Technical Report

Justice in Decision-Making

Studying Racial & Ethnic Disparities in the Brooklyn District Attorney's Office

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CUNY INSTITUTE FOR STATE & LOCAL GOVERNANCE

Contents

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Acknowledgements

Executive Summary

INTRODUCTION

In 2018, shortly after being sworn in, Brooklyn District Attorney (DA) Eric Gonzalez launched the **Justice 2020 Initiative** with the goal of increasing community safety, fairness, and equal justice for all. The Initiative aims to establish community-based alternatives to incarceration as the default response, shifting office resources to the cases and individuals presenting the most harm—all while engaging the community as partners. These objectives demand a range of approaches, including strategies that facilitate a culture of data-driven decision-making and transparency in the office, which DA Gonzalez recognized as critical to both advancing effective reforms and to being accountable to the public. Additionally, because equity underpins every facet of the Justice 2020 plan, the DA was interested in a systematic baseline assessment of racial and ethnic disparities across prosecutorial decision-making to help identify areas where further reform efforts may be needed to build on the work of the Initiative. The DA's office partnered with the CUNY Institute for State and Local Governance (ISLG) to conduct this assessment.

The research aims to directly inform the DA's efforts to ensure safety and fairness in its own decision-making practices; using the findings from this analysis, the DA's office plans to identify areas where further reform efforts may be needed, particularly as DA Gonzalez moves into his next term and expands his current agenda. The study also has great national relevance in this time of increasing calls for action to eliminate racial inequities in the criminal legal system. As the gatekeepers to this system, prosecutors wield significant power and discretion across all stages. Prosecutors are directly responsible for determining charges against people accused of crimes, and—through bail recommendations, plea bargaining, and sentencing recommendations—they exert a tremendous amount of influence over whether people are incarcerated.

That said, prosecutors do not operate in a vacuum. Other system stakeholders, such as law enforcement, the judiciary, and the defense, also influence the outcomes of criminal case processes. Outcomes are also driven by structural forces. Low socioeconomic status, limited community resources, and lack of access to opportunity, for example, can foster criminogenic conditions and expose certain communities—largely communities of color—to a greater level of enforcement and subsequent criminal legal system involvement. While this may mean that strategies to eliminate disparities more broadly are often beyond the sole discretion of prosecutors, drawing on the influence they do have—particularly as it relates to racial and ethnic biases within their own processes and structures—can lead to positive change. Prosecutorial efforts may also fuel collaborations with other system actors to further reduce racial and ethnic disparities in criminal legal system outcomes.

The Study

The research presented in this report is a crucial first step towards developing a more holistic understanding of where racial and ethnic disparities exist in the Brooklyn DA's processes, as well as the factors and circumstances that appear to drive them. To provide a baseline understanding of disparities, we analyzed outcomes by race and ethnicity at key decision points for all 256,078 cases screened by the office's Early Case Assessment Bureau (ECAB) between calendar year 2016 and mid-year 2019, as well as all 266,098 cases disposed by the Kings County Criminal Court (including misdemeanors and some cases that began as felonies) and/or Supreme Court (felonies) during that same period.

We explored the full trajectory of a case: from initial case acceptance and initial charges filed by the prosecutor's office, to bail and detention decisions, disposition, plea-bargaining, and finally, to sentencing. For our investigation of case acceptance, charging, and plea bargaining, we assessed prosecutorial decision-making directly, while our analysis of arraignment outcomes, disposition, and sentencing focused on the final judicial decisions, due to a lack of data regarding prosecutors' recommendations at these stages. However, we know that judges are heavily influenced by the prosecutor in making these determinations.

For each decision point, ISLG ran a series of exploratory and more complex statistical analyses to document whether and to what extent key outcomes associated with each decision point were influenced by race and ethnicity, both alone and accounting for other factors, including age, gender, criminal history, and characteristics of the current case (e.g., top charge class, assigned trial bureau).

Given that the office's administrative data systems did not include much information related to the plea-bargaining process, we also reviewed paper files for 204 cases disposed of by guilty plea, which provided valuable insight into the factors considered at this stage of prosecutorial decision-making. In addition, to supplement administrative data findings, we conducted two smaller reviews to gather additional qualitative context for instances where we observed disparities at dismissal and post-arraignment detention.

All results and findings were reviewed with an internal advisory board comprised of representatives across bureaus, units, and positions within the DA's office, from line staff to leadership, in addition to two external consultants with expertise in this area.

SUMMARY OF FINDINGS

At the aggregate level, we did not consistently find racial and ethnic disparities negatively impacting Black and Hispanic people across decision-points; instead, our findings were more nuanced, and, when we did find disparities, they were often marginal, or in some cases relics of past policies that have since been changed. We found that Black and Hispanic people were more likely to exit the system (e.g., through declinations or dismissals) at various points as their cases progress; for those who remained, their outcomes were worse at certain stages in the process or for certain categories of crime.

SUMMARY OF KEY FINDINGS

Arrest

Custodial arrests	Desk appearance tickets

The prosecutorial process starts once a person has been referred to the prosecutor's office by law enforcement following a custodial arrest and booking or the issuance of a desk appearance ticket.

Screening

Accepted	Declined

Overall, prosecutors accepted more than 90 percent of cases during the study timeframe. Although differences across groups were quite small, they were more likely to decline to prosecute cases involving Black and Hispanic people accused of crimes. An exception was misdemeanor drug offenses, for which prosecutors were more likely to accept cases with Black and Hispanic people. This disparity was particularly pronounced for misdemeanor marijuana possession through 2018, after which a policy change drove down the volume of these cases.

Charging

Reduced	No change	Increased

Across offense types, among the cases accepted, prosecutors were less likely to reduce the severity of the top charge between arrest and screening (i.e., to charge something less severe than the most serious charge identified by law enforcement) for Black and Hispanic people.

Arraignment

Not Disposed

No bail or detention ordered	Bail set	Detention ordered	Disposed

For cases not disposed at arraignment, Black and Hispanic people were most likely to be assigned bail. Among those with bail set, Black people had the highest bail set for violent felonies while Asian people had the highest bail set for misdemeanors and non-violent felonies.

Post-arraignment

Released	Detained

Black and Hispanic people were more likely to be detained following arraignment, largely because they were more likely to have bail set and less likely to be able to post bail following arraignment. Disparities were particularly notable for felony person crimes, as well as for felony criminal contempt; for the latter, disparities were larger for offenses associated with domestic violence compared to those that were not. Our qualitative review of case files showed that, in a subset of felony assault cases in which the person had been detained, there tended to be additional factors (such as prior history of violence or the presence of weapons) that may account for the disparities we found. However, the limited number of files we were able to review was too small for us to draw definitive conclusions.

Disposition

Convicted via trial	Convicted via guilty plea	Dismissed

Black individuals were less likely to be convicted and more likely to be dismissed, with the exception of misdemeanor property crimes where they were more more likely to be convicted. Black and Hispanic people were less likely to plead to a lesser charge, especially for felony weapons charges. While more than three-quarters of all people pled to reduced charges compared to those filed at initial screening, Black and Hispanic people were less likely to plead to a lesser charge, especially for felony weapons charges.

Sentencing

Custodial	Time served	Non-custodial

Among misdemeanor cases, Black people were slightly more likely than white people to receive jail or prison sentences. Among felony drug cases, both Black and Hispanic people were more likely to receive jail or prison sentences.
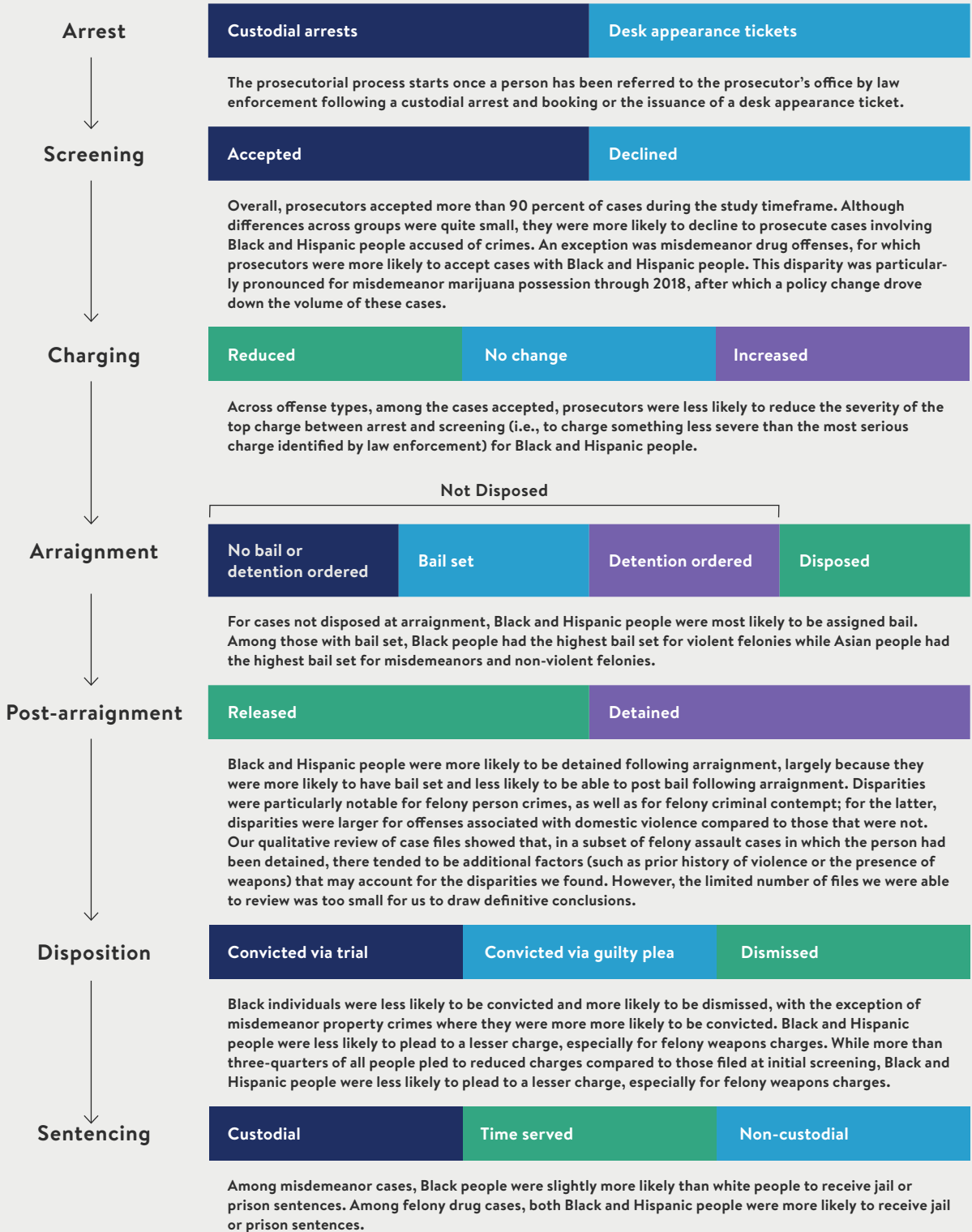
FIGURE 1. SUMMARY OF RESULTS — DIFFERENCES BETWEEN WHITE PEOPLE AND ASIAN, BLACK, OR HISPANIC PEOPLE, ACCOUNTING FOR OTHER INDIVIDUAL AND CASE CHARACTERISTICS

Note: Each color represents whether the outcome was more or less likely for each racial/ethnic group compared to the white group, and the magnitude of the effect.

Legend:

↑
- Predicted rate 10%+ higher than white
- Predicted rate 5-9% higher than white
- Predicted rate 1-4% higher than white

↓
- Predicted rate 1-4% lower than white
- Predicted rate 5-9% lower than white
- Predicted rate 10%+ lower than white

— No meaningful difference

DISCUSSION

Disparities across the criminal legal system are well-documented at national, state, and local levels. Evidence has shown repeatedly that Black and Hispanic people are more likely than white people to suffer adverse outcomes, from arrest to incarceration, which can harm communities and undermine public confidence in law enforcement and in the larger criminal legal system. Racial and ethnic disparities begin at arrest and they compound at each point throughout the system, including at several points where prosecutors either control or have a hand in shaping outcomes. That said, while we did find evidence of disparities at some key decision-making points at the Brooklyn DA's office, they were not as pronounced as might have been expected; moreover, disparities often lessened or even disappeared when demographics, criminal history, and case characteristics were accounted for. These promising findings can, at least in part, be attributed to the policies and practices that have been implemented across criminal legal system actors in the borough, and particularly within the DA's office: starting with DA Kenneth Thompson's election in 2014 and continuing under DA Gonzalez's leadership, the office has shifted focus away from conviction as a metric of success towards diversion and other more rehabilitative outcomes, along with a more intentional focus on reducing harm and limiting the scope of the criminal legal system more broadly. It is important to keep in mind, however, that while accounting for other factors did sometimes lessen the disparate impacts we found throughout the analysis, it does not necessarily indicate that disparities do not exist, because the factors we typically control for in these types of studies are often proxies for other broader structural and systemic inequities.

While our analysis showed that case processing in the Brooklyn DA's office resulted in fewer racial and ethnic disparities than expected overall, there were more notable disparities within specific offense types or charges. For example, disparities were found for drug offenses and person offenses at multiple decision points. In some cases, these disparities may have been largely or partially addressed subsequent to the time period of the data for this study (e.g., through the office's expanded marijuana policy, as noted above), but in other cases, these findings may suggest potential priority focus areas for the next phase of the office's reforms.

As noted throughout the report, the DA's office has long been engaged in efforts to address inequities in the system, and Justice 2020 represents a commitment to continuing these reforms, including strategies focused on community engagement. As the office continues this work, it will be important to continue to monitor racial and ethnic trends in the future to ensure that the reductions in racial and ethnic disparities the office has achieved to date continue and that new reform efforts do not exacerbate disparities at key decision points. Though well-intentioned, reform policies can sometimes have the opposite effect; as systems shrink, disparities may remain or even worsen.

RECOMMENDATIONS AND NEXT STEPS

Drawing on the findings from the analysis and on conversations with the office about where to focus efforts next, ISLG offers the following recommendations across three main areas: continued monitoring and evaluation, additional decision point and/or charge-specific policy and practice considerations, and expanded community and broader system engagement.

Monitoring and evaluation

In developing the Justice 2020 agenda, the Brooklyn DA's office recognized the need to build a data infrastructure that would support regular and active use of data to inform its decisions and practices and to promote accountability and transparency—key ingredients for equitable decision-making. We highlight three recommendations to ensure that the office establishes processes for continued monitoring and evaluation of the trends identified in ISLG's study over time:

Address data gaps, particularly with respect to tracking diversion/alternatives, prosecutorial recommendations, and key factors that underlie decision-making

Evaluate specific Justice 2020 strategies

Prioritize transparency and accountability by making data public through dashboards and reports

Decision point and/or charge-specific policy and practice considerations

The DA's office has made great strides over the past several years in creating a model of progressive prosecution by adopting policies and practices that adhere to a core set of principles related to fairness, safety, and transparency. Results from this analysis show some early evidence that adoption of these policies and practices has had some impacts on limiting the scope of the criminal legal system overall and on reducing disparities; however, there may be additional reforms for the DA's office to consider in order to enhance and sustain its progress to date and to reduce the impact of structural forces outside the office's purview, which relate to the following recommendations:

Consider additional charging policies that further reduce case acceptance rates pre-arraignment, rather than having cases dismissed at later stages

Consider instituting policies to ensure that, when prosecutors consider criminal history in decision-making, they are mindful of the extent to which encounters with law enforcement and subsequent criminal histories are shaped by factors such as race, income, and neighborhood, taking care to differentiate between types of criminal history, so that individuals are not precluded from community-based responses and opportunities

Identify new target populations for expanded programming options post-arraignment

Community and broader system engagement

While the DA has prioritized transparency and community partnerships, transparency alone does not constitute effective community engagement—the community must have a voice in how success is defined and measured and in how policies and practices are shaped. In addition to engaging the broader community, the DA should leverage findings from the current study to engage other criminal legal system actors. The DA has taken a first step in assessing disparities across the decisions made by his office, and the office is already considering ways to bolster community engagement efforts. Therefore, ISLG recommends the following:

Continue to engage and empower the community more holistically in decision-making practices and in further developing effective responses to crime

Using this analysis as a starting point, highlight larger criminal legal system inequities and engage in discussion with other system actors to identify collaborative responses to disparities still in evidence

Foreword *from District Attorney Eric Gonzalez*

Eric Gonzalez
District Attorney
Kings County

SHORTLY AFTER I WAS INAUGURATED as Brooklyn District Attorney in January 2018, I set out to make good on my campaign promise to have an outside organization conduct a Racial and Ethnic Disparity study of my office. Coming into office with a mandate to change an institution where I had spent my entire career, I knew that in order to achieve the reforms I was elected to pursue, I would need data—to show where we were as a baseline, to measure our progress, and to hold myself accountable to the people who had elected me.

I convened an external panel of experts, including academics and advocates, defense lawyers and formerly incarcerated people, community leaders and clergy, and representatives from the NYPD. I asked them to tell me what they thought I needed to do to make meaningful change in the DA's office—change that would move us toward a fairer justice system, thereby helping to restore community confidence. I called this initiative Justice 2020.

Among the four main goals, or pillars, of Justice 2020 was to "invest in data to drive innovation and reform." I knew that I would need outside help to meet this goal, given the poor quality of the office's data and the lack of resources we had as a government agency.

Help arrived in the form of Adam Gamoran of the William T. Grant Foundation. He came to a presentation for funders on Justice 2020 and expressed an interest in helping to fund our data work, and specifically our Racial and Ethnic Disparity study. He said his foundation had limited funds, but he thought he could interest a larger funder with a strong record of

supporting important criminal justice reforms, Arnold Ventures. He urged me to connect with Michael Jacobson of CUNY's Institute for State and Local Governance, whom both foundations had worked with previously, to help us prepare a grant proposal.

I was already an admirer of Mike from all the inspiring work he has done in support of criminal justice and corrections reform. Mike and his team put the grant proposal together and helped us present it to the funders. Once we had secured a two-year grant, which went to ISLG for this project, they worked with the staff of my office to do a full data diagnostic in the first year, and this study in the second year. Reagan Daly, Jennifer Ferone, Victoria Lawson, and the rest of the ISLG team were dream partners for us, and helped us move a long way toward our Justice 2020 goal.

The report you are reading now represents the culmination of the vision of Justice 2020, of the funders, and of the community to whom I made those promises four years ago and who entrusted me with the office I now hold.

As I read early drafts of the report, I was very encouraged to see that the racial disparities that exist in the cases my office handles, and there are some, are relatively small and not always in the predicted direction; in some cases my ADAs make decisions that actually reduce some of the disparities in the cases that came to us. More gratifying still was the finding that some of the changes I had instituted even before my election, when I served as Acting District Attorney, had begun to bear fruit in the form of reduced racial disparities over the years I have been in office.

I am both proud of these results and grateful to the ISLG team for showing us areas in which we can do better, to move us toward the justice system our communities need and deserve. I look forward to following up on the recommendations contained in this report and to reporting in the future on further progress toward a fairer and more equal justice system.

Introduction

In 2018, shortly after being sworn in as Brooklyn District Attorney (DA), DA Eric Gonzalez launched the **Justice 2020 Initiative** with the goal of increasing community safety, fairness, and equal justice for all. The Initiative aimed to establish community-based alternatives to incarceration as the default response, shifting office resources to the cases and individuals presenting the most harm—all while engaging the community as partners.[1] These objectives demanded a range of approaches, including strategies to facilitate a culture of data-driven decision-making and transparency in the office, which DA Gonzalez recognized as critical to both advancing effective reforms and to being accountable to the public. Additionally, because equity underpinned every facet of the Justice 2020 plan, the DA was interested in a systematic baseline assessment of racial and ethnic disparities across prosecutorial decision-making to build on the work of the Initiative and help identify areas where further reform efforts may be needed, particularly as he moves into his next term and expands his current agenda.

Toward these goals, and with funding from Arnold Ventures and the William T. Grant Foundation, the office collaborated with the CUNY Institute for State and Local Governance (ISLG) to launch the Data and Transparency Initiative (DATI) comprising two phases of work. Phase one of the DATI focused on data and capacity building, and this report focuses on phase two: a mixed-methods study to identify and explore racial and ethnic disparities in prosecutorial decision-making. The research was designed to establish a baseline understanding of existing disparities, between calendar year 2016 and mid-year 2019, against which the office can measure progress toward addressing those disparities through Justice 2020 and other efforts and identify further points for intervention. The study focused on multiple points in the criminal legal process where prosecutors have the most discretion and/or influence in final case decisions, from initial case screening and acceptance to sentencing. However, prosecutors do not always have the final decision-making power at each point, and, for those where they do not, we selected points where they exert a strong indirect influence through recommendations to the court (e.g., bail recommendations) or through the plea bargaining process.

The research aims to directly inform the DA's office's efforts to ensure safety and fairness in its own decision-making practices; however, it also has great national relevance during a time of increasing calls for action to eliminate racial inequities in the criminal legal system. Research has shown repeatedly that, at every stage of the criminal legal system, from arrest to incarceration, Black and Hispanic people are more likely than white people to suffer adverse outcomes.[2] Racial and ethnic disparities start at arrest, which Black people nationwide are 30 percent more likely to experience than white people, and can be compounded at each point throughout the system, including several points where prosecutors

control or have a hand in shaping outcomes.[3] Ultimately, Black and Hispanic individuals in the United States are 4.7 and 1.6 times more likely to be incarcerated, respectively.[4]

As the gatekeepers to the criminal legal system, prosecutors wield significant power and discretion across all stages; in fact, some scholars go so far as to argue that prosecutorial decision-making has been the biggest driver of mass incarceration over the last 40 years. Prosecutors are directly responsible for determining how to charge people accused of crimes and for negotiating plea bargains,[5] and they exert a tremendous amount of influence on judicial decision-making related to incarceration through bail recommendations and sentencing recommendations. The limited research on prosecutorial decision-making shows that disparities are prominent in outcomes across multiple decision points (as they are throughout the system), particularly with respect to pretrial detention and sentencing.[6] Of course, the tremendous power that prosecutors possess means they also have the potential to play a critical role in reducing mass incarceration and eliminating the racial and ethnic disparities that exist across these areas.

It is important to highlight that the findings presented here raise more questions than provide concrete answers about the underlying causes of the disparities that emerged at the specific decision points we examined. Prosecutorial decision-making does not operate in a vacuum. Not only can the roles of other system stakeholders (e.g., law enforcement, the judiciary, the defense) trigger disparate outcomes for a number of different reasons, but there are also broader structural factors at play. Structural differences in socioeconomic status and access to opportunities and community resources drive inequity across many levels, including fostering criminogenic conditions and exposing certain communities to a greater risk of enforcement and subsequent criminal legal system involvement. Therefore, solutions for eliminating disparities in this context are often beyond the sole discretion and policy of prosecutors. That said, drawing on the power of prosecutors and the influence they do have can lead to positive change, particularly in regards to racial biases (both explicit and implicit) surrounding their own processes and structures—and it is for this reason that this work has been a focus of the Brooklyn DA's office.

It is important to keep in mind that the current study and findings are not designed to explore the impact of Justice 2020 but instead aim to enable that exploration in future efforts. That said, because select strategies enumerated in the Justice 2020 plan were implemented beginning in 2018, some of the positive trends we observed over time may reflect aspects of the Initiative. Further, the study timeframe represents a period—beginning with DA Kenneth Thompson's election in 2014—when the culture and philosophy of the DA's office began changing, moving away from conviction as a metric of success towards diversion and a more intentional focus on limiting the scope of the criminal legal system overall. Against this backdrop, we make some hypotheses about new policies that may be driving the findings presented in this report, based on our prior work on conversations with office staff and leadership. ISLG and the DA's office have also identified areas for future

analysis, including a direct evaluation of specific Justice 2020 policies and their impacts on disparities.

This report begins with a summary of findings from ISLG's analyses and then provides a brief synopsis of the methods used in the study. These sections are followed by an overview of case processing in New York City and in Brooklyn in particular, which provides context for the more detailed results presented throughout the report. The study's key findings at each system point are then described in order of the typical progression of a case: case acceptance and charging, bail and detention decisions, disposition, plea-bargaining, and sentencing. The report concludes with key next steps for the DA's office to consider with respect to current policies and practices, as well as strategies the office may develop based on the findings from this work.

Summary of Key Findings

At the aggregate level, ISLG did not consistently find racial and ethnic disparities negatively affecting Black and Hispanic people across decision points; instead, our findings were more nuanced, and, when disparities were found, they were often marginal, and in some cases relics of past policies that have since been changed. We found that Black and Hispanic people were more likely to exit the system at various points as their cases progressed; for those who remained, they fared worse at specific stages in the process or for certain types of crimes.

Looking specifically at each of the decision points in our analysis, we identified a number of key findings after accounting for other demographic characteristics, criminal history, and case characteristics.

Prosecutors were **more likely** to decline to prosecute cases involving Black and Hispanic people compared to white people, although it is important to note that prosecutors accepted the vast majority of cases across all groups, and the differences by race were small. Black and Hispanic people were also **more likely** to have their cases dismissed at or following arraignment, and these differences were somewhat larger and more meaningful than those found at case acceptance.

On the other hand, when they did accept a case, prosecutors were **less likely** to reduce top charges between arrest and screening (i.e., to charge something less severe than the most serious charge identified by law enforcement) for cases in which Black and Hispanic people were charged. These populations were also **more likely** to be detained post-arraignment—largely due to failure to make bail—compared to similarly situated white people (i.e., those with similar demographics, criminal history, and case characteristics).

Black and Hispanic people who were convicted, in turn, were **less likely** to negotiate a plea to a lesser charge (although it was still a common outcome) and, at least for misdemeanors, were slightly **more likely** to receive custodial (jail and prison) sentences compared to similarly situated white people.

Certain crime types and penal law charges showed interesting, and at times surprising, patterns across decision points. First, for drug-related offenses, there were significant racial and ethnic differences at case acceptance, conviction, and sentencing, even after accounting for other factors (i.e., demographics, criminal history, and case characteristics), and these differences sometimes ran counter to the overall patterns observed across all charge levels.

Particularly notable findings include:

At case acceptance, Black and Hispanic people were **more likely** than white people to have their cases accepted for misdemeanor drug offenses once accounting for other factors. This disparity was particularly pronounced for misdemeanor marijuana possession through 2018, which is of interest given the office's expansion of a policy that same year to decline to prosecute smoking marijuana in public. This policy caused a sharp decline in the rate of marijuana cases coming in the door, and by 2019, the volume of these cases was small enough that we could not make meaningful comparisons. Felony drug offenses, on the other hand, exhibited the same pattern as for felony offenses overall—Black and Hispanic people were **less likely** to have their cases accepted.

At conviction, Black and Hispanic people were **less likely** than white people to be convicted of misdemeanor and/or felony drug offenses as a whole—similar to the overall pattern for convictions—but Hispanic people were **more likely** to be convicted of offenses related to marijuana.

At sentencing, Black and Hispanic people were **more likely** than white people to receive custodial sentences for felony drug offenses. Within this charge category, Hispanic people had significantly higher rates of custodial sentences than white people had for possession of a controlled substance in the third degree.

The fact that the number of marijuana cases declined dramatically following the office's change in policy is particularly important to note, because it is a demonstration of how close attention to data can drive more equitable prosecutorial policy and practice. The office changed its marijuana-related case prosecution policies due to explicit recognition of the racial and ethnic disparities in marijuana enforcement and case processing. Moreover, the office noted that its decision to decline to accept the vast majority of marijuana possession cases also impacted law enforcement's arrest practices—once these cases were no longer being accepted, arrest rates dropped accordingly. [7][8]

ISLG's findings underscore the complexity of the task facing prosecutors at each stage of the criminal legal process and the many factors that play a role in their decisions. Prosecutors make decisions based on the cases that arrive at their front door. ISLG assessed prosecutorial decision-making directly in our investigation of case acceptance, charging, and plea-bargaining. While we focused our analysis on the final judicial decisions at arraignment, disposition, and sentencing, given the lack of data regarding prosecutors' recommendations at these stages, we know that judges are heavily influenced by the prosecutor in making these determinations. It is important to emphasize here that prosecutors can only use discretion as far as their own offices' policies and practices allow to make change in any of these outcomes, in light of the fact that numerous additional internal and external factors influence outcomes at each point. That said, the findings from each stage—even stages where prosecutors have only indirect influence—can still provide prosecutors with valuable insight about ways in which their recommendations may be shaping outcomes and ways they can collaborate with other system actors to address disparities in a holistic way.

It is important to note that when demographics, criminal history, and case characteristics were accounted for, some of the differences we had initially observed descriptively were not statistically significant. This finding underscores the complex nature of racial and ethnic disparities and the many different factors that may play a role in driving them. As noted in the methods section, race and ethnicity are closely tied to criminal history and the characteristics of specific cases, especially given differences in arrest and enforcement patterns in different communities. This means that even in instances where prosecutorial decision-making itself was not found to be racially biased, there may still be disparities in outcomes due to other factors. Additionally, in many cases there were disparities in decision point outcomes for certain types of crimes or penal law charges, even when they were not found for that decision point overall.

Figure 1 highlights and summarizes significant differences in our main outcomes of interest between white, and Asian, Black, or Hispanic people when statistically accounting for demographics, criminal history, and case characteristics. These findings are separated by charge level: misdemeanor, non-violent felony offense, and violent felony offense.

FIGURE 1. SUMMARY OF RESULTS — DIFFERENCES BETWEEN WHITE PEOPLE AND ASIAN, BLACK, OR HISPANIC PEOPLE, ACCOUNTING FOR OTHER INDIVIDUAL AND CASE CHARACTERISTICS

Note: Each color represents whether the outcome was more or less likely for each racial/ethnic group compared to the white group, and the magnitude of the effect.
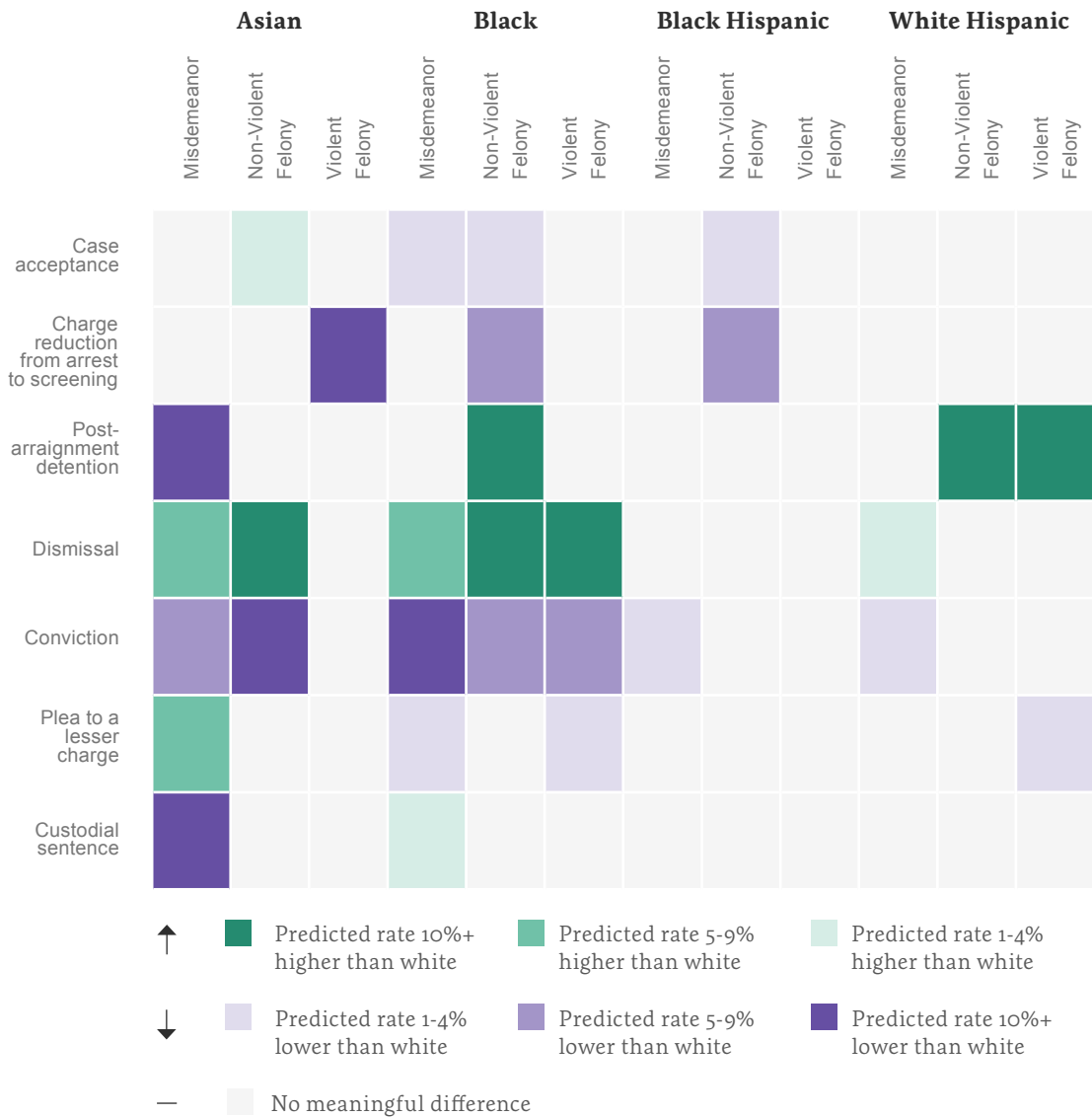
Study Approach and Methods

ISLG employed both quantitative and qualitative methods[9] in pursuit of the study's goals and objectives, focusing specifically on exploring racial and ethnic disparities at the key decision points where prosecutors have the most discretion and/or influence: case acceptance, initial charging, bail decisions and detention outcomes, disposition type, plea-bargaining, and sentencing decisions.[10] For a description of each decision point and an illustration of the process, see **Brooklyn Criminal Legal Process** below.

ISLG ran a series of exploratory and more complex statistical analyses using administrative data housed by the Brooklyn DA's office—spanning calendar year 2016 through mid-2019—to document whether and to what extent key outcomes associated with each decision point were influenced by race and ethnicity, both alone and accounting for other factors. A closer review of case files, in turn, relied on paper case records from the DA's office and served two purposes. First, we used files for a more in-depth exploration of factors and circumstances that may have affected disparities in plea offers. Given that many of the factors and strategies that influence plea bargaining are difficult to quantify, are largely missing from case management systems, and are often too complex to adequately analyze in statistical models, a qualitative review of case record details provided valuable insight into this stage of prosecutorial decision-making. Second, we used the case files to dig deeper qualitatively into select findings from the quantitative research and to help explain why certain patterns existed in the data.

For each decision point, the study examined the following research questions:

1. Do racial and ethnic disparities exist in outcomes related to this decision point? If so, what are the nature and magnitude of these disparities?
2. How have these disparities changed over the years of the study period?
3. How do disparities by race/ethnicity intersect with other characteristics of the case or the person being charged (e.g., for young adults, low-level drug offenses, domestic violence cases)?
4. How do disparities cumulate over the decision points included in the study?

ISLG reviewed all results and findings with an internal advisory board comprised of representatives across bureaus, units, and positions within the DA's office, from line staff to leadership, in addition to two external consultants with expertise in this area.

ADMINISTRATIVE DATA ANALYSIS

- **Data**: Data for the report came from the DA's office's case management system and included 1) all cases screened by the DA's office's Early Case Assessment Bureau (ECAB) between January 1, 2016 and June 30, 2019; and 2) all cases disposed by the Kings County Criminal Court (including misdemeanors and some cases that began as felonies) and/or Supreme Court (felonies) between January 1, 2016 and June 30, 2019. The datasets collectively included 256,078 cases screened and 266,098 cases disposed during this period; ISLG used the former to examine pre-disposition outcomes, and the latter to explore disposition and sentencing outcomes. There is overlap between the two datasets for cases screened and disposed within the same period.

- **Racial and Ethnic Categories**: The office's case management system lists race and ethnicity as recorded by law enforcement. The report presents findings for Asian, non-Hispanic Black, non-Hispanic white, Hispanic Black, and Hispanic white people. Note that the terms white and Black refer to non-Hispanic populations throughout the report.[11]

- **Case Definitions**: ISLG conducted our analyses at the case level rather than at the charge level; because many cases in the dataset had multiple charges and/or counts, it was necessary to aggregate certain factors in the data to the case level. To establish offense categories, we aggregated the data by using the top (most severe) charge for each case and decision point to identify charge level, class, and offense type. We also calculated an aggregated count of the unique charges associated with each case and used it as a control in our statistical models.

- **Offense Categories**: ISLG first analyzed all cases by charge level, disaggregating misdemeanors, non-violent felonies, and violent felonies as statutorily defined by New York State.[12] Then, ISLG completed secondary analyses by offense type—person, property, drug, weapons, public order, and other—and specific charges within each offense type that presented as the most frequent at each decision point, such as assault, marijuana possession, petit larceny, and criminal contempt, among others.

- **Legal and Non-Legal Factors**: The analysis accounts for as many relevant factors as possible based on the administrative data provided by the office (i.e., demographics, prior history, current charge characteristics), although some were not included in ISLG's statistical models due to their high association with other variables.[13] Furthermore, due to limited data availability, the results do not take into account case evidence such as prior threat to a victim or prior injury, diversion, socioeconomic characteristics, defense attorney, or prosecutor and victim characteristics. See Figure 2 below for details regarding the types of factors included in the analysis.

As noted in Figure 2, ISLG accounted for criminal history[14] throughout the analysis because, based on a belief that past behavior is generally a good predictor of future behavior, particularly histories of violence, it is a key consideration for prosecutors and other criminal legal system actors. However, we recognize that the relationships between race, criminal history, and legal system outcomes are complex, as illustrated by several recent studies on the biased effects of risk assessment instruments, which has led some researchers to reconsider criminal history as a statistical control altogether.[15] Criminal history as a factor does not differentiate individual behavior from the practices and actions of system actors. Given that police presence and enforcement is more likely in predominantly Black and Hispanic communities,[16] it becomes more likely that individuals from these communities will also have more prior interactions with the criminal legal system at all stages. Though we opted to include criminal history in our analyses given the important role it plays in decision-making, this "baked-in disparity," as we refer to it, was at the forefront of our conversations and analytic iterations. It shaped the ways in which we framed and contextualized results, and we used it to develop concrete policy and practice recommendations for the DA's office that may begin to address the complexities of relying so heavily on criminal history as a key factor in decision-making.

FIGURE 2. FACTORS ACCOUNTED FOR IN THE ANALYSIS
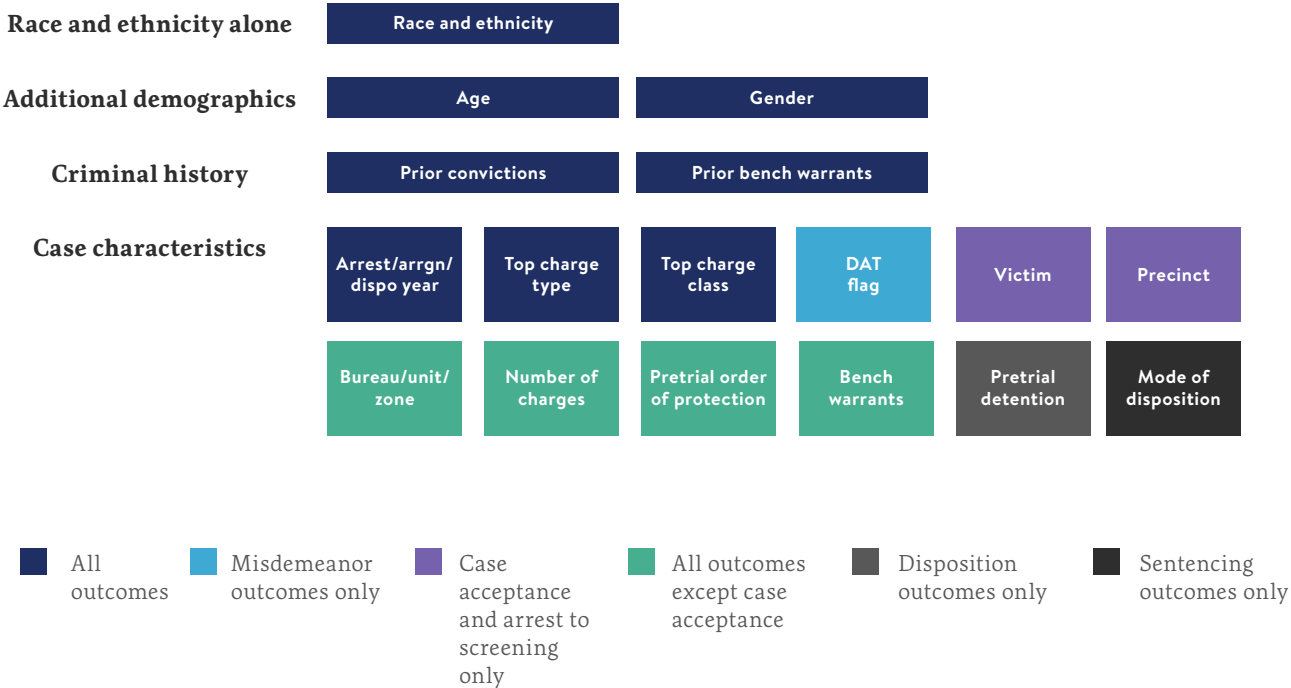
CASE FILE REVIEW

ISLG conducted three types of case file reviews to identify decision-making factors not captured in administrative data. Each review focused on a specific decision point within the prosecutorial process. In total, ISLG reviewed 252 paper case files. The first and largest review focused on plea-bargaining, while the latter two focused on 1) cases in which people were detained post-arraignment, and 2) cases that were dismissed. These latter reviews were smaller in scale and scope than the plea review.

- **Charge and Case Selection:** In all three types of reviews, ISLG selected cases for review by isolating specific charge types, allowing us to account for differences in outcomes based on charge. ISLG next sorted cases by race, ethnicity, and age (younger adult versus older adult) to select an equal number of cases within each racial and ethnic group, and a proportional number by age group. We then randomly selected cases within each group to review. We then selected cases for the plea, post-arraignment detention, and dismissal reviews as follows:

  » **Plea:** ISLG identified 102 grand larceny cases and 102 petit larceny cases for the plea-bargaining review—a number specified in ISLG's initial research plan based on capacity, time, and resources necessary for the contextual and qualitative nature of the review. ISLG and the DA's office chose larceny cases for the plea review because they are less likely to be heavily influenced by victim input than person-based crimes and therefore are more clearly influenced by prosecutorial decision-making.

  » **Detention Post-Arraignment and Dismissals:** ISLG selected 24 felony assault cases in which people were detained post-arraignment because there was a clear disparity in rates of detention for Black and Hispanic people compared to white people for this particular charge. ISLG then selected 24 misdemeanor criminal mischief cases (vandalism) that had been dismissed to explore whether reasons for dismissal might differ between Black and Hispanic people and white people. We were also interested in exploring whether these cases could have been declined at screening, thereby preventing further involvement in the criminal legal system, or whether they had been diverted, also a common reason for dismissal.

- **Data Collection:** ISLG recorded variables of interest for each case file review in a data collection tool to ensure consistency across reviewers. The information in the paper case files enabled us to consider numerous variables not present in the administrative data, including bail recommendations, plea offer charges and sentences, and the value and nature of damaged or stolen property, heightening our ability to explore and contextualize disparities in decision-making.

Specifically, information collected included:

» demographic details from NYPD arrest and complaint reports;

» narrative descriptions of incidents from ECAB Complaint Room Screening Sheets;

» prior arrests, convictions, and sentences from New York State Criminal History Records;

» employment and housing status, as well as recommendations for pretrial release from the NYC Criminal Justice Agency (CJA) interview sheets;

» bail amounts requested and set from the Chronological Record of Case sheets;

» dates, charges, and sentences of plea deals offered and accepted from Felony Waiver Unit File Outcards (for felonies), Court Part Information Sheet (for misdemeanors), status sheets; and

» additional information from email printouts and handwritten notes on the files, including negotiations with defense counsel, victim preferences and cooperativeness with prosecutors, and information about individuals' mental and physical health at the time the incident occurred and during the court process.

• **Analysis:** Analyses for all reviews included both descriptive quantitative and qualitative components.

» **Plea:** After compiling the datasets, ISLG quantified ways in which plea offers changed over time for different groups of people. To provide additional context and identify how specific factors may have contributed to disparities in plea outcomes, ISLG developed more qualitative case typologies, grouping cases by the circumstances and nature of the charges (e.g., stealing a car, shoplifting basic needs items, committing fraud).

» **Detention Post-Arraignment and Dismissal:** Given the limited sample size for these reviews, analyses focused on descriptive patterns and ultimately relied more on qualitative information to identify any additional circumstances that may explain differences in outcomes and provide context for the administrative data findings.
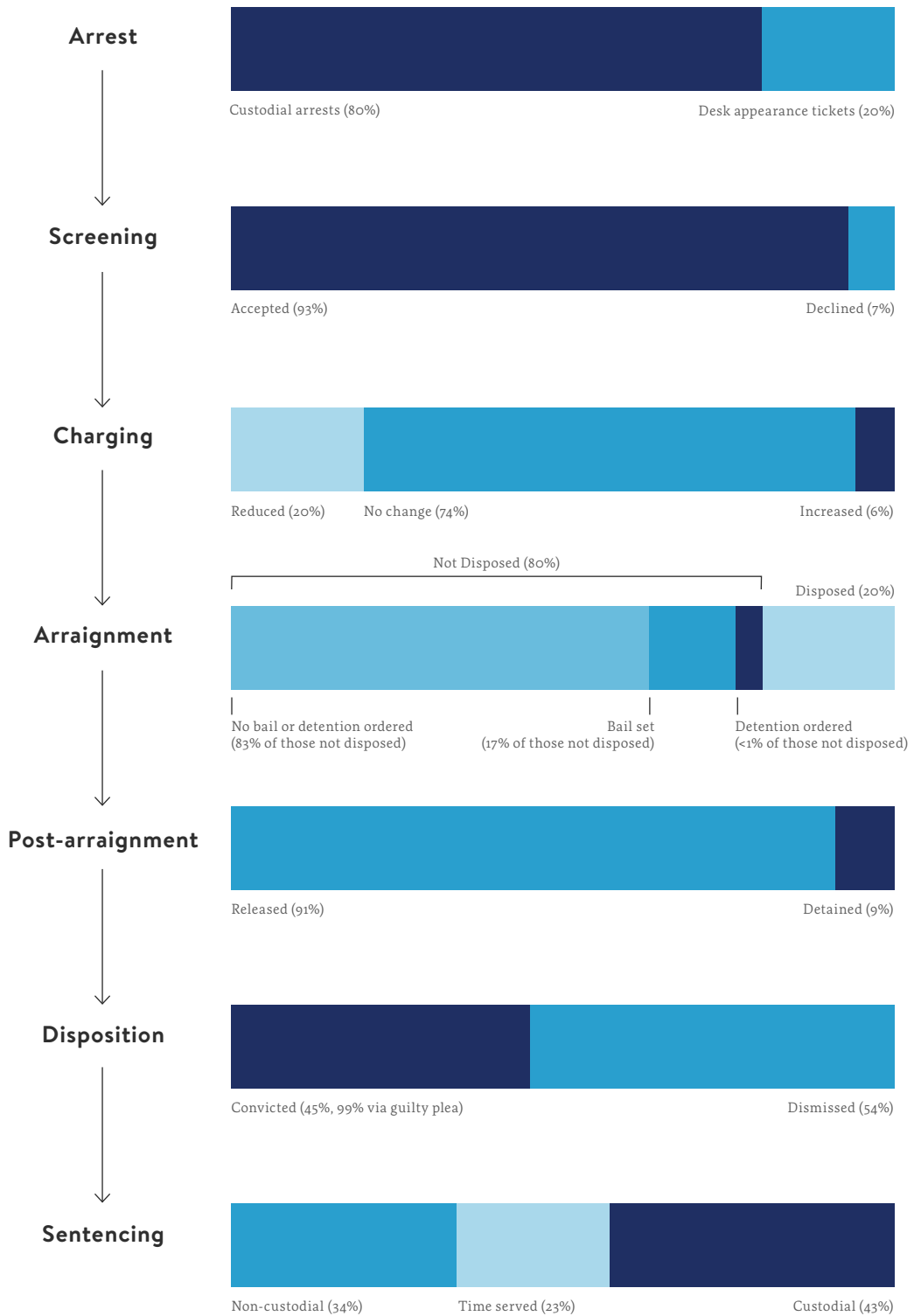
The Criminal Legal Process in Brooklyn

Brooklyn, also known as Kings County, is the largest of five boroughs in New York City. In fact, it is the largest county in New York State, with 2,736,074 residents reported in 2020.[17] Brooklyn is known for its diversity across a number of dimensions. According to the 2020 Census, the borough is currently comprised of 13.7 percent Asian, 26.7 percent Black, 18.9 percent Hispanic, and 35.4 percent white residents. There has been a slight shift over the past decade, with the Asian population the fastest growing of any demographic group across the borough.

In terms of law enforcement in Brooklyn, the New York State Division of Criminal Justice Services reported a total of 46,516 arrests—22,135 felonies and 24,381 misdemeanors—of people 18 and older in 2019, a total that declined to 32,199 in 2020 and was likely influenced, in part, by the coronavirus pandemic. That said, the reach of the criminal legal system in New York City, and in Brooklyn in particular, had already been consistently declining over the past decade, which can in part be attributed to the reform-minded philosophies adopted across criminal legal system actors in the borough, including the DA.

This section provides an overview of how misdemeanor and felony cases flow through Brooklyn's criminal legal system at the decision points explored in this study, particularly with respect to the ways in which prosecutors make or inform decisions. We present a visual depiction of this case flow in Figure 3. It is important to keep in mind that this description represents only those decision points included in our analysis. There are some important process points, such as diversion, that could not be included due to limited data availability. We present this summary to provide a broad understanding of how most cases flow through the system and to serve as a guide for how the remainder of the report is structured; however, movement through the below points is not always linear.

FIGURE 3. BROOKLYN CRIMINAL LEGAL SYSTEM PROCESS

Proportions based on data spanning January 2016 to June 2019

Arrest

Custodial arrests (80%)　　　　　　　　　　　　　　　Desk appearance tickets (20%)

Screening

Accepted (93%)　　　　　　　　　　　　　　　Declined (7%)

Charging

Reduced (20%)　　No change (74%)　　　　　　　　　　　Increased (6%)

Not Disposed (80%)　　　　　　　　　　　　　Disposed (20%)

Arraignment

No bail or detention ordered　　　　　Bail set　　　Detention ordered
(83% of those not disposed)　　　(17% of those not disposed)　　(<1% of those not disposed)

Post-arraignment

Released (91%)　　　　　　　　　　　　　　　Detained (9%)

Disposition

Convicted (45%, 99% via guilty plea)　　　　　　　　　Dismissed (54%)

Sentencing

Non-custodial (34%)　　　Time served (23%)　　　　Custodial (43%)

Most people first encounter the criminal legal system through contact with law enforcement.[18] Police officers can issue a summons or take a person into custody, at which point the officer may issue the person a Desk Appearance Ticket (DAT) or take them to Central Booking. Individuals given DATs are released from the local police precinct and instructed to appear in Criminal Court for arraignment. Individuals taken to Central Booking are held in custody until arraignment, which typically happens within 24 hours. In January 2020, legislation took effect in New York State requiring law enforcement to issue DATs for nearly all misdemeanor and non-violent E felony charges.

In New York City, prosecutors are ultimately responsible for determining whether a case will continue through the criminal legal process. After an arrest (regardless of type), the case is referred to the DA's office to determine whether to accept it. In Brooklyn, the DA's Early Case Assessment Bureau (ECAB) makes that decision, drawing on facts and details of the case provided by the police department and/or through ECAB's subsequent investigation and screening. ECAB may decline to file charges (also called "decline to prosecute") for a number of reasons (e.g., insufficient evidence, law enforcement breach of constitutionality, suitability for diversion). Declining to prosecute a case is a relatively rare (though growing) practice in Brooklyn. Although declination rates have increased slightly in recent years, particularly for misdemeanor charges, Brooklyn's case acceptance rate is still quite high compared to other jurisdictions nationally.[19]

In determining whether to accept a case, ECAB staff review the charges filed in the police report (referred to here as arrest charges). The screening assistant district attorney (ADA) may accept all or a portion of the charges presented and may decide to add additional charges with higher or lower severity than those assigned at arrest. This process may result in changes to the number and severity of charges on a case between arrest and screening.

Once a case is accepted and charges are filed, the case is arraigned in Criminal Court. This occurs for both felony and misdemeanor cases, even though many felony cases are ultimately disposed of in Supreme Court. At arraignment, cases can be continued for further court action or they can be resolved (i.e., disposed of) at the arraignment hearing through a plea, dismissal, or adjournment in contemplation of dismissal (ACD).[20] For cases that are not resolved at Criminal Court arraignment, ADAs review the available evidence and make bail requests to the judge, who will then make a decision about an individual's release conditions while their case is pending trial. Options for release decisions include release under pretrial supervision (which allows an individual to remain in the community with supervision and services), release on financial bond, release on the individual's own recognizance (ROR), or, in the most serious circumstances, remand to custody (meaning that the person will be detained without the option to be released on bail). Individuals who cannot post bail at arraignment or who

are remanded are sent to jail while their cases are processed or until they are able to pay bail or otherwise secure release.[21] It should be noted that the Brooklyn DA's office has a policy dating back to April 2017 of not seeking bail on misdemeanor and low-level felony cases; 2020 legislation now prohibits it statewide. Of course, there are exceptions, particularly with respect to domestic violence cases where there is perceived danger of immediate harm to the person experiencing abuse.

After arraignment in Criminal Court, the court process varies depending on the severity of a case. Brooklyn's Criminal Court has jurisdiction over misdemeanor cases, so these cases remain within the Criminal Court system and proceed towards trial. For individuals charged with a felony, on the other hand, Brooklyn's Supreme Court has ultimate jurisdiction, though many cases are resolved in Criminal Court before they are indicted. For cases to proceed to Supreme Court arraignment, they must be indicted by a Grand Jury; individuals may also waive the Grand Jury process and proceed right to Supreme Court arraignment on a Superior Court Information for the purposes of a guilty plea.[22] As with Criminal Court arraignment, felony cases may be resolved at Supreme Court arraignment if a plea agreement is reached. For those cases not resolved, the case goes to trial, though the vast majority of both misdemeanor and felony cases resulting in conviction are ultimately disposed of by plea.[23]

In both Criminal and Supreme Court, cases can result in a number of dispositions, including a guilty plea (through acceptance of a negotiated plea offer), case dismissal, or acquittal or conviction at the end of a trial (note that diversion may be a component of either a plea offer or dismissal). The most common outcomes for cases that resulted in a disposition between January 2016 and June 2019 were dismissal and conviction. A judge may convict someone on some or all of the charges associated with their case; when the conviction is by guilty plea, the maximum severity is usually reduced as part of the plea agreement between the prosecution and the defense. For example, someone may be charged with a Felony B offense but accept an offer to plead to a Felony C, avoiding conviction on a higher severity charge and becoming eligible for a lesser sentence. In some rare instances, a new, more severe charge may be added to a case, but this requires that the case be presented to the Grand Jury a second time for the additional charges to be added.

New York State law allows for several possible sentencing outcomes for convicted individuals, which we grouped into three categories for our analyses. Listed in order of least to most severe, these sentence types are non-custodial (e.g., fines, probation, conditional discharge with conditions like entering a program or making restitution), time served (i.e., credit for jail time served during the pre-trial phase prior to case resolution), and custodial (i.e., jail time for sentences under one year or prison time for longer sentences).

Results Roadmap

The results of the study and discussion are organized by decision point, from case acceptance to sentencing, to address the study's key research questions.

In addition to providing an initial summary of findings at each decision point, each section offers context about the prosecutor's role at each point in the process before identifying and describing observed differences in outcomes by race and ethnicity, including any patterns over time. Each section then presents how the impact of race and ethnicity changes when ISLG accounted for other factors (see Figure 2 for factors accounted for in the analysis). Finally, as relevant, we present the results of more detailed explorations that aimed to explain high-level trends by centering analyses on more specific crime types and penal law charges. For descriptive findings, we categorized results as meaningfully different if differences between groups were greater than 5 percent and framed findings as similar if differences between groups were less than 5 percent. While we also considered statistical significance, our 5 percent threshold was an even higher standard—a finding can be statistically significant without necessarily being practically meaningful enough to warrant major changes in practice. Each section ends with a brief discussion of policies or practices that may be driving patterns in the data.

The goal in each section is to illuminate the bigger picture trends that are most meaningful and important to the Brooklyn DA's office. Where disparities emerged, the intention was to dig deeper into those disparities and to present analysis to better understand the factors associated with those trends. For this reason, we do not discuss every analysis conducted. We present the detailed statistical models, including significance and magnitude, for each decision point in Appendix A and findings regarding the impact of race and ethnicity for different offense types (e.g., person offenses, drug offenses) at each decision point in Appendix B.

Each section includes common graphics that display:

Percentages: The actual percent of each racial and ethnic group who experienced each outcome, not accounting for other factors that might be associated with the outcome; we present percentages for Asian, Black, Black Hispanic, white, and white Hispanic people separately for misdemeanors, non-violent felonies, and violent felonies.

Relative Rate Indices (RRI): A ratio that compares the rate of each outcome for Asian, Black, Black Hispanic, and white Hispanic groups to the rate of each outcome for the white group. Generally speaking, RRIs above "1" indicate that the racial and ethnic group is more likely relative to white people to receive the outcome, RRIs below "1" indicate that the racial and ethnic group is less likely relative to white people to receive the outcome, and RRIs equal to "1" indicate that there is no difference between the groups. RRIs do not account for other factors. We present the rates underlying the calculation of RRIs in Appendix C.

Predicted Probabilities: To compare similarly situated Asian, Black, Black Hispanic, and white Hispanic groups to the white group, we generated expected rates per 1,000 cases for each racial and ethnic group across each outcome. These rates, called predicted probabilities, were grounded in the results of logistic or multinomial logistic regressions, which account for individual and case characteristics and factors associated with each outcome. To interpret the predicted probability, we provide the following example:

- For misdemeanors, the predicted probability for white people in pleading to a lesser charge is 870 per 1,000; while for Black people it is 855 per 1,000. This means that 15 fewer Black than white people charged with misdemeanors per 1,000 were likely to plead to a lesser charge accounting for other factors. This can also be translated into a percentage—87 percent of white people were likely to plead to a lesser charge compared to 85.5 percent of Black people, accounting for other factors. This result was statistically significant, though small in magnitude.

Findings

SECTION 1: CASE ACCEPTANCE AND INITIAL CHARGING

Summary of Findings

- Brooklyn prosecutors accepted the vast majority of cases, which means that any variations found were generally small.
- There were differences by race and ethnicity, however, with Black people brought to the office on misdemeanor and non-violent felony arrest charges less likely to have their cases accepted than white people, even after accounting for other demographics, criminal history, and case characteristics.
- When we examined different charge types, racial and ethnic differences were particularly apparent for both misdemeanor and felony drug cases; while felony drug cases aligned with the overall pattern, for misdemeanor drug cases—and marijuana cases in particular—Black and Hispanic people were more likely, rather than less likely, to have their cases accepted.
- When prosecutors did accept misdemeanor cases, they rarely changed the charge level or class from the arrest charge. However, prosecutors changed considerably more felony arrest charges at screening, with both non-violent and violent felony offenses having a higher rate of charge reduction at screening. In general, charges for Black and Hispanic people were more likely to stay the same or increase compared to white people.

Following an arrest, police refer cases to the prosecutor's office, where the prosecutor must decide whether to accept the case and what charges to file. Prosecutors may decline to prosecute a case, but if a case proceeds, prosecutors must decide whether to retain the arrest charges that law enforcement assigned, assign less severe charges (a reduction), or assign more severe charges (an increase) in the complaint document filed in court. Charge changes can be changes in charge level (e.g., felony to misdemeanor) or changes to the charge class within the level (e.g., felony B to felony C).

Are there racial and ethnic differences in screening outcomes? What do patterns look like when not accounting for other factors?

Case Acceptance

Overall, the office accepted over 90 percent of cases (92.8%) in the period examined, and rates for misdemeanors (92.0%), non-violent felonies (93.4%), and violent felony offenses (93.2%) were similarly high (see Figure 1.1). It is worth noting that the acceptance rate in Brooklyn is higher than in many other jurisdictions nationally,[26] though it is generally in line with those in other NYC boroughs, including Manhattan.[27] That said, declination rates increased between 2016 (6.0%) and 2019 (9.5%), and discussions with the office revealed recent efforts to increase declination rates, including through the use of pre-filing diversion and other specific charging policies. In 2018, for example, the office expanded its marijuana declination policy to include smoking in public in addition to possessing small amounts of the drug.[28] Further, beginning in 2017, the office declined to prosecute most theft of service (i.e., turnstile-jumping) cases.[29] Both of these policies impacted acceptance rates for misdemeanors and were implemented due to the recognized racial and ethnic disparities in these types of cases.

FIGURE 1.1. CASE ACCEPTANCE RATES BY CHARGE LEVEL AND YEAR OF ARREST
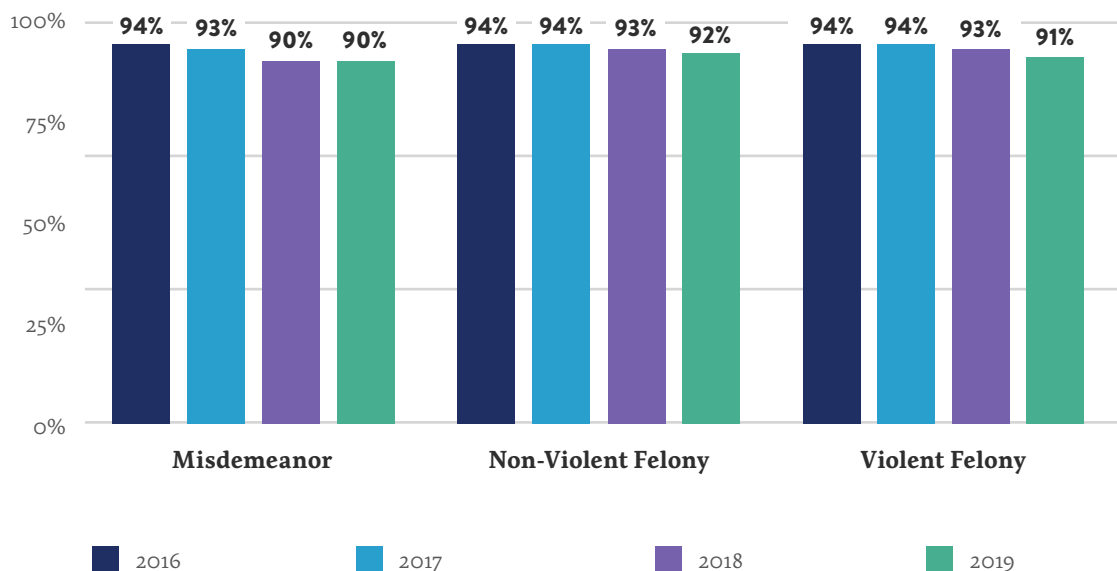
Across years, acceptance rates were similarly high for all racial and ethnic groups for misdemeanors, non-violent felonies, and felonies (see Figure 1.2).[30]

FIGURE 1.2. CASE ACCEPTANCE RATES BY CHARGE LEVEL FOR EACH RACIAL/ETHNIC GROUP
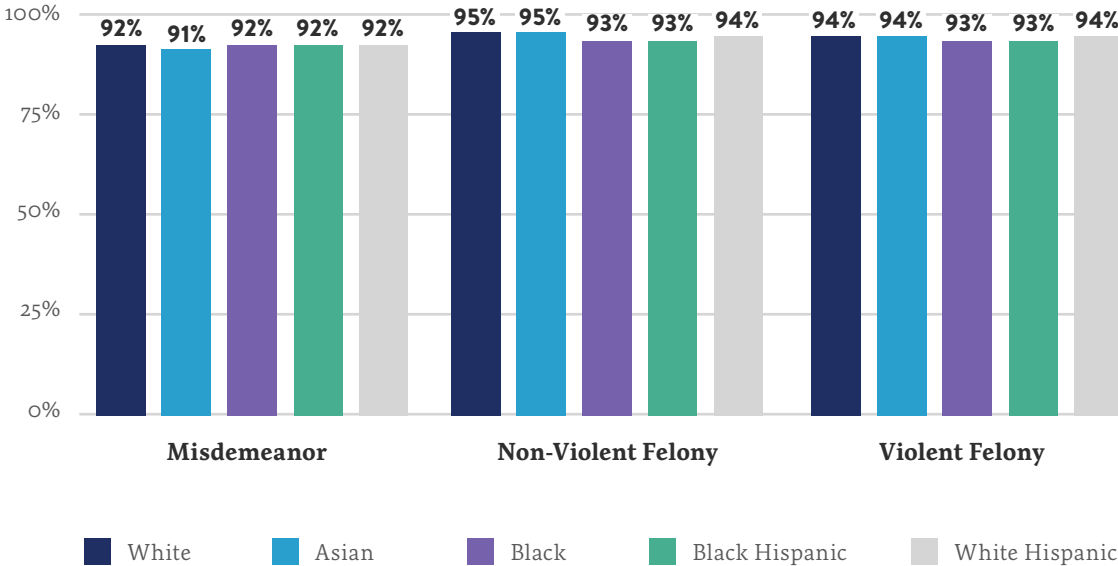
Charging: Arrest to Screening

Among misdemeanors, charging patterns were largely stable over time, with screening ADAs opting not to change the charge level or class for the vast majority of cases (see Figure 1.3). When they did make changes, screening ADAs were considerably more likely to deviate from the arrest charge for felonies, and there was more variability over time. For non-violent felonies, charges were reduced for just over half of cases (53.3%) in 2016, while in 2019 charges were reduced for roughly two-thirds of cases (65.1%), a 22 percent increase in the likelihood of a charge reduction. Among violent felony offenses, charge reductions were 15 percent more likely over time, from 43 percent (43.4%) in 2016 to almost 50 percent (49.9%) in the first half of 2019. Charge increases were 31 percent less likely (8.6% to 5.9%). In light of these findings—and, specifically, the relative lack of changes in charge for misdemeanors—all further discussion of charge changes between arrest and screening focuses on felonies.

FIGURE 1.3. CHARGE CHANGE RATES BY YEAR OF ARREST
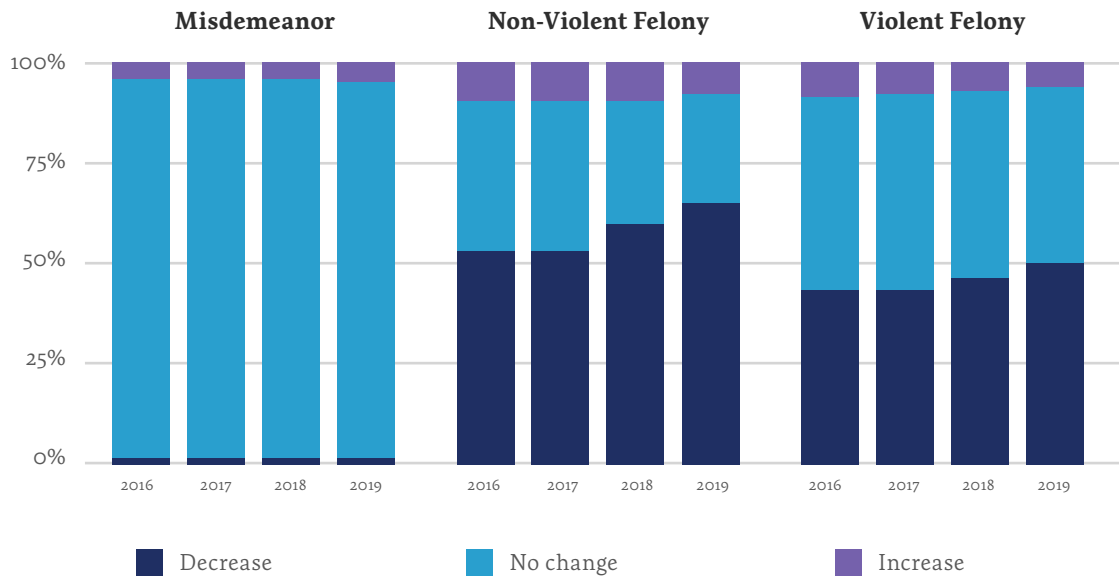
Among felonies, the likelihood of charge changes differed somewhat across racial and ethnic groups (see Figure 1.4). For non-violent felony arrests, Black Hispanic people were 6 percent less likely than white people to have their charges reduced, while rates for Black and white Hispanic people were similar to white people. For violent felony arrests, both Black and Hispanic people were less likely to experience a reduction in charges, and the magnitude was greater than for non-violent felonies.[31] Specifically, Black and white Hispanic people charged with a violent felony were 10 percent less likely to experience a charge reduction than white people, and Black Hispanic people were 11 percent less likely to experience a charge reduction than white people.

FIGURE 1.4. RELATIVE RATE INDICES (RRI) COMPARING THE PERCENTAGE OF FELONY ARRESTS WITH REDUCED CHARGES FOR EACH RACIAL/ETHNIC GROUP TO THE PERCENTAGE FOR WHITE PEOPLE

Numbers higher than one mean charges were more likely to be reduced relative to white people, while numbers less than one mean they were less likely relative to white people.
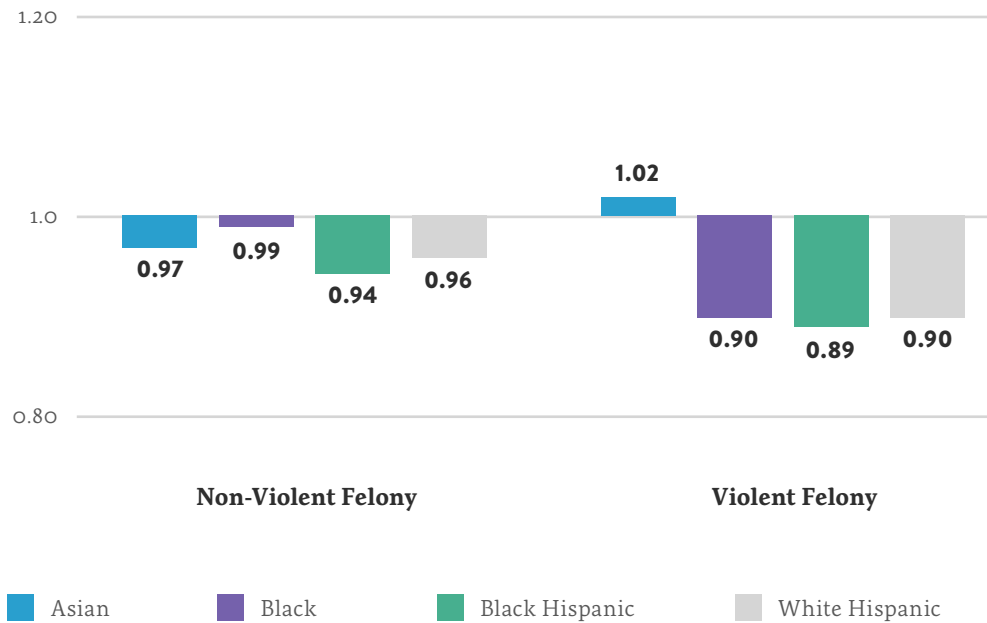
How do racial and ethnic differences in screening outcomes change when accounting for other factors?

Case Acceptance

When we accounted for other factors,[32] there were no racial and ethnic differences in case acceptance for violent felony offenses. We did find statistically significant differences for misdemeanors and non-violent felonies, but it is important to note that the magnitudes of these differences were quite small and not much different numerically from those found for violent felonies. That said, for non-violent felonies, Black and Black Hispanic people were somewhat less likely than white people to have their cases accepted, while differences for misdemeanors were found for Black people only. Figure 1.5 shows the likely number of people that would have their cases accepted for prosecution out of 1,000 people from each racial and ethnic group accounting for other key factors.

FIGURE 1.5. PREDICTED NUMBER OF CASES ACCEPTED OUT OF 1,000 PEOPLE FOR EACH RACIAL/ETHNIC GROUP

Numbers for each racial/ethnic group represent the predicted number of accepted cases out of 1,000 screened cases after controlling for other case and defendant factors. Patterned bars represent statistically significant differences from the expected number of white people who would have their cases accepted.
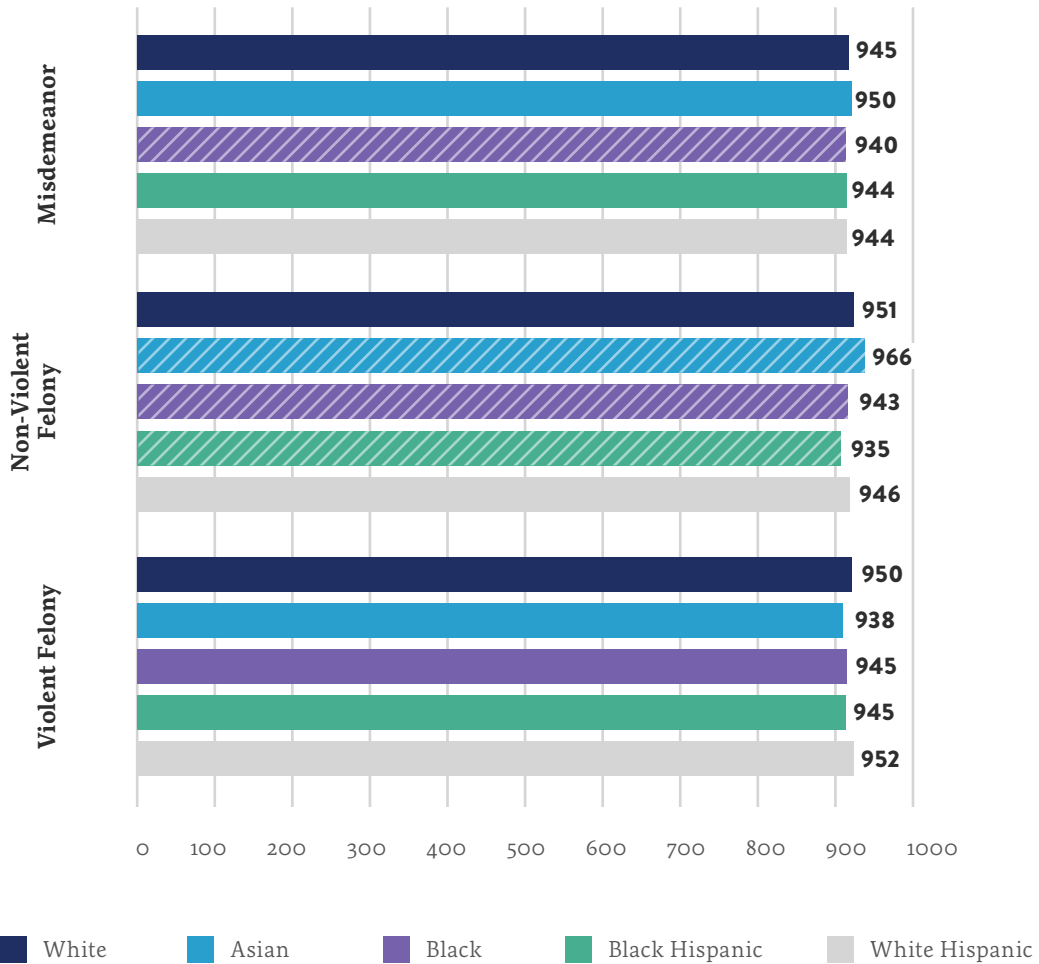
While there is no single reason for the differences we found in acceptance rates for misdemeanors and non-violent felonies across groups, it is possible that prosecutors may be correcting for disparities in enforcement[33] or other police practices related to race, ethnicity, or neighborhood. For example, we found that the arresting precinct had a significant impact on the likelihood of the case being declined for prosecution for both misdemeanors and felonies; when the highest volume precincts (i.e., those with the highest percentage of arrests) were accounted for, higher misdemeanor acceptance rates were found for the 84th precinct, covering Brooklyn Heights and Boerum Hill, a comparatively more affluent, less heavily

policed, and more commercial area, and lower rates for the 67th and 75th precincts, covering East Flatbush and East New York, less affluent and more heavily policed areas. For felonies, lower acceptance rates were found for the 67th, 75th, and 77th precincts, the latter of which represents Crown Heights, all of which are comparatively less affluent and more heavily policed neighborhoods.[34] Moreover, ADAs were more likely to cite lack of prosecutorial merit (listed in the data as "The Office of the District Attorney declines in the interest of Justice") as a reason for declining cases involving Black and both Black and white Hispanic people than for those involving white people (see Figure 1.6); these differences were particularly notable for misdemeanors. For Black and white Hispanic people, prosecutors were also more likely to decline felony cases due to a determination that an unlawful search or seizure had been made (although for misdemeanors, ADAs were less likely to decline cases due to unlawful search or seizure determinations for Black and Hispanic people).

We did not generally observe racial and ethnic differences in prosecutors' most common reasons for declination: insufficient evidence or other evidentiary issues (53.0%), and issues related to witnesses (22.7%; e.g., complaining witness declines to prosecute), although the latter was more common for Asian people. Theft of services was an exception in that the office was less likely to cite reasons related to theft of services for Black and Hispanic people, but examination of actual declination rates over time revealed that there had been substantial racial and ethnic differences in 2016 that decreased considerably over time, with the reverse pattern found in 2018 (i.e., more declinations for theft of services cases involving Black and Hispanic people). This is consistent with the office's decision to decline most turnstile-jumping cases in 2017, which meant that the volume of these cases decreased considerably, going from 7,383 in 2016 to 2,133 in 2018; the numbers were too small in 2019 to draw conclusions.

FIGURE 1.6. RELATIVE RATE INDICES (RRI) COMPARING THE PERCENTAGE OF DECLINED CASES BY REASON FOR EACH RACIAL/ ETHNIC GROUP TO THE PERCENTAGE FOR WHITE PEOPLE

Numbers higher than one mean the reason was given more often relative to white people, while numbers less than one mean it was given less often relative to white people.
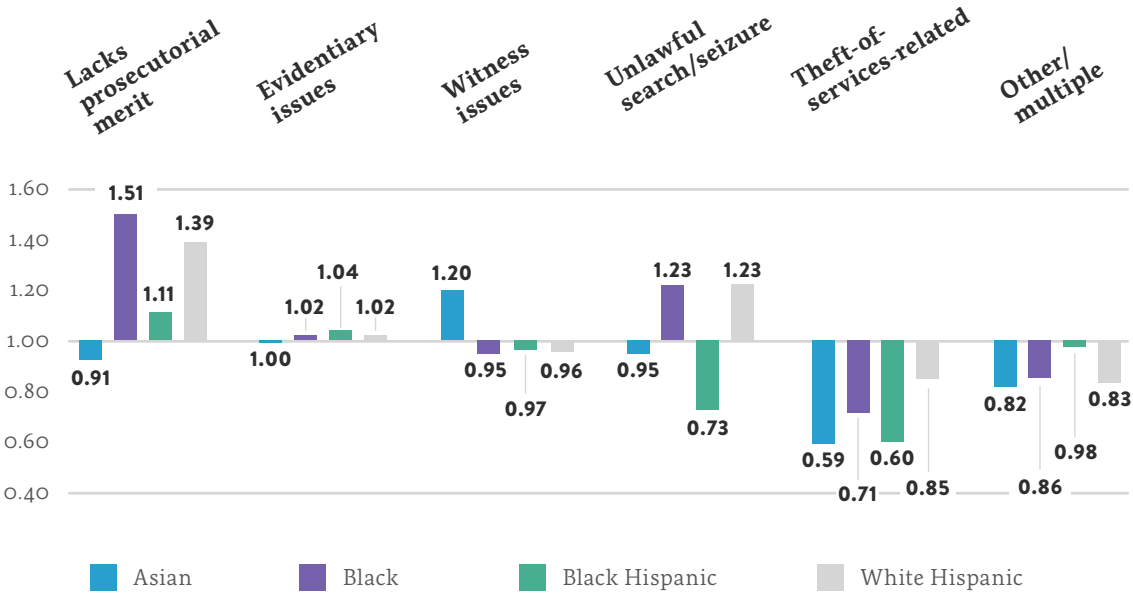

Charging: Arrest to Screening

Because misdemeanor charges are not likely to be reduced or increased, this section focuses on felony charges. For felony charges, when other factors were accounted for,[35] Asian, Black, Black Hispanic, and white Hispanic people were significantly more likely than white people to have their charges stay the same or increase and less likely to experience charge reductions. When we examined non-violent felonies and violent felonies separately, however, differences between groups were significant only for non-violent felonies, and the difference for white Hispanic people was no longer significant for either type of felony. Figure 1.7 illustrates the differences in rates of charge reduction by racial and ethnic group for every 1,000 individuals, controlling for other factors. For non-violent felonies, Asian people were 12 percent less likely and Black and Black Hispanic people about 6 percent less likely to experience a charge reduction between arrest and screening.

FIGURE 1.7. PREDICTED NUMBER OF CHARGE REDUCTIONS OUT OF 1,000 PEOPLE FOR EACH RACIAL/ETHNIC GROUP

Numbers for each racial/ethnic group represent the predicted number of reductions out of 1,000 cases after controlling for other factors. Dark blue bars represent statistically significant differences from the expected number of white people who would have their charges reduced.
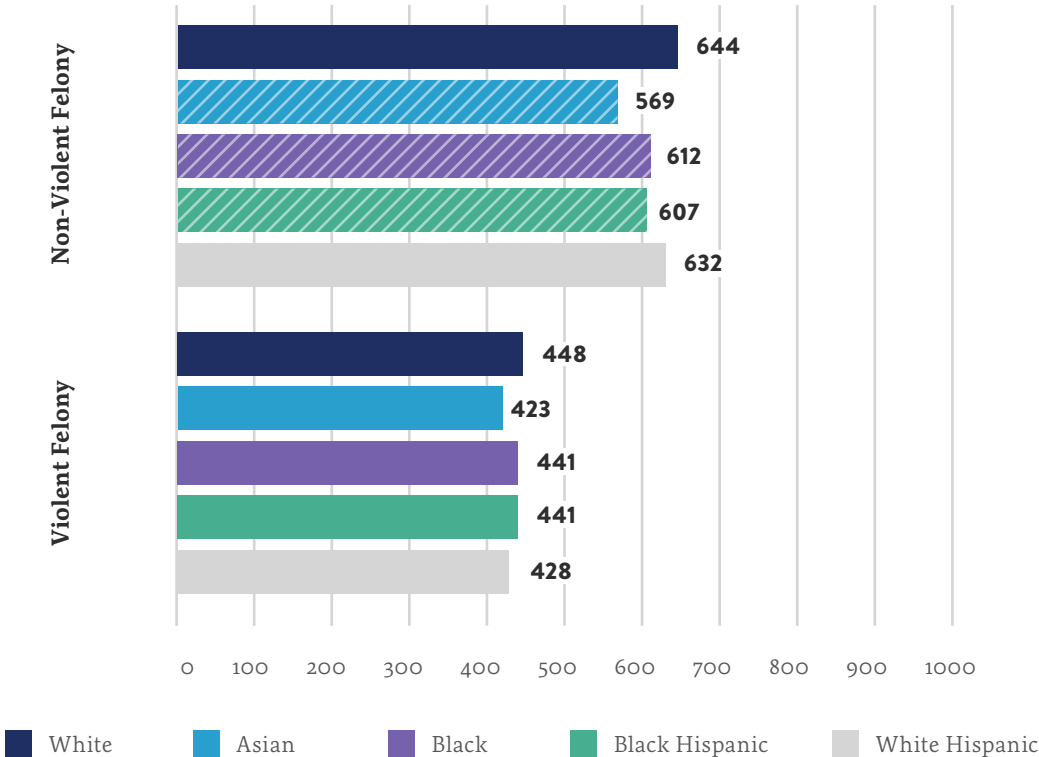

Examination of Offense Types and Specific Charges

When examining disparities by offense type, accounting for other factors, racial and ethnic differences were most apparent for drug offenses, though the patterns varied for misdemeanors and felonies within that offense type. For **felony drug offenses**, prosecutors were less likely to accept cases in which Black and Black Hispanic people were accused of crimes, similar to the overall pattern for felonies and case acceptance more broadly. In contrast, for **misdemeanor drug offenses**, once we accounted for additional factors, prosecutors were more likely to accept cases in which Black, Black Hispanic, and white Hispanic people were accused of crimes; it was only after these factors were accounted for that the pattern changed.

It appears that the pattern of higher case acceptance rates for misdemeanor drug offenses may be driven by **misdemeanor marijuana possession**. Even after we accounted for other factors, Black, Black Hispanic, and white Hispanic people were all more likely to have their cases accepted for this charge than white people were

(see Figure 1.8). Beyond that, the disparity for Black people in particular got larger in 2018: Prosecutors were 18 percent more likely to accept cases in which Black people were accused of **misdemeanor marijuana possession** than similarly situated cases in which white people were accused, compared to 7 percent more likely in 2016. This increased disparity was noted alongside an overall decline in the volume of cases during that year, going from 4,884 in 2016 and 5,433 in 2017 to 2,900 in 2018—likely due at least in part to the office's expanded marijuana declination policy and corresponding drops in arrest rates, since law enforcement might be more reluctant to bring in cases they knew would be declined; the number of cases was low enough in 2019 that meaningful comparisons among groups could not be made (only 260 cases were brought to the office in the first half of 2019).

FIGURE 1.8. DIFFERENCE IN THE PREDICTED CASES ACCEPTED OUT OF 1,000 PEOPLE FOR EACH RACIAL/ETHNIC GROUP COMPARED TO WHITE PEOPLE FOR MISDEMEANOR DRUG AND MARIJUANA POSSESSION OVERALL, AND IN 2016 AND 2018

Note: We used 2018 data instead of 2019 for comparison purposes due to smaller numbers of people in 2019. Patterned bars represent differences that were statistically different from the findings for white people.
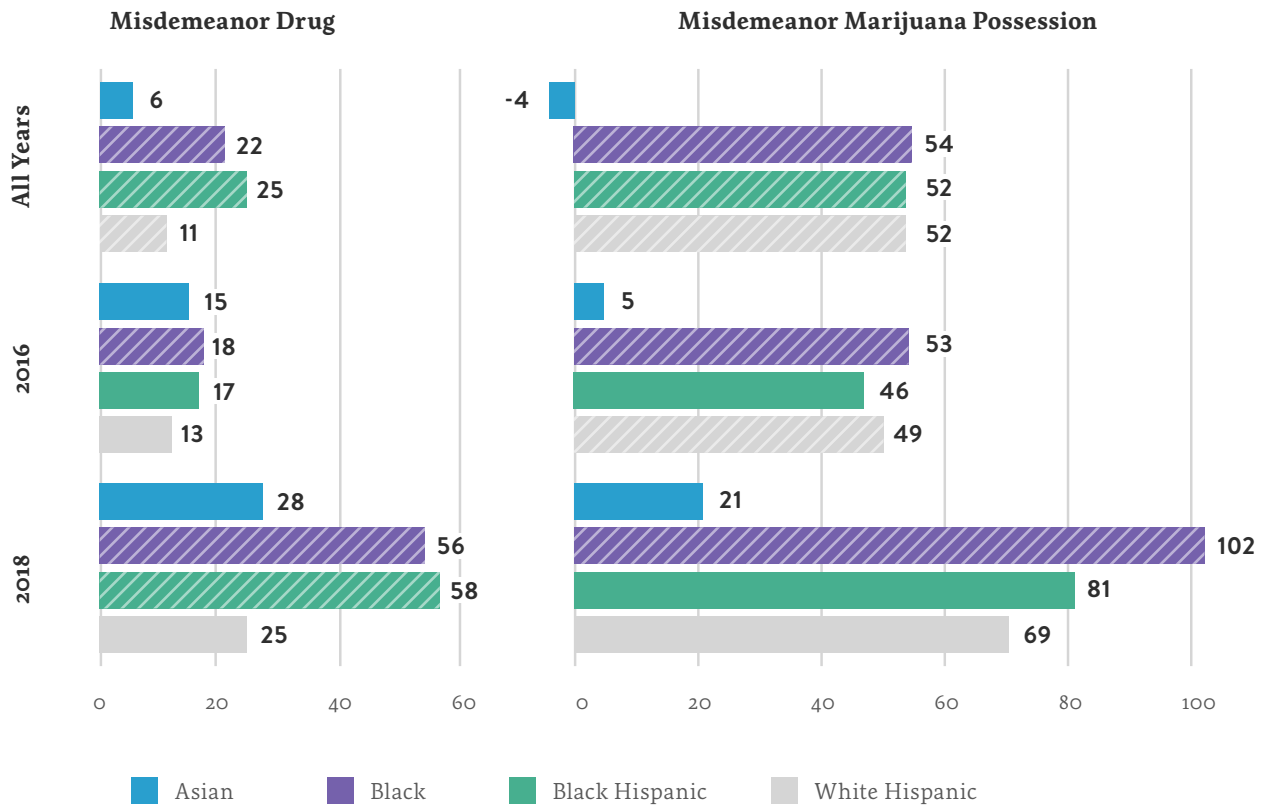
Discussion

Overall, we found different patterns for non-violent felonies and violent felonies at the point of case screening. Broadly speaking, for non-violent felonies, prosecutors were less likely to accept cases in which Black and/or Hispanic people were accused of crimes than cases in which white people were accused, but among cases they did accept, they were less likely to decrease the charges against Black and/or Hispanic individuals. Particularly in light of the fact that the differences in case acceptance were so slight, cumulatively they may have ended up with worse outcomes than white people at the point of initial acceptance and charging (i.e., the greater magnitude of the disparity in charge reductions may have outweighed any advantages arising from lower case acceptance rates). For violent felonies, on the other hand, we did not find differences at the point of screening by race or ethnicity, either in case acceptance or in initial charging patterns; cumulatively, then, Black, Hispanic, and white people accused of violent felonies ended up with similar outcomes for this decision point.

Among misdemeanors, once demographics, criminal history, and case characteristics were accounted for, prosecutors were less likely to accept cases in which Black people were accused of crimes. It is possible that prosecutors in these cases were correcting in some way for law enforcement practices, such as for comparatively high levels of enforcement in some neighborhoods, as evidenced by differences in acceptance rates by police precinct, or a greater likelihood of problematic arrests, as evidenced by a greater likelihood of declination due to lack of prosecutorial merit or unlawful search and seizure.

Misdemeanor drug offenses, and particularly misdemeanor marijuana offenses, exhibited a different pattern than what was found for cases overall. For these offenses, prosecutors were more likely to accept cases in which Black and Hispanic people were charged. This disparity relates to an important example of a prosecutor's office changing its practices based on insights gleaned from data. Marijuana possession is an example of an offense where racial and ethnic disparities have long been seen in enforcement and prosecutorial practices, and we found evidence for these disparities in our data. Conversations with the office revealed that knowledge of these disparities played a big role in the office's decision to adopt a policy of declining marijuana possession cases and to expand that policy to cases involving smoking in 2018. The office further indicated that its practice of routinely declining to prosecute these cases also impacted police practices, making them less likely to arrest people on marijuana charges. In response to this policy change, the number of cases involving marijuana declined dramatically, and these declines are expected to have continued following the period represented in this dataset.

Summary of Findings

- Roughly one in 20 people charged with a misdemeanor were detained post-arraignment compared to one in five charged with a non-violent felony and one in four charged with a violent felony; for violent felonies, these rates increased considerably from 2016 to 2019, with almost a third detained in 2019.
- Black and Hispanic people were more likely to be detained post-arraignment, although for misdemeanors these disparities were not present for white Hispanic people. Once other factors were accounted for, Black and white Hispanic people charged with a non-violent felony and white Hispanic people charged with a violent felony were more likely to be detained; no significant disparities were found for misdemeanors.
- Bail is likely a driver of some of these disparities, as we found that judges were more likely to set bail for Black and Hispanic than white or Asian people. That said, among those who received bail, Asian people had the highest amount of bail set for misdemeanor and non-violent felonies, while Black people had the highest bail set for violent felonies.
- Within specific offense types, there were notable differences for felony person and felony "other" offenses, with both Black people and white Hispanic people more likely than white people to be detained. Within those types, two of the most common charges were 2nd degree assault and 1st degree criminal contempt; for both charges, Black people were more likely to be detained. For criminal contempt, which is often associated with violations of orders of protection, disparities were larger for domestic violence cases.

At arraignment, the prosecutor makes a recommendation to the judge about whether an individual charged with a crime should be released and under what conditions (i.e., their own recognizance, under supervision), whether bail should be set, and in what amount, or, in the most serious cases, whether they should be remanded to custody without the possibility of release on bail. Post-arraignment detention refers to individuals who are remanded to custody and those who are unable to make bail, as well as those with $1 bail, which is generally what is set when an individual is already being held for another reason such as a pending charge on a different case. The judge is responsible for the ultimate release decision at arraignment.

Are there racial and ethnic differences in post-arraignment detention? What do patterns look like when not accounting for other factors?

Overall, judges' release decisions and terms following arraignment differed considerably by charge type. Perhaps not surprisingly, release on recognizance rates declined as charges became more serious—judges released almost nine in 10 individuals charged with misdemeanors on their own recognizance compared to six in 10 individuals charged with non-violent felonies and five in 10 charged with violent felonies (see Figure 2.1). The opposite pattern emerged for cases where judges remanded or set bail (regardless of whether individuals were able to make bail). Almost half (49.2%) of individuals charged with violent felonies had one of these two outcomes compared to just over one in three charged with non-violent felonies and only one in 10 charged with misdemeanors; these outcomes resulted in detention following arraignment for roughly a quarter of individuals charged with violent felonies (26.6%), one in five charged with non-violent felonies (20.4%), and one in 18 charged with misdemeanors (5.6%).

To further explore racial and ethnic disparities in detention post-arraignment, ISLG conducted a small case file review of 24 case files where people had been detained for a charge of felony assault—a charge for which disparities were particularly pronounced. As relevant, results from this review will be noted throughout this section.

FIGURE 2.1. PERCENTAGE OF PEOPLE RECEIVING EACH DECISION AT ARRAIGNMENT BY CHARGE LEVEL

Boxes depict the percentage detained following arraignment across more specific categories.

Legend: Remanded without bail · $1 bail · Jail in lieu of bail · Bail set · Supervised release · ROR
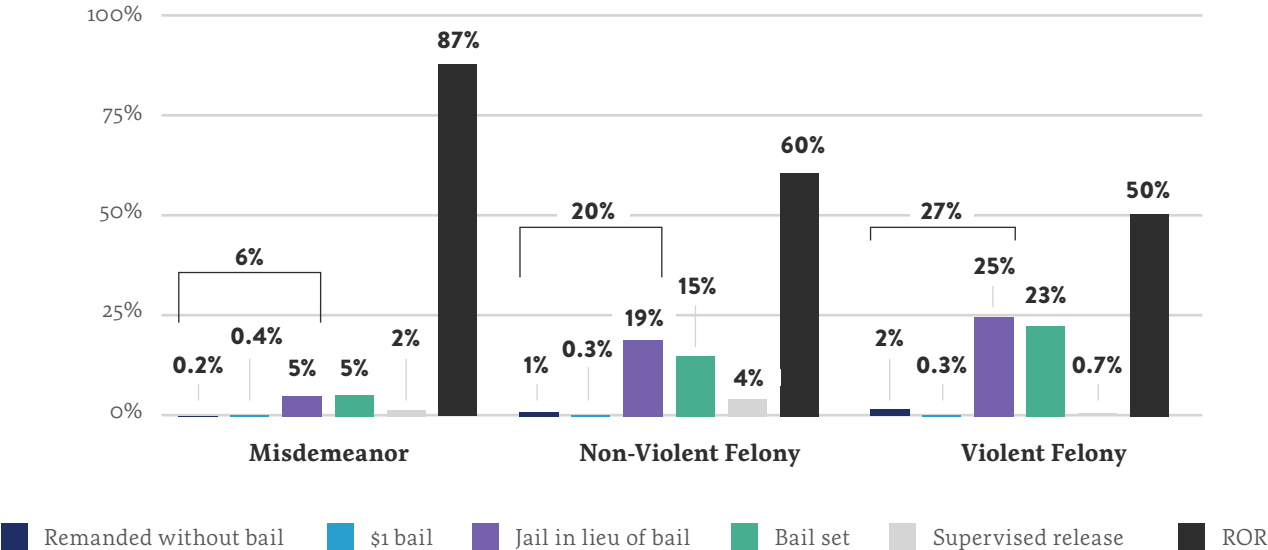
Over time, post-arraignment detention rates tended to stay consistent, except in the case of violent felonies, where they increased considerably: in 2016, just over one in five individuals charged with a violent felony were detained, but by 2019 the rate had risen to almost one in three (see Figure 2.2).
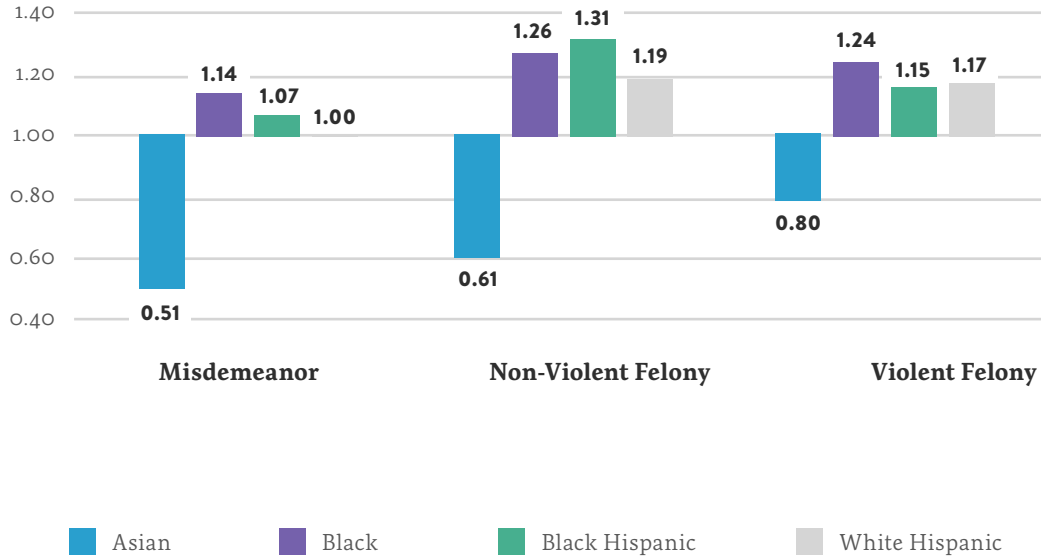
FIGURE 2.2. POST-ARRAIGNMENT DETENTION RATES BY CHARGE LEVEL AND ARRAIGNMENT YEAR
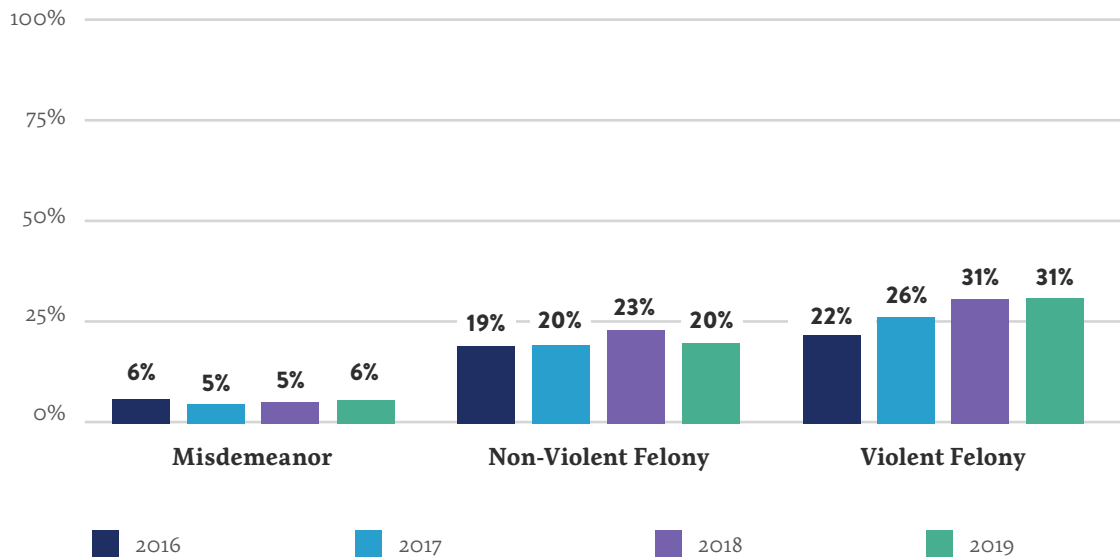
When we broke post-arraignment detention rates down by race and ethnicity, Black and both Black Hispanic and white Hispanic people charged with a felony were more likely to be detained for both non-violent and violent felonies, although for misdemeanors, disparities were limited to Black individuals (Hispanic and non-Hispanic) (see Figure 2.3). Asian people were less likely to be detained. There were no consistent patterns over time, and so we do not present results broken out by year.

FIGURE 2.3. RELATIVE RATE INDICES (RRI) COMPARING THE PERCENTAGE OF PEOPLE DETAINED POST-ARRAIGNMENT FOR EACH RACIAL/ETHNIC GROUP TO THE PERCENTAGE FOR WHITE PEOPLE

Numbers higher than one mean people were detained more often relative to white people, while numbers less than one mean they were detained less often relative to white people.

	Misdemeanor	Non-Violent Felony	Violent Felony
Asian	0.51	0.61	0.80
Black	1.14	1.26	1.24
Black Hispanic	1.07	1.31	1.15
White Hispanic	1.00	1.19	1.17

To better understand the context around disparities in detention outcomes, we reviewed case files for 24 people charged with felony assault who were detained post-arraignment. We found that Black individuals more often had documented case circumstances that may have resulted in prosecutors taking the allegations more seriously (e.g., a weapon was used, defendant made incriminating statements), more often had NYPD arrest sheet documentation of escalating violence and victims expressing fear, more often had prior interactions with the criminal legal system (e.g., prior jail incarceration), and more often had a prior history of failures to appear in court. As mentioned earlier in this report, Black and Hispanic people were more likely to have prior criminal legal system contacts, which may, in turn, exacerbate racial disparities. Hispanic people experienced fewer serious case circumstances than Black people, but more than white people. While it is possible that differences in case characteristics by race and ethnicity may partially account for other findings in this report, it was not possible to explore this further given the limited information available in the administrative data, or to draw conclusions based on the small sample of cases explored.

We were also able to examine recommendations made by the Criminal Justice Agency (CJA), New York City's pretrial services agency. CJA evaluates people charged with crimes prior to arraignment and makes release recommendations to prosecutors and the court. Interestingly, Hispanic people were the only ones for whom the ultimate detention outcome consistently matched the CJA recommendation. Out of eight Hispanic individuals in the cases we analyzed, none were recommended by CJA for release on their own recognizance and then detained, compared to three out of eight Black individuals and five out of eight white individuals.

Bail as the Gatekeeper

For many people charged with a crime, ability to pay bail makes the difference between release and detention. In Brooklyn, of individuals detained following arraignment, more than nine in 10 (91.4%) were jailed because they were not able to pay bail.[36] When we looked at trends over time, judges set bail in a smaller percentage of cases from 2016 to 2019 (see Figure 2.4). The decrease was particularly notable for misdemeanors and non-violent felonies for which rates dropped by 39 and 34 percent, respectively. At the same time, the average bail amount increased over time, particularly for non-violent felonies (see Figure 2.4). It is likely that both of these changes relate to a policy of not seeking small amounts of bail enacted by the Brooklyn DA's office during this period, as described further in the discussion section below.

FIGURE 2.4. THE PERCENTAGE OF PEOPLE ASSIGNED BAIL AND THE AVERAGE BAIL AMOUNT SET (BOTH EXCLUDING $1 BAIL) BY CHARGE LEVEL AND ARRAIGNMENT YEAR

Percentage of people receiving bail

Average bail amount

Legend: ■ 2016   ■ 2017   ■ 2018   ■ 2019
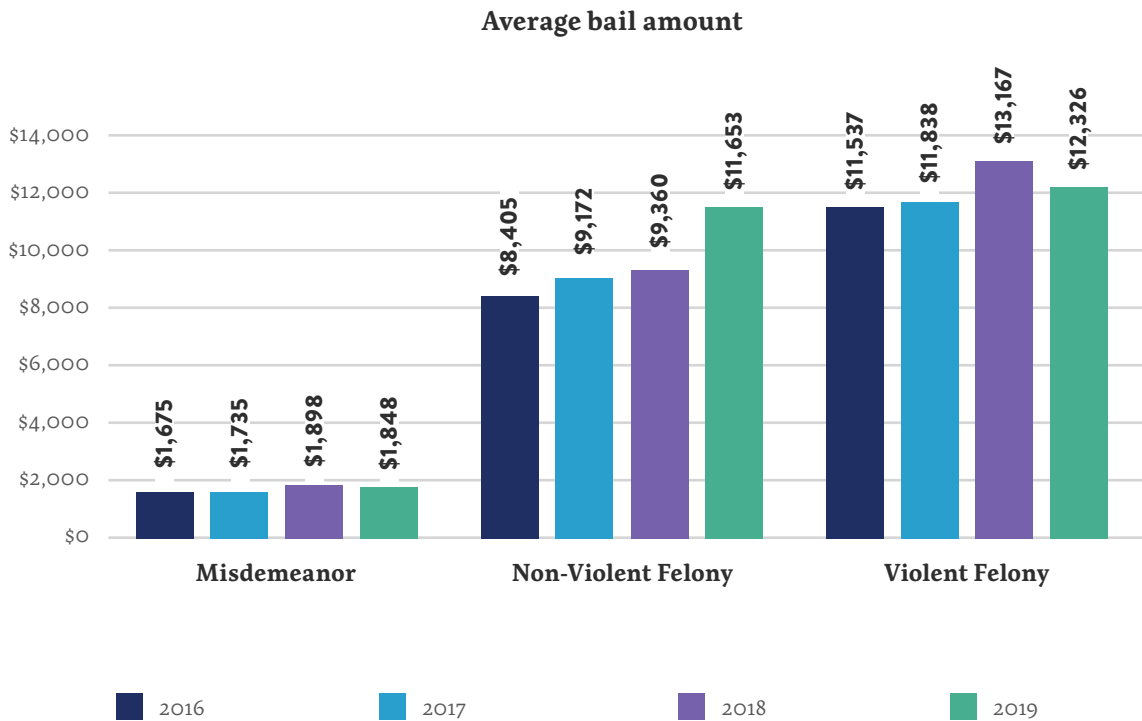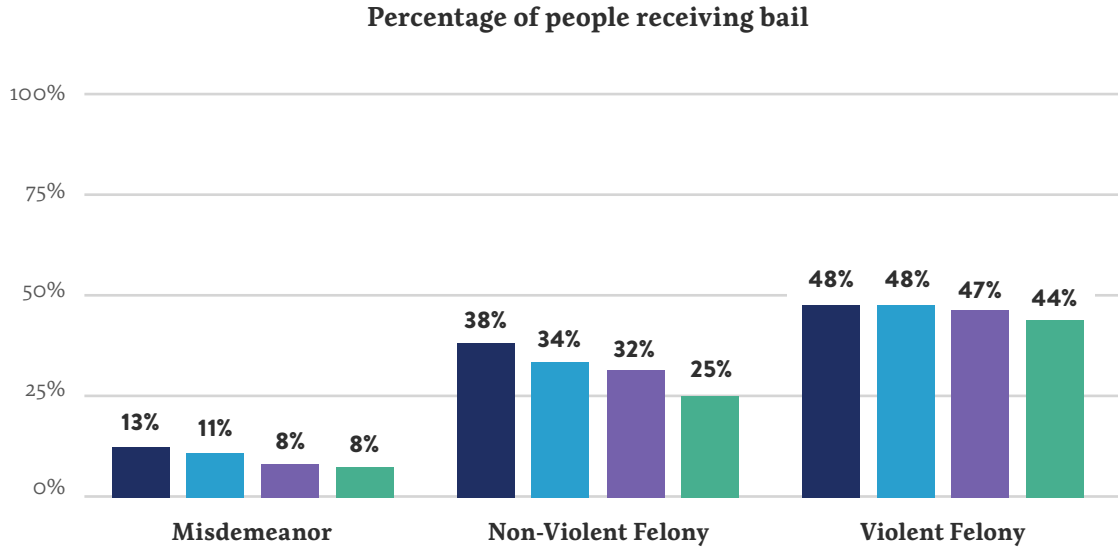
Judges were generally more likely to set bail for Black people and Hispanic people than for white people, and least likely to set it for Asian people (see Figure 2.5), consistent with the patterns we saw in who was detained following arraignment.

While Asian people were least likely to receive bail, among those who did, this group had the highest average amount set for misdemeanors and non-violent felonies—one of the few places where Asian people had consistently worse outcomes. Differences in amounts for those charge levels were inconsistent for the other groups as compared to white people: for misdemeanors, the amounts were similar across groups, while for non-violent felonies, amounts were 10 percent higher than white people for Black Hispanic people, 9 percent lower for white Hispanic people, and similar for Black people (see Figure 2.5). With that said, Black people had the highest bail set for violent felonies—17 percent higher than the amount set for white people charged with violent felonies. What this suggests is that while having bail set plays a role in driving disparities in post-arraignment detention, the actual amount set may not always be the determining factor in whether someone is ultimately detained. For example, Black people were more likely than white people to be detained for non-violent felonies, but the average amount of bail they were assigned was similar, suggesting that ability to pay makes more of a difference.

FIGURE 2.5. THE PERCENTAGE OF PEOPLE ASSIGNED BAIL AND AVERAGE BAIL AMOUNT SET (BOTH EXCLUDING $1 BAIL) BY CHARGE LEVEL AND RACIAL/ETHNIC GROUP

Percentage of people receiving bail


Average bail amount
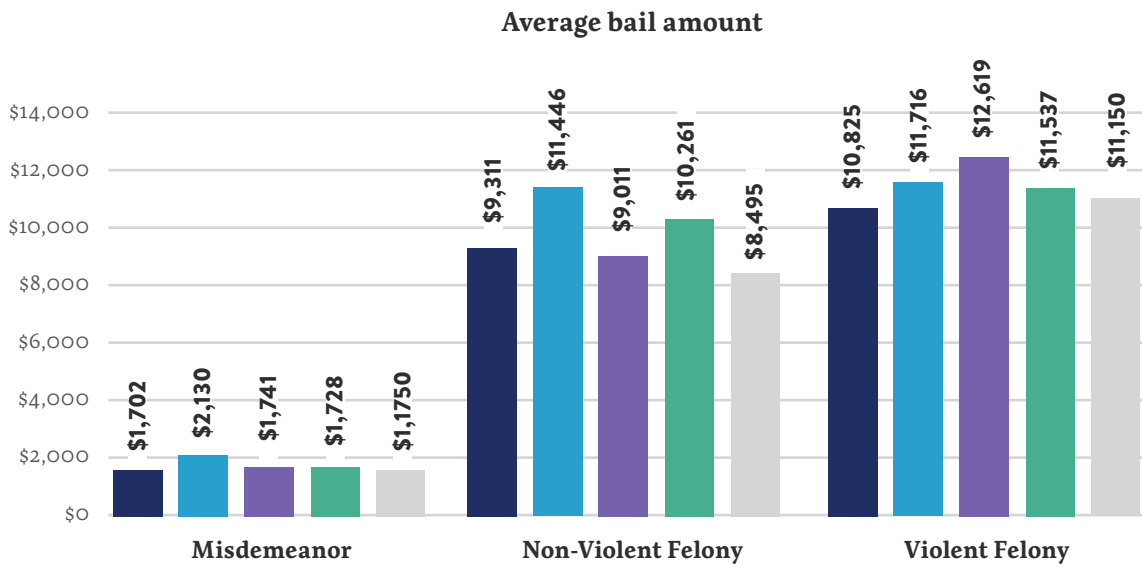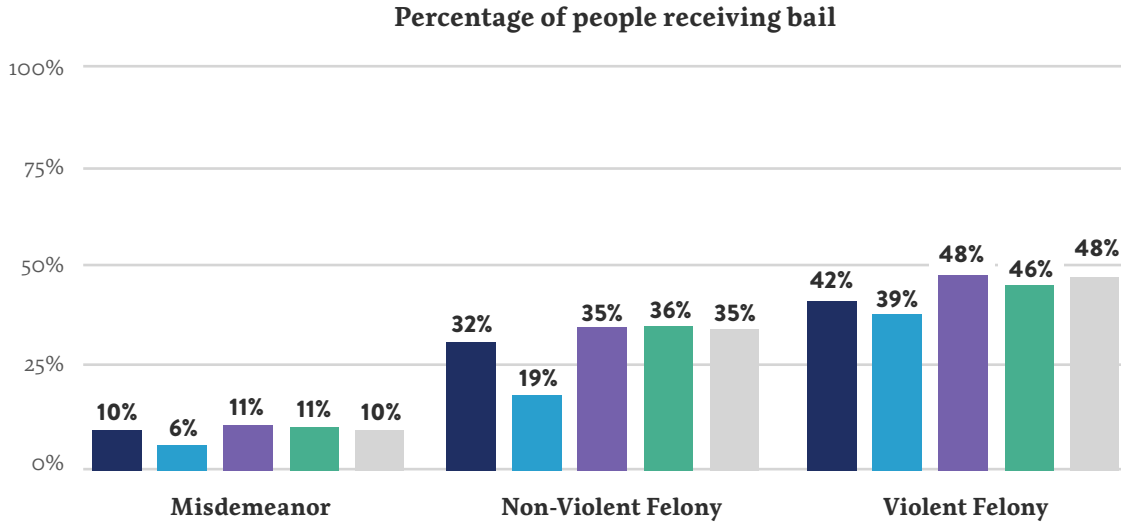
White   Asian   Black   Black Hispanic   White Hispanic

How do racial and ethnic differences in post-arraignment detention change when accounting for other factors?

When we statistically accounted for other factors,[37] racial and ethnic disparities were somewhat less pervasive, but they were still present for felonies. For non-violent felonies, Black and white Hispanic people were significantly more likely to be detained post-arraignment than white people were—22 percent and 23 percent more likely, respectively. For violent felonies, differences were only significant for white Hispanic people, for whom detention was 23 percent more likely. Figure 2.6 shows the likely number of individuals that would be detained post-arraignment out of 1,000 from each racial and ethnic group after accounting for other key factors.

FIGURE 2.6. PREDICTED NUMBER OF POST-ARRAIGNMENT DETENTIONS OUT OF 1,000 PEOPLE FOR EACH RACIAL/ETHNIC GROUP

Numbers for each racial/ethnic group represent the predicted number of detentions out of 1,000 cases after controlling for other factors. Patterned bars represent statistically significant differences from the expected number of white people who would be detained following arraignment.
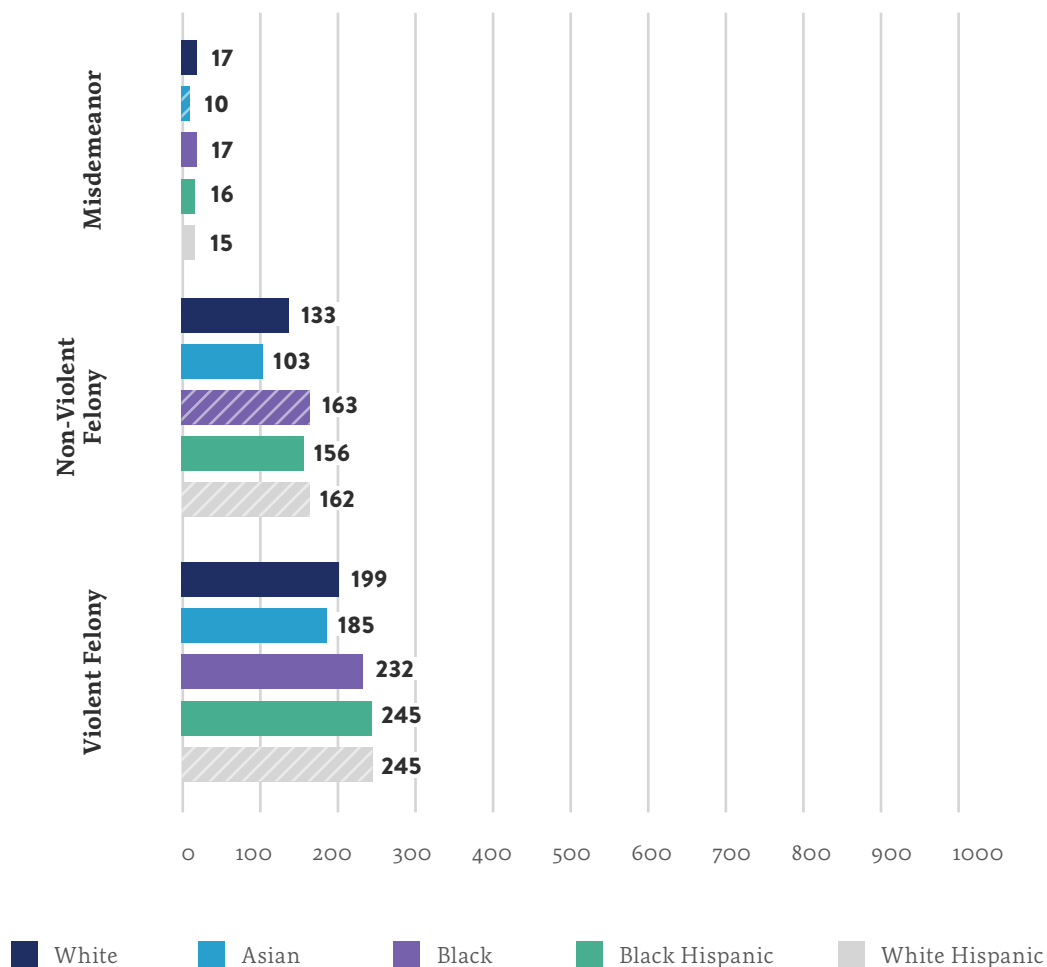
Examination of Offense Types and Specific Charges

Within offense types, disparities were particularly notable for **felony person and felony "other" offenses**, with Black and white Hispanic individuals charged with these types of offenses more likely to be detained than white individuals. Within the most frequent charges, we found particularly prominent disparities for **assault in the 2nd degree** and **criminal contempt in the 1st degree**, for which Black individuals were more likely to be detained (see Figure 2.7 and 2.8). Given that **criminal contempt** is often associated with **violations of orders of protection**, we also explored domestic violence status and found that disparities were larger for cases involving domestic violence than for those not associated with domestic violence.[38] While it is possible that the disparities among specific offense and charge types could be partially explained by differences in the seriousness of case characteristics, it is difficult to measure these types of factors when relying solely on administrative data—more detailed information on case characteristics, as well as notes on information gleaned from interviews and discussions with witnesses and victims are found only in paper case files.

FIGURE 2.7. DIFFERENCE IN PREDICTED POST-ARRAIGNMENT DETENTIONS OUT OF 1,000 PEOPLE FOR EACH RACIAL/ETHNIC GROUP COMPARED TO WHITE PEOPLE FOR FELONY PERSON CRIMES/2ND DEGREE ASSAULT

Patterned bars represent differences that were statistically different from the findings for white people.
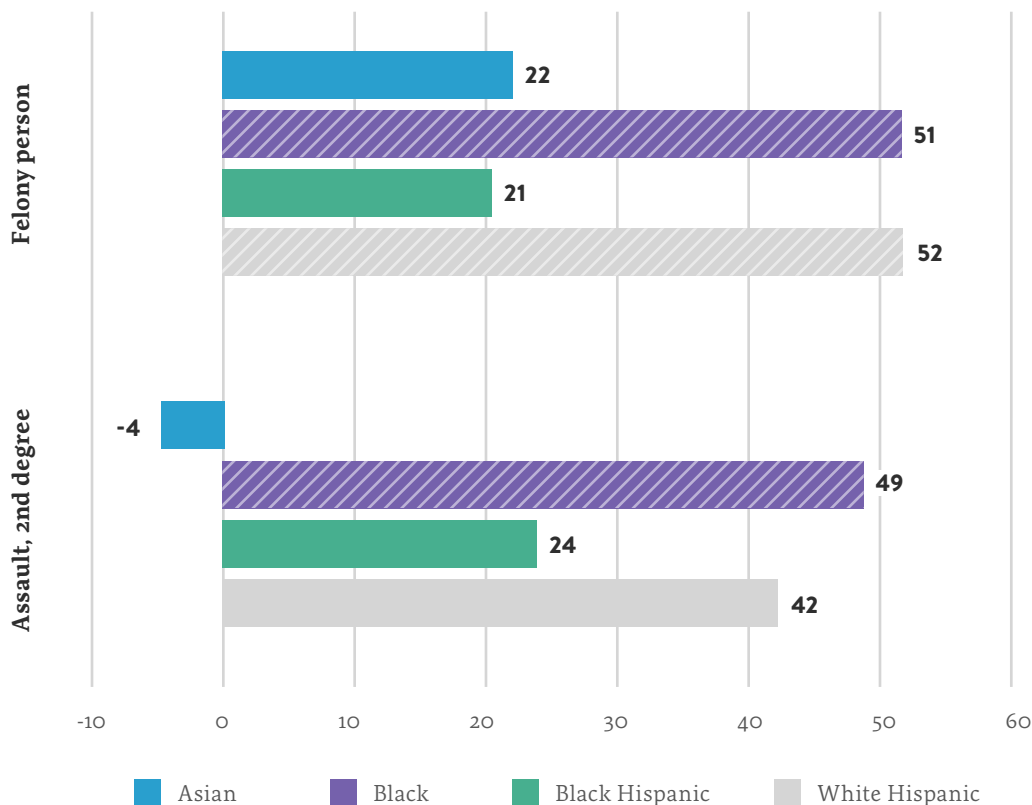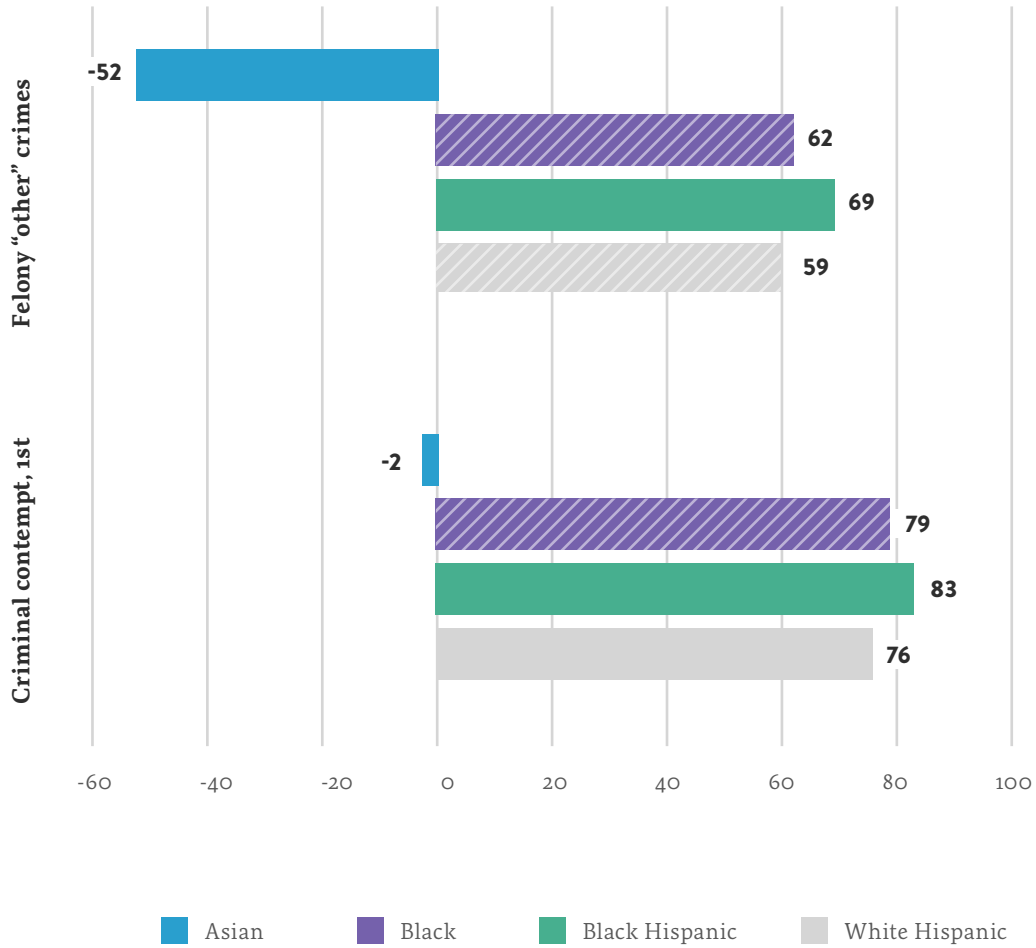
FIGURE 2.8. DIFFERENCE IN PREDICTED POST-ARRAIGNMENT DETENTIONS OUT OF 1,000 PEOPLE FOR EACH RACIAL/ETHNIC GROUP COMPARED TO WHITE PEOPLE FOR AND FELONY "OTHER" CRIMES/1ST DEGREE CRIMINAL CONTEMPT

Patterned bars represent differences that were statistically different from the findings for white people.

Discussion

Post-arraignment detention was an area of notable disparity at the Brooklyn DA's office, despite important policy changes that have gone into effect in recent years both within the office and across New York State. Even after other factors were taken into account, Black people and/or white Hispanic people were more likely to be detained following arraignment than white people. This is likely in large part because Black people and both Black and white Hispanic people were more likely to have bail set, even though differences in bail amounts were not consistent.

It will be interesting to observe how these disparities might change with the 2020 state bail legislation, which restricts bail for misdemeanors and non-violent felonies with some exceptions, as well as with the continuation of changes to local bail policy already made by the DA's office. Conversations with the project's Advisory Board revealed that during the time period examined in this study, the office made concerted efforts to reduce the number of people receiving small amounts of bail and instead release them on their own recognizance or under supervision, recognizing that these small bail amounts served largely to punish impoverished people while having little impact on public safety. This was an important policy change, given that small amounts of bail are most often imposed in cases where there is little risk to public safety, and have the effect of disadvantaging low-income people, often Black and Hispanic. Given that the ability to pay bail plays an outsized role in determining detention status for those not released on their own recognizance or under supervision, bail recommendations are an important issue for the office to continue to focus on. This may be an area where additional targeted efforts can be made to address remaining disparities once the effects of bail reform can be ascertained. Additional work to examine the factors that we were not able to glean from the administrative data, such as the differences in the seriousness of case characteristics that we observed in the case file review, will be critical to uncovering the reasons for any remaining disparities.

SECTION 3: DISPOSITION—DISMISSAL AND CONVICTION

Summary of Findings

- Conviction rates declined between 2017 and 2019 while dismissal rates increased over the same period.
- White people had significantly higher conviction rates for misdemeanors after controlling for other factors.
- Black people were convicted at significantly lower rates than white people at all charge levels and for the majority of offense types.
- Differing from the overall trend, white people were less likely to be convicted than Black people for misdemeanor property and theft of service charges, though the latter disparity was no longer present by 2018.
- A supplemental review of paper case files found that, regardless of race/ethnicity, the 24 cases we reviewed were dismissed largely due to lack of victim cooperation and failure to meet speedy trial deadlines.

For this analysis, ISLG investigated two out of a number of possible disposition outcomes: 1) case dismissal, which includes instances of diversion and instances where the DA desired prosecution but could not move forward with the case (e.g., due to speedy trial deadlines, lack of victim cooperation, and/or strength of evidence, among other reasons); and 2) conviction, which includes guilty pleas as a result of plea bargains struck between the prosecutor and the defense, or conviction as the result of trial. Diversion may also be a component of a plea offer.

Are there racial and ethnic differences in disposition outcomes? What do patterns look like when not accounting for other factors?
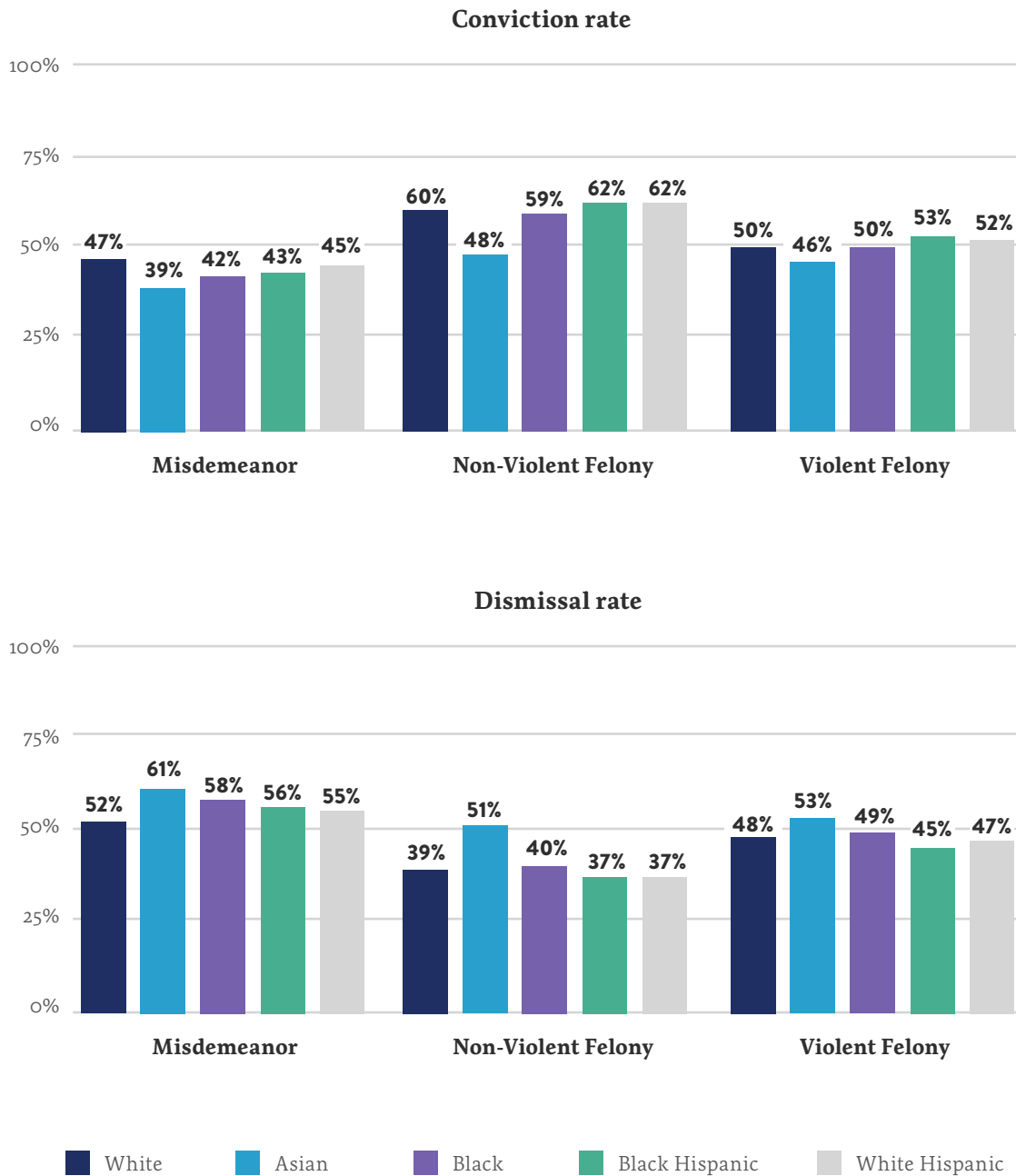
Of the cases disposed of between 2016 and 2019, nearly all (99%) were either dismissed or convicted, as very few cases had alternate dispositions such as mistrial, acquittal, or mediation. Given that convictions and dismissals together comprise the large majority of dispositions, trends in one outcome will largely be the opposite of the other as illustrated in Figure 3.1 below. In general, conviction rates declined between 2017 and 2019 while dismissal rates increased; and conviction rates were higher for felonies than for misdemeanors (with the highest rate for non-violent felonies), while dismissal rates were highest for misdemeanors.

FIGURE 3.1. CONVICTION AND DISMISSAL RATES BY YEAR OF DISPOSITION

Conviction rate

Dismissal rate

Legend: 2016, 2017, 2018, 2019
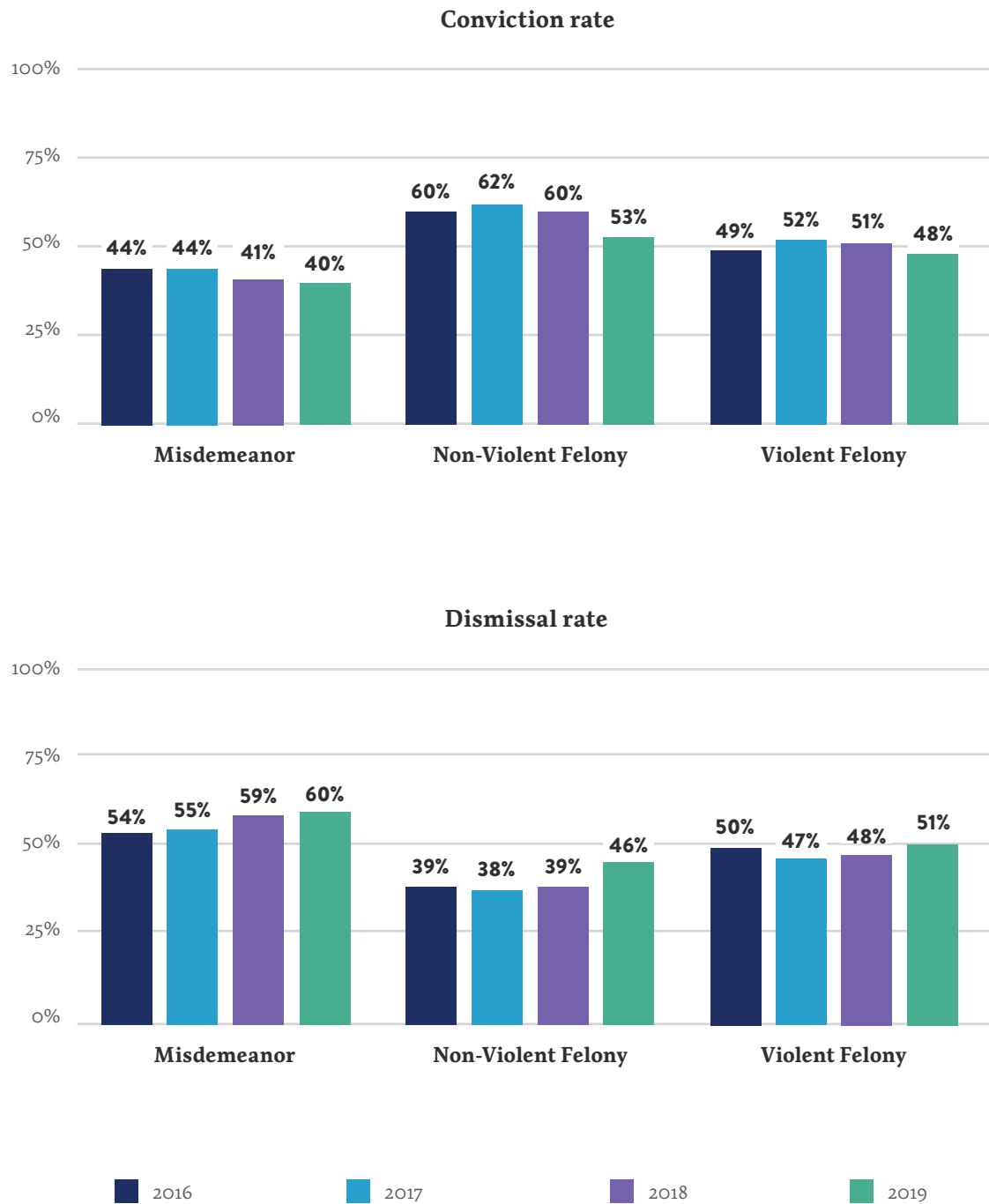
There was no clear pattern by race and ethnicity with respect to disposition outcomes when looking across charge categories, except for Asian people, who had the lowest conviction rates and the highest dismissal rates across charge levels (see Figure 3.2).

FIGURE 3.2. CONVICTION AND DISMISSAL RATES FOR EACH RACIAL/ ETHNIC GROUP

Conviction rate

	Misdemeanor	Non-Violent Felony	Violent Felony
White	47%	60%	50%
Asian	39%	48%	46%
Black	42%	59%	50%
Black Hispanic	43%	62%	53%
White Hispanic	45%	62%	52%

Dismissal rate

	Misdemeanor	Non-Violent Felony	Violent Felony
White	52%	39%	48%
Asian	61%	51%	53%
Black	58%	40%	49%
Black Hispanic	56%	37%	45%
White Hispanic	55%	37%	47%

White   Asian   Black   Black Hispanic   White Hispanic

Context from the Case File Review

Dispositions were explored further with a small supplemental case file review of dismissed cases (N=24) to get a better sense of whether different reasons for dismissal may shed light on the differences by race and ethnicity found in the quantitative analyses (these reasons were not available in the administrative data). To explore these questions, we looked at misdemeanor criminal mischief charges (i.e., vandalism) because Black, Black Hispanic, and white Hispanic people were much more likely to be dismissed on this charge compared to white people (and more so than for other charges).

That said, the small number of files we were able to review did not provide much additional insight. The most commonly cited dismissal reasons in the cases we reviewed were the same for Black, Hispanic, and white people: Cases were generally dismissed because victims were not cooperative and cases came up against the 30.30 speedy trial deadline. However, more complex case characteristics were generally cited in the files for cases involving white people. For example, white people had more prior domestic incident reports as well as mental health or substance use issues than Black or Hispanic people. While the amount of property damage was not always indicated in the files, when it was, the extent of damage tended to be greater for white people. A second phase analysis should look more closely at the relationships between case acceptance and dismissal at various points in case processing, as well as examining other types of charges that might be less influenced by victims.

How do racial and ethnic differences in disposition outcomes change when accounting for other factors?

Results accounting for other factors[39] are presented for convictions only, given that trends in dismissal are generally the inverse of conviction trends.

Judges were most likely to convict white people across all charge levels (see Figure 3.3). For misdemeanors, there were significant differences between white people and all other racial and ethnic groups once we accounted for other factors—in particular, Black people were 10 percent less likely and Asian people 9 percent less likely to be convicted than white people. For felonies, only two groups had conviction rates that were significantly lower than those of white people: Asian and Black people for non-violent felonies (12% and 5% less likely, respectively), and only Black people for violent felonies (9% less likely). In general, then, the largest differences in conviction rates were for misdemeanors; as charges became more serious, differences dissipated.

FIGURE 3.3. PREDICTED NUMBER OF CONVICTIONS OUT OF 1,000 DISPOSED CASES FOR EACH RACIAL/ETHNIC GROUP

Numbers for each racial/ethnic group represent the predicted number of convictions out of 1,000 disposed cases after controlling for other factors. Patterned bars represent a statistically significant difference from the predicted number of convictions for white people.
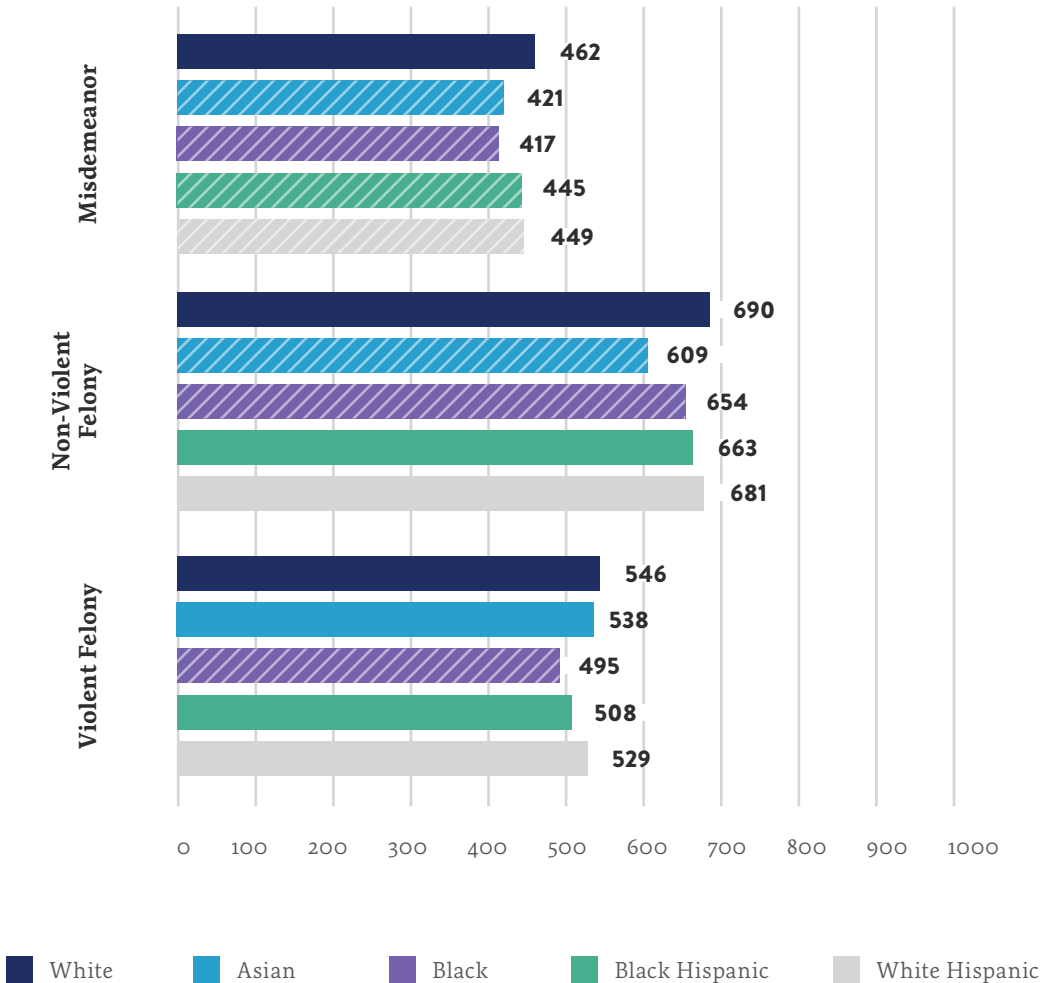

Examination of Offense Types and Specific Charges

Judges were less likely to convict Black people than white people across offense types. The one exception was for **misdemeanor property crimes** for which Black people were 7 percent more likely to be convicted than white people were after accounting for other factors. **Theft of services** was one of the most prevalent charges in this category of offense (N=19,257 across all years), and we found significant disparities in 2016 and 2017, but those differences were eliminated by 2018 due to policy shifts in this area. In 2016, Black and Hispanic people were 21-33 percent more likely to be convicted of **theft of services** than similarly situated white people. However, in 2018, disparities reversed, showing no difference between white and Black people, while white Hispanic people were 33 percent less likely to be convicted for **theft of services** than white people.

FIGURE 3.4. DIFFERENCE IN PREDICTED CONVICTIONS OUT OF 1,000 PEOPLE FOR EACH RACIAL/ETHNIC GROUP COMPARED TO WHITE PEOPLE FOR MISDEMEANOR PROPERTY AND THEFT OF SERVICES OFFENSES

2018 data are used instead of 2019 for comparison purposes due to smaller numbers of people in 2019. Patterned bars represent differences that were statistically different from the findings for white people.
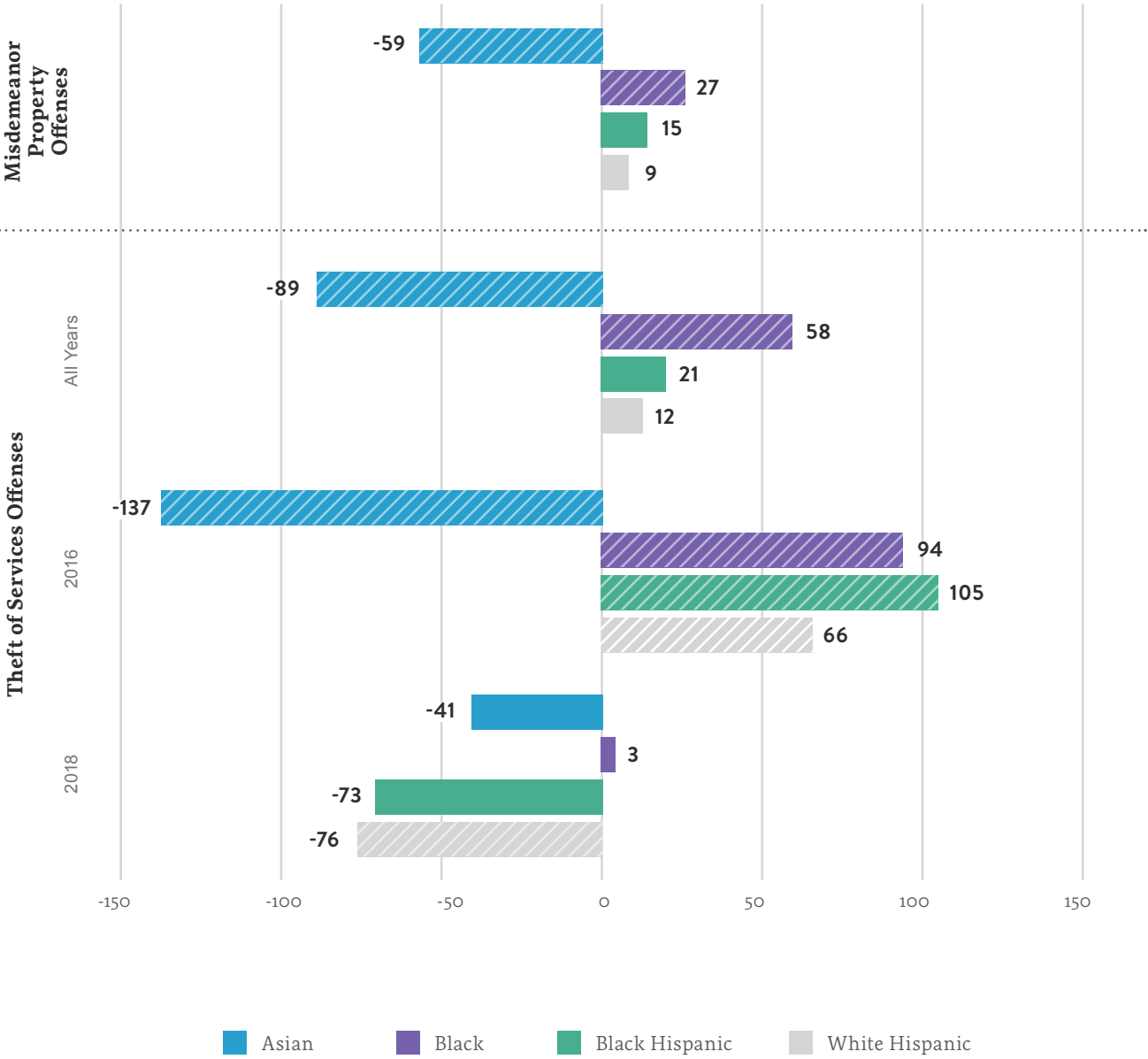
As with other decision points, we found significant racial and ethnic disparities in conviction rates for **misdemeanor marijuana possession**. When accounting for other factors, 48 more Black Hispanic people were predicted to be convicted of **misdemeanor marijuana possession** out of 1,000 compared to white people, a difference of 26 percent.

FIGURE 3.5. DIFFERENCE IN PREDICTED MARIJUANA CONVICTIONS OUT OF 1,000 PEOPLE FOR EACH RACIAL/ETHNIC GROUP COMPARED TO WHITE PEOPLE

Patterned bars represent differences that were statistically different from the findings for white people.
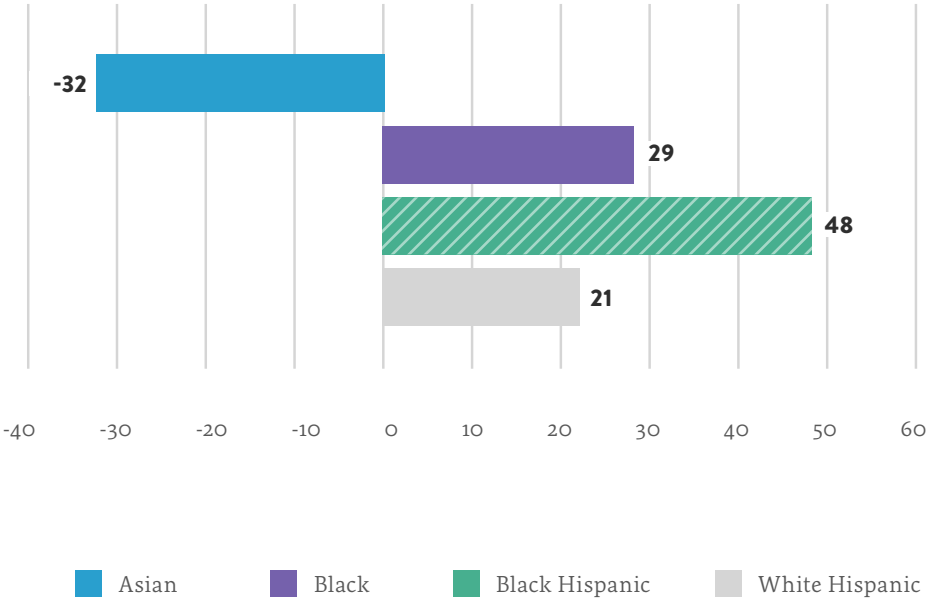
Discussion

The Brooklyn DA's office experienced a lower rate of conviction and higher rate of dismissal over time, which is not surprising given the significant cultural shifts it has undergone in recent years to reduce reliance on conviction and incarceration and to default to diversion and alternatives whenever possible. Indeed, these shifts are the main focus of the Justice 2020 Initiative. That said, while dismissals can indicate that a case was diverted, they may also be indicative of unnecessary charging at earlier system points, which underscores the need to be cautious in how findings are interpreted at this stage. After taking other factors into account, for misdemeanors, Black and Hispanic people were less likely to be convicted—and thus more likely to be dismissed—compared to white people, while for felonies, Black people were less likely to be convicted—again, meaning more likely to be dismissed—compared to white people. It is difficult to ascertain whether this is a positive or negative finding from the perspective of racial and ethnic disparities given that we could not tease out reasons for dismissal, which may include a range of factors including victim cooperation, diversion, or evidentiary issues. The office may want to investigate this further with a particular focus on dismissal reasons and whether there are opportunities to screen out certain types of cases earlier in the process.

Digging deeper into specific offense types and charges reveals ways in which data-driven policy decisions can work to improve disparate outcomes. Most notable are the findings for theft of service charges (i.e., fare evasion, turnstile-jumping) which, as alluded to in earlier sections, the office began declining to prosecute in 2017 after observing disparities in these charges. Accordingly, the number of theft of service offenses decreased steadily from 8,425 in 2016 to 3,711 in 2018. Conviction rates for those cases also dropped between 2016 and 2018, from 37 percent to 23 percent. Furthermore, as illustrated in Figure 3.4, disparities in conviction outcomes for theft of service charges dissipated in 2018. It is worth noting that once the DA declined to prosecute these cases, the NYPD stopped arresting people for them altogether, leading to greater reductions over time.

The office enacted similar policies for marijuana charges in 2018. This resulted in fewer marijuana-related cases moving through screening and disposition. Indeed, the overall volume of convicted low-level marijuana cases went from 977 in 2016 to 527 in 2018 for Black people and from 280 in 2016 to 113 in 2018 for Hispanic people, declines of 46 and 60 percent, respectively. However, despite drops in conviction rates for low-level marijuana cases, the disparity in conviction rates between white and Hispanic people, was actually higher in 2018 than it was in 2016, an example that illustrates the ways in which policy changes may exacerbate certain disparities despite making large impacts on the size of the legal system overall. When we looked across years, after accounting for other factors, Black Hispanic people were significantly more likely than white people to be convicted of this charge.

SECTION 4: PLEA BARGAINING AND CHARGE REDUCTIONS AT DISPOSITION

Summary of Findings

- Overall, charge reductions at conviction were common across charge types and racial and ethnic groups, while charge increases were relatively rare. This was likely largely driven by the plea bargaining process.
- For misdemeanors, Black people were less likely to plead to a lesser charge, and Asian people were more likely to plead to a lesser charge than similarly situated white people.
- For violent felonies, Black and white Hispanic people were less likely to plead to a lesser charge than white people, though the magnitudes of the differences were small.
- For felony weapons offenses, and particularly for criminal possession of a firearm, Black and Hispanic people were less likely than white people to plead to a lesser charge.
- Further investigation of over 200 case files revealed disparities in outcomes throughout the plea bargaining process, as well as disparate outcomes in time to disposition for Black and Hispanic people.

As described in section 3, an overwhelming majority—99 percent—of convictions are the result of a guilty plea, as opposed to a trial verdict. The defense and prosecution negotiate a plea for an individual through the plea bargaining process, which can occur at any time during a case from arraignment up until the conclusion of a trial. In a typical plea bargain, the individual charged with a crime pleads to a lesser charge in order to be eligible for a less severe sentence (i.e., less restrictive, such as probation instead of prison or a shorter prison sentence). Plea offers are heavily dependent on prior record and on the seriousness of the charge.

As the one who actually imposes the sentence, the judge must approve all plea deals. It is unusual, but not unheard of, for a judge to reject a deal negotiated between the prosecution and the defense, sending them back to continue to negotiate or letting the parties know what the judge thinks the outcome of the case should be. While the plea bargaining process is a mutual negotiation between the defense and the prosecution, the prosecution has much more power in the negotiation because they are the ones who decide what charges to bring in the first instance and whether to reduce the charges to make the individual eligible for a lesser sentence. The prosecution makes the initial offer and is in a position to reject a

proposed disposition from the defense and insist that the individual take the final offer or go to trial on all of the charges in the indictment, risking a potentially harsher sentence if convicted.

We initially examined the ways that charges evolved between screening and conviction, including cases disposed by plea and those that go to trial. Given that most convictions are the result of a plea. However, this section focuses on disposition by plea to a lesser charge in particular, to assess disparities in the final outcomes of plea bargaining processes. A plea to a lesser charge indicates a move down in one or more charge severity levels; for example, class D felony to class E felony. For this stage, we selected all cases disposed of by plea and then looked to see whether the charge level dropped between screening and conviction. It is important to note that administrative data at this stage is limited largely to the final accepted plea offer and therefore much of the plea bargaining process is not captured, including the informal and internal calculus of prosecutors in making these decisions. That said, we were able to glean some additional insights through a case file review that included information and details not available in the administrative data.

Are there racial and ethnic differences in charging outcomes between screening and conviction? What do patterns look like when not accounting for other factors?

Looking across all convictions, regardless of whether the conviction in the case was by plea or trial, charge change patterns between screening and conviction were different then the patterns found between arrest and screening for both misdemeanor and felony cases. While at screening, prosecutors did not adjust the majority of misdemeanor charges from the arrest charge class, driven by the plea bargaining process a large majority were reduced at conviction, a proportion that has increased over time (see Figure 4.1): from 2016 through the first half of 2019, the percentage of misdemeanors reduced at conviction increased from three-quarters (76%) to nearly 90 percent. It is worth noting that conversations with the office suggested that this increase might, in part, be the result of an intentional effort to help people avoid the collateral consequences of even a misdemeanor conviction, as most are reduced to violations, which are not considered crimes. Close to 90 percent of non-violent felonies across all years experienced a charge reduction at conviction, with little variation year to year. Violent felony charges, however, did have slightly lower rates of reduction compared to non-violent felony charges, though a majority were still reduced at this stage. An increase in charge at conviction was a relatively rare occurrence—just under 1 percent—for both misdemeanors and felonies, regardless of type.

FIGURE 4.1. CHARGE CHANGES AT CONVICTION BY YEAR
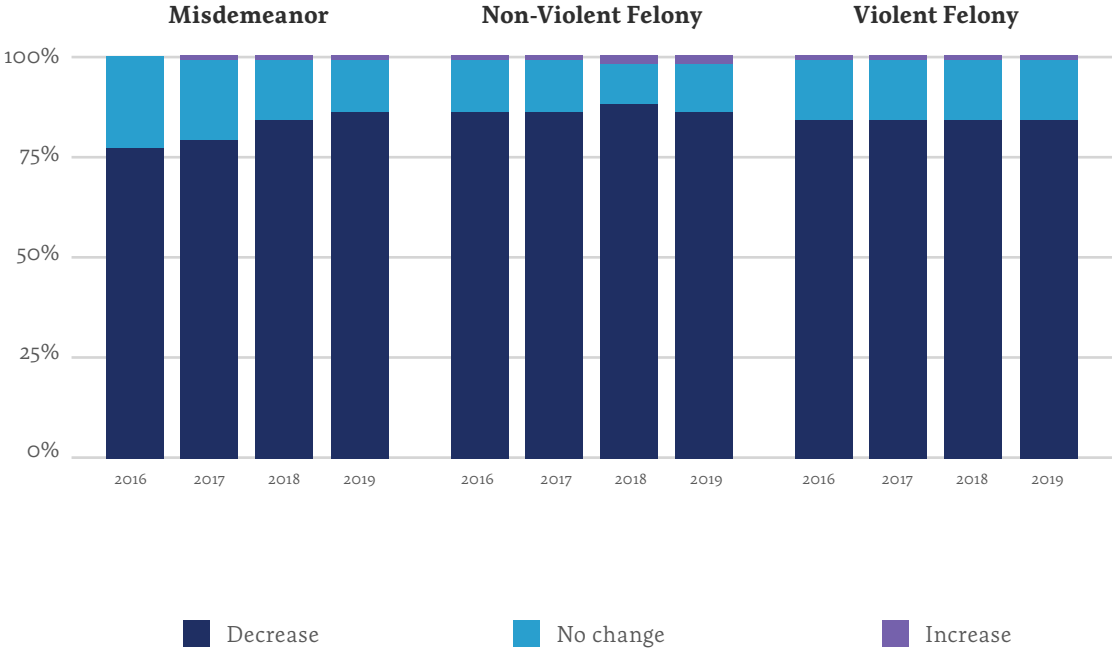
Overall, because the vast majority of cases were resolved by plea, people across all racial and ethnic groups had high percentages of charge reductions at conviction, regardless of charge category (see Figure 4.2). Further, charge reduction rates were similar across groups, with some exceptions. For misdemeanor and non-violent felony charges, a greater percentage of Asian people (92%) experienced a charge reduction compared to other groups, while for violent felonies a greater percentage of white people (91%) experienced a reduction. For violent felonies, Black and Hispanic people experienced lower percentages (83-85%) of charge reductions compared to white people (91%), although reduction rates were similar for misdemeanors and non-violent felonies. Patterns were largely consistent over time, and charge increases remained a relatively rare occurrence.

FIGURE 4.2. CHARGE CHANGE FROM SCREENING TO DISPOSITION FOR EACH RACIAL/ETHNIC GROUP
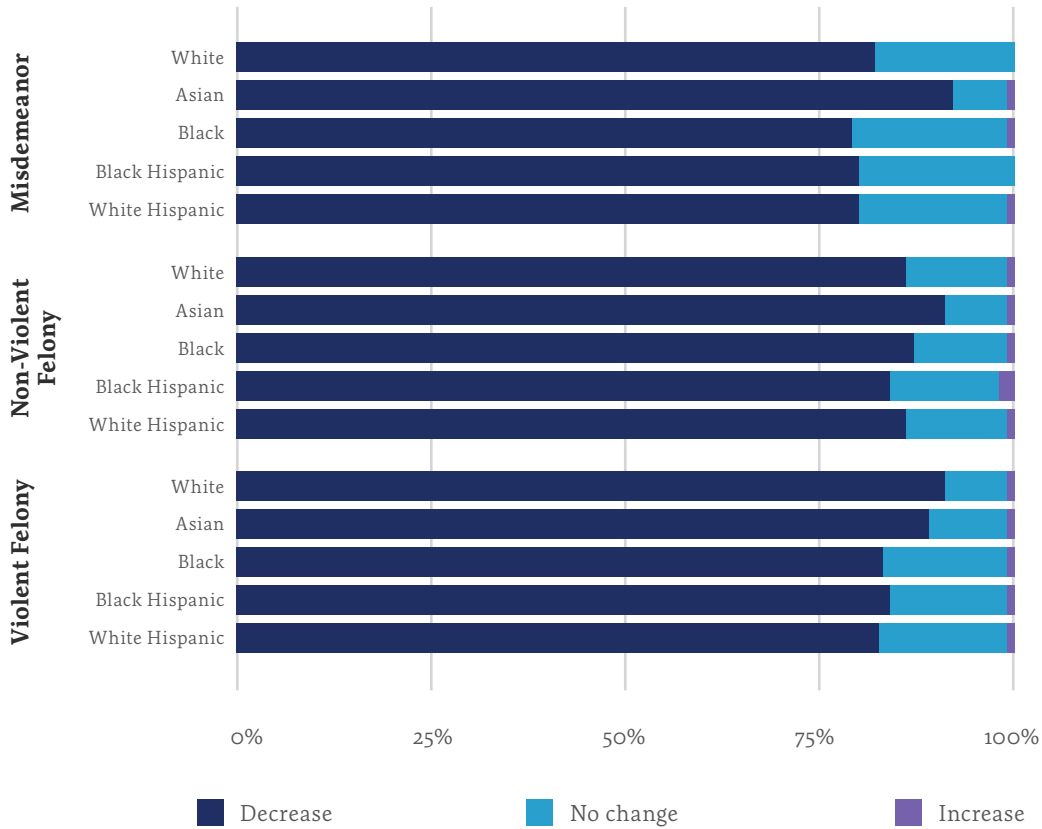

How do racial and ethnic differences in charge reductions due to plea bargaining change when accounting for other factors?

As noted above, we focus the remainder of this section on plea dispositions to a lesser charge to assess whether there were racial and ethnic disparities that resulted from the plea bargaining process when accounting for other factors.

Consistent with the descriptive findings above, when accounting for other factors,[40] Black and white Hispanic people charged with violent felonies were significantly less likely to plead to a lesser charge than similarly situated white people (see Figure 4.3). Descriptive trends did not suggest differences for other charge categories, and findings after other factors were accounted for largely mirrored those trends. Even in the few instances where significant differences were found, they were of small magnitude. Specifically, there were no significant differences for non-violent felonies. For misdemeanors, Black people were less likely, and Asian people more likely, to plead to a lesser charge than similarly situated white people, but these differences were also small.

FIGURE 4.3. PREDICTED NUMBER OF PLEA DISPOSITIONS TO A LESSER CHARGE OUT OF 1,000 CONVICTED CASES FOR EACH RACIAL/ETHNIC GROUP

Numbers for each racial/ethnic group represent the predicted number of pleas to a lesser charge out of 1,000 convicted cases after controlling for other factors. Patterned bars represent a statistically significant difference from the predicted number of pleas to a lesser charge for white people.
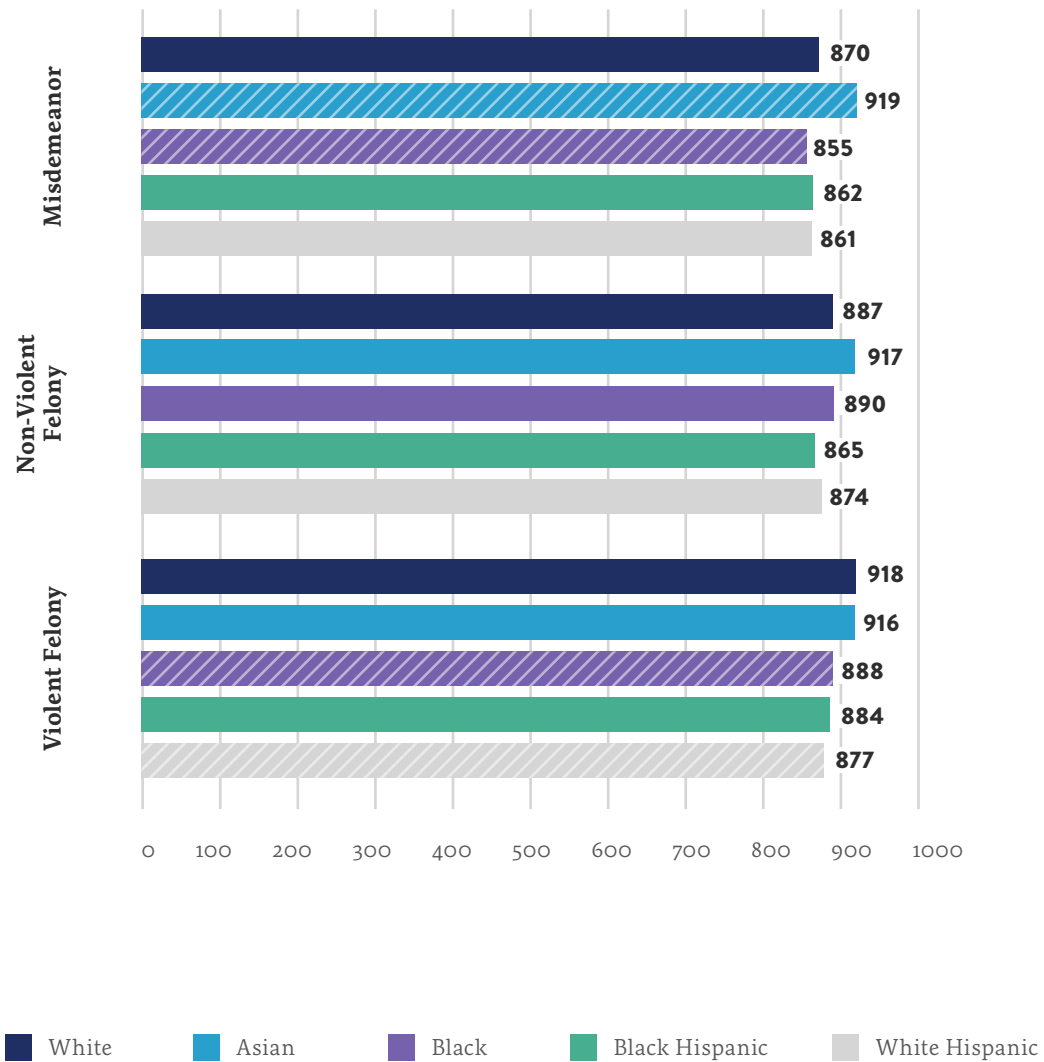
Examination of Offense Types and Specific Charges

The specific offense type and penal law code analysis showed that Black and Hispanic people were less likely than white people to plead to a lesser charge for felony weapons offenses; within **felony weapons offenses**, Black and Hispanic people were less likely to plead to a lesser charge for **criminal possession of a firearm**[41] than white people (see Figure 4.4). Moreover, the disparities for **felony weapons offenses**, and for **criminal possession of a firearm** specifically, were much larger than the disparities we found for felony offenses as a whole (i.e., not broken out by offense type). For **felony weapons charges**, accounting for other factors, Black Hispanic people had rates of pleas to a lesser charge that were 25 percent lower than similarly situated white people, a difference of 233 per 1,000 cases. For **criminal possession of a firearm**, specifically, Black Hispanic people were 85 percent less likely than similarly situated white people to plead to a lesser charge, a difference of 541 per 1,000 cases. There were also large and statistically significant differences in outcomes between Black and white Hispanic people compared to white people.

FIGURE 4.4. DIFFERENCE IN PREDICTED PLEAS TO A LESSER CHARGE OUT OF 1,000 PEOPLE FOR EACH RACIAL/ETHNIC GROUP COMPARED TO WHITE PEOPLE FOR FELONY WEAPONS CHARGES AND CRIMINAL POSSESSION OF A FIREARM

Patterned bars represent differences that were statistically different from the findings for white people. Asian people are not included due to the very small number charged with felony weapons offenses.
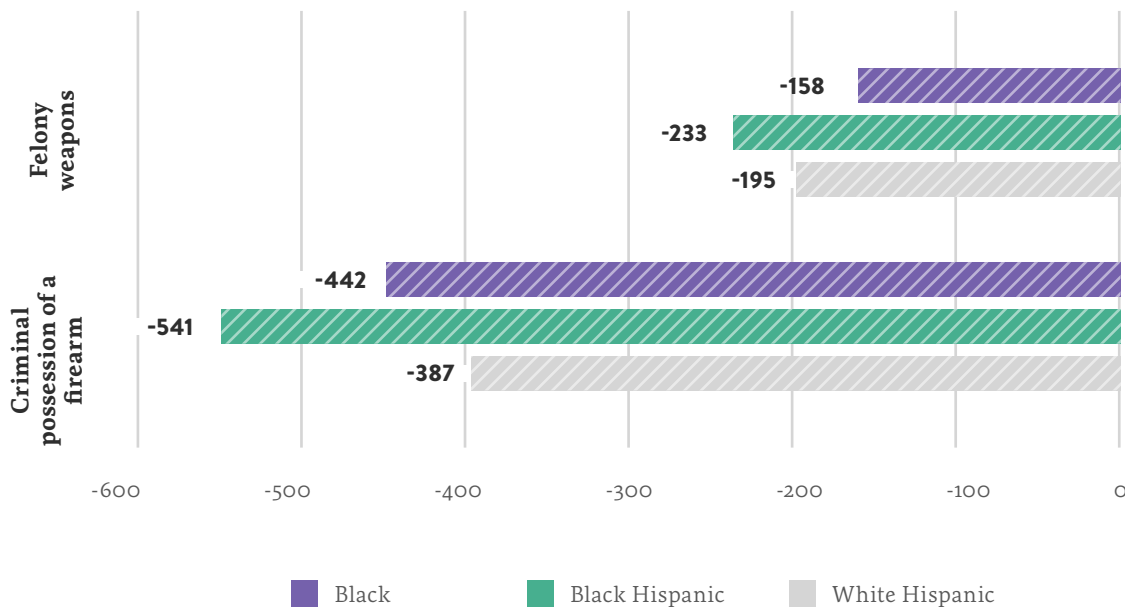
## Additional Exploratory Context from Case File Review

To further explore plea offers and the plea-bargaining process, we conducted a review of 102 grand larceny and 102 petit larceny case files. We present observed differences by race, ethnicity, and other factors. It is important to note that the analysis was exploratory, the sample size is small, and we did not control for factors in statistical models. That said, across the cases we reviewed, there were disparities in outcomes throughout the plea process, most notably for Black people. Black people, and to a lesser extent, Hispanic people experienced worse outcomes than white people, even when looking at young adults (who fared better on average), individuals with frequent prior arrests (who fared worse on average), and distinct case types based on case circumstances.

We explored disparities by comparing two distinct points in the plea-bargaining process: the first plea offer made to the individual as recorded in the paper file and the final plea offer accepted by the individual. Each plea offer includes both a charge and sentence component, meaning that between the first and final offer, prosecutors may present a different charge, a different sentence, or both.

Plea to a lesser charge type, sentence length, and time to disposition

Among grand and petit larceny cases in the review sample, white people ultimately pled to a lesser charge more often than Black people, although the difference was larger for petit larceny (62% vs. 49%) than it was for grand larceny (85% vs. 80%). While the majority of people charged with petit larceny pled down to a violation (almost always disorderly conduct), just over half of Black people were offered and pled to the original, higher severity charge, a misdemeanor (see Figure 4.5). Among people charged with grand larceny (also shown in Figure 4.5), Hispanic people were more likely than white people to be offered and ultimately plead to a felony rather than lesser charges.[43] In both instances, the disparity began at the first plea, and continued through the final plea, which suggests that racial differences in final outcomes might originate from prosecutors' decisions to offer more conservative deals to Black and Hispanic people early in the plea bargaining process. Black people charged with grand larceny also pled to felonies at a higher rate than white people, although they were also the most likely to plead to a violation.

FIGURE 4.5. PLEA OFFERS AND FINAL CHARGES FOR PETIT LARCENY AND GRAND LARCENY FOR EACH RACIAL/ETHNIC GROUP

Petit larceny
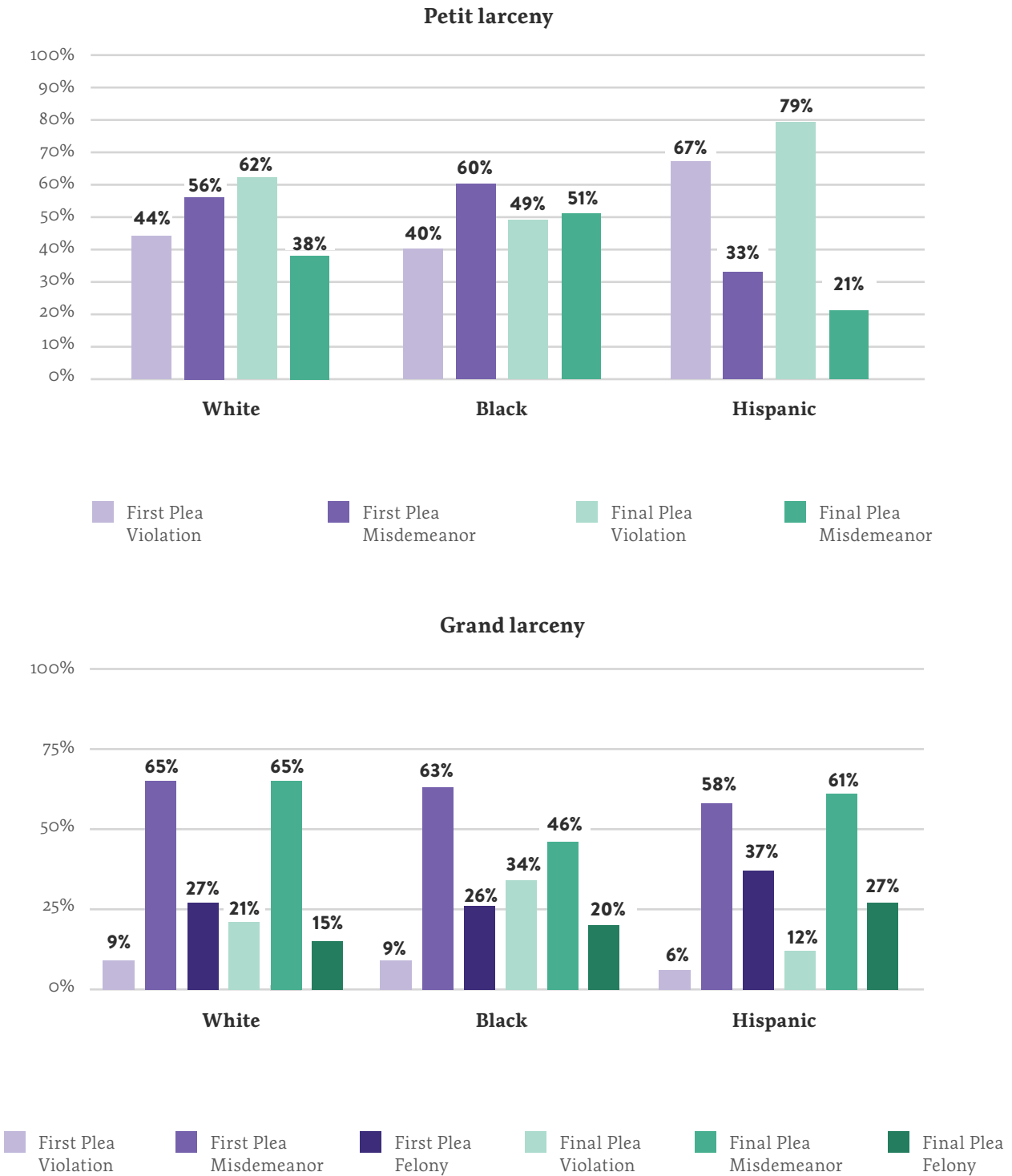
Grand larceny

Consistent with the differences in charging, there were also differences by race and ethnicity in sentencing. While most people charged with grand larceny pled to non-custodial sentences, and only 29 percent of those charged with grand larceny received jail time, sentences differed across racial and ethnic groups. Black individuals charged with grand larceny were offered and pled to longer jail terms (169% longer than white people at first offer, 71% longer at final offer), as were Hispanic people, though to a lesser extent (114% longer than white people at first offer, 9% longer at final offer). While few people charged with petit larceny were sentenced to jail, the percentage was higher for Black people than for white people (17% vs. 9%).

Differences were also found in time from arrest to disposition. In grand larceny cases, Black people's cases took a median of 133 days to dispose compared to white (92 days) or Hispanic (69 days) people. Lengthier time to disposition could be related to several factors, including delays in either party's readiness for court, scheduling, and victim cooperation, in addition to warrants, new arrests, resistance to taking a plea deal, or optimism for a better plea offer. Ultimately however, for Black people, longer time to disposition did not result in comparatively less restrictive sentences. For petit larceny, the trends were the opposite, with Black people's cases quickly disposed in a median of 4 days, compared to 15 days for white people and 42 days for Hispanic people. Among petit larceny cases ending in time served, Black and Hispanic people had shorter median times between arrest and disposition—cases were disposed within two days—compared to white people, indicating that these individuals were offered and quickly accepted plea deals that allowed them to return home. For petit larceny cases, differences in outcomes may be related to arrest type. Fewer Black individuals charged with petit larceny in the sample were issued DATs, compared to Hispanic and white individuals.

Age, prior record, and case typologies

To better understand the context behind observed racial disparities, we also analyzed the sample by age group, prior arrests, and case types.

Across the board, plea outcomes were more lenient for younger people, which may be a concerted effort among prosecutors to spare them the burden of a criminal record, though Black young adults were still most likely to experience less favorable outcomes among their age group.

- While young adults' cases took about 30 percent longer to dispose than older adults' (167 days vs. 127 days, respectively), young adults were more likely to benefit from multiple offers and to have their charges reduced. That said, Black young adults waited more than three times longer between first and final plea offers on average than those who were white or Hispanic (124 days vs. 34 and 46 days, respectively), potentially due to longer times between court dates, and experienced fewer charge reductions.

- We observed more pleas to a lesser charge and more violations (as opposed to criminal charges) for young adults compared to older adults: reductions were found for one in three young adults compared to one in five older adults charged with grand larceny, and four in five young adults compared to one in two older adults charged with petit larceny. However, Black young adults pled to violations less often than white or Hispanic young adults, meaning that despite better outcomes overall for young adults, Black young adults continued to experience disparities compared to their white peers, similar to overall trends.

- Programs and other non-custodial outcomes were more common for young adults, but there were notably fewer pleas to programs for Black young adults (3/21) compared to Hispanic (10/16) and white young adults (7/19). We observed longer jail terms for young adults charged with grand larceny who received sentences, but none received jail sentences for petit larceny.

Taking into consideration that prior history may particularly disadvantage Black and Hispanic people given patterns of differential enforcement and broader structural inequities, we looked at outcomes for people with frequent prior arrests to better understand how prior criminal history may impact case outcomes. Individuals with frequent prior arrests[44] were defined as those with more than the average number of arrests for their age group: three or more arrests for young adults, and ten or more arrests for older adults. We found that people with frequent

prior arrests were less likely to be offered and plead to a lesser charge among both petit larceny cases—roughly half compared to three-quarters of those without frequent prior arrests—and grand larceny cases—three quarters compared to four in five. Among individuals charged with grand larceny, people with frequent prior arrests were also much more likely to receive custodial sentences (62% vs. 15%).

Case Types

We also identified common case types and categorized cases to contextualize differences in circumstances that may have resulted in disparate outcomes. We identified five case types: basic needs (which comprised shoplifting necessary items of a value of less than $100, such as prepared foods, grocery items, clothing, and hygiene products), other shoplifting, any fraud or theft from an employer, theft from a person, and car theft.

FIGURE 4.6. CASE TYPOLOGY [45]

Petit Larceny				Grand Larceny			
Basic Needs (N=33)	Shoplifting (N=52)	Fraud or Theft from Employer (N=5)	Theft from Person (N=12)	Shoplifting (N=11)	Fraud or Theft from Employer (N=32)	Theft from Person (N=45)	Car Theft (N=14)

Ultimately, in grouping the case files this way, we found that differences by race and ethnicity were observed within each case type, with Black and Hispanic people often receiving worse outcomes. For example, while most basic needs cases resulted in violations (21/33), a majority of Black people charged with basic needs offenses pled to misdemeanors (6/11). Among people charged with petit larceny shoplifting offenses, Hispanic people were more likely to plead to violations (12/15) but less likely to receive non-custodial sentences (3/15) compared to white people (10/19 pled to violations, 6/19 to non-custodial sentences). In grand larceny cases of fraud or employer theft, the only three individuals receiving custodial sentences were people of color. Finally, in grand larceny person theft and car theft cases, non-custodial pleas were more common for white people. While it is important to keep in mind that the observed differences within case types are anecdotal given the small sample size and our inability to control for additional factors, it is notable that they were found across types.

Discussion

Prosecutors weigh a multitude of factors throughout the plea bargaining process, and while criminal history and the nature of the current charge play a central role in the decision, there are many informal factors that are not captured in administrative data. After accounting for as many factors as were available in the data, however, there were statistically significant differences across racial and ethnic groups with respect to plea dispositions, though these were often small in magnitude and likely explained by factors that are not captured in administrative data systems. For example, some of the findings around violent felony charges in particular may be driven by victim preference and input about how the case is handled and disposed of. Differences may also be driven, at least in part, by the quality of defender representation, with stronger defenders in better positions to negotiate more favorable plea deals. These factors emerged in discussions with the Brooklyn DA's office during advisory board meetings, as well as

qualitatively in the case file review, though they were not quantifiable using the administrative data we had access to.[42] Additionally, being held in detention while a case is pending may impact the plea negotiation process. Detention post-arraignment was a factor significantly associated with a lower likelihood of pleading to a lesser charge overall; those detained post-arraignment were about half as likely to plead to a lesser charge compared to those released pretrial.

While overall disparities in outcomes were limited at this point in the process, disparities were notably larger for felony weapons offenses. These findings are likely driven by factors not included in the administrative data, including the internal calculus used to determine whether a defendant had intent to use the weapon versus simply possessed the weapon for protection due to perceived threats to safety, circumstances that are not uncommon in specific communities in Brooklyn.

Summary of Findings

- When looking at all cases across years, there were no major shifts in rates of non-custodial, time served, and custodial (jail or prison) sentence outcomes.
- After controlling for other factors, a small but statistically significant disparity emerged for misdemeanors: Asian people were less likely to be sentenced to jail or prison and Black people were more likely to be sentenced to jail or prison compared to white people.

- Larger differences emerged for specific crime types. Black and Hispanic people convicted of felony drug or misdemeanor person offenses were significantly more likely than white people to receive a sentence to jail or prison. There were particularly prominent disparities in sentencing for possession of a controlled substance and assault in the 3rd degree.

New York State law allows for a number of possible sentencing outcomes, which we grouped into three categories for our analyses. Listed in order of least to most restrictive, these sentence types include: non-custodial (e.g., fines, probation, conditional discharge—often with conditions like entering a program or making restitution), time served (credit for time spent in jail while awaiting disposition), and custodial (including either jail time for sentences under one year or prison time for longer sentences). In our analysis, we identified the most restrictive sentence type for each case (i.e., if the sentence included multiple components or if multiple sentences were associated with a specific case, the most severe of these was used to classify the sentence type), and then classified it into one of the three categories identified above. We note that the judge, not the prosecutor, makes the final sentencing decision, though the prosecutor does influence this decision through plea-bargaining and recommendations made to the court.

Are there racial and ethnic differences in sentencing outcomes? What do patterns look like when not accounting for other factors?

Looking across charge levels, the distribution of sentence types remained steady from 2016 to 2019 (see Figure 5.1). People convicted of misdemeanors[46] and non-violent felonies saw slight decreases in custodial sentences and slight increases in non-custodial sentences over time. For violent felonies, custodial sentence rates decreased in 2017 and 2018, but rose back to 2016 levels in 2019.

FIGURE 5.1. SENTENCE TYPE RATES BY YEAR OF DISPOSITION
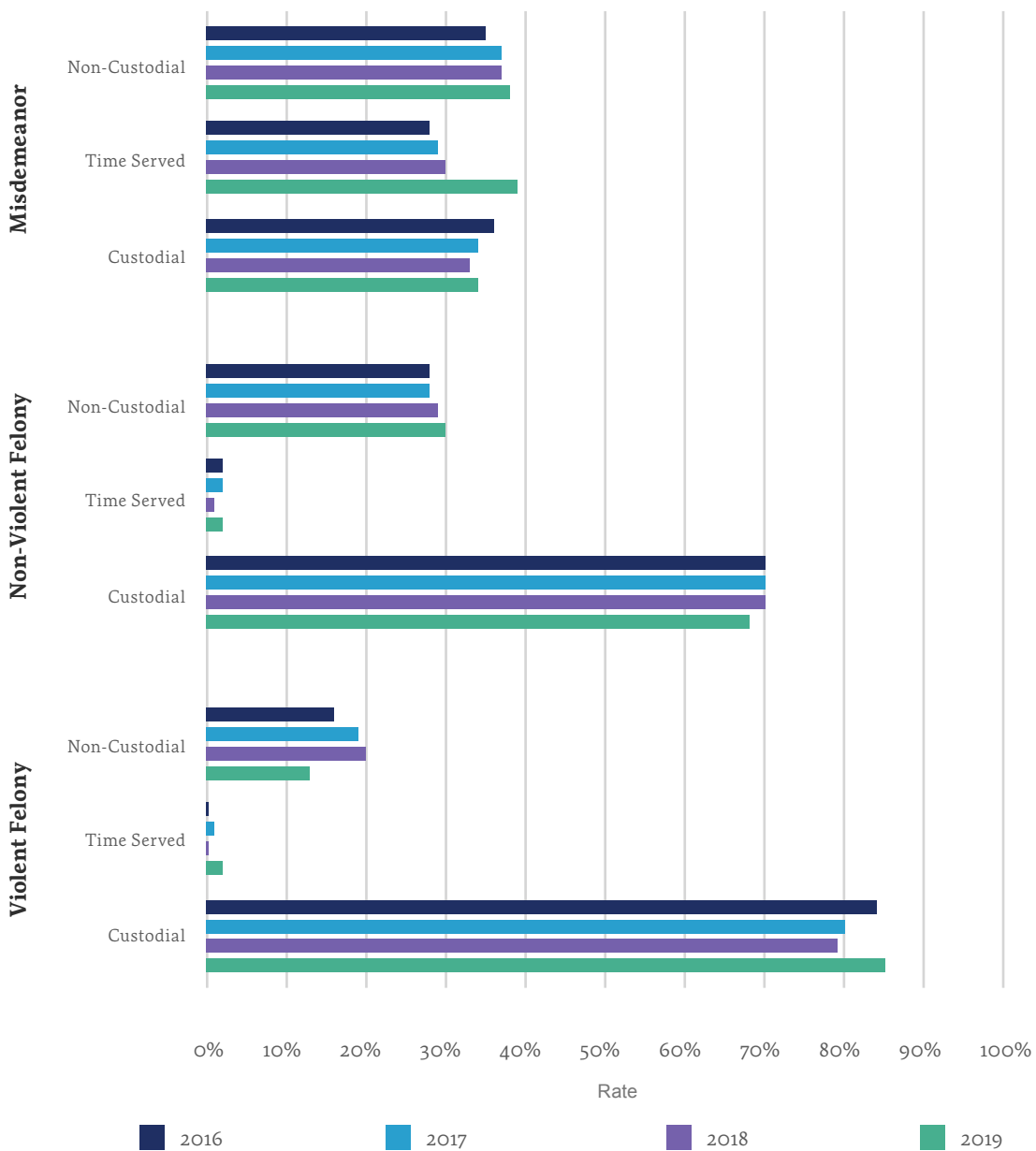
There were racial and ethnic disparities in sentencing outcomes, with judges in misdemeanor and non-violent felony cases sentencing Asian people more to non-custodial options and less to time served and jail/prison than other racial and ethnic groups (see Figure 5.2). Within other racial and ethnic groups, however, differences were only apparent within felony charges. Specifically, for both non-violent and violent felonies, judges sentenced Black and Hispanic people to jail and prison at higher rates than Asian and white people, and to non-custodial sentences at lower rates.

**FIGURE 5.2. SENTENCE TYPE RATES FOR EACH RACIAL/ETHNIC GROUP**
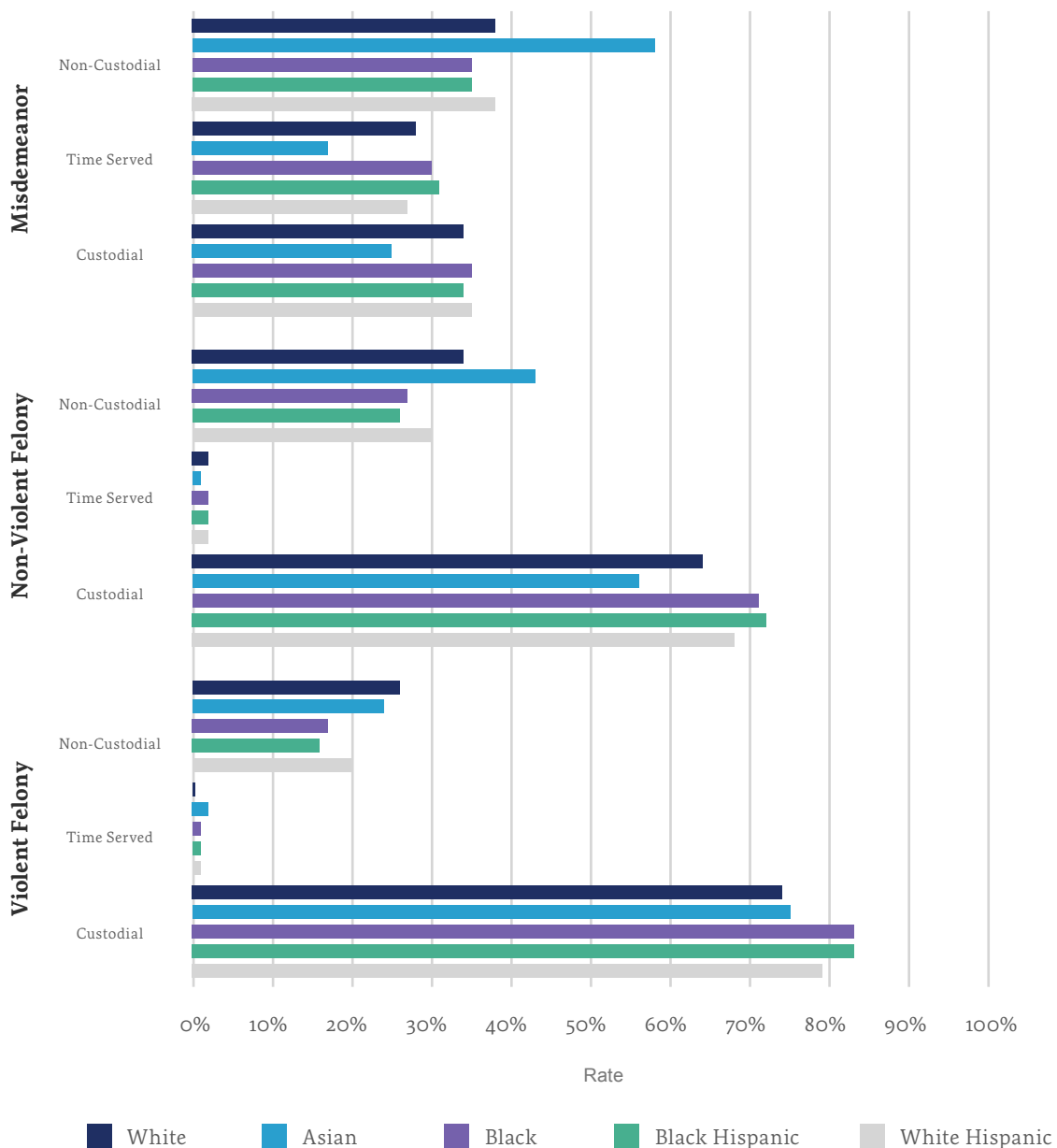
How do racial and ethnic differences in sentencing outcomes change when accounting for other factors?

While there was variation between racial and ethnic groups in the predicted number of custodial sentences after controlling for other factors,[47] there were only two statistically significant comparisons for misdemeanors: Asian people were significantly less likely to receive a custodial sentence, and Black people were significantly more likely to receive a custodial sentence, compared to white people. The magnitude of the difference for misdemeanors was quite large for Asian people, whom judges were 20 percent less likely than similarly situated white people to sentence to a jail or prison term. On the other hand, despite being statistically significant, the magnitude of the difference for Black people was much smaller and likely not meaningful in practical terms: judges were only 2 percent more likely to sentence them to a jail or prison term compared to similarly situated white people.

FIGURE 5.3. PREDICTED CUSTODIAL SENTENCES OUT OF 1,000 CONVICTED CASES FOR EACH RACIAL/ETHNIC GROUP

Numbers for each racial/ethnic group represent the predicted number of convictions out of 1,000 disposed cases after controlling for other factors. Predicted values for misdemeanors are derived from a multinomial regression accounting for all three sentence type outcomes, while predicted values for felonies are derived from logistic regressions comparing custodial to non-custodial sentences only. Time-served sentences were excluded from the felony analysis due to the small number of felony cases resulting in such a sentence.
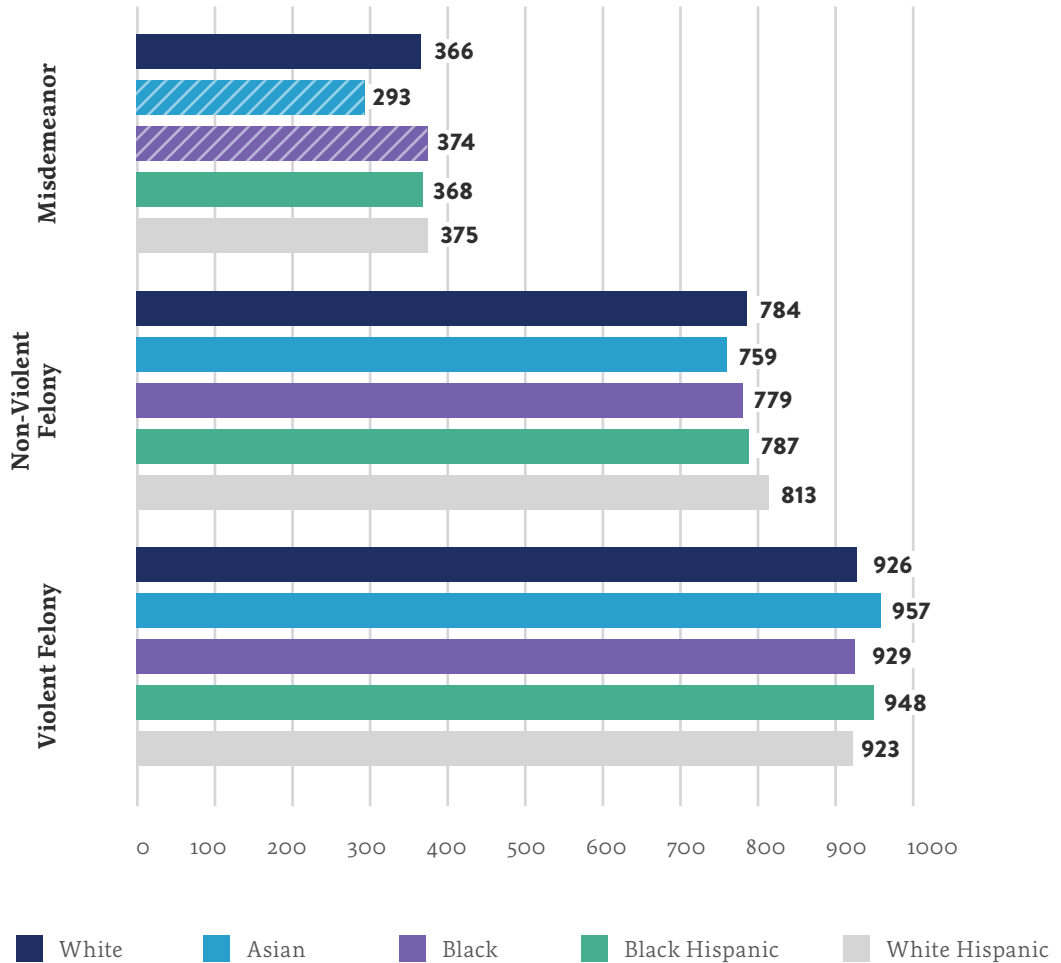
Examination of Offense Types and Specific Charges

While significant disparities were generally not observed after controlling for other factors across all offense types combined, when looking at them separately, we noted some disparities. These disparities were particularly apparent for Black people, who were significantly more likely than white people to receive custodial sentences for several offense types and charge levels: felony drug offenses, misdemeanor public order offenses, misdemeanor person offenses, misdemeanor weapons offenses, and misdemeanor "other" offenses.

Among the differences we found, Black and Hispanic people were significantly more likely to be sentenced to jail and prison for **felony drug** and **misdemeanor person** offenses. Indeed, as depicted in Figure 5.4, predicted custodial sentence rates for Black and Hispanic people convicted of a felony drug offense were 28-42 percent higher than the rate for white people. Within felony drug offenses**, third degree possession of a controlled substance** offenses were rare (representing roughly 200 cases without missing data on any of the factors we controlled for), but were nonetheless a notable source of disparity, particularly for Black Hispanic and white Hispanic people, who were more than twice as likely to be sentenced to jail or prison than similarly situated white people. Similarly, predicted custodial sentence rates for Black and Hispanic people convicted of **misdemeanor person offenses** were 33-58 percent higher than the rate for white people, and within these offenses, disparities in custodial sentences were especially pronounced for **assault in the 3rd degree**. For cases with this top charge, Black and Hispanic people were 42-55 percent more likely to be sentenced to jail or prison compared to similarly situated white people, and over 50 percent of these cases resulted in a custodial sentence for Black and Hispanic people[48] (see Figure 5.5). This charge, in particular, may be associated with domestic violence incidents, though the finding remained even after controlling for that factor in the statistical models.

FIGURE 5.4. DIFFERENCE IN PREDICTED CUSTODIAL SENTENCES OUT OF 1,000 CONVICTED PEOPLE FOR EACH RACIAL/ETHNIC GROUP COMPARED TO WHITE PEOPLE FOR FELONY DRUG AND POSSESSION OF A CONTROLLED SUBSTANCE IN THE THIRD DEGREE

Patterned bars represent differences that were statistically different from the findings for white people.
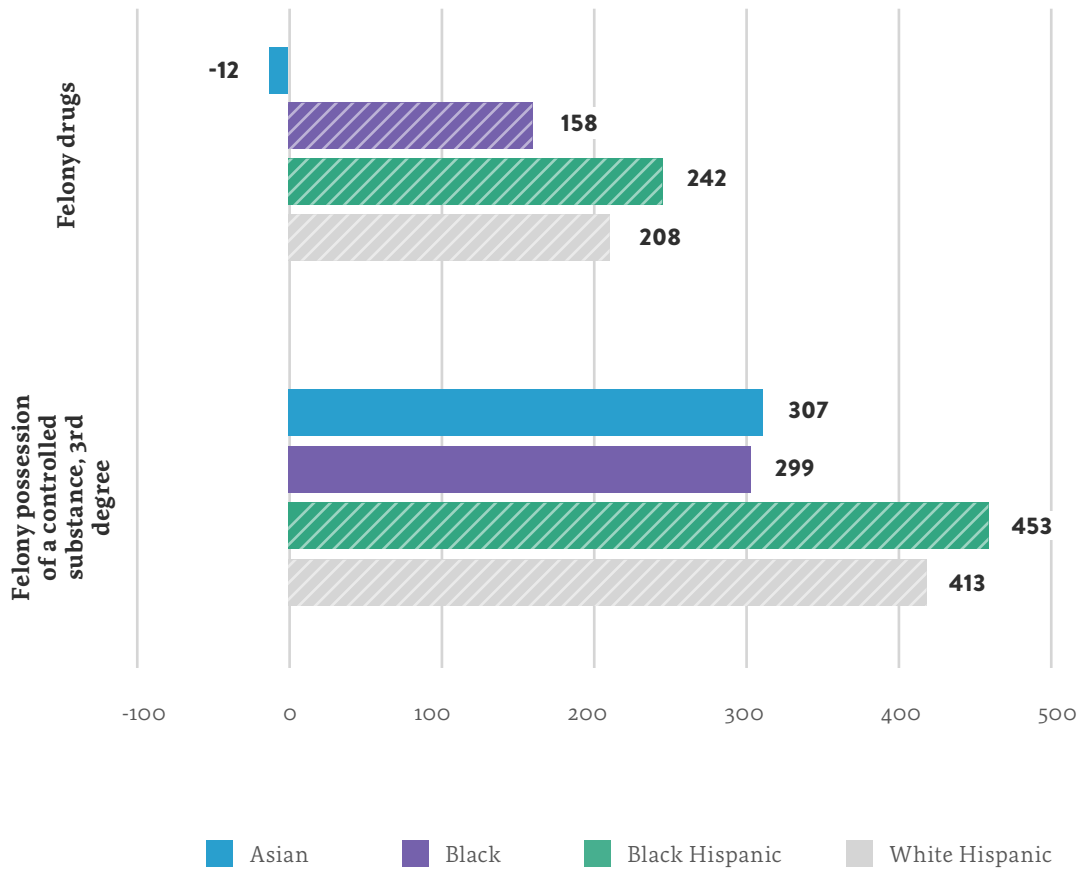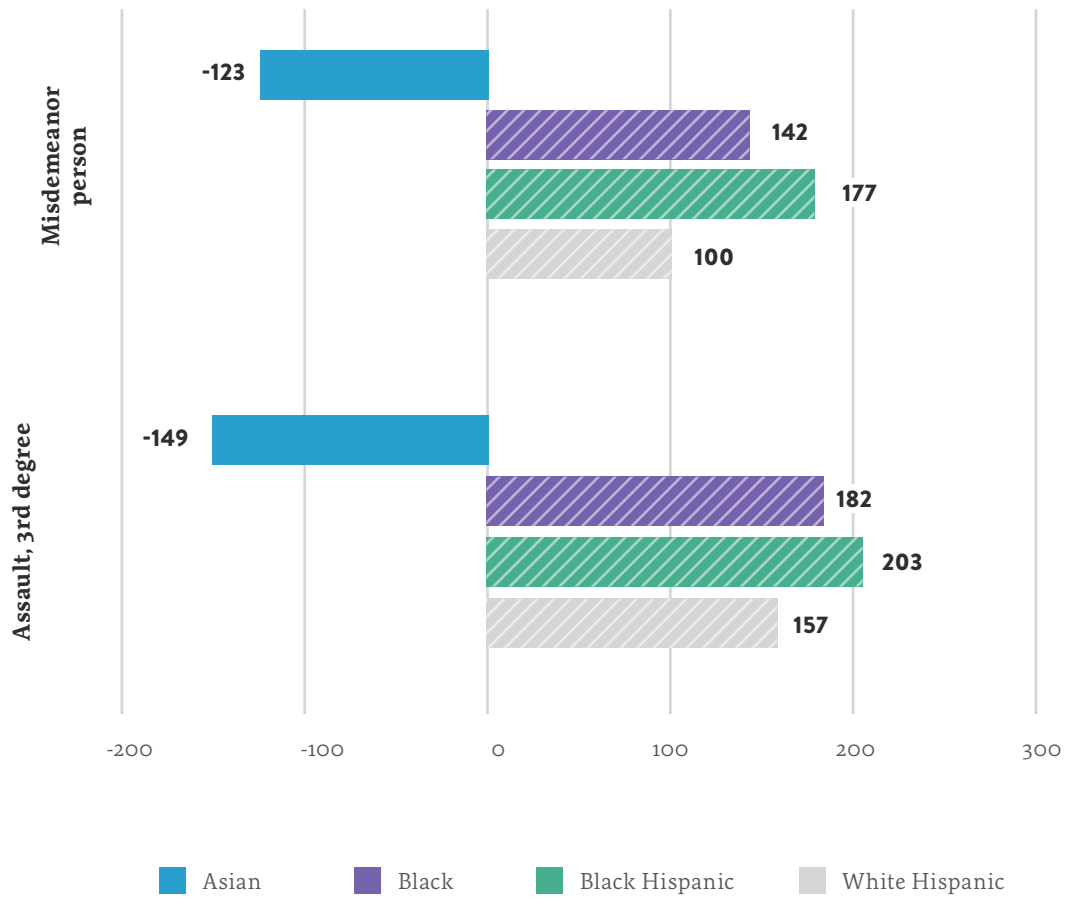
FIGURE 5.5. DIFFERENCE IN PREDICTED CUSTODIAL SENTENCES OUT OF 1,000 CONVICTED PEOPLE FOR EACH RACE/ETHNICITY GROUP COMPARED TO WHITE PEOPLE FOR MISDEMEANOR PERSON AND ASSAULT IN THE 3RD DEGREE CONVICTIONS

Patterned bars represent differences that were statistically different from the findings for white people.

Discussion

While the descriptive analysis did reveal larger rates of jail and prison sentences for Black and Hispanic people convicted of felonies, these disparities largely dissipated when accounting for other factors. For misdemeanors, though descriptively rates were similar between racial and ethnic groups (apart from Asian people), when accounting for other factors, some small differences emerged for Black people, though their small size suggests that they may not be particularly meaningful. That said, notable disparities did negatively affect Black and Hispanic people convicted of a number of specific offense types—felony drug and misdemeanor person offenses, in particular, with more notable disparities emerging for felony possession of a controlled substance in the 3rd degree and misdemeanor assault in the 3rd degree. The DA's office might consider further investigating these trends, including examining assaults specifically related to domestic violence, to explore factors that may not have been apparent within the administrative data.

The DA's Justice 2020 agenda aims to encourage less conviction and incarceration, emphasizing the use of alternative options to hold individuals accountable whenever possible. That said, with respect to overarching sentencing trends, incarceration rates have largely remained steady across charge types, at least through mid-2019. Though there are not large differences by race and ethnicity, the office may wish to consider implementing or support additional community-based responses that target some of the specific charge-based results presented in this section.

Conclusion

KEY CONSIDERATIONS, RECOMMENDATIONS, AND NEXT STEPS

Racial and ethnic disparities across the criminal legal system are well-documented at national, state, and local levels. Evidence has shown repeatedly that Black and Hispanic people are more likely than white people to suffer adverse outcomes from arrest to incarceration, which can harm communities and undermine public confidence in law enforcement and the larger criminal legal system. These disparities begin at arrest, and they compound at each point throughout the system, including several points where prosecutors either control or have a hand in shaping outcomes. That said, while we did find evidence of disparities at some key decision-making points at the Brooklyn DA's office, they were not as pronounced as might have been expected; moreover, they often lessened or even disappeared when demographics, criminal history, and case characteristics were accounted for. As noted in the introduction, however, it is important to keep in mind that while accounting for other factors did sometimes lessen the disparate impacts we found throughout the analysis, it does not necessarily indicate that disparities do not exist, because the factors we typically control for in these types of studies are often proxies for other broader structural and systemic inequities.

> **While our analysis showed that case processing in the Brooklyn DA's office resulted in fewer racial and ethnic disparities than expected overall, there were more notable disparities within specific offense types or charges.**

These promising findings can, at least in part, be attributed to policies and practices implemented across criminal legal system actors in the borough, and particularly within the DA's office; starting with DA Kenneth Thompson's election in 2014 and continuing under DA Gonzalez's leadership, the office has shifted focus away from conviction as a metric of success towards diversion and other more rehabilitative outcomes, along with a more intentional focus on reducing harm and limiting the scope of the criminal legal system more broadly. While our analysis showed that case processing in the Brooklyn DA's office resulted in fewer racial and ethnic disparities than expected overall, there were notable disparities within specific offense types or charges. For example, disparities were found for drug offenses and person offenses at multiple decision points. In some cases, these disparities may have been largely or partially addressed subsequent to the time period of the data for this study (e.g., through the office's new marijuana policy, as noted above), but in other instances, these findings may point to potential priority focus areas for the next phase of the office's reforms.

As noted throughout this report, the DA's office has long been engaged in efforts to address inequities in the criminal legal system, and Justice 2020 represents a commitment to continuing these reforms, including strategies focused on community engagement. As the office continues this work, it will be important to continue to monitor trends to ensure that reductions in racial and ethnic disparities that the office has achieved to date continue and that new reform efforts do not exacerbate disparities at key decision-points. Though well-intentioned, reform policies can sometimes have the opposite effect: as systems shrink, disparities may remain or even worsen. Close monitoring and reporting of trends will also help other jurisdictions learn from Brooklyn's efforts and make decisions about their own reform efforts.[49]

Drawing on the findings from the analysis and through conversations with the office about where to focus efforts next, ISLG offers the following recommendations across three main areas: continued monitoring and evaluation, additional decision point and/or charge-specific policy and practice considerations, and expanded community and broader criminal legal system engagement. Following these recommendations, while we know that Justice 2020 makes the DA's vision for the office clear, the release of the current report may be a good time to check in with staff and ensure that their processes align with the broader goals and vision for the office. Ongoing training focused on diversity, equity, and inclusivity is an overarching recommendation to ensure the office continues and sustains the changes made to date.

MONITORING AND EVALUATION

In developing the Justice 2020 agenda, the Brooklyn DA's office recognized the need to build a data infrastructure that would support regular and active use of data to inform its decisions and practices and to promote accountability and transparency—key ingredients for equitable decision-making. Over the past three years, the DA's office has made some improvements towards these goals and has begun to establish the data-driven culture necessary to build off the present study and continue to monitor racial and ethnic disparities over time, including evaluating specific reform policies and practices and sharing findings with the communities they are serving. Drawing on our experience working with the office's administrative data and our partnership with the office on a larger Data and Transparency Initiative (DATI) for the past three years, we offer three recommendations to ensure that the office establishes processes to support the continued monitoring and evaluation of the trends identified in this study over time:

- **Address data gaps.** Though the office's administrative data systems have been improved in recent years, there are still critical pieces of information that they

do not capture or that are not always accurate, making it difficult to understand the fuller context surrounding the disparities found in our analyses. A key gap identified was diversion/alternative program participation and outcomes. Diversion is an important outcome in itself, and it can also be a key driver of dismissal rates. However, as noted throughout the report, we were not able to establish when an outcome such as a dismissal was due to diversion. This made it difficult to not only understand how diversion decisions are made and whether or not they are made equitably, but also to capture the fuller picture around dismissals and whether to interpret findings at this point in a more or less favorable way. For example, higher dismissal rates may indicate an increase in the use of diversion, but it may also suggest that the office is accepting cases they should have declined up front. The current case management system makes these nuances difficult to explore.

In addition to diversion outcomes, there were a number of factors that we had hoped to account for in our analyses—knowing they play a large role in decisions—but that were unavailable or inaccurate. These included, for example, victim characteristics (including victim race and ethnicity), prosecutor characteristics, gang association, predicate felon status, and defense attorney type.[50] It is also crucial to note that the lack of detailed information on case circumstances available in the administrative data limited our ability to understand how even cases with similar charges and other characteristics may, in fact, be different. For example, we found differences in the seriousness of case characteristics in our case file review of 24 detained felony assault cases, but we were not able to determine whether these types of differences existed in a broader range of cases. Further, we were not able to look at prosecutorial recommendations at key decision points (e.g., bail, sentencing), resulting in inferences about these decisions based on final judicial decisions. ISLG recommends that the office fill these gaps to allow for more robust and complete analyses of disparities going forward as well as a greater understanding of the contextual factors that may underlie decision-making at different points.

- **Evaluate specific Justice 2020 strategies.** As noted in the introduction, the study and findings were not designed to explore the impact of Justice 2020, but to enable that exploration in future efforts. Specifically, the present study was designed to provide a baseline understanding of disparities to enable the office to assess progress made due to Justice 2020 and to inform expanded efforts to further ameliorate inequities in Brooklyn's criminal legal system. The DA's office should consider more formal evaluation of those policies and practices ripest for evaluation to determine the impacts on racial and ethnic disparities since implementation. In particular, they may want to explore charge-based declination policies (e.g., marijuana possession, theft of service, and most

recently, prostitution), bail reform, and diversion efforts (e.g., pre-plea diversion). While the study showed some evidence of improvements in disparate impacts due to some of these policy shifts, the period under study did not allow ISLG to assess whether trends continued past mid-2019.

- **Prioritize transparency and accountability.** A key goal for the office is to increase transparency and accountability to the communities it serves. While the release of this report in itself represents an important step forward, a key strategy to facilitate transparency is the release of a set of metrics through a public-facing dashboard that will be regularly updated to present the most up-to-date information about office practices. ISLG recommends that the office prioritize external reporting mechanisms and make disparity metrics central to this goal. Prosecutors across the country have increasingly utilized similar dashboards, including most recently the Manhattan District Attorney's Office, whose dashboard includes a separate section focused on disparities in decision-making. The office can use these examples as models and draw on lessons learned to tailor metrics to the elements that resonate most with users of the information, including community members.

DECISION POINT AND/OR CHARGE-SPECIFIC POLICY AND PRACTICE CONSIDERATIONS

As noted throughout the report, the DA's office has made great strides over the past several years in creating a model of progressive prosecution by adopting policies and practices that adhere to a core set of principles related to fairness, safety, and transparency. Results from this analysis show some early evidence that adoption of these policies and practices has had some impact on limiting the scope of the criminal legal system overall and reducing disparities; however, there may be additional reforms for the DA's office to consider to enhance and sustain its progress to date, which relate to the following recommendations:

- **Consider additional charging policies to further reduce case acceptance rates and address subsequent dismissals.** Brooklyn has formalized policies to decline to prosecute marijuana smoking and simple possession, turnstile jumping, and prostitution, among others. Additionally, office culture and practice has emphasized declination for many minor and low-level charges, particularly for individuals with limited prior histories. That said, though case acceptance rates have declined in recent years, they remain high. Further, 56 percent of misdemeanors and 43 percent of felonies were subsequently dismissed at later stages of system processing, and it is possible that some of these cases could have been declined at the outset. Given that the Brooklyn DA has a unit (ECAB) dedicated to comprehensively assessing cases that come in and making initial charging decisions, a unit that not every prosecutor's office has

established, it does not seem likely that high rates of case acceptance are due to a lack of diligence up front in examining the merits of charges against arrested individuals. To the contrary, ECAB undertakes its own investigatory efforts when the information received from law enforcement is not sufficient to establish case merits. This suggests that driving acceptance rates down further will require additional or expanded policy efforts. The office should consider whether there are additional charges where they can effectively establish a default to decline to prosecute.

It is important to acknowledge here that disparities were not apparent with respect to this decision point—in fact, in some instances, Black people accused of crimes were less likely to be accepted for prosecution than white people accused of crimes. Given that Black people were subsequently more likely to have their cases dismissed, however, it is possible that cases were still being accepted that did not need to be. This is still an unknown given the limited information about the nature of dismissals in the data—in particular, the extent to which they were due to successful diversion as opposed to cases that could or should have been declined at the outset. Findings from the study support further investigation, and recent research suggests that diverting both misdemeanor and non-violent charges up front can actually reduce crime later.

- **Consider instituting policies that ensure ADAs are mindful of the extent to which encounters with law enforcement and subsequent criminal histories are shaped by factors such as race, income, and neighborhood, so that individuals are[51] not precluded from community-based responses and opportunities.** Given the troubling relationship between criminal history and race and ethnicity, the office should rethink the ways that it considers criminal records in decision-making, and in particular, formalize a process to communicate to prosecutors that consideration of criminal history, when necessary, should focus on violent criminal history more specifically and consider additional factors such as age-related behavior and circumstances (i.e., maturity level) and enforcement practices. Though the office has been building a culture that pivots focus from incarceration to community-based forms of justice, it may be worth documenting parameters around how criminal history should be factored into decisions.

- **Identify new target populations for expanded programming options post-arraignment.** The DA and his team have expanded diversion options at the front-end of the system in a number of ways over the past several years, including implementing or expanding CLEAR, DTAP, and Project Reset, among others. ISLG recommends that the office identify any gaps in programming that

may not currently be offered as an option in lieu of more restrictive sentencing outcomes for populations that can be safely held accountable through community justice responses, including programming that does not only target substance use.

COMMUNITY AND BROADER SYSTEM ENGAGEMENT

While the DA has prioritized transparency and community partnerships, transparency alone does not constitute effective community engagement—the community must have a voice in how success is defined and measured and how policies and practices are shaped. In addition to engaging the broader community, the DA should leverage findings from the current study to engage other criminal legal system actors around issues of equity. ISLG recommends the office build on their current efforts to:

- **Engage and empower the community more holistically in decision-making practices and in further developing effective responses to crime.** DA Gonzalez recognizes the importance of engaging the communities that his office serves, a key value that influenced his election. The DA's office has established a dedicated unit to respond to issues raised by the community, and it is currently working to cultivate and expand a shift to more proactive forms of community engagement. While the office has been working on this over the past few years, it takes time to cultivate relationships in order for engagement to be most meaningful and effective. That said, community engagement can and should be a large focus for the office in thinking through next steps around equity and further reducing disparities. Many of the reform policies that aim to address racial and ethnic disparities offered by other jurisdictions have already been considered and implemented by the DA's office. While there are additional populations and practices to consider (as discussed above), working together with the community to craft solutions to the issues they know are pervasive is critical to continued impact. The community has valuable perspectives and expertise that will be different from the stakeholders working within the system. Their unique perspective can provide insight about new target populations to consider for programs, new approaches, and gaps they observe. ISLG recommends the office consider developing a strategic plan for community engagement by contracting with an organization that has specialized knowledge about the most effective ways to do this work within a DA's office. Community should be considered broadly to include individuals with lived criminal legal system experience, victims, advocates, community leaders, and service providers, among others. While the DA is already working towards transparency, the office should also be open to feedback from community members about new solutions to old problems.

- **Highlight larger criminal legal system inequities and engage in discussion with other system actors.** Prosecutors hold a significant amount of power in shaping case outcomes. That said, they do not operate in a vacuum, and while they have direct control over certain decisions—such as charging, bail requests, and plea offers—there are many other factors and courtroom actors that shape the final results of a case. Given the focus and emphasis that DA Gonzalez has placed on equity throughout his reform agenda, there is an opportunity for the DA's office to convene other criminal legal stakeholders, engage in discussion, and craft strategies that can not only reduce racial and ethnic disparities, but eliminate them. The release of this report can be a springboard for those conversations.

Endnotes

1. The Brooklyn DA's office aimed to implement the strategies set forth in Justice 2020 by the end of 2020. Current efforts are underway to build upon the original plan's strategies to sustain and expand the DA Gonzalez's reform agenda moving forward.

2. Clear, T. R., & Frost, N. A. (2015). The punishment imperative: The rise and failure of mass incarceration in America. NYU Press; Hinton, E., Henderson, L., & Reed, C. (2018). An unjust burden: The disparate treatment of black Americans in the criminal justice system. New York, NY: Vera Institute of Justice.

3. Barnes, J.C., Jorgensen, C., Beaver, K.M., Boutwell, B.B., & Wright, J.P. (2015). Arrest prevalence in a national sample of adults: The role of sex and race/ethnicity. American Journal of Criminal Justice, 40(30), 457-465; Starr, S.B., & Rehavi, M.M. (2013). Mandatory sentencing and racial disparity: Assessing the role of prosecutors and the effects of Booker. Yale Law Journal, 123(1), 1-265; Kutateladze, B., Lynn, V., & Liang, E. (2012). Do race and ethnicity matter in prosecution? A review of empirical studies. New York, NY: Vera Institute of Justice; Berdejó, C. (2018). Criminalizing race: Racial disparities in plea-bargaining. BCL Rev., 59, 1187.

4. Sabol, W. J., Johnson, T. L., & Caccavale, A. (2020). Trends in Correctional Control by Race and Sex. Federal Sentencing Reporter, 32(3), 157-177.

5. Pfaff, J. F. (2012). The micro and macro causes of prison growth. Georgia State University Law Review, 28(4).

6. Kutateladze, B. L., Andiloro, N. R., Johnson, B. D., & Spohn, C. C. (2014). Cumulative disadvantage: Examining racial and ethnic disparity in prosecution and sentencing. Criminology, 52(3), 514-551; Schlesinger, T. (2005). Racial and ethnic disparity in pretrial criminal processing. Justice Quarterly, 22(2), 170-192; Spears, J., & Spohn, C. (1997). The effect of evidence factors and victim characteristics on prosecutors' charging decisions in sexual assault cases. Justice Quarterly, 14(3), 501-24; Chiricos, T.G., and Bales, W.D. (1991). Unemployment and punishment: An empirical assessment. Criminology, 29(4), 701-24; Holmes, M.D., Hosch, H.M., Daudistel, H.C., Perez, D.A., & Graves, J.B. (1996). Ethnicity, legal resources, and felony dispositions in two Southwestern jurisdictions. Justice Quarterly, 13(1), 11-30; Spohn, C., & Holleran, D. (2000). The imprisonment penalty paid by young, unemployed black and Hispanic male offenders. Criminology, 38(1), 281-306; Ulmer, J. (1997). Social worlds of sentencing: Court communities under sentencing guidelines. Albany, NY: State University of New York.

7. Researchers observed similar trends of arrest reduction following DA-led policy reform in Dallas, Texas. The Deason Criminal Justice Reform Center reported that after the Dallas County DA announced a policy to decline to prosecute most misdemeanor cases of first-time marijuana possession in February 2019, police arrested 33 percent fewer cases in that year compared to 2018.

8. Metzger, P., Smiegocki, V., & Meeks, K. (2021). Budding Change: Marijuana Prosecution Policies and Police Practices in Dallas County, 2019. Dallas, TX: Deason Criminal Justice Reform Center.

9. See also William T. Grant Foundation (2018). Understanding & Reducing Racial & Ethnic Disparities in the Kings County District Attorney's Office: A Research

Proposal. http://wtgrantfoundation.org/browse-grants#/grant/189238.

10. While diversion is an important element of the Justice 2020 plan and the Brooklyn DA's reform strategy, data on how, when, and who was diverted were not available in any form that would enable inclusion in the analysis. Part of this is due to the fact that when a case is diverted, it is ultimately dismissed and its record sealed.

11. Given the diversity of Brooklyn as a borough, ISLG recognizes that the racial and ethnic categories used in the analysis are overly broad. That said, the administrative data analyzed for the study did not allow for a nuanced analysis across other racial and ethnic categories. In addition, law enforcement identified the racial and ethnic categories included in the data; the categories were not self-identified.

12. Note that the New York State Division of Criminal Justice Services classifies Class A felonies as violent felonies. See New York State Division of Criminal Justice Services (2017). New York State Violent Felony Offense Processing 2016 Annual Report. Office of Justice Research and Performance. https://www.criminaljustice.ny.gov/crimnet/ojsa/nys-violent-felony-offense-processing-2016.pdf.

13. For example, ISLG did not include "presence of a victim" in models following case acceptance because of the strong association with "domestic violence status" (i.e., cases handled by the Domestic Violence Bureau) and the "presence of an order of protection."

14. Note that ISLG included only "prior convictions" and "bench warrants" in the models due to high correlations with other criminal history variables, such as "prior arrests."

15. Monahan, J., & Skeem, J. L. (2016). Risk assessment in criminal sentencing. Annual review of clinical psychology, 12, 489-513; Skeem, J. L., & Lowenkamp, C. T. (2016). Risk, race, and recidivism: Predictive bias and disparate impact. Criminology, 54(4), 680-712; Chouldechova, A. (2017). Fair prediction with disparate impact: A study of bias in recidivism prediction instruments. Big data, 5(2), 153-163.

16. Scrivener, L., Meizlish, A., Bond, E., & Chauhan, P. (2020). Tracking Enforcement Trends in New York City: 2003-2018. Data Collaborative for Justice. New York, NY: John Jay College of Criminal Justice; Bell, M. (2017, July). The Dynamics of Policing and Segregation by Race and Class. NYU Furman Center. https://furmancenter.org/research/iri/essay/the-dynamics-of-policing-and-segregation-by-race-and-class.

17. U.S. Census Bureau (2021). QuickFacts: Kings County, New York; United States. https://www.census.gov/quickfacts/fact/table/kingscountynewyork,US/PST045219.

18. Some individuals may also enter the DA's office through an investigation by the DA, though this type of case is outside the scope of our analysis.

19. See, for example Kutateladze, B.L., Richardson, R., Meldrum, R., Stemen, D., Olson, D., Webster, E., Arndt, M., Matthews, D., & Soor, S. (2019). Race, Ethnicity and Prosecution in Milwaukee County, Wisconsin. Advancing Prosecutorial Effectiveness and Fairness Report Series. http://caj.fiu.edu/publications/reports/milwaukee-report.pdf; Kutateladze, B.L., Richardson, R., Meldrum, R., Stemen, D., Olson, D., Webster, E., Arndt, M., Matthews, D., & Soor, S. (2019). Race, Ethnicity and Prosecution in Clay, Duval and Nassau Counties, Florida. Advancing Prosecutorial Effectiveness and Fairness

Report Series. https://caj.fiu.edu/projects/ppis/duval-county-disparity-report-printable.pdf; Kutateladze, B.L., Richardson, R., Meldrum, R., Stemen, D., Olson, D., Webster, E., Arndt, M., Matthews, D., & Soor, S. (2019). Race, Ethnicity and Prosecution in Cook County, Illinois. Advancing Prosecutorial Effectiveness and Fairness Report Series. https://ppibuild.wpengine.com/wp-content/uploads/2020/09/FIU-Loyola-Report-2-Cook-County-C-spreads-with-cover-small.pdf.

20. ACDs defer case dispositions with the potential for charges to be dismissed provided defendants do not come back into the justice system within six months.

21. Note that some defendants initially detained following arraignment may have posted bail and been released at a later date.

22. This process has become relatively rare since 2020, after discovery reform.

23. Going to trial does not preclude a plea—defendants can take a plea at any point before disposition.

24. Note that the reasons for dismissal in these cases are not systematically recorded in the case management system and could include, for example, diversion, lack of evidence, speedy trial requirements, or lack of victim cooperation, among other possible reasons.

25. Note that 42 percent of these cases were reduced felonies, meaning that while their screening charge was a felony, they were ultimately convicted of a misdemeanor, which may account for the relatively high percentage of people convicted of misdemeanors receiving custodial sentences.

26. See, for example Kutateladze, B.L., Richardson, R., Meldrum, R., Stemen, D., Olson, D., Webster, E., Arndt, M., Matthews, D., & Soor, S. (2019). Race, Ethnicity and Prosecution in Milwaukee County, Wisconsin. Advancing Prosecutorial Effectiveness and Fairness Report Series. http://caj.fiu.edu/publications/reports/milwaukee-report.pdf; Kutateladze, B.L., Richardson, R., Meldrum, R., Stemen, D., Olson, D., Webster, E., Arndt, M., Matthews, D., & Soor, S. (2019). Race, Ethnicity and Prosecution in Clay, Duval and Nassau Counties, Florida. Advancing Prosecutorial Effectiveness and Fairness Report Series. https://caj.fiu.edu/projects/ppis/duval-county-disparity-report-printable.pdf; Kutateladze, B.L., Richardson, R., Meldrum, R., Stemen, D., Olson, D., Webster, E., Arndt, M., Matthews, D., & Soor, S. (2019). Race, Ethnicity and Prosecution in Cook County, Illinois. Advancing Prosecutorial Effectiveness and Fairness Report Series. https://ppibuild.wpengine.com/wp-content/uploads/2020/09/FIU-Loyola-Report-2-Cook-County-C-spreads-with-cover-small.pdf.

27. Manhattan District Attorney's Office Data Dashboard (2021). Cohort Outcomes by Race/Ethnicity. Manhattan District Attorney's Office. https://data.manhattan-da.org/#!/cohorts.

28. Kings County District Attorney's Office (2018, July 27). Low-Level Marijuana Prosecutions in Brooklyn Plunged by over 91% This Year as District Attorney's Office Expanded Declination Policy. Kings County District Attorney's Office. http://www.brooklynda.org/2018/07/27/low-level-marijuana-prosecutions-in-brooklyn-plunged-by-over-91-this-year-as-district-attorneys-office-expanded-declination-policy/.

29. Gabrielli, S. & Blau, R. (2017, July 25). Brooklyn officials seek to decriminalize subway turnstile jumping. New York

Daily News. https://www.nydailynews.com/new-york/brooklyn-officials-seek-decriminalize-subway-turn-stile-jumping-article-1.3355948; Ewing, M. (2017, Aug. 4). Will New York Stop Arresting People for Evading Subway Fares? The Atlantic. https://www.theatlantic.com/politics/archive/2017/08/new-york-subway-fares/535866/.

30. Note that we do not present RRIs here because rates for different racial and ethnic groups were similar to one another.

31. Because of the relatively small percentage of misdemeanor arrests with charge changes at screening, the remainder of the section illustrates outcomes for felony arrests only.

32. Factors we controlled for: gender, age (i.e., young adult versus older adult), prior felony convictions, prior bench warrants, arrest year, arrest precinct, arrest charge class, whether a desk appearance ticket was issued (misdemeanors only), presence of a victim, and arrest charge type (i.e., person, drug, property, weapon, public order, or other).

33. See Scrivener, L., Meizlish, A., Bond, E., & Chauhan, P. (2020). Tracking Enforcement Trends in New York City: 2003-2018. Data Collaborative for Justice. New York, NY: John Jay College of Criminal Justice.

34. See, for example, median income data from the U.S. Census Bureau's American Community Survey at U.S. Census Bureau (2020). American Community Survey. https://www.census.gov/programs-surveys/acs/data.html, and Stop, Question and Frisk data from the New York Police Department at New York City Police Department (2021). Stop, Question and Frisk Data. https://www1.nyc.gov/site/nypd/stats/reports-analysis/stopfrisk.page.

35. Factors we controlled for: gender, age (i.e., young adult versus older adult), prior felony convictions, prior bench warrants, arraignment year, arrest precinct, arrest charge severity, whether a desk appearance ticket was issued (misdemeanors only), presence of a victim, and top charge type (i.e., person, drug, property, weapon, public order, or other).

36. Coded in the data as "Jail in lieu of bail."

37. Factors we controlled for: gender, age (i.e., young adult versus older adult), prior felony convictions, prior bench warrants, arraignment year, trial bureau, screening charge class, whether a desk appearance ticket was issued (misdemeanors only), order of protection at arraignment, screening charge type (i.e., person, drug, property, weapon, public order, or other), and number of unique charges at arraignment.

38. Note that we did not find this pattern for either misdemeanor or felony person crimes.

39. Factors we controlled for: gender, age (i.e., young adult versus older adult), prior felony convictions, prior bench warrants, disposition year, trial bureau, screening charge severity, whether a desk appearance ticket was issued (misdemeanors only), order of protection at arraignment, current bench warrant, screening charge type (i.e., person, drug, property, weapon, public order, or other), number of unique charges at arraignment, and detention post-arraignment.

40. Factors we controlled for: gender, age (i.e., young adult versus older adult), prior felony convictions, prior bench warrants, arraignment year, arrest precinct, arrest charge severity, whether a desk appearance ticket was issued (misdemeanors only), presence of a victim, and charge type (i.e., person, drug, property, weapon, public order, or other).

41. Note that while 265.01 is a misdemeanor, 265.01-a and 265.01-b are classified as E felonies. We found disparities for the felony charges, all but one of which were 265.01-b.

42. While the number of defendants with private attorneys in the plea-bargaining case file review sample was small, private attorneys generally secured better outcomes in the form of pleas to a lesser charge and non-custodial sentences for their clients than did public defenders.

43. Observed disparities for Hispanic defendants in this sample were not related to translation issues. Lack of proficiency in English was noted for only three cases, all of which were petit larceny cases that resulted in violations.

44. Note that while we used arrests for the purposes of comparison, it is likely that these individuals also had multiple prior convictions, which would also influence outcomes.

45. Grand and petit larceny are similar offenses, so we developed the case typology considering the range of circumstances that might fall into either charge type. To render analyses more meaningful, we focused our analysis on case types with larger samples.

46. Note that of the misdemeanor convictions that resulted in a custodial sentence, 42 percent were reduced from felonies while 58 percent were misdemeanors at screening.

47. Factors we controlled for: gender, age (i.e., young adult versus older adult), prior felony convictions, prior bench warrants, disposition year, trial bureau, conviction charge severity, whether a desk appearance ticket was issued (misdemeanors only), order of protection at arraignment, current bench warrant, charge type (i.e., person, drug, property, weapon, public order, or other), detention post-arraignment, and guilty plea.

48. Note that the custodial sentence rate was 53 percent for those that had been reduced from felony charges at screening (which represented two-thirds of the cases) and 42 percent for those that were misdemeanors at screening (which represented one-third of cases).

49. See, for example, CUNY Institute for State and Local Governance (2021). Reducing the Misuse and Overuse of Jails in Safety and Justice Challenge Sites. https://islg. cuny.edu/resources/ reducing-the-misuse-and-overuse-of-jails.

50. Note that some of these factors are included in the system (e.g., defendant zip code, gang affiliation) but they are not consistently populated or are inaccurate, and too much data was missing to enable use for analysis.

51. Agan, A., Doleac, J. L., & Harvey, A. (2021). Misdemeanor Prosecution (NBER Working Paper 28600). Cambridge, MA: National Bureau of Economic Research. https://www.nber.org/system/files/ working_papers/w28600/w28600.pdf.

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