

# EXPLORING PLEA NEGOTIATION PROCESSES AND OUTCOMES IN MILWAUKEE AND ST. LOUIS COUNTY

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## INTRODUCTION

Although guilty pleas are the modal method for criminal case resolution in the US, relatively little attention has been paid to the plea negotiation process.<sup>i</sup> Pleas are a function of multiple courtroom workgroup members, yet, prosecutors drive decision-making.<sup>ii</sup> Prior reforms to sentencing and charging have strengthened prosecutors' discretionary power,<sup>iii</sup> and these decisions have critical impacts on sentencing outcomes, often more than the final sentencing decision itself.<sup>iv</sup> These decisions, however, are largely hidden and informal, and little is known about the role that different courtroom actors play in the process,<sup>v</sup> including initial screening decisions, charging and charge reductions, and sentencing agreements.<sup>vi</sup> The court community literature also suggests that these decisions may vary substantially between places as a function of workgroup norms,<sup>vii</sup> indicating the need to examine specific locales to understand how decisions are made.

Unpacking these plea negotiation<sup>viii</sup> decisions is especially key to understanding racial and ethnic disparities in criminal case processing. Prior research has demonstrated that pretrial detention, initial case screening, charging, and plea negotiation decisions are all critical to understanding racial disparities throughout the court process.<sup>ix</sup> Taken together, research suggests that these decisions add up to cumulative disadvantages for people of color.<sup>x</sup> Despite the wealth of research on racial inequalities in sentencing, more research on prosecutorial decision-making is needed to understand the factors that drive guilty pleas and other early-stage decisions, as well as their attendant racial disparities.

Funded as part of the John D. and Catherine T. MacArthur Foundation's Safety and Justice Challenge Research Consortium, the current study seeks to expand existing research by considering guilty plea negotiation processes and outcomes in Milwaukee County, Wisconsin, and St. Louis County, Missouri. The goal of the study is to expand existing research to consider how prosecutors, and other court actors, approach and make decisions surrounding the plea negotiation process and to consider factors that affect guilty plea outcomes. The data utilized in this report include narratives and data from interviews and surveys of local stakeholders including prosecutors, public defenders, judges, private attorneys, and system-involved persons. It also relies on administrative data collected through agencies' case management systems for cases filed in Milwaukee and St. Louis Counties through 2020.

The research centers on the following research questions:

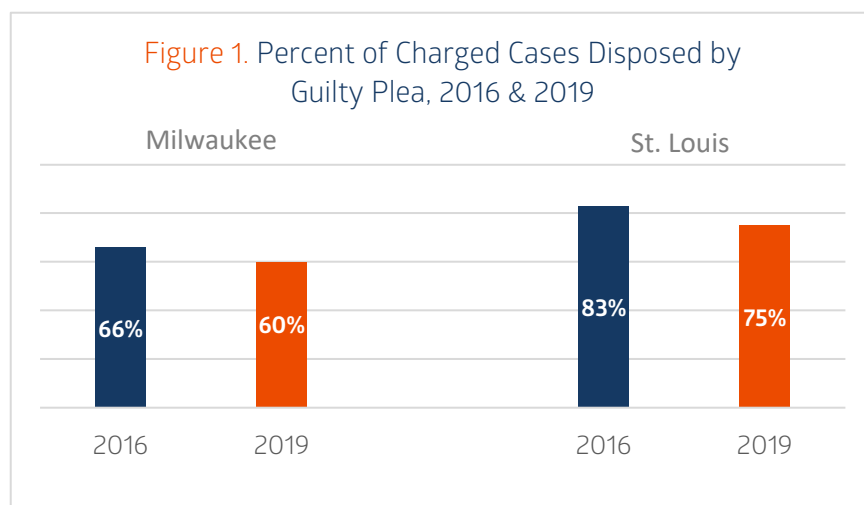
1. *What current policies govern the decision-making process?*
2. *How do attorneys approach the initial and subsequent plea offer and negotiation process?*
3. *What is the frequency of cases disposed by guilty plea?*
4. *How much do guilty plea outcomes differ from the initial filed charges?*
5. *How do attorneys evaluate and weigh the factors affecting a case?*
6. *What factors affect differences in guilty plea outcomes?*
7. *How do plea negotiations directly or indirectly influence outcomes by race?*

The study was conducted in 2021 and 2022 and includes a discussion of how the ongoing COVID-19 pandemic and subsequent restrictions impacted the plea negotiation process. In addition, a central element of the work is identifying how the negotiation process could be improved, particularly as it relates to racial disparities in processes and outcomes.

## WHAT DID WE FIND?

**The plea negotiation process is marked by a substantial amount of discretion.** In Milwaukee and St. Louis Counties, the plea negotiation process occurs in four general phases: case review, initial plea offer, negotiation, and judicial review and sentencing. During the case review stage, prosecutors review the police report and other documents to decide whether to move forward with the case. Then, they communicate a plea offer to the defense that outlines the charges and their recommended sentence. During negotiation, prosecutors and defense attorneys discuss a potential plea agreement based on potentially mitigating factors and evidentiary issues. In the final phase, judges review plea outcomes and impose a sentence. Participants describe the process as more of an art than a science. Prosecutorial discretion was noted at each phase of the process, particularly in Milwaukee County. In recent years, the Prosecuting Attorney in St. Louis County, Wesley Bell, has added some limits to discretion by expanding the sexual and domestic violence units, as well as, instituting a supervisor over all homicide cases. In both counties, there is consensus that judges do not interfere with negotiated plea agreements. In St. Louis County, legal actors indicated that it is the norm to negotiate pleas, including sentences, without judicial involvement. In contrast, in Milwaukee County, the prosecution and defense rarely negotiate sentence agreements to present to the judge; instead, the defendant will plead guilty, without settling specifics of the sentence, which allows the judge to make a final decision.

**The large majority of cases are disposed of through a guilty plea.** Although guilty pleas are the most common method of case disposition in both counties, St. Louis County disposes of a higher percentage of cases by guilty plea than Milwaukee County – 82% versus 65%. Because a relatively higher percentage of cases are resolved by guilty plea in St. Louis, a much lower percentage of cases are dismissed relative to Milwaukee – 12% versus 25%. Yet, with the election of Prosecuting Attorney Bell in St. Louis County in 2019, guilty plea rates decreased, and dismissal rates increased. During the first year of Prosecuting Attorney Bell's term, guilty plea rates decreased to 75% and dismissal rates increased to 19%. This finding is consistent with the department's overall goal to enhance the use of diversion, particularly for individuals with substance use disorders who are charged with drug-related and other minor crimes.<sup>xi</sup> Overall, the guilty plea rate in both counties decreased slightly over time: in St. Louis County the percent of cases disposed of by guilty plea decreased from 83% in 2016 to 75% in 2019, and in Milwaukee County, it decreased from 66% in 2016 to 60% in 2019.



**Guilty plea rates decreased significantly during the COVID-19 pandemic.** Both Milwaukee and St. Louis Counties were greatly impacted by COVID-19, where case processing slowed during the initial months of March and April 2020. In St. Louis County, the number of disposed cases dropped from roughly 300 cases per month in 2019 to just 30 cases per month in April and May 2020; throughout the rest of 2020, just 90 cases per month were disposed. In Milwaukee County, the number of disposed cases dropped from roughly 830 cases per month in 2019 to just 114 cases per month in April and May 2020; throughout the rest of 2020, just 266 cases per month were disposed. In both sites, the percent of cases disposed by guilty plea dropped markedly in April and May 2020 before recovering to pre-COVID-19 levels.

**COVID-19 has influenced all aspects of the plea negotiation process.** COVID-19 has changed how court actors, defendants, and victims communicate. Before the pandemic, most negotiations were conducted in person. The typical face-to-face process transitioned to email or other forms of communication during the pandemic, and there was a consensus of less communication during COVID. All informal discussions within the courtroom workgroup were also minimized during this time as most attorneys in both offices worked from home for at least the first full year of the pandemic. It is unclear how changes in communication affected case outcomes. Some defense attorneys felt that the lack of communication hindered their clients as courtroom actors were not able to argue the nuances of the case. Others felt that the more focused discussions were more efficient. Court actors in both counties reported strong pressure to work on some of the backlogs that were amassed as part of court closures. There is also consensus that there was some leniency in the processing of non-violent cases at the beginning of the pandemic, although it is not clear if these processes continued.

**Courtroom actors rely on a number of sources of data and case information when navigating the plea negotiation process.** The nature of the offense, the strength of the case, and the defendant's criminal history are the most salient factors considered by all actors. Victims play a substantial role in the process, particularly for the prosecutor's offices, and both counties are governed by state

laws that dictate the ways in which victims can be involved in the process. Victim involvement typically extends the length of the plea negotiation process. That noted, courtroom actors indicate that the process is highly individualized, making it difficult to identify the most salient factors in the decision-making process.

#### **Several defendant and case factors are associated with guilty plea outcomes.**

Trials happen rarely in Milwaukee and St. Louis Counties; as such, most cases are resolved by guilty plea, dismissal, or deferred prosecution. In St. Louis County, Black people were less likely than white people to have their case resolved by guilty plea. In Milwaukee County, Latinx/Hispanic people were more likely than white people to have their case resolved by guilty plea. While there were no significant differences in case outcomes for men and women in St. Louis County, in Milwaukee, men were significantly more likely than women to have their case result in a guilty plea. Finally, there were differences by age, with older people more likely to have their cases result in a guilty plea in St. Louis County, but less likely in Milwaukee. Case characteristics were more similar between the two sites. For example, cases with more charges at screening were more likely to result in a guilty plea in both sites. Except for the most serious felonies in Milwaukee (e.g. homicide), more serious felonies tended to be resolved by guilty plea when compared to the least serious felonies. Cases with a violent or family violence charge (relative to a property charge) were also less likely to be resolved by a guilty plea. Relative to a property charge, cases involving a weapons charge were more likely to result in a guilty plea in Milwaukee but less likely to result in a guilty plea in St. Louis County. This may be attributed, in part, to the fact that Milwaukee makes some misdemeanor weapons charges eligible for a deferred prosecution program that requires a guilty plea, while no such opportunity is available to defendants in St. Louis. Also, weapons offenses in Missouri are typically classified as felonies.

#### **Guilty pleas involving a reduction in the number or severity of charges have increased over time.**

In St. Louis County, the percent of cases with a reduction in the number of charges from filing to guilty plea increased from roughly 60% in 2016 to 70% after 2019; the percent of cases with a reduction in the severity of charges followed a similar trend. In Milwaukee County, there was a slight increase in the percent of cases with a reduction in the number of charges, from 40% in 2015 to 48% after 2020; however, there was a marked increase in cases with a reduction in the severity of charges starting in March 2018, from roughly 8% to over 20% by 2020. There were both similarities and differences in racial disparities in charge reductions between the sites. In St. Louis County, prosecutors charged Black people with a greater number of charges and more severe charges on average relative to white people; however, white people were less likely than Black people to have the number and severity of charges reduced. While prosecutors in Milwaukee reduced the number of charges for white people more relative to Black people, white people were less likely to have the severity of charges reduced.

#### **Court actors and system-involved persons acknowledge broad disparities in the criminal legal system.**

However, there was disagreement over if and how race, directly and indirectly, influences the plea negotiation process and outcomes. Some

felt that legal actors had implicit biases, while others felt that bias was embedded in the criminal legal system itself. Several participants denoted the role of over-policing and how decisions at other phases of the system influenced the types of cases that came to the court. Others indicated that the lack of racial and ethnic diversity in the court, overall, leads to a lack of empathy and humanization of court clients. Court actors and system-involved persons recounted acts of racism that they had observed in court. Stakeholders identified racial disparities in how Black people received worse penalties for gun crimes and how white people were more likely to qualify for diversion programs. Although there was a general perception that there were inequities in the system, there was little discussion of a racist system overall. Instead, the disparities were attributed to biased actors or to external factors, like income, that influenced representation and furthered the cycle of involvement in the system.

**Milwaukee and St. Louis Counties have reduced some of the racial disparities in prosecution, but do so at different stages.** In St. Louis County, the prosecutors' office charges a similar proportion of cases for Black and white people – roughly 39% of cases involving Black people are charged and roughly 43% of cases involving white people are charged. However, guilty pleas account for a relatively lower percentage of cases for Black people (76%) relative to white people (88%), especially in more recent years. In contrast, in Milwaukee, the prosecutors' office charges a lower percentage of cases for Black people (43%) relative to white people (52%); however, Milwaukee guilty plea rates are relatively similar for Black people (64%) and white people (65%). There are also some similarities and differences in racial disparities for some crime types. In Milwaukee, a higher percentage of drug cases result in guilty pleas for Black people (71%) relative to white people (43%). In contrast, in St. Louis County, guilty plea rates in drug cases are similar for Black (86%) and white people (89%). On the other hand, in family violence/domestic violence cases, guilty pleas occur more often for white people compared to Black people – in Milwaukee, 51% of domestic violence cases result in guilty pleas for Black people compared to 67% of cases involving white people, and in St. Louis, 65% of family violence cases result in guilty pleas for Black people compared to 74% of cases involving white people.

**There are still large-scale racial disparities throughout the criminal legal system process, but there is little evidence that these disparities compound in case outcomes in Milwaukee and St. Louis Counties.** In both sites, white people are more likely to receive a more punitive combination of case outcomes compared to Black people – after screening, prosecutors are more likely accept cases for white people relative to Black people, and white people's cases are more likely to result in a guilty plea without a charge reduction relative to Black people. In fact, in both St. Louis and Milwaukee Counties, Black people are the most likely to receive the *least* punitive outcome (case not accepted) and the least likely to receive the *most* punitive outcomes (guilty plea without a charge reduction). This finding may reflect the cases that are coming into the system, where police are more likely to arrest Black people but also to charge them with a greater number and more severe charges. As such, they are more likely to have their charges not accepted in the first



place at screening, or if the prosecutor initially files charges, they are more likely to have these charges reduced during the prosecutorial process. On the other hand, people interviewed reported long lengths of stay in the early pretrial process, suggesting that disparities may be even greater on the front end of the system.

**System-involved persons find the process confusing and feel that they have little voice.** Most system-involved people reported that they did not speak with court actors outside of their attorney. Overall, they felt that the court process moved very slowly and was opaque, yet, their involvement and ability to have a voice was very brief. System-involved people felt that they were better served by a private attorney and felt that public defenders did not have enough time to assist with their cases given the large caseloads, particularly in St. Louis County. They also indicated that there was substantial pressure to enter into the plea negotiation process. Several system-involved people felt that they did not have a choice but to plead guilty, and others indicated that they plead guilty because they were in jail or the process dragged out. People described the entire process as arduous and indicated that the process itself was punitive. This points to the need to examine procedural justice within the prosecution process.

**Court actors identify several ways to reform the plea negotiation process.** Prosecutors and public defenders noted that there was a need to increase the consistency of plea offers and outcomes. In both communities, there has been high staff turnover, and some felt that this led to substantial variation in outcomes, particularly when training is sparse. That noted, there was a great deal of emphasis placed on the import of discretion in the process as consistent pleas may not be inherently fair. Most actors also felt that the onus for reform rested with the prosecutor, as the actor who initiated the negotiation process in most cases. There also was a desire expressed to improve the exchange of information about cases and defendants, particularly considering the COVID-19 pandemic. The pandemic also has further highlighted the need to expedite the negotiation of pleas. Although there are challenges with the process, there was a general consensus that the plea negotiation process was essential given the current caseload size and resources available to the court.

# THE PLEA NEGOTIATION PROCESS

## INTRODUCTION

For most prosecutors, defense attorneys, and judges, the plea negotiation process is essential. Court actors feel that there simply is not the capacity to go to trial with all of the cases that are processed through the courts. A judge from St. Louis County denoted the sheer number of economic resources needed for a trial and indicated that there was no other choice than to make plea deals. They explain,

*It's just a fact. As a society, I don't think we want to devote economic resources to more judges, more courts, more jails, more juries. You have this discrete resource called a courthouse, and you have these discrete human resources, and we only have so much time.*

One judge from Milwaukee County commented that the plea negotiation process brought closure to cases in an expeditious manner,

*Plea negotiations are really important because obviously, it resolves cases in the system. Not to sound like people are widgets that we process through the system, but cases do get processed. So, it's a way to resolve cases, to bring finality to them. Plea negotiations represent compromise and compromise is not a dirty word when you have to deal with the volume of cases that we do.*

However, some participants feel that there should be more trials, as had been the practice in the past. One private defense attorney in Milwaukee County commented, "Trials are down to about 3% of all cases. And it used to be 30 to 40 in the '70s and '60s. And that's the way it should be."

## THE PLEA NEGOTIATION PROCESS IN FOUR PHASES

In Milwaukee and St. Louis Counties, the plea negotiation process occurs in four general phases: case review, initial plea offer, negotiation, and judicial review and sentencing.



### Phase 1: Case Review

The plea negotiation process typically begins with the prosecutor. The prosecutor is assigned a file and will review all of the documents to consider if the case is appropriate to move forward. One St. Louis County prosecutor describes their process of reviewing the case and deciding to file charges: *"I try to look analytically. First, I'm looking at it like a check-and-balance. Is this even a good case? Is this something I can move forward on? If not, I'm going to look to get it dismissed."*

When prosecutors initially consider the case, they are "charging off paper," or based on the police report, and there may be a great deal that they still do not know about the case. Prosecutors and defense attorneys specified that prosecutors do not typically view all the associated footage from surveillance videos, police body cameras, or dashboard cameras prior to issuing charges. Nor will they have spoken to witnesses.

This initial process also includes a consideration of the defendant's criminal history and may involve motions for more information, like body camera footage. In some cases that involve non-violent misdemeanors or other lower-level offenses, the case review is relatively cursory, and no additional information is requested. Several prosecutors in both jurisdictions mentioned that they will consider the defendant for an alternative court program or diversion during this initial review before developing a plea recommendation.

The defendant and counsel, either a public defender or private attorney, will confer at some point to discuss the relevant facts of the case and the desire to participate in the plea negotiation process. Defense attorneys traditionally wait to review at least the probable cause statements and perhaps preliminary discovery documents before discussing potential options with the defendant. Individuals who are detained pretrial are usually prioritized for review. One St. Louis County public

defender described the process and factors that they use to consider case information and potential recommendations:

*What is this defendant actually charged with? What is the evidence that the state believes they have that would help tend to prove guilt of these charges? You know, what is the strength of that evidence? Are there any constitutional questions about that evidence? Is there any way to help limit the effectiveness of that evidence? There are factors, I guess, that are personal to my client, what is going on in their life? What is their life? What are their lived experiences, that inform their decision-making process here and now?*

Defense attorneys usually wait to hear from the prosecutor on a plea offer, but some attorneys indicated that they would reach out to a prosecutor if they did not receive any communication in an appropriate amount of time.

In Milwaukee County, prosecutors described learning more about the case at formal “charging conferences,” in which law enforcement officers or even defendants come in to discuss the case before charging. Both prosecutors handling serious felonies and lower-level offenses described these practices as standard in their pre-pandemic processing. In more serious cases, charging conferences allow the prosecutor to hear from the law enforcement officer directly as a supplement to the police report. One prosecutor stated, *“I like talking about the strengths and the weaknesses of the case with the officer. It really helps me make a good decision.”* This prosecutor appreciated a knowledgeable officer who could shed light on a victim or witness’s likely involvement and willingness to appear at trial.

These comments reflect the prosecutors’ challenge to assess the merits of the case based mainly on the police report. With the pandemic and the switch from in-person communication to phone and email communication, charging conferences seem to have been discontinued. According to a Milwaukee County public defender, *“I don’t think they’ve been doing them at all during the pandemic.”* Participants did not explain why charging conferences could not continue to occur, nor could they explain when or if they might resume.

## **Phase 2: Initial Plea Offer**

Relying primarily on charging documents (e.g., affidavit of probable cause) that outline the facts of a case, prosecutors make initial plea offers. In both communities, the initial plea offers are relatively unconstrained. More than one participant described this process as more of an “art” or a “human endeavor” than a science. However, prosecutors indicated that there were general guidelines for non-violent and lower-level felony offenses. Both prosecutors’ offices provide training to new staff on the process, and prosecutors denoted that they often reviewed cases with more experienced attorneys to learn the process and norms of the office. Even experienced prosecutors described seeking feedback from their supervisors or colleagues at times. In both communities, victims’ rights legislation requires victims’ input, which may serve as a constraint on prosecutors’ discretion.

Milwaukee County prosecutors are encouraged by judges and by their leadership to proactively produce an offer letter in early stages of case processing. The defense attorney receives this offer letter in a template form along with preliminary discovery materials. For misdemeanors, this exchange may happen as soon as the defense attorney is appointed. In felonies, it traditionally occurs soon after the preliminary hearing.

Prosecutors appreciated their discretion and described guidelines as informal, as exemplified in this Milwaukee County prosecutor's comment:

*I start with what I think is the minimum penalty I should go for to effect justice. I often say, I feel like my job is to look at a situation, decide what I think is fair, and then fight like hell for it. But I think that we are afforded a lot of discretion in this office and that's one of the reasons I really like it here.*

Prosecutors who handle more serious offenses, and have more experience, are especially unconstrained. Contributing to their sense of discretion is the wide range of sentences possible for the different felony classes in Wisconsin. For example, a Class A felony can result in anything from a 0 to a 40-year sentence.

Few Milwaukee County prosecutors stated that they were required to seek supervisory approval. One exception to this broad discretion occurs if the case has the potential to generate significant public or media attention. In those cases, prosecutors reported seeking feedback or supervisory approval. The St. Louis County prosecutors' office has added more checks and balances around sexual assault, domestic violence, and homicide offenses by adding special teams and supervisory positions to address these cases. Line prosecutors are required to consult with their unit supervisor for more serious cases, A and B felonies specifically (the most serious felony classes in Missouri), and domestic violence charges. In addition, all homicide recommendations are handled by a specific staff person.

Missouri statute requires that victims of dangerous felonies be afforded several rights including the right: to be present at proceedings, to review information on the crime, and to confer with the prosecutor regarding all phases of the case (RSMo 595.209). All other victims must petition the court in writing. Therefore, prosecutors regularly consider the perspective of the victim when making decisions. St. Louis prosecutors indicated that, at a minimum, they try to engage the victim before making a plea negotiation offer.

Milwaukee County prosecutors described being somewhat constrained by Marsy's Law,<sup>xii</sup> which governs victims' rights. Depending on the type of case, prosecutors might have very different experiences with victims. However, prosecutors acknowledged victims' influence, while qualifying its impact. One Milwaukee County prosecutor described how victims' input might constrain their discretion:

*You get input with the victim and that might be a case where you're looking to go lower, but then the victim is very aggressive and wants...So you're not going to go with the victim's wishes of getting the maximum. But you may not dip as low as you thought you would, because this victim is very upset. And you understand that, but this might not be a case you can negotiate as freely with because of that victim.*

In both jurisdictions, the need to check decisions with the victim was a common thread throughout prosecutor interviews.

### *The Effects of COVID-19 on Plea Offers*

In both communities, many prosecutors and some defense attorneys acknowledged a “COVID discount,” in which prosecutors proposed more lenient offers than they would have previously. Defense attorneys in both jurisdictions described a temporary “fire sale” to clear cases and release nonviolent defendants from custody, primarily drug cases and misdemeanors that had lingered since before the pandemic. Survey results indicate that some changes were made during the pandemic, especially in Milwaukee, including offering more lenient plea deals, recommending more lenient sentences, and recommending pretrial detention less frequently.

Some participants perceived a continued trend of better offers and lower sentencing recommendations in initial plea offers. For example, Milwaukee private defense attorneys were especially likely to describe more ongoing flexibility from the prosecutor’s office. As one private defense attorney stated:

*So definitely the offers have been a lot more reasonable. I guess much more appropriate to the offenses. And also, just a lot less jail time. I've also seen official letters of offers that have been revised and written by deputies, like the actual deputy DAs to say, "In response to the pandemic, we are now offering these types of offers," where in the past they didn't offer those types of things.*

The comment suggests a prosecutorial office policy of reducing sentencing offers in light of the pandemic, a claim that was substantiated by Milwaukee prosecutors’ own remarks. These prosecutors stated that they were openly acknowledging the “COVID discount” and the need to be “a little more flexible in a worldwide pandemic.” One argued that the pandemic had taught them to assign “a different, lesser value to a case.”

Nevertheless, some defense attorneys did not notice any change, or only a very temporary one, or only from certain prosecutors and not others. A St. Louis private defense attorney believed that “recs have remained pretty consistent.” A Milwaukee public defender had been told by their superiors that “you might start to see more flexibility or more openness to X, Y, and Z from the prosecutors.” But they argued that they personally had not seen that “at all.”

### Phase 3: Negotiation

Typically, following initial offers, prosecutors and defense attorneys engage in plea negotiation. Defense attorneys describe the decision to negotiate, and the negotiations themselves, as largely driven by the defendant and their wants and needs. This viewpoint is not necessarily shared by system-involved people, however. When discussing relationships with clients and the factors guiding decision-making, a public defender in St. Louis County highlighted the importance of their client's wishes:

*I want my clients to feel like they're in the driver's seat, like they are not passive participants in a case that they are the ones who are determining, you know, I want them to feel like they have agency and control even if the state is pursuing something pretty aggressive against them.*

Once the defense attorney learns more about the client's wishes, they begin working to collect more information about the client and the case. In the words of one St. Louis County public defender, *"Sometimes that's mental health records. Sometimes that's criminal records of the victim, if there's self-defense or that kind of situation, but typically it involves some investigation on that end."* The attorney then reviews the relevant information and confers with the client on the next steps. Defense attorneys then agree to the prosecutor's initial offer, provide a counteroffer, or request a trial.

If the defense continues with a counteroffer, it is presented to prosecutors in consideration of mitigating factors. For example, a public defender in Milwaukee County explained the importance of providing prosecutors with information that humanizes their clients:

*I like to draft a letter. I like to attach supporting documents, supporting letters from family and friends, report cards, other certificates of completion of various programs. You never get to see somebody's true personality when they're in court. So, I'll write a letter. I will include facts about my client's life, I will include social science literature about the collateral consequences of locking my person up and exiling them from the City of Milwaukee to someplace else. I'll show the pictures of the kids that are going to be without mom or dad.*

Some defense attorneys also expressed the need to tailor the presentation of their counteroffer on the seriousness of the charges, the jurisdiction, and personnel. A St. Louis County public defender denoted that there was little room for negotiation for sexual assaults and homicide cases, particularly under Prosecutor Wesley Bell, as supervisors have been appointed to review and approve all homicides and sexual assaults. However, there was some consideration in other types of crimes, like robbery.

*Robbery is all about the facts. It's all about, you know, is there something in there that could show it wasn't supposed to be a rob one or assault one? Is there something mitigating for it to be amended? If that could be like I said, something with one of the witnesses, something with the alleged victim? Something my client might have said...anything?*

Prosecutors said that they would consider the relevant case information along with the defense attorney's counteroffer when making a recommended sentence. Survey results suggest that prosecutors do consider the defense's presentation of mitigating circumstances (mean across both sites=3.67<sup>xiii</sup>). Less commonly, prosecutors might proactively reach out to the defense attorney themselves and ask about the defendant. According to one Milwaukee County prosecutor:

*I would love it if every defense attorney could tell me some great mitigating information about their client, you know what I mean? And I love to give the defense attorney that opportunity. One of the things that I think makes a good defense attorney is characterizing their defendant in colorful terms, like, make me believe that your client will make use of a more lenient sentence, right?*

As with earlier phases of the process, the participants denoted that there is substantial discretion and that the process varies depending on the attorneys involved. One public defender describes that he attends to each case differently, depending on his relationship with the prosecutor.

*Because not every prosecutor is the same every prosecutor has their own experiences that they bring to the table to things that they want to talk about, and things that affect them when they're looking at case and some, some prosecutors...you learn the buttons and levers to press, you learn how to operate a machine, so you can get the intended outcome or the desired outcomes.*

If the informal negotiation process does not lead to the desired outcome, some public defenders indicated that they would request a meeting with a supervisor in the prosecutors' office, particularly if a sentence seemed unreasonable or unusual. Prosecutors and judges also acknowledged this practice as fair game. Therefore, defense attorneys could act as an additional check on prosecutorial discretion.

Negotiations between attorneys typically revolve around adjusting the recommended sentence, more than adjusting initial charges or "charge bargaining." Prosecutors in St. Louis County indicated that they do drop charges, particularly when multiple charges are issued, and that they rarely change the initial charges. In some cases, felony charges will be reduced to misdemeanors if the facts of the case reflect this type of change, more common in drug possession and property crimes. In Milwaukee County, prosecutors do not typically negotiate charges. They are trained to charge the case with charges for which they want the defendant to plead



guilty. Charges, once initiated, are also rarely dropped. Instead, if the defendant chooses to go forward with a trial, additional charges could be added. This is somewhat reflected in the administrative data, where the reduction in the severity of charges was especially rare in Milwaukee, though this percentage is rising. In St. Louis County, a much higher percentage –60% to 80% of guilty pleas– involved a reduction in charge severity through dropping of the top charge. Interestingly, when we surveyed both sites, prosecutors in Milwaukee (mean=1.53) and St. Louis (mean=2.29) reported relatively low support for the idea that the first plea offer should be the only plea offer available with no negotiations. One prosecutor explained that part of the reason for not engaging in charge bargaining is to help defendants avoid collateral consequences associated with overly inflated initial charges, since these charges are listed publicly in state court data. The aim is to make the initial charges match the final conviction.

#### Phase 4: Judicial Review and Sentencing

Once a negotiation has been made and an agreement reached, plea outcomes are reviewed by judges and a sentence is imposed. The consensus in St. Louis County was that judges typically do not object or interfere with any agreed-upon plea negotiation. A public defender provided their perspective:

*Usually, the judges stay out of it. They go, you know, for 99-95% of the time the judge say, "Whatever your deal is, you know, I'll honor that deal." You know, very rare, will they say, "Oh, I just can't do that. Because I might be called on the carpet," but pretty much they'll honor it.*

Although it is rare, some system stakeholders in St. Louis County elect to use the "blind plea" process to resolve cases when the defendant has agreed to plead guilty, but the prosecutor and defense attorney are not able to come to an agreement on the sentence.<sup>xiv</sup> In Milwaukee County, most plea negotiations result in blind pleas. Instead of accepting the prosecution's plea offer, the defense attorney leaves it up to the judge to make a decision on the case. Both prosecution and defense may present the judge with competing sentence recommendations.

Milwaukee County judges also do not involve themselves in plea negotiations. However, they do play an indirect role in the plea outcome since they issue the sentence, sometimes with limited guidance from prosecutors and defense attorneys. Unlike in many other jurisdictions, prosecutors and defense attorneys in Milwaukee County rarely come to negotiated sentence agreements to present to the judge. Estimates ranged from only 10-25% of cases that were resolved in a joint sentencing recommendation – meaning that 75-90% of guilty plea outcomes do not include a negotiated sentence recommendation. Negotiations between the two parties rest on whether an agreement can be reached that the defendant will forgo their right to trial and plead guilty, without settling specifics of the sentence. In court, both sides issue separate sentencing recommendations. This allows the defense to express to the judge what they think is an appropriate sentence. It may also help expedite the plea negotiation process since the parties can move forward without an explicit agreement. A Milwaukee County prosecutor explained how this

practice had the effect of leaving discretion to the judge: *Once in a while, we'll do something where we come up with a joint, sort of a stipulated resolution, where both the defense and the state agree this is the appropriate sentence. But that would be infrequent. Typically it's: we're going to make our recommendation, defense agrees, that that's going to be our recommendation, and then they're free to ask for whatever they think is appropriate. I mean, if you can come up with a stipulation, I think that that is fine, but I think part of a defense attorney's job is to make their argument for the client. And so a lot of times I think it's best to be able to make those arguments so the judge can hear that without both parties saying, "This is what the recommendation is going to be".*

### **The Effects of COVID-19 on Negotiation**

The pandemic has changed the nature of negotiations between prosecutors and defense attorneys, with the general effect that the two parties have become less accessible to each other. Most respondents interpreted this as a disadvantage. According to one St. Louis County judge: *"The pandemic has made it hard for people to meet and talk, you know...they send emails or they get on the phone, but they don't cut deals like they used to in the back hallways...and that's really how it happens."*

The email and phone communications have delayed negotiations. Parties must now piece together a conversation over a series of emails or schedule a phone call or virtual conferencing session. Prosecutors missed the opportunity to "proverbially shoot the shit with the defense attorney."

While some defense attorneys worried that protracted negotiations may result in less favorable outcomes for defendants, others saw advantages. One St. Louis County public defender appreciated that communication was now "more focused" and "more targeted." Another acknowledged the "burdensome" nature of remote negotiation but also recognized that the delays could actually benefit their clients. "Now they get more time to think it through and figure it out beforehand." A Milwaukee County public defender appreciated having a record of email exchanges to help track the progression of the case and to share with their client. Notwithstanding these potential advantages, prosecutors, judges, and defense attorneys all expressed the need to become more efficient amidst the pressure to clear the pandemic backlog.

## **PERSPECTIVES OF SYSTEM-INVOLVED PEOPLE ON THE PLEA PROCESS**

### **Understanding the Process**

Many system-involved individuals felt that they did not have a good understanding of how the plea process worked. They often rely on their defense attorney to explain the process to them, or more frequently, are told the limited plea options and encouraged to take them. One system-involved person, Guy, suggested that the plea process should have

*a little bit more transparency... If you're somebody that doesn't have a lawyer to sit down and explain to you what's going on, it can be a very scary and very confusing process about everything- everything moves so-so slowly, yet so quickly, at the same time.*

As Guy alluded, a lack of understanding of the case is compounded by the fact that case proceedings are often conducted relatively quickly, so system-involved individuals do not have much of a chance to understand what is happening. Another person, Isis, explained,

*it was like a rushed thing to me because [the public defender] was just not only my [attorney], she was a couple of people's that had went to court. So I was like, oh, like all a little rushed. Like okay, "Here's the papers" and you know, "Next!" You know what I mean?*

### **[Lack of] Voice and Dehumanization in Court Processing**

One of the most notable findings is how minimal a role most system-involved individuals play in the negotiation process. The vast majority do not speak to the other court actors beyond their defense attorney, although there was a mixed response on whether they wanted to do so. Most people also felt that they were not allowed to speak in court, simply because the opportunity was not presented to them, and oftentimes hearings would occur very quickly. In this sense, the lack of contact with other court actors, as well as the opportunities to speak freely in court, left system-involved people feeling like they were passive rather than active members of the "courtroom workgroup." Several system-involved individuals who wanted to speak more also believed that explaining themselves in court might help the prosecutor understand the context of the crime and come to a different outcome. For example, James reflected:

*I wanted to, but didn't turn out that way...I thought that, perhaps in putting a face to just the facts of the case, and having a discussion, like we are today, that perhaps they would see fit to change their mind, in my particular case, just, yeah, just throw the book at him. And let's, you know, lock the door and forget about him kind of thing. And just throw away, I didn't want to be thrown away.*

System-involved individuals noted that they either needed to be a strong advocate for themselves, or have someone advocate for them, like a defense attorney, to have a fair plea process and case outcome. Other people reported that they felt that they (or their attorneys) were better able to advocate for them, giving them a voice in the process.

Together, the lack of understanding, the quickness of the actual hearings in contrast to the slowness of the court, and the lack of voice in the process led many system-involved individuals to feel that they were being dehumanized in the process. As Guy described, *"I guess you could think of it almost like a machine, you know...you're*

*been herded like cattle I guess. the whole thing is kind of just like, it's very industrial, you know...it's easy to get lost in the system."*

While not all system-involved individuals mentioned that they felt dehumanized through the plea process, some echoed similar sentiments, saying that it felt "degrading," as if they were "lost in the system," and like an "alienating" experience.

### **Perceptions of overburdened public defenders and preference for private representation**

Almost universally, system-involved individuals agreed that hiring private representation was better than gaining services from the public defender's office. Nearly all system-involved individuals stated that public defenders seemed "polite" and "decent," but they felt that the public defender did not have enough time and resources to assist with their cases. Among the sample of system-involved people we interviewed, most hired private attorneys, specifically because they felt that they would receive better representation on their cases. As Carlos explained,

*I didn't trust the public defenders enough...you think about their workloads and stuff that they probably do not have the time to really, individually look at your case, they're probably looking to, I mean, in my mind, plea out everything as quickly as possible.*

In general, system-involved individuals who hired private representation felt that while the public defenders were well-intentioned, they did not want to take a chance with their case. As one person put it, although he had heard that some public defenders are good, it's a "roll of the dice," and that taking chances on a legal case was not worth it.

### **Feeling the pressure to Plea**

System-involved individuals also felt that they had significant pressure to plea. Bill stated, "*The system strives to get you to either plea bargain out or just flat out plead guilty.*" Generally, there were three primary rationales that system-involved individuals gave as to why they felt pressure to plead guilty: the perceived trial penalty, feeling like they lacked other options, and for a few people, wanting to get out of jail and resolve their case. The trial penalty, which is the difference between the more severe sentence a person would likely get if they went to trial relative to the less severe sentence they would receive if they agreed to a plea deal, was often perceived as one of the most common reasons for agreeing to plead guilty. Sometimes, it was not even necessarily the threat of a trial, but even the threat of lengthening the process. For example, John D explained that his defense attorney told him, "*Dude...if you actually ask for a preliminary hearing, they're going to go for the maximum and you're going to be screwed.*" *This is what my defense attorney said.*" Thus, system-involved individuals agree to plead guilty in part because they do not want to risk either going to trial and being sentenced to a longer sentence, or even causing more delays and having the prosecutor recommend a more severe penalty.

Many system-involved individuals mentioned that they did not feel like they had a choice. Missy mentioned,

*But they presented this to you as not only your best option but, really, your only option. So I felt like when they asked me that question, that's the only time I feel like in the whole court proceedings that I actually lied because I did feel coerced into doing it.*

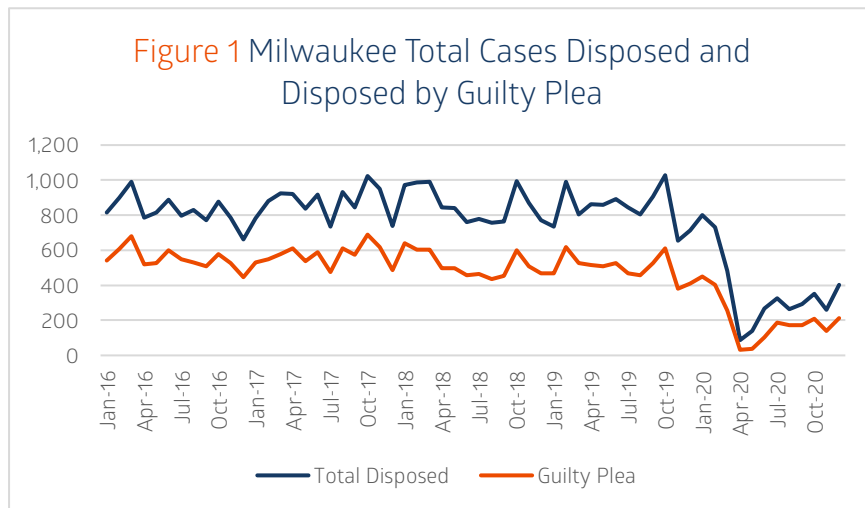
Finally, a few system-involved individuals noted that they plead guilty to get out of jail and/or to get their case resolved. In other words, the process in itself serves as punishment<sup>xv</sup> and coerces participants to plead guilty. CJ, for example, ended up being sentenced to a longer term than he initially anticipated due to a violation of his community supervision:

*What made me like really cop to it so fast is the fact that every time I would come to court, it'd be something like this. "Your...public defender did not show up today. And so, we're going to continue it." Okay, I go back to the cell for a month...And then when I do come back, he want to talk about this class B or not. And then I'm like, "No, I don't want that. Can you give me this?" And then she said, "Well, you're gonna take some more time. We're gonna reschedule you to think about it and all this stuff." And so, I'm like, "Man, look man, y'all tryna play games with me. Can ya give me seven [year sentence]. Let me go, please. Because I'm tired of just coming up here and ya sending me back to this fucking cell.*

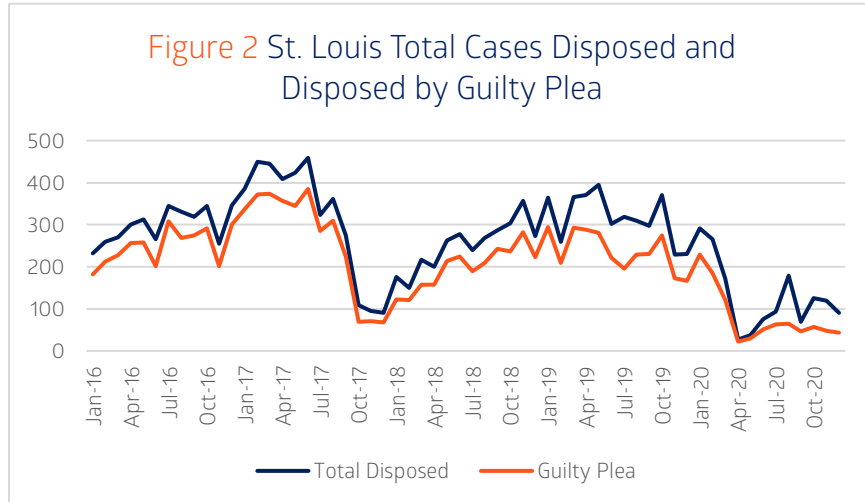
# EXPLAINING GUILTY PLEA OUTCOMES

## THE FREQUENCY OF GUILTY PLEA OUTCOMES

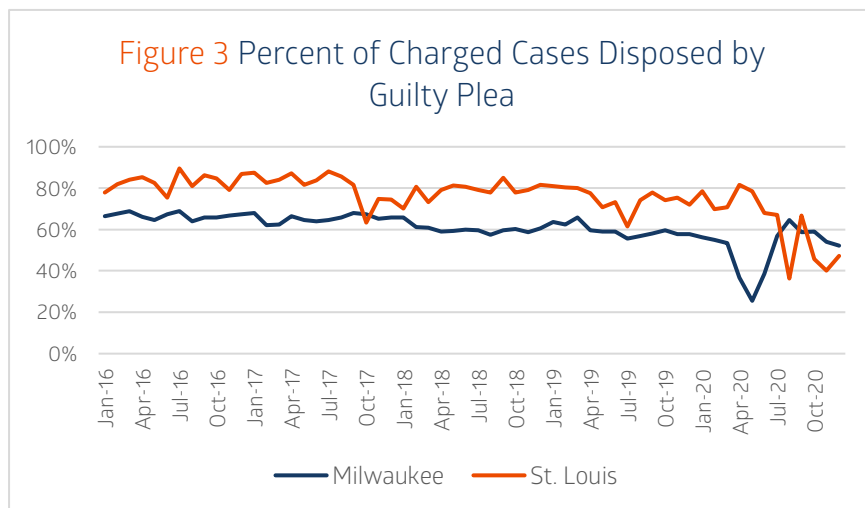
The large majority of criminal cases in Milwaukee and St. Louis Counties are resolved through a guilty plea. The number of cases disposed in Milwaukee County remained fairly stable at roughly 850 cases per month between January 2016 and February 2020 (Figure 1).<sup>xvi</sup> In April 2020 – the first full month of court closures due to COVID-19 – the number of cases disposed dropped to just 87 before rebounding to roughly 290 cases per month – a 66% decrease from prior monthly averages. In turn, the number of cases disposed by guilty plea dropped as well. Between January 2016 and February 2020, roughly 530 cases per month were disposed by guilty plea; this dropped to just 152 cases per month after March 2020 – a 72% decrease.



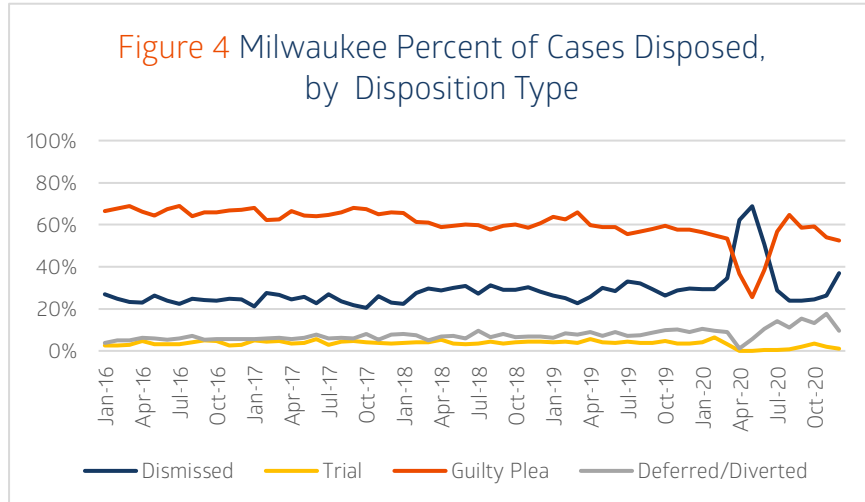
Cases in St. Louis County followed a similar trend. Between 2016 and 2017, the St. Louis County Prosecuting Attorney's Office disposed of an average of 350 cases per month, before dropping sharply in October 2017 to just 100 cases (Figure 2). The number of disposed cases rose through early 2020 before dropping again, possibly reflecting delays due to COVID-19. Cases in the most recent year under Prosecuting Attorney Bell (2020) should be interpreted with caution, because the sample only includes resolved cases.



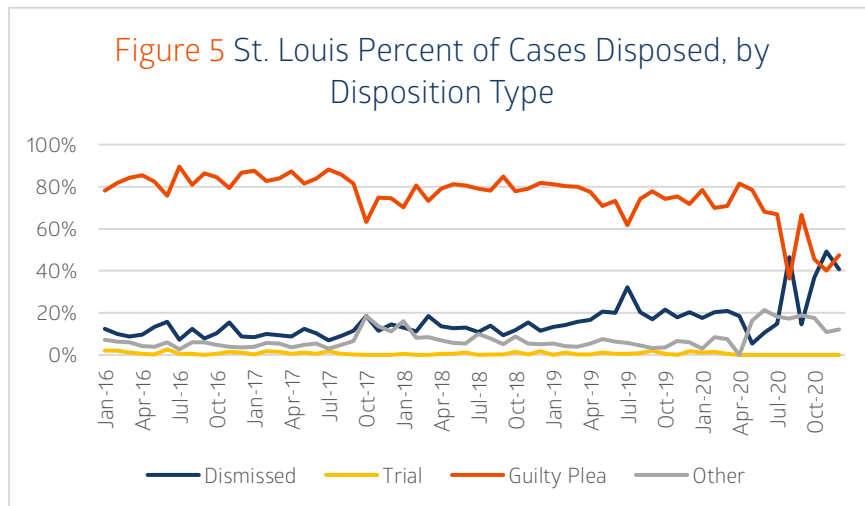
The percent of cases disposed by guilty plea decreased over time in both counties as well (Figure 3). In Milwaukee County, the percent of cases disposed by guilty plea dropped from roughly 67% of cases in January 2016 to 55% of cases in February 2020. In May 2020, the percent of cases disposed by guilty plea dropped to just 26% of disposed cases, before rebounding to pre-COVID-19 levels (roughly 56% of cases). In St. Louis County, prior to 2017, 85% to 90% of cases were resolved by guilty plea. However, between October 2017 and March 2020 (pre-COVID 19), this dropped to roughly 76% of cases. In 2020, the percent of guilty plea cases fluctuated widely as the number of disposed cases dropped to just 100 cases per month. Thus, in St. Louis County, not only did the number of cases decrease since 2017, but the percent of cases resolved by guilty plea also decreased.



The sudden drop in the percent of cases disposed by guilty plea in Milwaukee County in May 2020 coincided with a steep increase in the percent of cases dismissed (Figure 4). The percent of cases dismissed increased from roughly 24% of cases in 2016 to 28% of cases in 2019; dismissals jumped to a high of 69% of cases in May 2020 before dropping to roughly 25% of cases through November 2020.



Like Milwaukee, the sudden drop in the percent of cases disposed by guilty plea in St. Louis County coincided with an increase in those resolved by dismissal (Figure 5). Prior to 2017, roughly 9% of filed cases were dismissed; this increased to 13% through 2018 and increased again to 19% through 2019. In 2020, the percent of cases dismissed fluctuated, reaching over 45% of cases in some months. In both Milwaukee and St. Louis Counties, trials remained relatively rare throughout the entire time period.

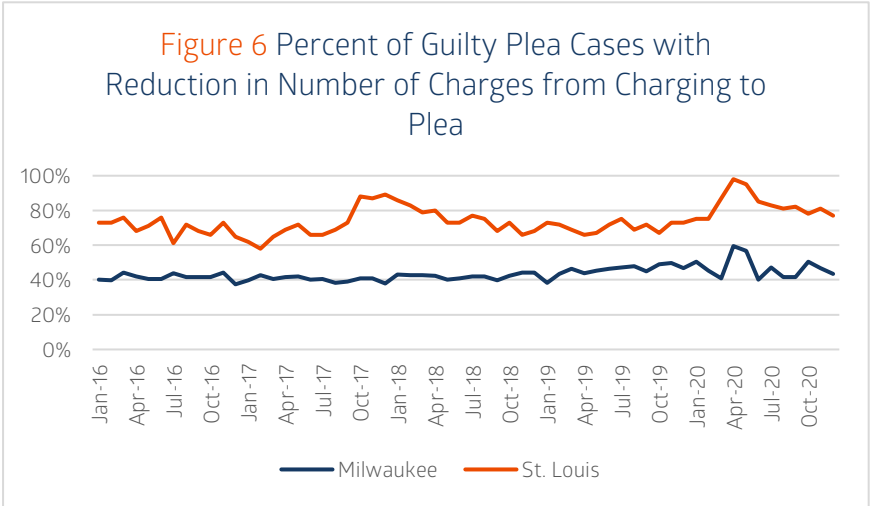


## CHARGE REDUCTIONS IN GUILTY PLEAS

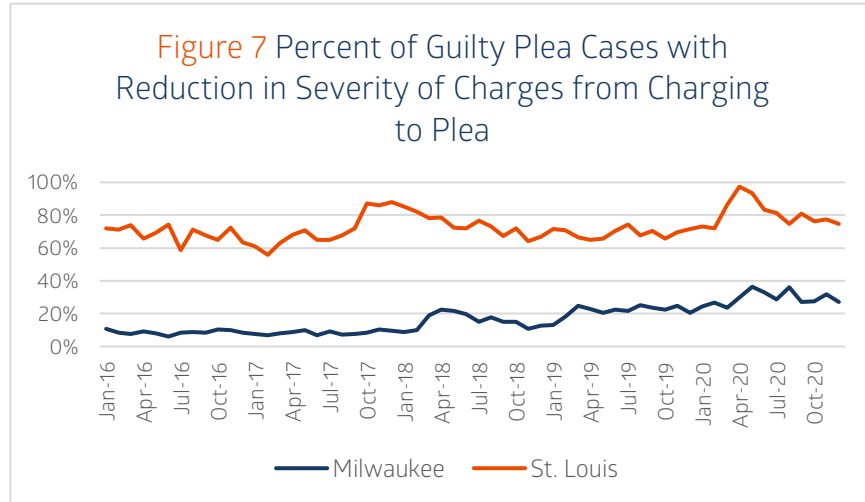
Cases resolved by guilty plea may involve a reduction in either the number of charges or the severity of charges in exchange for a guilty plea. A reduction in charges can signal a productive plea negotiation. However, it may also indicate that prosecutors initially overcharged the case as a negotiation tactic. In Milwaukee County, the percentage of guilty plea cases involving a reduction in the *number* of charges from charging to disposition remained fairly stable between 2016 and 2019, before rising slightly (Figure 6). In January 2016, 40% of guilty plea cases involved a



reduction in the number of charges from charging to guilty plea; by January 2020, this had increased to roughly 50% of cases. Reductions in the number of charges were much more common in St. Louis – with 60% to 80% of guilty pleas involving a reduction.<sup>xvii</sup> Between 2016 and September 2017, roughly 66% of cases received a reduction in the number of charges from screening to conviction; between October and February 2020 this increased to roughly 74% of cases, and between March 2020 and December 2020 this increased again to roughly 85% of cases.<sup>xviii</sup>



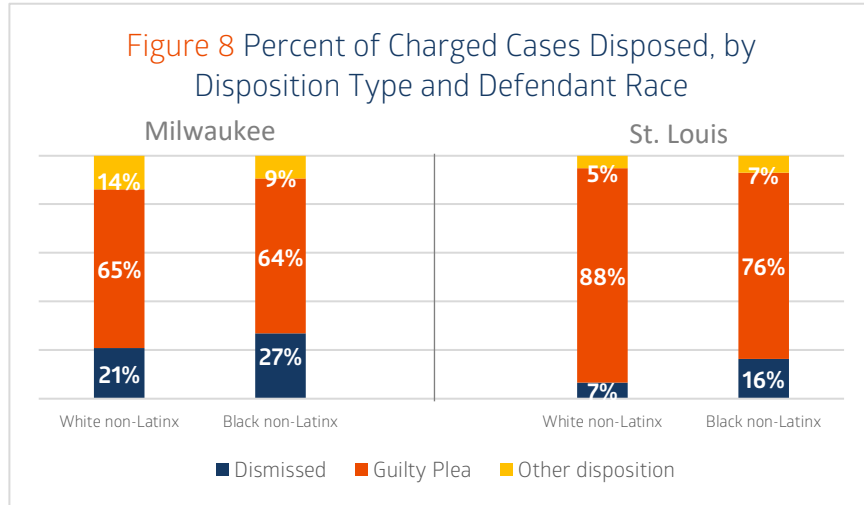
Reductions in the *severity* of charges were also much more common in St. Louis County than in Milwaukee County (Figure 7). Between January 2016 and February 2018, just 8% of guilty plea cases in Milwaukee County involved a reduction in the severity of the top charge from charging to disposition. The rate increased sharply in March 2018 to 20% and remained fairly stable through February 2020 before rising again during COVID-19 to roughly 30% of cases. In contrast, in St. Louis County, 60% to 80% of guilty pleas involved a reduction in charge severity. The percentage of cases with a reduction in the severity of the top charge increased from roughly 65% of cases between 2016 to 2017 to over 80% of cases in 2020. This was most often done by dropping the top charge, rather than amending charges. Even given these general increases, there were two time periods with more dramatic increases. The first big increase was in October 2017, when the percent of cases with a reduction in the severity of charges increased from roughly 65% of cases to roughly 73% of cases, likely reflecting changes to the criminal code.<sup>xix</sup> The second increase occurred in March 2020, with the onset of COVID-19, when the percent of cases with a reduction in charge severity increased to roughly 81% of cases.



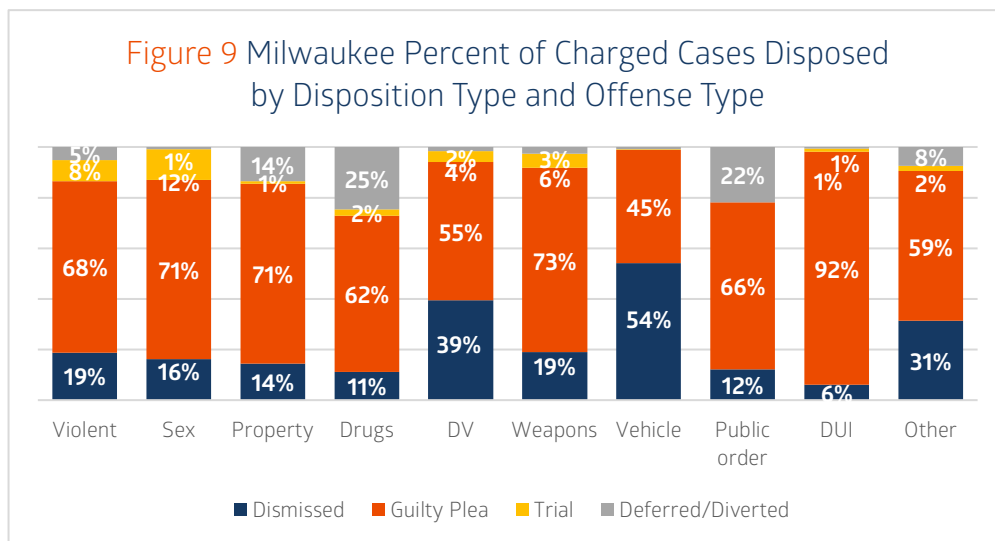
## VARIATION IN GUILTY PLEA OUTCOMES

To explore the effects of defendant and case factors on case outcomes, we examined all charged cases that were disposed in Milwaukee County between January 2016 and December 2020 and in St. Louis County between January 2014 and December 2020.

In Milwaukee County, cases involving Black defendants and white defendants were disposed by guilty plea at nearly equal rates – 64% of cases involving Black defendants and 65% of cases involving white defendants were disposed by guilty plea (Figure 8). Black defendants, however, were slightly more likely than white defendants to have their cases dismissed (27% versus 21%). In St. Louis County, Black defendants were less likely to have their cases resolved by guilty plea, compared to white defendants. Specifically, of filed cases, 76% of Black defendants had their cases resolved by guilty plea, compared to 88% of white defendants. Similar to Milwaukee, Black defendants in St. Louis County were relatively more likely to have their cases dismissed (16%) compared to white defendants (7%). The number of cases for other racial and ethnic groups, including Latinx and other persons, were very low; because of the small number of cases involving these other racial/ethnic groups, they are excluded in Figure 8.

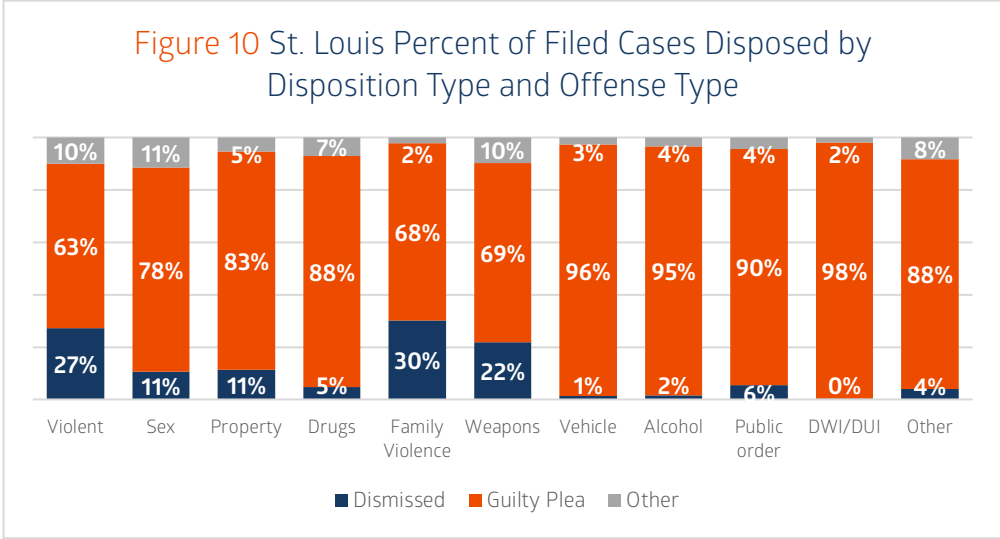


Although the majority of charged cases were disposed by guilty plea, there was some variation in outcomes by crime type. In Milwaukee County, cases involving sex, property, weapons, and DUI charges as the top charge were more likely to be resolved by guilty plea – with over 70% of filed cases resolved by guilty plea (Figure 9). In contrast, cases involving violent, drug, domestic violence, vehicle, public order, and other charges were less likely to be resolved by guilty plea – just 68% of violent cases, 55% of domestic violence cases, and 62% of drug cases were resolved by guilty plea. Notably, 39% of charged cases involving domestic violence charges as the top charge were dismissed after charging; in contrast, 25% of drug cases were diverted or deferred.

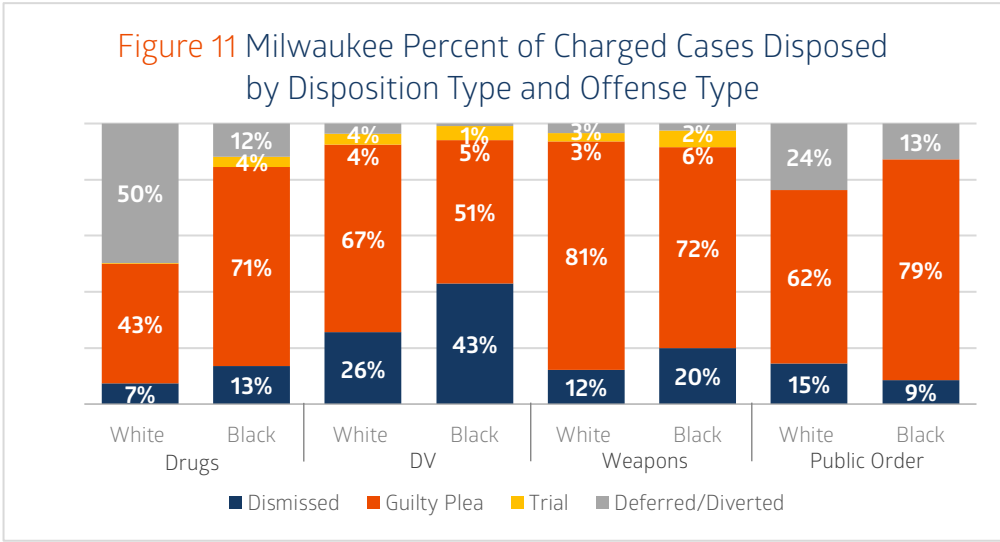


In St. Louis County, cases involving drug, vehicle, alcohol, public order, and DWI/DUI related charges were more likely to be resolved by guilty plea – with nearly 90% of filed cases resolved by guilty plea (Figure 10). In contrast, cases involving violent, family violence, and weapons related charges were less likely to be resolved by

guilty plea – just 63% of violent cases, 68% of family violence cases, and 69% of weapons cases were resolved by guilty plea.

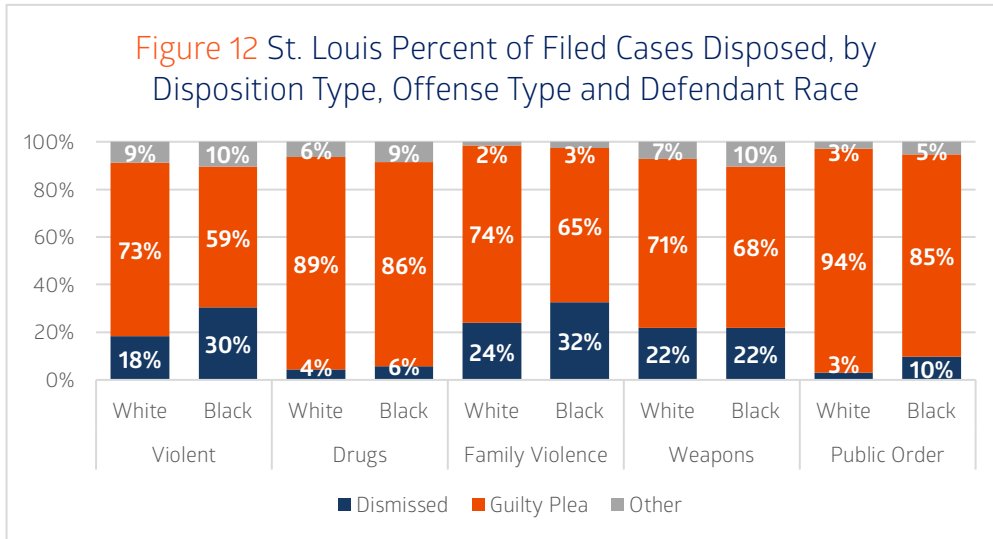


Outcomes for Black and white defendants were similar across most offense types in both sites. However, for several offense types, there was marked variation in outcomes across racial groups. In Milwaukee, for example, roughly 71% of drug cases involving Black defendants were disposed by guilty plea, compared to just 43% involving white defendants (Figure 11). Similarly, for public order offenses, cases involving Black defendants were more likely than cases involving white defendants to be disposed by guilty plea (79% versus 62%). However, for domestic violence cases and weapons cases, cases involving Black defendants were less likely to be disposed by guilty plea.

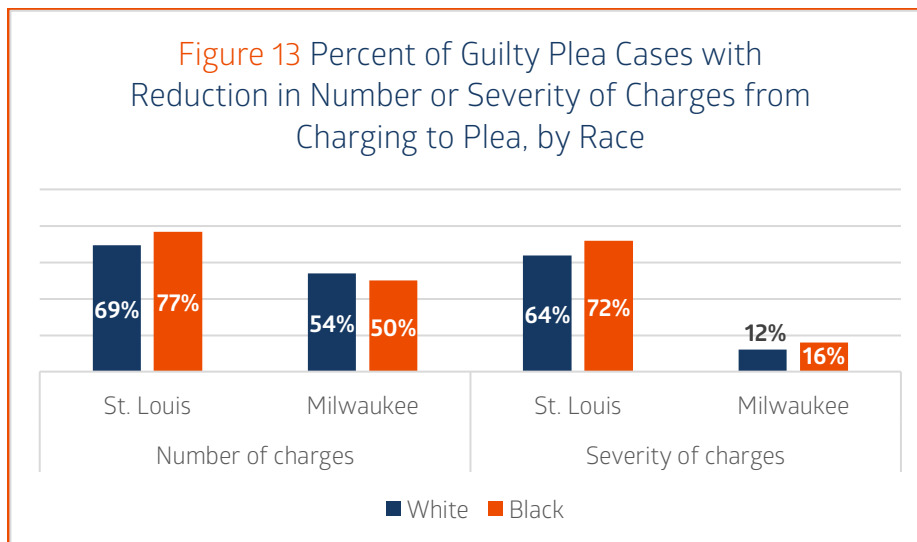


In St. Louis County, cases with violent charges and family violence charges resulted in a guilty plea more often for white people (73% and 74%, respectively) than for Black people (59% and 65%, respectively) (Figure 12). Cases with violent charges and

family violence charges were more likely to be dismissed for Black people (roughly 30% of filed cases). Other offenses, including cases involving drugs and weapons charges, were resolved similarly for white and Black people.



There are both similarities and differences in racial disparities in charge reductions between the sites. In St. Louis County, prosecutors charged Black people with a greater number of charges and more severe charges on average relative to white people. As reflected in Figure 13, prosecutors were less likely to reduce the number and severity for white people relative to Black people. While white people were more likely than Black people to receive a reduction in the number of charges in Milwaukee, white people were less likely to have the severity of charges reduced.



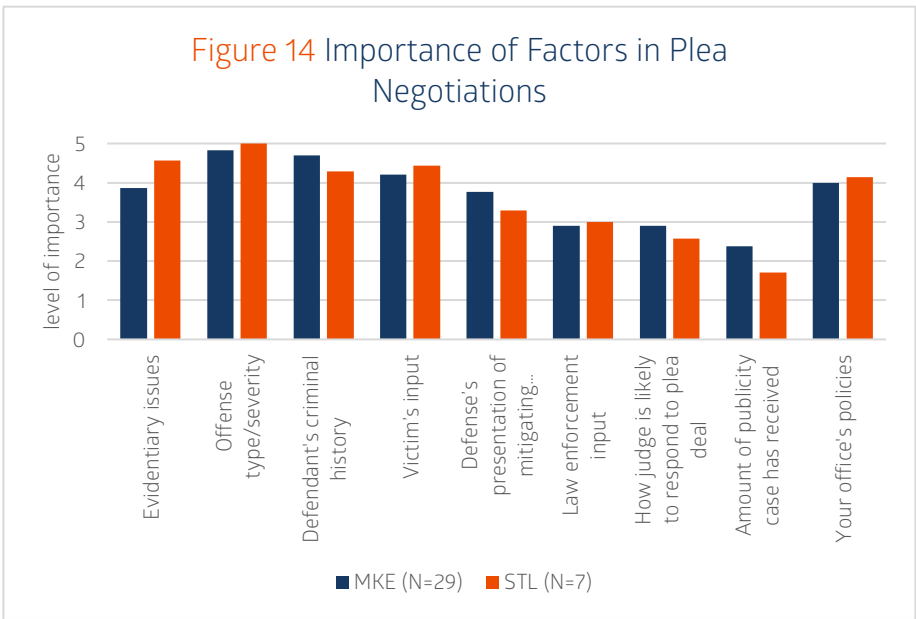
# FACTORS AFFECTING GUILTY PLEA OUTCOMES: COURT ACTORS' PERSPECTIVES

During initial offers, prosecutors consider several factors, including the seriousness of the charges, the probable danger posed by the defendant, the strength of the evidence, the harm done to any potential victim and their input on the case, and the defendant's criminal history. When asked what factors influenced their initial offer, one prosecutor from St. Louis County responded:

*How severe were the allegations? What level of evidence do we have to prove those allegations? So, the strength of the case impacts it. The defendant's criminal history or lack thereof. What ultimately... what are the victim's wishes? The danger to the victim moving forward, the danger to the community moving forward...*

Overall, prosecutors emphasized that they should consider only the legally relevant factors during initial offers. A prosecutor from Milwaukee County commented on their process: *"When I'm making that initial offer, I just don't care about the defendant's characteristics. The only thing I know about the defendant is the prior criminal history. That's it, that's all..."*

This is also reflected in the survey results, where prosecutors in both sites overwhelmingly reported that they consider legally relevant variables, including offense severity, criminal history, and evidentiary issues. However, other factors, including victims' input and office policies, also were considered relatively important factors in making decisions.



More contextual factors become relevant later during negotiations with defense attorneys. In both jurisdictions, the plea negotiation process, particularly for felonies, typically does not start in earnest until after the preliminary hearing has been held. Prosecutors reported considering a wide variety of potential mitigating factors during negotiations, including defendant's cooperation with the prosecution, mental health, substance abuse issues, poor physical health, youth, family support, educational attainment, good employment history, degree of remorse, and good behavior while out of custody awaiting disposition.

One St. Louis County public defender described a similar range of factors considered:

*Basically, the way you are going to value a case, and the state does the same thing – they look at what's the crime charged, how bad is it, what's the range of punishment, smallest and largest, what's the defendant's personal situation when they come to be charged. Do they have lots of priors or none? Do they have any mitigating mental health or any other kind of mitigating situation that cuts in the defendant's favor that would justify maybe a downward departure from sort of what you would expect?*

## FACTORS AFFECTING GUILTY PLEA OUTCOMES: LOGISTIC REGRESSION MODELS

We focused on guilty pleas more specifically by estimating logistic regression models to determine if particular defendant and case factors were associated with the likelihood of a case being resolved by a guilty plea. Defendant factors included sex, race, age, prior criminal cases, and in Milwaukee County, pretrial detention and residence. Case factors included crime type and charge severity for the top charge, number of charges, and time to disposition. In Milwaukee County, we also included charge reduction at filing and referral agency. Finally, in Milwaukee County, we also included several attorney factors: prosecuting attorney years of experience, total caseload, felony caseload, and violent caseload and defense attorney years of experience, attorney withdrawal, and public defender status. The full models are in the Statistical Appendix.

We found several similarities and differences across the two sites (Figure 15). Figure 15 reports the direction of influence for each factor; a "+" indicates that the factor increased the likelihood of a guilty plea, a "-" indicates that the factor decreased the likelihood of a guilty plea, and gray indicates that the factor was not associated with the likelihood of a guilty plea. In St. Louis County, for example, Black people were less likely than white people to have their case resolved by a guilty plea. In Milwaukee, defendant race was not associated with case outcomes; however, Latinx people were more likely than white people to have their case resolved by guilty plea. While there were no significant differences in case outcomes for men and women in St. Louis County, in Milwaukee, men were significantly more likely to have

their case result in a guilty plea. Finally, there were differences by age, with older people more likely to have their cases result in a guilty plea in St. Louis County, but less likely in Milwaukee.

Case characteristics were more similar between the two sites. For example, in both sites, cases with more charges at screening were more likely to result in a guilty plea. With the exception of the most serious felonies in Milwaukee County, more serious felonies tended to be resolved by guilty plea more often relative to the least serious felonies. Cases with a violent or family violence charge (relative to a property charge) were less likely to be resolved by a guilty plea. Interestingly, relative to a property charge, cases involving a weapons charge were more likely to result in a guilty plea in Milwaukee but less likely to result in a guilty plea in St. Louis.

**Figure 15** Factors Associated with the Likelihood of a Guilty Plea

	St. Louis	Milwaukee
Black (relative to white)	-	
Latinx/Hispanic (relative to white)		+
Male		+
Age	+	-
Number of charges at screening	+	+
More serious felonies	+	+/-
Misdemeanors	+	-
Longer criminal history	+	
Violent (relative to property)	-	-
Family violence (relative to property)	-	-
Weapons (relative to property)	-	+
Drugs (relative to property)		-

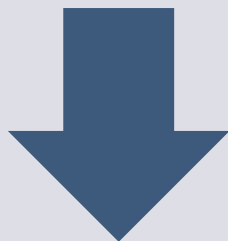


## What factors influence guilty pleas in Milwaukee County?



### Factors that increase the likelihood of a guilty plea

- Defendant is male
- Defendant is Latinx
- Defendant is under 25 years old
- Defendant is in jail at disposition
- Case involves more charges
- Case involves a change in charges from arrest to charging
- Prosecutor has a higher caseload
- Prosecutor has a higher violent caseload
- Case involves no change in defense attorney
- Case involves only a public defender
- Defense attorney is more experienced



### Factors that decrease the likelihood of a guilty plea

- Case is referred to a specialized unit
- Prosecutor has a higher felony caseload
- Prosecutor is more experienced

## What factors influence guilty pleas in St. Louis County?



### Factors that increase the likelihood of a guilty plea

- Defendant has a longer criminal history
- Case involves more charges
- Case involves a misdemeanor as the top charge (relative to a Class E Felony)
- Case involves a Class D or C Felony charge as the top charge (relative to a Class E Felony)
- Case involves drug, vehicle, alcohol, public order, or other charge as the top charge (relative to a property charge)
- Case has a longer time to disposition



### Factors that decrease the likelihood of a guilty plea

- Defendant is Black
- Defendant is under 25 years old
- Case involves violent, family violence, or weapons charge as the top charge (relative to a property charge)
- Case involves a Class A Felony as the top charge (relative to a Class E Felony)

## What factors influence charge reductions in Milwaukee County?



### Factors that increase the likelihood of a reduction in the number and severity of charges

- Defendant is Black (number) or Latinx
- Defendant is under 25 years old (severity)
- Defendant is in jail at disposition
- Defendant has at least one prior criminal case (number)
- Defendant is from Milwaukee City
- Case involves increase in charges from arrest to charging
- Case involves more charges
- Case has a longer time to disposition
- Case is referred from Milwaukee Police (number)
- Cases is referred to a specialized unit (number)
- Prosecutor has a larger caseload (number)
- Prosecutor has a larger felony caseload (severity)
- Prosecutor has a larger violent caseload (severity)
- Prosecutor is more experienced (number)
- Case involves change in defense attorney (severity)
- Defense attorney is more experienced (severity)



### Factors that decrease the likelihood of a reduction in the number and severity of charges

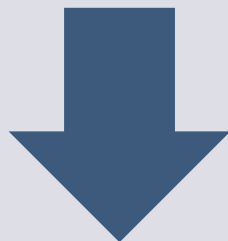
- Defendant is male (severity)
- Defendant has at least one prior criminal case (severity)
- Case involves reduction in charges from arrest to filing
- Case is referred to specialized unit (severity)
- Prosecutor has a larger caseload (severity)
- Prosecutor has a larger felony caseload (number)
- Case involves a public defender

## What factors influence charge reductions in St. Louis County?



### Factors that increase the likelihood of a reduction in the number or severity of charges

- Defendant is Latinx (number)
- Case involves more charges
- Case involves violent, sex (number), drugs (number), weapons, vehicle (number), public order (number), DWI (number), or other charge as the top charge (relative to a property charge)
- Case involves a more serious felony as the top charge (relative to a Class E Felony)



### Factors that decrease the likelihood of a reduction in the number or severity of charges

- Defendant has a longer criminal history
- Case involves a misdemeanor as the top charge (relative to a Class E Felony)
- Case has a longer time to disposition (severity)

# RACE AND GUILTY PLEA OUTCOMES

## PERSPECTIVES ON RACE

Court actors acknowledge that race plays a role in the criminal legal system, but most do not believe that the plea negotiation process contributed to racial disparities. When asked about racial disparities in the plea negotiation process, most participants did not see “any difference resulting” in plea disparities and that the recommendations “are tremendously consistent.”

### Direct Influence of Race

Some court actors described how people of color may be considered more dangerous or threatening by stakeholders, which may influence the plea process. Others noted that plea negotiations were directly influenced by race via people of color receiving harsher sentences than their white counterparts. A private defense attorney in Milwaukee County provides an example:

*I had two clients. One of them was a white, older male who had a little bit more aggravated of a case. [violent crime and he had a criminal record]. So then I had that guy, same DA. I had another case, young, Black male, in his twenties. Working a job. The white guy was working a job, too...the DA was out for blood on my young Black kid and insisting... By the way, he had no prior felonies.*

In addition, a few believed that there were clear racial disparities that manifested in certain crimes and their subsequent punishment. For example, one Milwaukee County judge explained that “race plays a role in the way that certain types of cases are resolved.” They described cases involving the carrying of a concealed weapon and the selectivity in who is offered the opportunity to participate in a diversion program. They said:

*First of all, in my court virtually everyone who's charged with a CCW offense is a young Black man, and I think that might be a virtue of policing and how individuals are policed and stopped in the city. But everyone's not offered this deferred prosecution agreement first and foremost, and particularly for operating a firearm while armed. I see a lot of elderly white men offered deferred prosecution agreements, but I don't see kind of that same thing with younger Black men...*

The eligibility criteria for the diversion program may also produce racial disparities. According to a Milwaukee prosecutor, “Sometimes there are people that might be eligible for [diversion] but for a gun crime or a violent crime on their record, even if it's like 10 or 15 years ago. I would say that tends to impact black defendants more than it does white defendants.”

### Indirect Influence of Race

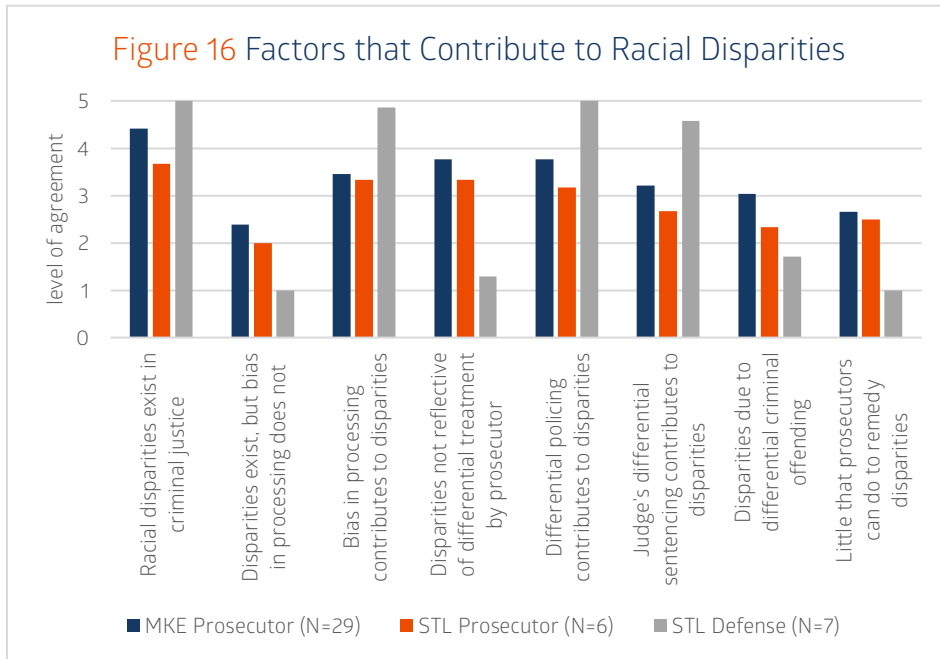
Some described how the actions of attorneys and judges, just as any person, may be reflective of implicit biases. Explaining that they have “had a lot of training” both in their office and with public defenders, one Milwaukee County prosecutor remarked that they

*[T]ry to eliminate implicit bias as much as possible. Try not to see somebody and think, oh, that's, he's a young thug, and things like that. Or if you live in this neighborhood, he must have a rough upbringing. Everybody deserves the same chance, whether they're white, Black, rich, or that type of thing. I'd say try to just eliminate your implicit biases as much as possible when you make an offer.*

A few considered implicit biases to be embedded within the criminal legal system, more broadly, which manifested in the over-policing of communities of color and their subsequent overrepresentation in the criminal legal system. For example, a public defender in St. Louis County specified, “*We all know that cops are not stopping people at equal rates. Yeah, the amount of those that are going to be arrested and issued are definitely going to be up higher, more proportionately people of color.*” Similarly, as one Milwaukee County judge explained:

*Black and Brown young men and women are having far more contact with law enforcement, which is not surprisingly resulting in police contacts and more convictions in certain populations. So, for me, if you have a deferred prosecution of early intervention program that excludes anyone who has a prior criminal conviction, you are automatically creating a program that is going to be less forgiving in certain communities, and less acceptable to people in certain communities.*

Survey results from both prosecutors’ offices and the St. Louis County public defenders’ office also indicate that differential policing tactics by law enforcement contributed to racial disparities. Respondents from all offices agreed that bias in criminal legal system processing does contribute to racial disparities, but disagreed on how this happens. Public defenders were more likely than prosecutors to suggest that this was due to differential treatment by the prosecutor, as well as differential sentencing by judges.



Others pointed to a perceived inability of some white male judges to connect with and humanize minority defendants. One Milwaukee County public defender described:

*I definitely think race is always an issue. It's absolutely always an issue. I think judges treat white people, especially white women, probably the best out of any gender and race, I think white women get treated the best. Because our judges are still predominantly white men, and I think they see them as daughters.*

Finally, some attorneys and judges perceived a relationship between the defendant's race and socioeconomic status. For example, one St. Louis County public defender noted that some "misdemeanor courts" are populated by people of color who get caught "in these cycles where he's just getting ticketed, he can't afford them, so he gets suspended, he gets revoked. He gets another ticket, he can't afford that. Soon you've got thousands of dollars worth of tickets."

Overall, participants were more likely to recognize racial disproportionality and the potential for biases to impact criminal legal decision-making than they were to identify specific areas of court processing that may be susceptible to producing racial disparities. Judges with previous defense experience and defense attorneys provided more specific examples and suggestions than did prosecutors.

### Race and the Criminal Legal System

When asked about race in the criminal legal system, system-involved individuals often pointed to individual instances of racism, but there were mixed feelings as to whether the system was "racist." There were a few system-involved people who identified differential treatment in their punishments because of race. Hailee

suggested that because she “*look[s] predominantly white, that I did not have nearly as a negative experience.*” For example, Isis, who identifies herself as a Black woman, mentioned that she felt that she was treated unfairly because of her race: “*And guess what? They're not locked up...Cause they white! Cause of they skin color! You know what I mean?*”

CJ similarly reported that because he is Black, he might not be afforded second chances in the same way a white person would:

*It always played some part, in statistics, but do I believe that you know, if you do a crime and I do a crime and you white and I'm Black then we gonna get the same time? Uh, we're not exactly the same time but I guarantee it's gonna look similar, you know. [Do] I see this inside the judicial system? Stuff like...more white boys getting treatments [treatment programs] than Black guys...getting treatments because when you get a treatment, they give you another opportunity to go do a six-month treatment...and come home rather than, like say for instance, I go to jail I go to prison for seven years.*

Bill, who identifies as a Black man, also explained that part of the unequal outcomes is connected to racialized wealth inequalities:

*When I say [the courts] don't follow the guidelines, it's a racial undertone that you have to pay attention to, and it's a prejudice on its own that you have to pay attention to because if a person is less fortunate and does not have finances or resources in this city and they happen to be a person of African ancestry or indigenous person... It's mainly the most vulnerable population that they prey on.*

The vast majority of system-involved individuals interviewed reported experiencing racism at the hands of police officers. Carlos reported that he felt “singled out” by the police when he was pulled over because he is a Hispanic man. Similarly, Guy, who identifies as white, mentioned discriminatory actions by police pulling Black people over in predominantly white neighborhoods. Guy also noted that a “*disproportionate amount of minorities...were getting a public defender,*” relative to white people, which contributed to less favorable case outcomes. These statistics are borne out to some degree in the administrative data. For example, in St. Louis County, Black people represent just over 50% of the cases reviewed by the prosecutors’ office, but are just over 60% of public defender clients; similarly, in Milwaukee County, Black people account for 62% of cases referred and 65% of public defender cases. Thus, these responses suggest that some system-involved individuals saw racism as occurring through multiple mechanisms, such as through police action or the ability to hire a private attorney.

Finally, a few system-involved individuals also made “reverse racism” arguments or responded to questions in a colorblind manner. When asked about whether he felt

like he was treated differently because of his race, John D, who identifies as a white man, responded,

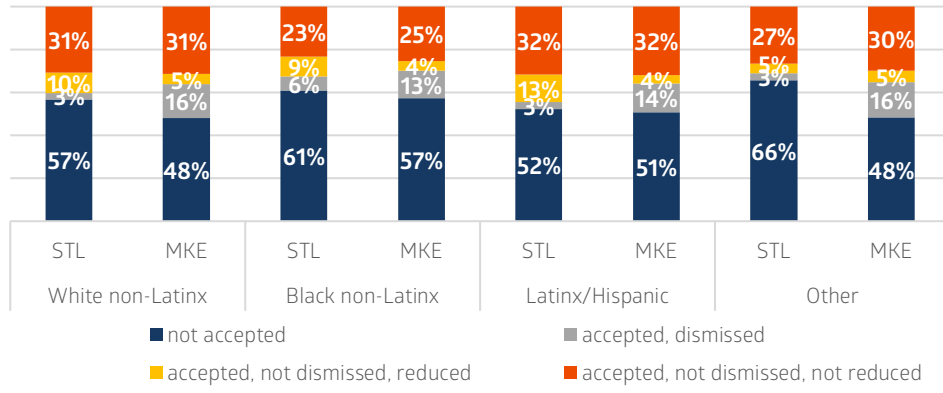
*No...I think they do everybody the same way. I think they just want their money...I can't think of them treating a Black man any worse than me? Unless they were gonna beat the crap out of 'em. I mean, that's the only further thing they can do...They don't care what color you are. They want just your money.*

## COMPOUNDING RACIAL DISADVANTAGES IN CASE OUTCOMES

To examine racial disparities in case outcomes more generally, we created combinations of outcomes and then examined racial disparities in these cumulative outcomes. We included four different outcomes that represent the prosecutorial decision-making/plea negotiation process, in order of least punitive outcome to most punitive outcome: 1) case not accepted (not prosecuted); 2) case accepted and dismissed; 3) case accepted, not dismissed, but charge severity or number of charges reduced; and 4) case accepted, not dismissed, and not reduced. To better understand cumulative racial and ethnic disparities across the prosecution process, we compared combinations of case outcomes by racial/ethnic group in both Milwaukee and St. Louis Counties (Figure 17).

Racial disparities coming into the system through arrest and booking are stark: for example, in St. Louis, two-thirds of the population is white, and about one quarter is Black, but about 45% of people arrested and booked are white, and over 55% are Black. These disparities persist to some degree through the prosecution process. Yet, in both jurisdictions, white people were more likely to receive a *more punitive* combination of case outcomes compared to Black people after arrest – in both sites, white people were more likely than Black people to have their cases accepted, not dismissed, not reduced, and result in a guilty plea. In fact, in both Milwaukee and St. Louis Counties, Black people were the most likely to receive the *least punitive* outcome (case not accepted) and the least likely to receive the *most punitive* outcome (guilty plea without a charge reduction). This may be a reflection of the cases that are coming into the system, where Black people are more likely to not only be arrested in the first place, but also to have more charges and more severe charges at screening. As such, they are more likely to have their charges not accepted in the first place, or if the prosecutor initially files charges, they are more likely to have these charges reduced during the prosecutorial process. On the other hand, several attorneys denoted that Black people were more likely to held for longer periods of time on pretrial detention, suggesting that disparities may be even greater on the front end of the system. Thus, although the prosecution process does result in more punitive combinations of case outcomes for white relative to Black people, racial disparities still persist in the criminal legal system.

Figure 17 Cumulative Disadvantage in Prosecutorial Outcomes



# REFORMING THE PLEA NEGOTIATION PROCESS

## INTRODUCTION

When asked to suggest ways to improve the plea negotiation process, many prosecutors, defense attorneys, and judges have difficulty describing specific reforms. In some instances, participants pointed to other problems in the criminal legal system – a lack of mental health services, the inadequacy or burdensomeness of diversion programs, racial disproportionality in arrests – and suggested reforms to address those issues, indicating, perhaps, the interconnectedness of plea negotiations to other parts of the system.

When participants described changes specific to the plea process, their suggestions focused on three general areas of reform: ensuring the consistency of plea offers and outcomes, improving the exchange of information about cases and defendants, and expediting the negotiation of guilty pleas.

### Consistency: Creating Guidelines for Initial Plea Offers

Many participants acknowledged the need for greater consistency or uniformity in plea offers and outcomes for similarly situated defendants. Some participants noted the lack of experience of new prosecutors or defense attorneys which created a lack of awareness of the “right” or “normal” plea offer in a typical case and, in turn, inconsistencies in outcomes. One public defender in Milwaukee County commented on the high turnover in the prosecutors’ office, creating a situation in which, *“a new prosecutor comes in, they have no idea what they’re doing, they’ve no idea what a case is worth...And so sometimes they make these offers that are just so above the norm because they don’t know.”*

Others noted that it was not just prosecutorial inexperience, but also the variability in courtroom workgroups that created inconsistencies. One prosecutor in St. Louis County noted that *“it just kind of depends on the combination of the judge that you are in front of and the prosecutor you’re dealing with, in terms of what do those two things create.”*

Many participants felt that ensuring consistency in plea offers and outcomes had to start with prosecutors, with one prosecutor in Milwaukee County commenting *“that’s something that’s all on us.”* Milwaukee prosecutors described informal guidance reinforced through training and supervisory feedback, but no formal guidelines. Therefore, one solution they discussed involved the creation of formal guidelines or lists of going rates for initial plea offers that would ensure plea negotiations started from a similar place. The basic idea was that prosecutors would be provided a list of specific crimes with an initial plea offer to present to defense



attorneys as a starting point for negotiations. As one prosecutor in Milwaukee County described it:

*if you're going to provide them more guidance with, "all right, if you have this case, this background, this age, this chart, you should be looking in this range, except for maybe if X, Y, and Z are present." I think that could be potentially helpful.*

A public defender in St. Louis County similarly noted that

*if you knew for this type of charge, if it's a first offense, then typically the recommendation will be SIS probation. Even if we knew those kind of things that would at least give some kind of help from the get go on how negotiations are going to go.*

By starting from a similar point, participants felt the final plea outcome would be more consistent.

At its base, the reform would provide prosecutors with an idea of what has been offered or accepted in other cases. One prosecutor in Milwaukee County commented that a similar service currently was available to defense attorneys in Wisconsin, providing a summary of average sentences imposed for specific crimes across the state. Although guidelines and going rates were seen as ways to eliminate inconsistencies, some suggested that they may still lead to a lack of *fairness*. While guidelines based on past practices may ensure consistent outcomes and eliminate disparities, these going rates still may not be the appropriate outcomes for cases. As one public defender in Milwaukee County noted, *"it could be a way of eliminating those disparities and individual discretion, but that assumes that the starting point is a reasonable starting point, and you can't assume that."*

Others noted the difficulty of determining how to set the guidelines, since what is often available after the resolution of a case is simply the final outcome. One stakeholder questioned, *"Would you look at what's actually given in the end by a judge on the sentence or would you look at what people were recommending?"* Indeed, many participants argued that guiding the *initial* plea offer was more important – it was the discretion of prosecutors at this point in the plea process that determined the contours of the actual outcome. As such, reforms based on guidelines or lists of going rates had to address the initial plea offer. There was also skepticism about ensuring consistency through recommended plea offers or sentences. As one judge in St. Louis County noted,

*I think plea bargaining generally speaking is an imperfect solution to an imperfect human system. I don't know any other way. I don't like the federal system where there's mandatory guidelines. I don't like that because that ties everyone's hands and it doesn't permit enough*

*flexibility...And you don't want to be forced into giving out a sentence that you don't think is right, and that's what the guidelines force you to do.*

Many participants noted the need for flexibility in plea offers and outcomes; guidelines, while helpful, could not completely determine the final outcome of a plea negotiation. Some argued that guidelines would limit the ability of courtroom actors to consider the unique circumstances of the case and the defendant. One prosecutor in Milwaukee County felt that guidelines were good to “*help people in terms of having an idea*” but that they should not be constraining on the final plea offer or outcome.

### **Individualization: Improving the Exchange of Information**

While participants emphasize the need for consistency and uniformity, they also recognize the need for individualization in plea offers and outcomes. Plea guidelines may effectively set the starting point of plea negotiations, but respondents also noted that these guidelines should not fully determine the outcome. As one prosecutor in Milwaukee County said, “*I worry, if you try and take that step back, that you're missing out on the person and their situation and their circumstances.*”

A prosecutor in St. Louis County described it as the need to understand the “whole picture”: “*My job is to understand the lay of everything going on.*” Indeed, nearly all respondents felt that plea outcomes needed to be tailored to the unique circumstances of the case and defendant, and that the best way to ensure such individualization was to improve the exchange of information between prosecution and defense.

Several prosecutors and defense attorneys felt that they did not receive mitigating information about defendants in a timely manner – information that could impact the initial plea offer. Several suggested that receiving this information early in the process could significantly change how the plea negotiation progressed. One prosecutor in Milwaukee County noted that it was not just the timely exchange of information but also “*getting people to talk about reasonable offers earlier is most important.*”

Several respondents suggested specific reforms that would improve this exchange. Judges in Milwaukee County suggested the need for prosecutors and defense attorneys to meet in person to negotiate pleas, criticizing attorneys for not presenting and discussing information before coming to court. This was specific to Milwaukee County, with one judge noting,

*Many times, the day of the hearing, the parties come in front of me, and I could tell that they just haven't talked, and they seem so far away. And I think it's so important for them to just communicate beforehand. And I think it's important for the defense to provide information to the*

*prosecutor. So they get a picture of who this person is that's coming before them.*

These were described as “plea conferences,” in which information would be exchanged and initial plea offers and counter offers would be made. As one Milwaukee County judge described it, *“they are ordered to be in conference with each other before the first pretrial hearing and make sure discovery has been exchanged, make sure an offer has been conveyed, and then actually have a meaningful discussion.”*

In Milwaukee County, a pilot project was being implemented to compel prosecutors and defense counsel to meet in a scheduled Zoom conference prior to the pre-trial hearing and *“have a meaningful conversation about the case.”* The hope was that this new practice will help resolve more cases in advance of the trial. Public defenders in Milwaukee County saw the benefit of this as well, commenting that this would help decrease acrimonious exchanges and improve everyone’s knowledge of a case. One public defender in Milwaukee County specifically noted that plea offers via email are difficult given the inability to engage and the potential for misinterpretation of tone:

*I think we need to have more in-person negotiation... I mean, I just think people get put off by perceived tone in emails in a way that if you could see somebody's face and hear them talk, you're going to have less of those...But I think there would be more give and take in person.*

Several participants also felt that involving the defendant in the plea process could improve the exchange of information. One prosecutor in St. Louis County described it as *“having the human element”* in plea negotiations and suggested a process in which the prosecutor had more interactions directly with the defendant:

*If there was a period of like, sentence mitigation or something where the defendant could, retain their right to remain silent, but also like, just talk to the prosecutor, just, you know, say, “Hey, I want to make a statement to you, I want to talk to you.” Because sometimes people are like, “Hey, I’m sorry, I won’t do it anymore.” Okay. And then sometimes people are genuinely remorseful for what they’ve done. They want to make a change and they’re seeking to, to do better.*

Defense attorneys saw the benefit of greater defendant involvement as well, not just to convey information to the prosecutor, but to better understand and contribute to the process. As one defense attorney in Milwaukee County noted,

*I think there's a real benefit, if the client is at least hearing the negotiations, being part of the negotiations...and provide input to the attorney...instead of what happens is, you go back into chambers, you talk with the judge, prosecutor secretly, and then you come out and you tell the client, either good news or bad news. And they're like, what the*

*hell happened, they don't feel part of the system. So, I think that the way the system should change, is clients need to be directly more involved.*

### **Efficiency: Expediting the Negotiation Process**

While improving the exchange of information was seen as crucial to the plea process, participants also suggested ways to expedite the process to make it more efficient. Many of these suggestions derive from changes made to the process in response to the COVID-19 pandemic, while others are a response to long-standing practices.

Several participants felt that better scheduling was necessary. One change that occurred in Milwaukee County during the pandemic involved better scheduling of plea hearings; these allowed for more efficient use of time by prosecutors and defense attorneys and could potentially lead to more meaningful exchanges. As one prosecutor in Milwaukee County noted,

*I like that now courts are now scheduling more specific times for people, not as much of a cattle call...I do, I really like that change and it's made it so I can, as attorneys, we can get more accomplished.*

The same assistant district attorney noted the benefit for defendants, arguing that providing defendants with specific times for hearings

*helps overall give us all legitimacy...As a defendant, you don't want to have to go and sit and feel like you don't matter. I think having them have a more specific time where hopefully their case is called more quickly than the old way I think is helpful and it helps people, I think, have a better sense of legitimacy and feeling like they're being treated like a person that matters and their time matters.*

Other reforms for expediting cases centered on improving the initial review of cases. Several participants argued that both prosecutors and defense attorneys had limited knowledge of cases at crucial early stages when initial charging decisions were made and when initial plea offers were set. As a result, cases that could be diverted out of the system were often charged and reasonable plea offers were often overlooked. One suggested reform focused on prosecutors spending more time screening cases – specifically to get through discovery before they charge a case – in order to better understand the circumstances of the case and, in turn, to better inform an initial plea offer. Others suggested creating committees within the public defenders' office to identify cases that could be diverted and bringing those to the prosecutors' attention; this would alleviate the burden on public defenders by getting more cases out of the system early. As one judge in St. Louis County described it,

*just the ability to be able to fast-track some cases, having someone that could do a quick analysis of whether or not someone should go into*

*treatment court, or consider other options...It just isn't happening, because for the most part you've got a group of really earnest folks that are just reacting to putting out fires all of the time because they don't have the luxury of really preparing a case in a way that they should.*

This was echoed by a public defender in St. Louis County, who similarly noted how high caseloads often limited the ability for early intervention in some cases; reforms at the front end of the process could lead to greater diversion for low-level defendants and more resources available to prosecutors, defense attorneys, and judges to address more serious cases:

*The best way to do that would be to have some kind of diversion program on the front end that doesn't involve charging and needing defense counsel...the resources that you would want to a program like that would cut my caseload down drastically, would cut the prosecutor's caseload down drastically. We'd have more time to send investigators out and get mitigating circumstances for some of our clients, because the fact of the matter is that I'm overworked and I don't have the time or the resources to get every piece of mitigating information that I can, to get the best possible deal for my client.*

Others, however, felt there was a need to slow down the process; the focus should not be on expediency but the *effectiveness* of the plea negotiation process. This sentiment was often coupled with a feeling that prosecutors, defense attorneys, and judges really did not know enough about a case to know if the plea outcome was fair. Survey results suggest that public defenders did not support increasing case efficiency (mean=2.43), compared to the support from prosecutors in Milwaukee County (mean=4.41) and St. Louis County (mean=3.20). One public defender in Milwaukee County put the onus on judges to ensure that both the prosecutor and defense attorney had thoroughly considered all aspects of the case before submitting a plea agreement:

*judges making sure that both sides have had enough time to review everything that exists in the case before having to make final decisions about the case, like a settlement agreement or a trial...I'd like to see a more detailed kind of fully informed record that the judge makes that both sides have actually like really become familiar with that. The reason why I don't think that'll happen is it'll slow down court. And I don't know where it comes from. But there's so much pressure to do things quickly in the criminal court system that makes us think that speed has no place in the criminal court system when you're talking about quality of justice.*

# CONCLUSION

While prosecutors, defense attorneys, and judges seek out more consistency in plea processes and outcomes, we find that plea outcomes in Milwaukee and St. Louis Counties are largely consistent. Variation in both the likelihood of a guilty plea and the reduction in charges as part of a guilty plea is due primarily to case level-factors – charge severity, charge type, number of charges. In addition, when prosecutors rate the importance of different factors in plea offer decision making, they overwhelmingly report the consideration of legally relevant variables, including offense severity, criminal history, and evidentiary issues. Moreover, despite racial inequalities on the front end of the system, we find few racial differences in the likelihood of a guilty plea or in the likelihood of charge reductions across the two sites after arrest. We also find little evidence of compounding disadvantage to Black defendants in either site during the prosecution and plea process; rather, we find that Black defendants are more likely to receive the least punitive outcome relative to white defendants. Thus, despite perceptions of a lack of consistency and the need for reforms to ensure consistency, analyses indicate uniform plea outcomes in both Milwaukee and St. Louis Counties.

What is interesting from the interviews with stakeholders and with system-involved individuals is the tension between consistency and individualization in plea processes and outcomes. This is evident in the calls for greater communication between prosecutors and defense attorneys and for the timely exchange of detailed information specific to the defendant's circumstances. More importantly, this is evident in the way courtroom actors talk about the need to recognize the "human element" in plea processes and in the way system-involved individuals lament their lack of involvement in the process, lack of "voice" in the outcome, and lack of connection to their attorney. Thus, more fundamental reforms to the plea process may be focused on how to ensure greater defendant involvement and defendant-specific plea outcomes, rather than ensuring greater consistency through plea "guidelines" and "going rates."

COVID-19 also has upended much of the plea negotiation process, by limiting in-person engagement among system actors and delaying outcomes for defendants. In the effort to expedite the resolution of cases backlogged due to the pandemic, much of the "human element" of the process has been absent. While many of the COVID restrictions are perceived as beneficial, their persistence after the end of the pandemic creates new tensions between the desire for efficiency and the desire for consistency *and* individualization. Disposing of a large volume of cases quickly may lead to inconsistencies as court actors treat older cases differently than newer cases or fail to recognize similarities in cases that would favor similar outcomes. In contrast, a quick resolution of cases also may lead to a lack of individual treatment as court actors issue blanket plea offers to large groups of cases or fail to recognize differences in cases that would favor different outcomes.

Overall, these tensions in the plea negotiation process may be beneficial. Justice demands both equality and equity in treatment, both consistency and individualization. And the reforms articulated by court actors and system-involved individuals recognize these dual demands – seeking greater communication, collaboration, and consideration in reaching guilty plea outcomes.

# A NOTE ON DATA AND METHODS

This report details two sets of analyses of guilty plea outcomes in Milwaukee County, Wisconsin and St. Louis County, Missouri. Although we analyze outcomes in each jurisdiction separately, we approach the analyses in a similar way. This section briefly details the data and methods used in each set of analyses. Additional information is provided in the statistical appendix.

## ADMINISTRATIVE DATA ANALYSES

### Administrative Data

The analyses of guilty plea outcomes relied on data for all cases filed in St. Louis County between January 1, 2014 and December 31, 2020 and all cases filed in Milwaukee County between January 1, 2015 and December 31, 2020. Data were obtained from official data provided by the Institute for State and Local Governance (ISLG) at the City University of New York. For Milwaukee, these data were supplemented with data obtained from the Milwaukee District Attorney's Office case management system (PROTECT) and the Wisconsin state court case management system (CCAP). Data included information on all felony and misdemeanor cases screened for prosecution in each jurisdiction during the study period, including approximately 55,000 cases in St. Louis and 100,000 cases in Milwaukee. These data provided information on defendant demographics, charges, and case outcomes.

### Outcomes

The study examines several guilty plea outcomes in each jurisdiction. The first outcome examined was whether the case resulted in a guilty plea. If any charge in a case resulted in a plea of guilty, the case was considered resolved by a guilty plea. The second outcome examined whether there was a change in charges from initial filing to disposition for cases resulting in a guilty plea. We examined changes in the number of charges in a case and changes in the severity of the top charge in a case from initial filing to case disposition.

### Statistical Analyses

The examination of guilty plea outcomes relied on a series of multivariate statistical models that isolated the influence of defendant and case characteristics on outcomes. Specifically, the analyses used logistic regression models, which estimate the effects of defendant and case factors on the odds of specific outcomes (e.g., the odds of a case resulting in a guilty plea or the odds of a reduction in the severity of the top charge in a case from initial filing to case disposition). The sections below summarize the most important results of the logistic regression models. The full results of all logistic regression models are presented in the Statistical Appendix.



## INTERVIEW AND SURVEY ANALYSES

### Interviews

Data in this study are drawn from 63 semi-structured interviews with judges, prosecutors, defense attorneys (public defenders and private attorneys), and defendants in the plea-negotiation process (whom we refer to as “system-involved individuals”) in Milwaukee County and St. Louis County. Interviews were conducted in-person, over Zoom, and over the telephone, and were handled by a research team of two graduate students and four faculty members all of whom are the authors of this report.

### Recruitment Strategy

The research team worked with the District Attorney’s office, Public Defender’s office, and Office of the Chief Judge in each county to recruit potential prosecutor, defense attorney, and judicial participants; additionally, recruitment flyers were distributed and posted at various sites (e.g., District Attorney’s office). To recruit system-involved individuals, we relied on a multi-pronged recruiting strategy. Members of the research team investigated and identified several advocacy and re-entry groups/organizations via general internet and social media searches; to reach these entities, emails and messages were sent to offer an opportunity to participate. However, recruiting during the COVID-19 pandemic created some challenges and barriers to in-person engagement with the court and reaching community members.

Guided by leading research in the courts, plea-negotiation, and sentencing literature, an interview guide was developed to cover numerous topics related to plea negotiations, including racial disparities, courtroom workgroup dynamics, and the factors that shape plea negotiations and decisions. Across the two sites, a total of 10 judges, 22 prosecutors, 17 defense attorneys, and 14 system-involved individuals were interviewed. Generally, each interview lasted approximately one hour, was audio-recorded, and transcribed both by hand and via Zoom automated transcription. Although all judges, prosecutors, and defense attorneys were eligible to participate in our study, we took several approaches to screen system-involved participants. To be eligible for inclusion at the St. Louis County site, community members had to be at least 18 years or older and have plead guilty to a case in St. Louis County within the last two years. In Milwaukee County, community members had to be at least 18 years or older and have plead guilty to a case in Milwaukee County within the last five years. Across sites, all community members received \$30 as compensation for their participation, whereas court actors were not compensated.

To begin the analysis, we created a basic tabulation of demographics that included, for example, the race and ethnicity of each participant. Similarly, we developed a codebook to define recurrent themes that emerged in the data. Drawing upon thematic coding, the identification of key passages that are related to each other by

a common theme were identified; these were categorized and further analyzed using the qualitative software Dedoose.

### Surveys

We also distributed online surveys to prosecutors and defense attorneys to supplement our analyses and received 42 responses across the two sites. We included questions covering the factors that the attorneys weigh in plea offers and in negotiation decisions, changes to court processing during COVID-19, racial disparities, attitudes about criminal behavior, and opinions about reforms to the plea process.

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- <sup>v</sup> Johnson, B., King, R., & Spohn, C. (2016). Sociolegal approaches to the study of guilty pleas and prosecution. *Annual Review of Law and Social Science*, *12*, 479-495.
- <sup>vi</sup> Kutateladze, B., Andiloro, N., & Johnson, B. D. (2016). Opening Pandora's Box: How Does Defendant Race Influence Plea Bargaining? *Justice Quarterly*, *33*(3), 398-426.
- <sup>vii</sup> Eisenstein, J., & Jacob, H. (1977). *Felony justice: An organizational analysis of criminal courts* (p. 21). Boston: Little, Brown; Ulmer, J. T., & Kramer, J. H. (1996). Court communities under sentencing guidelines: Dilemmas of formal rationality and sentencing disparity. *Criminology*, *34*(3), 383-408.
- <sup>viii</sup> Throughout this report, we use the term preferred by study participants "plea negotiation" as opposed to "plea bargaining."
- <sup>ix</sup> Schlesinger, T. (2007). Cumulative Effects of Racial Disparities in Criminal Processing, *The Journal of the Institute of Justice and International Studies*, *7*, 261; Stemen, D., & Escobar, G. (2018). Whither the prosecutor? Prosecutor and county effects on guilty plea outcomes in Wisconsin. *Justice Quarterly*, *35*(7), 1166-1194; Metcalfe, C., & Chiricos, T. (2018). Race, plea, and charge reduction: An assessment of racial disparities in the plea process. *Justice Quarterly*, *35*(2), 223-253.
- <sup>x</sup> Kutateladze, B., Andiloro, N., Johnson, B., & Spohn, C. (2014). Cumulative disadvantage: Examining racial and ethnic disparity in prosecution and sentencing. *Criminology*, *52*(3), 514-551.
- <sup>xi</sup> More information on Prosecutor Wesley Bell's platform can be found on his website - <https://www.stlouiscountyprosecutingattorney.com/wesleybell>
- <sup>xii</sup> Marsy's Law is a constitutional amendment to the Wisconsin bill of rights for victims and witnesses, statute 950. <https://docs.legis.wisconsin.gov/statutes/statutes/950.pdf>
- <sup>xiii</sup> This score is based on a Likert scale of 1 to 5, where 1 is "not at all important" and 5 is "very important," where prosecutors rated how important various factors were to them in plea negotiations. A score of 3.67 is closest to "fairly important."
- <sup>xiv</sup> In the blind plea process, the judge is asked to make a final determination of the case outcome. All other aspects of the negotiation are handled by counsel. Blind pleas can be used when a final determination on the sentence can't be reached using the traditional plea process, but the defendant and/or the attorneys do not want to go through an entire trial.
- <sup>xv</sup> Feeley, M. M. (1979). *The Process Is the Punishment: Handling Cases in a Lower Criminal Court*. New York: Russell Sage.
- <sup>xvi</sup> We examined the outcomes for all "charged cases" in Milwaukee that were disposed of between January 2016 and December 2020. "Charged cases" are those cases accepted for prosecution and formally charged by the District Attorney's Office. This does not include all cases referred to the office; we discuss the outcomes for all referred cases below. Outcomes are aggregated by disposition date.
- <sup>xvii</sup> Tracking charges from the St. Louis County Prosecuting Attorney's Office is complicated because their case management system overwrites charges if there are any changes in the charging process. While this allows us to examine how the number of charges changes from screening, to case filing, to conviction, we can only examine changes to top charges across multiple stages if the top charge is dropped across different stages. We, therefore, present both the number and severity of charges across stages with this caveat in the data.

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<sup>xviii</sup> There were two large spikes in the percent of cases with a reduction in the number of charges: in October 2017, which may reflect the changes to Missouri's criminal code, and another in March 2020 at the beginning of COVID-19.

<sup>xix</sup> Missouri's criminal code changed in 2017 to introduce the new class E level felony as a new lowest class of felony charges, along with adjusted punishments for class C and D charges.