

# Plea Tracking in the Durham County District Attorney's Office

One-year Report  
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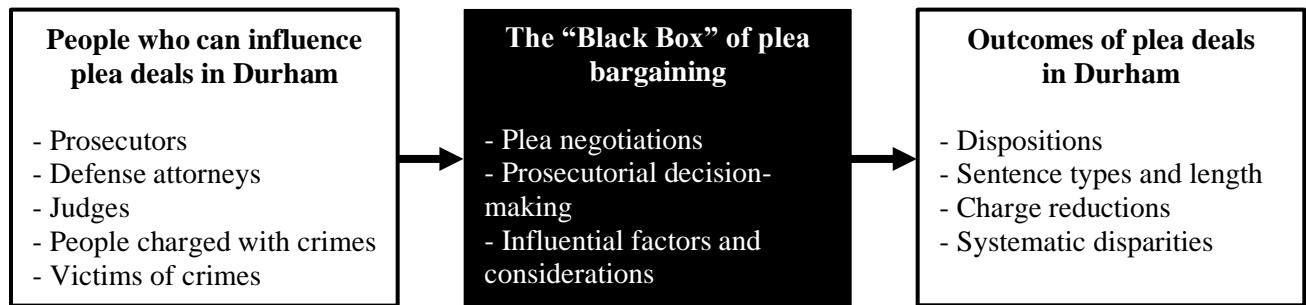
## Executive Summary

Aspect of Plea Bargaining	Finding	Page
Dispositions	#1. Nearly two-thirds of all charges (1,216 of 1,874 charges) were dismissed by prosecutors. The majority of dismissals were Superior Court charges (81%, or 987 of 1,216 charges).	5
	#2. About one-in-ten cases (35 of 325 cases) were pled to a misdemeanor charge only.	5
Sentencing	#3. Prison and probation-only sentences were each imposed in 40% of all cases. More than half of cases with violent crimes received a prison sentence, whereas nearly half of cases with non-violent crimes received a probation-only sentence.	6
	#4. Additional sentencing conditions were applied in three-quarters of all cases (244 of 325 cases).	8
	#5. The most common types of offenses involved dangerous drugs, larceny, and robbery. The single most common charge was a Possession of a Firearm by a Felon in 42 cases.	9
Charge reductions	#6. Prosecutors dismissed charges in 84% of all cases (272 of 325 cases), most often because the person pled guilty to something else.	12
	#7. Prosecutors reduced charges from indictment to the final guilty plea in nearly half of all cases (46%, or 151 of 325 cases).	13
Demographics of people charged with crimes	#8. Most people charged with felony crimes in Durham were Black (80%, or 260 of 325 cases), followed by White (15%, or 48 of 325 cases) and Latinx (5%, or 16 of 325 cases).	14
	#9. About three-quarters of people charged with felony crimes had a prior conviction. Approximately 44 people with no criminal record were held in pretrial detention.	14
Victims	#10. There was a person victim in 59% of cases (191 of 325 cases). Most person victims were Black (107 of 191 cases) and/or female (112 of 191 cases).	17
	#11. Prosecutors communicated with victims in 85% of cases (162 of 191 cases), and discussed the plea terms with victims before making the initial offer in 80% of cases (77 of 96 cases)	17
Factors considered in plea negotiations	#12. The most commonly considered mitigating factors were the person's record, history of substance use, and age. For aggravating factors, it was the seriousness of the offense, criminal history, and history of recidivism.	18
	#13. On average, prosecutors considered more aggravating factors than mitigating factors per case.	19
	#14. On average, prosecutors considered more mitigating factors in cases with White people. However, prosecutors considered more aggravating factors in cases with Black people.	19
	#15. Prosecutors considered collateral consequences in about two-thirds of all cases. The most commonly considered factors related to the person's health and ability to readjust to daily life.	20
	#16. Cases represented by private counsel more often received probation-only sentences, but also received longer prison sentences.	22
The role of defense attorneys	#17. Prosecutors corresponded with the defense about three-quarters of the time before making the initial offer, and 95% of the time after making the initial offer.	23
	#18. Defense attorneys requested changes to the initial plea offer in 56% of cases (183 of 325 cases). At least some of these changes were made to the offer in 83% of cases (143 of 178 cases).	24-25

# Overview

Plea tracker cases entered between **April 12, 2021**, and **April 12, 2022**

The Wilson Center for Science and Justice at Duke University School of Law (WCSJ)<sup>1</sup> and the Durham County District Attorney’s Office began a collaborative, data-driven effort to better understand the plea negotiation process. In North Carolina and most other states, roughly 90-95% of criminal cases are resolved through plea bargaining. Information about plea terms and sentences are publicly available, yet very little is documented about how prosecutors negotiate offers. In other words, we know *what* gets charged but not the reasoning for *how* or *why* a certain plea deal was reached. Consequently, prosecutors, defense attorneys, judges, and the public are largely uninformed about prosecutorial discretion and its important influence on criminal outcomes. This lack of transparency can create inconsistencies in how plea negotiations are handled. Understanding how plea offers are developed requires systematically tracking the wide variety of decisions and considerations made by prosecutors and other court officials.



Together, the WCSJ and the Durham District Attorney’s Office designed and implemented a plea tracker to document and analyze comprehensive data on felony cases, people charged with crimes and victims, plea negotiations, and plea outcomes. The plea tracker is a powerful tool for recording detailed, real-time information about cases that can be used to uncover patterns and trends in how prosecutors use their discretion. A pilot was conducted in January 2021 before the completed tracker was launched in mid-April. The report describes data on 325 felony cases that were entered into the tracker over 249 business days, from April 12, 2021, to April 12, 2022.

The purpose of this report is to highlight the insights we can glean from plea tracking, describe the cases managed in the Durham Office, and draw attention to any emerging patterns in case characteristics and prosecutorial discretion. In Part I, we focus on plea bargaining outcomes, including charge dispositions, sentences, and changes made to plea offers. In Part II, we focus on factors that guide decision-making in the plea bargaining process.

Through this partnership, the Durham County District Attorney’s Office has taken a crucial step in promoting transparency in the plea negotiation process. It is our hope that the plea tracking data will inform prosecutorial decision-making, assist the Office in evaluating the efficacy of its policies, and improve public trust in the plea negotiation process.

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<sup>1</sup> The Wilson Center for Science and Justice at Duke Law is an interdisciplinary, non-partisan group of researchers and legal scholars who conduct applied empirical research relevant to the criminal legal system and translate that work into evidence-based policy recommendations, interventions, and other practical solutions.

## Part I. Plea Bargaining Outcomes

Part I of this report focuses on plea bargaining outcomes in **325 cases** resolved in Superior Court in Durham, North Carolina.<sup>2</sup> This includes charge dispositions, sentence types and lengths, the influence of plea offer revisions and changes to charges on sentencing, and whether outcomes vary based on the race, ethnicity, gender, and/or legal representation of the person charged. These outcomes represent negotiations between prosecutors, defense attorneys, and judges.

### A. Dispositions

#### What charge dispositions did people receive?

Over 12 months, prosecutors entered 325 cases into the tracker, which carried 1,874 felony and misdemeanor charges, since some felony cases included lesser-charges. The details of cases and their associated charges and dispositions are shown in Table 1. The vast majority of cases, 89% (290 of 325 cases), involved a person pleading guilty to a felony offense, with 35 cases brought initially as felony cases, but resolving in pleas to misdemeanor charges only. On average, there were about six indicted charges per case.

Many cases involved the dismissal of some charges. Almost two-thirds of all charges were dismissed (65%, or 1,216 of 1,874 charges). Eighty-one percent of the dismissed charges were in Superior Court (987 of 1,216 charges). Among all dismissed charges, 35% resulted in guilty pleas (655 of 1,874 charges), with an average of two pled charges per case. The number of pled charges per case ranged from 1 to 11.

*Alford* pleas were used in five cases and there were zero “No Contest” pleas.<sup>3</sup> Prosecutors attempted restorative justice in 20 cases, which included participation in treatment programs and reconciliation with victims.

**Table 1.** Categories of Charges and Cases, April 12, 2021, through April 12, 2022

	Number (%)	Mean (SD, Range)
Number of charges	1874	5.89 (4.95, 1-31)
Number of pled charges	655 (35%)	2.06 (1.48, 1-11)
Number of dismissed Superior Court charges	987 (53%)	3.10 (3.36, 0-15)
Number of dismissed District Court charges	232 (12%)	0.73 (2.16, 0-15)
Number of cases	325	
Cases indicted on felony charges	320 (98%)	
Cases pleading guilty to felony charges	290 (89%)	
Cases pleading guilty to only misdemeanor charges	35 (10%)	
Cases with at least one dismissed Superior Court charge	230 (76%)	
Cases with at least one dismissed District Court charge	52 (17%)	
Cases with an <i>Alford</i> plea	5 (1%)	
Cases with a No Contest plea	0	
Cases attempting restorative justice	20 (6%)	

*Note:* SD = Standard deviation. Four cases were omitted because they went to trial.

<sup>2</sup> We report on all cases entered into the plea tracker (N = 325) which met inclusion criteria (i.e., felony charges resolved in Durham County between April 12, 2021, and April 12, 2022). As of the writing of this report, there were 30 cases that met these criteria but were not entered in the tracker.

<sup>3</sup> An *Alford* plea, an option named after the Supreme Court ruling in *North Carolina v. Alford*, 400 U.S. 25 (1970), and available in some states like North Carolina, permits a person to accept a plea while maintaining innocence. In a No Contest plea, a person is considered guilty but does not admit or dispute their charges.

## B. Sentencing

In this section, we look at the frequency and length of pretrial detention, the frequency of sentence types and dispositional ranges, and whether and what additional sentencing conditions were applied. Further, we look at the types and lengths of sentences for commonly pled charges, including the most common charge: Possession of a Firearm by a Felon (G.S. 14-415.1).

### **How often were people charged with crimes detained pretrial and for how long?**

People charged with crimes were held in pretrial detention in 66% of cases (216 of 325). Table 2 shows the number of days spent in pretrial detention. The most common length of detention was one-to-six months (44%). In 5% of cases (11 of 216), the person spent between one and six days in pretrial detention. On the other end, in 7% of cases (15 of 216), the person was detained for at least two full years. These cases involved Category A, B1, and B2 offenses, such as first-degree and second-degree murder. A greater proportion of people charged with violent crimes were held in pretrial detention (79%, or 64 of 81) compared with nonviolent crimes (63%, or 152 of 242). In one-third of violent cases with pretrial detention, the person was held for at least one year.

Among the 109 cases with no pretrial detention, the most serious pled offenses were typically Category F, G, H offenses. In six of these cases, the highest pled charge was a misdemeanor offense. Exactly half of all Latinx people charged with crimes were included in this group (8 of 16). Prosecutors typically perceived that these individuals posed a minor threat or no threat at all to the public or themselves. In more than half of cases (58%, or 126 of 216), the length of pretrial detention was solely related to the reported case, and not the person’s other ongoing cases.

**Table 2.** Pretrial Detention

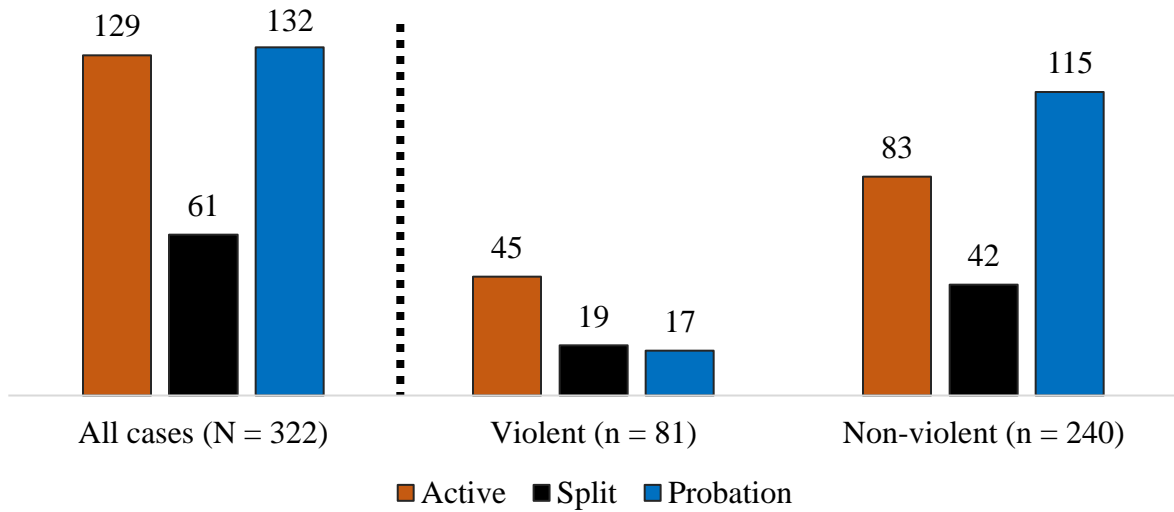
	Number (%)
Length of pretrial detention:	216 <sup>a</sup>
1-2 days	6 (3%)
3-6 days	5 (2%)
7-29 days	21 (10%)
1-6 months	94 (44%)
6-12 months	50 (23%)
12-24 months	22 (10%)
2 years or longer	15 (7%)
Impact on detention length:	
Solely related to this case	126 (58%)
Other cases had an impact	85 (39%)

*Note:* <sup>a</sup> Out of 325 total cases. Information on the length of pretrial detention was missing in three cases.

### **How frequently were active, split, and probation-only sentences imposed?**

Figure 1 shows the number of each sentence type for all cases (N = 322), for violent crimes only (n = 81), and for non-violent crimes only (n = 240). Prison and probation-only sentences were each imposed in about 40% of all cases (129 and 132 cases, respectively). A split sentence was less commonly used in 61 cases (19%). In North Carolina, a split sentence requires a person charged with crime to serve a period of confinement followed by supervised probation. More than half of all violent crimes received a prison sentence (56%, or 45 of 81 cases). Nearly half of all non-violent crimes received probation-only sentences (48%, or 115 of 240 cases).

**Figure 1. Types of Sentences**



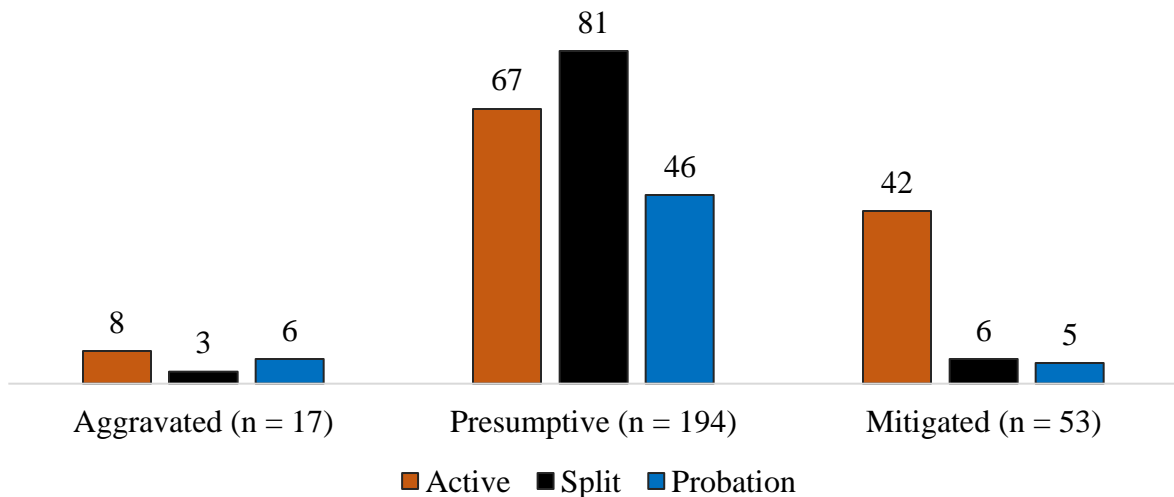
*Note:* Data were missing for three cases. Data were incomplete for one case with an active sentence, but no information on the type of crime (i.e. violent or non-violent).

**What were the most common dispositional ranges?**

In North Carolina, the sentencing grid for felony punishments is used to determine the sentence range based on the crime category and the person’s prior record level. Dispositions can fall within three ranges: aggravated, presumptive, and mitigated. Presumptive ranges are standard, with aggravated and mitigated ranges being applied in cases where certain factors are considered. Among all cases with complete information, 17 cases received a minimum sentence in the aggravated range, 194 in the presumptive range, and 53 in the mitigated range.

Figure 2 shows the distribution by type of sentence. The patterns are similar, except that a large proportion of cases with prison sentences (36%, or 42 of 117 cases) were sentenced in the mitigated range. About 11% of cases with probation-only sentences were sentenced in the aggravated range.

**Figure 2. Disposition Ranges for Minimum Sentences**



*Note:* In 35 cases, the highest class for a pled charge was a misdemeanor. Data were incomplete for 26 cases.

### What were the minimum and maximum sentencing ranges?

Sentencing ranges for active and split sentences are shown in Table 3. The median active sentences ranged from 20 to 33 months in prison, with a minimum of 1.5 months to a maximum of 532 months.<sup>4</sup> The median split sentences ranged from 14 to 26 months, with a low of 2.5 months and a high of 89 months. A larger proportion of violent crimes than non-violent crimes received active sentences. The median active and split sentences were longer for violent crimes.

**Table 3.** Sentencing Ranges

	All cases (N = 322)		Violent (n = 81)		Non-violent (n = 240)	
	Median	SD (Range)	Median	SD (Range)	Median	SD (Range)
Active sentence:	129 cases		45 cases		83 cases	
Minimum <sup>a</sup>	20	87.21 (1.5-532)	64	112.73 (6-532)	16	56.61 (1.5-408)
Maximum <sup>a</sup>	33	100.28 (1.5-532)	93	127.43 (17-532)	29	65.05 (1.5-408)
Split sentence:	61 cases		19 cases		42 cases	
Minimum	14	11.32 (2.5-64)	21	12.77 (8-54)	13	9.92 (2.5-64)
Maximum	26	16.14 (4-89)	35	19.88 (19-87)	25	12.78 (4-89)
Active split	3	2.53 (0.15-10)	4	2.81 (1-9)	3	2.34 (0.15-10)

*Note:* Data were missing for three cases. Minimum and maximum sentences are not reported for probation because the survey probation questions were answered inconsistently during the data collection period. <sup>a</sup> Indicates months in prison.

### What additional sentencing conditions were applied?

Prosecutors were asked to report whether and what additional sentencing conditions were applied to plea deals. For 75% of cases (244 of 325), prosecutors reported that various additional sentencing conditions were applied (see Table 4). Across all cases, the most common sentencing condition was supervised probation, which was more frequently imposed in cases with non-violent crimes. A larger proportion of sentences for violent crimes than nonviolent crimes carried no-contact orders, mental health stipulations, and mandatory anger management training. But, a larger proportion of nonviolent crime sentences carried orders for substance use assessment and treatment and Cognitive Behavioral Interventions (CBI). Restitution was imposed in 41 cases, with costs ranging from \$80 in a firearm possession case and a common law robbery case to \$150,000 in an embezzlement case.

<sup>4</sup> We report the median sentence length because averages could be skewed by extreme outlier cases. The median is the value at which half the cases are below this value and half are above this value.



**Table 4.** Additional Sentencing Conditions

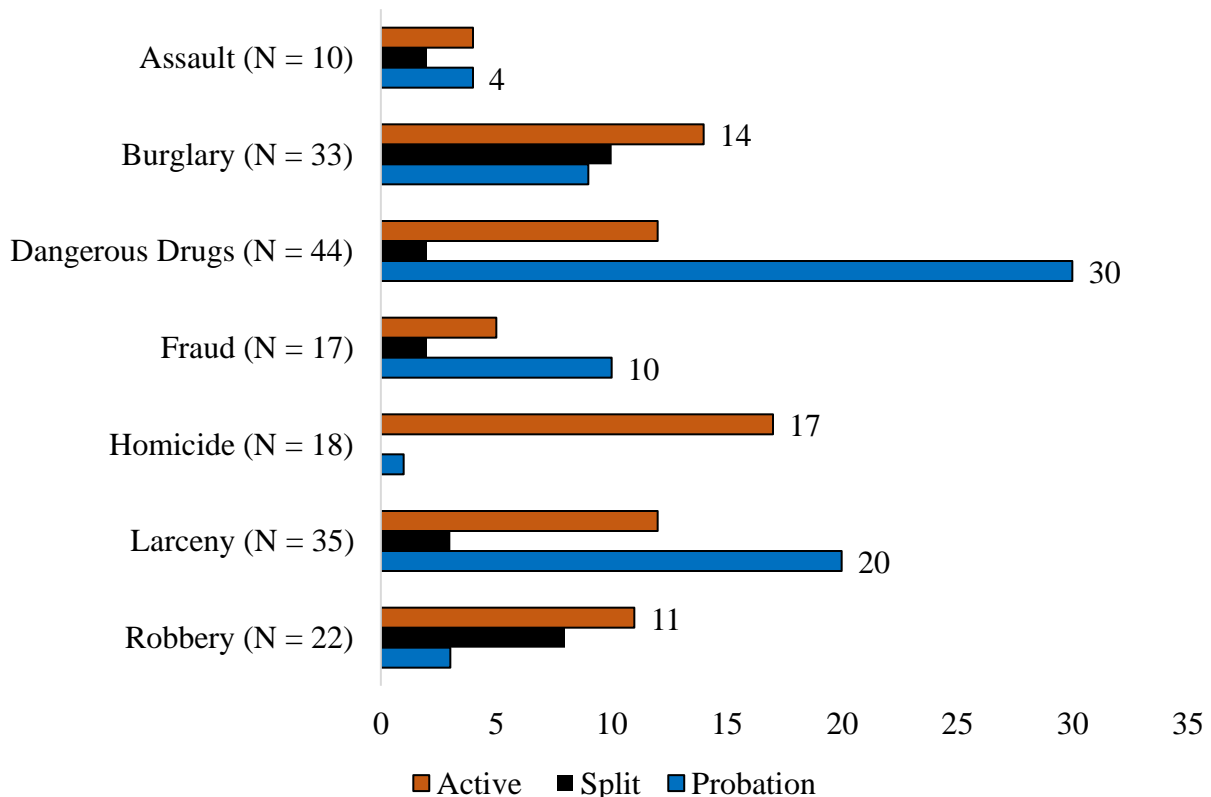
	All cases (N = 325)	Violent crimes (n = 81)	Non-violent crimes (n = 240)
	Number (%)	Number (%)	Number (%)
Supervised probation	178 (55%)	35 (43%)	143 (59%)
No-contact order	86 (26%)	41 (51%)	45 (19%)
Substance use assessment	82 (25%)	18 (22%)	63 (26%)
Substance use treatment	86 (26%)	15 (18%)	70 (29%)
Mental health assessment	35 (11%)	17 (21%)	18 (7%)
Mental health treatment	28 (9%)	11 (14%)	16 (7%)
Restitution	41 (13%)	12 (15%)	29 (12%)
CBI	21 (6%)	3 (4%)	18 (7%)
Anger management training	12 (4%)	9 (11%)	3 (1%)
Other condition	62 (19%)	13 (16%)	48 (20%)

Note: CBI = Cognitive Behavioral Intervention

### What types of sentences were given for common offense types?

We examined the type of sentence imposed for the seven most commonly charged types of offenses (see Figure 3). Collectively, these crimes represent 55% of cases (179 of 325) entered in the plea tracker. Crimes involving dangerous drugs or larceny comprised 38% (50 of 132) of all probation-only sentences. Theft crimes, such as robbery and burglary, received a relatively high proportion of split sentences. Almost all homicide cases received active sentences.

**Figure 3.** Type of Sentence Given for Common Types of Offenses



### What were the sentence lengths for the most commonly pled charges?

We analyzed the median minimum and maximum sentences for the 12 most commonly pled charges (see Table 5). Cases with the most serious charges (Classes A through D) all received active sentences, but sentence types varied for Classes G through I felony pleas. For example, the most common pled charge, Possession of a Firearm by a Felon (Class G), was the most serious charge in 42 cases, with active sentences in 13 cases, split sentences in 9 cases, and probation-only sentences in 20 cases. It is important to note that this analysis does not account for a person’s criminal record or other pled charges in the same case, which may significantly impact the length and type of sentence imposed.

**Table 5. Median Sentences for Common Pled Charges**

Pled charge Charge (Class)	Active sentences			Split sentences			Probation sentences			
	N	Min	Max	N	Min	Max	Active	N	Min	Max
Second-degree murder (B1)	3	300	372	0				0		
Second-degree murder (B2)	6	157	201	0				0		
First-degree rape (B2)	1	292	363	0				0		
Second-degree rape (C)	3	98	142	0				0		
Robbery with a dangerous weapon (D)	2	74	101	0				0		
Voluntary manslaughter (D)	3	85	108	0				0		
Common law robbery (G)	3	20	33	5	13	25	4	1	24	24
Possession of a firearm by a felon (G)	13	15	27	9	16	28	4	20	17	24
Identity theft (G)	3	17	30	1	13	25	4	1	36	36
Obtaining property by false pretense (H)	2	12	24	0				4	13	22
Breaking and entering (H)	5	17	30	1	8	19	2	1	6	17
Breaking and entering motor vehicle (I)	1	6	17	1	6	17	1	1	9	20

### Did the severity of sentencing outcomes vary by other characteristics of the case?

The most common pled felony charge was a Possession of a Firearm by a Felon (Class G). Given of the frequency of this charge (42 cases), we examined whether characteristics of the person charged, victim, defense attorney, or prosecutor varied across the severity of sentencing outcomes (see Table 6). In PFF cases, all the people were male, with an average age of 34 years and an average prior record level of 3.26. People receiving active sentences in PFF cases were slightly older and had a higher average prior record level (4.17). A greater share of cases with a probation sentence featured a non-person victim, compared to split and probation sentences.

About two-fifths of all PFF cases (18 cases) were represented by a public defender, with public defenders representing 15% of cases receiving active sentences. Prosecutors communicated with the defense before the initial offer in half of all active cases; however, they communicated with the defense after the initial offer in every active case. Prosecutors reported fairly similar levels of defense attorney influence across all sentence types. However, defense attorneys were more likely to request changes to initial offers in cases that ultimately received active sentences (69%) than in those that resulted in probation sentences (45%).

The Special Victims team entered three PFF cases, two of which resulted in an active sentence, one in a split sentence, and none in a probation sentence. The Drug and Property team entered the remaining 34 PFF pleas, the majority of which resolved with a probation sentence.

**Table 6.** Sentencing Outcomes for Possession of a Firearm by a Felon (PFF) Cases

	All cases N = 42	Active n = 13 (31%)	Split n = 9 (21%)	Probation n = 20 (48%)
<b>Person charged:</b>				
Female	0	0	0	0
Age	34 (11.55)	36.6 (9.88)	29.2 (9.07)	34.4 (12.6)
Prior record level	3.26 (1.20)	4.15 (1.46)	3.00 (0.93)	2.85 (0.81)
<b>Victim type:</b>				
Person or persons	15 (36%)	6 (46%)	3 (33%)	6 (30%)
State of North Carolina	25 (60%)	7 (54%)	6 (67%)	13 (65%)
Other	2 (5%)	0	0	2 (10%)
<b>Attorney type:</b>				
Public defender	18 (43%)	2 (15%)	6 (67%)	10 (50%)
Court-appointed lawyer	15 (36%)	10 (77%)	2 (22%)	3 (15%)
Private attorney	9 (21%)	1 (8%)	1 (11%)	7 (35%)
<b>Attorney communication:</b>				
Correspond before offer	24 (57%)	7 (54%)	7 (78%)	10 (50%)
Correspond after offer	36 (86%)	13 (100%)	7 (78%)	16 (85%)
Provided mitigation	13 (31%)	3 (23%)	2 (25%)	8 (40%)
Influenced initial plea <sup>a</sup>	15 (36%)	5 (38%)	3 (38%)	7 (35%)
Requested changes	21 (50%)	9 (69%)	3 (38%)	9 (45%)
<b>Prosecutor team:</b>				
Special victims	3 (7%)	2 (15%)	1 (11%)	0
Drug/property	34 (81%)	9 (69%)	6 (67%)	19 (95%)

Note: <sup>a</sup> This includes any level of influence (“a lot”, “somewhat”, or “a little”).

### C. Changing Charges and Sentences

Cases resolved through plea deals may involve reductions in the number of charges or severity of charges, in exchange for a guilty plea. In addition, prosecutors may have the discretion to offer different types of sentences within the ranges provided by the North Carolina state sentencing grid. Charge reductions can signal productive negotiations between all parties.

#### How often did prosecutors dismiss or drop charges, and why?

Prosecutors commonly dismissed charges. As shown in Table 7, charges were dismissed in 84% of cases (272 of 325). In 93% of cases (254 of 272), the main reason for dismissing charges was that the person pled to something else. Prosecutors also noted witness cooperation, weak evidence, prosecution in another jurisdiction, low priority offenses, and the availability of the arresting officer or witness. Other reasons included participation in a diversion program, substance use treatment, lab results, the person’s age, and being unable to contact the victim. In all but 16 cases, prosecutors indicted the most serious charge brought by the police.<sup>5</sup>

**Table 7.** Reasons for Charge Dismissals (N = 272)

	Number (%)
Defendant pled to something else	254 (93%)
Witness cooperation	25 (9%)
Weak evidence	22 (8%)
Suppression of evidence	2 (1%)
New evidence	5 (2%)
Prosecution in another jurisdiction	3 (1%)
Low priority offense	17 (6%)
Availability of arresting officer or witness	5 (2%)
Other	40 (15%)

*Note:* Prosecutors could list multiple reasons for each case. Percentages reflect total number of cases. In 37 cases, no charges were dismissed. Data were missing for 16 cases.

#### How often did prosecutors reduce charges?

We examined how often prosecutors “reduced” charges (i.e. selected charges of a less severe class) from indictment to the guilty plea. This analysis is limited, however, due to the tracker’s focus on Superior Court cases—low-level felonies are often resolved in District Court and are not entered in the tracker. This means that charge reductions for low-level felonies (particularly Classes G, H, and I) are likely to be significantly underrepresented in the data. A substantial number of low-level felonies are ultimately resolved in District Court.

Focusing on the most serious charges in non-drug trafficking cases, indicted charges were reduced to a lower class for the guilty plea in 47% of cases (136 of 291). In Figure 4, columns represent indicted charges and rows represent pled charges. For example, the first column shows that the 11 charges indicted as Class A felonies were reduced to Class B1 (2), B2 (5), C (1), and D (3) felonies. The next column shows that charges indicted as Class B1 felonies were not reduced in five cases (i.e. they were pled as Class B1 felonies), and were reduced to B2 (1), C (3), E (1), and I (1) in the other cases. See Figure A2 in the Appendix for drug trafficking crimes.

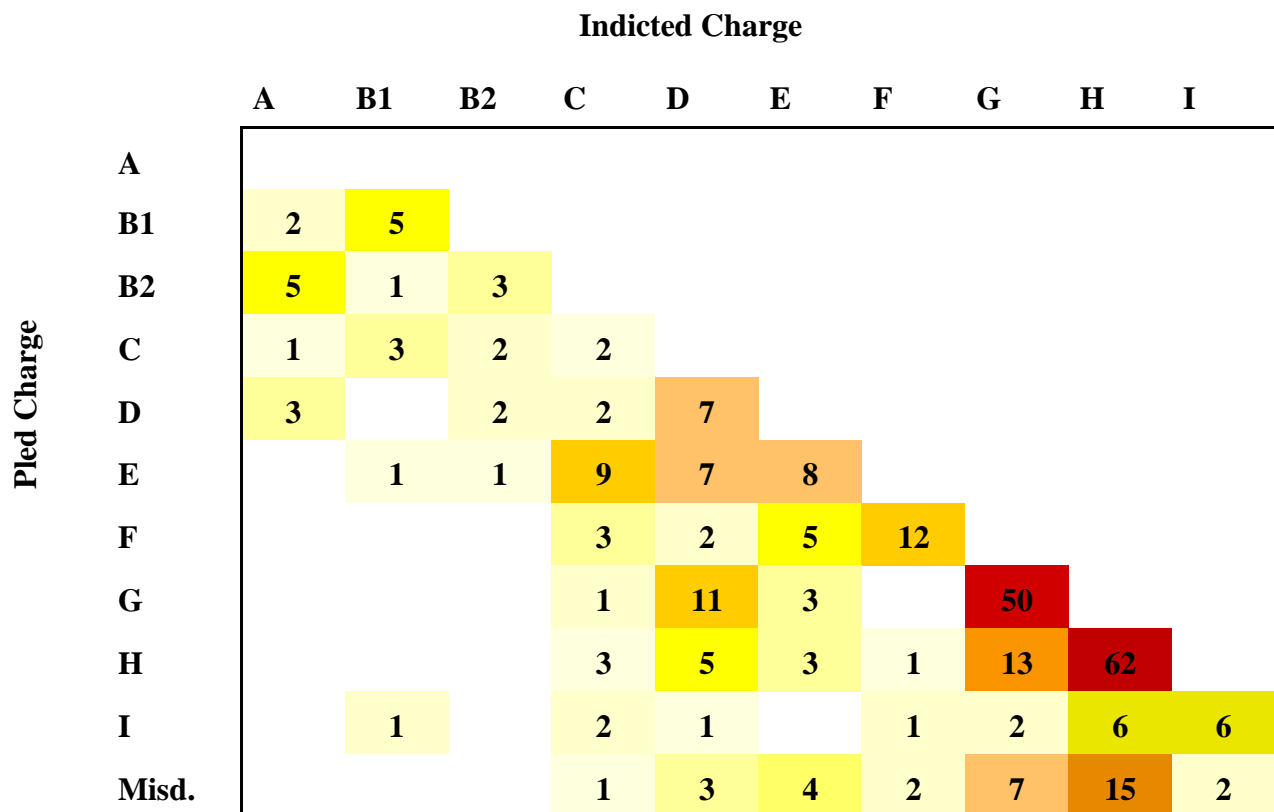
<sup>5</sup> Data for this question were missing in 30 cases.

For every offense class, there was at least one charge reduction. In 34 cases, there was a charge reduction from a felony class to a misdemeanor. In the Class D category, for instance, there were three cases that resulted in pleas to misdemeanor charges. These initial indicted charges included a robbery with a dangerous weapon, discharging a firearm, and felony death by vehicle.

More detailed information can be found in Appendix Table A1, including the average reduction for each class of charge. The average reduction for each class of charge was higher for the more serious charges: Class A felonies were reduced by an average of 2.5 classes and Class C had the largest reduction at 2.9. Class I felonies had the smallest average reduction. As previously mentioned, the smaller reductions in low-level felonies may be a function of how underrepresented these felonies are in the tracker, as many are resolved in District Court.

Charge reductions in drug trafficking cases are shown in Appendix Table A2. Felony drug trafficking charges were only made in Class C (1), D (6), E (3), F (10), and G (5). About one-third of the cases charged with Class D drug trafficking were not reduced, and the cases charged Class F and G were reduced an average of 1.9 and 0.6 classes, respectively. It is important to note that these charge dismissals do impact the sentencing ranges, though quantitatively measuring the difference between the initial charges and the actual charges/sentence (i.e. “distance travelled”) is complex.

**Figure 4.** Heat Map of the Most Serious Indicted Charge vs. the Most Serious Pled Charge, in Non-Drug Trafficking Cases (N = 291)



## D. Demographics

### What were the demographic characteristics of people charged with crimes in Durham?

Prosecutors reported demographic information about people charged with crimes, including the person’s criminal history and the prosecutor’s perceptions of the threat that the person poses to public safety, property, and themselves.

In Durham, people charged with crimes were most often male, Black, non-Hispanic, and an average age of 36. This is consistent with felony conviction statistics for the entire state, except for race. In North Carolina, White people account for 53% of felony convictions, whereas Black people account for 41%.<sup>6</sup> However, 2021 arrest data for Durham County show that that 72% of people who arrested by police were Black and 27% were White.<sup>7</sup> Nearly 80% of people charged were indigent, which includes 79% of Black people charged with crimes, as compared to 67% of White people. Indigency is determined by the court for eligibility for a public defender.<sup>8</sup>

Turning to criminal history, about three-quarters of people charged with crimes (73%, or 238 of 325) had at least one prior conviction, and 57% (185 of 325) had previously been convicted of a felony, with 24% (78 of 325) eligible to be convicted in their current case as a habitual felon. In contrast, 27% (87 of 325) had no criminal record at all. People charged with crimes had the following prior record levels: I (94), II (69), III (48), IV (33), V (18), and VI (48).<sup>9</sup>

**Table 8.** Demographic Characteristics of People Charged with Crimes

	Number (%)
Race <sup>a</sup> :	
White	48 (15%)
Black	260 (80%)
Latinx	16 (5%)
Other	1 (1%)
Hispanic ethnicity	23 (7%)
Gender:	
Male	289 (89%)
Female	31 (10%)
Unknown	5 (1%)
Indigent status	243 (75%)
Criminal history:	
Eligible as habitual felon	79 (24%)
Has prior felony conviction	185 (57%)
Has any prior conviction	238 (73%)
No criminal record	87 (27%)

*Note:* The mean age was 36 years, with a range from 19 to 71 (SD = 11.77).

<sup>a</sup> In Durham County, the racial composition is White (54.5%), Black (40%), and Latinx (14%).

<sup>6</sup> North Carolina Sentencing and Policy Advisory Commission. 2021. “Quick Facts: Felony Convictions.” Data source: <https://www.nccourts.gov/documents/publications/quick-facts>

<sup>7</sup> Total number of unique arrestees = 3198; Black = 2296; White = 872; Asian = 13; Indian = 6; Hispanic ethnicity = 375. Data source: <https://live-durhamnc.opendata.arcgis.com/documents/dpd-arrests-ucr-nibrs-reporting/about>

<sup>8</sup> In 30 cases, however, an indigency determination had not yet been made.

<sup>9</sup> Data for the person’s prior record level were missing for 15 cases.

### What were the perceived levels of threat posed by people charged with crimes?

Prosecutors reported their perceptions of people’s threat to public safety, property, and themselves. These judgments were reported on a Likert-type scale, by considering all information about the person charged and the current case. These categories included no threat, minor threat, moderate threat, high level of threat, and highest level of threat. When prosecutors indicated their perception of a person’s threat to public safety and property, their ratings averaged between “minor” and “moderate” levels of threat. Nearly a quarter of people were categorized as a high level of threat to property. In no cases was the person charged deemed the highest level of threat in any category.<sup>10</sup>

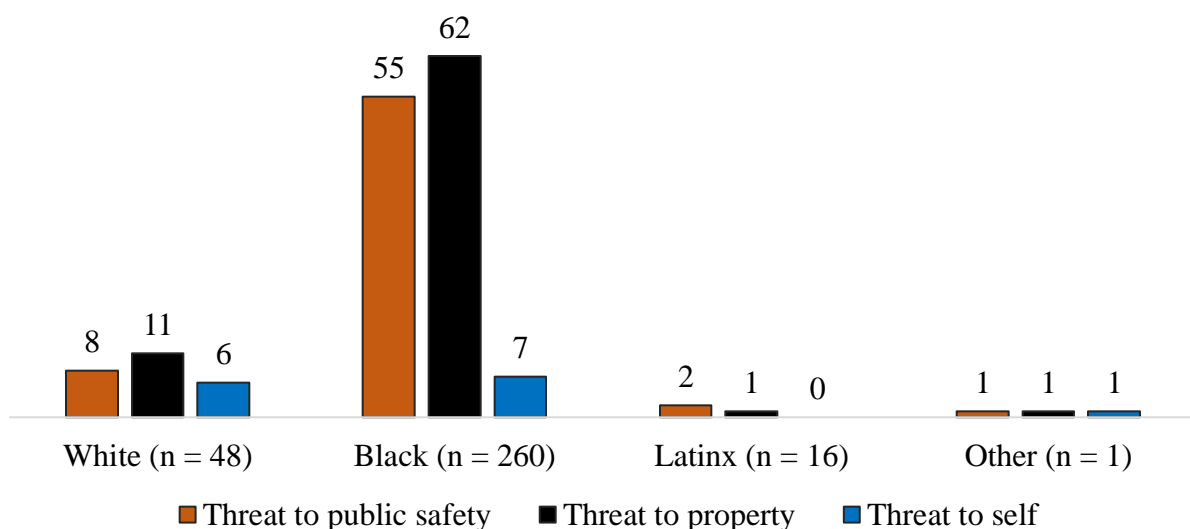
On average, the perceived threat that people charged with crime posed to public safety and property was greater than the perceived threat to themselves. Approximately 21% (69 of 325) of people were viewed as no threat to themselves. People charged with crimes were judged to pose a high level of threat to public safety in 66 cases and to property in 75 cases. They were perceived a high threat to themselves in only 4% of cases (14 of 325). Figure 5 shows the highest perceived level of threat by the person’s race.

**Table 9.** Perceived Levels of Threat Determined by the Prosecutor (N = 325)

Perceived Threat Level	Threat to Public Safety	Threat to Property	Threat to Self
No threat at all	18 (6%)	44 (14%)	69 (21%)
A minor threat	133 (41%)	98 (30%)	78 (24%)
A moderate threat	113 (35%)	102 (31%)	46 (14%)
A high level of threat	66 (20%)	75 (23%)	14 (4%)

*Note:* Threat level is scored from 1-5, with 5 being the highest level. However, the highest level was never selected. The mean levels of threat: public safety = 2.73 (SD = 0.85); property = 2.70 (SD = 0.98); self = 2.04 (SD = 0.92).

**Figure 5.** Highest Perceived Level of Threat, by Race of the Person Charged



<sup>10</sup> In 64 cases, prosecutors reported that “this has yet to be determined.”

## **Part II. Factors that Influence Plea Bargaining**

Part II of this report focuses on prosecutors' decision-making process during plea bargaining. Prosecutors were asked to report on their perceptions of the case, the various decisions they made, and the reasons for those decisions. We present data on the timeline of plea bargaining, the demographics and influence of alleged crime victims, prosecutors' considerations of mitigating factors, aggravating factors, and collateral consequences, and the perceived influence of defense attorneys and mitigation.

### **A. Time and Judges**

#### **How much time passed between the initial plea offer and the final plea that was entered?**

The plea bargaining process takes time. After prosecutors present an initial offer, a series of negotiations and deliberations might occur. Table 10 shows the time passed between when the initial offer was made and when the person enters the final plea. In 49% of cases (160 of 325), the final plea was different from the prosecutor's initial offer. Very few pleas were finalized within one week. Most cases (59%, or 193 of 325) took about 1-8 months before the final plea was entered. Cases that took longer than eight months to resolve more often had changes made to the initial plea offer. These patterns were consistent across the type of attorney and the demographics of the person charged.

**Table 10.** Time Elapsed between Initial Offer and Final Plea Offer

	Plea unchanged (n = 150)	Plea changed (n = 160)
Less than 1 day	1 (1%)	1 (1%)
1-7 days	6 (4%)	6 (4%)
1 week-1 month	24 (16%)	15 (9%)
1-3 months	53 (35%)	36 (22%)
4-8 months	52 (35%)	52 (33%)
More than 8 months	14 (9%)	50 (31%)

*Note:* Percentages reflect column totals.

Judges can have an active role in shaping sentencing outcomes, which may extend the case's length. Every case involving conditions imposed by judges took at least one month before the final plea was entered. In 18% of cases (57 of 325), judges had the discretion to either determine the sentence (e.g. open pleas) or impose/waive certain conditions (e.g. waive court costs). In about half of these cases (47%, or 26 of 57), judges added conditions to the plea beyond the terms negotiated by the prosecutor and the defense. In 87% of all cases (288 of 325), however, judges did not add any conditions to the plea other than those negotiated by the parties. We did not find a relationship between the judge's decision to add or modify conditions and the type of attorney.



## B. Victims

### How often was there a victim of a crime in pled cases? What was the demographic makeup of victims?

Victims of crime can have an important participatory role in the plea bargaining process as prosecutors routinely recognize victims' interests. In total, there were at least 329 different alleged victimized parties (see Table 11). One or more people were listed as a victim in 191 cases. There were 105 cases with one primary victim and 82 cases with two or more victims. In cases with one primary victim, the person charged was least often a family member (see Table 12). Among individual victims, more than half were Black (56%, or 107 of 191), a similar proportion were female (59%, or 112 of 191), and most were non-Hispanic (71%, or 136 of 191). Victims were categorized as a business or corporation<sup>11</sup> in 14% of cases (46 of 325) and the state of North Carolina in 28% of cases (92 of 325). Several alleged victims (10%, or 19 of 191) were identified as vulnerable.

**Table 11.** Victim Characteristics

	Number	(%)
Victim type:		
Person	191	(59%)
One victim	105	(32%)
Two or more victims	82	(25%)
Business or corporation	46	(14%)
State of North Carolina	92	(28%)
Victim race <sup>a</sup> :		
White	53	(28%)
Black	107	(56%)
Asian	6	(3%)
Latinx	15	(8%)
Other	6	(3%)
Victim ethnicity <sup>a</sup> :		
Hispanic	27	(14%)
Non-Hispanic	136	(71%)
Unknown	2	(1%)
Victim gender <sup>a</sup> :		
Male	69	(36%)
Female	112	(59%)
Vulnerable	19	(10%)

**Table 12.** Relationship to the Victim (n = 105)

	Number	(%)
Family member	8	(8%)
Non-family acquaintance or friend	34	(33%)
Romantic partner	26	(25%)
They do not know each other	36	(35%)

**Table 13.** Prosecutor Communication with Victim (n = 191)

	Number	(%)
Plea discussed with victim before offer <sup>a</sup>	77	(80%)
Prosecutor communicated with victim:	162	(85%)
Phone	153	(80%)
Mail	101	(53%)
Email	50	(26%)
In-person, at hearing	38	(20%)
In-person, separate from hearing	37	(19%)
Text	32	(17%)
Virtual	4	(2%)
Other	8	(4%)

*Note:* The total number does not equal 191 because prosecutors could list multiple forms of communication per case. <sup>a</sup> Percentage is out of 96 cases.

*Note:* <sup>a</sup> Race, ethnicity, and gender information were missing for several cases in which alleged victims were reported as both a person and a business.

### How often, and in what ways, did prosecutors communicate with victim(s)?

Prosecutors reported whether they communicated with the victim(s). In four-fifths of all cases with one primary victim (80%, or 77 of 96), prosecutors discussed the plea with the victim before making the initial offer. It is not always clear, however, if these discussions significantly altered the terms of the initial offer. It is also unclear *how* victims were involved in the cases against the person charged in pled cases. For instance, we do not know if victim(s) appeared in court, provided oral or written testimony, or were involved in other ways. Prosecutors contacted victims in most cases (85%, or 162 of 191) to some extent, and typically used multiple forms of communication. As shown in Table 13, prosecutors most often communicated with the victim(s) by phone (80%, or 153 of 191) or by mail (53%, or 101 of 191). Virtual communication (2%) was used least often. There were no observable patterns in the number of times each form of communication was used.

<sup>11</sup> Victimized businesses included supercenters (e.g. Target, Walmart), restaurants, and gas stations.

## C. Prosecutors

### What mitigating factors and aggravating factors did prosecutors consider?

When developing the initial offer, prosecutors consider a wide range of legal and extralegal factors. Durham prosecutors were asked to select from a list of factors to indicate which factors influenced them to recommend a sentence that was more lenient or more severe in the initial plea offer. The lists of potential factors were designed by the WCSJ Research Team with suggestions from the Office. Table 14 lists the mitigating factors and aggravating factors reported by prosecutors, in order from those most often reported to those reported least.

Prosecutors considered at least one mitigating factor in 84% of cases (272 of 325), with an average of about one-and-a-half mitigating factors reported per case. At most, there were eight mitigating factors reported in a single case. The most frequently considered mitigating factors were the person’s criminal record (32%), the person’s substance use (29%), and age (20%). The factor influencing sentence leniency that prosecutors selected second most often was “other” (31%), which included health concerns, minor damages, and the age of the case.

Prosecutors considered at least one aggravating factor in 93% of cases (301 of 325), with an average of about two aggravating factors reported per case. At most, there were six aggravating factors reported in a single case. In five cases, one or more mitigating factors were considered but aggravating factors were not. The most frequently considered aggravating factors were the seriousness of the offense (54%), criminal history (40%), past recidivism (30%), presence of firearms (26%), violent nature of the offense (24%), and “other” factors (20%), which included the presence of children, the number of total charges, and the dangerousness of drugs or substances involved.

Among people sentenced to prison (129 cases), prosecutors reported no mitigating factors in 35 cases and no aggravating factors in 10 cases. Among people sentenced to probation (132 cases), prosecutors reported no mitigating factors in 10 cases and no aggravating factors in 5 cases. It is unclear whether demographics are associated with how often mitigating or aggravating factors were considered. Across all racial groups and gender categories, a person’s criminal record and the seriousness of the offense were the most cited factors.

We examined whether there was a relationship between the number of mitigating factors and aggravating factors reported in any particular case. For instance, does the number of mitigating factors considered in a case relate to the number of aggravating factors also considered in the case? There appears to be a low correlation ( $r = .20$ ; 95% CI [.09, .30]). Therefore, there is no strong evidence to suggest patterns in how many mitigating or aggravating factors prosecutors consider in a particular case.

**Table 14.** Factors Influencing Plea Deals

Mitigating factors	Number (%)	Aggravating factors	Number (%)
Person’s record	103 (32%)	Seriousness of offense	177 (54%)
Substance use	95 (29%)	Criminal history	131 (40%)
Person’s age	65 (20%)	Recidivist	99 (30%)
Mental health	43 (13%)	Presence of firearms	84 (26%)
Cooperation	34 (10%)	Violent nature of the crime	79 (24%)
Social background	32 (10%)	Major or leadership role	24 (7%)
Minor role in crime	11 (3%)	Forensic labs	3 (1%)
Forensic labs	4 (1%)	Other	64 (20%)
Other	102 (31%)		

*Note:* The total number exceeds 325 because prosecutors could list multiple mitigating or aggravating factors for each case.

In addition, prosecutors were asked to select the single most important mitigating or aggravating factor considered in each case. Table 15 shows the top five mitigating and aggravating factors deemed most important. Among mitigating factors, a person’s record was often considered most important. Victim involvement, or lack thereof, was considered most important in 10 cases, suggesting that prosecutors were receptive to victims’ inability or unwillingness to cooperate. Among aggravating factors, the violent nature of the crime was often considered most important. In more than half of cases where violent nature was considered (61%, or 48 of 79), it was perceived to be the most influential factor. The most common factors, such as the person’s record or criminal history, seemingly emphasized the person’s rehabilitative potential. A notable difference is that the top two aggravating factors most often considered important were focused on the extent of the harm done.

**Table 15. Most Important Factors Influencing Plea Deals**

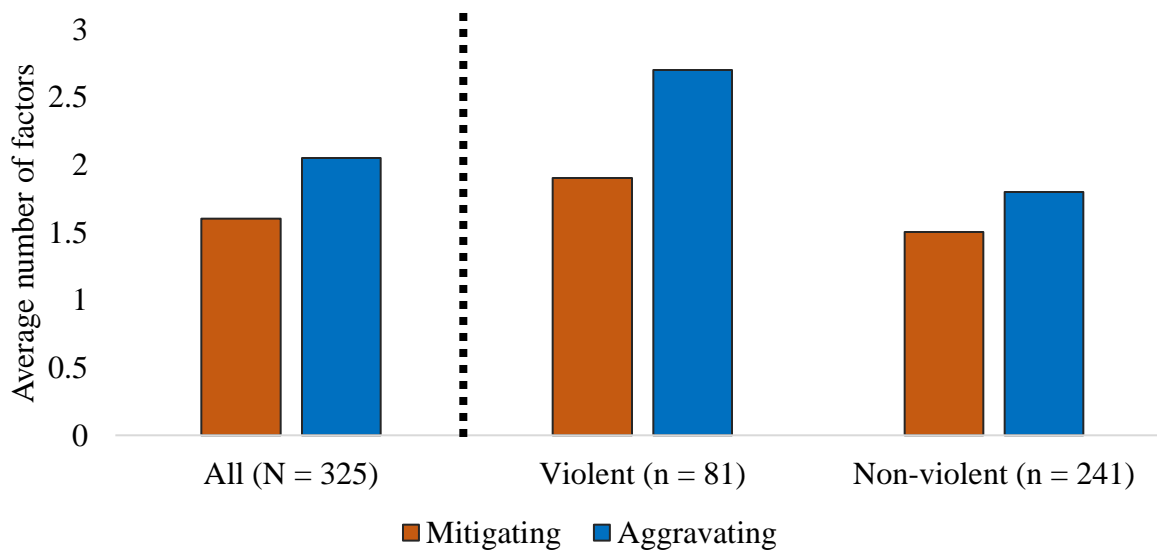
Mitigating factors	Number (%)	Aggravating factors	Number (%)
Person’s record	38 (14%)	Violent nature of the crime	48 (16%)
Mental health	20 (7%)	Seriousness of offense	38 (13%)
Person’s age	17 (6%)	Criminal history	37 (12%)
Substance use	14 (5%)	Recidivist	23 (8%)
Victim involvement	10 (4%)	Presence of firearms	21 (7%)

Note: Percentages reflect different denominators. Mitigating factors is out of 272 cases; Aggravating factors is out of 301 cases.

**Did the number of factors considered vary by crime type or the race of the person charged?**

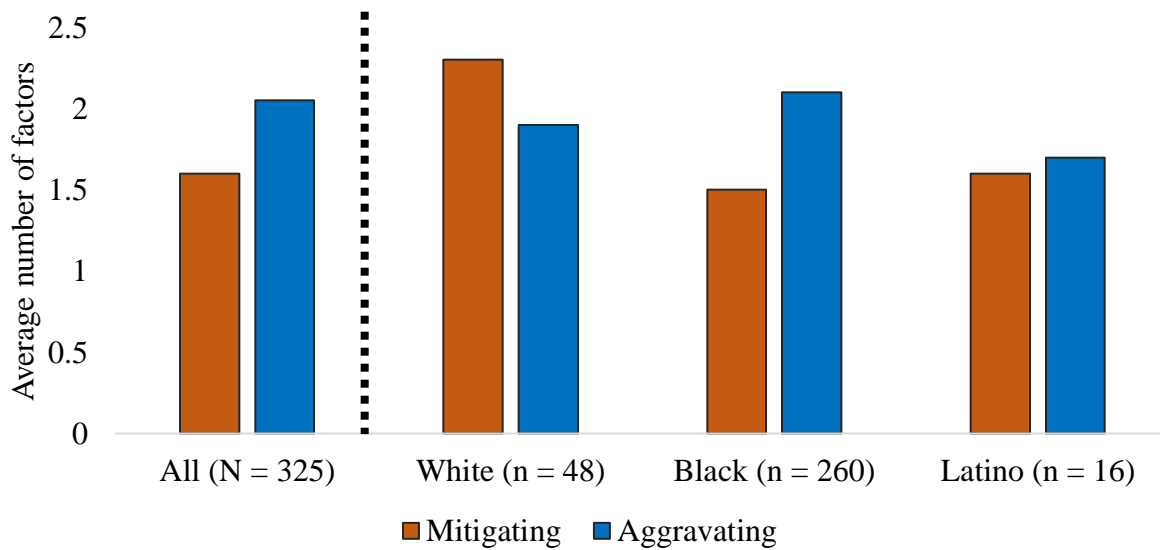
For both violent and non-violent cases, prosecutors considered more aggravating factors on average. But prosecutors considered more mitigating *and* aggravating factors per case in violent crime cases. This suggests that prosecutors were more deliberative with their reasoning in cases involving a more severe or serious offense.

**Figure 6. Average Number of Mitigating and Aggravating Factors, by Crime Type**



Turning to race, we find a stark discrepancy in the numbers of factors considered per case (see Figure 7). Prosecutors considered more mitigating factors on average in cases involving White people charged of crime. But prosecutors considered more aggravating factors, on average, in cases with Black people. Most types of mitigating factors were considered more frequently in cases with White people. Prosecutors evaluated the seriousness of the offense and violent nature of the crime in a greater proportion of cases with White people; however, they evaluated the criminal history, likelihood of recidivism, and the presence of firearms in a greater proportion of cases with Black people (see Figure A3 in the Appendix).

**Figure 7.** Average Number of Mitigating and Aggravating Factors, by Race of the Person Charged



**What collateral consequences did prosecutors consider?**

Prosecutors also reported any collateral consequences they considered in developing plea offers (shown in Table 16). Prosecutors considered at least one potential collateral consequence in 65% of cases (207 of 325), with just one collateral consequence considered in 22% of cases (71 of 325). The person’s mental and physical health was the most commonly considered consequence (31%). Other frequently considered consequences related to the capacity of the person charged to readjust to daily life, which included the ability to contribute positively to the community (30%), the ability to return to daily life after their sentence (28%), and the ability to seek or maintain employment (26%).

**Table 16.** Collateral Consequences Considered in Plea Deals

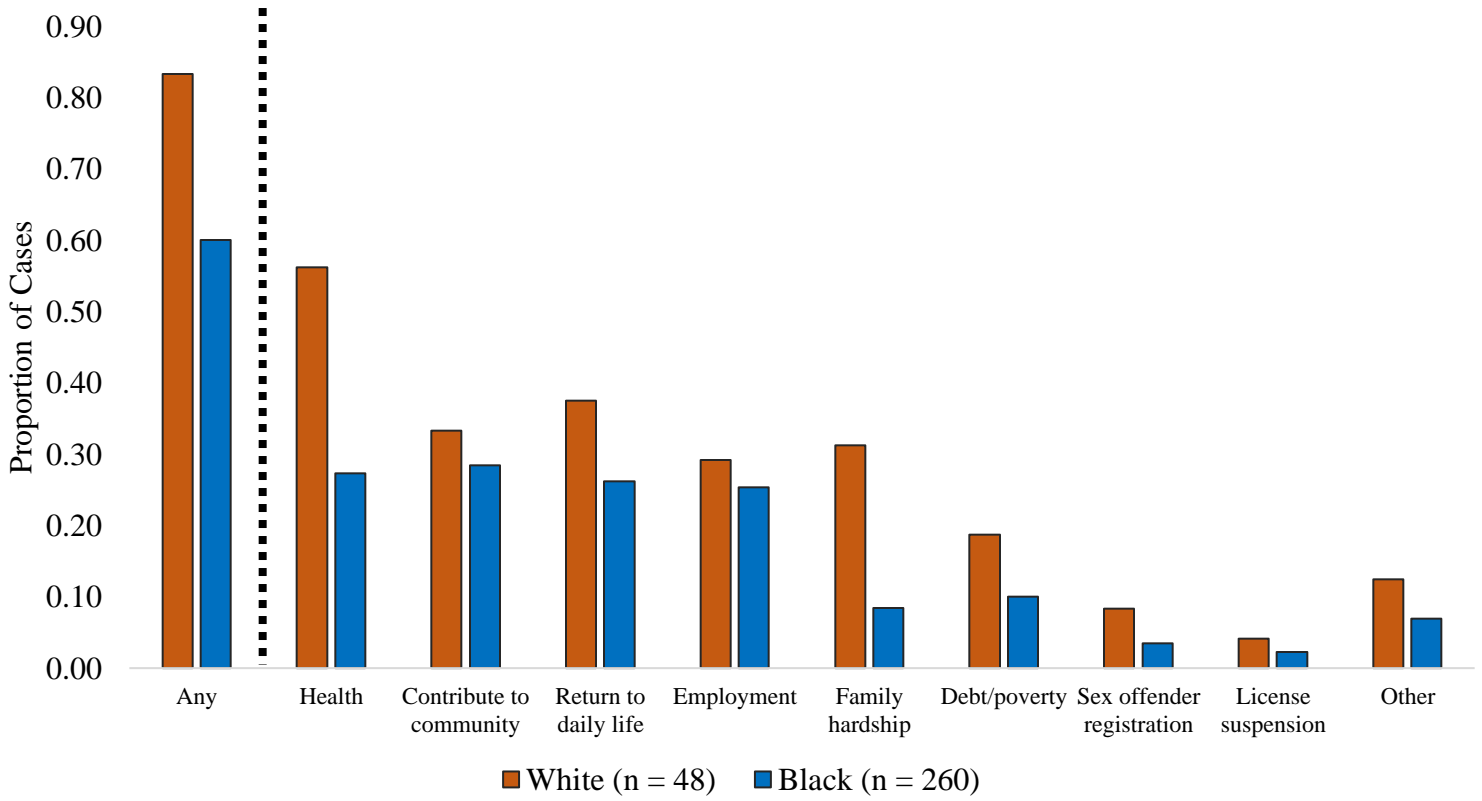
Collateral consequence	Number (%)
Mental and/or physical health of the person	100 (31%)
Ability to contribute positively to the community	98 (30%)
Ability to return to daily life once any fines and sentences are fulfilled	91 (28%)
Ability to seek or maintain employment	85 (26%)
Creating family hardship for the person	41 (12%)
Debt or poverty	38 (12%)
Requiring the person to register as a sex offender	15 (5%)
Suspending the person’s driver’s license	10 (3%)
Other	26 (8%)

*Note:* The total number does not equal 325 because prosecutors could list multiple collateral consequences for each case.

**Did the number of consequences considered vary by crime type or the race of the person charged?**

Prosecutors considered about one-and-a-half collateral consequences per case. The average number of collateral consequences did not vary by crime type. However, there was a sizeable difference based on race. Prosecutors considered almost one more collateral consequence per case in cases with White people (2.31) than in cases with Black people (1.38). Prosecutors considered any type of consequence in 83% of cases with White people and 60% of cases with Black people. Across all types of collateral consequences, prosecutors made these considerations more often in cases with White people (see Figure 8).

**Figure 8.** Collateral Consequences Considered, by Race of the Person Charged



## D. Defense Attorneys

### What types of defense attorneys did people charged with crimes have?

System-involved individuals with a limited understanding of how the plea process works will rely on their defense attorney for guidance. In fact, people often only interact with their defense attorney and have minimal or no contact with other courtroom actors. We found that public defenders represented the largest share of cases (46%, or 148 of 325), with one-third represented by court-appointed lawyers (33%, or 105 of 325) and about one-fifth represented by private attorneys (21%, or 69 of 325).<sup>12</sup> The type of defense attorney reflected differences in sentencing outcomes. People represented by private counsel more often received probation-only sentences; however, when a person with a private attorney received an active sentence, it was longer than the active sentences imposed in cases handled by other types of attorneys.

**Table 18.** Type of Sentence and Length, by Type of Attorney

Sentence type	Defense attorney type	Number (%)	Median sentence length
Active sentence	Public defender	59 (40%)	21–35
	Court-appointed	47 (45%)	19–32
	Private counsel	20 (29%)	48–55
Split sentence	Public defender	30 (20%)	14–26
	Court-appointed	22 (21%)	14–26
	Private counsel	9 (13%)	13–29
Probation sentence	Public defender	58 (40%)	-
	Court-appointed	35 (34%)	-
	Private counsel	39 (57%)	-

*Note:* Data were missing for 6 cases. Column percentages reflect the total number of cases per type of attorney: public defender = 147; court-appointed = 104; private counsel = 68. Sentence lengths are not reported for probation because the survey probation questions were answered inconsistently during the data collection period.

### What influence did prosecutors perceive defense attorneys to have on plea negotiations?

Prosecutors were asked to report how much influence they perceived the defense attorney’s actions to have on the terms of the initial plea offer. Table 19 shows the type of attorney, level of perceived defense attorney influence, whether mitigation was provided, and the perceived influence of mitigation. Importantly, because these data were reported by prosecutors, it is possible that defense attorneys had different perceptions about their own influence in plea negotiations.

Defense attorneys had varying degrees of influence on the initial plea offer. Defense attorneys were reported to influence the initial plea offer “a lot” in 9% and “not at all” in 42% of overall cases, but influence varied depending on the type of defense attorney. For instance, 14% of public defenders had “a lot” of influence, compared with 6% of court-appointed counsel and 4% of private attorneys. Defense attorneys provided mitigation evidence, or information speaking to why the person charged might deserve a more lenient sentence, before prosecutors made their initial offer in more than one-third of cases, and the mitigation had at least a little influence on the initial offer in the vast majority (93%) of those cases.

Public defenders and private counsel provided mitigation more often before the initial offer, compared with court-appointed counsel. Generally, prosecutors communicated with the defense before the first offer in most cases (73%), and after the initial offer in nearly all cases (95%).

<sup>12</sup> Both public defenders and court-appointed counsel represent indigent clients. Public defenders are employed by the Public Defender’s Office, whereas court-appointed counsel are not.

**Table 19.** Defense Attorney Influence and Mitigation, by Type of Attorney

	All cases N = 322 (100%)	Public defender n = 148 (46%)	Court-appointed n = 105 (33%)	Private counsel n = 69 (21%)
Amount attorney influenced initial offer: <sup>a</sup>				
A lot	29 (9%)	20 (14%)	6 (6%)	3 (4%)
Somewhat	62 (20%)	31 (21%)	11 (12%)	20 (29%)
A little	88 (29%)	37 (26%)	32 (34%)	19 (28%)
Not at all	129 (42%)	56 (39%)	46 (48%)	27 (39%)
Provided mitigation before initial offer: <sup>b</sup>				
Yes	119 (38%)	61 (42%)	29 (30%)	29 (42%)
No	179 (58%)	75 (52%)	65 (68%)	39 (57%)
Not sure	11 (4%)	8 (6%)	2 (2%)	1 (1%)
Amount mitigation influenced initial offer: <sup>c</sup>				
A lot	17 (14%)	10 (16%)	5 (17%)	2 (7%)
Somewhat	38 (32%)	18 (30%)	6 (21%)	14 (48%)
A little	56 (47%)	30 (49%)	16 (55%)	10 (34%)
Not at all	8 (7%)	3 (5%)	2 (7%)	3 (10%)
Prosecutor corresponded with defense <b>before</b> initial offer <sup>a</sup>	224 (73%)	112 (78%)	61 (64%)	51 (74%)
Prosecutor corresponded with defense <b>after</b> initial offer <sup>d</sup>	295 (95%)	137 (95%)	93 (96%)	65 (94%)

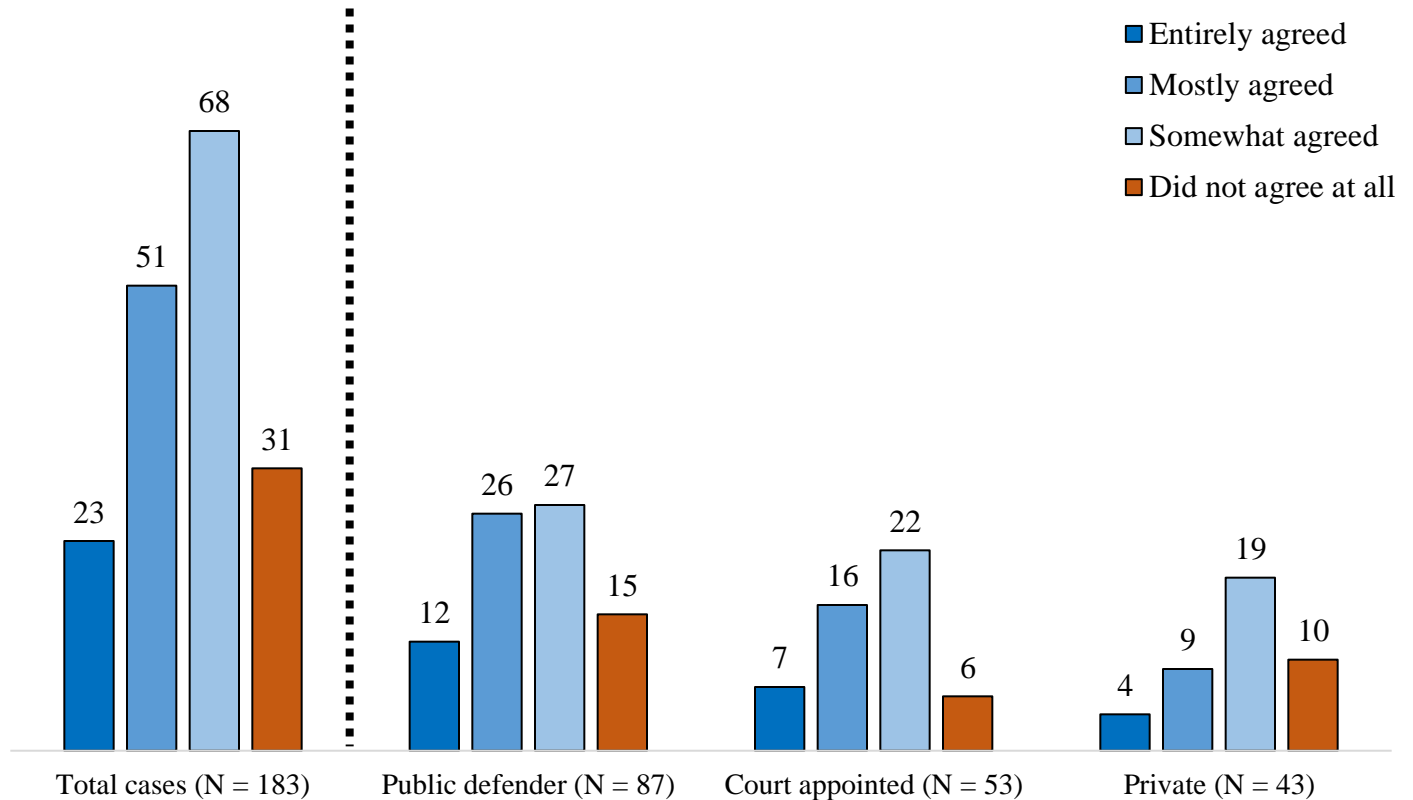
*Note:* Data for the type of attorney were missing in three cases. <sup>a</sup> Data were missing for 10 cases with a court-appointed lawyer and four cases with a public defender. <sup>b</sup> Data were missing for nine cases with a court-appointed lawyer and four cases with a public defender. <sup>c</sup> Percentages shown are out of cases where mitigation was provided (n = 119). <sup>d</sup> Data were missing for eight cases with a court-appointed lawyer and four cases with a public defender.

The level of perceived influence was similar across racial groups. However, attorneys representing Black clients provided mitigation before the initial offer less than one-third of the time, compared with two-thirds of attorneys representing White clients. Moreover, prosecutors corresponded with the defense before the initial offer in 60% of cases with a Black client, compared to 92% of cases with a White client. This is noteworthy considering that mitigation often influenced the plea offer and the timely receipt of mitigating information can be crucial in shaping the initial plea offer and its trajectory through to the final offer.

### **How often did the defense request changes to the plea offer, and did prosecutors agree?**

The defense attorney requested changes to the initial plea offer in 56% of all cases (183 of 325). This was consistent across attorney type. Prosecutors generally expressed some level of agreement with the requested changes (see Figure 9). In 23 cases, the prosecutor entirely agreed with the requested changes. However, they completely disagreed in 31 cases. In both cases represented by public defenders and private attorneys, the prosecutor completely disagreed with the requested changes more often than they agreed with all changes.

**Figure 9.** Prosecutor Level of Agreement with the Requested Changes



Note: Total cases only includes cases where the defense requested any change. Data were missing for 10 cases.

**What types of changes to the plea offer did the defense request and for what reasons?**

Table 20 shows the types of changes requested by the defense. The most common requested changes related to the length and the type of sentence. This pattern was consistent across attorney type, except for the smaller proportion of cases with court-appointed counsel (26%, or 14 of 53) that requested changes to the type of sentence. Changes related to rehabilitation and treatment were pursued in only two cases with a court-appointed attorney. Other types of requested changes included dismissals, time served, amended supervised release terms, and restitution adjustments. The defense could request multiple changes. In 64 cases, the defense requested only one type of change. In such cases, arguments about the severity of the crime were the most common justification. There were no patterns between prosecutors’ level of agreement and the type of changes requested.

**Table 20.** Types of Changes Requested by the Defense

	Total cases N = 183 (100%)	Public defender n = 87 (48%)	Court appointed n = 53 (29%)	Private counsel n = 43 (23%)
Length of sentence	90 (49%)	45 (52%)	26 (49%)	18 (42%)
Type of sentence	65 (36%)	33 (38%)	14 (26%)	17 (40%)
Type of charges	60 (33%)	27 (31%)	17 (32%)	16 (37%)
Number of charges	21 (11%)	12 (14%)	4 (8%)	5 (12%)
Terms of probation	28 (15%)	13 (15%)	9 (17%)	6 (14%)
Rehabilitation or treatment	4 (2%)	2 (3%)	2 (4%)	0
Other	30 (16%)	15 (17%)	6 (11%)	7 (16%)

Note: Total cases includes all cases where the defense requested any change. The total number does not equal 183 because prosecutors could list multiple types for each case. Percentages reflect column totals. Data are missing for one case with a public defender.



Prosecutors were asked to reflect on the stated reasons for why the defense requested changes to the plea offer (see Table 21). The most common justification was the culpability of the person charged in the offense, followed by evidence of positive or proactive conduct and the severity of the offense. Notably, the severity of the offense was mentioned in only one common law robbery case with a court-appointed attorney. Prosecutors also reported a wide variety of other justifications provided by the defense, including the person’s age, willingness to cooperate, time spent in custody, culpability of the victim, inconsistencies in the quality of evidence, presence of federal charges, and trauma associated with the crime.

**Table 21. Reasons or Justifications for the Requested Changes**

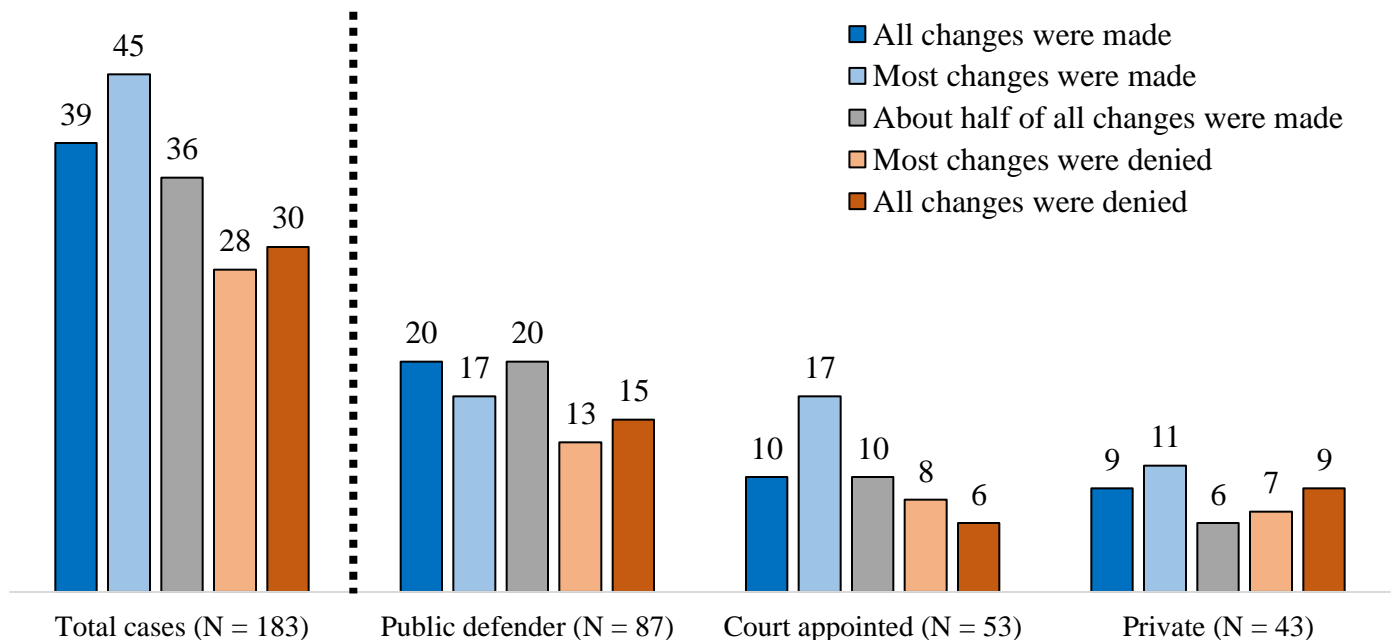
	Total cases N = 183 (100%)	Public defender n = 87 (48%)	Court appointed n = 53 (29%)	Private counsel n = 43 (23%)
Culpability of the defendant	55 (30%)	23 (26%)	13 (25%)	18 (42%)
Evidence of positive conduct	35 (19%)	15 (17%)	8 (15%)	12 (28%)
Severity of the offense	31 (17%)	19 (22%)	1 (2%)	11 (26%)
New evidence in mitigation	30 (16%)	12 (14%)	7 (13%)	11 (26%)
Lack of witness cooperation	17 (9%)	6 (7%)	7 (13%)	4 (9%)
Alignment with office policies	15 (8%)	8 (9%)	3 (6%)	4 (9%)
Other	83 (45%)	41 (47%)	28 (53%)	12 (28%)

*Note:* Total cases includes only cases where the defense requested any change to the plea offer. The total number does not equal 183 because prosecutors could list multiple reasons for each case. Percentages reflect column totals. Data were missing for eight cases (four with public defenders, two with court-appointed counsel, and two with private counsel).

**How often, and to what extent, did prosecutors make the requested changes?**

Figure 10 shows whether prosecutors changed the initial plea offer. In most cases (83%, or 148 of 178), at least some changes were made before the final offer. Prosecutors made all changes or denied all changes in a fairly similar number of cases (39 and 30, respectively). Among all cases, the requested changes were either all or mostly denied when the prosecutor completely disagreed with the defense.

**Figure 10. Extent to which Prosecutor Made Changes to the Plea Offer**



*Note:* Total cases includes only cases where the defense requested any change to the plea offer. Data were missing for five cases.

## Conclusion

In Durham, North Carolina and across the United States, most criminal cases are resolved through plea deals in a process that is largely undocumented. The primary goal of the plea tracker has been to unpack the “Black Box” of plea bargaining by collecting and analyzing detailed data on plea negotiations and case outcomes. Through an exploratory analysis of 325 felony cases, we learned:

- Charge dismissals and charge reductions are common. Nearly two-thirds of all charges were dismissed. The most common reason is that the person pled guilty to something else, suggesting that plea negotiations were productive. In about half of all cases, the indicted charges were reduced.
- Sentences reflect a variety of case-specific and person-specific factors. A similar proportion of cases resolved in prison sentences and probation sentences. Cases involving violent crimes typically received prison sentences, whereas those involving non-violent crimes typically received probation sentences.
- Most of the people charged with felony crimes were male, Black, and low-income (based on indigency status), with some form of a prior criminal history. Compared with statewide felony convictions and countywide arrests, Black people appear to be slightly overrepresented among people charged with felony crimes in Durham.
- Prosecutors often contacted victims of crime—including people (who were largely Black and female), businesses, and the State—using various forms of communication, typically by phone or mail. This communication often included discussing the plea terms before making an initial offer.
- The reasoning behind plea offers is complex. Mitigating, aggravating, and collateral consequence-related factors all influenced initial plea offers. Prosecutors more often considered aggravating factors than mitigating factors. There were racial disparities in the frequencies of these considerations.
- The exchange of information between prosecutors and defense attorneys influenced plea results. Prosecutors often corresponded with the defense before the initial offer and almost always after making the initial offer. In most cases, defense attorneys requested changes to the initial offer related to sentencing terms and charges. In most of these cases, at least some of the changes were made before the final offer.

The plea tracking data have already resulted in a range of surprising new insights into the degree to which outcomes change during the plea negotiation process, and the factors and interactions that produce those changes. We plan to conduct more detailed analyses with additional data, as well as refine the plea tracker to focus on the most interesting, useful, and surprising information: factors influencing plea offers, interactions with the defense, and changes to the terms of pleas during the negotiation process. The findings from the first year of data collection illustrate how informative and effective an open prosecution approach can be.

# Appendix

**Table A1. Indicted vs. Pled Charge Classes (the Most Serious charge in Each Case) in Non-Drug Trafficking Cases**

Pled →	B1	B2	C	D	E	F	G	H	I	Misd.	Total (% of 291)	Avg. reduction
Indicted ↓												
A	<b>2 (18%)</b>	<b>5 (45%)</b>	<b>1 (9%)</b>	<b>3 (27%)</b>	0	0	0	0	0	0	<b>11 (3.8%)</b>	2.5
B1	<b>5 (45%)</b>	<b>1 (9%)</b>	<b>3 (27%)</b>	0	<b>1 (9%)</b>	0	0	0	<b>1 (9%)</b>	0	<b>11 (3.8%)</b>	1.7
B2	0	<b>3 (37.5%)</b>	<b>2 (25%)</b>	<b>2 (25%)</b>	<b>1 (12.5%)</b>	0	0	0	0	0	<b>8 (2.7%)</b>	1.1
C	0	0	<b>2 (9%)</b>	<b>2 (9%)</b>	<b>9 (39%)</b>	<b>3 (13%)</b>	<b>1 (4%)</b>	<b>3 (13%)</b>	<b>2 (9%)</b>	<b>1 (4%)</b>	<b>23 (8.0%)</b>	2.9
D	0	0	0	<b>7 (19%)</b>	<b>7 (19%)</b>	<b>2 (5.5%)</b>	<b>11 (30.5%)</b>	<b>5 (14%)</b>	<b>1 (3%)</b>	<b>3 (8%)</b>	<b>36 (12.4%)</b>	2.4
E	0	0	0	0	<b>8 (35%)</b>	<b>5 (22%)</b>	<b>3 (13%)</b>	<b>3 (13%)</b>	0	<b>4 (17%)</b>	<b>23 (8.0%)</b>	1.7
F	0	0	0	0	0	<b>12 (75%)</b>	0	<b>1 (6%)</b>	<b>1 (6%)</b>	<b>2 (12.5%)</b>	<b>16 (5.5%)</b>	0.8
G	0	0	0	0	0	0	<b>50 (69%)</b>	<b>13 (18%)</b>	<b>2 (3%)</b>	<b>7 (10%)</b>	<b>72 (24.7%)</b>	0.5
H	0	0	0	0	0	0	0	<b>62 (75%)</b>	<b>6 (7%)</b>	<b>15 (18%)</b>	<b>83 (28.5%)</b>	0.4
I	0	0	0	0	0	0	0	0	<b>6 (75%)</b>	<b>2 (25%)</b>	<b>8 (2.7%)</b>	0.25
	<b>7 (2.4%)</b>	<b>9 (3.1%)</b>	<b>8 (2.7%)</b>	<b>14 (4.8%)</b>	<b>26 (8.9%)</b>	<b>22 (7.6%)</b>	<b>65 (22.3%)</b>	<b>87 (30.0%)</b>	<b>19 (6.5%)</b>	<b>34 (11.7%)</b>	<b>291</b>	

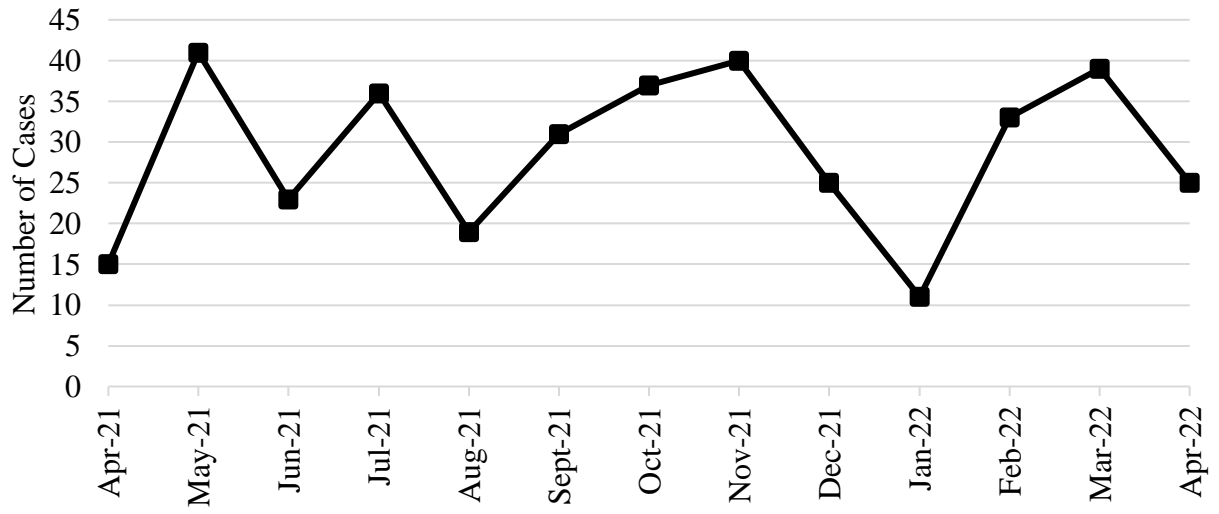
*Note:* Percentage of the total number of pled non-trafficking cases (N = 291) are in parentheses. Data are missing for five cases. Class reduction is computed as one unit from a given felony class to the next lowest class (B1 and B2 are counted as one class apart from each other, as are I and misdemeanor).

**Table A2.** Indicted vs. Pled Charge Classes (the Most Serious Charge in Each Case) in Drug Trafficking Cases

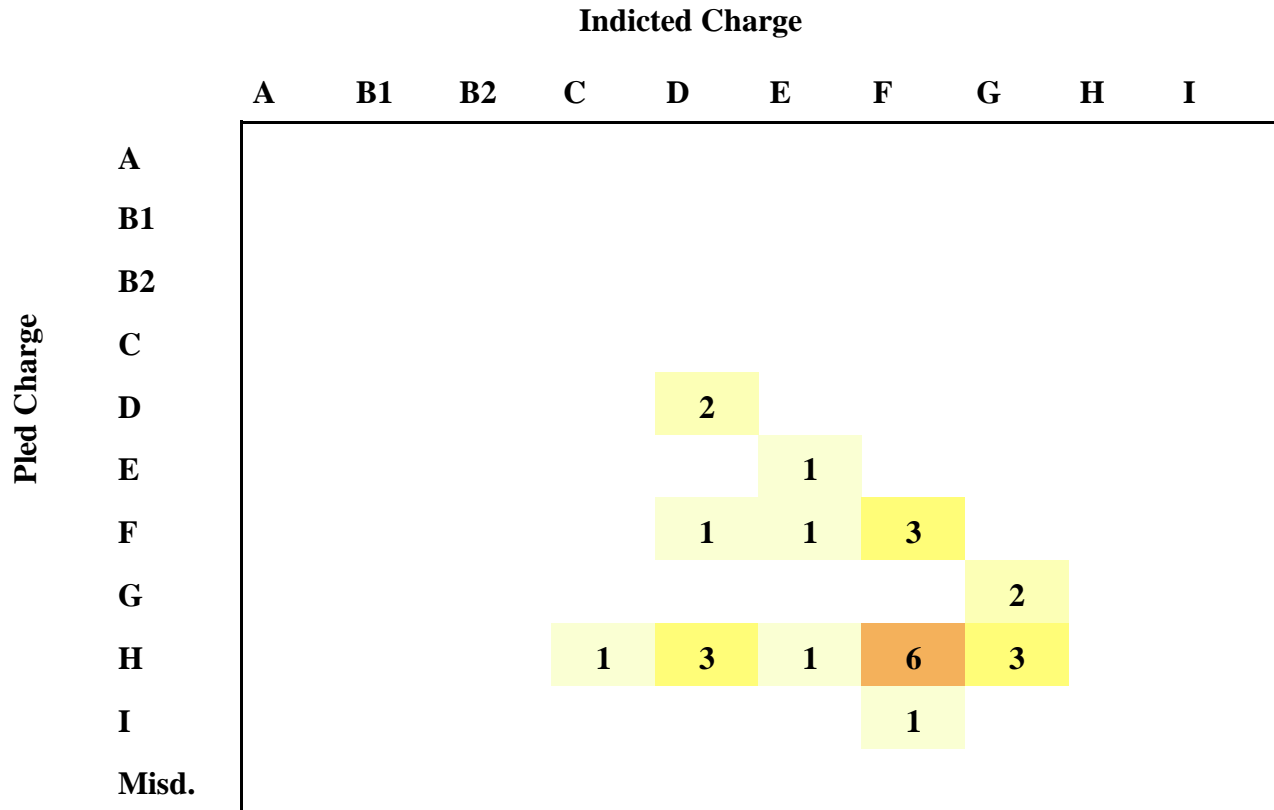
Pled →	D	E	F	G	H	I	Misd.	Total (% of 25)	Avg. reduction
Indicted ↓									
A traf	0	0	0	0	0	0	0	0	NA
B1 traf	0	0	0	0	0	0	0	0	NA
B2 traf	0	0	0	0	0	0	0	0	NA
C traf	0	0	0	0	<b>1 (100%)</b>	0	0	<b>1 (4%)</b>	5
D traf	<b>2 (34%)</b>	0	<b>1 (17%)</b>	0	<b>3 (50%)</b>	0	0	<b>6 (24%)</b>	2
E traf	0	<b>1 (33%)</b>	<b>1 (33%)</b>	0	<b>1 (33%)</b>	0	0	<b>3 (12%)</b>	1.3
F traf	0	0	<b>3 (30%)</b>	0	<b>6 (60%)</b>	<b>1 (10%)</b>	0	<b>10 (40%)</b>	1.9
G traf	0	0	0	<b>2 (40%)</b>	<b>3 (60%)</b>	0	0	<b>5 (20%)</b>	0.6
H traf	0	0	0	0	0	0	0	0	NA
I traf	0	0	0	0	0	0	0	0	NA
	<b>3 (12%)</b>	0	<b>4 (16%)</b>	<b>2 (8%)</b>	<b>13 (54%)</b>	<b>1 (4%)</b>	0	<b>25</b>	

*Note:* Trafficking charges were identified by the presence of “trafficking” or “traf” in the charge description. There were no Class A, B1, B2, or C indicted charges. Percentage of the total number of pled trafficking cases (N = 25) are in parentheses. Class reduction is computed as one unit from a given felony class to the next lowest class (B1 and B2 are counted as one class apart from each other, as are I and misdemeanor).

**Figure A1.** Adult Felony Cases Disposed, April 12, 2021, through April 12, 2022

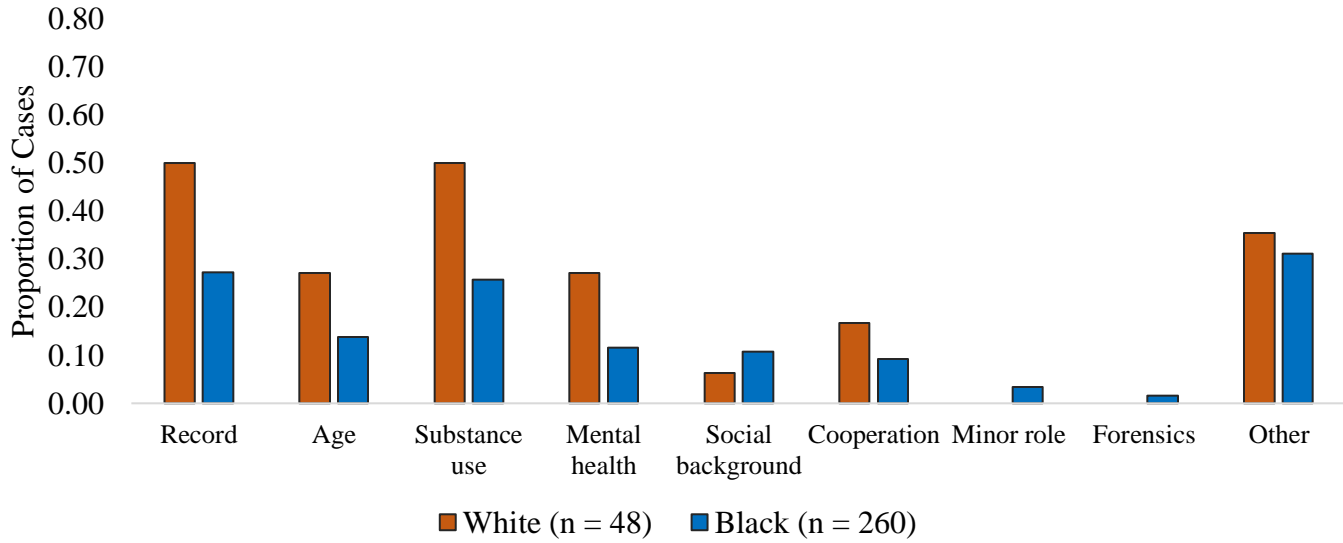


**Figure A2.** Heat Map of the Most Serious Indicted Charge vs. the Most Serious Pled Charge, in Drug Trafficking Cases (N = 25)



**Figure A3.** Mitigating and Aggravating Factors, by Race of the Person Charged

**Mitigating Factors**



**Aggravating Factors**

