendant’s socioeconomic status — regardless of their race — can influence the outcome of plea bargain negotiations. Even if the prosecutor uses identical negotiation strategies in similar cases, the defendant’s ability to hire a defense attorney and the attorney’s capacity to negotiate the plea deal can lead to differing outcomes. Plea bargain outcomes are determined by the defendant’s willingness to accept the deal as well as the prosecutor’s decision to offer it.

Due to data limitations, it was not possible to conduct a reliable analysis of potential racial disparities in plea deal bargaining, related to the number and severity of charges recommended by the prosecutor’s office. However, analysis of available data found no indication of racial disparities related to plea bargaining

FIGURE 8: HABITUAL OFFENDERS



These charts show the percentage point difference in likelihood that defendants of color are designated as habitual offenders in a given year relative to white defendants in similar circumstances. Negative percentage points mean white people were more likely to be designated habitual offenders than people of color (gray-brown bars). Positive percentage points mean people of color were more likely to be designated habitual offenders (blue bar). Only 2019 and 2022 were statistically significant. The chart on the left shows the small differences in percentage points at a scale of 100%, and the chart on the right zooms in to take a closer look at the differences between years.

DIVERSION AND DEFERRAL

Prosecutors have discretion to deviate from traditional criminal processes for certain categories of cases and defendants, allowing alternative approaches that encourage defendant rehabilitation. The U-M analysis focused on two diversion programs: the Holmes Youthful Trainee Act and Pre-Plea Diversion.

Diversion into Holmes Youthful Trainee Act

The Holmes Youthful Trainee Act is a state law that allows judges to designate young adult defendants as trainees if the defendant pleads guilty. If the defendant successfully completes the rehabilitation program, the court does not enter a judgment of conviction and seals the record of the case. The analysis found no evidence of racial disparities in HYTA status between 2017 and 2022.

Pre-Plea Diversion

Unlike most diversion programs, the defendants enter the Pre-Plea Diversion program without pleading guilty. Participants in this program develop six-month accountability plans to address issues connected to their involvement in the criminal legal system. Participants who successfully complete their plan have their case dismissed without entering a guilty plea.

If participants fail to complete the plan, they return to the criminal legal system.

For this program, disparate outcomes can stem from two places: in deciding which cases to consider for diversion and in deciding which cases to accept into the program. Overall, in both decision points related to Pre-Plea Diversion, the analysis found no evidence of significant racial disparities.

MAKING THE LEGAL SYSTEM WORK FOR ALL PEOPLE

The strength of this analysis is that it allows for direct comparison of similar cases in addition to looking at overall outcomes for criminal cases between 2017 and 2022, and it zeroed in on actions taken by the prosecutor’s office.

There is evidence of racial disparities in Washtenaw County’s criminal legal system, with the largest disparity identified in this analysis arising at the stage in which requests for charges are received by the prosecutor’s office from law enforcement. Additional review of non-prosecutorial data – including, potentially, policing and demographic data – would be needed to begin to understand the factors that contribute to Black residents facing a disproportionately high rate of requests for charges.

There is evidence of smaller racial disparities or no evidence of racial disparities in areas of prosecutorial decision-making in Washtenaw County. Having a more nuanced understanding of the decision points that contribute to disparate outcomes can inform action to correct these issues and promote equity.

In addition to this analysis, the Prosecutor Transparency Project is identifying metrics to track to ensure equitable treatment going forward. These metrics will be publicly available via a data dashboard. Transparent data sharing and analysis is key to understanding inequities in the legal system.

CREDITS

The Prosecutor Transparency Project is a joint project of the Washtenaw County Prosecutor Office, ACLU Michigan, Michigan Law and Poverty Solutions.

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