RACIAL DISPARITY IN HOUSTON’S PRETRIAL POPULATION

FIRST REPORT IN THE “Understanding Criminal Justice Disparities” SERIES

CENTER FOR JUSTICE RESEARCH
TEXAS SOUTHERN UNIVERSITY
Minorities are at a Distinct Disadvantage in the Nation's Third Largest Pretrial Population

There has been no shortage of discourse surrounding racial and ethnic disparities in the criminal justice system. In fact, the need to address these inequities have emerged as a central tenet of most viable criminal justice reform efforts. However, missing from the ongoing dialogue concerning race, crime, and justice, are attempts to evolve from the mere documentation of disparity's presence to action through empirically informed policy recommendations, program development and intervention designs. The following report represents one such localized movement toward action in Houston, Texas, the third largest criminal justice system in the nation, whereby we examine those behavioral characteristics and systematic responses that underlie the state of racial/ethnic disparities in the jail system.

Processing over 100,000 citizens each year, the Harris County jail has garnered national attention for its discriminatory bail practices, which have been found to criminalize poverty while indirectly impacting racial and ethnic minorities. People of color collectively represent 72% of those in jail prior to a determination of guilt in Harris County. A class action legal injunction handed down in June 2017, catalyzed by a woman unable to post a $2,500 bond for driving with a suspended license, requires that all persons charged with misdemeanors be released from jail within 24 hours. Essentially, the county has been prohibited from detaining poor defendants for low-level, non-violent misdemeanor offenses. In effect, this reduces the likelihood of Debtor’s Prison at the local level. The Harris County pretrial population is of particular concern, as three-quarters of the average daily population of 9,600 inmates have yet to be convicted of any crime, three-fourths of whom are people of color.

Though Harris County’s current bail litigation focuses on indigency status, its influence on pretrial outcomes has significant implications for persons detained before trial. Previous examinations of disparities in pretrial release decisions simply document unequal outcomes, without identifying factors that may explain these disparities. Failing to understand the context in which inequities occur produces ineffective interventions, primarily as a result of the lack of specificity. Therefore, this report examines racial and ethnic disparity among jail bookings and the pretrial population in Harris County so that we are better able to inform and prioritize approaches to pretrial equity. Policy suggestions are provided at the conclusion of this report.
According to the 2017 United States Census Bureau population estimates, Harris County, Texas has a population of approximately 4.6 million and is the third largest county in the United States. Despite its diversity, minorities are overrepresented throughout the jail system, as indicated in the forthcoming analyses. As a point of reference, Harris County's racial and ethnic composition is 30% White, 42% Latino, 20% Black, and 8% Other (Asian, American Indian, Alaskan Native, Pacific Islander).
Over the last 8 years, there were approximately 80,000 to 100,000 yearly bookings into the Harris County jail. As indicated in Figure 2, bookings into the Harris County jail have not been proportionally distributed. Each year, Blacks represent 50% of all persons processed by the jail, despite comprising just 19.7% of the jurisdiction's population.

Over time, as the number of overall bookings fluctuated, Black's remained over-represented in their percentage of bookings relative to their proportion in the general population. Recent efforts to reduce the number of incarcerated persons have had no discernible impact on the racial and ethnic disparities in the Harris County jail. Therefore, it is not enough to identify disparity, we must understand why these disparities exists. To that end, we move to understand the offense patterns of the jail population in the following pages.

Total Bookings into Harris County Jail, 2011-2017

"It's not enough to simply identify disparity, we must understand WHY these disparities exists."
Figures 3 and 4 demonstrate that Harris County’s total pretrial population is overwhelmingly male and minority, as Black defendants represent 50% and Hispanic defendants represent 22% of the population.

Conversely, data shows that while Black and Latino defendants constituted 77% of Harris County’s pretrial detention population, they only comprised a combined 17% of defendants who received DWI Pretrial Diversion and 29% of those who received general pretrial intervention. Among persons released without conditions via money bail, Black defendants represented 42%, while Latino and White defendants constituted 20% and 32%, respectively. Additionally, it is worth noting that the data provided for pretrial diversion inconsistently reported ethnicity; however, all eligible cases were included in the analysis.

Of particular concern is the pretrial population, which Harris County has spent over $8 million defending, only to have its bail practices found to be in violation of due process and equal protection rights for discriminating against the poor.

Findings indicate that despite representing 30% of Harris County residents, White defendants comprised approximately 22% of all persons held in custody before trial and 20% of all persons under pretrial supervision. However, between 2013 and 2017 (Figure 5), White defendants appeared to be overrepresented in their participation in the DWI Pretrial and general Pretrial Intervention programs (74% and 64%, respectively).

**KEY TERMS:**

- **Disposition:** before the case is resolved.
- **Pretrial Release:** released without conditions before disposition.
- **Pretrial Supervision:** released with conditions and supervised by Harris County Pretrial Services before disposition.
- **Pretrial Detention:** detained before disposition.
- **Pretrial Diversion:** diverted before disposition.

Data Sources: Harris County Sheriff’s Office, Harris County’s District Attorney’s Office and Harris County Pretrial Services Department.
To gain a better understanding of disparity, we examined the offense patterns of bookings into the Harris County jail by race and ethnicity. Doing so provides an opportunity to understand police practices and behavioral responses that bring citizens to the attention of law enforcement. We found that despite constituting just 19.7% of Harris County residents, Blacks represent 49% of bookings for drug offenses, 49% of bookings for property offenses, 43% of bookings for person offenses, 50% of bookings for public order offenses, 49% of bookings for serious offenses, and 50% of bookings for violent offenses (Figure 6). While Blacks were over-represented across most offenses, defendants classified as Other, were consistently underrepresented across offense types from 2011 to 2017.

**Figure 6**

*Average Percentage of Arrests into Harris County Jail by Race, Ethnicity and Offense Type, 2011-2017*

Data Source: Harris County Sheriff's Office
Harris County jail inmates have not been convicted of any crime (pretrial population).

...the monthly jail population reached a high of nearly 7,500 Black and Latino inmates during Summer 2018.

In January 2018, the number of persons incarcerated in the Harris County jail began to climb. County officials attributed the increase to Hurricane Harvey, while others identified the County’s handling of the storm’s immediate aftermath as the catalyst for the surge in jail occupancy. Despite the reason, the jail population reached a high of nearly 7,500 Black and Latino inmates during Summer 2018, a figure not seen since 2011.

With criminal justice stakeholders and members of the public identifying a reduction in incarceration as central to any viable criminal justice reform effort, there remains an untapped opportunity to expand the use of both pretrial supervision and pretrial diversion. We cautiously recommend the expansion of pretrial supervision, recognizing that like most forms of supervision, there may be some unintended net-widening effects. As such, County officials must be intentional and deliberate in their commitment to incarceration alternatives, disparity reduction efforts and allegiances to public safety.

At any given time:

- 75% of the Harris County pretrial population are felony defendants.
- of the pretrial population in the Harris County jail are Black and Latino.
Patterns in the Data: Pretrial Diversion in Harris County

To better understand the relationship between disparity and Harris County’s yet to be convicted pretrial populations, we examined pretrial diversion failure, the only pretrial population for which data was readily available. By examining the total sample, as is most common, without regard to criminal justice practices and/or behavioral differences, there is no way of understanding arrest disparities. In consideration of this fact, we move beyond frequencies and percentages to analyze relationships between the demographic and case level factors and diversion failure by a defendant perceived race. In so doing, we uncover meaningful patterns, policy recommendations and effective program developments. It should be noted that Harris County does not differentiate between White and Hispanic. As a result we are unable to make that differentiation, though the United States Government has done so since the 1970s.

Relationships between demographic factors, case level items and diversion failure are demonstrated in Figure 7. Findings indicate that both demographic and case level factors were significantly associated with diversion failure for White defendants. In other words, male status, non-citizen status, youth, felony status, increased number of court dates, greater time spent in a diversion program, court level differences, and DWI Pretrial diversion were all related to unsuccessful diversion completion for White defendants. On the other hand, none of the demographic level factors were associated with diversion failure for Black defendants. In other words, neither gender, citizenship, nor age appeared to affect diversion failure for Black defendants on pretrial diversion. Further, with the exception of the number of case settings, case level factors were found to be most related to diversion failure for Black defendants. For example, felony status, greater time spent on diversion, court level differences, type of offense alleged to have been committed and participation in DWI Intervention were significantly associated with diversion failure among Black defendants. Given current findings at the bivariate level, to reduce disparate outcomes among White and Black defendants on pretrial diversion, efforts must be aimed at the case level to see a meaningful movement toward parity.

Data Source: Harris County District Attorney’s Office
What's The Significance?
Black Felony Defendants More Likely to Experience Pretrial Diversion Failure

Given the significance of the relationships between demographic variables, case level factors and diversion outcomes, we sought to determine whether the same variables were predictive of diversion failure and if so, whether diversion failure was predicted equitably among Black and White defendants on pretrial diversion in Harris County. In this way, the current report improves upon previous studies that only present findings of total samples without examining racial/ethnic differences. Aggregated results often mask outcome variation by diverse groups of justice involved persons. Instead, we identified whether the factors that influenced diversion failure differed by defendant race. This approach allows future attempts at increasing diversion success to be empirically supported and contextually specific to defendant outcomes in Harris County. Despite the admitted overlap between correlational relationships and logistic regressions, we chose to include the latter in order to present the likelihood of failure of each factor with statistically significant confidence levels.

Figures 8 and 9 demonstrate how well case and demographic level factors predict diversion failure for the total sample and across defendant groups. Specifically, each figure displays the likelihood of failure for statistically significant predictors as identified by the predictive model.

**Case Level Factors**

As a predictive model, offense severity, number of case settings, time spent in a diversion program, specific court, offense and program type were found to be significant predictors of diversion failure. However, only factors that were statistically significant at the case level are provided in Figure 8. Despite being significant predictors of failure for the all defendants, it is clear that Black defendants had the highest likelihood of failure among felonies on pretrial diversion (12 times as likely). In fact, Black felony defendants experienced failure at a rate nearly twice that of White felony defendants.

Simply because Blacks have the greatest likelihood of diversion failure it can not be assumed that it is because of their racial classification more so than it is about their life experiences with poverty, educational access, employment opportunities, and any other structural or racial inequalities. As such, we have an ethical obligation to note the scientifically proven fact that race and ethnicity have no biological determinants. In our case, race and ethnicity are simply measures of structural inequities and discriminations that have been confirmed, by our report, to produce pretrial disparities between the groups under examination.

In the examination of racially disparate criminal justice experiences, it is of utmost importance that there be a determination of the relationship that exists between a person’s race, ethnicity and justice system inequities. Here, we were able to observe how providing results without examining racial groups independently impedes the ability to understand the likelihood of failure for minority defendants. Program length appeared to influence failure similarly across all defendant groups. However, court level differences were found to be a significant predictor of failure only for Black defendants. Simply stated, there were certain courts that had greater likelihoods of failure for Black defendants on pretrial diversion. Moreover, whether a defendant was on diversion for DWI pretrial intervention or general pretrial intervention affected the likelihood of failure, but only for the aggregated sample and White defendants individually. Altogether, case level factors explained 17.6% of the change in diversion failure among defendants who received the intervention. But, without this breakout regression analysis pushing past the constraints of previous total sample analyses, insight into the factors differentially affecting the likelihood of failure for diverse defendants on diversion would have likely remained unclear.
Demographic Level Factors

Hidden within the results of the total sample, race appeared to be the sole demographic level factor predictive of diversion failure for Black defendants. Of the demographic level factors, race, gender, citizenship status and age were significant predictors of diversion failure for White defendants (see Figure 9). Black defendants were nearly twice as likely to fail diversion as Whites in the sample. Moreover, gender, citizenship and age predicted diversion equitably for White defendants. However, for Black defendants on diversion neither gender, citizenship, nor age had a significant influence on diversion failure. To put it plainly, diversion failure was equally likely for Blacks regardless of gender, age, or citizenship status.

Demographic level factors explained only 1.5 percent of diversion failure, thereby providing support for an additional investigation of factors that inhibit successful diversion completion. Particularly, this is important, since most agency level evaluations do not control for demographic characteristics beyond gender and age.

Figure 9

... Not controlling for racial/ethnic differences overshadows the potential for effective remedies
Despite the prevalence of racial and ethnic disparities among the various pretrial programming in Harris County, departments must continue to take the necessary steps to identify why these inequities exist. This report provides a springboard from which to continue to seek amicable solutions. Based on our analysis of Harris County data, the following recommendations emerge from the current report and are detailed on the following pages.

**Solutions and Implications**

Our Findings Pinpoint Sources of Racial Disparity and Develop Data-Driven Policy Recommendations to Address Inequitable Pretrial Outcomes

1. **Address Patterns of Disparity**
2. **Conduct Ongoing Community Assessment**
3. **Realign Policing Practices**
4. **Increase Alternatives to Incarceration**
5. **Adopt Action-Based Strategies**
6. **Focus on Front-End Reform Efforts**
ADDRESS PATTERNS OF DISPARITY

Harris County must identify patterns of disparity in pretrial outcomes.

Using the findings of this report as a springboard, the Harris County criminal justice system must identify jurisdiction specific disparities, ensuring that interventions have a high level of responsiveness and are appropriate to the population at hand. Research suggests that interventions that maximize alignment between offender risk, need and responsiveness have a significant effect on recidivism. In the context of pretrial research, prior studies have limited their scope to differential release decisions among White and Black defendants. Consistently, these studies stop short of identifying specific factors that have led to disparity. The case level items are just one example of local factors that influence racial/ethnic disparities (i.e., program length, offense severity and court level differences). Our analysis indicated that these factors were significantly predictive of diversion failure for Black defendants in Harris County. To increase parity among diversion outcomes, these specific factors should be evaluated, monitored, and modified where appropriate. Otherwise, failing to triage these differential outcomes inhibits the development of policies and interventions that stymie the flow of minorities into Harris County’s criminal justice system. As a result, current attempts to address racial and ethnic disparity, regarding those in custody before trial, effectually amounts to little more than documentation.

CONDUCT ONGOING COMMUNITY ASSESSMENT

An examination of the structural issues related to crime at the community level is recommended.

With the exception of DWI’s, Blacks comprised the largest racial group booked into the Harris County jail for drug, person, property, serious, and violent offenses. Any recommendation that seeks to address racial disparity along the various criminal justice touch points (charging, conviction and sentencing outcomes) must consider the underlying factors that drive illegal behaviors because simply noting the disparity is not enough. Previous research identifies a lack of employment, low educational attainment, low percentage of home ownership and low annual household income as predictors of crime in poor and minority communities. Therefore, we recommend an assessment of community needs in Harris County and a push for greater access to social services in high crime areas. By identifying, addressing, and monitoring factors significantly associated with crime in specific Harris County neighborhoods, we are better able to confront illegal behavior by utilizing a multi-pronged approach.
REALIGN POLICING PRACTICES

Evidence suggest further examination of policing practices for better contextualization of the racially disparate arrests and subsequent pretrial release decisions.

Although the number of bookings into the jail fluctuated each year, the proportional representation of each racial and ethnic group did not change. For example, even when total bookings decreased, as they did in 2014, Black Harris County residents still represented 50 percent of persons booked into the jail. Moreover, bookings by race, ethnicity and offense type indicated fixed rates of participation across drug, DWI, person, and property offenses. Bookings into the Harris County jail provides an opportunity to better examine these concerns as the initial touch-point into the jurisdiction's criminal justice system. Since bookings, or arrests, are a formal response to illegal activity known to law enforcement, any attempt to understand overall rates of bookings across groups must consider law enforcement behavior, such as patrol practices (number of officers in a given neighborhood), departmental policies (stop and frisk, cite and release, etc.) and officer discretion to contextualize which individuals go to jail and why, particularly when prior studies document the impact of such policies on vulnerable populations, all of which have been shown to impact arrest outcomes.

INCREASE ALTERNATIVES TO INCARCERATION

After this most recent finding of its unconstitutional bail practices, coupled with the findings of this report, Harris County should expand the use of pretrial supervision and diversion among non-violent pretrial detainees and increase the number of minorities who participate in both interventions.

Much of the conversation on pretrial release decisions has focused on whether the accused had been charged with a felony or misdemeanor offense. We argue, that to prioritize public safety and increase access to liberty, release decisions should be predicated on the violent characteristic of the current offense. With nearly 42% of the Harris County pretrial detention population accused of non-violent crimes, Harris County should expand the use of pretrial supervision and pretrial diversion programs as an alternative to incarceration. Effectively, this would reduce its jail utilization by nearly 40%. Moreover, Harris County should periodically monitor diversion participation to ensure equitable access to these alternatives.
ADOPT ACTION-BASED STRATEGIES

Harris County should adopt action based strategies across justice agencies and make their progress toward identified outcomes publicly available.

Despite a general consensus regarding the presence of racial and ethnic disparities in Harris County’s criminal justice system, the reduction efforts made towards disparity have not progressed beyond documentation and discussion. To actualize efforts to bring about a fairer, more equitable system, action-based strategies must be implemented throughout the jurisdiction. More specifically, after the discovery of baseline disparity measures within patterns of Harris County’s justice data system, criminal justice stakeholders must challenge themselves to set measurable disparity reduction indicators, over and above the need to appear unbiased. These objective outcomes should follow a timeline, with regular follow-ups to assess progress and allow for course correction. Moreover, progress toward these outcomes should be publicly available in an effort to foster greater transparency and accountability.

FOCUS ON FRONT-END REFORM EFFORTS

In Harris County, Black and Latino defendants comprise 75% of all persons booked into jail each year. However, they collectively represent just 17% and 29%, respectively, of each diversion program for which data was made available and analyzed. The level of minority participation in Harris County’s booking and pretrial detention population demonstrates numerous points of entry for people of color into Harris County’s criminal justice system, but few opportunities for diversion. The findings in this report are not unique to Harris County, in fact, a number of jurisdictions have engaged in policy changes and program development to address racial and ethnic inequities and reduce the overuse of incarceration. Among these jurisdictions, policies have been introduced to increase the number of non-arrestable offenses, downgrade sanctions for certain offenses, revise charge enhancement policies, repeal mandatory minimums for specific crimes, and expand the use of alternatives to incarceration. These types of front-end criminal justice reform initiatives consist of policy changes that either improve the outcomes or reduce the number of persons in the earliest stages of the criminal justice system (e.g., arrest, charging and pretrial detention).

Recently, front-end justice reform efforts have attracted the financial support of sponsors across the country. Generally, these initiatives emphasize reducing arrest and increasing the use of treatment and diversion as practical alternatives to traditional justice system processing. Given the findings of this report, we recommend that Harris County expands the use of front-end criminal justice reform efforts, like the pretrial diversion programs examined in this report and the District Attorney’s Marijuana Diversion Program, to actively minimize the number of county residents introduced into the justice system. Moreover, we recommend specific diversion developments aimed at reducing disparate impacts and the overall effect of that introduction.
FUTURE DIRECTIONS

Despite the ever-present racial and ethnic disparities in pretrial populations, coupled with growing public and bi-partisan political support, Harris County’s ability to address these issues remains commandeered by a few influential decision-makers. There is no better opportunity for bail and pretrial reform than now. The innumerable amount of causes in direct relation to pretrial disparities can be adequately addressed with concrete commitments from the criminal justice gate-keepers, service providers and the community.

By moving beyond simply identifying disparities in the pretrial system to creating a better understanding of those underlying factors is a step that must be made, if we are to ever adequately reduce racial/ethnic and class inequities. The CJR will continue to determine why racial/ethnic disparities exist in our criminal justice system. Simultaneously, we will disseminate findings in a manner consistent with our ongoing mission of eliminating criminal justice inequities, couched within behavioral and situational realities for resilient communities as defined by their historically oppressive experiences with the existing system of justice.

The CJR will continue to determine why racial/ethnic disparities exist in our criminal justice system.
UNDERSTANDING CRIMINAL JUSTICE DISPARITIES SERIES

Unequal Justice: Racial Disparities in Harris County's Pretrial Population

For more information please contact:

Center for Justice Research
Barbara Jordan - Mickey Leland School of Public Affairs
Texas Southern University
3100 Cleburne St., Bell Building Suite 24
Houston, TX 77004
(713) 313-7813
justice.research@tsu.edu
www.centerforjusticeresearch.org