



CITY OF TACOMA

EXAMINING DISPARITIES AND
IMPLICIT BIAS IN THE PROSECUTION
OF MISDEMEANORS IN TACOMA
MUNICIPAL COURT

UNIVERSITY OF WASHINGTON
DANIEL J. EVANS SCHOOL OF PUBLIC
POLICY AND GOVERNANCE

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LIVABLE CITY YEAR 2017–2018
IN PARTNERSHIP WITH
CITY OF TACOMA

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LIVABLE CITY YEAR 2017—2018
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ABOUT LIVABLE CITY YEAR

The University of Washington's Livable City Year (LCY) initiative enables local governments to engage UW faculty and students for one academic year to work on city-defined projects that promote local sustainability and livability goals. The program engages hundreds of students each year in high-priority projects, creating momentum on real-world challenges while enabling the students to serve and learn from communities. Partner cities benefit directly from bold and applied ideas that propel fresh thinking, improve livability for residents and invigorate city staff. Focus areas include environmental sustainability; economic viability; population health; and social equity, inclusion, and access. The program's 2017–2018 partner is the City of Tacoma; this follows a partnership with the City of Auburn in 2016–2017.

The LCY program is led by faculty directors Branden Born (Department of Urban Design and Planning), Jennifer Otten (School of Public Health) and Anne Taufen (Urban Studies Program, UW Tacoma), with support from Program Manager Teri Thomson Randall. The program was launched in 2016 in collaboration with UW Sustainability and Urban@UW, with foundational support from the Association of Washington Cities, the College of Built Environments, the Department of Urban Design and Planning, and Undergraduate Academic Affairs.

LCY is modeled after the University of Oregon's Sustainable City Year Program, and is a member of the Educational Partnerships for Innovation in Communities Network (EPIC-N), the collection of institutions that have successfully adopted this new model for community innovation and change.

For more information, contact the program at uwlcy@uw.edu.



ABOUT TACOMA

The third largest city in the state of Washington, Tacoma is a diverse, progressive, international gateway to the Pacific Rim. The port city of nearly 210,000 people has evolved considerably over the last two decades, propelled by significant development including the University of Washington Tacoma, the Tacoma Link light rail system, the restored urban waterfront of the Thea Foss Waterway, the expansions of both the MultiCare and CHI Franciscan health systems, and a significant influx of foreign direct investment in its downtown core.

Washington State's highest density of art and history museums are found in Tacoma, which is home to a flourishing creative community of writers, artists, musicians, photographers, filmmakers, chefs, entrepreneurs, and business owners who each add their unique flair to the city's vibrant commercial landscape. The iconic Tacoma Dome has endured as a high-demand venue for some of the largest names in the entertainment industry.


A magnet for families looking for affordable single-family homes in the Puget Sound area, Tacoma also draws those seeking a more urban downtown setting with competitively priced condos and apartments that feature panoramic mountain and water views. The city's natural beauty and proximity to the Puget Sound and Mount Rainier draws hikers, runners, bicyclists, and maritime enthusiasts to the area, while its lively social scene is infused with energy by thousands of students attending the University of Washington Tacoma and other academic institutions.

The City of Tacoma's strategic plan, Tacoma 2025, was adopted in January 2015 following unprecedented public participation and contribution. The plan articulates the City's core values of opportunity, equity, partnerships, and accountability, and expresses the City's deep commitment to apply these values in all of its decisions and programming. Each Livable City Year project ties into the principles and focus areas of this strategic plan. The City of Tacoma is proud of its 2017–2018 Livable City Year partnership with the University of Washington and of the opportunity this brings to its residents.



TACOMA 2025 STRATEGIC PLAN

Examining Disparities and Implicit Bias in the Prosecution of Misdemeanors in Tacoma Municipal Court project supports the Equity and Accessibility goal of the Tacoma 2025 Strategic Plan and was sponsored by the City Attorney's Office.

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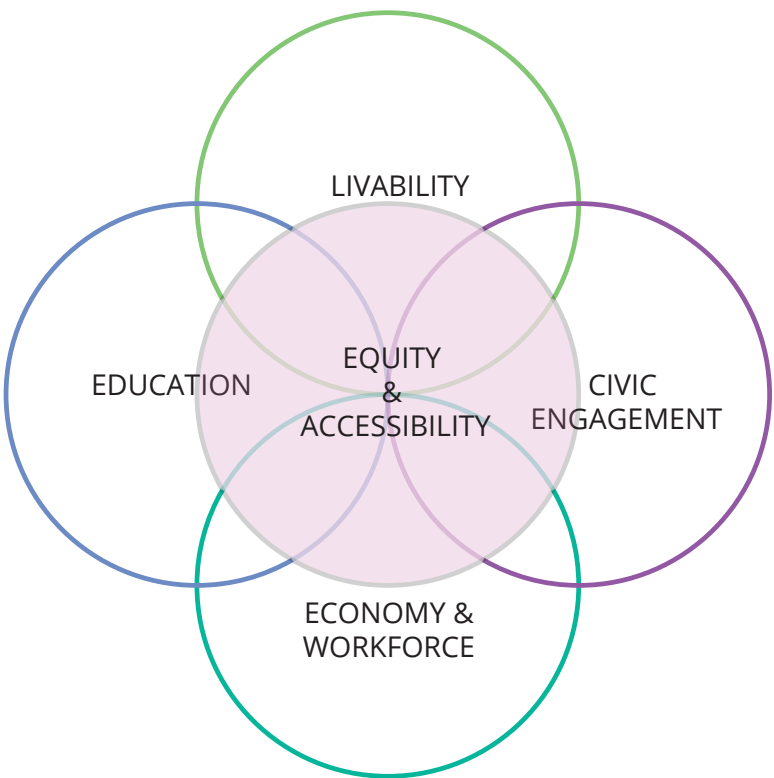
Goal #1 Livability
The City of Tacoma will be a city of choice in the region known for connected neighborhoods, accessible and efficient transportation transit options, and vibrant arts and culture. Residents will be healthy and have access to services and community amenities while maintaining affordability.
- 

Goal #2 Economy and Workforce
By 2025, Tacoma will be a growing economy where Tacoma residents can find livable wage jobs in key industry areas. Tacoma will be a place of choice for employers, professionals, and new graduates.
- 

Goal #3 Education
Tacoma will lead the region in educational attainment amongst youth and adults. In addition to producing more graduates from high school and college, more college graduates will find employment in the region. Lifelong learning and access to education will be prioritized and valued.
- 

Goal #4 Civic Engagement
Tacoma residents will be engaged participants in making Tacoma a well-run city. The leadership of the city, both elected and volunteer, will reflect the diversity of the city and residents and will fully participate in community decision-making.
- 

Goal #5 Equity and Accessibility
Tacoma will ensure that all residents are treated equitably and have access to services, facilities, and financial stability. Disaggregated data will be used to make decisions, direct funding, and develop strategies to address disparate outcomes.



RESOURCES

- Tacoma 2025 Strategic Plan:** https://www.cityoftacoma.org/tacoma_2025
- City of Tacoma Attorney's Office:** https://www.cityoftacoma.org/government/city_departments/CityAttorney
- Daniel J. Evans School of Public Policy and Governance:** <https://evans.uw.edu/>
- Livable City Year:** <https://www.washington.edu/livable-city-year/>

In fall 2017, the Tacoma City Attorney's Office contracted with the University of Washington Livable City Year (LCY) and the University of Washington Evans School of Public Policy and Governance. In particular, the City Attorney's Office sought to address disparities in sentencing outcomes occurring due to defendant race, mental health status, and socioeconomic status, and the presence of implicit bias within the court system. Racial, mental health, and socioeconomic-related disparities are well-documented in the criminal justice system and can occur at many decision points, from initial arrest to incarceration and probation for misdemeanor offenses. At the time of this report, no such research exists for the City of Tacoma.

The goals of this report are fourfold:

1. Quantify racial disparities in sentencing outcomes for misdemeanor cases in Tacoma Municipal Court
2. Examine implicit bias among prosecutors and public defenders
3. Provide an assessment of prosecutors and public defender's perceptions of racial, mental health and socioeconomic disparities and biases in Tacoma Municipal Court
4. Provide preliminary recommendations to the City Attorney's Office and the City of Tacoma that address race, mental health, and income-related disparities in addition to implicit bias in Tacoma Municipal Court

Quantitative analyses indicated that racial disparities exist for multiple sentencing outcomes in the City of Tacoma. In particular, depending on the presiding official, Native American defendants were more likely than similarly situated White defendants to incur higher fines and serve jail time, and less likely to have their fines reduced from the citation. Similarly, depending on presiding official, Black and Asian defendants were more likely than similarly situated White defendants to incur higher citations.

According to results from the Implicit Association Test (IAT) that we administered to prosecutors and public defenders, the City Attorney's Office has an overall moderate preference for distinctive White names and the Department of Assigned Counsel has an overall slight preference for distinctive White names, demonstrating that there is evidence of implicit bias within the court system. The strength of implicit bias of prosecutors and public defenders in Tacoma Municipal Court is consistent with broader patterns that have been observed nationally.

Semi-structured interviews with defense and prosecuting attorneys gave a more nuanced view of racial, mental health, and socioeconomic disparities, and biases in Tacoma Municipal Court. Attorneys in both offices reported some level of observed disparities in Tacoma Municipal Court, but on average, public defenders were more definitive about the existence of disparities and went into more detail than the prosecutors about experiences of disparities. Additionally, socioeconomic disparities were the most commonly mentioned type of disparity between the two offices, though attorneys in both offices also mentioned that they perceive these disparities to be linked with racial and mental health characteristics.

While these disparities cannot be directly linked to bias, public defenders and prosecutors spoke to the existence of microaggressions from judges in Tacoma Municipal Court and police officers in the City of Tacoma. Additionally, attorneys in both offices spoke to the cyclical nature of socioeconomic status and criminal history, and how the inability to pay for court fees and fines often leads not only to future cases, but also more severe outcomes for defendants in those future cases. Finally, individuals from the two offices identified the courtroom in which defendants find themselves, as well as varying philosophies of fairness between the attorneys and between the judges as barriers to fair outcomes. One prosecutor connected these themes when they reported that in Tacoma Municipal Court:

"[w]e're dealing with more implicit bias...I think some people can acknowledge it and some have more difficulty.... I see it more playing out about people with money versus people with none."

RECOMMENDATIONS

1. Reform Court Fees and Fines
 - Short Term: Prosecutors should consider the impact of mandated fines and fees when making charging decisions on a case-by-case basis for indigent defendants.
 - Long Term: Tacoma Municipal Court should create an evidence-based approach to recommended court fines and consider alternative approaches to court fees and fines.

2. Improving Data Collection and Increasing Data Analysis

- Short Term: Tacoma Municipal Court should improve data collection, specifically by:
 - » Collecting correct demographic information especially for Hispanic/Latino defendants
 - » Collecting data on post-disposition outcomes
 - » Collecting data on mental health and defendant income
- Short Term: Data should be made available to the public on an open source database to increase prosecutorial and judicial transparency and accountability.
- Long Term: In partnership with the Office of Equity and Human Rights, the Prosecutor's Office should conduct continued analyses measuring racial, mental health, and socioeconomic disparities.

3. Undergoing Ongoing Implicit Bias Training

- The City Attorney's Office and/or Tacoma Municipal Court should undergo ongoing implicit bias training. However, implicit bias training should only be implemented in conjunction with other recommendations. Evidence suggests implicit bias training is only effective at reducing implicit bias in the short term, and it is not clear from our findings that this will independently reduce disparities in sentencing outcomes.



Exterior of Pierce County District Court building in Tacoma, Washington. CITY OF TACOMA

“I recently experienced this [situation] where I was asking for a no contact order between the protected party and the defendant be lifted.... None of these people had any criminal history, and but one set was a White couple and the other set were a couple who were two persons of color and the only thing that I could think of that separates these two was that. The motion to modify the no contact order was granted in the instance of the White couple but not granted in the instance of the couple who were persons of color. [Because] they’re similarly situated, I have to believe that that’s a function of implicit bias.”

-- Tacoma Municipal Court Public defender

UNDERSTANDING DISPARITIES AND BIASES IN THE CRIMINAL JUSTICE SYSTEM

Disparities in criminal justice refer to differences in outcomes that are unexplainable or unjustifiable and result in unfair or disadvantaging consequences. Racial, mental health, and socioeconomic-related disparities can occur at many decision points from initial arrest to incarceration and probation for misdemeanor offenses.¹ Figure 1 shows the many decision points in the criminal justice system. For the purposes of our report, we are focusing on those that occur within the red outline.

Explicit bias, implicit bias, and laws and practices with disparate effects likely contribute to disparities in the criminal justice system.² Explicit bias refers to conscious attitudes or beliefs a person holds about others based on social category, whereas implicit bias refers to the attitudes or stereotypes that an individual holds about others that affect the understanding, reactions, and decisions regarding these individuals in an unconscious manner.³ Implicit bias is of particular importance in the prosecution of misdemeanors because there are fewer sentencing guidelines and mandatory minimum sentences for misdemeanors compared to felonies. Thus, prosecutors and judges have a significant amount of discretion in misdemeanor cases, and implicit bias likely has greater potential to influence outcomes. Everyone relies on mental shortcuts, such as past experiences or organizational norms to make decisions. For prosecutors, defense attorneys and judges, mental shortcuts in charging and sentencing decisions directly affects the lives of defendants., Critical to understanding the effect of implicit bias on

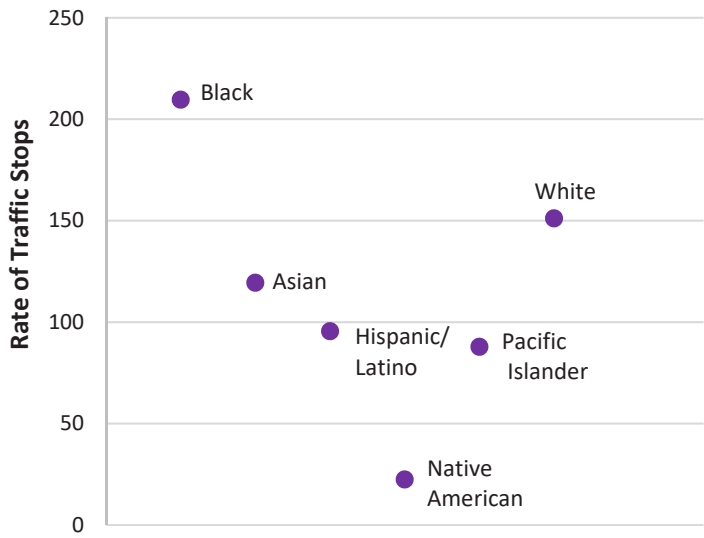
sentencing outcomes, Levinson, Cai, and Young (2010) found that people hold implicit associations between Black and guilty. The analyses in this report focus on racial, mental health, socioeconomic-related disparities, and implicit bias in misdemeanor sentencing outcomes in Tacoma Municipal Court and understanding how Tacoma Municipal Court operates in a chain of potentially disparate outcomes is critical to making effective recommendations.

OVERVIEW OF RACIAL, MENTAL HEALTH AND SOCIOECONOMIC DISPARITIES

Overall Racial Disparities

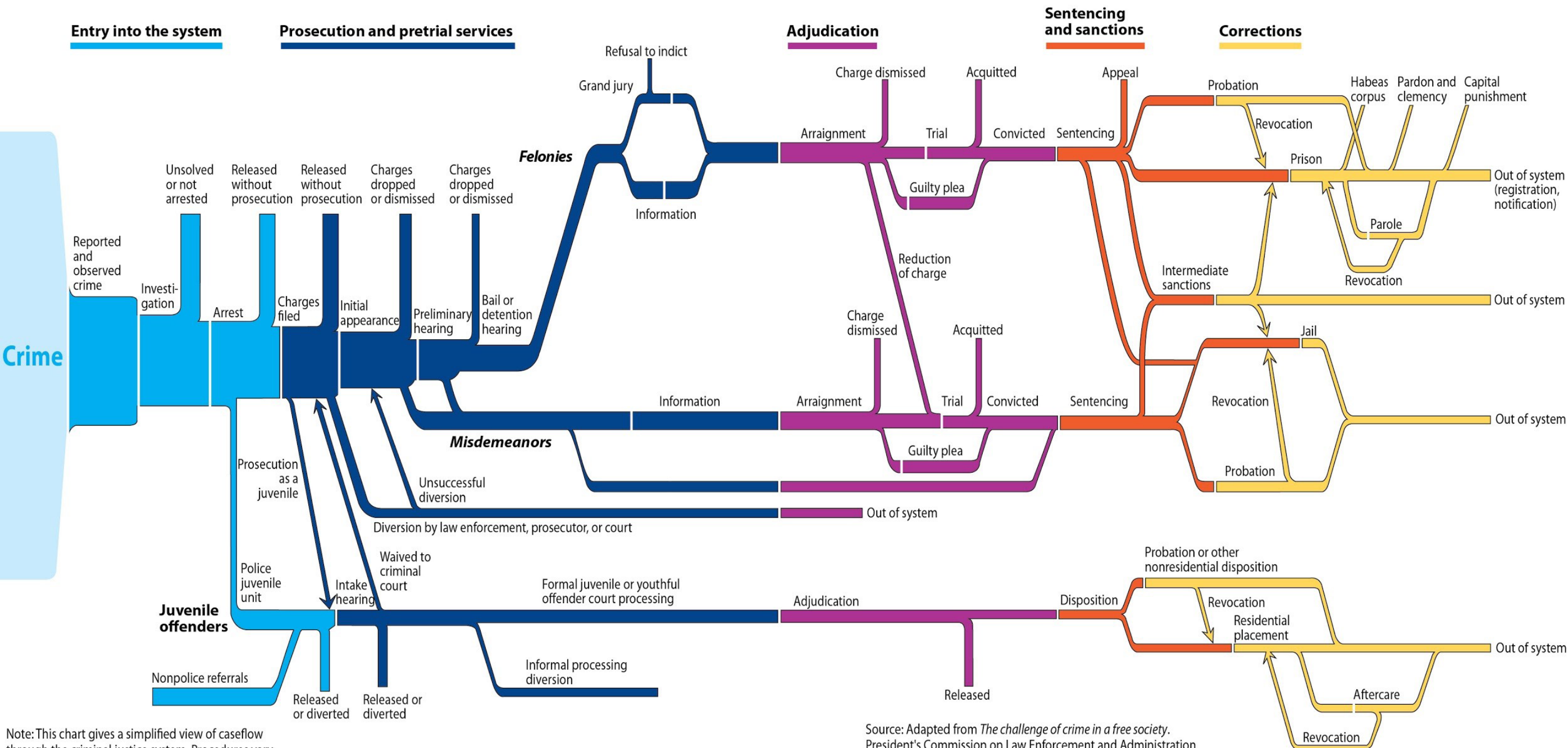
Racial disparities in the criminal justice system between White individuals and people of color have been a feature of the U.S. criminal justice system for almost as long as criminal justice records have been maintained.⁴ While racial disparities are less likely to be traced to explicit racial prejudice and discrimination than in previous decades, there remain significant disparities between White individuals and people of color, particularly Black and Hispanic individuals.⁵ Whether due to explicit court actor bias, color-blind laws which disproportionately target non-White individuals (e.g, crack cocaine penalties),⁶⁷ or implicit bias from court

Pierce County Police Stops per 1,000 Residents



Source: Adapted from Pierson E, Simoiu C, Overgoor J, et al. (2017). A large-scale analysis of racial disparities in police stops across the United States. The Stanford Open Policing Project. <https://5harad.com/papers/traffic-stops.pdf>

What is the sequence of events in the criminal justice system?



Note: This chart gives a simplified view of caseload through the criminal justice system. Procedures vary among jurisdictions. The weights of the lines are not intended to show actual size of caseloads.

Source: Adapted from *The challenge of crime in a free society*. President's Commission on Law Enforcement and Administration of Justice, 1967. This revision, a result of the Symposium on the 30th Anniversary of the President's Commission, was prepared by the Bureau of Justice Statistics in 1997.

actors, people of color are overrepresented in receiving the harshest possible outcomes in the criminal justice system.

There are racial disparities at every discretion point including police stops, pre-trial detention and bail, charges filed, and incarceration. In Pierce County, the unadjusted stop rate is higher for Black individuals and lower for Hispanic individuals in Pierce County.⁸

There are racial disparities at every discretion point including police stops, pre-trial detention and bail, charges filed, and incarceration.

Additionally, for felony cases, the odds of pre-trial detention remain about 55 percent higher and 44 percent higher for Black and Hispanic individuals, respectively when controlling for individual demographics and criminal histories.⁹ Because criminal history is partially a function of police contact, and unexplainable differences in felony sentencing may be a function of bias, it is reasonable to assume that these findings from felony cases may be applicable to misdemeanor cases as well. For charges filed, the University of Washington, commissioned by the Minority Justice Commission in King County found that from 1994-1995, Black and Native American defendants were significantly more likely to have felony charges filed.¹⁰ Additionally, Black defendants were more likely to be given a higher bail and a longer sentence, and less likely to receive a prosecution recommendation for alternative sentencing.

And, finally, the United States has the largest number of individuals incarcerated or on probation of any country.¹¹ The population of prisons and jails is overwhelmingly male and disproportionately people of color. In 2017, 91 percent of all incarcerated individuals were male, 39 percent were White, 40 percent were Black, and 19 percent were Hispanic/Latino.¹² This stands in stark contrast the general U.S population in 2017, in which 64 percent were White, 13 percent were Black, and 16 percent were Hispanic/Latino. Given the large difference in incarceration rates between Black, White, and Hispanic/Latino individuals, there has been no shortage of controversy between academics attempting to disentangle

what proportion of incarceration rates is due to *differential treatment* and what proportion is due to *differential behavior*.¹³ *Differential treatment* refers to different outcomes with the criminal justice system based on defendant characteristics, including race, socioeconomic status, and/or mental health status. *Differential behavior* proposes that some groups do commit violent and serious crimes at higher rates. In nearly every case, researchers acknowledge that both differential treatment and differential behavior explain a portion of the difference in incarceration rates. In fact, even the largest skeptics of differential treatment tend to accept that some of the disparity in incarceration due to arrest rates, particularly for drug and traffic crimes, cannot be explained by differential behavior.¹⁴

Racial Disparities in the Prosecution of Misdemeanors

While there are racial disparities at all discretion points for all offenses, disparities in the prosecution of misdemeanors are of particular importance to our study. Misdemeanors are the most common type of offense for which individuals are arrested, detained, and convicted.¹⁵ It is generally asserted that as crime severity decreases, legal discretion increases because there is comparatively less concrete criminal evidence when compared to more severe crimes.¹⁶ Additionally, prosecutors, defense attorneys, and judges have fewer sentencing guidelines leading to increased discretionary judgment.

Prosecutors have power, discretion, and the opportunity to use perceptual shorthand or stereotyping at many decision points, including charge filed, pre-trial status recommendations (detention or money bail), and plea-bargaining. In a study of 10,753 cases from the San Francisco Public Defender's Office between 2011 and 2014, Owens, Kerrison, and Santos Da Silveira (2017) found that after controlling for prior criminal history, defendants of color were convicted of more serious crimes than White defendants.¹⁷ Specifically, Black defendants were convicted of 60 percent more felony charges and 10 percent fewer misdemeanor charges than White defendants. Hispanic or Latino defendants were convicted of a similar number of felony charges, but of 10 percent more misdemeanor charges than White defendants.¹⁸ Berdejó (2017) found that in a study of 30,807 misdemeanor cases in Wisconsin over a seven-year period, White defendants facing misdemeanor charges were about 74 percent more likely than Black defendants to have all charges carrying potential jail time dropped, dismissed, or reduced.¹⁹ Additionally, Berdejó finds that White defendants with no criminal history were more likely to have

charges reduced than Black defendants who had no criminal history. Similarly, Munoz and Freng (2007) found that for misdemeanors cases in three counties in Nebraska, White males were more likely to have higher fine amounts, while males of color had harsher sentences, in addition to a fine.²⁰

Kutateladze et al. (2014) assessed racial and ethnic disparities for multiple discretionary points of prosecution and sentencing, including case acceptance, pretrial detention, case dismissal, and custodial plea offer.²¹ Kutateladze et al. (2014) used data from New York City District Attorney's Office for 20 months in 2010-2011, tracking 185,275 felony and misdemeanor criminal cases. Findings indicate that for misdemeanor cases, Asian defendants had the most lenient cumulative effect of outcomes, followed by White defendants, Latino defendants, and then Black defendants. Additionally, Black defendants were the most likely to receive the most disadvantaged combination of outcomes (i.e., being detained, case not dismissed, receiving a custodial plea offer, and being sentenced to jail).

Given the results from the above studies, we expect that there will be racial disparities in sentencing outcomes of misdemeanors in Tacoma Municipal Court. While the studies above reveal racial disparities in the prosecution of misdemeanors, they do not provide information on causal mechanisms.

Mental Health Disparities

Mental health disparities are also well documented in the criminal justice system. Jails are the largest providers of mental health care in this country.²² There are about 10 times more individuals with serious mental illness²³ in prisons and jails than there are in state mental hospitals. While mental health courts may aid in decreasing the number of individuals with serious mental illness in jails and prisons, research shows that individuals in treatment courts are generally older, White, and more likely to be female than the general incarcerated population.²⁴

Socioeconomic Disparities

In one of the first studies of its kind, Looney et al. (2018) from the Brookings Institution link federal tax records to prison release records to estimate the effect of parental income or class background on the probability of prison incarceration. Results on a national level confirm what

literature on neighborhood characteristics has indicated for years: high incarceration neighborhoods are associated with high rates of childhood poverty, single-parent households, and widespread unemployment. Boys from the lowest 10 percent of household earnings are almost 20 times more likely to be incarcerated in their late twenties to early thirties relative to boys in the top 10 percent of household earnings. There are more men in prison who grew up in the bottom 1 percent of household earnings than who grew up in the top 15 percent.²⁵ Additionally, roughly one third of all unemployed men in their thirties are incarcerated, or former prisoners.²⁶

If the vast overrepresentation of low-income individuals in prison holds for the court system overall, then it is reasonable to conclude that low-income individuals are more impacted by the imposition of uniform legal financial obligations (LFOs) than those with higher incomes. LFOs, or monetary sanctions, are the most common type of punishment imposed in the criminal justice system.²⁷ Broadly, LFOs fit into one of four categories:

- Fines, which are typically set with a maximum or minimum range determined by a legal statute;
- Restitution, which aims to direct funds from defendants compensate victims;
- Court Fees, which are administrative costs designed to fund the efficiency of the court system; and
- Surcharges and Assessments, which function similarly to court fees, but are imposed regardless of any criminal disposition, and can be imposed against any defendant regardless of the outcome.²⁸

Increased judicial discretion over the imposition of LFOs in misdemeanor sentencing means that fines for similarly situated defendants may vary by judge. Paying an LFO is a larger barrier for low-income individuals. As low-income individuals are more likely to have untreated mental illness and, in Tacoma, are more likely to be people of color, variation in LFOs between judges may inadvertently compound other disparities in sentencing outcomes.

Summary of Disparities

People of color are more likely to be low-income, are more likely to be stopped by the police, and are less likely to receive a referral to a sentencing alternative. Additionally, for those who would benefit from treatment, numerous barriers to behavioral health care for racial and

ethnic minorities continue to be unaddressed. At any point during contact with the criminal justice system, one or more of these factors can lead to an outcome in which the severity of a sentence is not dictated by the defendant's crime, but rather is an inadvertent effect of their race, mental health or socioeconomic status.

IMPLICIT BIAS IN COURT

Implicit bias occurs when an individual's thoughts and perceptions unconsciously affect their judgment and attitude toward others.²⁹ Research on implicit bias since the late 1990s has shown that a majority of individuals have negative implicit attitudes toward Black individuals, and other socially marginalized groups.³⁰ Implicit biases occur without an individual's awareness and are often inconsistent with their self-reported values.³¹ Researchers who have used the Race IAT, in which participants quickly pair pictures of Black faces with positive words in one task, and pair Black faces with negative words in a second task, have found that the most individuals have negative implicit associations and stereotypes towards Black individuals. Additionally, critical to understanding the effect on sentencing outcomes, Levinson, Cai, and Young (2010) found that people hold implicit associations between Black and guilty.³²

Research on implicit bias since the late 1990s has shown that a majority of individuals have negative implicit attitudes toward Black individuals, and other socially marginalized groups.

Implicit bias manifests through a phenomenon known as “priming.” Priming occurs when an individual's stereotypes about other groups are activated by situational context.³³ Thus, priming might account for the fact that racial stereotypes influence prosecutorial decisions even without direct contact with defendants.³⁴ Implicit bias may also affect sentencing outcomes via “anchoring effects,” or perceptions and beliefs that prevent an individual from modifying their view. Anchoring effects occur when individuals are exposed to information that increase or decrease their own personal judgments. For example, individuals may use an arbitrary number as an anchor from which to make their own guess

or determination. Research shows that asking someone whether they think a percentage is higher or lower than an arbitrary number will yield a different result than simply asking them for a percentage.³⁵

Everyone relies on mental shortcuts, such as past experiences or organizational norms to make decisions. For judges, defense attorneys and prosecutors, mental shortcuts in charging and sentencing decisions directly affects the lives of defendants.^{36, 37}

Implicit biases occur without an individual's awareness and are often inconsistent with their self-reported values.

TACOMA MUNICIPAL COURT

Key Actors in Tacoma Municipal Court

The Tacoma Municipal Court is an independent and impartial branch of the city government. It's mission is “to promote respect for law, society and individual rights; provide open, accessible and effective forums for dispute resolution; resolve legal matters in a just, efficient and timely manner and assure the dignified and fair treatment of all parties.”³⁸ The Municipal Court hears traffic and non-traffic infractions, criminal and criminal-traffic misdemeanors, and gross misdemeanors. There are three elected judges and two commissioners in the Municipal Court. According to court actors, typically, Judge David Ladenburg hears domestic violence cases in Department 1; trespass, Judge Drew Henke hears theft and other various misdemeanors in Department 2; and Judge Verhey hears driving violations such as driving under the influence are heard in Department 3. Department 3 also has a mental health docket every week for individuals who are found not competent to stand trial. Due to judicial turnover during our study period (2012-2017), we include data from four judges and two commissioners. In the results section, all judges and commissioners are referred to by randomized numbers 1 through 4 and 1 through 2.

The City Attorney's Prosecution division is responsible for prosecuting infractions and misdemeanor violations of City criminal codes.³⁹ There

are six full-time attorneys and two part-time attorneys in the Prosecution division. According to the Supervisor of the Prosecution Division, there have been policy and resource changes in the last five years that have affected the prosecution of misdemeanors. Those include: legalization of marijuana; restriction of a police officer's ability to search a vehicle of an individual stopped for driving without a license in the third degree; and a decrease in individuals arrested and misdemeanor cases tried due to limited attorneys, police officers, and jail space. Currently, approximately 10 misdemeanors cases go to trial per year. This has decreased from five years ago, when approximately 50 cases would go to trial per year.⁴⁰ (There were about 25 misdemeanors charges filed in Tacoma per 1,000 residents in 2016.⁴¹)

The Department of Assigned Counsel (DAC) delivers mandated legal services to indigent individuals, or those who meet 125 percent of the federal poverty guidelines.^{42, 43} The DAC works in the Tacoma Municipal Court, Pierce County Superior Court, Pierce County District Court, Gig Harbor, Fircrest, Ruston, and Pierce County Juvenile Court. There are 25 attorneys who work in the Tacoma Municipal Court.

RESEARCH GOALS AND QUESTIONS

The purpose of this report is to provide information on disparities in misdemeanor cases, prosecutor and public defender perceptions of the causes of disparities, and the extent to which implicit bias influences outcomes in Tacoma Municipal Court. Our goals are to present:

- 1. A summary of available literature on racial, mental health and socioeconomic disparities in the criminal justice system.
- 2. Quantitative analyses of racial disparities for misdemeanor sentencing outcomes in Tacoma Municipal Court.
- 3. Qualitative interviews of prosecutors and public defenders examining perceptions of racial, mental health, and socioeconomic-related disparities and biases in Tacoma Municipal Court.
- 4. Quantitative analysis of implicit bias among prosecutors and public defenders using the race implicit association test (IAT).
- 5. Recommendations for the City Attorney's Office and the City of Tacoma to reduce disparities in Tacoma Municipal Court.

To address these goals, we answer the following research questions throughout this report:

Measuring Racial Disparities in Sentencing

- Were people of color more likely to be charged with a higher number of charges per case?
- Were people of color more likely to experience a change between charges filed and charged sentenced from 2012-2017?
- Were people of color more likely to receive a guilty conviction for a charge from 2012-2017?
- Were people of color more likely to incur higher fines or fees associated with charges in Tacoma Municipal Court from 2012-2017?
- Were people of color more likely to incur longer sentences if sentenced to a crime from 2012-2017?

Measuring Implicit Bias

- To what extent do prosecutors and public defenders in Tacoma Municipal Court exhibit implicit racial bias in 2018?

Assessing Perceptions of Disparities and Biases

- What are prosecutors' and public defenders' perceptions of racial, mental health, and socioeconomic-related disparities?
- What are prosecutors' and public defenders' perceptions of the presence and sources of biases in misdemeanor cases?
- What are barriers to achieving 'fair' charging, sentencing, and post-disposition outcomes from the perspective of prosecutors and public defenders?

MEASURING RACIAL DISPARITIES IN TACOMA MUNICIPAL COURT

The City Attorney's Office had requested that we also assess disparities related to defendant mental health and defendant socioeconomic status. However, this information is not systematically tracked in Pierce County's case management system. In lieu of quantitative analysis, we relied on qualitative semi-structured interviews with the Tacoma City Attorney's Office Prosecution division and Pierce County public defenders who work in Tacoma Municipal Court to explore perceptions of disparities due to mental health and socioeconomic status. While we could not specifically assess defendant socioeconomic status, we were able to assess original citation amounts and fines due at sentencing. Understanding the change between these two points and the average fine incurred to an individual provides some initial guidance in understanding how fines and fees function in Tacoma Municipal Court.

To assess racial disparities in Tacoma Municipal Court, we relied on a combination of data from the Tacoma Municipal case management system and criminal history data shared from the Washington State Administrative Office of the Courts (AOC). Tacoma Municipal Court uses a case management system that is shared by all courts in Pierce County.

The case management system does not track data related to criminal history. However, this dataset did allow us to control for the number of times an individual appears in Tacoma Municipal Court. Number of prior cases has been used as a proxy for criminal history in a previous study.⁴⁴ To obtain additional information on case histories for all other courts in Washington State, we filed case history requests with the AOC for every unique individual with a case in Tacoma Municipal Court between 2012 and 2016. From here, we aggregated felony and misdemeanor charges by disposition for every case for every individual.

We combined case histories from AOC with a running total of cases per person in Tacoma Municipal Court to create a rigorous control for criminal history. Specifically, we use two variables: 1) the sum of felony and misdemeanor charges by disposition of charge per defendant at time *t* of their case in Tacoma Municipal Court; and 2) the running total of number of Tacoma Municipal court cases per unique defendant at time *t* of their case in Tacoma Municipal Court.

We use a combination of data from Tacoma Municipal Court and case history data from the AOC to perform regression analyses on the following nine outcomes:

- The likelihood of being sentenced to jail for a relevant case
- The difference in incarceration length for those sentenced to jail
- The number of charges per case
- The likelihood of having a charge dismissed or deferred
- The likelihood of having a charge amended to a lesser charge
- The likelihood of being found guilty of a charge
- The difference in citation quantity (in dollars)
- The likelihood of having sentenced fines and fees reduced from citation quantity
- The difference in fines and fees sentenced (in dollars)

For each regression model, we began by assessing the goodness of fit.⁴⁵ We began by fitting the regression model with no variable indicating race. Next, we introduced a new model that incorporates race and perform either *F tests* or *Likelihood Ratio Tests* to test that models are significantly different from each other.⁴⁶ Finally, we introduced a model, which tests the interaction effect between defendant race and presiding official, and performed the relevant statistical analysis to confirm if the models were significantly different.

The comparison between the model with no race, and the model with race with a fixed effect for judge determined whether race alters outcomes in Municipal Court. The comparisons between the model using race and the model using an interaction effect of defendant race and presiding official determined the effect of defendant race based on which presiding official heard the case. This is a particularly critical piece of our analysis as we have been asked to assess implicit bias. While the interaction effect does not allow for us to control for implicit bias, understanding the effect of the interaction between defendant race and a presiding official allows us to determine the extent to which disparities occur at the level of presiding official.

To assess the differences in quantity of fines and fees and length of incarceration, we used ordinary least squares (OLS) linear regression models.⁴⁷ To assess the probability of fines being increased or decreased, of defendants receiving a guilty conviction, of an amended conviction, or of a deferred conviction, we utilized binomial logistic regression models.⁴⁸ To assess the number of charges per case, we used a Poisson model⁴⁹

to correctly adjust for the variance in a “count” data structure.⁵⁰ In all cases, we tested results against the hypothesis that differences are a function of unobserved differences in case features not captured by the administrative data. All calculations were performed in R Studio version 1.0.153.

In cases related to charge disposition, we used a model that controls for the disposition of the charge at the *charge* level. This is important because within one case a defendant can have multiple dispositions per charge. Every observation in the data set corresponds to a unique charge per case per person.

For more information on the specific regression models utilized in our analysis see the full report on the University of Washington Evans School website.

In all models we control for “charge type”, which refers to an assessment by the team of the ‘type’ of the charge filed against a defendant. For case level outcomes, charges by type are aggregating by the number of charges filed or the dispositions of charges filed depending on the outcome assess. For example, when assessing the probability of being sentenced to jail, it is critical that we control for guilty charges by type. In contrast, when assessing citation amounts, in order to correctly model that case at time of issuing a citation, we instead only control for number of charges by type. See Appendix 2 for more information on charges by ‘type’ of charge.

In all models we included a fixed effect for the specific presiding official (four Judges and two Commissioners) to adjust the mean estimate our outcomes based on potential variation caused by the presiding official. There are three judges and two commissioners in Tacoma Municipal Court. One judge retired and another was elected during our study period (2012-2016), so our analysis included four judges. Given the large amount of discretion a presiding official has over sentencing outcomes in Tacoma Municipal Court, our models adjust for the effects of individual presiding judge or commissioner. In all cases, Judges and Commissioners are identified by randomized titles, such as “Judge 1” or “Commissioner 2.” These do not correspond to department numbers in Tacoma Municipal Court.

Sensitivity Analysis

Reports from the internal stakeholders suggested that certain charges may be correlated with specific judges. Furthermore, some charges carry mandatory sentences. While the use of a fixed effect for presiding official in our primary analysis adjusts our mean estimates for the overall difference in presiding official, this does not correctly adjust for difference in variance between officials. This is critical, as failing to adjust for this variance may bias the standard errors for our coefficients of race, leading us to draw incorrect conclusions about the significance of the effect of race or the interaction of race with presiding official on a given outcome. To control for the clustering, we used a generalized estimating equation model that assessed the effects of clustering⁵¹ and adjusts the variance in our models accordingly.

MEASURING IMPLICIT BIAS

To measure the extent to which prosecutors and public defenders in Tacoma Municipal Court in 2018 exhibit implicit bias, we administered the Implicit Association Test (IAT) Race Test to eight prosecutors and eight public defenders. Our IAT measured the relative strength of automatic associations by presenting distinctive White names and distinctive Black names and positive and negative words. We chose to test associations based on name rather than face as both prosecutors and public defenders indicated that significant decisions regarding defendants occurs prior to any face-to-face interaction.

We used PsyToolkit to create a web-based Race IAT.^{52,53} Stimuli consisted of good and bad words validated by the creators of the IAT,⁵⁴ and distinctive White and Black first names validated by authors of a labor market study.^{55,56} The IAT consisted of five blocks, of which three were practice blocks where one category (names or good/bad words) was shown, and two were test blocks in which both categories were shown at the same time. One test block showed distinctive White names and good words on one side and distinctive Black names with bad words on the other, and one test block showed distinctive Black names and good words on one side and distinctive White names and bad words on the other. The test blocks were used in our analysis. Participants sorted the stimulus (White or Black names and good or bad words) as quickly as possible by pressing the “E” or “I” keys, which represented left and right sides of the computer screen respectively.

We then used R Studio version 1.0.153 to calculate overall D-scores for the Prosecution Division and the Department of Assigned Counsel, as well as individual D-scores for individuals working in each office.⁵⁷ D-scores are bounded by -2 and 2 and represent the strength of automatic associations between White and Black names and good and bad words. The strength of the attitude (or the D-score) is the difference in response speed between an individual pairing a Black name or White name with a negative word and a Black name or White name with a positive word. A negative D-score represents faster sorting of Black names with good, and a positive score represents faster sorting of White names with good.

ASSESSING PERCEPTIONS OF BIAS AND DISPARITIES IN TACOMA MUNICIPAL COURT

We conducted qualitative semi-structured interviews with prosecutors and public defenders to assess perceptions of disparities and bias related to race, mental health, and socioeconomic status in court proceedings. Specifically, we interviewed all eight prosecutors in the City Attorney’s Office and nine attorneys in the Department of Assigned Counsel who are assigned to Tacoma Municipal Court between February 2018 and April 2018. Interviews lasted from 20 minutes to one hour. The interview protocol was piloted with the Supervisor of the Prosecution Division to verify the efficacy of the questions. See Appendix 1 for the semi-structured interview questionnaire.

All interviews were recorded and transcribed. To ensure consistent analysis across interviews and team members, we used NVivo 11 to identify themes in two of the interviews, one with a prosecutor and one with a public defender. We assessed intercoder reliability to ensure consistency of themes across team members (*Kappa coefficient* = 0.73, “Good”). We then constructed a “master codebook” that listed the common themes to identify in the remaining interviews. From here, we identified themes across all interviews and used the responses to inform our research questions.



Source: ST. LOUIS CIRCUIT ATTORNEY’S OFFICE

MEASURING RACIAL DISPARITIES IN TACOMA MUNICIPAL COURT

Descriptive Sample Characteristics

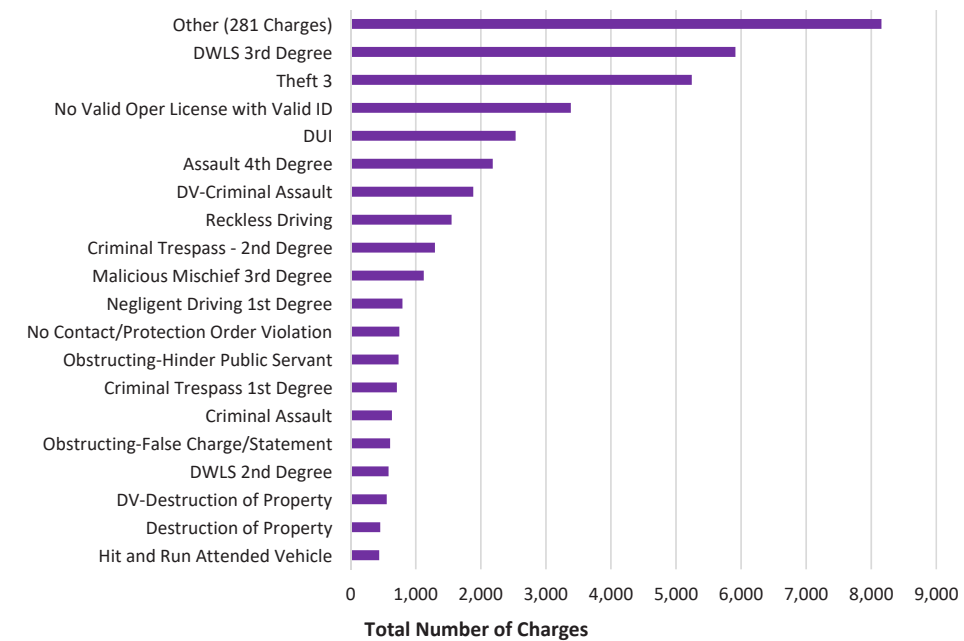
Between 2012 and 2017, 17,812 Tacoma residents were charged with one or more misdemeanors. Of these 17,812 charged individuals, approximately 1,965 represent individuals who had never been arraigned for a charge or citation in Tacoma, or whose case was filed prior to 2012. The data as given did not allow us to identify the reason that a case was missing a disposition. The database administrator indicated that these cases with no dispositions were either at-large, transferred to a different court, or cases that the prosecutor did not intend to bring forward. Therefore, we narrowed our analysis to only cases with dispositions in Tacoma Municipal Court, accounting for 15,847 unique people, representing 22,179 unique cases and 32,721 misdemeanor charges filed in the City of Tacoma between 2012 and 2017.

Of the 32,721 charges filed, there were 301 unique charges. Despite the range of charges, approximately 80 percent of all charges filed were for one of the top twenty charges. More than half of all charges filed were for the top ten charges. For a complete list of all 301 charges in our data set and their corresponding quantity of charges filed, see the full report on the University of Washington Evans School website.

Men represent about 71 percent of the subset of charges for which jail time was a possible outcome, and 70 percent of all charges in general. This is in contrast to incarceration statistics in which men account for 93 percent of all inmates.⁵⁸ The overrepresentation of men in the criminal justice system is not within the scope of this report. However, the relatively large share of the caseload by women underscores the need to control for gender in our analyses.

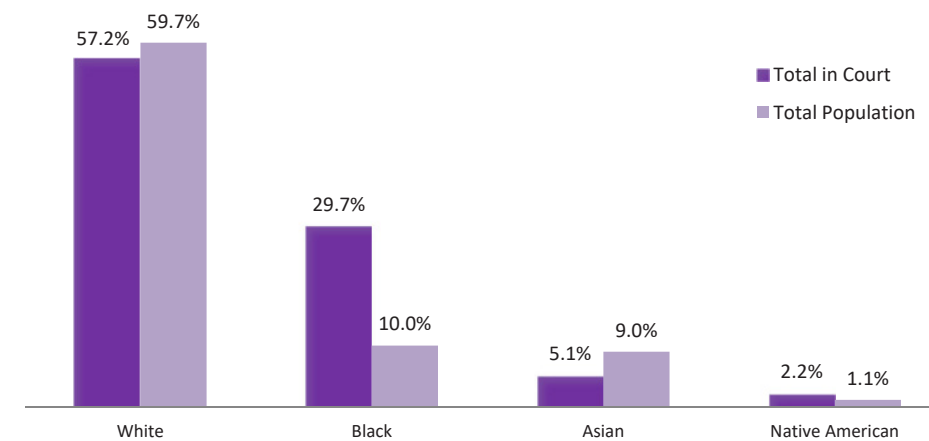
While the Tacoma Municipal case management system does track ethnicity, data seem to be missing at random, and we did not believe that the court accurately and consistently reports the Hispanic status of the sample. Ethnicity in the system indicates that 9.05 percent of the sample is 'Non-Hispanic', 4 percent are 'Hispanic', and 79.93 percent are 'Missing.' Thus, we omitted the use of defendant ethnicity in our analysis. Figure 8 shows the percent of defendants in Tacoma Municipal Court by race.

Top 20 Charges Filed (2012-2017)



Source: Tacoma Municipal Court Database Extract, 2012-2017. Count of top 20 charges filed.

Population of Caseload (2012-2017) vs. Population of Tacoma (2016)



Source: Tacoma Municipal Court Database Extract, 2012-2017, Cases by Race. and Data Access and Dissemination Systems (DADS). (2016). American Community Survey. Retrieved February 21, 2018, from https://factfinder.census.gov/faces/nav/jsf/pages/community_facts.xhtml

Significant overrepresentation of Black residents occurs in Tacoma Municipal Court prior to any involvement with the court. Assessing the total number of individuals with at least one case during the study period gave a conservative estimate of the rate of misdemeanor charges by race in Tacoma Municipal Court district.⁵⁹ The results indicated that Black residents are about three times as likely to incur a misdemeanor charge as White residents.

Evaluating whether or not disparities exist for a group within the criminal justice system requires an understanding of the differences in representation of that group, their outcomes, and the characteristics, such as criminal history, which we think might influence sentencing outcomes. Summary statistics indicated that average fine, jail, and prior offenses vary by sex and racial group in Tacoma.

For all racial groups, the most common charge sentenced was Theft 3rd Degree. While there are more Driving with a License Suspended in the 3rd Degree (DWLS 3rd) charges filed, about 58 percent of these charges were amended to lesser charges. By contrast, only two percent of Theft 3 charges were amended.

For Black and Native American defendants the median previous guilty felony conviction was one, and for White and Asian defendants it was zero. Criminal history data was heavily skewed by a relatively small number of individuals with very large numbers of previous charges. For prior felony charges, about 80 percent of defendants had less than two previous guilty felony charges at the time of their Tacoma Municipal Court case. Misdemeanor charges varied much more between racial groups. For example, the interquartile range, or middle 50 percent, for previous guilty misdemeanor charges for White defendants was 0 to 13, compared to 0 to 8 for Asian defendants and 0 to 26 for Native American defendants. Furthermore, for every racial group, a small number of individuals had accrued over 10 previous felony convictions (*n*=353) and some had over a 100 previous guilty misdemeanor charges (*n*=80).

Fines and jail time are also skewed. In 52 percent of cases, fines were reduced to \$0 negatively biasing average fines paid for all groups. In cases where defendants were sentenced to pay a fine, fines ranged from \$40.99 to \$6,682. In about 60 percent of cases for which jail was possible, the defendant was not sentenced to jail. About 30 percent of cases

Table 3. Defendant Summary Statistics by Race and Gender⁸¹

Demographics	Number of Defendants	Median Age (years)	Median Fine (dollars) ⁷⁹	Median Prior Guilty Felonies	Median Prior Guilty Misdemeanors	Percent Violent Charges ⁸⁰
White	12,424	36	343	0	4	21.68%
Asian	1,066	33	343	0	2	28.42%
Black	7,170	34	300	1	5	27.46%
Native American	572	34	343	1	11	18.01%
Male	15,583	35	343	0	6	26.12%
Female	6,596	34	300	0	3	17.47%

were sentenced to the maximum sentence of one year, and most of the remaining 10 percent were sentenced to 90 day sentences.

REGRESSION RESULTS

In this analysis, we used a combination of binomial logistic, Quasi-Poisson, and ordinary least squares (OLS) regression models to assess the effect of defendant race and the interaction between defendant race and presiding official. In every case we controlled for defendants’ prior felony and misdemeanor charges by disposition as well as by the number of cases a defendant had within Tacoma Municipal Court at the time of their case during the study period (2012-2017). Additionally, we controlled for type of charges filed in the unique case and, when relevant, the associated dispositions by types of charge. For information regarding how charges were categorized, see the Methods section and/or the full report on the University of Washington Evans School Website.

In every case, we began our analysis by performing either a likelihood ratio or F test comparing the results of a model that does not utilize race to a model utilizing race and a model utilizing the interaction effect of race and presiding official. If the appropriate test confirmed that the models were significantly different we reported the effects of the most advanced model, i.e. the race and interaction effect model. In very few instances there was no significant difference between the model using race and the model using the interaction effect. For these cases, we only reported

the results of the race model. In an even smaller number of cases, there is no significant difference between the model using race and the model without race. In these cases we also performed the relevant test against the interaction effect model. If neither the model utilizing race nor the model utilizing the interaction effect were significantly different from the model without race, we did not report the results.

Results shown in this section are statistically significant coefficients of defendant race for a given outcome and the interaction effects between defendant race and presiding official. All regression results in this section are shown in either the odds ratio⁶⁰ of a predicted outcome or the relevant unit of that outcome, such as dollars for fines and days sentenced for jail. For all of our analyses, White defendants served as the referent category. Similarly, for all officials, “pro tem”⁶¹ or temporary judge was used as the referent category. Therefore, results show outcomes for defendant race as compared to White defendants and the interaction of defendant race and a given official compared to the interaction of race a random or substituting official.

For complete regression outputs, see the full report on the University of Washington Evans School website.

Incarceration Results

Likelihood of Jail Time

We tested the effect of race on likelihood of a receiving of a jail sentence for a crime for which jail was an option, when controlling for charge dispositions within the case, criminal history, presiding official, and defendant gender and age. Table 4 shows the coefficients for race from the interaction effect model. For likelihood of jail time served, likelihood ratios tests between the model with race and no race was significant ($df^{62} = 10.78$, $deviance = 10.78$, $p < 0.05$) and the interaction effect of race and official was significant ($df = 28$, $deviance = 64,324$, $p < 0.0001$). Because the interaction effect model was found to be significantly different from the race model, we can conclude the coefficients of the interaction effect model better fit the data.

The model utilizing interaction effects between defendant race and presiding official indicates that **Native American defendants are significantly more likely to be sentenced to jail compared to similarly situated White defendants with a case seen by Judge 1.**

Table 4. Likelihood of being Sentenced to Jail by Defendant Race and Presiding Official

Coefficient ⁸²	Odds Ratio of Jail Sentence	p
Judge 1 * Native American	7.59** ⁸³	<0.00
Comm 2 * Native American	0.24	0.06

Sentence Length

Initially, we performed OLS linear regressions on the length of the jail sentence imposed on a defendant for which jail was a potential outcome of their case. *F tests* indicated no significant difference between results of the model utilizing no race and the mode utilizing race ($df = 4$, $p > 0.1$). However, *F tests* indicated significant differences in the model utilizing the interaction of race and presiding official ($df = 32$, $p < 0.05$). Results for these regressions indicated that Black defendants who saw Judge 4 were likely to receive a sentence which was about 17 days longer than a similarly situated White defendant.

As it may be possible that our results are skewed by the difference in probability of being sentenced to any jail time, we performed additional OLS linear regressions assessing changes in sentence length *only among those who had be sentenced to any jail time*. Like our previous analysis, *F tests* confirmed that the model utilizing race was significantly different from the model without race, ($df = 4$, $p < 0.01$). In contrast to our previous results, *F tests* found no significant difference between the model using race and the model using the interaction effect ($df = 28$, $p > 0.05$).

For the model utilizing race and assessing sentence length *among those sentenced to jail*, we find that both Black and Asian defendants receive marginally shorter sentences than similarly situated White defendants. Specifically, we find that Asian defendants serve about 18 days less than similarly situated White defendants ($p < 0.01$) and Black defendants serve about 5 days less than similarly situated White defendants ($p < 0.05$). However, these results may be misleading considering the number of cases in which the maximum sentence is imposed causing a skew in the data.

In fact, overwhelmingly defendants sentenced to jail received the maximum sentence of one year. About 73 percent of the 5,436 cases in

which a jail sentence was imposed received the maximum sentence of one year. From here, almost 27 percent of the remaining cases imposed 90 days sentences, with less than 1 percent of observations imposing sentences fewer than 90 days. In other words, combined sentences of one year and 90 days account for about 99 percent of all jail sentences imposed.

To more accurately estimate difference in sentence length, we ran two nested binomial logistic regressions, assessing the probability of receiving a sentence of 90 days or one year. *Likelihood ratio tests* for the models assessing the *likelihood of receiving a yearlong sentence* confirmed there was a significant difference between the model utilizing race and the model without ($df = 4$, $deviance = 16.52$, $p < 0.01$), though there was no difference between the model utilizing race and the interaction effect model ($df = 28$, $p > 0.39$, respectively). For the likelihood of receiving a yearlong sentence, we find that Asian defendants have an odds ratio about 0.57 ($p < 0.05$) and Black defendants have an odds ratio of about 0.79 ($p < 0.05$). See Figure 10 for a summary of these results.

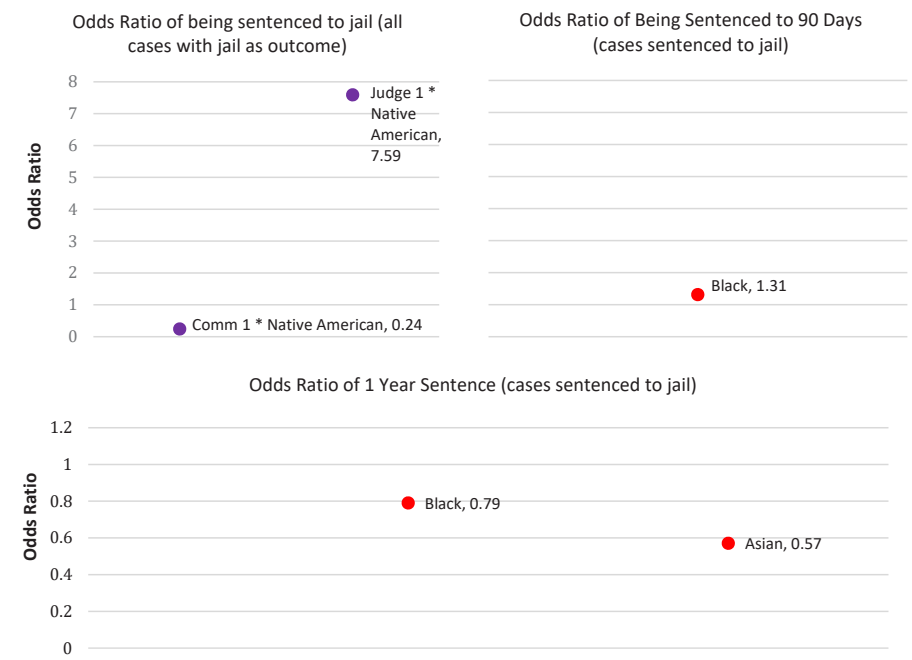
In contrast, *likelihood ratio tests* for the probability of receiving a 90 day sentence indicated that there was a significant difference in the model without race and the model utilizing race ($df = 4$, $deviance = 17.94$, $p < 0.01$). There was no significant difference between the model utilizing race and the interaction effect model ($df = 28$, $deviance = 28.54$, $p > 0.4$). In the case of the model utilizing race, Black defendants have odds ratios of about 1.54 to White defendants of receiving a day 90 day ($p = 0.04$). This suggests that in cases in which a year was not an appropriate sentence length, Black defendants may have greater odds than similarly situated White defendants for a longer sentence. Figure xx summarizes significant results for this section.

Charge Level Results

Analyzing Number of Charges per Case

The number of charges in a given case is based on the police report and prosecutor’s discretion. All cases consist of multiple charges filed per case prior to a defendant’s interaction with a presiding official. In these models, we controlled for defendant criminal history and demographics, and assessed the effect of race and the interaction between race and presiding official on the number of charges filed. Total charges filed per

Jail Regression Results



Source: Logistic Regression Analyses of Tacoma Municipal Court Database Extract, 2012-2017.

case range from 1 to 27. The median number of charges filed was 2, meaning that about half of all cases involved only one charge, and about half of all cases involved more than two charges. Only 11 percent of cases involved more than three charges.

Unlike our other models, number of charges filed is “count”⁶³ data, which theoretically has no upper limit. Therefore, we used a Poisson regression model, which appropriately accounted for the variance in count data. As with every other model, we began with a nested structure, first assessing whether incorporating defendant race produced a model that is significantly different from a model with no race, and then assessing if the interaction with defendant race and presiding official is significantly different. Here, F tests confirmed that both models utilizing race and the interaction of race and official are statistically significant ($df = 4$, $deviance = 281.75$, $p < 0.00$ and $df = 24$, $deviance = 434.78$, $p < 0.001$ respectively).

Critical to the interpretation of a Poisson regression model, we found that the interaction effect model shows a residual deviance of 46,849

on 32,677 degrees of freedom.⁶⁴ Because the residual deviance in the interaction effect model (46,849) was greater than the degrees of freedom (32,677), we had extra variance, which was not accounted for by the model or by the error structure. To account for this over-dispersion, we utilized a quasi-Poisson model, which fits an extra dispersion parameter to account for extra variance. Utilizing a quasi-Poisson model did not result in changes to our residual deviance or in the outcomes of *likelihood ratio tests* comparing models.

Quasi-Poisson Results on Number of Charges per Case

Table 5 shows the significant coefficients of the interaction effect model assessing the number of charges per case. In general, Asian defendants were likely to have slightly fewer charges than similarly situated White defendants, while Native American defendants were likely to have more. As in many of our results, this effect is overshadowed by the interaction effect with presiding official.

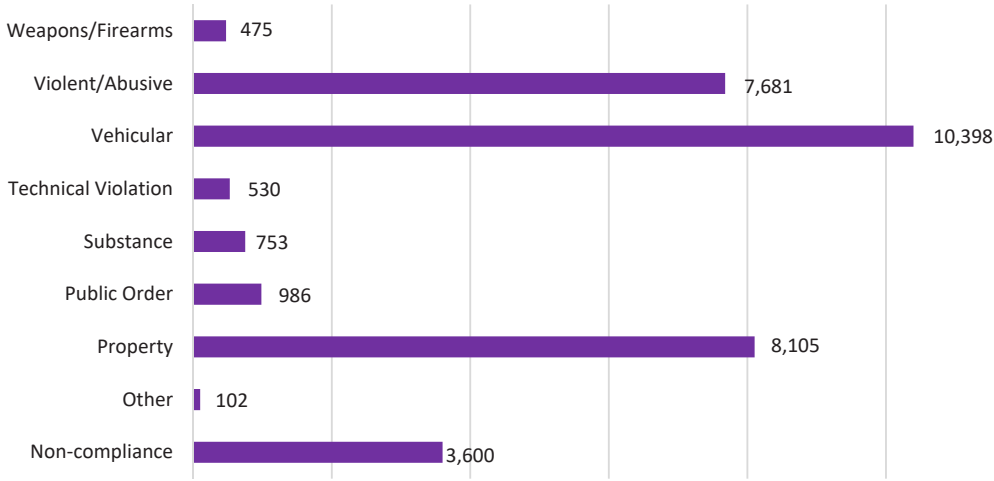
Interpreting these results independently is very challenging. In theory, presiding official should have no bearing over the number of charges filed per case, as charges are filed *prior* to a defendant’s interaction with the official and yet we find significant interaction effect results. It may be the presiding official acts as proxy for prosecuting attorney. Barring very limited attorney reassignment, each unique courtroom has been assigned the same two prosecuting attorneys for almost our entire study period. Therefore, it is possible that, to some extent, the increased number of charges estimated by race interacting with official is driven by prosecutorial decisions.

Alternatively, as these models controlled only for defendant criminal history, significant results for presiding official in this case may be a function of the models’ inability to control for differential behavior. As an illustration of the difference between treatment and behavior, Figure 11 on the next page shows the percent of charges by type present in the total number of cases by race. Certain groups were more likely to be charged with certain types of crime. The extent to which the number of charges in each case reflects a difference in behavior (i.e. a greater number of in a given category committed) versus a difference in treatment (i.e. Black and Native American defendants are more likely to be overcharged for the same crimes as White defendants) is outside the scope of this analysis. However, the qualitative analysis provides potential evidence in support of differential treatment.

Table 5. Change in Number of Charges by Defendant Race and Presiding Official

Coefficient	Change in Number of Charges	<i>p-value</i>
Asian	-0.300***	<0.00
Native American	0.2839***	<0.00
Comm 1 * Asian	0.4364***	<0.00
Comm 2 * Asian	0.3011*	0.01
Comm 3 * Black	-0.1343**	<0.00
Judge 1 * Native American	0.1929*	0.03
Judge 2 * Asian	0.3364**	<0.00
Judge 3 * Black	-0.1753***	<0.00
Judge 3 * Native American	-0.6719***	<0.00
Judge 4 * Asian	0.3899***	<0.00
Judge 4 * Black	0.1219**	<0.00

Total Number of Charges by Type of Charge (2012-2017)



Source: Tacoma Municipal Court Database Extract, 2012-2017. Number of charges by “type.”

Analyzing Dispositions per Charge

In any given case, a defendant can receive a multitude of sentencing outcomes per individual charge. In this analysis, we aggregate all possible sentencing outcomes into one of three categories, specifically: 1) Guilty or Committed 2) Dismissed or Deferred 3) Amended. Outcomes one and two are mutually exclusive. In the case of an amended charge, the original charge is lowered and almost always replaced with a guilty disposition for a charge carrying a less severe outcome. In this analysis, we assessed the likelihood of receiving one of these three outcomes per individual charge, and what role defendant race and the interaction of defendant race an official plays in charge dispositions.

Using likelihood ratio tests, we found that both the model containing race and the interaction effect were significantly different when predicting the likelihood of our three dispositions ($p < 0.05$ in all cases). Likelihood ratio tests for the amended interaction effect model denote a significant difference between interaction effect models and race models ($df = 24$, $deviance = 38.52$, $p < 0.05$). In contrast, the guilty and dismissed or deferred models show evidence of over dispersion, with a residual deviance of 41,198 on 32,667 degrees of freedom and a residual deviance of 35,475 on 32,667 degrees of freedom respectively.⁶⁵ Despite over dispersion, dismissed or deferred interaction models were significantly different from race models ($df = 24$, $deviance = 60$, $p < 0.001$), and similarly for guilty models ($df = 24$, $deviance = 74.4$, $p < 0.001$). See the Sensitivity Analysis results for addressing over dispersion and clustering in this analyses.

Dispositions per Charge Results

Table 6 shows the odds ratios of the significant coefficients for guilty, dismissed or deferred, and amended charges. Native American defendants were more likely to receive a guilty disposition for a charge ($odds\ ratio = 1.74$, $p < 0.00$) as compared to similarly situated White defendants. Native American defendants were also less likely to receive a dismissed or deferred charge compare to similarly situated White defendants ($odds\ ratio = -0.57$, $p < 0.00$).

In the case of Judge 4, this difference in likelihood of a guilty disposition for Native American defendants was offset by decreased odds when seeing Judge 4, showing that odds ratios are roughly the same as for White defendants. Similarly, the association between Judge 4 and Black defendants also decreased the likelihood of a guilty disposition ($odds$

Table 6. Likelihood of Disposition by Defendant Race and Presiding Official

Coefficient	Odds Ratio Guilty	<i>p-value</i>	Odds Ratio Dismissed/ Deferred	<i>p-value</i>	Odds Ratio Amended	<i>p-value</i>
Asian					1.54	0.05
Native American	1.74***	<0.00	0.57***	<0.00		
Comm 1 * Asian	1.46	0.08				
Comm 1 * Native American		1.75	0.05			
Comm 2 * Native American		1.71	0.05			
Judge 4 * Black	0.72***	<0.00	1.32*	0.01		
Judge 4 * Native American	0.47	<0.00	2.59	0.05	0.39*	0.04
Judge 4 * Asian					0.46**	<0.00

ratio = 0.72, $p < 0.00$). For Black defendants, a similar pattern exists for dismissed or deferred charges, where the odds ratio in this case is slightly greater than similarly situated White defendants ($odds\ ratio = 1.32$, $p = 0.01$).

The only statistically significant effects on the likelihood of having a charge amended in the interaction effect model were for Judge 4, relating to Native American and Asian defendants. In both of these cases, Native American and Asian defendants had a lower likelihood of receiving an amended disposition as compared to White defendants. In contrast, overall, Asian defendants had greater likelihoods of receiving an amended disposition, but the effect is only marginally significant ($p = .053$).

Overall, it appears that Native American defendants were more likely to receive a guilty disposition and less likely to receive a dismissed or deferred disposition even when controlling for criminal history. Both Black and Native defendants are more likely to be below the federal poverty level in Tacoma, and this greater likelihood of deferrals may be a reflection of defendant socioeconomic status. However, this does not explain why there was not a similar effect for Black defendants.

Additionally, it appears that Judge 4 tends to show evidence of leniency toward Black and Native American defendants. However, when the

combined with the overall effect for Native American defendants, these results indicate that Judge 4 has roughly the same odds ratios of a guilty disposition for Native American defendants as for White defendants. Furthermore, police stop probabilities for Black defendants are typically higher than for White defendants, thus the higher likelihood of a dismissed or deferred charge may reflect a tendency to reduce overcharging decisions.

Finally, our Quasi-Poisson model assessing the number of charges per case indicated that race was significantly associated with an increase in the number of charges, and to some extent differences in disposition may reflect a judge’s response to perceived overcharging. It is difficult to extrapolate from these data alone, though qualitative interviews provide some possible explanations.

Fines and Fees Results

Original Citation Amount

Before a defendant receives a sentence to pay a given fine, they are given a citation fee, which comes as a starting recommendation from the police report and the prosecutor. Therefore, when assessing whether racial disparities exist in the amount of fines and fees a defendant is ordered to pay, it is important to begin with the starting amount they are ordered to pay. When assessing citation quantities, *F tests* indicated there is no significant difference between models utilizing race and no race (*df* = 4, *p*>0.1). However, when utilizing an interaction effect that all models are significantly different (*df* = 32, *p*<0.05).

As shown in Table 7, Black defendants tended to receive slightly lower citations than similarly situated White defendants. This effect is moderated by the presiding official, where Black and Asian defendants tend to receive higher citations from Judge 4 than similarly situated White defendants. Given that citations occur prior to a defendant’s interaction with the presiding official this begs the question of why it is that the interaction of presiding official and race shows disparities in the citation. Again, differences by officials in this case may be an indirect function of the prosecuting attorney.

Changes from Citation to Fines and Fees Sentenced

In about 94 percent of all cases, fines were reduced beyond the citation quantity. About 52 percent of all cases resulted in a sentence that was

Table 7. Change in Citation Amount by Defendant Race and Presiding Official

Coefficient	Change in Citation Quantity (Dollars)	<i>p-value</i>
Black	-\$50.58*	0.01
Judge 4 * Asian	\$148.81**	<0.00
Judge 4 * Black	\$116.56***	<0.00
Comm 2 * Black	\$57.18	0.05

reduced to \$0 in fines. Using all cases, we assessed the probability of a fine increasing or staying at the citation quantity. Given the relatively small number of cases where fines were increased or remained at citation quantities (*n* = 1,067), we elected to also analyze the probability of fines decreasing from citation levels to assess the possibility that lack of significant effects by race may be due to decreased statistical power.⁶⁶

Using *likelihood ratio tests*, we found that for the probability of fines increasing or staying at citation quantities was significant for the model utilizing race (*df* = 4, *deviance* = 15.64, *p*<0.01), though not significant for the interaction effect model and the model utilizing race (*df* = 28, *deviance* = 31.86, *p*>0.2). The only significant coefficient related to race from these models, is that Black defendants have slightly lower odds than similarly situated White defendants of having their fines increased, with an odds ratio of about 0.79.

In the case of fines decreasing from citation, *likelihood ratio tests* indicated that there was no significant difference between the model using race and the model not using race (*df* = 4, *deviance* = 7.73, *p*>0.1). However, the interaction effect model is significantly different from both the race (*df* = 28, *deviance* = 46.24, *p*<0.05) and the no race model (*df* = 32, *deviance* = 53.97, *p*<0.01).

Results of the interaction effect model assessing likelihood of fines decreased from citation are shown in Table 8. Results indicate that in the case of Judge 2 and Commissioner 2, Native American defendants were marginally more likely than similarly situated White defendants to see their fines reduced from the citation quantity.

Table 8. Odds Ratios of Fines Decreased from Citation by Defendant Race and Presiding Official

Coefficient	Odds Ratio of Fines Decreased from Citation	<i>p-value</i>
Judge 2 * Native American	0.01***	<0.00
Comm 2 * Native American	0.09*	0.03

Finally, we assessed the effects of race on the total amount that a defendant is ordered to pay in their case. Given that nearly 52 percent of all cases resulted in a defendant being ordered to pay \$0, we assessed the effect of race on the amount a defendant is ordered to pay in all cases, and only in cases where the total fine is greater than \$0. When using all cases, *F tests* confirmed significant differences between both the model using race (*df* = 4, *p* < 0.001), and the model using interaction effect (*df* = 28, *p* < 0.001).

Table 9 shows the effects of race and of the interaction of race and presiding official over the quantity of fines defendants were ordered to pay. Overall, Black and Native American defendants seem to incur lower fines than White defendants. However, this is mediated by the presiding official, and in the cases of Judge 3 and 4, Native Americans pay significantly higher fines. In the case of Judge 3, Black defendants pay slightly higher fines, while Asian defendants pay lower fines.

When assessing only cases in which defendants were sentenced to pay any fine, we found a significant difference in the model utilizing race (*df* = 4, *p* < 0.01), but not the interaction effect model (*df* = 28, *p* > 0.5). In the race model, results indicated that Black defendants pay about \$20 less than White defendants. While significant, this is quite small compared to both the average fine incurred and the difference in coefficients per official. For example, compared to “pro tem” judges, significant differences in Judge ranged about \$75 less per case with Commissioner 2, to about \$318 more per case with Judge 4. While the interaction model in this case was not significant, it nevertheless remains that presiding official is a strong determinant of the total fine a defendant is ordered to pay, regardless of race.

Table 9. Change in Fine Sentenced by Defendant Race and Presiding Official (all cases)

Coefficient	Change in Fine Sentenced (dollars)	<i>p-value</i>
Black	-\$22.62*	0.01
Native American	-\$65.11*	0.01
Comm 2 * Black	\$24.12	0.08
Judge 2 * Black	\$25.89	0.05
Judge 2 * Native American	\$119.46***	<0.00
Judge 3 * Native American	\$125.98**	<0.00
Judge 3 * Black	\$35.19*	<0.00
Judge 4 * Black	-\$22.36	0.09
Judge 4 * Asian	-\$59.55*	0.03
Judge 4 * Native American	\$72.79	0.07

Sensitivity Analysis Results

GEE Model Results

For both charge level and case level outcomes, there are concerns that our estimates of the coefficient of race or the interaction of race and presiding official are biased due to repeated observations per individual. This is particularly salient for charge level outcomes, as in some cases there many observations of charges per case per person, which may be influencing our results. For case level outcomes, there are instances of multiple cases per person per presiding official, though these are far less frequent. To control for this potential clustering, we use a generalized estimation equation (GEE) model. See the Methods section and the full report on the University of Washington Evans school website for more detail on this model.

Table 10 shows the significant coefficients for race and the interaction effect of race and official with robust standard errors from our GEE model. Incorporating a GEE increases the number of significant coefficients based on race in our results. While the overall point estimates and estimates for Judge 1 odds ratios of a guilty charge for Native American defendants is relatively unchanged from our base analysis (1.77

Table 10. Sensitivity Analysis by Defendant Race and Presiding Official

Coefficient	Odds Ratio Guilty	Robust <i>P-Value</i> ⁸⁴	Odds Ratio Dismissed/ Deferred	Robust <i>P-Value</i>	Odds Ratio Amended	Robust <i>P-Value</i>
Asian	0.87***	<0.00	1.15***	<0.00	1.54***	<0.00
Black					1.12***	<0.00
Native American	1.77***	<0.00	0.56***	<0.00		
Comm 1 * Asian	1.49***	<0.00	0.67***	<0.00		
Comm 1 * Native American					1.32***	<0.00
Comm 2 * Asian					0.64***	<0.00
Judge 1 * Asian	0.84***	<0.00	1.19***	<0.00	0.55***	<0.00
Judge 1 * Native American					0.88***	<0.00
Judge 1 * Black	1.12***	<0.00	0.89***	<0.00		
Judge 2* Asian					0.57***	<0.00
Judge 2 * Black					1.42***	<0.00
Judge 2 * Native American					0.77***	<0.00
Judge 3 * Asian					0.36***	<0.00
Judge 4 * Asian					0.46***	<0.00
Judge 4 * Black	0.76***	<0.00	1.31***	<0.00	0.86***	<0.00
Judge 4 * Native American	0.59***	<0.00	1.70***	<0.00	0.39***	<0.00

vs. 1.75), Asian defendants had slightly lower overall odds ratios of a guilty charge than White defendants (0.87 vs. no significant effect). Furthermore, Judge 1 now shows a relatively small increase in the odds ratio for Black defendants that was not present in the base case (1.12 vs. no significant effect). The overall estimates for Judge 4 are relatively unchanged.

We see almost the exact same situation when assessing the odds of a dismissed or deferred charge. Asian defendants have overall higher odds of a dismissed or deferred charge, while Native American defendants have significantly lower odds. For Judge 4, this difference is largely offset, and Black defendants have higher odds of a dismissed or deferred charge than White defendants.

The results for amended charges are different from our previous logistic regression results. Previously, only results for Judge 4 indicated that Native American and Asian defendants had lower odds of an amended charge (odds ratios of 0.39 and 0.46 respectively). After adjusting for the variance of our models using GEE, results show that overall, Asian defendants had a greater likelihood of an amended charge than similarly situated White defendants (odds ratio of 1.54), though this is offset by the interaction with the presiding official in nearly every case. Black defendants had a higher likelihood of amended charges overall (odds ratio of 1.12), but the strength and direction of this effect was mediated by the presiding official. For Native American defendants, we see no overall effect, with higher odds of amended charges for commissioners (odds ratios of 1.32 and no significant difference respectively) and lower odds of amended charges for judges (odds ratios of 0.88, 0.77, no significant difference, 0.39 respectively).

While the incorporating of the GEE model was effective for assessing the results of charge level dispositions, the GEE model failed to converge for⁶⁷ the outcomes in the case level dataset, meaning we could estimate a GEE model for case level outcomes. This may be due to the large number of covariates used to aggregate case level attributes, namely the covariates for number of charges by disposition. Ultimately, developing an alternative method of aggregating charges by disposition per case so that both are a valid presentation of the data and applicable to a GEE model is outside the scope of this report. However, the difference between the robust p-values given for charge level dispositions in the GEE analysis and former logistic regression analysis suggests that future research should use a GEE model when assessing court data with clustering around presiding officials.

MEASURING IMPLICIT BIAS

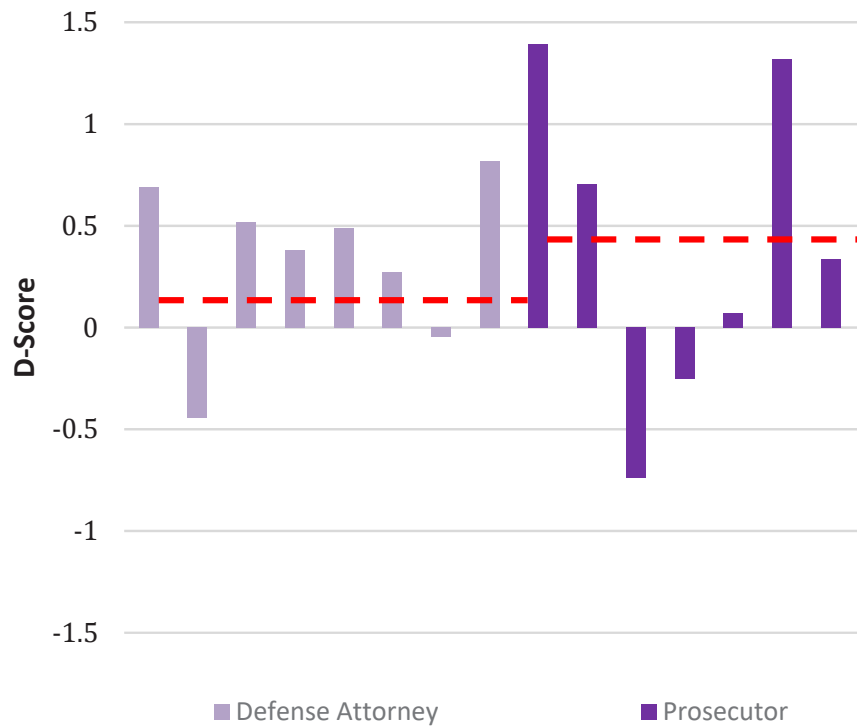
We administered the IAT to eight prosecutors and eight public defenders. The IAT effect, or D-score, has a range of -2 to +2. These scores represent the strength of implicit associations. Negative scores represent preference for distinctive Black names and positive scores represent preference for distinctive White names. Regardless of direction, scores from 0-0.14 indicate no preference, scores from 0.15-0.34 indicate a slight preference, scores from 0.35 to 0.64 indicate a moderate preference, and scores from 0.65 to 2 indicate a strong preference.

We tested the nine City Prosecutors and found that the City Prosecutor’s Office on average had a moderate preference towards distinctive White names (*D-score* = 0.42). We tested eight of the 25 public defenders and found that these individuals had on average a slight preference towards distinctive White names (*D-score* = 0.30).

We also calculated individual D-scores, shown in Figure 7. Prosecutors had more variability in the strength and direction of their associations than public defenders. Specifically, four prosecutors had strong preferences toward distinctive White names, while one had a strong preference towards distinctive Black names. Three public defenders exhibited moderate preferences toward distinctive White names while one exhibited moderate preference toward distinctive Black names.

The results below are not atypical. The strength of implicit bias of prosecutors and public defenders in Tacoma Municipal Court is consistent with broader patterns of implicit bias that have been observed nationally.⁶⁸

Prosecutor and Public Defender’s Implicit Bias Scores



The strength of implicit bias of prosecutors and public defenders in Tacoma Municipal Court is consistent with broader patterns of implicit bias that have been observed nationally. Nearly everyone exhibits some form of implicit bias.

Nearly everyone exhibits some form of implicit bias. The strength of implicit preferences towards distinctively White or Black names does not inherently predict disparities. However, these results do demonstrate the implicit associations favoring White names exist in both offices. When seen in the context of our quantitative analysis and qualitative results, this suggests that implicit bias may play in a role in racial disparities.

QUALITATIVE ASSESSMENT OF BIAS AND DISPARITIES IN TACOMA MUNICIPAL COURT

While the IAT gave us an idea of actors’ implicit attitudes in their work, it does not provide insight to the applied actions or practiced viewpoints of the actors. To gain this insight, we conducted semi-structured interviews with attorneys from the City Attorney’s Office and the Department of Assigned Counsel to assess the perceptions of racial, socioeconomic, and mental health disparities, the presence and sources of biases misdemeanor cases, and the barriers to achieving “fair” charging, sentencing, and post-disposition outcomes. We interviewed all eight prosecutors in the City Attorney’s Office and nine of the public defenders assigned to Tacoma Municipal Court in the Department of Assigned Counsel. From our interviews we identified three major themes:

- *Perceptions of Disparities within Tacoma Municipal Court:* While socioeconomic disparities are most commonly observed by attorneys in Tacoma Municipal Court, racial and mental health disparities are also present and intimately linked to socioeconomic status.
- *Perceptions of Bias within Tacoma Municipal Court:* Racial and socioeconomic explicit and implicit biases, including microaggressions,⁶⁹ occur within Tacoma Municipal Court and from other actors in the Tacoma criminal justice system, including police officers.

- *Barriers to Fairness:* One barrier is the notion that prosecutor and public defender definitions of fairness, and judicial philosophies of fairness, vary. Another barrier to fairness is the cyclical nature of poverty and crime.

Perceptions of Disparities within Tacoma Municipal Court

While socioeconomic disparities are more common, they are intimately linked to racial and mental health disparities. Overall, prosecutors were likely to see Tacoma Municipal Court as a just entity, delivering sentences that they believe match the crime committed. Many viewed disparities in charging and sentencing as an inevitable result of the structure of the criminal justice system, including laws that target low-income communities of color. Public defenders were more likely to see disparities as a function of individual court actors and the structure of Tacoma Municipal Court. Several public defenders reported different outcomes depending on the judge ruling in the case, as well as perceived varying philosophies from the prosecutors and different outcomes existing as a result of those varying philosophies.

Racial Disparities

There were varying perspectives on racial disparities between the two offices. Overall, the City Attorney’s Office was somewhat less cognizant of racial disparities that may exist in Tacoma Municipal Court, whereas the Department of Assigned Counsel was more inclined to share anecdotes involving racial disparities.

One prosecutor reported that they could assume overrepresentation of people of color exists by “eyeballing” the cases that come through the office, while others reported seeing no significant differences in the race of defendants. When asked about disparate outcomes, one prosecutor stated, “[A]s far as racial disparit[ies]...my court sees pretty much across the board... It’s hard to say because [the office does not] keep statistics or anything like that...” Conversely, another prosecutor did acknowledge that the criminal justice system has a role perpetuating disparities, stating, “...[I]t’s a known fact that our criminal system in general tends to...be one that is racist by criminalizing the activities [of] people of color, in particular Black males...” This perspective, however, was not common among the prosecutors, with most holding the perspective that few disparities exist on the basis of race.

Public defenders more commonly reported seeing racial disparities, especially for Black men and women. One public defender stated,

“When [we] have a client who is a person of color who is similarly situated to a White person, for whatever reason the relief that [they] are asking for to the judge is...either not granted or granted with some kind of conditions.”

Another public defender shared their own perception that “Black women get fewer chances” than other defendants before a final sentence is imposed. A third public defender reported having a disproportionate number of Black clients, and that Black male clients usually receive higher bail amounts in arraignment hearings.

Mental Health Disparities

There was not a significant focus on disparities relating to a defendant’s mental health among the prosecutors or the public defenders. Attorneys in both offices noted the work of the mental health court and how that process is mitigating disparities that may have existed before it was instituted, and several public defenders even noted that defendants in the mental health court receive lighter sentences than other defendants. Public defenders also felt that the mental health court was a positive step toward more appropriate outcomes for defendants with mental health issues, but that the court should continue to move toward being more therapeutic. Several prosecutors noted that if there is a mental health issue with a defendant, they often will not charge that defendant. One public defender noted, however, that Washington State is behind in conducting mental health evaluations of defendants, causing defendants to stay in jail longer than they should.

Socioeconomic Disparities⁷⁰

A majority of attorneys interviewed in both offices mentioned the significance of a defendant’s socioeconomic status. Many of the public defenders agreed that socioeconomic disparities were more prevalent than racial disparities or mental health disparities, but that these disparities were very intersectional.⁷¹ The public defenders were largely of the opinion that it is illogical to impose bail and monetary sentences on individuals who cannot afford it, such as homeless defendants.

Prosecutors were acutely aware of the prevalence of crimes of poverty and that crimes are sometimes committed because the defendant feels there is no other alternative.

People from both offices said that bail is a major, and often insurmountable financial burden for defendants, though this was reported more commonly by the public defenders. Also common between the offices was the pattern that a defendant's inability to post bail often leads to a guilty plea to move forward with their case more quickly. A public defender mentioned, *"Poor people will plead to get out of jail because they can't post the bail."*

"Poor people will plead to get out of jail because they can't post the bail."

Also reported were disparities existing post-disposition that are primarily a function of socioeconomic status. Several attorneys mentioned that many defendants find themselves back in court as a result of the inability to pay for court-imposed drug or alcohol treatment, or other court-imposed workshops. This often leads to defendants accruing more charges and a larger criminal history, which contributes to harsher sentencing in the future. This cyclical effect is discussed further in the "Barriers to Fairness" section below.

Perceptions of Bias within Tacoma Municipal Court

Implicit Racial Bias and Microaggressions inside the Municipal Court

Attorneys in both offices were aware of implicit bias and the effects it can have within criminal justice, as well as how difficult it can be to address, as shown by a public defender's comment, *"I think it's definitely hard to put your finger on implicit bias."* From the perspectives of several attorneys interviewed, implicit bias reportedly manifests most commonly in language, but also in the actions of attorneys, judges, and police officers. These perspectives, however, were not universal among all attorneys in both offices. While some did suggest a connection between implicit bias among court actors to disparate treatment of defendants, many attorneys did not explicitly say that they saw implicit bias regularly exhibited in Tacoma Municipal Court toward defendants.

Anecdotally, however, there have been cases. One telling anecdote of implicit bias among attorneys, as well as at least one judge, comes from a case related by a prosecutor in which a group of White high school boys from a local, prestigious school were driving around, shooting people with a toy gun, and buzzing a taser as the toy gun made contact. The boys were pulled over, cited for also having alcohol in the car, and were charged. They came to court with private attorneys and were willing to accept the sentencing recommendation that day. The recommendation consisted of community service, which the boys had already completed for their school requirements. The court accepted the resolution. The prosecutor telling this recounted that *"everybody kind of was just like, 'Oh, well, see how nice they are, what good boys they really are, they're from good families.'"*

While the implicit bias exhibited in the case with the high school boys worked to the defendants' benefit, other instances of implicit bias have been negative and seem to act against defendants rather than in their favor. Another public defender recounted an interaction between one of the Municipal Court judges and a Black male defendant in which the judge said, *"You know, just by looking at you, you're an intimidating person,"* but insisted that the judge did not appear to sentence the defendant harsher because of his appearance.

Implicit Racial Bias and Microaggressions outside the Municipal Court

Many interviewees felt that implicit bias in the Tacoma criminal justice system starts well before defendants are in contact with attorneys or judges. One public defender told of a string of cases involving defendants riding a bike without a helmet or without signal lights being stopped by Tacoma police officers. The attorney noted that they *"[h]aven't had a White client be stopped on a bicycle yet. It's all been people of color that are stopped."* The public defender also raised the question of *"what implicit biases do police officers have in how they're making the decision of what infractions to enforce."*

Socioeconomic Bias inside the Municipal Court

The most commonly reported type of bias was based on socioeconomic status, which complements the attorneys' perspectives regarding disparities in Tacoma Municipal Court. One prosecutor stated that in Tacoma Municipal Court, *"[w]e're dealing with more implicit bias...I think*

some people can acknowledge it and some have more difficulty.... I see it more playing out about people with money versus people with none." A public defender reported, "I would say bias applies, at least in my experience, largely against the poor." Another public defender presented a more nuanced view, stating:

"[I]f you're well-off, middle class, you have a different culture than people who are very poor, indigent, like all my clients are. And it's so hard to understand even just the terms that they use and the way that they talk. ...I think sometimes the court finds it disrespectful or this or that, but it's just a matter of these people haven't had the lifestyle that you've had and they haven't been taught the values you've been taught. They've been taught different values. Doesn't mean necessarily that they're wrong, it just means that they're different and I think that there is bias based on that."

Additionally, attorneys from both offices also reported that while some judges are more understanding and patient in cases where the defendant has mental health issues, other judges tend to show less patience and seem to deliver harsher sentences in those cases.

Explicit Bias in the Municipal Court

While implicit bias is the focus of the report, biases can manifest explicitly and show the level to which biases exist from an actor or within a system. In our interviews, attorneys identified examples of explicit bias in Tacoma Municipal Court, such as a public defender reporting cases in which one judge instilled higher fee sentences on members of the local Puyallup tribe because the judge was aware of financial benefits that tribal members receive when they turn eighteen years old. The judge stated that the sentence was as high as it was because the defendant had the financial means to afford it. Another example of explicit bias was reported in which a judge knowingly and continually referred to a transgender woman as "he" in court, despite the defendant's stated preferred pronoun of "she."

Barriers to Fairness

Different Definitions of Fairness between Offices

Overall, the City Prosecutor's Office and the Department of Assigned Counsel had different definitions of "fairness." Prosecutors largely shared

The City Prosecutor's Office and the Department of Assigned Counsel had different definitions of "fairness."

the definition that similarly situated individuals facing similar charges should receive similar outcomes, and that a fair outcome balances the facts of the case and the characteristics of the defendant with public safety. A small number of prosecutors differentiated having a professional definition and a personal definition of fairness. The professional definition aligned with that of their colleagues: bringing a just outcome to match the law that was broken. The personal definition, however, focused more on equitable outcomes and treating defendants in productive ways that address their situations rather than treating all similarly situated individuals in the same way. One prosecutor identified the office's definition of fairness as a possible barrier to fair outcomes, stating *"there's some implicit bias as far as how we look at it from the angle of public safety is paramount and it's our number one concern."*

Like the prosecutors, the public defenders also defined fairness as being similar outcomes for similarly situated individuals, but also held the definition of ensuring that clients are afforded the rights to which they are entitled. It was evident that public defenders were aware of the different goals of the two offices, their own being advocating for their clients and the prosecutors' being advocating for public safety and ensuring laws are upheld. We cannot determine that prosecutors were not also aware of these different goals, but they were not discussed in our interviews significantly and we could not identify this is a common theme. Some public defenders reported seeing an appropriate balance between fairness and justice in Tacoma Municipal Court, while others reported seeing unfair outcomes for defendants. Attorneys in both offices evaluated their colleagues in the other office as relatively reasonable and fair when discussing sentencing recommendations. Public defenders especially stated that unfair outcomes are more often a result of judges' decisions, and that the level of fairness varies significantly by judge. Additionally, several public defenders did cite the definition of fairness among the prosecutors as leading to harsher sentence recommendations for defendants or worse treatment of defendants in court, such as

prosecutors being less understanding of defendants' inability to arrive to court on time due to unreliable transportation or a lack of financial means to use public transportation.

Different Judicial Philosophies

Public defenders identified varying perspectives between judges as another major barrier to fair outcomes for defendants. Interviewees identified “fairer” outcomes from judges depending on the interviewee’s own definition of fairness. . For example, one public defender recounted particular cases with non-White defendants of lower socioeconomic status in which the judge rejected sentencing recommendations from the prosecutors and stated that the recommendations do not have to be accepted by the court. Other judges seeing cases with similarly-situated defendants, however, accept the recommendations without scrutiny. Additionally, attorneys from both offices noted that judges often respond differently from each other, and even from their own past sentencing decisions, when faced with similarly situated defendants of different races. One of the most telling accounts to support this is that of one of the public defenders, who stated:

“Fairness to me means having an impartial judge whether it be for a trial, sentencing, post-disposition review hearings. There’s a disparity in how certain individuals are treated depending on what courtroom you find yourself in Tacoma Municipal Court.”

One prosecutor also stated that for a particular sentence, there could be various outcomes, and sometimes a judge will go more lenient, while another judge may give a harsher sentence. Similarly, in some instances, judges impose the maximum jail sentence of 364 days if post-disposition requirements, such as treatment, are not met, while others may impose a shorter sentence. Several of the public defenders mentioned attempts to overcome this barrier by filing affidavits of prejudice, or motions to move a case to a different judge, to get fairer sentences and post-disposition outcomes for defendants.⁷² While no connection was made by attorneys interviewed between affidavits filed and bias of any particular judge, they did suggest that different judges deliver notably different outcomes depending on the case. Even if bias is not involved, these different outcomes from different judges for similar cases is of particular interest to this report and highlights the awareness of disparities from the perspective of the attorneys.

Cyclical Nature of Poverty and Crime

A final barrier to fairness is the combination of socioeconomic disparities and defendant characteristics, specifically defendants’ inability to meet financial duties imposed by the court. When defendants are unable to pay fines, fees, and treatment costs sentenced to them, this leads to further court violations and a longer criminal history. When facing a judge in future cases, the defendant is likely to receive more severe fines and sentences because of their criminal history. Two public defenders highlighted this barrier. One reported that, “people who are poor are going to find themselves falling out of compliance with the court because they just cannot financially pay for what’s been ordered.” The other explained that, “[b]ecause [our] clients are poor, they’ve got larger criminal records. Particularly, you get deals based on what your criminal history is.”

When defendants are unable to pay fines, fees, and treatment costs sentenced to them, this leads to further court violations and a longer criminal history.

Additional Themes

Mental Health Court

In addition to the major themes identified, other themes were commonly observed in our qualitative interviews. The Prosecuting Attorney’s Office placed more of a reliance on the mental health court, whereas the Department of Assigned Counsel reported further improvements that should be made to the court, such as moving to more therapeutic solutions. One limitation to this, which was also referenced by both offices, is a lack of funding and resources that prevent an expansion such as this.

Collaborative Workplace Culture

Relating to workplace culture, both offices reported high levels of collaboration, both within the respective offices and across offices. The attorneys stated that they consider this a major advantage to Tacoma Municipal Court and that it is helpful in getting to reasonable sentencing recommendations for defendants. Despite this collaborative nature,

both offices saw different values within the court. Secondary to the most common value of fairness, prosecutors were more likely to see the most important court value as efficiency and public defenders were more likely to see the most important court value as rehabilitation, though this was cited among attorneys in both offices. Several attorneys also commented on the difficulty that arises from the adversarial nature of the criminal justice system and how each office fundamentally has a different motivation in the courtroom, which could contribute to the variance in values.

A final theme was the acknowledgement of more understanding and more patient court actors as an advantage in Tacoma Municipal Court. Attorneys in both offices expressed their appreciation for attorneys who had a greater understanding of the situation that defendants are in and the factors that led to that situation. Also appreciated were judges who were similarly understanding of the situations that defendants are in, and the patience exhibited by those judges in handling cases, working with defendants, and working toward more feasible sentences.

LIMITATIONS OF ANALYSES

Quantitative Analysis

First, the largest limitation for quantitative analysis is the limits of the data that are not systematically tracked. Data for defendant income, sexual orientation, mental health, public defender, and prosecutor were all requested, but not tracked by the Administrative Office of the Courts. Therefore, we could not quantitatively assess differences or disparities by these categories.

Data for defendant ethnicity are also not functionally useful. Nearly 85 percent of all charges were from defendants whose ethnicity data was missing. It is not within the scope of this project to investigate why this occurs, though anecdotal reports from internal stakeholders suggest that it is due to missing data in police reports. It is possible that officers do not asking for ethnicity, as less than 0.0001 percent of charges were from defendants who refused to answer questions related to their ethnicity. Due to what appears to be randomly missing data for ethnicity, we could not assume that individuals who are indicated as Hispanic/Latino are a representative sample of this population, and therefore we cannot assess differences within this group. Additionally, from our literature review,

Spohn et al (2013) identifies⁷³ critics of previous studies, who argue that studies that found no significant difference between Black and White defendants in sentencing outcomes for felonies do so because they failed to control for ethnicity. These critics argue that because many Hispanic individuals are White, this potentially biasing the coefficient of White defendants downward, as in other cases Hispanic defendants were found to have less favorable outcomes than White defendants.

Third, our analysis did not address the very first interaction between defendants and the court, which is whether or not prosecutors elect to file charges. This information is tracked by the City Attorney's Office, however this information does not contain demographic information. Therefore, for this project we were unable to verify if differences or disparities by race, or any other group exist at this level.

Fourth, our sensitivity analysis applied a GEE model to our previous charge-level regression estimates. The application of the GEE model allowed us to control for correlation due to individuals facing multiple charges, and correlation induced by having charges tried by the same official. The GEE model increased the significance of some coefficients and led to greater variability among outcomes for interaction effects. It is possible then, that if we were to control for correlation at the case level we would expect to see greater disparities here as well. Unfortunately, we were unable to fit the GEE model to our case-level dataset, and more research is needed to understand the role of correlation for outcomes at this level.

Finally, our quantitative analysis is ultimately descriptive. While this analysis demonstrates that there are differences by defendant race that cannot be explained by their case histories, charges filed, or any demographic information other than race, this does not in and of itself suggest that implicit bias is the cause of this disparity. Qualitative reports suggest that, in addition to seeing different caseloads, judges tended to utilize different philosophies with regards to defendant's ability to pay and adhere to sanctions. Race may to some extent act as a proxy for defendant income. Ultimately to get closer to understanding the causal mechanism behind this disparity, we currently need to rely on qualitative data.

Implicit Association Test

First, while the IAT has been validated by several studies, there is no perfect measure of implicit bias as it is notoriously hard to measure and detect. Thus, the IAT acts as a proxy measure, and results should be taken with some caution. Additionally, because the IAT is less effective with multiple associations, we were only assessed prosecutors and public defender’s automatic associations with White or Black names and good or bad words. We specifically chose to test associations based on name rather than face as both prosecutors and public defenders indicated that significant decisions regarding defendants occurs prior to any face-to-face interaction. However, we were not able to test implicit associations to other defendant’s racial groups or characteristics such as socioeconomic status.

Second, we were able to test all prosecutors, but were not able to test all public defenders. We tested the majority of the public defenders that we interviewed; however, the overall result for the Public Defenders is not representative of all attorneys practicing in Tacoma Municipal Court. We were also unable to test judges and other court actors such as clerks. Third, we were unable fully replicate the validated IAT Project Implicit that has been used in multiple published reports.⁷⁴ The IAT that we administered was a close approximation but it had not been validated. We were able to use the scoring method from Project Implicit.

Finally, although distractions in the room were minimized, they could not be eliminated and may have affected response times. We were also unable to control for the number of times a prosecutor or defense attorney had taken IATs.

Qualitative Analysis

First, a large limitation to using semi-structured interviews to detect implicit bias is that implicit bias cannot be detected easily through open conversation. The very nature of implicit bias is that people are typically unaware of their own and have difficulty identifying it in others. The perspective of the respondent skewed the responses we collected, and the level to which each respondent examines their own implicit bias regularly likely contributed to the robustness of their responses.

Second, we were unable to include all perspectives affected by misdemeanor prosecution in Tacoma. During the research period, we

wanted to conduct a focus group with current or former defendants to get the perspective of those receiving the charges and witnessing the actions of the court actors in that way. Due to our limited time frame and difficulty recruiting and coordinating current and former defendants, we were unable to complete this. Defendant perspective is essential and should considered for future research.

Third, we were unable to interview each public defender that handles cases in Tacoma Municipal Court. By not speaking with each of them, we have a limited representation and perspective of how public defenders view the court system, the judges, and the prosecutors. The information we received from the public defenders we did interview was substantial, but it impossible to fully infer the perspectives of the public defenders we did not interview.

Finally, we were unable to speak with judges or Tacoma Municipal Court staff. When we approached Tacoma Municipal Court staff to schedule interviews, we were informed this would not be possible due to a rule in the Washington State Code of Judicial Conduct barring judges from discussing ongoing cases with parties other than clients or their attorneys.⁷⁵ Despite our attempts to refine our question guides to comply this rule, our subsequent requests for information were also denied and we were unable to schedule interviews with judges and court staff.

DISCUSSION

Our quantitative results are similar to previous King County studies,⁷⁶ which found that Native American and Black defendants were likely to serve longer sentences and, in some cases, pay higher fines.⁷⁷ Our findings build on this previous research by incorporating the interaction effect of a defendant’s presiding official (judge or commissioner) and defendant race on defendant outcomes. When doing so, we see that there are racial disparities primarily at the level of the presiding official.

For example, Native American defendants who saw Judge 1 were more likely to receive a jail sentence than similarly situated White defendants. Similarly, Black and Native American defendants tended to pay less than White defendants. However, the extent of this effect and the direction of it change depending on interaction between defendant race and presiding official. For example, Judges 2 and 3 issue much larger fines to Native American defendants, more than twice the extent to which their fines are

lower overall. Similarly, Judge 3 issues larger fines to Black defendants to an extent that exceeds the extent to which Black defendants tend to pay lower fines overall. Judge 4 tends to issue lower fines to Asian defendants.

While the results of findings for charge dispositions were similar to the previous King County study, introducing the GEE model and interaction effects adds considerable nuance to the interpretation. Both the direction of the effects and the size of the effects changes remarkably for all disposition outcomes depending on the presiding official. Whether a Black or Native American defendant should expect a disparate outcome relative to a similarly situated White defendant depends on the official overseeing their case.

The quasi-Poisson regression on the total number of charges filed against a defendant indicated that Native American defendants were more likely to receive a greater number of charges regardless of criminal history. The interaction effects show that effect of race for Black, Asian, and Native American varies both in the direction of effect and strength of the effect depending presiding official. In other words, Black, Asian, and Native American defendants may experience either preferential or unfair treatment, depending on the presiding judge. Independently this analysis is difficult to interpret, however police stop data and qualitative evidence from interviews with assigned counsel and prosecution indicate this may not always be the case. Two interviews with public defenders indicated that they perceived Black defendants as regularly being charged excessively in a pattern that they did not see for White defendants. In one case a public defender indicated they had seen multiple charges filed for riding a bike with no helmet, exclusively filed against Black defendants, while another attorney indicated they sometimes saw cases where individuals were charged with resisting arrest and obstructing justice, which may serve as duplicative charges. If there is a pattern of overcharging defendants of color, then it may be that Judge 4 *alone* adjusts for this when considering disposition.

The quantitative analysis in this report does not illustrate causation, but it does provide for well-informed inferences in concurrence with our qualitative interviews and IAT results. Prosecutors and public defenders gave insight into how a defendant's socioeconomic status can act as a determinant of disparate or unfair outcomes. In Tacoma, Black and Native American individuals are more likely to be below the federal poverty line

than White individuals.⁷⁸ Though we are unable to control for defendant socioeconomic status, the racial disparities we identify quantitatively may be a function of defendant socioeconomic status.

Qualitative interviews indicated that judicial discretion plays a role in sentencing outcomes, and that Tacoma Municipal Court judges have different philosophies when it comes to imposing jail sentences and fines and fees. Although not a focus of our research, the point estimates for presiding official in our regression corroborate this. In some cases, discussion of judicial philosophy specifically indicated explicit bias. For example, one interview specifically identified situations in which one judge regularly enforced stricter fines against Native American defendants, citing funding they received from their tribe as evidence of their ability to pay. Therefore, the sharp disparities for fines sentenced seen for Native Americans for Judges 2 and 3 may be a function of how officials consider a Native American defendant's income from tribal affiliation.

Additionally, multiple public defenders raised examples of cases in which Black defendants received a sentence that differed significantly with the sentence of a similarly situated White defendant. When asked about racial bias in the qualitative interviews, prosecutors discussed the presence of or role of racial bias in their cases less, whereas the public defenders were more willing to identify presence and role, as well as actions of judges that seemed connected to racial bias.

Patterns of microaggressions suggest the possibility of implicit bias on the part of judges and commissioners. IAT results confirm the existence of implicit bias among both the prosecution and defense, and that generally both offices exhibit bias towards White names over Black names. If implicit bias is affecting the ways in which a case is handled by the prosecution and defense, then this may affect the evidence with which the judge can make their sentence. Furthermore, it is entirely possible that judges and commissioner's exhibit implicit bias, and that this in part contributes to the disparities identified in our quantitative analysis.

Our qualitative research into mental health disparities were unable to inform whether Tacoma Municipal Court reflects the overrepresentation of mental health issues in the criminal justice system overall, but it does suggest that other disparities are more prevalent than mental health disparities. We can infer from our qualitative interviews, though, that the

socioeconomic disparities in Tacoma Municipal Court reflect the broader climate for these disparities in the criminal justice system, especially as they relate to defendants’ inability to pay for legal financial obligations. Because of the little research that exists on the effects of implicit bias in the criminal justice system, we are unable to determine whether our own research reflects existing research, but we can conclude that, as many studies suggest, court actors are not immune to implicit bias, including the prosecutors and public defenders in Tacoma Municipal Court.

Overall, it is important to remember that although this is a rigorous assessment of sentencing outcomes in Tacoma Municipal Court, our literature review suggests that disparities due to race, socioeconomic status, and mental illness in sentencing outcomes occur in many other courts and in many parts of the criminal justice system. In many cases these are disparities, which likely emerge prior to any interaction with the court, with multiple causes that are difficult to disentangle and address. No one single recommendation is likely to address all disparities in sentencing outcomes, and an on-going commitment to reform and evaluation is likely needed shift these outcomes.



Source: ASPEN REID

We have found that racial disparities in charges, outcomes, and sentencing exist; self-reported racial and socioeconomic disparities and biases are prevalent in Tacoma Municipal Court System; and prosecutors and public defenders show slight to moderate bias towards distinctive White names over Black names. While our report is exploratory, we propose three main considerations. Within the first two considerations, we include one option that will be feasible in the short term and one that could be explored in the long term.

1) REFORM COURT FEES AND FINES

Short Term

Prosecutors should consider the impact of mandated fines and fees when making charging decisions on a case-by-case basis for indigent defendants. Many misdemeanor offenses, such as trespass and theft, can be classified as “quality of life” crimes. Court fines and fees can act as a “poverty penalty” for indigent individuals. Because there are more people of color living below the poverty line than White individuals in Tacoma, fines and fees may disproportionately affect people of color.⁸⁵ Tacoma Municipal Court provides electronic monitoring (i.e., confinement of an individual to his or her residence and/or alcohol or other substance use monitoring) free of charge to indigent individuals, which is a positive step toward preventing unnecessary jail time for indigent defendants. However, according to our interviews, that is not enough. When the law mandates fines and fees, prosecutors should consider whether the charge and its associated financial obligations advance public safety. This recommendation has high feasibility given the prosecutors’ discretion in charging decisions and open and collaborative work environment.

Long Term

Tacoma Municipal Court should create an evidence-based approach to recommended court fines and consider alternative approaches to court fees and fines. The evidence-based approach should take into consideration defendant’s ability-to-pay, as well as the associated costs of their sentence, including treatment, restitution, the fees associated with regaining a suspended driver’s license, and other outside but necessary costs. With this approach, prosecutors should advocate for ability-to-pay determinations prior to the imposition of criminal justice-related fines and before incarceration for non-payment.

Tacoma Municipal Court should also consider alternative approaches to court fees and fines for homeless and indigent defendants. For example, consider creating a diversion court in which judges may waive certain fees or fines for participation in educational or drug treatment programs. An example is a so-called homeless court, as has been piloted in San Diego County and the City of Houston, where homeless defendants can resolve outstanding misdemeanor warrants.^{86,87} Defendants work with local agencies to propose how they will fulfill their sentence requirements, with options including participation in community service, counseling, job-search programs, or computer courses.

This option would require time and resources to implement. However, the costs of collecting the outstanding debts are high and do not produce much revenue, especially when levied on low-income individuals. Thus, reforming court fees and fines could result in savings for the court in the long term.⁸⁸

2) IMPROVE DATA COLLECTION AND CONDUCT ONGOING ANALYSIS

Short Term

Improve data collection and make the data easily accessible to the public to increase judicial and prosecutorial transparency and accountability. Specifically, both Tacoma Municipal Court and the Prosecutor’s office should consider approaches to improving data collection such as 1) collecting demographic information in “decline to prosecute” cases, 2) collecting correct demographic information 3) collecting data on post-disposition outcomes, and 4) making data accessible to the public via an open online portal.

Collect demographic information for “decline to prosecute” cases

While our analysis captures differences in the probability of amended or deferred charges, the fact remains that the first point of contact an individual has with Tacoma Municipal Court is whether the prosecution decides to pursue charges. Feedback from both prosecution and assigned counsel stakeholders gave conflicting information about the potential for disparities to exist in decline to prosecute cases.

Without data on “decline to prosecute” cases, we cannot know if racial disparities occur at this level in Tacoma Municipal Court. Currently

the City Attorney’s Office keeps a record of decline to prosecute cases. Connecting historical data to the corresponding police reports, and changing department policy to track race and ethnicity for future decline to prosecute cases, will allow for analysis of these records.

Collect correct demographic information, especially for Hispanic/Latino defendants

About five percent of all cases in our sample had defendants with an “unknown” race. Understanding why some cases are missing race, and what the correct entry should be, could alter results depending on what race should have been indicated.

About 80 percent of all cases had ethnicity indicated as missing. Historically failing to account for defendant ethnicity has led researchers to underestimate disparity between White defendants and people of color.⁸⁹ Specifically, by failing to isolate differences between White Non-Hispanic individuals and people of color, we may be showing results that are biased by differences between Hispanic and Non-Hispanic individuals.

Almost 10 percent of the population of Tacoma is Hispanic or Latino.⁹⁰Failing to analyze the experiences of this group in the criminal justice system is an equity concern. Until better data is collected for this group, the court cannot measure disparities for Hispanic or Latino defendants.

Collect data on post-disposition outcomes

We find anecdotal evidence that disparities occur post-disposition, particularly that indigent defendants who are unable to pay for treatment may be sentenced to the maximum 364 days for failing to complete the terms of their disposition. However, we were unable quantitatively measure these disparities because data on post-disposition outcomes is not systematically collected. Because treatment is commonly sentenced in Tacoma Municipal Court, and we have heard that many defendants are unable to pay for treatment, analyzing post-disposition outcomes is very important.

Collect data on mental health and defendant income

We were unable to quantitatively measure mental health and socioeconomic disparities. Because racial and socioeconomic disparities are intimately connected in Tacoma Municipal Court system, it is important

to assess if the racial disparities we found are mediated by defendant income.

Data should be made available to the public on an open database to increase prosecutorial and judicial transparency and accountability.

Data for Tacoma Municipal Court is public record, but it was not easily accessible. The public should be able to access data so that they can be well-informed about the court processes, especially when making judicial selections. Several states, including Pennsylvania and Iowa, have easily accessible data portals on the front page of the state website. Pennsylvania presents court data in two ways: static tables and interactive data dashboards. The dashboards allow viewers to analyze and interpret court statistics and evaluate court performance.⁹¹ Additionally, the Seattle Police Department has created an open database for use of force to foster public trust. With increased data collection and publically available data, prosecutors and judges will be more accountable to the community they serve, and community members may be less concerned about court fairness.

Long Term

Using our analyses as a baseline, and **possibly in partnership with the Office of Equity and Human Rights, the City Attorney’s Office should conduct analyses measuring racial, socioeconomic, and mental health disparities.** No study like ours has been done in Tacoma, and ongoing analyses of racial, socioeconomic, and mental health disparities is needed in Tacoma Municipal Court to track potential improvements. The Office of Equity and Human Rights has been an interested stakeholder in our project. Because Tacoma Municipal Court has few resources, they can leverage the Office of Equity and Human Rights’ resources to conduct ongoing analyses. If the City Attorney’s Office and/or Tacoma Municipal Court chooses to undergo implicit bias training, these analyses are critical to understanding if implicit bias training efforts help reduce disparities. Additionally, continued analysis and published reports will increase prosecutorial and judicial accountability and public trust.

3) UNDERGO IMPLICIT BIAS TRAINING

The City Attorney’s Office and/or Tacoma Municipal Court should undergo ongoing implicit bias training. Implicit bias training consists of learning about the science of implicit bias and ways in which it affects court actor’s decision making for charging and sentencing. The purpose of implicit

bias training is to help the individual become aware of his or her biases in order to mitigate the effects of these biases. Over a short period of time, implicit bias training may not be effective. Racism is deeply embedded in our society and implicit bias training will not be able to completely eliminate implicit bias. However, it can lead to increased awareness and reflection about one's own biases if the court makes a commitment to ongoing training.⁹² It is important to note that Starbucks and other corporate companies have faced backlash because of their decisions to pursue only one implicit bias training program in response to racially-motivated incidents. Critics claim that it is not enough.⁹³ Therefore, the City Attorney's Office and Tacoma Municipal Court should only pursue ongoing implicit bias training if it is in addition to data collection and analysis.

Implicit bias training should be done in conjunction with increased data collection and analysis. The City Attorney's Office should also consider reforming court fees and fines. Pursuing these recommendations will allow Tacoma Municipal Court to better pursue its commitment to justice, public safety, transparency, and efficient use of taxpayer money.



Source: KURT CLARK

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45 “Goodness of fit” refers to assessing how well a model fits the data. This is critical to ensuring we have selected the best possible model. For every outcome we begin by assessing one model with race and one without. It may be the model with race indicates significant effects based on defendant race. However, if there is no statistically significant difference in goodness of fit between the model with race or without, then it would be false to conclude that the model utilizing defendant race is giving a more accurate description of the data. The same logic applies to comparing the model with race, and the model with race and interaction effect of race and presiding official. If there is no difference in goodness of fit between the model with race, and the model with an interaction effect of race and presiding official, then we cannot conclude that the interaction effect model is a better fit to the data.

46 F tests are the conventional standard for comparing the goodness of fit between two linear models. Likelihood Ratio Tests are used to compare to goodness of fit between non-linear models, such as logistic regressions.

47 Broadly, regression analysis is an approach to modeling the relationship between a dependent outcome variable and one or more explanatory variables by finding the best fit line to the data. An OLS model is generally considered the standard when assessing outcomes where the outcome is independent of the random error term. In our sensitivity analysis we explore the limitations of this assumption in our analysis.

48 Binomial logistic regressions are used to assess the change in probability of a certain dichotomous outcome. For example, when assessing the probability of receiving sentence with any jail time, this a dichotomous outcome can be represented as binary, as either a) sentenced to jail (1), or b) not be sentence to jail (0). Attempting to fit a straight line to this data may give results that are invalid, by fitting a line which predicts a probability greater than 1 or less than 0. Therefore, we use binomial logistic regressions to calculate the log odds ratio of the probability of a certain outcome on a curved line with all outcomes between a probability 0 and 1.

49

50 Standard OLS regression models assess the change in a given continuous outcome for all coefficients utilized in the model. This assumes that variance of the continuous outcome variable is constant regardless of the expected values of the explanatory variables. When assessing count data, the number of charges received per case are theoretically independent of one another with no maximum number of charges. Therefore, the assumptions of the OLS model are no longer valid. We adjust for this by fitting a Poisson distribution to the data, which correctly adjusts the variance for counts of events that occur independently of each other.

51 “Clustering” in this case refers to correlation that occurs due to multiple observations per individual. For example, when assessing the charge level outcomes, there is often multiple charges per case, and thus multiple observations per case. Furthermore, many individuals have multiple cases. Thus, there are two levels of clustering which occurs. First, at the charge level, with multiple charges per case. Second, at the case level, with multiple cases per individual.

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54 Nosek, B. A., Banaji, M., & Greenwald, A. G. (2002). Harvesting implicit group attitudes and beliefs from a demonstration web site. *Group Dynamics: Theory, Research, and Practice*, 6(1), 101-115. doi:10.1037/1089-2699.6.1.101

55 The names used in the IAT originated from Bertrand and Mullainathan's 2004 study on labor market discrimination (citation below). They took several steps to provide a valid set of names. First, they used name frequency data calculated from birth certificates of babies born in Massachusetts between 1974 and 1979. The authors then tabulated the data by race to determine which names were distinctively White and which were distinctively African American. Names that had the highest ratio of frequency in one racial group to frequency in another were chosen. They also conducted a field survey in Chicago asking respondents to identify the race of each name. We used names that had 100 percent probability of being chosen as White or African American in the field survey.

56 Bertrand, M., & Mullainathan, S. (2004). Are Emily and Greg More Employable than Lakisha and Jamal? A Field Experiment on Labor Market Discrimination. *The American Economic Review*, 94(4), 991-1013. doi:10.3386/w9873

57 The D-score algorithm used was adapted from the creators of the IAT: Greenwald, A. G., Nosek, B. A., & Banaji, M. R. (2003). Understanding and using the Implicit Association Test: I. An improved scoring algorithm. *Journal of Personality and Social Psychology*, 85(2), 197-216. doi:10.1037/0022-3514.85.2.197

58 Federal Bureau of Prisons: Bureau of Prison Statistics (2018). BOP Statistics: Inmate Gender. Retrieved from: https://www.bop.gov/about/statistics/statistics_inmate_gender.jsp

59 One observation per individual with a case in the five year period, i.e repeat offenders are only counted once

60 "Odds Ratio" (OR) for our analyses presented in this report refers to the odds of a given outcome for group X divided by the odds of a given outcome for similarly situated white defendants. If the OR equals 1, then we would say the odds are identical for both groups. If the OR is larger than 1, say for example, 7, then we would say that odds of a group X experiencing the given outcome are 7 times that of similarly situated white defendants.

61 In our analysis, a "pro tem" judge refers to cases in which the presiding official with indicated as "pro-tem" meaning one of several possible judges filled in the typical presiding official for that case.

62 "degrees of freedom"

63 In statistics, "count data" refers to discrete observations which arise from counting. For example, the number of charges in a case or people in a household are discrete measures because they cannot be subdivided. This is in contrast to continuous data, which often refers to measurements, such as time, which can continually be subdivided (e.g, from days into hours into minutes, and so on).

64 For residual deviance for all other regression outputs see the full report on the University of Washington Evans School website.

65 See the full report on the University of Washington Evans school website .

66 There were only 1,067 cases in our sample of 22,179 cases in which fines stayed at, or were increased beyond the citation quantity. Of these 1,067 cases, only 14 were for Native American defendants, and only 58 were for Asian defendants. Given the large number of explanatory variables used in our analysis, it may be that we do not have the statistical power to identify differences in the likelihood of having stay at or increase beyond the citation amount for these groups. Therefore, we look at both differences in the likelihood of having fines reduced, and the likelihood of having fines stay at or increase beyond citation amounts.

67 All logistic regressions test for the convergence of probability of a given outcome in order to assess the strength of prediction. In this case, the model must fit values for each coefficient that describes the probability of a binary outcome for a given disposition. Failure to converge for the GEE models in this case is likely due to the large number of explanatory variables, some of which had very high likelihoods of one of the binary outcomes. Given that our models represent an approach to analyzing sentencing outcomes validated in part through stakeholder meetings and the literature, refining this model to allow for a GEE fit is outside the scope of this report.

68 Greenwald, A., Nosek, B., & Banaji, M. (2006.). Race Attitude. Retrieved from <https://implicit.harvard.edu/implicit/demo/background/raceinfo.html>

69 "Microaggressions," as defined by psychologist Derald Wing Sue, are "brief, everyday exchanges that send denigrating messages to certain individuals because of their group membership."

70 It should be noted that public defenders see more cases with clients in lower socioeconomic classes due to the nature of their office. In Tacoma Municipal Court, public defenders are only assigned to defendants if they are found by the court to be indigent. It is possible that the prosecutors report seeing fewer biases because they encounter cases with public defenders and with private attorneys.

71 "Intersectionality," as defined by professor Kimberlé Crenshaw in discussions of feminism, is the idea that "[c]ultural patterns of oppression are not only interrelated, but are bound together and influenced by the intersectional systems of society. Examples of this include race, gender, class, ability, and ethnicity."

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73 Ibid. Spohn, C. (2013)

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75 Washington State Code of Judicial Conduct, Rule 2.9 Ex Parte Commu-

nications (2011).

76 Ibid. Crutchfield, R. (1995)

77 Ibid. Munoz, E A. (2002)

78 Ibid. American Community Survey. (2016).

79 For cases in which the defendants was sentenced to pay a fine. In all other cases the median is \$0.

80 This refers to defendants with either a violent/abusive charge or a weapons or firearms charge.

81 Note: all of these statistics pertain to defendants, which are distinct from per person, as one person may have multiple cases.

82 Only significant interaction effects are show.

83 For all tables, “*” denotes significant at $p < 0.05$, “**” denotes significant at $p < 0.01$, and “***” denotes significant at $p < 0.001$ or more.

84 “The robust P value” in this case refers to the p-value obtained when assessing the significance of the coefficient when using the new variance estimations from our combined GEE models.

85 Ibid. American Community Survey. (2016).

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90 Ibid. American Community Survey. (2016).

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APPENDIX 1: INTERVIEW PROTOCOL

My name is _____, I'll be asking you some questions today. This is _____ and _____, they will be taking notes throughout. This is a collaborative project between the Tacoma City Attorney's Office and the Evans School looking at disparities in the Municipal Court system. Thank you for taking the time to speak with us today. The information we get from you today may be used in the final report, but responses will be kept anonymous and what you say will not be linked to you.

We typically record these interviews so that we can transcribe them and refer to them later if needed. No one will hear these recordings other than those interviewing you today. If you are uncomfortable with us recording but are still willing to speak with us, please let us know and we can speak without recording. This interview should take about an hour.

Introduction

1. Position(s) in the Tacoma criminal justice system:
2. Years in that position:
3. Any prior position in the Tacoma criminal justice system:
4. What is the most common type of case, or charge you see?
5. Describe a typical (non-traffic? DUI? Something to narrow) defendant that you have encountered in the Tacoma Municipal Court System in the last month for the most common type of case or charge you.
6. How do you interact with defendants?
 - Prompt: Realizing of course you cannot see them outside of the courtroom- what are you interactions within the courtroom like? Do often speak to defendants directly? What is this like normally? (e.g, do you feel they listen to you? Do they interact beyond yes/no?)
7. How do you move a case forward?
8. Who has the most discretion over charge severity? Over sentencing outcomes?

Culture of the Tacoma Municipal Court System

We are interested in learning about the culture of the Municipal Court. We are particularly interested in learning about the interactions of those working in the court and what attitudes exist in the organization.

1. What would you say is the most important value in the Tacoma Municipal Court system? Why is this the most important?

2. What are the biggest advantages to the workplace culture in the Tacoma Municipal court?
 - Prompt: From your perspective?
 - Prompt: As it applies directly to your work
3. What the biggest disadvantages to the workplace culture in the Tacoma Municipal court?
 - Prompt: From your perspective
 - Prompt: As it applies directly to your work
4. To what extent do you collaborate with your co-workers on a given project/case?
 - Would you say that everyone contributes equally to this?
 - » Prompt: Why/why not?
 - Has conflict ever arisen during one of these collaborations?
 - » Prompt: Tell me about a specific instance
 - » Prompt: Have complaints ever come out of this?
 - » Prompt: How was this handled?

Roles and Responsibilities of Tacoma Municipal Court Actors

1. Do you perform any job functions that are not part of your formal job description? If so, what?

Processes within the Tacoma Municipal Court System

1. What is your definition of fairness? Is there a shared definition of fairness as it relates to sentencing defendants in the court? If so, what is it?
 - Prompt: Does this differ at all from your definition?
 - Prompt: If so, how/why?
2. Using your definition or the shared definition, do you think that processes in the Tacoma Municipal Court System result in a fair charge and sentence of an individual?
 - Prompt: Ultimately, do you feel this results in a fair outcome? Are there any instances where this does not result in a fair outcome?
 - Prompt: Why or why not?
 - Prompt: How often do you think a fair charge/sentence is given to a defendant? What are some factors you think affects these decisions?

Biases in the Tacoma Municipal Court System

Explicit bias is conscious attitudes or beliefs a person holds about other groups. An example is hate speech against a racial group.

In contrast, implicit bias is the attitudes or stereotypes that an individual

holds about others that affect the understanding, reactions, and decisions regarding others in an unconscious manner. An example is intentionally avoiding a neighborhood because of the residential demographics.

1. Have you heard of the concept of implicit bias before?
 - Prompt: If yes, in what context? If no, what are your initial thoughts about the concept?
 - Have you ever had implicit bias training before?
 - » Prompt: Can you describe what it was like?
2. Do you notice disparate outcomes based on certain social categories?
 - Prompt: By mental illness
 - Prompt: By race
 - Prompt: By Socioeconomic Status
3. Can you think of a case where bias has influenced sentencing?
 - Interviewer to give an example
4. How do you think these biases could be addressed in an effective manner to mitigate their effects? (We will provide some possible recommendations.)
 - Prompt: Are these solutions relevant to Tacoma Municipal Court?
 - Prompt: To what extent are disparities in Tacoma Municipal Court different?

Recommendations

Next we’re going to talk about solutions that other states and jurisdictions are currently pursuing to address disparities in sentencing. Specifically we are going to focus on racial and mental health. We have chosen to focus on these issues because a.) Stakeholder input at the onset of our project suggested that mental illness likely contributed to a lot of disparate outcomes in sentencing, and b.) A cursory review of the demographics of the caseload compared to the demographics of Tacoma reveals that non-White individuals are overrepresented in the courts. Thus, there is a possibility of bias related to sentencing as a result of this overrepresentation.

Before we review strategies used elsewhere, we’d like to give you a chance to give an open response:

1. What, if anything, do you think Tacoma Municipal Court can do to reduce racial or mental illness related disparities in sentencing outcomes?
2. Certain other states across the U.S, notably some Midwest states

such as Wisconsin have begun specific racial fairness or equity commissions. Broadly this entails state governments making a commitment to analyzing racial disparities in sentencing outcomes on a regular basis and coordinating across agencies to reduce disparities. Do you feel that this is needed in Tacoma?

- Prompt: What about Statewide? Would going broader than Tacoma be necessary to make a large difference?
 - Prompt: Do you feel this could be redundant with the work the Tacoma equity office already takes on?
3. You may know this already but if not, the Tacoma Police Department recently underwent implicit bias training. Essentially this involves administering implicit bias tests, and trying to help individuals become aware of their own biases in order to help mitigate the consequences of this on their behavior.
 - Prompt: Do you feel this would be effective training for Municipal Court Judges? Attorneys?
 - Prompt: Anybody else?
 - Prompt: If yes, how so? And if not, why not?
 - Prompt: Overall- do you think completing this training would influence sentencing outcomes?
 4. Optional: You may know this already- but the City Attorney's Office is working to establish a mental health court for misdemeanor cases similar to the mental health courts that exist for felony cases statewide.
 - Prompt: Are you familiar with mental health courts and therapeutic courts in general? (If no, give description)
 - Prompt: Do you think this is feasible for misdemeanor cases?
 - » Prompt: Why/Why not?
 - » Prompt: Compared to felony cases? (given shorter sentences)
 - » Prompt: What barriers, if any, do you see to implementation?
 - » Prompt: Overall- how effective do you feel this would be at influencing sentencing outcomes?
 5. Do you have any suggestions that we have not discussed?
 - Prompt: If yes, what are they?
 6. Of the options we’ve discussed, what do you feel would be the most effective strategy to pursue?
 - Prompt: Why?

Conclusion

1. Is there anything else you would like to tell us?
2. Is there anyone else you think we should talk to?
 - Suggestions for reaching out to defendants?

APPENDIX 2: INTERVIEW PROTOCOL

We reviewed the 301 unique charges present in the data and we categorized them as:

a. Weapons or Firearms	Charges involving possession or use of a weapon or firearm.
b. Technical Violations	Charges involving failure to adhere to a code requiring a defendant to take certain actions. This includes charges such as failure to transfer vehicle title within 45 days or failure to renew expired registration.
c. Vehicular	Charges involving the use of a vehicle. For example, driving with a license suspended, or negligent driving.
d. Substance-Related	Charges involving substance use. For example, possession of drug paraphernalia.
e. Violent or Abusive	Charges involving a violent or abusive act committed by one person against another. For example, assault 4th degree, or disorderly conduct with abusive language.
f. Property	Charges involving a defendant committing a crime against either public or private property that is not their own.
g. Noncompliance	Charges involving failure or refusal to stop a certain behavior. For example, resisting arrest or violating a no contact order.
h. Public Order	Charges involving disturbance or unacceptable behavior for a public place. For example, soliciting for money or prostitution.
i. Other	This refers to charges that do not fit into our categories. "Other" accounts for <0.001 percent of all charges.