



## **Plea Tracking in the Berkshire County District Attorney's Office**

### **PART ONE**

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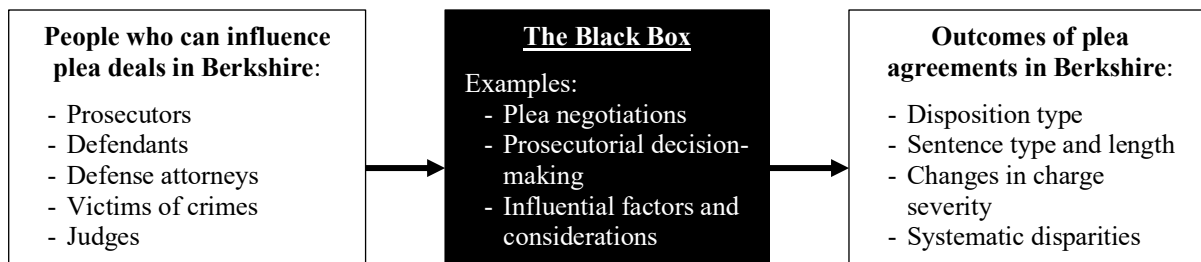
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## OVERVIEW: The Plea Tracker Project

The Wilson Center for Science and Justice at Duke University School of Law (WCSJ) began a collaboration with the Berkshire County District Attorney's Office in 2020 to study the plea-bargaining process and plea outcomes in Berkshire, Massachusetts. The WCSJ is an interdisciplinary, non-partisan group of researchers at who conduct research and policy work relevant to the criminal legal system. [Most criminal cases are resolved through settlements, or plea bargains](#), but that process occurs outside of court and is typically not documented. As a result, very little is known nationally, or even in any particular jurisdiction, about the process. The WCSJ plea tracking work aims to shed light on plea bargaining processes and how prosecutors use their discretion to resolve cases without a trial.

The goal of the Plea Tracker Project is to collect and analyze case-level data on plea negotiations and associated outcomes for one year in the Berkshire DA's Office. This project represents the first look at how the people important in the plea-bargaining process (to the left of the black box) may influence plea outcomes (to the right of the black box).



The Berkshire DA's Office aimed to better understand its own role by documenting the plea process and identifying aspects that can be improved. The Office is committed to increasing transparency and public trust, demonstrating the efficacy and implementation of their central policies, and identifying areas of the system that can be improved.

The WCSJ agreed to collect data to study the use of prosecutorial discretion during plea bargaining. Between August 2020 and December 2020, the Berkshire DA's Office worked directly with Dr. Quigley-McBride, a researcher at the WCSJ, to create a Plea Tracker which was pilot tested in January and February of 2021. Final revisions were made in February and March of 2021. The Office was trained on April 1, 2021.

This report reflects one year of data collection, from April 1, 2021, through April 30, 2022. These data do not include cases for which all charges were dismissed, that resulted in a trial, or that the Office declined to prosecute.

## Executive Summary

**Background.** Given that the vast majority of cases are resolved through plea bargains, one cannot fully understand the criminal legal system without understanding the plea process. Until the Berkshire District Attorney's Office (DA's Office) began the plea tracking project, however, that process was not documented. In Massachusetts, even court-level data can be lacking. In particular, the volume of cases that come through District Court has made it particularly hard to study those cases. These data presented in this report reflect over 1,000 District Court cases. We also examine 81 Superior Court cases, shedding new light on the most serious cases resolved by plea by the Berkshire DA's Office. The focus of Part One of this report is to assess the outcomes of pled cases in Berkshire, MA, and begin to describe how some defendant factors, system factors, and factors related to the particular offense might influence pled outcomes.

**Race of Persons Charged.** Most people charged with crimes in Berkshire MA were white (81%). We observed a higher proportion of Black people charged with crimes in Superior Court (35%) than was observed in District Court (12%).

**Dispositions and Race.** White persons received more lenient disposition types in District Court. Black persons charged with crimes in District Court were more likely to accept a plea with at least one Guilty conviction (30%) than white persons charged in District Court (22%). In contrast, 28% of white persons charged in District Court had at least one Continuance without a Finding (CWO) compared with 5% of Black persons. In Superior Court, a different pattern was observed—a slightly lower percentage of cases charging Black persons had at least one Guilty conviction (76%) than cases charging white persons (85%).

**Disposition and Crime Type.** In District Court, at least one Guilty conviction was more common in cases involving violent crimes or crimes against people, while CWOs were less common. Cases with crimes against property had at least one Guilty conviction or at least one CWOs equally often. Cases with motor vehicle offenses featured at least one CWO more frequently than at least one Guilty conviction. In Superior Court, at least one Guilty conviction was much more common than any other disposition, regardless of crime type.

**Defense Attorneys.** In District Court, persons with private attorneys received a probation sentence most often (93%) and a prison sentence least often (10%; only 5 days on average). Similar benefits were seen in Superior Court among persons who retained a private attorney. Persons with court-appointed lawyers accepted pleas involving a prison sentence in 25% of District Court cases, with an average prison sentence of 2.06 months. CPCS lawyers (Committee for Public Council Services) had the highest proportion of prison sentences (35%), and the longest prison sentences (4.52 months on average).

**Defense Attorney and Race.** White persons charged in District Court were most likely to retain a private attorney (approximately twice as often as Black persons). It was more common for CPCS and court-appointed attorneys to represent Black people in District Court, with a third of Black persons represented by CPCS and 62% retaining court-appointed lawyers. In Superior Court, white persons were also much more likely to have a private attorney (26%) than Black persons (7%).

**Race and Sentence Type.** The percentage of Black and white people receiving prison and probation sentences was fairly equal in both District Court and Superior Court.

**Pretrial Detention.** In District Court, pretrial detention occurred in 19% of cases, with an average length of approximately 2 months. Including credit for “time served” in the final plea was reported in 61% of cases featuring pretrial detention, with an average length of 72 days, or about 2.4 months. In Superior Court, pretrial detention was more common and reported in 49% of cases. The average length was approximately 8 months and “time served” features in 31% of Superior Court Tenders of Plea, with an average “time served” of approximately 7.4 months.

**Prison Sentences.** In District Court, 26% of Tenders of Plea included a prison sentence, with an average sentence length of 2.4 months. Probation was more common—reported in 75% of cases—with an average length of 6 months. In contrast, 81% of Superior Court cases resulted in a prison sentence and 36% involved probation. The average prison sentence range in Superior Court was from 27 and 33 months.

**Dropped Charges.** In District Court, prosecutors reported dropping a charge or charges in 20% of cases. Thirty five percent of the time, the charge was dropped to effectuate a plea deal. Other reasons included office policy (18%), defendant factors (e.g., age, cooperation, mental health; 19%), victim-related issues or input (14%), a weak case (19%), wrong or duplicative charges (8%), and avoiding a felony conviction or minimizing the defendant’s record (6%). In Superior Court, dropped charges were reported in 49% of cases. The reasons included avoiding a mandatory minimum or minimizing the person’s criminal record (23%), to facilitate a plea (20%), a weak case (13%), and victim-related information (5%).

**Charge Bargaining.** In District Court, prosecutors reported charge bargaining in 8% of cases, usually to avoid a felony conviction record for the person charged. Conversely, in Superior Court, charge bargaining was more common (46% of cases), and usually served to avoid an otherwise-applicable mandatory minimum sentence.

**Multiple Plea Offers.** In District Court, most cases were resolved after a single offer (73% of cases) rather than multiple offers (more than one offer in 13% of cases). A new offer was created when the person charged (34%) or the judge (18%) rejected the initial offer, or there was new information about the case (17%). Multiple plea offers were more common in Superior Court (26% had two or more offers) than in District Court, but the first offer was still accepted in most cases (60% of Superior Court cases). New offers occurred when the person charged rejected the initial offer (67%), there was new information (19%), or due to office policy (24%).

**Mandatory Minimums.** In Superior Court, 58% of cases featured a charge that triggered a mandatory minimum at some point during the plea-bargaining process. Most of the time (80% of cases triggering a mandatory minimum), this sentence was ultimately avoided by charge bargaining, dropping the charge, or amending the charge in line with office policy. There were no racial or crime type differences observed when examining cases in which a mandatory minimum was triggered, and the subset of cases in which that sentence was ultimately avoided.

**Sentence Travel.** In Superior Court, the average discount observed was 49 and 104 months when comparing the pled sentence to the sentence the person charged could have received before any dismissals or abandoned charges. The discount was 16 and 49 months on average when calculating the discount by comparing the pled sentence to the sentence the person could have received post-dismissals and post-abandoned charges. Cases with crimes involving firearms travelled more than drug crimes and violent crimes in Superior Court.

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## I. Plea Bargaining Outcomes

Part I focuses on the outcomes of plea-bargaining in cases resolved in **District Court** and **Superior Court** in Berkshire, MA. This includes charge dispositions, sentence type and length, the effects of plea offer revisions and alterations to charges or sentences, and variations in outcomes based on characteristics of the person charged or their representation. We examined **81 cases in Superior Court** and **1012 cases in District Court** from April 1, 2021, through April 30, 2022, for which we have at least one Plea Tracker entry from either support staff or a prosecutor. However, some cases are missing an entry from one of these groups.<sup>1</sup> While the data we examine were generously collected by prosecutors, these outcomes reflect the results of negotiations between prosecutors, defense lawyers in consultation with their clients, and with some degree of judicial involvement. Thus, these outcomes shed light on the work and the roles of multiple actors. Where possible, we provide information about the role of criminal defense lawyers and judges.

The plea process works slightly differently in District Court versus Superior Court. District Courts handle misdemeanors as well as felonies, largely those punishable by up to 5 years of custody. Superior Court, in practice, handles the more serious felony cases. A plea offer formally introduced in court is called a “Tender of Plea” in Massachusetts. Both the prosecution and defense can tender pleas. When these plea offers are tendered in District Court, judges may impose a different sentence, but if it will be greater than what the defendant requested, the judge must first give the defendant an opportunity to withdraw the plea. In Superior Court, the judge can impose a sentence that exceeds the prosecutor’s request but, only if the judge provides an opportunity to withdraw. Finally, if the judge chooses to reject a plea containing recommendations both parties agreed to, the judge can inform the parties what sentence the judge would impose and either party can withdraw from that agreement.<sup>2</sup>

We used the Massachusetts Sentencing Guidelines Grid (hereafter, the *Sentencing Grid*) in interpretation and analysis of pled charges and sentences in **Superior Court**. For instance, the criminal history data (counts of prior convictions) were coded to align with the Criminal History categories in the Sentencing Grid, which ranges from “A” (minor to no criminal history) to “E” (very serious history of violent crimes). In addition, the Offense Level (“0” – minor infraction to “9” – serious felonies) of the charges reported were added to the data by looking up these charges in the Massachusetts Sentencing Guidelines Document. These data were used to determine what the person charged in Superior Court could have been sentenced under the Guidelines if all initial charges had remained, and whether the sentence resulting from the plea was below, above, or within that initial Guidelines recommendation. If the pled sentence was within the Guidelines, we also determined whether it was on the low, middle, or high end of this recommendation.

If statistical analyses were run to determine strength of an association or the significance of a difference, these analyses are reported in the appendices and denoted by a superscript code that indicates which section it is in, and then numbered from start to finish. So, analyses run as part of Section A, with three prior analyses noted in that section, would be indicated by “[A4]”.

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<sup>1</sup> This was especially the case in District Court where the extensive caseload created larger data entry burdens. Prosecutors were also not required to answer every question in the Plea Tracker, so they sometimes opted to leave a question with no response. Information that prosecutors typically provided could sometimes be found in the support staff entry, so some missing data was sourced that way. As a result, the sample sizes or denominators used in this report will vary, but these will be reported alongside every statistic or percentage calculated in this report.

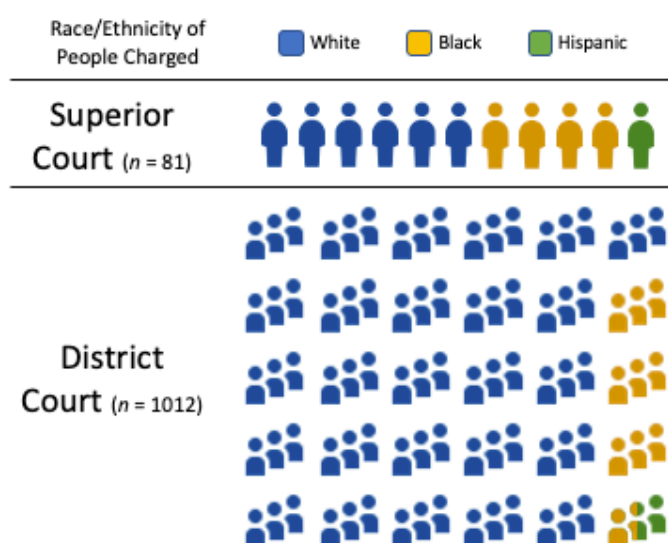
<sup>2</sup> Mass. R. Crim. P. 12.

## A. DEMOGRAPHIC FACTORS AND REPRESENTATION OF PERSONS CHARGED

Support staff are responsible for reporting demographic information about people charged with crimes and the type of lawyer they are working with in the Plea Tracker. When prosecutors complete their data entry, they report the person's criminal history and their perceptions of the threat that person poses to public safety and property. In this section, we examine whether people with different demographic characteristics, or who appear more dangerous in the eyes of the prosecutor, were associated with different outcomes in their tenders of plea.

### 1. Race/Ethnicity of Persons Charged in District and Superior Court

In both **District Court** and **Superior Court**, people charged with crimes were most often men who identified as white and 35 years of age on average.<sup>3</sup> Most also had at least one prior conviction or CWOFF. In addition, a greater proportion of Black people were charged with crimes in Superior Court (35% of people charged) as compared to District Court (12% of people charged). Hispanic people appeared in 2% of both District and Superior Court cases. Table 1 contains the demographic details of the persons who accepted a plea in either District or Superior Court.



One way to understand these data concerning **Superior Court** cases in Berkshire, MA, is to compare demographics of charged individuals with arrest records from agencies in Berkshire County. We examined the data submitted to the Federal Bureau of Investigation (FBI) for the Uniform Crime Report from 2020. These data indicate that 18% of people who were arrested by police were Black and 6% were Hispanic, while 73% of arrestees were white.<sup>4</sup> The percentage of Black and Hispanic persons coming into contact with the criminal justice system in Berkshire County are higher than their representation in the general population—only about 3% of the population in Berkshire identify as Black and about 5% identify as Hispanic.<sup>5</sup>

<sup>3</sup>  $SD = 11.67$  years.  $SD$  is the Standard Deviation, which describes how “spread out” the data is around the average value. Here, the average 35, and the  $SD$  is approx. 12 years. This suggests that the age of people charged would often be as low as about 23 or as high as 48, but it would be rare for people charged to have more extreme ages (i.e., younger than 23 years of age, or older than 58 years of age).

<sup>4</sup> Total  $N_{2021}$  arrestees = 2582; 298 = Black, 98 = Hispanic, 1145 = White, and 41 = Other or Unknown. Data source: <https://masscrime.chs.state.ma.us/public/Browse/browsetables.aspx>

<sup>5</sup> Smith, J. (2018, 22 September). A Pittsfield forum, a look at “Being Black in the Berkshires” in the past and present. *The Berkshire Eagle*. Retrieved from: [www.berkshireeagle.com/archives](http://www.berkshireeagle.com/archives)

**Table 1.***Demographic Features of the People Charged in District and Superior Court (N = 984).*

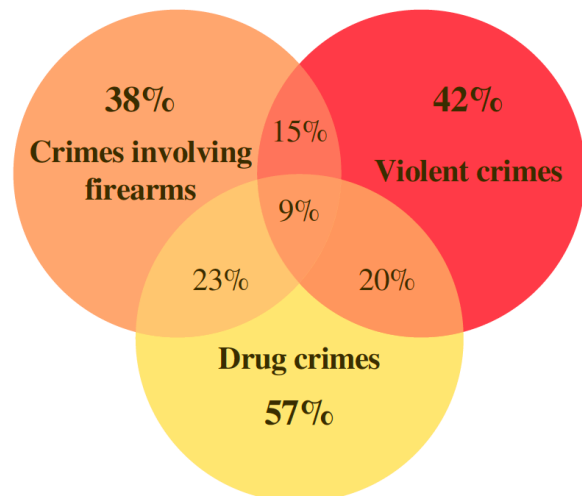
Feature	Categories	Number of Cases	Percentage of Cases
<i>Race</i>	White	792	81%
	Black	139	14%
	Hispanic	21	2%
	Other/Unknown	32	3%
<i>Gender</i>	Male	759	77%
	Female	212	22%
	Other/Unknown	14	1%
<i>Criminal History</i>	At least one prior felony <sup>#</sup>	201	20%
	At least one past conviction or CWO <sup>F*#</sup>	418	42%
	No criminal record	209	21%
	Other/Unknown	332	34%

*Notes:* These data were not always available, hence the lower sample size used to calculate percentages here ( $n = 984$ ). \*CWO<sup>F</sup> = Continuance without a Finding. <sup>#</sup>These categories are not mutually exclusive. Values represent the number or percent of cases involving a person within the relevant category. Mean age was 36 years ( $SD = 12.22$ ).

These arrest records from Berkshire County police agencies also specify the type of crime that led to the arrest. In Superior Court, three main types of offenses appear most frequently:

- serious drug or narcotics offenses (labelled “Drugs/Narcotics Violations” in the arrestee data);
- crimes involving firearms (labelled “Weapons Laws Violations”); and
- violent crimes (a combination of arrests for crimes labelled “Simple Assault”, “Aggravated Assault”, “Statutory Rape”, and “Sodomy”).

### Superior Court cases (n = 81)



Serious drug charges appeared in 57% of the 81 Superior Court cases, 42% of these cases involved violent offenses, and 38% of these cases featured charges involving illegal use of firearms. Refer to the Venn Diagram above for a depiction of the overlap between these types of cases. The racial breakdown of the persons charged in these types of cases is displayed in Table 2 with the 2020 arrestee data from the same category alongside for comparison. There are very few Hispanic persons in both data sets, so we focus on the percentages of Black and white persons charged.

Comparing these data in this way shows that the percentage of Black and white persons charged with crimes involving firearms between April 1, 2021, and April 20, 2022, in Superior



Court, as reported in the Plea Tracker, were approximately equal to the proportions seen in the Berkshire 2020 arrestee data (all around 45-50%). However, there were fewer white persons and more Black persons charged with for drugs/narcotics offenses by the Berkshire DA's Office than was seen in the arrestee data. Similarly, there were fewer white persons and more Black persons charged with violent crimes in Superior Court than seen in the 2020 arrestee data.

**Table 2.**

*Comparing 2020 Berkshire County Arrestee Data and Superior Court Cases from the Plea Tracker by Race/Ethnicity of the Person Charged or Arrested and the Type of Crime.*

Type of Crime	Race/ethnicity of person charged	Arrestee Data		Superior Court Data		
		Count	Percent *	Count	Percent*	Percent within race/ethnicity^
Drug/ Narcotics Violations	All	58	16%	46	57%	-
	White	35	60%	24	52%	52%
	Black	19	33%	19	41%	66%
	Hispanic	4	7%	2	4%	100%
Weapons Law Violations	All	13	3%	31	38%	-
	White	6	46%	14	45%	30%
	Black	6	46%	14	45%	48%
	Hispanic	1	8%	1	3%	50%
Violent Crimes <sup>#</sup>	All	301	81%	34	42%	-
	White	221	73%	18	53%	39%
	Black	57	19%	12	35%	41%
	Hispanic	23	8%	2	6%	100%

Notes. <sup>#</sup>Includes simple assault ( $n = 187$ ), aggravated assault ( $n = 110$ ), statutory rape ( $n = 1$ ), and sodomy ( $n = 3$ ) from the arrestee data from Berkshire County in 2020. \*Percentages for "All" races/ethnicities calculated with the total sample ( $N_{2020\ drug/firearm/violent\ arrestees} = 372$ ;  $N_{SuperiorCourt} = 81$ ), and for each race/ethnic category, percentages calculated using the total sample size *within each crime type* (the "All" count). ^Percentages calculated using the number of people charged in SC in that race/ethnic category ( $n_{white} = 46$ ,  $n_{black} = 29$ ,  $n_{hispanic} = 2$ ).

## 2. Sentencing Outcomes and Perceived Threat to Public Safety and Property

The threat that persons charged in District Court posed to public safety and property, as reported by prosecutors, was lower than in Superior Court. Specifically, in **District Court**, the persons charged were most often perceived to be a minor threat to public safety by prosecutors (39% of cases) and no threat at all to property (41%). In **Superior Court**, however, the most common judgment prosecutors made about persons charged was that they were high level of threat to public safety (28% of cases) *or* a minor threat (32% of cases), and no threat to property (41% of cases). Refer to Table 3 for a summary of these data.

In both courts, prosecutors' perceptions of the danger the person posed to society were related to the frequency of prison sentences. In **District Court**, prosecutors perceived most people who received prison sentences ( $n = 148$ , due to missing prosecutor entries) to be a high level (32% of cases) or a moderate level (39% of cases) of threat to public safety. Persons perceived to be a high or moderate threat to public safety were more likely to have received prison sentences than

those who posed no threat to public safety.<sup>[A1]</sup> Prosecutors also perceived this same group to be a moderate level (34% of cases) or minor level (33% of cases) of threat to property in most cases. Any perceived threat to property increased the chance that a person would receive a prison sentence as compared to people who posed no threat at all to property.<sup>[A2]</sup> In contrast, prosecutors usually perceived people who accepted a plea with only a probation sentence ( $n = 448$ , due to missing prosecutor entries) as posing only a minor threat (44% of cases) or no threat (29% of cases) to public safety. Similarly, prosecutors only perceived this group of people charged in District Court to be a minor (36% of cases) or no threat (47% of cases) to property.

In **Superior Court**, prison and persons posing a high threat were more common overall. Persons perceived to be a greater threat to public safety were more likely to receive a prison sentence.<sup>[A3]</sup> A total of 66 persons charged in Superior Court received a prison sentence, and 30.30% were perceived to pose a high threat to public safety by the prosecutor on the case while 24% were perceived to pose a moderate threat to public safety. However, how much of a threat to property posed was not related to whether they received a prison sentence.<sup>[A4]</sup> In fact, for 32% of plead cases in Superior Court resolved with a prison sentence, the prosecutor judged the person to be no threat to property. Only 17 persons in Superior Court received either no sentence or only a probation sentence. These were judged by the prosecutor to be a minor threat or no threat to public safety and property in 76% of cases.

**Table 3.**

*Perceived Level of Threat to Public Safety and Property Determined by the Prosecutor.*

Court	Prosecutor's Perception of Threat Level	Threat to Public Safety	Threat to Property
<b>District</b> ( $n = 579$ )	No threat at all	164 (28%)	239 (41%)
	A minor threat	224 (39%)	212 (37%)
	A moderate threat	132 (23%)	100 (17%)
	A high level of threat	59 (10%)	28 (5%)
<b>Superior</b> ( $n = 71$ )	No threat at all	11 (15%)	29 (41%)
	A minor threat	23 (32%)	20 (28%)
	A moderate threat	17 (24%)	14 (20%)
	A high level of threat	20 (28%)	8 (11%)

*Notes.* These are judgments made by prosecutors on a Likert-type scale. The total  $N$  for District Court is 1012, and 82 for Superior Court, but these data were missing in some cases. Percentages are calculated using the number of cases for which these data were available.

### 3. Type of Defense Attorney, Race/Ethnicity of Persons Charged, and Plea Outcomes

Outcomes of the plea-bargaining process reflect input from multiple actors. Although we do not have information reported by other actors involved in the plea negotiation process, we do have information about the type of defense attorney.

We found that the type of defense attorney representing the person charged made a difference for sentencing outcomes in **District Court**. Private attorneys appeared most likely to secure a probation sentence for their client (93% who hired private attorneys) and the least likely to have clients who accepted pleas deals involving prison sentences (10% of those who hired private attorneys).<sup>[A5]</sup> When a person with a private attorney did receive a prison sentence, it was shorter (0.17 months or 5 days on average<sup>6</sup>). Persons who had court-appointed lawyers accepted pleas involving a prison sentence in 25% of cases and an average prison sentence of 2.06 months.<sup>7</sup> CPCS lawyers (Committee for Public Council Services) had the highest proportion of prison sentences among clients (35%), and the longest prison sentences (4.52 months on average<sup>8</sup>).<sup>[A6]</sup> Sentence type data associated with defense attorney type appears in Table 4.

We also explored the link between defense attorney type and the race of the person charged (see Table 4 for these data in **District Court**). Private attorneys are the least common type of defense lawyer reported (only 12% of District Court cases). These data suggest that white persons retained a private attorney approximately twice as often as Black persons charged in District Court did. In contrast, it was more common for CPCS and court-appointed attorneys to represent Black persons, with a third represented by CPCS and 62% with court-appointed lawyers.

**Table 4.**

*Prison and Probation Frequency/Length in District Court by Defense Attorney Type.*

Sentence Type	Defense Attorney Type	Number of people sentenced (%) <sup>*</sup>	Average length (in months)	SD length (in months)
Prison	Private	11 (10%)	0.17	0.88
	Court-Appointed	137 (25%)	2.06	10.88
	CPCS	80 (35%)	4.52	13.36
	Unknown/Missing	4 (29%)	0.64	1.80
Probation	Private	99 (93%)	8.57	6.72
	Court-Appointed	418 (78%)	6.54	9.32
	CPCS	164 (71%)	6.37	8.97
	Unknown/Missing	8 (57%)	0.14	0.31

*Notes.* <sup>\*</sup>Percentages calculated with the number of people with that type of defense attorney as the denominator -  $n_{private} = 107$ ;  $n_{court-appointed} = 539$ ;  $n_{CPCS} = 230$ .

Finally, there were patterns associated with the type of defense attorney that was retained by the person charged in **Superior Court**. Similar to District Court, most charged in this court were

<sup>6</sup>SD = 0.88 months.

<sup>7</sup>SD = 10.88.

<sup>8</sup>SD = 13.36.

represented by court-appointed attorneys (63% of cases), though there was a slightly higher proportion of private attorneys (19%) and a lower proportion of CPCS lawyers (17%) retained in Superior Court as compared to District Court (refer to Table 5). White people were much more likely to have a private attorney (26%) than Black or Hispanic people (7% and 0% of cases, respectively). It was much more common for Black persons charged in Superior Court to retain a court-appointed lawyer (83%) and, far less common, an attorney from CPCS (10%).<sup>9</sup>

In 87% of cases with private attorneys<sup>[A7]</sup>, the person received a prison sentence with an average length of 28 – 35 months<sup>10</sup>. Clients of court-appointed lawyers received prison sentences in 75% of cases, with an average length of 25 – 31 months.<sup>11</sup> People represented by CPCS attorneys received prison sentences in 100% of cases with an average length of 29 – 40 months.<sup>12</sup> <sup>[A8]</sup> Probation for at least one charge was associated with 27% of cases with a private attorney, 65% of cases with court-appointed attorneys, and 36% of cases with CPCS lawyers.

**Table 5.**

*Number of Cases by Court, Type of Defense Attorney, and Race of Person Charged.*

Court	Type of Lawyer	Count	%	Race of Person Charged	Count	%
<b>District Court</b> ( <i>n</i> = 890)	Private Attorney	107	12%	White	92	12%
				Black	6	6%
				Hispanic	2	11%
	Court-Appointed Lawyer	539	61%	White	447	61%
				Black	67	62%
				Hispanic	10	56%
	CPCS	230	26%	White	188	25%
				Black	32	32%
				Hispanic	6	33%
<b>Superior Court</b> ( <i>n</i> = 82)	Private Attorney	15	18%	White	12	26%
				Black	2	7%
				Hispanic	0	0%
	Court-Appointed Lawyer	51	62%	White	24	52%
				Black	24	83%
				Hispanic	1	50%
	CPCS	14	17%	White	10	22%
				Black	3	10%
				Hispanic	0	0%

*Notes.* Some cases are missing race or attorney information. Percentages were calculated using the number of for which defense attorney information were reported (District Court = 890, Superior Court = 82), so percentages represent the proportion of all cases in which a type of defense attorney represented people within each Court and, the percentage of people with that type of attorney within each race/ethnicity:  $n_{white} = 738$ ;  $n_{black} = 108$ ;  $n_{hispanic} = 18$ .

<sup>9</sup> There were only two Hispanic people reported among the Superior Court cases—for one, the type of defense attorney was unknown, but the other had a court-appointed lawyer.

<sup>10</sup> *SD* = 42.39 months.

<sup>11</sup> *SD* = 44.01 months.

<sup>12</sup> *SD* = 31.71 months.

#### 4. Race/Ethnicity of Person Charged and Pled Sentences in District Court

In **District Court**, we observed sentencing differences between racial/ethnic groups, but these were not very large. Refer to Table 6 for a summary of the descriptive data. Hispanic individuals charged with crimes received prison time for at least one charge as often as White people in District Court.<sup>[A9]</sup> Black people charged with crimes received a prison sentence for at least one charge in only slightly more cases than white people—approximately 4% more cases.<sup>[A10]</sup>

Black people and Hispanic people charged with crimes also tended to receive longer prison sentences (approximately 0.94 and 5.58 months more in prison, respectively) than white people charged in District Court (refer to Figure 3 for a graph of these data). Again, though, these differences were too small to be noteworthy.<sup>[A11]</sup> In addition, the number of data points from Hispanic individuals was very small ( $n = 19$ ), so these aggregated results might not be robust. Table 6 for a summary of these data.

#### In District Court...



26%

of White people

29%

of Black people

...received a **prison** sentence.



77%

of White people

75%

of Black people

...received a **probation** sentence.

**Table 6.**

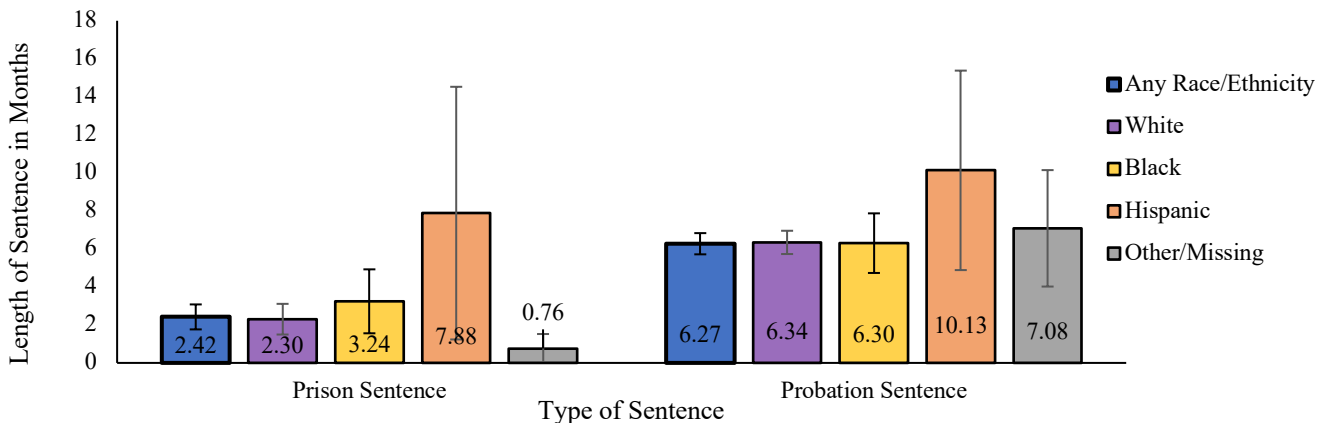
*Frequency of Prison and Probation Sentences in District Court as a Function of Race*

Race	Number who received a prison sentence (%)*	Number who received a probation sentence (%)*
Any Race/Ethnicity	259 (26%)	761 (75%)
White	193 (26%)	576 (77%)
Black	32 (29%)	82 (75%)
Hispanic	5 (26%)	15 (79%)
Other/Unknown	3 (11%)	25 (93%)

Notes. \*Percent calculated with # of people of that race:  $n_{white} = 746$ ;  $n_{black} = 110$ ;  $n_{hispanic} = 19$ ;  $n_{other/missing} = 27$ .

**Figure 1.**

*Length of Prison and Probation Sentences in District Court as a Function of Race.*



*Notes.* Values on the graph and the height of the bars indicate the average prison and probation sentence. Error bars are 95% Confidence Intervals, which means that 95% of individuals within that group should fall within that range. Thus, longer error bars mean that the sentence lengths varied more.

## 5. Race/Ethnicity of Person Charged and Pled Sentences in Superior Court

In **Superior Court**, for a total of 29 Black persons charged, 21 received prison sentences for at least one charge (72%). The average Offense Level for the most serious charged against Black people was 4.97.<sup>13</sup> Of two Hispanic persons charged in Superior Court, one received a prison sentence, and the average Offense Level for the most serious charge in these cases was 5.50.<sup>14</sup> Finally, of the 46 white people charged in Superior Court, 41 of them (89%) received prison sentences for at least one charge. For the white defendants, the average Offense Level for the most serious charge against them was 5.00.<sup>15</sup> So, even though Black people were disproportionately represented in Superior Court as compared to the population, their charges were as serious as the charges against white people on average.<sup>[A12]</sup> Moreover, Black people were slightly less likely to receive a prison sentence than White people.<sup>[A13]</sup>

When examining the sentencing outcomes for people charged with crimes in **Superior Court** as a function of their race, White people tended to receive the longest prison sentences, with sentences ranging from 27-35 months on average.<sup>16</sup> Black persons charged in Superior Court received similar sentences, though the sentences were slightly shorter on average<sup>[A14]</sup>, ranging from 26-30 months.<sup>17</sup> Only one Hispanic person (out of a total of two) received a prison sentence, and their plead sentence ranged from 15-21 months.

For probation sentences, 59% of the Black persons charged in **Superior Court** were sentenced to probation for at least one charge (17 cases), received probation, and 48% White people received a probation sentence for at least one charge (22 cases). There was no record of any probation sentences in pleas accepted by Hispanic persons. That said, there were no differences

<sup>13</sup>  $SD = 1.59$ .

<sup>14</sup>  $SD = 2.12$ .

<sup>15</sup>  $SD = 1.38$ .

<sup>16</sup>  $SD = 46.32$  months.

<sup>17</sup>  $SD = 35.30$  months.

in the rates of probation sentences between races that were large enough to be noteworthy.<sup>[A15]</sup> White and Black persons charged in Superior Court tended to receive probation sentences of similar lengths, with an average probation length of 24 months for White people and 23 months for Black people.<sup>18 [A16]</sup>

Finally, we assessed the racial breakdown of persons who received sentences that were above, within, or below the Sentencing Guidelines using the additional data and coding obtained from the Sentencing Grid (see page 4 for an explanation of this process). Cases in which the pled sentence was above the recommendations in the Sentencing Guidelines were rare (a total of 7 people, or 9% of Superior Court cases). However, most who fell into this category were Black (5 out of 7 or 71%). There was also a higher proportion of Black persons (67%) than white persons (33%) who received a sentence at the top of the range recommendation in the Sentencing Guidelines, but the proportions were almost equal in the middle range (56% white and 44% Black persons).



Given that Black people only make up 35% of Superior Court cases, these proportions suggest an overrepresentation of Black persons in cases where the person charged accepts a high sentence relative to what is recommended in the Guidelines. In contrast, at the bottom of the recommended range (75% white, 25% Black) and below the recommended range (68% white, 32% Black), the proportions more closely mirror the overall racial breakdown in Superior Court.

<sup>18</sup>  $SD = 14.63$  months and  $SD = 8.00$  months, respectively.



## B. DISPOSITIONS

In Massachusetts, charges can be disposed of in a variety of ways, including: a conviction (labelled “Guilty” below); a Continuance without a Finding (CWOFF)<sup>19</sup>; a 276/87 disposition<sup>20</sup>; Guilty Filed<sup>21</sup>; Dismissed; and Nolle Prosequi.<sup>22</sup> The final tender of plea may include a conviction for each charge, or it a combination of disposition types for different charges. The case may also be resolved globally under a 276/87 disposition.

We found different patterns among dispositions in **District Court** compared with those charged in **Superior Court**. These data are displayed in Table 7. Cases with at least one CWOFF or one conviction appeared to be equally common in District Court (29% and 25%, respectively). In contrast, 80% of cases in Superior Court featured at least one conviction and only 10% featured a CWOFF. Superior Court cases also tended to feature more examples of charges brought by the police that were not prosecuted, were dismissed, or were abandoned (Nolle Prosequi) early in the investigation (45% of cases with at least one) than seen in District Court (12% of cases with at least one<sup>23</sup>). Thus, in District Court people tended to receive more lenient types of dispositions than in Superior Court, perhaps reflecting that District Court cases involve lower-level offenses and defendants with fewer prior convictions.

**Table 7.**

*Cases with at Least One Example of Each Disposition Type as a Function of Court.*

Disposition	District Court	Superior Court
Guilty	256 (25%)	66 (80%)
CWOFF	292 (29%)	8 (10%)
276/87	48 (5%)	0 (0%)
Guilty Filed	60 (6%)	5 (6%)
Dismissed as part of Plea	46 (5%)	2 (2%)
Nolle Prosequi	6 (<1%)	16 (20%)
Total Number of Cases	1012	81

*Notes.* Percentages do not total to 100% as cases often have multiple charges, each associated with a disposition. The values indicate the number of cases in which at least one charge in that case was resolved with the disposition listed. Some cases are missing disposition data or data about which court presided over the case (these 105 cases were assumed to be in District Court). CWOFF = Continuance without a Finding.<sup>3</sup> 276/87 = a disposition type<sup>4</sup>.

<sup>19</sup> *CWOFF*: A Guilty disposition is not entered, and the case is “continued without a finding”. The person charged is required to complete a probation sentence with conditions and, if they do so without incident, the case is ultimately dismissed (Chapter 278, Section 18 of the MA General Laws).

<sup>20</sup> *276/87 Disposition*: If the crime qualifies under Chapter 276, Section 87 of the MA General Laws, the person charged may receive a special disposition and sentencing outcome—usually a probation sentence with conditions. Upon successful completion of the probation sentence, the charge is dropped and does not appear on their record.

<sup>21</sup> *Guilty Filed*: A situation in which the person charged is found guilty, but no sentence is imposed

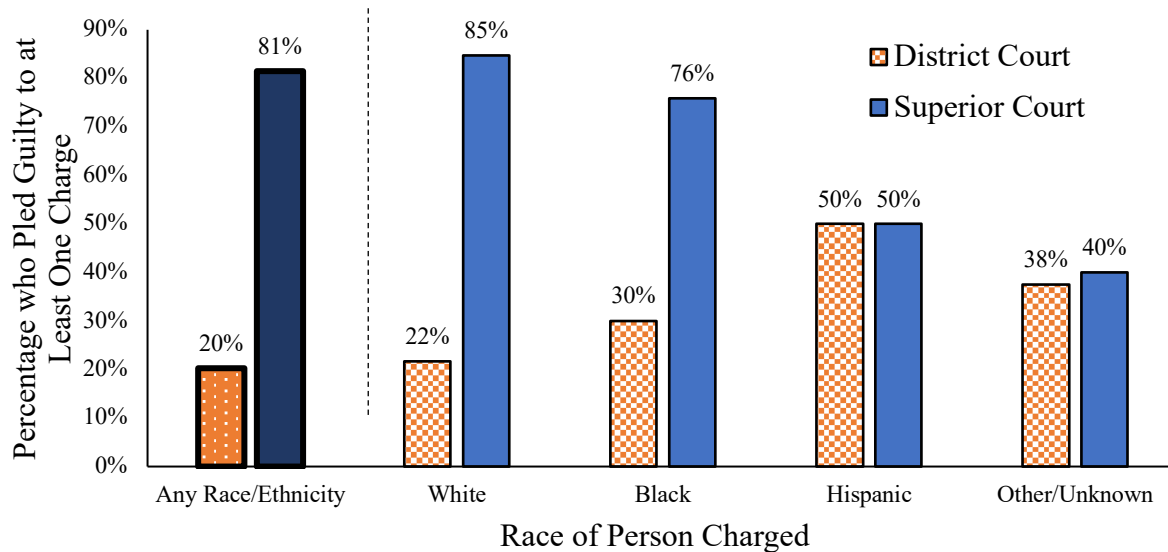
<sup>22</sup> *Nolle Prosequi*: The charge has been formally abandoned by the prosecution, but unlike for a dismissal, they could choose to refile the charge at a later time.

<sup>23</sup> An average of 1.03 charges dropped/declined to prosecute ( $SD = 1.81$ ) in Superior Court and an average of 0.31 charges dropped/declined to prosecute ( $SD = 1.37$ ) in District Court.



**Figure 2.**

*Percentage of People who Pled Guilty to at Least One Charge in District or Superior Court, as a Function of their Race/Ethnicity.*



*Notes.* The sample sizes used to calculate District Court percentages:  $N_{any\ race/ethnicity} = 1012$ ;  $n_{white} = 746$ ;  $n_{black} = 110$ ;  $n_{hispanic} = 8$ ;  $n_{other/unknown} = 16$ . For Superior Court:  $N_{any\ race} = 81$ ;  $n_{white} = 46$ ;  $n_{black} = 29$ ;  $n_{hispanic} = 2$ ;  $n_{other/unknown} = 5$ .

Cases in which the people pled Guilty to at least one charge can be found in Figure 2 above. The percentage of all cases with at least one Guilty conviction in **District Court** and **Superior Court** is displayed by the darker bars on the left side of the graph. Each set of bars after the dashed line represents a different population of people charged, organized by race and ethnicity.<sup>24</sup> The percentage of cases with at least one conviction are high for all individuals in Superior Court.

In Superior Court, the percentage of cases with at least one Guilty conviction was slightly lower for Black individuals (76%) than for White individuals (85%).<sup>[B1]</sup> In contrast, in District Court, cases involving Black individuals charged with crimes included a higher percentage of cases with at least one Guilty conviction (30%) compared with cases in which a White person was charged (22%).<sup>[B2]</sup> Similarly, white people charged in District Court had at least one CWOV (28%) more often than Black people (5%) who accepted pleas under similar conditions.<sup>[B3]</sup> These data suggest that, in District Court, White people received more lenient disposition types than Black people. Table 8 below contains a more detailed breakdown of the disposition types in each court, as a function of race.

<sup>24</sup> There were very few Hispanic individuals charged in either court, and also very few who were reported as “Other” race or an “unknown” race, so those percentages are not very informative and have not been interpreted here.

**Table 8.**

*Number and Percentage of Cases with at Least One Example of Each Possible Disposition Type as a Function of Court and the Race/Ethnicity of the Person Charged.*

Race	Disposition	District Court	Superior Court
White	Guilty	162 (22%)	39 (85%)
	CWOF	211 (28%)	2 (4%)
	276/87	27 (4%)	0 (0%)
	Guilty Filed	51 (7%)	4 (9%)
	Dismissed as part of Plea	32 (4%)	0 (0%)
	Nolle Prosequi	3 (<1%)	8 (17%)
	Total Number of Cases	746	46
Black	Guilty	33 (30%)	22 (76%)
	CWOF	5 (5%)	4 (14%)
	276/87	21 (19%)	0 (0%)
	Guilty Filed	5 (5%)	1 (3%)
	Dismissed as part of Plea	3 (3%)	1 (3%)
	Nolle Prosequi	1 (1%)	7 (24%)
	Total Number of Cases	110	29

*Notes.* Percentages do not total to 100% as cases often have multiple charges, each with a disposition. Values indicate the **cases** in which **at least one** charge in the Tender of Plea was resolved with the disposition listed. CWOF = Continuance without a Finding. 276/87 = a disposition type under ch.276, s.87 of MA G.L.

The dispositions associated with charges in District Court also reflect crime types of crimes. In cases involving violent crimes, at least one conviction was a lot more common (60% of cases) than at least one CWOF (37% of cases). Crimes against persons showed a similar pattern, with more cases resolved with at least one conviction (52%) than at least one CWOF (39%). In contrast, for crimes against property at least one conviction and at least one CWOF was almost equally common (44% and 49%, respectively).

For motor vehicle offenses, at least one CWOF was much more common than at least one conviction (68% and 36%, respectively). Crimes against property<sup>25</sup> and motor vehicle offenses<sup>26</sup> also tended to be cases in which the prosecutor determined that the person charged

#### District Court cases involving...



violent crimes

**60%** at least one Guilty  
**37%** at least one CWOF



crimes against people

**52%** at least one Guilty  
**39%** at least one CWOF



crimes against property

**44%** at least one Guilty  
**49%** at least one CWOF



motor vehicle offenses

**36%** at least one Guilty  
**68%** at least one CWOF




<sup>25</sup> Cases involving crimes against property and at least one CWOF: 69 cases; 45% = no threat at all to public safety, 46% = minor threat, 7% = moderate threat, 1% = high threat. Cases involving property crimes with no CWOFs: 74 cases; 32% = no threat at all, 36% = minor threat, 20% moderate threat, 11% = high threat.

<sup>26</sup> Cases involving motor vehicle offenses and at least one CWOF: 118 cases; 37% = no threat at all to public safety, 48% = minor threat, 14% = moderate threat, <1% = high threat. Cases involving motor vehicle offenses with no CWOFs: 57 cases; 9% = no threat at all, 37% = minor threat, 37% moderate threat, 18% = high threat.

posed no threat to public safety, or only a minor threat, which could be one reason the relative leniency in dispositions for these pled cases.

When focusing on persons charged in **Superior Court**, 65% of cases involving violent crimes had at least one conviction. In contrast, only 6% of these cases included at least one CWOFF in the Tender of Plea. For drugs/narcotics offense, an even higher percentage of cases were resolved with at least one guilty conviction pled to (74%), and only a small number included a CWOFF (11%). Crimes involving firearms had the highest percentage of cases with at least one conviction (81% of case with crimes involving firearms), and only 6% of cases had at least one CWOFF.

#### Superior Court cases involving...

	violent crimes	<b>65%</b> at least one Guilty <b>6%</b> at least one CWOFF
	drugs/narcotics offenses	<b>74%</b> at least one Guilty <b>11%</b> at least one CWOFF
	firearms offenses	<b>81%</b> at least one Guilty <b>6%</b> at least one CWOFF

Cases in which the person was charged with firearms offenses were also the cases in which prosecutors felt the person charged posed more of a threat to public safety, overall<sup>27</sup> (35% posed a high threat). This additional information can help to explain the higher rate of cases with at least one conviction. Cases with violent crimes had the second highest percentage of people perceived to be a high threat to public safety by the prosecutor (32% of cases). Finally, drug cases tended to involve someone that the prosecutor did not perceive to be as much of a threat (21% of cases).

<sup>27</sup> Cases involving firearms offenses: 31 cases; 13% = no threat at all to public safety, 19% = minor threat, 23% = moderate threat, 35% = high threat. Cases involving violent offenses: 34 cases; 9% = no threat at all, 24% = minor threat, 21% = moderate threat, 32% = high threat. Cases involving drug offenses: 46 cases; 17% = no threat at all, 30% = minor threat, 26% = moderate threat, 21% = high threat.

## C. SENTENCE TYPE AND LENGTH

In this section, we look at frequency and length of pretrial detention as well as whether sentences including “time served,” suspended sentencing, or split sentencing. In addition, we assess the rate at which people charged with crimes were sentenced to prison or probation and the length of those sentences.

### 1. Pretrial Detention and Time Served

In **District Court**, the prosecutor reported pretrial detention in 109 cases (19% of cases in which these data were reported, and 11% of the total cases). The average length of the person’s pretrial detention was 60 days, or approximately 2 months.<sup>28</sup> In 9% of these cases, the person was held pretrial while securing bail under Chapter 276, Section 58 of the MA General Laws. In 28% of these cases, pretrial detention was justified under Section 58A, which outlines the conditions associated with releasing persons who are accused of violent offenses (pending a “*dangerousness hearing*”). Finally, 42% of cases involved a person who had their release revoked due to a violation of release conditions, which results in a detention order under Section 58B. In 61% of cases in which pretrial detention was reported, the person charged received credit for time served. The average length of time served was 72 days, or approximately 2.4 months.<sup>29</sup>

In **Superior Court**, prosecutors reported **pretrial detention** was reported in 35 cases (49%), with an average length of 242 days, or approximately 8 months.<sup>30</sup> This is a much larger proportion of individuals receiving pretrial detention compared to District Court <sup>[C1]</sup>, and the pretrial detention lengths are much longer. <sup>[C2]</sup> A much larger proportion of people charged in Superior Court were awaiting a “dangerousness hearing” than in District Court. <sup>[C3]</sup> For 49% of Superior Court cases in which pretrial detention was reported, this was justified under Section 58A of the MA General Laws (violent offenses). In only 6% of cases, the person served pretrial detention because they had not yet secured bail, and in 20% of cases the person was held pretrial because they violated conditions of release. In 31% of Superior Court pleas, time served was part of the sentence, with an average time served of 221 days, or approximately 7.4 months.<sup>31</sup> <sup>[C4]</sup>

### 2. Suspended Sentences

Suspended sentences were uncommon. Of **District Court** cases, 505 (50%) indicated whether the sentence was suspended or not.<sup>32</sup> Prosecutors reported that the sentence was suspended in 3% of these cases and split in 1% of these cases. Split and suspended sentencing information was reported in 71 **Superior Court** cases (10 cases or 12% missing). Of these cases, 59 cases had a sentence that was *not* suspended (83% of cases with these data reported), seven reported a suspended sentence (10%), and five reported a split sentence (7%). Thus, suspended

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<sup>28</sup> *SD* = 88.57 days, or approximately 3 months.

<sup>29</sup> *SD* = 100.52 days, or approximately 3.4 months.

<sup>30</sup> *SD* = 257.44 days, or approximately 8.6 months.

<sup>31</sup> *SD* = 196.23 days, or approximately 6.5 months.

<sup>32</sup> 42% (427 cases) missing all prosecutor data. For other cases (~80), this question was not completed by the ADA.

and split sentences were rare in both District and Superior Court, but slightly more common in Superior Court. This difference is consistent with prison sentences being longer and more common in Superior Court than in District Court.

### 3. Prison and Probation Sentences

#### In District Court...



**26%** accepted a plea with a prison sentence



**75%** accepted a plea with a probation sentence



**8%** accepted a plea with both prison and probation



**7%** accepted a plea with neither prison nor probation

#### In Superior Court...



**81%** accepted a plea with a prison sentence



**52%** accepted a plea with a probation sentence



**36%** accepted a plea with both prison and probation



**2%** accepted a plea with neither prison nor probation

In **District Court** ( $n_{total} = 1012$ ), there were 259 cases in which a prison sentence was part of the final tender of plea (26%), with an average sentence length of 2.42 months.<sup>33</sup> A probation sentence was part of the Tender of Plea in 75% of these cases, with an average length of 6 months.<sup>34</sup> Some of these cases included both a prison *and* a probation sentence (7.81%). Finally, 7% of District Court cases had neither prison nor probation included in the final plea agreement.

In contrast, **Superior Court** ( $n = 81$ ) cases resulted in a prison sentence more often (81% of cases) than District Court cases<sup>[C5]</sup>, and some of these cases included probation in addition to prison (36% of cases). The average length of time recommended for prison sentences in Superior Court was between 27<sup>35</sup> to 33<sup>36</sup> months. A probation sentence was less common in Superior Court than District Court (52% of cases)<sup>[C6]</sup> and only 2% resulted in no sentence at all.

<sup>33</sup>  $SD = 10.66$  months.

<sup>34</sup>  $SD = 9.06$  months.

<sup>35</sup>  $SD = 38.59$  months.

<sup>36</sup>  $SD = 43.79$  months.

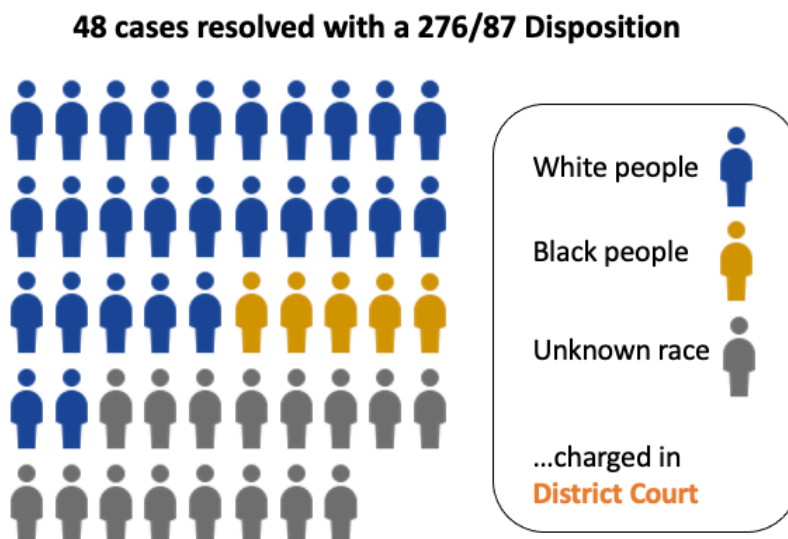
#### 4. 276/87 Dispositions

A person charged with a crime that qualifies under Chapter 276, Section 87 of the MA General Laws may receive a special disposition and sentencing outcome. This is usually a probation sentence with conditions, and upon successful completion of that probation term, the charge is dropped and does not appear on their criminal record. Although the statute permits this disposition in Superior Court, there were no cases resolved with a 276/87 in [Superior Court](#).

Among **District Court** cases, 48 cases were resolved with a 276/87 disposition (8% of the 585 cases in which these data were reported). The average offense level was 2.51<sup>37</sup> and the average length of probation was 4.04 months.<sup>38</sup>

Of the people who received this alternative disposition in District Court, 56% were White and 19% were Black, as compared with the full District Court sample (83% White and 12% Black). In addition, the average age was 35<sup>39</sup> and 17% were woman while 42% were men (and another 41% with no reported gender). Two people (4%) had one prior felony each, and 25% had some prior misdemeanors or CWOs (maximum was five priors). Most (69%) involved a person with no prior criminal history.

The kinds of crimes typically resolved with a 276/87 diversion were crimes against persons (52% of 276/87 dispositions, e.g., “Obscene Matter to a Minor”), violent crimes (13%; e.g., Assault and Battery with a Dangerous Weapon), or drug crimes (6%; e.g., Possession of a Class A Drug/Heroin). There were also several motor vehicle offenses (6%) and firearms offenses (2%).<sup>40</sup> The terms of probation were generally rehabilitation or treatment focused (e.g., substance abuse evaluation and treatment), victim focused (e.g., restitution or “stay away” order), or permissive (e.g., obey all federal and local state laws).



<sup>37</sup> *SD* = 0.69; Offense level can range from 0 to 9 and is defined for each offense in the Massachusetts Sentencing Guidelines.

<sup>38</sup> *SD* = 2.41 months.

<sup>39</sup> *SD* = 15.49 years.

<sup>40</sup> Note that charges can be classified as more than one type of crime (e.g., “assault and battery” is a violent crime and a crime against a person), and cases can have more than one charge, so these percentages do not total to 100%.

## D. CHANGES TO CHARGING AND SENTENCES

There are several mechanisms through which sentence outcomes can change during the plea-bargaining process in Berkshire, MA. Sometimes, prosecutors presented multiple plea offers to the defense, which suggests some back-and-forth. Sometimes the offers involved dropping, formally dismissing, or formally abandoning (i.e., a Nolle Prosequi disposition) charges, or reducing a charge to a similar, lower-level offense (called “*charge bargaining*”). Sentencing outcomes can change once the charges are fixed. Prosecutors often have discretion regarding the type of sentence they offer (prison, probation, or both) and whether they offer a sentence length towards the bottom or top of the recommended sentencing range in the Sentencing Guidelines. In this section, we examine data relevant to plea-bargaining mechanisms and sentencing outcomes.

### 1. Dismissed Charges

#### *i. Declining to Prosecute or Dropping Charges.*

In **District Court**, prosecutors reported dropping a charge or charges in 118 cases (20% of 585 cases for which we have these data). In 10% of these cases, there were charges brought by the police that the prosecutor decided not to pursue—a total of 86 charges were resolved in this way (an average of 1.43

charges they declined to prosecute in each of 60 cases). In 13% of these cases, prosecutors reported charges dropped later, after further investigation (but before securing a final plea agreement). A total of 154 charges were disposed of later, or an average of 1.97 charges.<sup>41</sup>

In **District Court** cases with prosecutor data ( $n = 585$ )...



**10% cases**  
60 cases

Office declined to prosecute some charges brought by police

**1.46 charges** per case on average



**13% cases**  
78 cases

Charges were dropped later after some investigation by prosecutor

**1.97 charges** per case on average

Prosecutors described the common reasons that charges were dropped, dismissed, or abandoned (nolle prosequi). In District Court, charges were dropped in 35% of cases to effectuate a plea deal and charges dropped due to office policy in 18%.<sup>42</sup> Defendant factors (e.g., young defendant, cooperation, mental health issues) were cited as the reason in 19% of these cases, and victim-related issues or input in 14%. A weak case (19%), wrong or duplicative charges (8%) and avoiding a felony conviction or minimizing the defendant’s record (6%) were other common reasons provided by prosecutors.<sup>43</sup>

<sup>41</sup> In some cases, charges brought by the police that were not pursued *and* charges were dropped later in the investigation, so there is some overlap between these categories.

<sup>42</sup> A reason was not always provided. In 21.19% of cases in which charges were not prosecuted or were dropped, the prosecutor indicated that some charges were dropped or not prosecuted but provided no reason.



<sup>43</sup> Other reasons (28% of these cases) included a lack of jurisdiction, the judge decided to drop the charge, avoiding overcharging, or a reason was not specified.



The dismissals that reflect office policy follow guidance that prosecutors should focus on more serious offenses in Berkshire and not on lower-level offenses that may be more associated with race and class. Examples include low-level drug charges (e.g., possession charges), shoplifting, low-level motor vehicle offenses that accumulate fines, and disorderly conduct charges. For example, in 19% of the 118 cases in which the prosecutor declined to prosecute or later dropped a low-level drug charge it was due to office policy. This represented a total of 32 charges, or 1.45 charges per case on average.

In **Superior Court**, in 40 cases (49% of 81 cases) either a charge brought by the police was not prosecuted or a charged was dropped after some investigation. In nine cases (11%), at least one charge brought by police was not prosecuted, with an average of 2 charges per case<sup>44</sup> that the office declined

#### In **Superior Court** cases ( $n = 81$ )...

	<b>11% cases</b> 9 cases	Office declined to prosecute some charges brought by police	<b>2.00 charges</b> per case on average
	<b>46% cases</b> 37 cases	Charges were dropped later after some investigation by prosecutor	<b>1.89 charges</b> per case on average

to prosecute. There was a much higher proportion of Superior Court cases in which charges were dropped later after some additional investigation by the prosecutor assigned to the case—46% of Superior Court cases disposed of at least one charge in this way, with an average of 1.89 charges<sup>45</sup> per case dropped later after some investigation. Thus, it is more common in Superior Court to drop some charges later after some investigation than in District Court,<sup>[D1]</sup> and more common to do some investigation rather than declining to prosecute.<sup>[D2]</sup>

When prosecutors provided reasons for a dropped charge or a charge they declined to prosecute, the most common was avoiding a mandatory minimum or minimizing the criminal record of the person charged (23% of the 40 cases in which a charge was dropped or not prosecuted). A similarly common reason was simply to facilitate a plea (20%), followed by realizing the evidence for that charge was weak (13%), and victim issues or input (5%).<sup>46</sup>

It was also quite common to decline to prosecute or dispose of charges early in the investigation for a variety of reasons (e.g., evidence would not meet the burden of proof, to facilitate a plea, duplicative charges, lack of victim cooperation). Prosecutors declined to prosecute or later dropped at least one charge in 45% of cases (and an average of 1 charge per case.)<sup>47</sup> Black persons charged in Superior Court also had at least one charge not prosecuted or dropped early in the investigation more often (55% of these case) than white persons (41% of these cases).

<sup>44</sup>  $SD = 1.41$  charges.

<sup>45</sup>  $SD = 2.16$  charges.

<sup>46</sup> Duplicative or incorrect charges (8% of these cases) or other reasons (8% of these cases) were uncommon. A reason for declining to prosecute or dropping a charge was also not provided in 8% of these cases.

<sup>47</sup>  $SD = 1.81$ .



ii. Dismissals and Nolle Prosequi.

In addition to declining or dropping charges, prosecutors can also choose to formally dismiss a charge or abandon, or nolle prosequi<sup>48</sup> a charge as part of the final plea. Table 9 breaks down the frequency of each of these methods of removing charges from a docket in **District Court** and **Superior Court**. The table also displays all people charged in each court with at least one dismissal or nolle prosequi, and the white and Black people charged reported separately. Formal dismissals are uncommon, but more common in District Court (8%) than Superior Court (1%).

These data also suggest that prosecutors are more likely to dismiss charges earlier in the case. In the previous section of this report, we found that prosecutors declined to prosecute or dropped charges early in a total of 118 District Court cases (20%) and 40 Superior Court cases (49%). Thus, it seems more common to remove charges from a docket early on rather than waiting to dismiss them formally as part of the plea. It is likely a more efficient use of resources to emphasize early disposal of unnecessary or unsupported charges.

**Table 9.**

*Frequency of Formal Dismissals/ Abandoning of Charges in District and Superior Court.*

Disposition	Race of Person Charged	<b>District Court</b>	<b>Superior Court</b>
Dismissal	Any race/ethnicity	46 (8%)	2 (2%)
	White	32 (5%)	0 (0%)
	Black	3 (<1%)	1 (1%)
Nolle Prosequi*	Any race/ethnicity	6 (1%)	16 (20%)
	White	3 (<1%)	8 (10%)
	Black	1 (<1%)	7 (9%)

*Notes.* Not all people charged were white or Black, so the “any race/ethnicity” row will be a larger value than the sum of the “White” and “Black” rows. Sample sizes used to calculate these percentages were cases in which the prosecutor had provided disposition data, so  $n = 81$  in Superior Court and  $n = 585$  in District Court.

## 2. Charge Bargaining

In **District Court**, 45 cases (8% of 585 cases with these data available) in which charge bargaining was reported for at least one charge (with an average of 1.04 charges in each of these cases charged bargained). Prosecutors were asked to indicate why that approach was taken in a case. Table 10 reports the number of charges for which charge bargaining was reported, and the percentage of charges bargained in District Court for each reason. The most common reason for charge bargaining was avoiding a felony conviction of the record of the person charged (36%). Other reasons included avoiding a mandatory minimum, sentence, or consequence associated with the original charge (21%) and a lack of evidence to prove the higher charge (30%).

In **Superior Court**, at least one charge was subject to bargaining practices in a total of 37 cases (46% of 81 cases), and a total of 62 charges reduced via this practice.<sup>49</sup> The primary reason

<sup>48</sup> Nolle Prosequi is when a charge was *abandoned* by the prosecution, but not *dismissed*. In theory, charges resolved with Nolle Prosequi could be picked up again in the future by the prosecution.

<sup>49</sup> An average of 1.68 charges per case involving charge bargaining were affected by this negotiation method.

for charge bargaining in Superior Court was to avoid a mandatory minimum associated with the original charge or a particular sentence associated with the original charge (66% of charges). Other reasons were avoiding an additional felony conviction on their record (11%), insufficient evidence or a weak case (6%), avoid serving time in State Prison (3%), or to effectuate a plea (6%).

Charge bargaining tended to be more prevalent in Superior Court than District Court<sup>[C3]</sup>. Navigating the mandatory minimums associated with the more serious felony charges that are more common in Superior Court was the main reason for this increase in charge bargaining as a negotiation strategy, whereas avoiding felony convictions or a long criminal record tended to be the primary goal of charge bargaining in District Court.

**Table 10.**

*Reasons for Charge Bargaining Reported in District and Superior Court.*

<b>Reasons in District Court</b>	<b>Count*</b>	<b>Percentage<sup>^</sup></b>
Avoid a felony conviction on the person's record	17	36%
Avoid a mandatory minimum/particular sentence or consequence	10	21%
No probable cause/weak case/facts did not fit higher charge	14	30%
Court lacked final jurisdiction	4	9%
Other (e.g., Victim, effectuate plea)	8	17%
<b>Reasons in Superior Court</b>	<b>Count*</b>	<b>Percentage<sup>^</sup></b>
Avoid a felony conviction on the person's record	7	11%
Avoid or reduce a mandatory minimum	41	66%
No probable cause/weak case/facts did not fit higher charge	4	6%
Court lacked final jurisdiction	0	0.00%
Other (e.g., Victim, collateral consequences, effectuate plea)	10	16%

*Notes.* \* Charges in which this was listed as the reason for the charge bargain, *not* cases. <sup>^</sup>Percentage of *charges* for which charge bargaining was reported by ADAs (District Court: *n* = 47; Superior Court: *n* = 62).

### 3. Multiple Plea Offers

In **District Court**, the majority of these cases were pled out after a single offer to the defendant, which became the Tender of Plea (73% of cases with information reported). In 13% of these cases, there was more than one plea offer made by the prosecutor. The most common reason provided for submitting multiple offers was the person who was charged did not approve the initial offer (34% of these cases). Other times, the judge did not approve the initial plea offer (18% of these cases) necessitating the creation of a new plea recommendation, or new information about the case was obtained that changed the prosecutors' recommendations (17% of these cases).

Cases in which prosecutors made multiple plea offers was approximately twice as common in **Superior Court** compared with District Court, with 26% of cases resolved after two or more offers to the person charged. In 14% of these cases, the number of offers was not reported, and in 60% cases the plea was accepted after the first offer was made. As in District Court, the main reason prosecutors made multiple offers was because the person charged did not accept their initial

recommendation (67% of these cases). In 19%, new information changed the prosecutors' recommendation and, in 24% of cases, the plea offer was changed due to office policy.

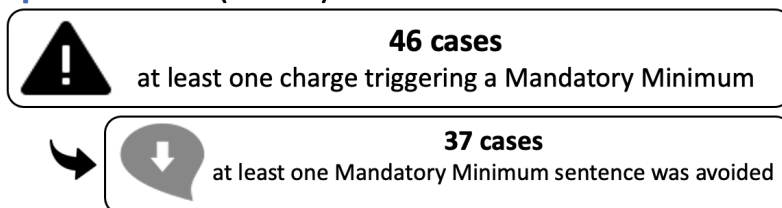
#### 4. Mandatory Minimum Sentences

“Mandatory minimums” are sentences associated with certain crimes which require courts to impose a fixed amount of prison time. Mandatory minimums can be triggered in **District Court** or **Superior Court**, but they are more commonly associated with very serious crimes, as selected by the legislature. Avoiding a mandatory minimum can be a driving factor in someone's decision to accept a plea, via charge bargaining or by dropping charges that trigger a mandatory minimum. The types of crimes that frequently trigger mandatory minimums in Massachusetts are:

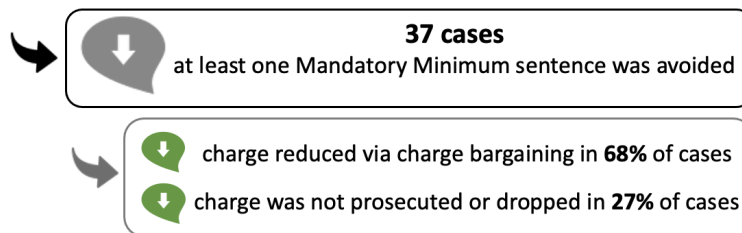
- Serious drug crimes; e.g., Trafficking of 10 grams or more of a Class A Drug under Chapter 94C, Section 32E of the MA General Laws is associated with a mandatory minimum of 42 months.
- Illegal use of firearms; e.g., Illegal Possession of a Firearm under Chapter 269, Section 10 of the MA General Laws is associated with a mandatory minimum of 18 months.
- Serious violent offenses; e.g., Rape and Abuse of a Child under Chapter 265, Section 23A is associated with a mandatory minimum of 120 months.

For the 81 cases in **Superior Court**, 58% of these cases had a mandatory minimum triggered by at least one of the original charges in the case. Table 11 contains a detailed breakdown of the cases in which a mandatory minimum was triggered at some point during the criminal legal process. These cases primarily involved serious drugs or narcotics offenses (41% of these cases), violent offenses (37% of these cases), or crimes involving firearms (20% of these cases).<sup>50</sup> The people charged in cases where a mandatory minimum was associated with at least one offense were 57% white, 35% Black, 2% Hispanic, and 7% from another or an unknown race/ethnicity.

In **Superior Court** ( $n = 81$ )...



In 37 cases, or 80% of the cases in which a mandatory minimum was associated with at least one of the original charges in the case, the mandatory minimum sentence was ultimately avoided. The primary method by which a mandatory minimum was removed from a case docket was by reducing the charge



to a lesser offense that either did not trigger a mandatory minimum or triggered a lower mandatory minimum sentence (54% of 46 cases with a mandatory minimum triggered). A policy-based

<sup>50</sup> Some cases involved charges that fell within more than one of these categories, so these categories are not mutually exclusive e.g., drug charges sometimes appeared alongside firearms offenses, in the same case.

amendment to the mandatory minimum was reported in 33% of cases and in 22% of cases the charge that incurred a mandatory minimum was dropped early after a small amount of investigation by the prosecutor.

**Table 11.**

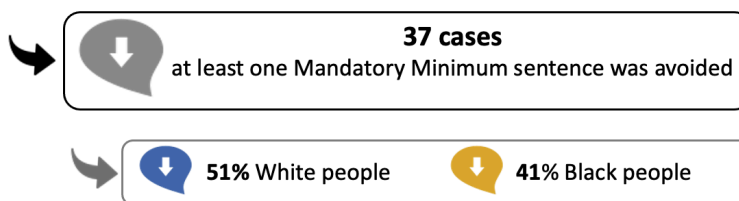
*Summary of Cases with Mandatory Minimum Charges, Features of those Cases, and the Fate of Those Charges in Superior Court.*

<b>Mand. Min. Avoided?</b>	<b>How avoided?</b>	<b>Count</b>	<b>Percentage*</b>
Yes <i>n</i> = 37 80% of cases with a MM	Charge bargain	25	68%
	Policy-based Amendment	15	41%
	Dropped	10	27%
	<b>Race of person charged?</b>		
	White	19	51%
	Black	15	41%
	Hispanic	1	3%
	Other/unknown race or ethnicity	2	5%
	<b>Types of offenses?</b>		
	Drugs or narcotics offenses	19	51%
No <i>n</i> = 9 20% of cases with a MM	Crimes involving firearms	9	24%
	Violent crimes	17	46%
	<b>Race of person charged?</b>		
	White	8	89%
	Black	1	11%
	<b>Types of offenses?</b>		
	Drugs or narcotics offenses	3	33%
	Crimes involving firearms	3	33%
	Violent crimes	5	56%

*Notes.* This table shows cases where a mandatory minimum was triggered, which includes 46 cases, or 56.79% of the 81 Superior Court cases. \*All percentages are calculated using the sample size indicated in the first column. Percentages will not total to 100% as each case might fall within more than one category.

The race or ethnicity of people charged with at least one mandatory minimum was examined, and a summary of these data can be found in Table 11. Cases in which the mandatory minimum sentence was ultimately avoided involved a Black person in 41% of cases (of the 37 cases in which the person was initially charged with at least one mandatory minimum), a white person in 51% of cases, a Hispanic person in 3% of cases, and someone from another or an unknown race/ethnicity in 5% of cases.

When focusing on the proportion of people from each racial/ethnic group that fell into each category, out of 46 total cases in which white people were charged in Superior court, 57% of these cases triggered a mandatory minimum sentence for at least one charge, but 41% of white



people ultimately also avoided the mandatory minimum sentence. A total of 29 Black people were charged with crimes in Superior Court. In 55%, the person was charged with an offense that was associated with a mandatory minimum sentence, and in all but one of these cases (52% of Black people charged in Superior Court) that mandatory minimum was ultimately avoided. Thus, avoidance of the impact of mandatory minimums in Superior Court appears equal across races, even when looking more closely at crime type and method through which the mandatory minimum was removed from the case.

## 5. Judge Involvement in Superior Court Tenders of Plea

In **Superior Court**, the prosecutor reported whether the ultimate outcome of the plea was different from what the prosecutor recommended, and the presiding judge imposed their own sentence. This type of judge involvement was observed in a total of 28 Superior Court cases (35% of 81 cases). Most of the time, the judge provided a more lenient outcome than the prosecution recommended (in 57% of the 28 cases).

For instance, requiring that the person charged complete a shorter probation sentence or prison sentence, changing a Guilty conviction to a CWO, and suspending or splitting the sentence. Sometimes, it was difficult to determine from our data how the judge-imposed outcome compared to the prosecutor's recommendation (39%). Finally, in one case, the prison sentence that the judge decided on was more severe than what the prosecution recommended.

It was rare for judges to become involved in the ultimate outcome of a plea agreement unless the defense attorney submitted a more lenient Tender of Plea. In fact, in all but two of the cases (93%) in which the judge altered the plea agreement, the defense had submitted an opposing Tender of Plea. In such cases, the imposed sentence tended to be a compromise of the two opposing recommendations (20 cases, or 71%), though occasionally it was reported that the judge imposed the defense recommendation (six cases or 21%).

Judges changed the charge or sentence in

**35% of Superior Court cases**



Judge involvement led to...

- more **lenient** outcomes (16 cases)
- different, but **unclear** how compares to prosecution Tender of Plea (11 cases)
- more **severe** outcomes (1 case)

...in these cases.

## 6. Sentence "Travel"

The effects of plea-bargaining practices in a District Attorney's Offices can be measured in a multitude of ways. One method is quantitative, by comparing the length of the prison sentence pled to (often as a range) after negotiations, charge bargaining, and judge involvement, to the potential prison sentences that were possible before the prosecutor used their discretion. For example, comparing the prison time for the charges that were originally brought and the prison time for all charges in the final tender of plea if the sentencing guidelines had been followed strictly. A second method is to look at nonquantitative factors in the sentence, such as allowing for concurrent sentences or waiving prison time altogether in favor of supervisory probation.

The difference between the charges against a person when their case is given to a prosecutor (initial charges) and the charges and associated sentences that they pled to is often referred to as sentencing “*travel*” or “*distance travelled*.” In addition to calculating any reductions in charging or sentences, or quantifying the amount of leniency granted by prosecutors, cases can be evaluated based on the reason underlying the largest reduction in sentencing and the reason for any changes between the initial charges and the actual charges/sentence pled to in the case.

These data were evaluated in the 81 **Superior Court** cases by determining the offense level for each charge against a person and their score on the Massachusetts Criminal History Scale, as defined in the Massachusetts Sentencing Guidelines.<sup>51</sup> Offense level and Criminal History Category was used to determine the sentence range recommended in the Massachusetts Sentencing Guidelines for each charge (even ones that were dropped or dismissed).

The sentencing ranges for all charges were added to determine the initial, potential sentencing range, the sentencing range after dismissals and dropped charges, and the actual sentence pled to. These data are presented in Figure 3 (presented on the next page), with the blue squares representing the actual sentence received in each case (with each numeral along the horizontal x axis representing a different case). The initial sentence and sentence after dismissals are represented by the red and yellow icons, respectively. How high each icon appears on the chart represents the length of the relevant sentence in months. As this graph shows, the actual charges and sentence pled to are frequently much lower than what the person charged could have faced.

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<sup>51</sup> The Massachusetts Sentencing Grid and Sentencing Guidelines are described earlier in this report on page 4. In situations where criminal history information was missing, people charged in Superior Court were assumed to be a Category B for analyses – a moderate criminal record. This choice was made because the majority of people charged in Superior Court had some low-level criminal history at a minimum, and occasionally some past felonies.

**Figure 3.**

*Sentencing Ranges that the Person Charged in Superior Court Could Have Received **Pre-** and **Post-**Dismissals, Compared to the Sentence **Pled** as a Function of the Offense Level Associated with the Most Serious Charge in the Case.*



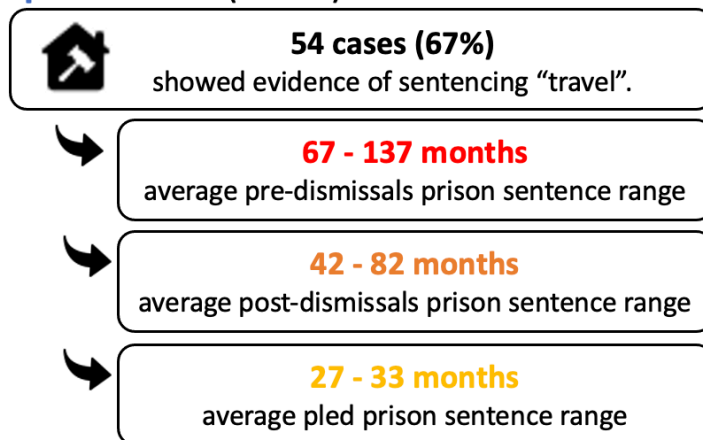
*Notes.* Cases where the most serious charge was only level 2 or 3 were combined into one panel (top-left). One case was excluded from this graph—the only Offense Level 9 (OL 9) case, with no sentencing “travel” observed (pre- and post-dismissal, plus pled sentence was 300 months, or life). Sentencing ranges depicted here capped at 300 months. There were 8 cases (3 cases = OL 4; 1 case = OL 5; 3 cases = OL 7; 1 case = OL 8) where the pre-dismissal sentencing range included numbers higher than 300 months and 1 case (OL 7) where the post-dismissal sentencing range included numbers higher than 300 months. These numbers were changed to 300 to create this graph, meaning that the pre-dismissal range is more varied and higher for some cases than is shown here.



In **Superior Court**, the pled prison sentences to fell an average range of 27 to 33<sup>52</sup> months. However, if the people had been sentenced based on what they were initially charged with using the Sentencing Guidelines alone, the average pre-dismissals prison sentence range would have been between 76 and 137<sup>53</sup> months.

After accounting for charges that not prosecuted, dropped early on in the case, dismissed, or abandoned (Nolle Prosequi), the average post-dismissals prison sentence according to the Sentencing Guidelines would have been between 42 and 82<sup>54</sup> months. This means that the average discount among people charged in Superior Court was between 49 and 104<sup>55</sup> months on average pre-dismissals and between 16 and 49<sup>56</sup> months post-dismissals.

#### In **Superior Court** ( $n = 81$ )...



Overall, 54 cases (66.67%) in Superior Court showed evidence of travel. Post-dismissals, drug crimes and crimes involving firearms travelled a similar amount (average maximum discounts of 46 months and 44 months, respectively), but violent crimes showed slightly more travel post-dismissal than other types of crimes (average maximum discount of 55 months). However, when examining pre-dismissal sentencing travel, cases with crimes involving firearms (average maximum discount of 143 months) travelled more than drug crimes and violent crimes (116 and 122 months, respectively).

There were several common reasons for the sentencing travel observed. As is clear from the difference between pre- and post-dismissal sentencing described above, declining to prosecute charges brought by the police, or dropping some charges early on, played a key role in reducing sentences in Superior Court (occurred in 49% of Superior Court cases). *Refer to Section [D.1.i] of this report for a detailed discussion of prosecutors' decisions to drop or not prosecute some charges.* Another common reason for a sentencing discount was concurrent sentencing (rather than consecutive; 42% of cases). In addition, charge bargaining was used in 46% of cases to reduce the sentence, particularly when the initial charge triggered a mandatory minimum (*Section [D.3] of this report*). In 17% of cases, judge involvement led to a reduced sentence.

Table 12 (all cases in Superior Court) and Table 13 (drug crimes, crimes involving firearms, and violent crimes reported separately) summarizes cases that were within, below, or above the Sentencing Guidelines. These data show that most cases were within or below the guidelines, regardless of whether all crime types are assessed together (46% and 47%, respectively), or they are examined separately within crime type (Drug: 50% and 41%; Firearm: 44% and 39%; Violent: 45% and 48%). Furthermore, of those cases where the pled sentence falls

<sup>52</sup>  $SD = 38.59$  and  $43.79$  months, respectively.

<sup>53</sup>  $SD = 95.96$  and  $140.05$  months, respectively.

<sup>54</sup>  $SD = 55.08$  and  $70.20$  months, respectively.

<sup>55</sup>  $SD = 84.47$  and  $128.88$  months, respectively.

<sup>56</sup>  $SD = 38.04$  and  $50.77$  months, respectively.



within the Sentencing Guidelines, most plead to a sentence that was in the mid-range of the guidelines, or the bottom of the guidelines. There were very few Superior Court cases in which the person charged pled to a sentence that was at the top of the Sentencing Guidelines (4% of cases), or above the Sentencing Guidelines (9% of cases). That said, people charged with at least one crime involving a firearm were slightly more likely to accept a pled sentence above the guidelines (17%) than people charged with drug crimes (8%) or violent crimes (7%).

**Table 12.**

*Comparison of Actual Sentence to Sentencing Guidelines in Superior Court (n = 81)*

How Actual Sentence Pled to Compares to Sentencing Guidelines	Count	Percentage
Above guidelines	7	9%
Within guidelines	37	46%
<i>Within guidelines (top end)</i>	3	4%
<i>Within guidelines (middle)</i>	17	21%
<i>Within guidelines (low end)</i>	17	21%
Below guidelines	38	47%

**Table 13.**

*Comparison of Actual Sentence to Sentencing Guidelines in Superior Court (n = 81)*

How Pled Sentence Compares to Sentencing Guidelines	Crime Type	Count	Percentage
Above guidelines	Drug Crimes	3	8%
	Crimes involving Firearms	3	17%
	Violent Crimes	2	7%
Within guidelines	Drug Crimes	18	50%
	Crimes involving Firearms	8	44%
	Violent Crimes	13	45%
<i>Within guidelines (top end)</i>	Drug Crimes	2	6%
	Crimes involving Firearms	1	6%
	Violent Crimes	1	3%
<i>Within guidelines (middle)</i>	Drug Crimes	8	22%
	Crimes involving Firearms	3	17%
	Violent Crimes	5	17%
<i>Within guidelines (low end)</i>	Drug Crimes	8	22%
	Crimes involving Firearms	4	22%
	Violent Crimes	7	24%
Below guidelines	Drug Crimes	15	42%
	Crimes involving Firearms	7	39%
	Violent Crimes	14	48%

*Notes.* The percentages were calculated within each crime type, so  $n_{drug} = 36$ ,  $n_{firearm} = 18$ , and  $n_{violent} = 29$ .

