

JUSTICE INNOVATION LAB &
LOYOLA UNIVERSITY CHICAGO

Disparity and Prosecution in Charleston, SC

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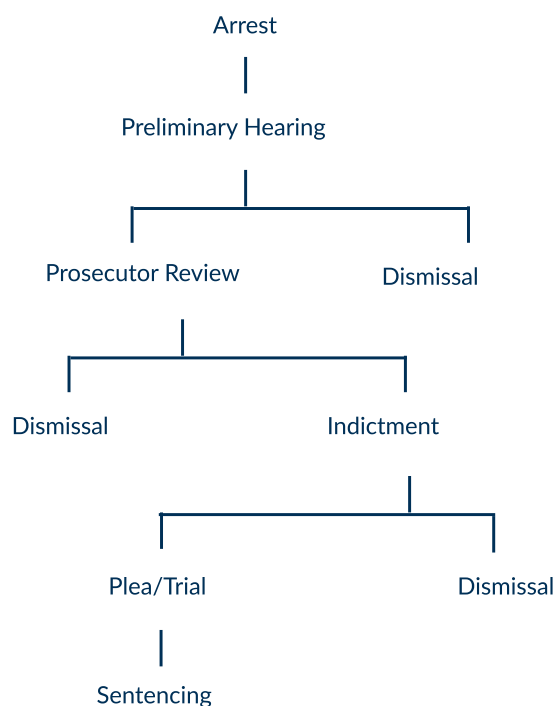


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What the Report is About

The fair and just treatment of all communities at each stage of the criminal justice system is of significant importance to communities of color, practitioners, scholars and Solicitor Wilson, alike. Central to this discourse is a recognition of the discretionary power that prosecutors wield in shaping the outcomes of criminal cases. This includes, among other things, the decision to prosecute or dismiss charges, adjust the severity and number of charges filed, and dispose of criminal cases through dismissal, plea negotiations, or trial.

This report focuses on the outcomes of prosecutorial decision making for felony and misdemeanor offenses in the Ninth Circuit Solicitor's Office in Charleston County, South Carolina. It assesses the existence and extent of racial and ethnic disparities across the following four decision points: (1) Complete case dismissals; (2) Plea negotiations; (3) Changes in charges from referral to disposition; and (4) Sentencing.



For a full diagram of the process click [here](#).

A Note on Arrest Disproportionalities

Solicitors' Offices receive cases only after law enforcement makes an arrest on a criminal warrant. Their prosecutors' decisions are "downstream" from the first decision in criminal case processing - deciding who is arrested. Where there are large racial disproportionalities in the raw number of people arrested, it follows that those disparate numbers flow through the prosecution.

While Black men account for just 12% of the population of Charleston, they account for 53% of those arrested for General Sessions offenses in 2019. Far more Black men are arrested in Charleston County than white men - in 2020, for example, there were 2,654 General Sessions cases involving Black men compared to 1,324 General Sessions cases involving white men. This disproportionality in arrests may not necessarily be explained by differences in criminal behavior. It can also be due to law enforcement practices and resource allocation that result in more people of color being stopped and arrested.

The very large divergence between population and who is arrested means that on a per capita basis, Black men are significantly more likely to be arrested. Yearly per capita arrest rates for Black men are roughly 60 people accused of a crime per 1,000 Black men; whereas for white men, the rate is much smaller - roughly 12 people accused of a crime per 1,000 white men. This results in Black men being 5 times more likely to be accused of a crime than white men.



Such large differences in arrests per capita persist across all crime types, though they are especially large with respect to guns, person, and drug crimes. Black men are roughly 6 times more likely to be arrested for a drug crime, which when combined with the sheer volume of drug cases means that drug arrests significantly influence all downstream trends in the prosecution

process. This difference ultimately affects case resolutions where Black men are more likely to have multiple arrests, and sentencing where Black men are more likely to be eligible for harsher punishment. In future reports, we will focus on these issues and show that the escalating nature of drug charging, paired with the long criminal histories generated by disproportionate drug arrests, account for a large portion of the racial disparity in incarceration lengths.

How to Interpret the Results

We encourage the reader to interpret the results while keeping in mind that disparate outcomes for minorities may occur for many different reasons. Some of these reasons, such as defense attorney role and judicial discretion, are beyond the immediate control of prosecutors. At the same time, Solicitor Wilson and the research partners are keenly aware that prosecutors can and should play a vital role in uncovering and addressing racial and ethnic disparities in the criminal justice system, and this report stems from that recognition. This report then is the first step for an office in using data to examine racial disparity in criminal case processing and can help guide an office toward deeper analysis related to one of the covered decision points.

We highlight certain crime types below where there are statistically significant differences in outcomes between Black and white men. Statistically significant differences means that the difference between outcomes for Black and white men are unlikely to be explained by chance or differences in cases involving Black and white men; rather these differences are likely explained by the individual's race. We also highlight crime types where there is a noticeable difference in outcomes, even where there is not a statistically significant difference in how Black and white men are being treated; we include these because these reveal differences in how Black and white men experience the criminal justice system.

The intent of this report is to prompt discussion and raise questions, rather than provide definitive answers. We also want to stress that the findings presented throughout this report cannot be used to support or refute possible racial and ethnic biases. Our methodology simply does not permit that. Rather than serving as an end point, we view this report as a starting point from which to engage in meaningful discussions concerning policies and procedures that can ameliorate racial and ethnic disparities in case outcomes. Furthermore, given that prosecutorial decision making does not operate in a vacuum, certain findings direct attention to ways the Solicitor's Office, the defense bar, law enforcement agencies, and the judiciary can galvanize future reform efforts. Even more importantly, continued efforts to engage with impacted

We refer to these first two types of dismissals as "complete dismissals," in which all charges against an individual are dismissed. Prosecutors also may divert an individual into a program, such as a PreTrial Intervention program or Drug Court, where charges are dismissed if the individual successfully completes the program - referred to as a "diversion dismissal."

Finally, when an individual is facing multiple cases or charges, some may be dismissed as part of plea negotiations where an individual pleads guilty to some charges while others are dismissed - referred to as a "plea dismissal." All cases not dismissed through a complete dismissal, diversion dismissal, or plea dismissal will result in a plea or trial.

For this section of the report, unless otherwise indicated, we consider "complete dismissals" where all charges an individual is facing are dismissed at the discretion of the prosecutor or judge and not because the individual successfully completed diversion or pled to other charges.

Overall, roughly 20.5% of cases in Charleston County receive complete dismissals.

After accounting for individual characteristics and the number and type of charges in the case, there is a statistically significant difference in dismissal rates between Black and white men arrested for similar crimes, with Black men more likely to have their cases dismissed — roughly **21.4%** of cases involving Black men are dismissed compared to **18.6%** of cases involving white men.

The difference may be the result of Black men being arrested more frequently on what appear to be weaker evidentiary cases.

While the dismissal rates are not markedly different, as noted above, nearly twice as many Black men compared to white men are charged with crimes and, in turn, nearly twice as many Black men have their case dismissed; overall, **1,749** Black men have their cases completely dismissed, compared to **906** white men.

In future analyses, with preliminary results in the **technical appendix**, we also examine racial differences in how many days it takes to make a dismissal decision where decisions for Black men are taking over **13%** longer than for white men.

The highest dismissal rates for both Black and white men are for person, gun, and domestic violence related crimes which may be driven by the challenges of prosecuting crimes with a victim or where there are multiple individuals arrested for the crime.

There is a statistically significant difference in dismissal rates for Black men compared to white men for person crimes — **26.8%** versus **22.2%** .

Though not statistically significant, there is still a large difference in dismissals for Black men compared to white men for gun crimes — **26.3%** versus **23.5%** .

Black men are more likely to have their domestic violence case dismissed —
32.8% versus **28.0%**

A larger sample for both Black and white men is needed to determine if this difference is statistically significant.

Next section: Plea Negotiations →

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Download Technical Appendix