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Plea Tracking in the Durham County District Attorney's Office

Second Report on Superior Court Cases
Pled from April 2021 to November 2023

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Executive Summary

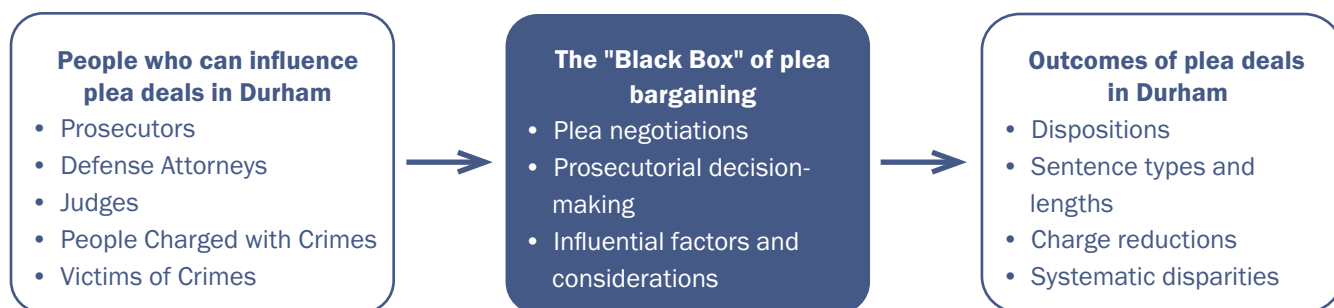
Aspect of Plea Bargaining	Finding
Demographics of People Charged	<ul style="list-style-type: none"> • Most people charged with felonies in Durham were Black (78%) and male (90%). • About three-quarters had a prior conviction
Dismissals and Detention	<ul style="list-style-type: none"> • This second report describes data on 678 felony cases with plea bargains that were disposed in Superior Court in Durham, North Carolina between April 2021 and November 2023 and entered into the plea tracker. • Prosecutors dismissed at least one charge in 81% of cases. • Nearly two-thirds of all charges were dismissed by prosecutors, with the most common reason being that the person pled guilty to something else. • About one-in-ten felony cases were pled to a misdemeanor charge only. • Most cases took 1-8 months to dispose. • People charged were held in pretrial detention in 68% of cases (451 of 666 cases for which we have pretrial detention information).
Sentencing	<ul style="list-style-type: none"> • Prison and probation-only sentences were each imposed in 40% of all cases. More than half of cases with a violent offense as the most serious pled charge had a prison sentence, whereas nearly half of cases with a non-violent offense as the most serious pled charge had a probation-only sentence. • Two-thirds of cases were sentenced in the presumptive (or middle) range of the applicable guidelines. • In 21% of cases, judges had discretion to either determine the sentence (e.g. open pleas) or impose/waive certain conditions. In 12% of cases, judges added conditions to the plea beyond the terms negotiated by the parties.
Charge Reductions	<ul style="list-style-type: none"> • Prosecutors dismissed at least one charge in about 81% of cases, most often because the person pled guilty to another charge. • Prosecutors reduced charges from indictment to the final guilty plea in 51% of cases (318 of 621 cases), in non-drug trafficking cases.
Victims	<ul style="list-style-type: none"> • There was a person victim in 65% of cases. Most were Black and/or female. • Prosecutors communicated with victims in 90% of cases.



Aspect of Plea Bargaining	Finding
Factors considered in plea negotiations	<ul style="list-style-type: none">• The most common mitigating factors were the person’s good record, history of substance use, mental health, and age. For aggravating factors, the most common were seriousness of the offense, criminal history, and history of recidivism.• Among mitigating factors, a person’s record was often considered most important, followed by history of substance use. Among aggravating factors, the seriousness of the offense, criminal history, and violent nature of the crime, were often considered most important.• On average, prosecutors considered more aggravating than mitigating factors per case.• On average, prosecutors considered more mitigating factors in cases with white people. And prosecutors considered more aggravating factors in cases with Black people.• Prosecutors considered collateral consequences in 63% of cases, but they did so less often in cases with Black people or Latinx/Hispanic people compared to white people.
The role of defense attorneys	<ul style="list-style-type: none">• Prosecutors corresponded with the defense over three-quarters of the time before making the initial offer. Before the initial plea offer, public defenders and private attorneys provided mitigation more often than court-appointed attorneys did.• Defense attorney type differed by race. Cases with a white person or a Latinx/Hispanic person were more likely to have representation by a private attorney.• Defense attorneys requested changes to the initial plea offer in 59% of cases. At least some of these changes were made to the offer in most cases.• Prosecutors perceived that attorneys had a higher level of influence on case outcomes when a white person was charged and that attorneys were more likely to have communication before the case compared to when a Black or Latinx/Hispanic person was charged. Prosecutors perceived that in cases with a Latinx/Hispanic person they were more likely to correspond with defense attorney about the case before the initial plea offer compared to cases with a Black person.

Overview

The Wilson Center for Science and Justice at Duke University School of Law (WCSJ)¹ 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 felony cases are resolved through plea bargaining. Information about sentences are publicly available, yet little is documented about how prosecutors negotiate pleas. Consequently, prosecutors, defense attorneys, judges, and the public lack adequate information about prosecutorial discretion and how plea negotiations are handled.



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, including information on the people charged, the victims, plea negotiations, and plea outcomes. The plea tracker is a tool for recording detailed 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 of 2021.

This report describes data on 678 felony cases with plea bargains that were disposed in Superior Court in Durham, North Carolina between April 2021 and November 2023 and were entered into the tracker.² In Part I, we focus on outcomes in cases that were resolved with pleas, including charge dispositions and sentences. In Part II, we focus on factors that inform plea bargaining.

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.

Demographics of Cases

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

What were the demographic characteristics of people whose cases were entered into the Durham plea tracker?

There were 662 people who had at least one case entered in the tracker, with 16 individuals having multiple cases entered into the tracker. The individuals in cases entered in the tracker were most often male (90%), Black (78%), non-Hispanic (90%), and had an average age of 35 years.³

Nearly 80% of cases defined the person as indigent at the time of the case. This percent indigent varied by the race/ethnicity of the person: 83% of cases in which a Black person was charged, 70% of cases in which a white person was charged, and 51% of cases in which a Latinx/Hispanic person was charged. Indigency was determined by the court for eligibility for a public defender. In only 40 of 677 cases, prosecutors reported that indigent status had yet to be determined. See Table 1 for characteristics of the cases.

The North Carolina Sentencing Guidelines uses six levels to describe a person’s criminal history (I (lowest level) to VI (highest level)). Nearly half of cases with a prior record level reported were either a level I or II. In 508 cases, the person had at least one prior conviction at the time including 405 cases where the person had previously been convicted of a felony (see Table 1). In 23% of cases, the person was classified as “eligible as a habitual felon.”

³Note: Race/ethnicity reported is mutually exclusive. Total does not add up to 100% because all other race/ethnicities were too small in number to report (includes: Native American, Asian, Middle Eastern, and other). SD=standard deviation.

Table 1: Demographic characteristics of cases entered in tracker

	Number of Cases (%) (n = 678)
Race/ethnicity*	
White only	82 (12.1%)
Black only	525 (77.4%)
Latinx/Hispanic	66 (9.7%)
Sex/Gender	
Male	615 (90.7%)
Female	63 (9.3%)
Age of person charged (mean (SD) [Range])	35 (11.4) [16-76]
Indigent status (n=677)	
Not indigent	109 (16.1%)
Indigent	528 (78.0%)
Has yet to be determined	40 (5.9%)
Criminal history	
Eligible as habitual felon (n=674)	157 (23.3%)
Has prior felony conviction (n=615)	405 (65.9%)
Has any prior conviction (n=626)	508 (81.2%)
Prior Record Level (n=618)	
I (Not more than 1 point)	149 (24.1%)
II (Between 2 and 5 points)	153 (24.8%)
III (Between 6 and 9 points)	47 (15.2%)
IV (Between 10 and 13 points)	72 (11.7%)
V (Between 14 and 17 points)	50 (8.1%)
VI (at least 18 points)	100 (16.2%)
Prior record level missing	60 (8.8%)

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

Prosecutors reported their perceptions of a person’s threat to public safety, property, and themselves, if they were not incarcerated, as displayed in Table 2. These judgments were reported by considering information about the person and the case on a four-point Likert-type scale ranging from no threat to high level of threat. On average, the perceived threat that people posed to public safety and property was greater than the perceived threat to themselves (which was less commonly reported by prosecutors). The most common perceived threat level ratings were “minor” or “moderate,” with a high level of threat to public safety and property in 21% of cases.

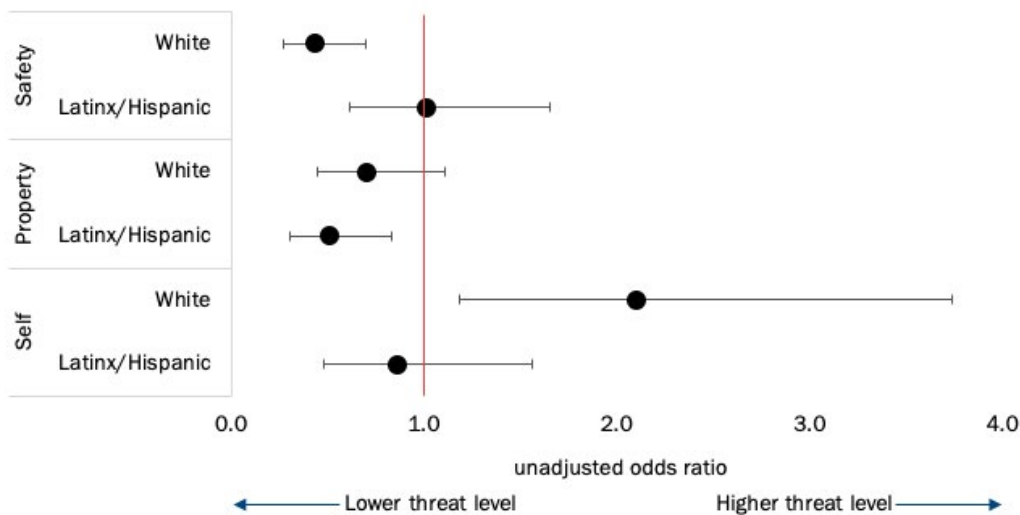
Table 2. Perceived levels of threat determined by the prosecutor

Perceived Threat Level	Threat to Public Safety (n=609) Number (%)	Threat to Property (n=604) Number (%)	Threat to Self* (n=375) Number (%)
No threat at all	24 (3.9%)	78 (12.9%)	142 (37.9%)
A minor threat	235 (38.6%)	200 (33.1%)	135 (36.0%)
A moderate threat	222 (36.5%)	199 (32.9%)	74 (19.7%)
A high level of threat	128 (21.0%)	127 (21.0%)	24 (6.4%)

Note: Threat level is scored from 1-4, with 4 being the highest level. The mean levels of threat: public safety=2.75 (SD=0.83); property=2.62 (SD=0.96); self=1.95 (SD=0.91). *In 101 cases prosecutors reported that the level of threat to self had not been determined.

The perceived threat level varied by the racial/ethnicity of the person (see Figure 1). Relative to Black individuals charged, white individuals were rated as a lower public safety threat, Latinx/Hispanic individuals were rated as a lower risk to property, and white individuals were rated as a higher risk to self.

Figure 1. Level of threat reported, by race/ethnicity of the person charged (reference =Black)



Note: This figure depicts results from an ordered logit model where the dependent variable is perceived threat level and the model is only adjusted for by the charged person’s race/ethnicity. The reference group is Black which implies an unadjusted odds ratio=1.0 (as denoted by the red line on the figure). The points reflect the unadjusted odds ratio relative to Black for white and Latinx/Hispanic individuals. The lines on the left and right of the points represent 95% confidence intervals for the unadjusted odds ratio.

Part I. Plea Bargaining Outcomes

Part I of this report focuses on plea bargaining outcomes. 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, and/or legal representation of the person charged. These outcomes represent negotiations between prosecutors, defense attorneys, and judges.

Dispositions

What charge dispositions did cases receive?

There were 664 cases that prosecutors entered into the tracker with detailed information about pled and dismissed charges. These cases carried 3,708 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 3. On average, there were between five and six charges per case, with an average of two pled charges per case. The majority of cases (87%) involved a person pleading guilty to a felony offense, with 13% of cases brought initially as felony cases, but resolving in pleas to misdemeanor charges only. Most cases involved the dismissal of at least one charge (81%). Alford pleas were used in 18 cases and there were zero “No Contest” pleas.⁴

Table 3. Information about cases entered in plea tracker

Information about charges from plea transcripts* (n=664)	Number of charges (%)	Mean number of charges in each case (SD, Range)
Total number of charges from all cases	3,708	5.6 (5.0, 1-31)
Number of pled charges	1,362 (36.7%)	2.1 (1.5, 1-11)
Number of dismissed charges	2,346 (63.3%)	3.5 (4.1, 0-26)
Information about cases from plea tracker and plea transcripts (n=678)	Number of cases (%)	
Cases pleading guilty to felony charges	591 (87.2%)	
Cases pleading guilty to only misdemeanor charges	87 (12.8%)	
Cases with at least one dismissed charge (n=665)	535 (80.5%)	

Note: SD = Standard deviation. *Prosecutors uploaded copies of plea transcripts into the tracker. Information about charges was collected from these worksheets using an automated scraping tool.

What were the most commonly pled offenses?

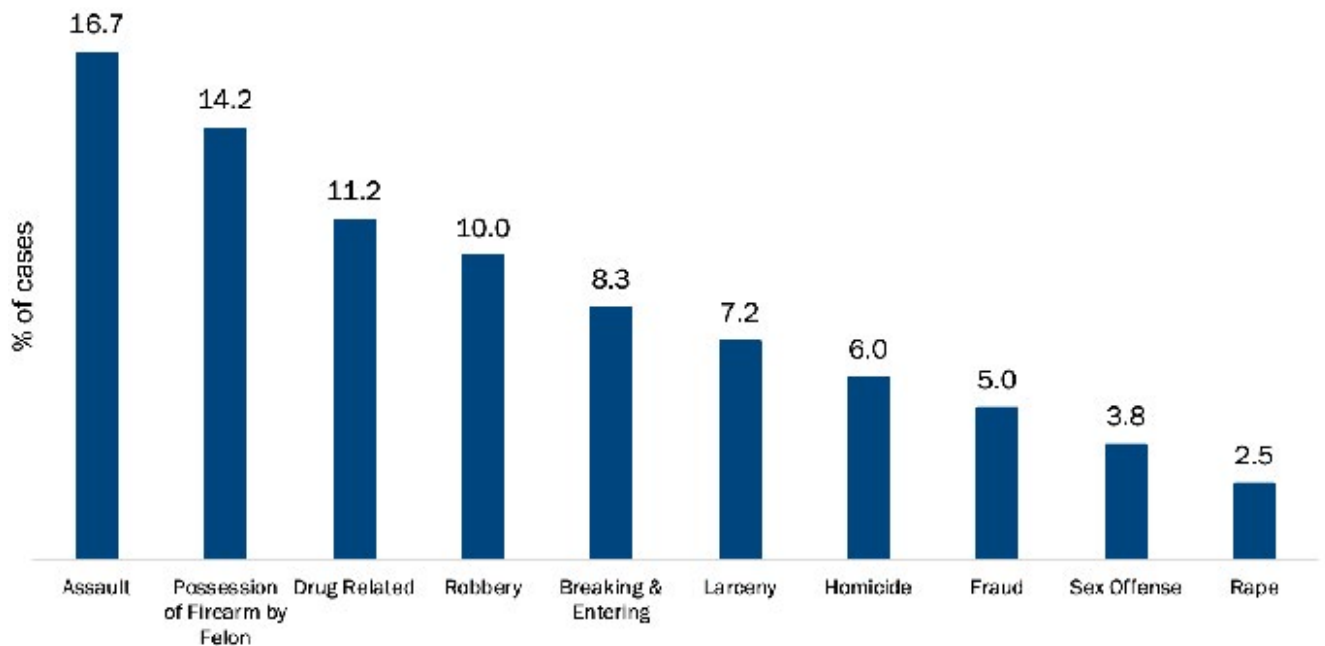
We examined the ten most commonly pled offenses (see Table 4). Collectively, these offenses represented 41% of cases entered in the plea tracker.

Table 4. Ten most commonly pled offenses (N=678)

Offense (class)	Number (%)
Possession firearm by felon (G)	96 (14.0%)
Common law robbery (G)	37 (5.4%)
Breaking or entering (felony) (H)	35 (5.1%)
Assault with deadly weapon inflicting serious injury (E)	21 (3.1%)
Felony flee to elude arrest in motor vehicle (H)	18 (2.6%)
Assault on female (A1)	16 (2.3%)
Obtaining property by false pretenses (H)	15 (2.2%)
Assault with deadly weapon with intent to kill (E)	14 (2.0%)
Conspiracy to commit robbery with a dangerous weapon (E)	14 (2.0%)
Possession with the intent to manufacture, sell, or deliver schedule II controlled substance (H)	12 (1.8%)

We also examined the ten most commonly pled types of offenses (see Figure 2).⁵ Collectively, these types of offenses represent 85% of cases entered in the plea tracker.

Figure 2. Ten most common types of pled offenses (N=678)



Sentencing

This section describes the frequency and length of pretrial detention, the frequency of sentence types and dispositional ranges, sentencing ranges, and whether and what additional sentencing conditions were applied.

How often were people detained pretrial and for how long?

People were held in pretrial detention in 68% of the 666 cases for which we have pretrial detention information. Table 5 shows the number of days spent in pretrial detention for 447 cases in which it was reported. The most common length of detention was one-to-six months (42%). A small percentage of cases had individuals with either short or long periods of pretrial detention. The cases with longer pretrial detention involved Class A, B1, B2, C and D offenses, which includes murder, kidnapping, manslaughter, and statutory rape of a child under 15. A greater proportion of cases with people whose most serious indicted charge was classified as a violent offense were held in pretrial detention (73%, or 211 of 289 cases) compared with cases where the most serious indicted charge was classified as non-violent (63%, or 238 of 376 cases).⁶ In 29% (60 of 208) of cases with a violent offense when pretrial detention length reported, the person was held for at least one year.

Among the 215 cases with no pretrial detention, the most serious indicted offense was typically Class C or lower felony (95+%). In these 215 cases, 24% ended up being pled as a misdemeanor. Prosecutors typically perceived that individuals not detained pretrial posed a minor threat or no threat at all to the public (56%, or 112 of 199 cases), property (67%, or 130 of 195 cases) or themselves (68%, or 103 of 151 cases). In just over half of cases with reported pretrial detention length, the length of pretrial detention was solely related to the reported case, and not the person's other ongoing cases.

Table 5. Pretrial detention

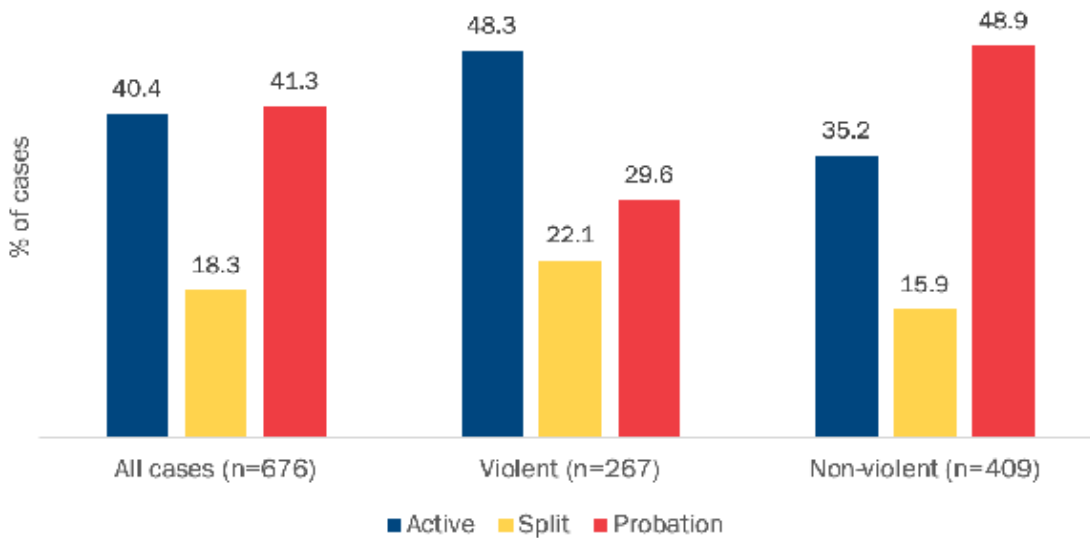
	Number of cases (%)
Person detained pretrial (n=666)	451 (67.7%)
Length of pretrial detention (n=447)	
1-6 days	20 (4.5%)
7-29 days	37 (8.3%)
1-6 months	186 (41.6%)
6-12 months	124 (27.7%)
12-24 months	55 (12.3%)
2 years or longer	25 (5.6%)
Impact on detention length (n=445)	
Solely related to this case	251 (56.4%)
Other cases had an impact	194 (43.6%)

We also examined pretrial detention and demographics. In 79% of cases where the person charged was Latinx/Hispanic, the person was held in pretrial detention, similarly pretrial detention was used in 68% of cases where a white person was charged and 66% of cases where the person charged was Black.

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

Figure 3 shows the number of each sentence type (active, split, probation) for all cases and separately for violent cases only and for non-violent cases only.⁷ Prison and probation-only sentences were each imposed in about 40% of all cases. Nearly half (48%) of all violent cases received a prison sentence, while nearly half (49%) of all non-violent cases received probation-only sentences. A split sentence was assigned in only 18% of cases and was more common in violent cases (22%) rather than non-violent cases (16%). In North Carolina, a split sentence requires a person to serve a period of confinement followed by supervised probation.

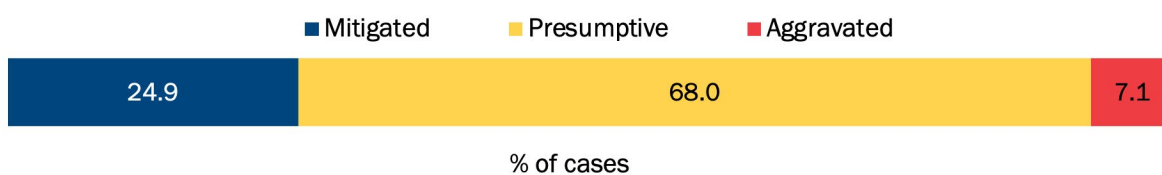
Figure 3. Types of sentences



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 class of the offense and the person’s prior record level.⁸ 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. There were 353⁹ cases with a pled felony that had an active or split sentence assigned and are sentenced within this grid with complete information about sentencing. Two-thirds of cases were sentenced in the presumptive range, with less than 10% sentenced in the aggravated range (see Figure 4). The type of range varied by sentencing outcome; 34% of cases with active sentences (80 of 233) were sentenced in the mitigated range and most cases with split sentences were sentenced in the presumptive range (86%, or 103 of 120).

Figure 4. Disposition ranges of minimum sentences for pled non-drug trafficking felonies (n=353)



What were the sentencing ranges?

Sentencing ranges for active and split sentences are shown in Table 6. This table excludes pled misdemeanor or drug trafficking charges because the range in sentencing for these cases is very different from felony cases. Prosecutors reported the total prison sentence for each case, including all consecutive sentences. The median active sentences ranged from 20 to 33 months in prison, with a minimum of five months to a maximum of 472 months.¹⁰ The median split sentences ranged from 15 to 27 months, with a low of 6 months and a high of 95 months. As expected, the median active sentence for violent cases was longer than the median active sentence in non-violent cases.

For drug trafficking pleas, the median active sentences ranged from 21 to 35 months, with a low of 15 months and a high of 121 months. For misdemeanor pleas, the median active sentences ranged from less than 2.5 months to 3 months, with a high of 12 months.

Table 6. Sentencing ranges for pled felonies with active or split sentence assigned

	Felony cases (n=350)		Violent cases (n=169)		Non-violent cases (n=181)	
	Median	SD (Range)	Median	SD (Range)	Median	SD (Range)
Active sentence	233 cases		114 cases		119 cases	
Minimum*	20	60.9 (5-360)	57.5	72.5 (6-360)	15	23.8 (5-192)
Maximum*	33	82.7 (14-472)	80	97.7 (17-472)	27	36.1 (14-291)
Split sentence	117 cases		55 cases		62 cases	
Minimum*	15	11.8 (6-72)	19	13.0 (6-64)	14	9.9 (6-72)
Maximum*	27	17.2 (17-95)	32	20.4 (17-95)	25.5	12.0 (17-87)
Active split*	4	5.7 (0.1-32)	4	5.3 (1-26)	4	6.0 (0.1-32)

Note: * Indicates months in prison

What additional sentencing conditions were applied?

Prosecutors were asked to report whether and what additional sentencing conditions were applied. For 77% of cases, prosecutors reported that additional sentencing conditions were applied (see Table 7). Across all cases, the most common sentencing condition was supervised probation, which was more frequently imposed in non-violent cases. A larger proportion of sentences for violent cases relative to non-violent cases carried no-contact orders, victim restitution, mental health assessment and/or treatment, and mandatory anger management training. However, a larger proportion of sentences for non-violent cases (which included more drug charges than sentences for violent cases) included orders for supervised probation, and substance use assessment and/or treatment.

Table 7. Additional sentencing conditions

	All cases Number (%)	Violent cases Number (%)	Non-violent cases Number (%)
Any additional sentencing conditions	(n=678) 524 (77.3%)	(n=267) 220 (82.4%)	(n=411) 304 (74.0%)
Specific conditions	(n=524)	(n=220)	(n=304)
Supervised probation	377 (71.9%)	129 (58.6%)	248 (81.6%)
No-contact order	206 (39.3%)	159 (72.3%)	47 (15.5%)
Substance use treatment	165 (31.5%)	40 (18.2%)	125 (41.1%)
Substance use assessment	155 (29.6%)	48 (21.8%)	107 (35.2%)
Victim restitution	78 (14.9%)	43 (19.5%)	35 (11.5%)
Mental health assessment	72 (13.7%)	50 (22.7%)	22 (7.2%)
Mental health treatment	70 (13.4%)	43 (19.5%)	27 (8.9%)
Cognitive Behavioral Intervention	37 (7.1%)	15 (6.8%)	22 (7.2%)
Anger management training	34 (6.5%)	27 (12.3%)	S
Community service	16 (3.1%)	S	S
Restorative justice	S	S	
Other condition	120 (22.9%)	45 (20.5%)	75 (24.7%)

Note: The total number exceeds 100% because prosecutors could select multiple responses. Percentages reflect column totals. S=suppressed due to <11 observations.

Charge dismissals and reductions

Cases resolved through plea deals may involve reductions in the number of charges or severity of charges, in exchange for a guilty plea. Charge reductions can signal productive negotiations between all parties.

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

Prosecutors commonly dismissed charges, although it should be noted that in most cases prosecutors indicted the most serious charge brought by the police (96%, or 624 of 653 cases). Still, in 80% of cases where information was reported (535 of 665); at least one charge was dismissed. The reasons why charges were dismissed were reported for 510 cases (see Table 8). In 95% of these cases, prosecutors reported that the person pled to something else. In addition to the reasons for dismissal listed in Table 8, prosecutors noted in a small number of cases that prosecution in another jurisdiction, new evidence, policy, and the availability of the arresting officer or witness were reasons to dismiss charges. Other reasons included participation in a diversion program, substance use treatment, lab results, the person's age, and being unable to contact the victim.

Table 8. Reasons for charge dismissals (n=510)

Reason	Number (%)
Pled to something else	486 (95.3%)
Witness cooperation	42 (8.2%)
Weak evidence	41 (8.0%)
Low priority offense	30 (5.9%)
Other reason	52 (10.2%)

Note: The total number exceeds 100% because prosecutors could select multiple responses.

How often did prosecutors reduce charges?

We examined the difference between class from indictment to the final plea to see how often prosecutors reduced charges, and selected charges of a less severe class. Since only Superior Court cases are documented using the tracker, charge reductions for low-level felonies typically resolved in District Court (particularly Classes G, H, and I) were substantially underrepresented in the data. Charge dismissals affect the applicable sentencing ranges, though quantitatively measuring the difference between the ranges applicable to the initial charges and the final sentence (i.e., the “distance travelled”) is complex.

We examined how the most serious class indicted compared to the most serious class pled, separately by non-drug trafficking and drug trafficking cases. As shown in Figure 5a, in non-drug trafficking cases (n=621), the most serious indicted charges were reduced to a lower class for the pled charge in 51% of cases and there was at least one case with a charge reduction in every offense category. In 14% of cases, there was a charge reduction from a felony class to a

misdemeanor. For classes G, H, and I, approximately three-quarters of cases pled to the same class level (71%, 73%, and 67% respectively). Parallel information for drug trafficking cases is shown in Figure 5b.

Figure 5a. Heat map of the most serious indicted charge vs. the most serious pled charge, in non-drug trafficking cases (n=621)

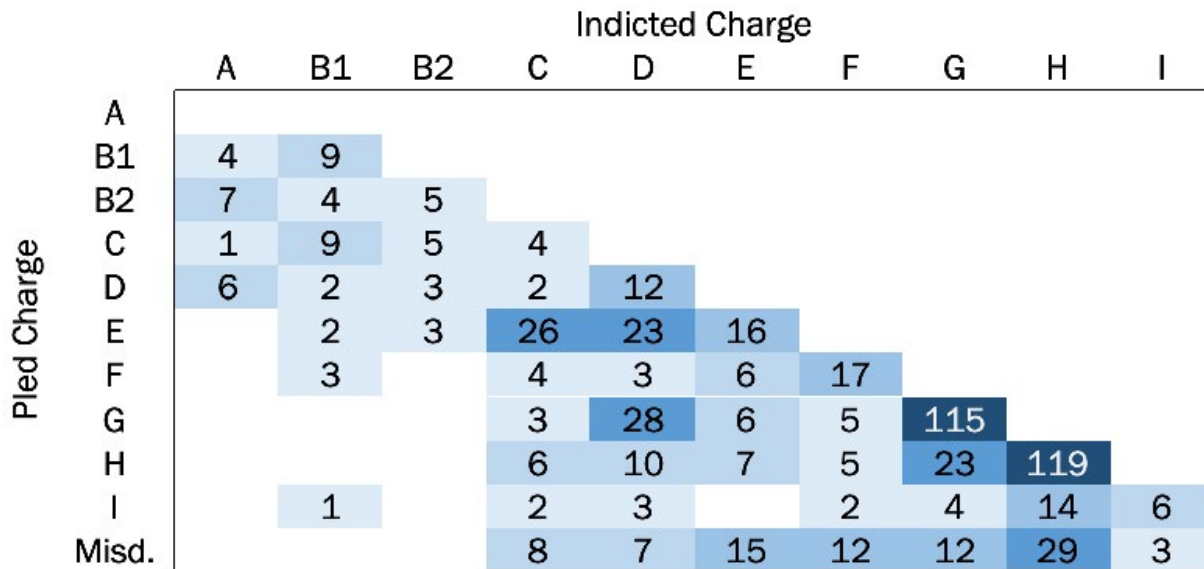
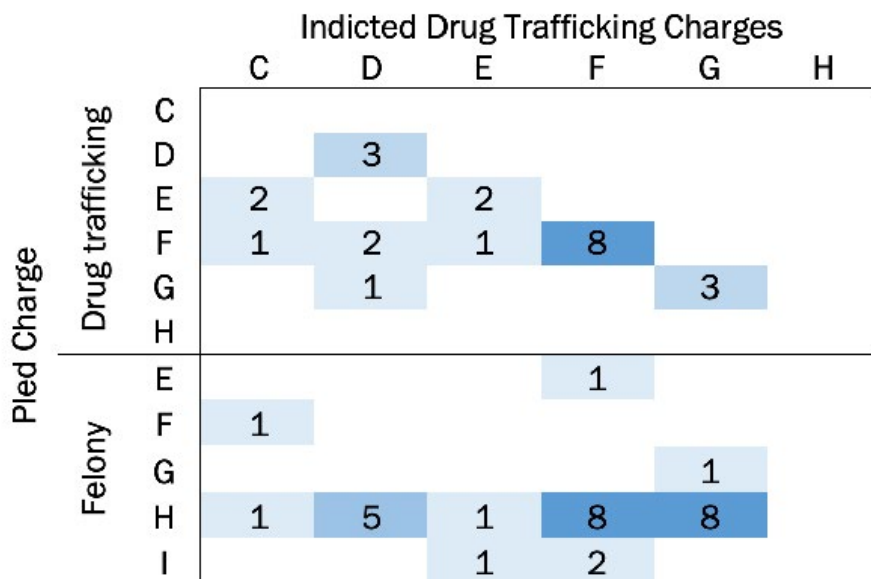


Figure 5b. Heat map of the most serious indicted charge vs. the most serious pled charge, in drug trafficking cases (n=52)



Note: The columns represent indicted charges and the rows represent how those charges were ultimately pled. For example, in Figure 5a the first column shows 18 charges that were indicted as Class A felonies which were ultimately reduced to Class B1 (4), B2 (7), C (1), and D (6) felonies.

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 decisions they made, and the reasons for those decisions. We present data on prosecutor's perceptions of the timeline of plea bargaining; the demographics of victims and prosecutors' communication with them; mitigating factors, aggravating factors, and collateral consequences; and the role of defense attorneys.

Time

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

Table 9 displays the time elapsed between the initial and final plea offer by whether or not the plea had changed. In 53% of cases (348 of 660), the final plea differed from the prosecutor's initial offer. Most cases (68%) took about 1-8 months before the final plea was entered with only 14% resolving within 1 month. In 77% of cases that took more than 8 months to resolve (93 of 121), the final plea reflected changes. In contrast, in 68% of cases that took less one month to resolve, the plea remained unchanged (63 of 92).

These patterns were consistent across the type of attorney. There was no significant effect of having a private attorney, versus a court-appointed attorney or public defender. Time elapsed between initial and final plea differed by demographic characteristics of the person charged. A much larger percentage of cases with Black people (20%) and cases with Latinx/Hispanic people (19%) had more than 8 months elapsed compared to cases with white people (7%).

Table 9. Time elapsed between initial offer and final plea offer

	All cases (n=660) Number (%)	Plea unchanged (n=312) Number (%)	Plea changed (n=348) Number (%)
Less than 1 month	92 (13.9%)	63 (20.1%)	29 (8.3%)
1-3 months	227 (34.4%)	134 (42.9%)	93 (26.7%)
4-8 months	220 (33.3%)	87 (27.9%)	133 (38.2%)
More than 8 months	121 (18.3%)	28 (9.0%)	93 (26.7%)

Judges

Did judges change conditions of plea?

We examined the role of judges in shaping sentencing outcomes for cases entered into the plea tracker. In 21% of cases (138 of 659), judges had the discretion to either determine the sentence (e.g. open pleas) or impose/waive certain conditions. In 12% of cases (77 of 662), judges added conditions to the plea beyond the terms negotiated by the prosecutor and the defense. In 76% of cases (501 of 662), judges did not add any conditions and/or did not have any discretion on conditions to the plea other than those negotiated by the parties.

Victims

Who were the victims?

Victims of crime can serve an important role in the plea-bargaining process. In total, at least 65% of all cases had at least one person listed as a victim, with just under half of those cases having two or more victims (see Table 10). In cases with one primary victim, the person charged was least often a family member (see Table 11). For cases that reported on race, sex/gender, and ethnicity of victims, 62% of cases had at least one victim that was Black, a similar proportion had at least one victim reported as female. Only 20% of cases reported at least one Latinx/Hispanic victim. More than one victim type could be selected in the tracker; the State of North Carolina was reported as the victim in 30% of cases.

Table 10. Victim(s) characteristics

	Number of cases (%)
Victim type (n=676)	
Person	437 (64.6%)
If person, how many victims (n=422)	
One victim	240 (56.9%)
Two or more victims	182 (43.1%)
Business or corporation	115 (17.0%)
State of North Carolina	204 (30.2%)
Other	11 (1.6%)
Reported race of any victim (n=375)	
White	116 (30.9%)
Black	233 (62.1%)
All other	23 (6.1%)
Reported ethnicity of any victim (n=384)	
Latinx/Hispanic	76 (19.8%)
Any female victim (n=405)	237 (58.5%)

Table 11. Relationship to the victim, if only one victim in case (n=239)

	Number of cases (%)
Family member	15 (6.3%)
Non-family acquaintance or friend	80 (33.5%)
Romantic partner	54 (22.6%)
They do not know each other	90 (37.7%)

How often, and in what ways, did prosecutors communicate with victims?

Prosecutors reported whether they communicated with the victim(s). In 90% of cases with at least one person as a victim, prosecutors communicated at least once with the victim(s) at some point during the case. We do not have information on whether victims participated, such as by appearing in court or testifying. Prosecutors typically used multiple forms of communication. As shown in Table 12, prosecutors most often communicated with the victim(s) by phone (92%) and/or by mail (52%).

Table 12. Prosecutor communication with victim(s)

	Number of cases (%)
Any communication (n=412)	369 (89.6%)
Ways in which the prosecutor communicated (n=374)	
Phone	345 (92.2%)
Mail	196 (52.4%)
Email	106 (28.3%)
In-person, at hearing	78 (20.9%)
In-person, separate from hearing	75 (20.1%)
Text	70 (18.7%)
Virtual or Other	23 (6.1%)

Prosecutors

What mitigating factors and aggravating factors did prosecutors consider?

Durham prosecutors were asked to select from a list of mitigating and aggravating factors to indicate which factors influenced them to recommend an outcome that was more lenient or severe than their initial plea offer. Table 13 lists the mitigating factors and aggravating factors reported by prosecutors, in order from those most to least often reported.

Prosecutors considered at least one mitigating factor in 82% of cases. In case where at least one mitigating factor was recommended, an average of 1.7 mitigating factors were 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 substance use (35%), the person’s criminal record (31%), and age (21%). In 35% of cases, prosecutors selected “other” as a factor influencing sentence leniency, which included health concerns, minor damages, and the age of the case.

Prosecutors considered at least one aggravating factor in 96% of cases, with an average of 2.1 aggravating factors reported per cases that included aggravating factors. At most, there were seven aggravating factors reported in a single case. The most frequently considered aggravating factors were the seriousness of the offense (56%), criminal history (41%), and past recidivism (31%). Prosecutors selected “other” factors in 16% of cases, which included the presence of children, the number of total charges, and the dangerousness of drugs or substances involved.

Looking at cases by sentence type, cases that received probation were more likely to have a mitigating factor reported (91%, or 255 of 279 cases) than cases that received an active sentence (70%, or 192 of 273 cases). There were no significant differences in the reporting of aggravating factors by sentence type.

Table 13. Factors influencing plea deals

Mitigating factors (n=559)	Number (%)	Aggravating factors (n=650)	Number (%)
Substance use	193 (34.5%)	Seriousness of offense	364 (56.0%)
Person's good record	173 (30.9%)	Criminal history	268 (41.2%)
Person's age	117 (20.9%)	Recidivist	198 (30.5%)
Mental health	98 (17.5%)	Presence of firearms	195 (30.0%)
Collateral consequences	62 (11.1%)	Violent nature of the crime	161 (24.8%)
Social background	56 (10.0%)	Major or leadership role	45 (6.9%)
Cooperation	52 (9.3%)	Confession	S
Minor role in crime	16 (2.9%)	Forensic labs	S
IQ	S	Other factors	106 (16.3%)
Forensic labs	S		
Other factors	194 (34.7%)		

Note: The total number exceeds 100% because prosecutors could select multiple responses. S=suppressed due to <11 observations.

In addition, prosecutors were asked to select the single most important mitigating or aggravating factor considered in each case. Table 14 shows the top five mitigating and aggravating factors deemed most important of all the factors that the prosecutor selected in either category. Among mitigating factors, a person’s record was often considered most important. Victim involvement, or lack thereof, was considered most important in 32 cases. Among aggravating factors,

the seriousness of the offense was often considered most important. Some factors were commonly considered as both mitigating and aggravating: a person’s record or criminal history was important as both mitigating and aggravating

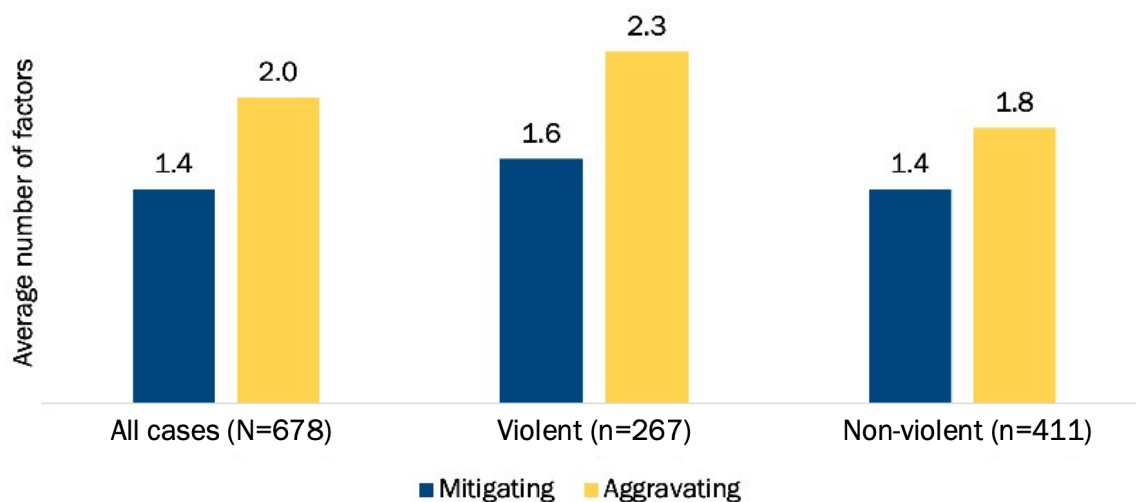
Table 14. Most important factors influencing plea deals (among cases listing mitigating or aggravating factors)

Mitigating factors (n=559)	Number (%)	Aggravating factors (n=650)	Number (%)
Person's good record	121 (21.6%)	Seriousness of offense	175 (26.9%)
Substance use	96 (17.2%)	Criminal history	127 (19.5%)
Mental health	59 (10.6%)	Violent nature of the crime	96 (14.8%)
Person's age	57 (10.2%)	Presence of firearms	81 (12.5%)
Victim involvement	32 (5.7%)	Recidivist	79 (12.2%)

Did the number of factors considered vary by case type or the race/ethnicity of the person?

For both violent and non-violent cases, prosecutors considered more aggravating than mitigating factors on average (see Figure 6). Prosecutors considered more mitigating and aggravating factors per case in violent cases, suggesting that prosecutors weighed more competing factors in cases involving a more serious offense.

Figure 6. Average number of mitigating and aggravating factors, by case type

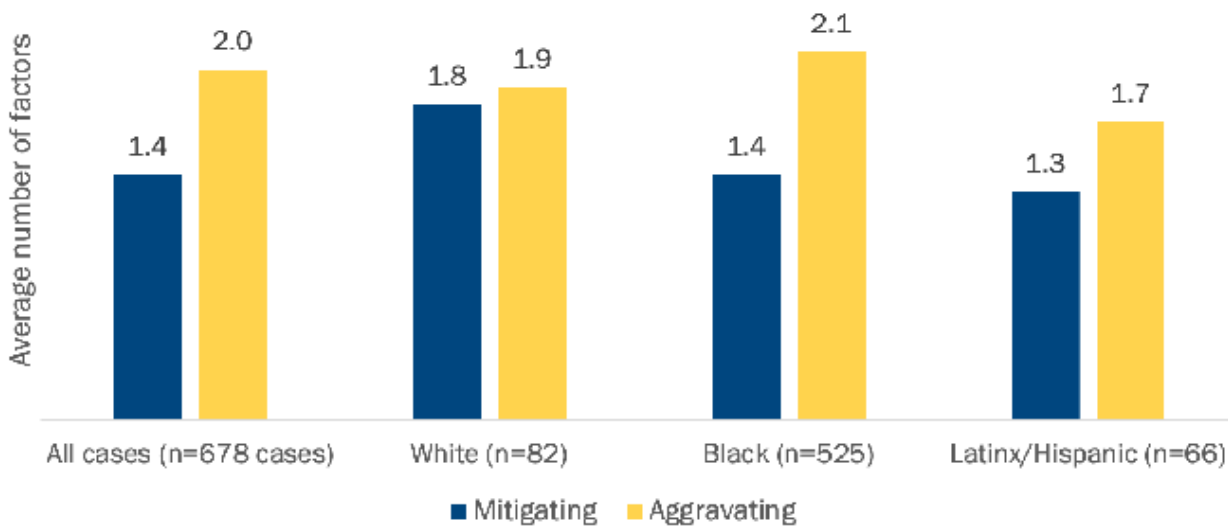


Note: The averages in Figure 6 include cases with zero aggravating or zero mitigating factors.

Turning to race/ethnicity, prosecutors reported considering more mitigating factors on average in cases with white persons charged than cases with Black or Latinx/Hispanic persons charged (see Figure 7). Prosecutors considered more aggravating factors, on average, in cases with Black people charged than cases with white or Latinx/Hispanic persons charged. Prosecutors evaluated the following mitigating factors differently across race/ethnicity: cooperation,

mental health, and substance abuse. Proportions were higher for cases with white persons charged than cases with Black or Latinx/Hispanic persons charged. Prosecutors evaluated the following aggravating factors differently across race/ethnicity: criminal history, confession, and presence of firearms. Proportions were higher in cases with Black persons than cases with white or Latinx/Hispanic persons charged, except confession was more often considered in cases with white persons.

Figure 7. Average number of mitigating and aggravating factors, by race/ethnicity of the person charged



Note: The averages in Figure 7 include cases with zero aggravating or zero mitigating factors.

What collateral consequences did prosecutors consider?

Prosecutors reported collateral consequences that they considered when developing plea offers, as shown in Table 15. Prosecutors considered at least one potential collateral consequence in 63% of all cases. In 42% of cases where collateral consequences were considered, just one collateral consequence was considered. The person’s mental and/or physical health was the most commonly considered consequence (49%). Other frequently considered consequences related to the capacity of the person charged to readjust

Table 15. Collateral consequences considered in plea deals

Collateral consequence (n=426)	Number (%)
Mental and/or physical health of the person	209 (49.1%)
Person’s ability to contribute positively to the community	189 (44.4%)
Person’s ability to seek and/or maintain employment	163 (38.3%)
Person’s ability to return to daily life once any fines and sentences are fulfilled	149 (35.0%)
Creating family hardship for the person	78 (18.3%)
Contributing to the person’s debt/poverty	69 (16.2%)
Requiring the person to register as a sex offender	42 (9.9%)
Suspending the person’s driver’s license	17 (4.0%)
Other	44 (10.3%)

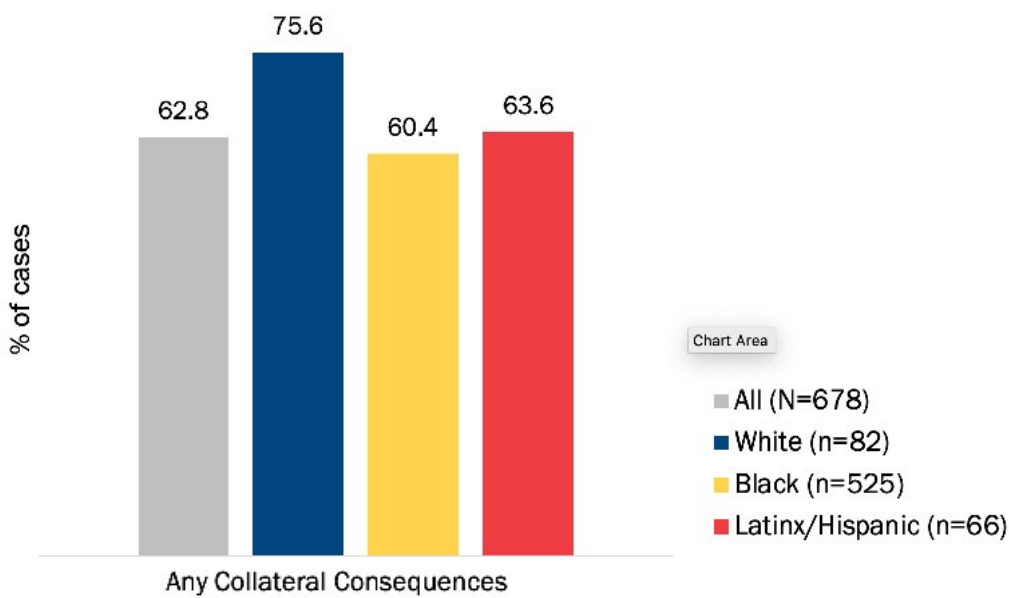
Note: The total number exceeds 100% because prosecutors could select multiple responses.

to daily life, which included: the ability to contribute positively to the community (44%); the ability to seek or maintain employment (38%); and the ability to return to daily life after their sentence (35%).

Did consideration of collateral consequences vary race/ethnicity of the person?

Prosecutors considered any type of consequence in 76% of cases with white people, 60% of cases with Black people and 64% of cases with Latinx/Hispanic people (see Figure 8). Creating family hardship for the person and requiring the person to register as a sex offender were less often considered in cases with a Black person compared to cases with a white person or cases with a Latinx/Hispanic person. Mental and/or physical health of the person was more often considered in cases with a white person compared to cases with a Black person or cases with a Latinx/Hispanic person.

Figure 8. Collateral consequences considered



Defense Attorneys

What types of defense attorneys did people have?

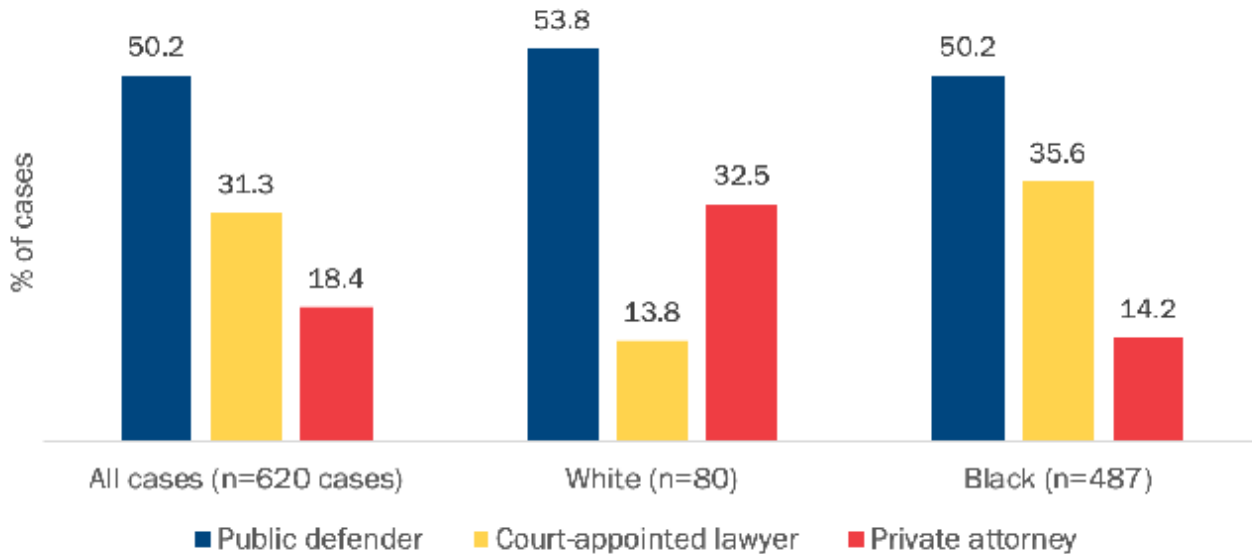
There were 675 cases that reported type of attorney. Public defenders represented the largest share of cases (50%). For the remaining cases, court-appointed lawyers represented 30% and 21% were represented by private attorneys.¹¹ For cases indicted with non-drug trafficking felonies (n=623), the representation was similar (50% public defenders, 31% court-appointed, and 19% private). However, for cases indicted with drug trafficking cases (n=51), about half of cases were represented by public defenders and half were represented by private attorneys, with less than ten cases represented by a court-appointed attorney.

Did defense attorney type differ by race/ethnicity of defendant?

Defense attorney type differed by the race/ethnicity of the defendant for cases indicted with non-drug trafficking felonies, as shown below in Figure 9. Representation by a public defender was similar across all races. However,

representation by a court-appointed lawyer and a private attorney varied by race/ethnicity. Cases with a white or Latinx/Hispanic person were more likely to have representation by a private attorney and less likely to have a court-appointed lawyer compared to cases with a Black person.

Figure 9. Defense attorney type of non-drug trafficking cases, by race/ethnicity of the person charged



Note: Sample size of cases with Latinx/Hispanic people are too small to show in figure. Cases with unknown race/ethnicity are not included in this figure.

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 16 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 reflect perceptions of prosecutors, defense attorneys may share different perceptions about mitigation provided and their influence.

Prosecutors’ perceptions of the influence of the defense attorney on the initial plea offer varied. Defense attorneys were reported to influence the initial plea offer “a lot” in 8% and “not at all” in 45% of cases, but influence varied by type of defense attorney. 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 39% of cases, and the mitigation had at least a little influence on the initial offer in the vast majority (91%) of those cases.

We also examined prosecutors’ perceptions of defense attorney influence by attorney type (e.g., public defender, court-appointed, and private).¹² Relative to cases represented by a public defender, prosecutors perceived that cases defended by a court-appointed attorney (a) had lower levels of attorney influence on case outcomes, (b) that they were less likely to be provided mitigation information before the cases, and (c) that they were less likely to correspond with the defense before the case. There were no statistically significant differences in these outcomes between public defenders and private attorneys. Relative to cases represented by a court-appointed attorney, prosecutors perceived

that cases defended by a private attorney had (a) higher levels of attorney influence on case outcomes and (b) that they were more likely to correspond with the defense before the case.

We also examined prosecutors' perceptions of defense attorney influence by race/ethnicity of the person.¹³ Relative to cases with a Black person charged, prosecutors perceived that cases with a white person charged (a) had higher levels of attorney influence on case outcomes, (b) that they were more likely to be provided mitigation information before the cases, and (c) that they were more likely to correspond with the defense before the case. Relative to cases with a Black person, prosecutors perceived

that in cases with a Latinx/Hispanic person they were more likely to correspond with the defense attorney about the case before making the initial plea offer. Relative to cases with a white person, prosecutors perceived that cases with a Latinx/Hispanic person (a) had lower levels of attorney influence on case outcomes, and (b) that they were less likely to be provided mitigation information before the cases. Note that these comparisons only account for the race/ethnicity of the person charged and do not consider other factors that could account for these differences. For example, the differences in influence of defense attorneys by race/ethnicity might be in part explained by the difference in type of defense attorney by race/ethnicity.

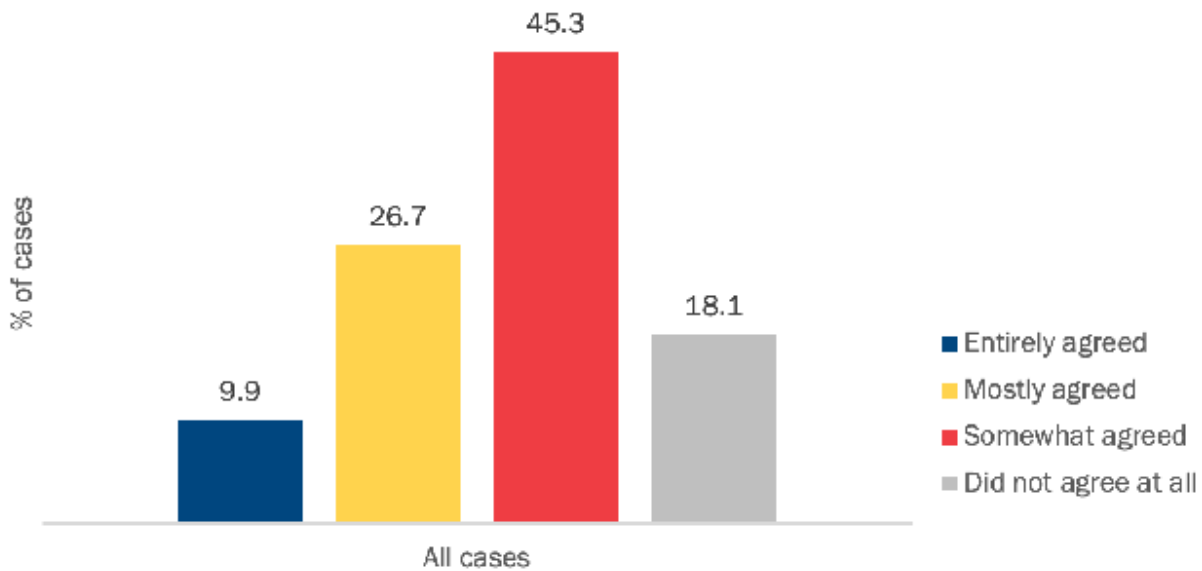
Table 16. Defense attorney influence and mitigation

	All cases (n=676) Number (%)
Amount attorney influenced initial offer (n=660)	
A lot	51 (7.7%)
Somewhat	128 (19.4%)
A little	186 (28.2%)
Not at all	295 (44.7%)
Provided mitigation before initial offer (n=662)	256 (38.7%)
Amount mitigation influenced initial offer (n=256)	
A lot	30 (11.7%)
Somewhat	84 (32.8%)
A little	118 (46.1%)
Not at all	24 (9.4%)
Prosecutor corresponded with defense:	
before initial offer (n=661)	523 (79.1%)
after initial offer (n=663)	643 (97.0%)

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 59% of cases (n=660). This was consistent across attorney type. Prosecutors generally expressed some level of agreement with the requested changes (see Figure 10). Of the 382 cases that reported on level of agreement, the prosecutor entirely agreed with the requested changes in only 10% of the cases, whereas they completely disagreed in 18% of cases. Ratings of agreement did not vary by attorney type.

Figure 10. Prosecutor level of agreement with the requested changes (n=382)



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

Table 17 shows the types of changes to the plea offer requested by the defense. The most common requested changes related to the sentence length, sentence type, and charge type. This pattern was consistent across attorney type. Changes related to rehabilitation or treatment, restorative justice, community service, and fines were reported in only a handful of cases overall. Other types of changes that the defense requested included dismissals, time served, amended supervised release terms, and restitution adjustments. The defense could request multiple changes, but in 58% of cases (226 of 392), the defense requested only one type of change. In such cases, arguments about the culpability of the person charged were the most common justification for the request.

Table 17. Types of changes requested by the defense

	All cases (n=390) Number (%)	Public defender (n=300) Number (%)	Court-appointed (n=104) Number (%)	Private counsel (n=86) Number (%)
Length of sentence	185 (47.4%)	100 (50.0%)	54 (51.9%)	31 (36.0%)
Type of charges	143 (36.7%)	75 (37.5%)	34 (32.7%)	34 (39.5%)
Type of sentence	139 (35.6%)	73 (36.5%)	32 (30.8%)	34 (39.5%)
Terms of probation	59 (15.1%)	27 (13.5%)	18 (17.3%)	14 (16.3%)
Number of charges	45 (11.5%)	24 (12.0%)	S	S
Other	57 (14.6%)	29 (14.5%)	14 (13.5%)	14 (16.3%)

Note: The total number exceeds 100% because prosecutors could select multiple responses. Percentages reflect column totals. S=suppressed due to <11 observations.

Prosecutors reflected on the stated reasons why the defense requested changes to the plea (see Table 18). The most common reason was the culpability of the person charged, followed by evidence of positive or proactive conduct and new evidence in mitigation. 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 18. Reasons or justifications for the requested changes

	All cases (n=390) Number (%)	Public defender (n=200) Number (%)	Court-appointed (n=104) Number (%)	Private counsel (n=86) Number (%)
Culpability of the person charged	114 (29.2%)	62 (31.0%)	22 (21.2%)	30 (34.9%)
Evidence of positive conduct	77 (19.7%)	41 (20.5%)	18 (17.3%)	18 (20.9%)
New evidence in mitigation	62 (15.9%)	28 (14.0%)	19 (18.3%)	15 (17.4%)
Severity of the offense	60 (15.4%)	36 (18.0%)	S	S
Lack of witness cooperation	30 (7.7%)	12 (6.0%)	S	S
Alignment with office policies	23 (5.9%)	11 (5.5%)	S	S
Other	150 (38.5%)	78 (39.0%)	42 (40.4%)	30 (34.9%)

Note: The total number exceeds 100% because prosecutors could select multiple responses. Percentages reflect column totals. S=suppressed due to <11 observations.



Conclusion

Three years of plea bargaining data have now been collected and analyzed in Durham, North Carolina. Through an exploratory analysis of 678 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. In about half of all cases, the indicted charges were reduced to a lower class in the plea..
- Sentences reflect a variety of case-specific and person-specific factors. A similar proportion of cases resolved in prison sentences and probation sentences. Violent cases typically received prison sentences, whereas non-violent cases typically received probation sentences.
- Most of the people charged with felonies were male, Black, and low-income (based on indigency status), with some prior criminal history. Black people appear slightly overrepresented among people charged with felonies in Durham.
- Prosecutors often contacted victims of crime (who were largely Black and female). This communication often included discussing the terms before making an initial offer.
- 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, with more aggravating factors, fewer mitigating factors, and fewer collateral consequences considered in cases with Black persons.
- There are racial differences in the type of defense attorney, with Black persons far less likely to have representation by a private attorney than white persons.
- The exchange of information between prosecutors and defense attorneys consistently influenced plea results. In cases that the defense attorneys requested changes to the initial offer, it was often related to sentencing terms and charges. In most cases, the prosecutor agreed to changes.

The plea tracking data continue to offer insights into what affects outcomes during the plea negotiation process. We plan to continue to analyze data collected using the revised plea tracker.



Endnotes

¹ The Wilson Center for Science and Justice brings together faculty and students at Duke University in law, medicine, public policy, and arts and sciences to pursue research, policy, and education to improve criminal justice outcomes. Our work is non-partisan and evidence-informed. We engage with community stakeholders, academics, and policy makers to conduct and translate interdisciplinary research into effective and practical policy change.

² As of the writing of this report, there were 274 cases that were not entered in the tracker. Cases that went to trial are not included in this report. See Appendix Figure A1 available to download at https://wcsj.law.duke.edu/wp-content/uploads/2024/12/DurhamPleaTrackerReport_Apr2021toNov2023_Appendix.pdf.

³ The racial composition of Durham County is white (55%), Black (35%), and Latinx (14%). <https://www.census.gov/quickfacts/fact/table/durhamcountynorthcarolina/BZA110221>.

⁴ 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.

⁵ See appendix Table A1 for a list of how each offense was categorized. Available to download at https://wcsj.law.duke.edu/wp-content/uploads/2024/12/DurhamPleaTrackerReport_Apr2021toNov2023_Appendix.pdf.

⁶ See appendix Table A2 for a full list of how each offense was categorized as violent or non-violent. Available to download at https://wcsj.law.duke.edu/wp-content/uploads/2024/12/DurhamPleaTrackerReport_Apr2021toNov2023_Appendix.pdf.

⁷ For this report a case is defined as violent or non-violent if the most serious pled offense was categorized as violent or non-violent based on the categorization of offense in Appendix Table A2. Available to download at https://wcsj.law.duke.edu/wp-content/uploads/2024/12/DurhamPleaTrackerReport_Apr2021toNov2023_Appendix.pdf.

⁸ The North Carolina Sentencing Guidelines grid can be viewed here: North Carolina Felony Punishment Chart (Effective for Offenses Committed After 10/1/13), at https://www.nccourts.gov/assets/documents/publications/FelonyChart_1013MaxChart.pdf?VersionId=JOZLdcExFM1TmizHLiPcH7dUcMjQ8Ls7. Drug trafficking charges and certain other types of offenses do not have sentences calculated using these guidelines. Drug trafficking offenses are governed by statutory provisions that include specified maximum and minimum sentencing ranges. N.C.G.S. § 90-95(h)(3).

⁹ Of the 678 cases entered in the tracker, in 87 cases the highest class for a pled charge was a misdemeanor, in 23 cases the highest pled charge was a drug traffic charge, data were incomplete for 32 cases, and 183 cases were probation only sentences we did not include in this analysis.

¹⁰ 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.

¹¹ Both public defenders, employed by the Durham Public Defender's Office, and court-appointed counsel represent indigent clients.

¹² The statistical test was an unadjusted ordered logit with $p < 0.05$ used to imply statistically significant differences between groups.

¹³ The statistical test was an unadjusted ordered logit with $p < 0.05$ used to imply statistically significant differences between groups.

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The Wilson Center for Science and Justice at Duke Law seeks to advance criminal justice reform and equity through science and law. We engage with academics, policy makers, and community stakeholders to translate interdisciplinary research into effective and practical policy. Our work focuses on three key areas: improving the accuracy of the evidence used in criminal cases, promoting fair and equitable outcomes in the criminal legal system, and improving outcomes for persons with mental illness and substance use disorders who encounter, or are at risk for encountering, the criminal legal system. Learn more about the Center at wcsj.law.duke.edu.

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