

PATHWAYS TO OFFENSE CHARGING

Examining Defense Decision-Making During Case Processing

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Prosecutors are afforded significant discretionary power in the current justice system. While much attention has been given to the factors that influence charging decisions, little is known about decision-making in the charging process itself. Moreover, research has yet to examine the mechanisms used to initiate charging: grand jury indictments or the information. As these charging processes are characteristically different and may have significant implications for case processing and justice outcomes, it is important to explore what factors influence decision-making at this early stage. The current study addresses these shortcomings using case-processing data from a large urban jurisdiction. Results indicate significant differences between defendants charged via grand jury and information processes. In addition, charging pathways have important consequences for case outcomes.

Keywords: prosecutorial discretion; case processing; case outcomes; charging practices

INTRODUCTION

Prosecuting attorneys are widely considered one of the most powerful decision-makers in the criminal justice system, so much so that they are often considered the gatekeepers of the criminal-legal system. Prosecutors are central to early case-processing decisions (e.g., charging) and to a certain extent, case outcomes as a result of the heavy reliance on plea-bargaining. Given the centrality of their position, scholars have begun to examine their decision-making behaviors, particularly in relation to charging decisions (Alderden & Ullman, 2012; Brady & Reys, 2020; Kutateladze et al., 2012; Lowrey-Kinberg et al., 2022; O'Neal & Spohn, 2017; Pinchevsky, 2017; Romain & Freiburg, 2013; Shermer & Johnson, 2010). Missing from the current discussion of charging decisions is an examination of the charging process itself and the role other court actors play in directing this process.

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In many jurisdictions, prosecutors are responsible for initiating the charging process and do so in one of two ways: grand jury indictment or information filing. While both grand jury indictments and information filings are legal documents that charge a person with a crime, they are notably different in origin, use, and process characteristics (Henning, 2015; Kuckes, 2004; Lombardo, 2000; Richardson, 1981; R. Simmons, 2016). The right to indictment by grand jury is outlined in the Fifth Amendment of the U.S. Constitution, which guarantees all citizens the right to a grand jury hearing prior to formal charging. Importantly, this right has not been extended to the states via the Fourteenth Amendment, to allow flexibility in the charging process (Richardson, 1981). As such, grand jury hearings are not a prerequisite for charging at the state level. In contrast, many jurisdictions employ an information filing process to levy charges against individuals accused of crimes. Informations are generally filed directly with the court from a prosecutor. Notably, many jurisdictions use both charging mechanisms to initiate formal legal proceedings.

Unlike many case-processing decisions, the charging process is not solely dictated by prosecutors. While prosecutors are primarily responsible for establishing probable cause and charges against the accused, defendants may guide this process by deciding the setting in which this process occurs. Specifically, the defense may choose to waive their rights to grand jury proceedings, in favor of a preliminary hearing.¹ Given the various procedural privileges granted to defendants at preliminary hearings, doing so may have important consequences for case outcomes. Notably, little research has examined the factors that influence a defendant's decisions to rely on either process.

Moreover, prior research has neglected to account for differences in charging processes as a factor that may affect case outcomes. A large body of research suggests that case-processing factors significantly influence sentence outcomes for persons convicted of an offense (Brennan, 2006; Farrell et al., 2009; Feldmeyer & Ulmer, 2011; Franklin & Henry, 2020; Kutateladze et al., 2014; Tartaro & Sedelmaier, 2009; Wang et al., 2013; Wooldredge, 2012). For example, individuals who are detained prior to trial face more punitive sanctions as opposed to those who are released. In addition, those sentenced at trial (i.e., they do not accept a plea) face a trial penalty if found guilty. Grand jury indictments and informations present the accused with significantly different opportunities to oppose charges against them. As such, these early process decisions may have unique effects on subsequent case outcomes.

The current study examines the consequences of this unexplored area of decision-making. To address these shortcomings, we first examine defendant decision-making in the charging process. Specifically, we explore the circumstances in which the accused choose to forego grand jury proceedings, opting instead for a preliminary hearing. Next, we examine the extent to which charging processes influence case outcomes for defendants. Specifically, we explore the relationship between charging mechanism (i.e., grand jury or information), case dismissals, deferred adjudication, and conviction. In doing so, we rely on data from a large urban prosecutor's office, which utilizes grand jury and information filing processes to initiate case processing.

CHARGING DEFENDANTS: GRAND JURY INDICTMENTS AND INFORMATION FILING PROCESSES

The grand jury process has a long-standing history in the American justice system. Grand juries are tasked with determining whether sufficient evidence exists to charge the

accused with an offense (Richardson, 1981). In other words, they assess the extent to which probable cause exists to support a legally substantiated charge. Historically, the grand jury has two primary functions. First, they are meant to act as a shield, protecting citizens from “hasty, malicious, and oppressive persecution” (Lombardo, 2000, p. 834) at the hands of overzealous prosecutors. Second, grand juries function as the *sword* of the government, relying on its investigatory powers to assist the government in finding probable cause. For example, prosecutors routinely rely on the grand jury’s subpoena powers to gather previously unavailable evidence and require witnesses to appear for testimony (Lombardo, 2000).

Although lauded as an essential protection to the rights of justice-involved persons, some legal scholars suggest the ability of grand juries to act as a shield has been severely hampered. According to Kuckes (2004), the process itself is uniquely “mysterious, shrouded in secrecy, and clouded in ambiguity” (p. 2). This secrecy does little to enhance public perceptions of transparency and legitimacy (Henning, 2015). Moreover, grand juries indict approximately 99% of cases brought before them (Hoffmeister, 2007), which fails to support the idea that grand juries serve as a check on prosecutorial charging powers.

The most notable critique of the grand jury process is its lack of procedural guardrails to protect against violations of due process (Henning, 2015; Lombardo, 2000; Richardson, 1981; R. Simmons, 2016). A series of rulings by the Supreme Court of the United States has significantly limited the protective powers of the grand jury, relegating it to a performative function at best (R. Simmons, 2016). For example, unlike in adjudicatory settings, prosecutors can present hearsay testimony to grand jurors. In addition, the exclusionary rule does not apply during grand jury hearings. Prosecutors may rely on illegally obtained evidence to establish probable cause (Richardson, 1981; R. Simmons, 2016). Moreover, prosecutors have no duty to present exculpatory evidence nor does the accused have the right to counsel during proceedings (Henning, 2015; Lombardo, 2000; R. Simmons, 2016). Taken together, little supervision exists governing the grand jury process.

Importantly, grand juries are not legally mandated for state prosecutions (see *Hurtado v. California*, 1884). In fact, roughly half of states rely on grand jury indictments to bring charges against the accused (Decker, 2005).² Many jurisdictions, instead, employ an information filing process in conjunction with a preliminary hearing to charge individuals with crimes. When charged using an information, accused individuals have a right to a preliminary hearing during which the prosecution presents evidence to a magistrate to establish probable cause that a crime was committed (Kuckes, 2004; Richardson, 1981). Unique to this process, and its most defining characteristic, is the role of the accused and their representing attorney. Unlike grand jury proceedings, defendants have the opportunity to refute evidence presented by the prosecution. They may confront and cross-examine witnesses, present exculpatory evidence, and maintain counsel during the “mini trial.” Legal scholars argue that this process affords defendants important procedural benefits unavailable to those charged via a grand jury indictment.

DECISION-MAKING IN CRIMINAL JUSTICE CASE-PROCESSING

Scholars interested in the decision-making behaviors of courtroom workgroup members routinely rely on uncertainty avoidance/causal attribution, racial/ethnic bias, and organizational efficiency perspectives to inform case processing and other legal outcomes (Albonetti,

1986, 1987, 1991; Steffensmeier et al., 1993; Ulmer et al., 2007). The current study also draws on these frameworks to guide expectations about decision-making during the charging process, integrating them through the focal concerns perspective. First applied to judges, the focal concerns perspective suggests that punishment decisions are primarily based on three universally held focal concerns: (a) culpability, (b) community protection and dangerousness, and (c) the practical constraints associated with the judicial decision-making process (Steffensmeier, Ulmer, & Kramer, 1993).

According to the focal concerns perspective, while striving to maintain a fully rational decision-making process, courtroom workgroup members (i.e., prosecutors and judges) face a great deal of uncertainty when assessing focal concerns. Organizational constraints (e.g., large caseloads, limited resources, and insufficient case information) often make achieving a completely rational decision-making process difficult. Decision-making, instead, is accomplished in the context of “bounded rationality” (Albonetti, 1991). To reduce uncertainty in this context, decision-makers engage in a causal attribution process (Albonetti & Hepburn, 1996), relying on perceptual shorthands when making decisions (Steffensmeier, Ulmer, & Kramer, 1993). These shorthands may be influenced by legally relevant factors, primarily offense severity and criminal history, as well as extralegal (e.g., race, age, and gender) and case-processing factors.

Notably, the focal concerns perspective is not readily applied to decision-making behaviors of defendants and their attorneys. This may be a consequence of the limited authority defendants and counsel have during court proceedings in comparison with other workgroup members. As Eisenstein and colleagues (1988) explain, defendants are more closely akin to “tourists” in the criminal legal system, as opposed to everyday fixtures. That said, defendants are afforded some discretionary decision-making power in early case processing. For example, defendants can choose to accept or decline negotiated pleas, waive their rights to counsel, and request a bench trial. As such, defendants and their attorneys must also adopt strategies to manage uncertainties and balance risk in their best interest.

As members of the courtroom workgroup, defense attorneys may also be guided by focal concerns in ways that mirror interpretations of other decision-makers. Like prosecutors, they are likely to be concerned with issues of culpability, perceived dangerousness, and convictability (Shermer & Johnson, 2010). Moreover, defense attorneys, particularly court-appointed attorneys, are likely to be inhibited by similar organizational constraints (e.g., large caseloads, limited resources, and insufficient case information), to an even greater degree than other courtroom workgroup members. As such, they too may rely on perceptual shorthands when making decisions. As defense attorneys adopt a downstream orientation attempting to predict how other courtroom workgroup members (e.g., judges, prosecutors, and jurors) may evaluate these characteristics (see Frohmann, 1997; Spohn et al., 2001), they must consider how perceptual shorthands may be assessed by other members of the courtroom workgroup.

In the context of charging, this means that the defense must account for how a grand jury or magistrate may interpret information presented at each venue and decide which process reduces likelihood of obtaining a true bill. As previously discussed, the grand jury process is the prosecutor’s domain. They control the type of evidence submitted (regardless of quality) and witnesses called to testify, and benefit from the lack of procedural safeguards available in other adversarial court proceedings (Henning, 2015; R. Simmons, 2016). Moreover, they can also use the fact-finding powers of the grand jury to bolster evidence against the

accused. Prosecutors may rely on these tools to shape the extent to which defendants are perceived as culpable or dangerous. As such, the grand jury process may increase the likelihood of defendants being charged. Given the outsized ability of prosecutors to shape how grand jurors perceive focal concerns, defense attorneys and their clients may be less inclined to rely on the grand jury process as it increases uncertainty of not being charged with an offense.

Because of their familiarity with local legal culture (Eisenstein et al., 1988), defense attorneys may also be keenly aware of court community norms and the types of cases traditionally dismissed in each venue. As such, prior experience and membership in the courtroom workgroup may facilitate decision-making. For example, defense attorneys may advise waiving the right to grand jury proceedings depending on the presiding magistrate, offense type, or defendant characteristics. Because court communities and culture shape intraworkgroup relationships and decision-making (Hester, 2017), it is possible that defense attorneys may draw on their familiarity with court norms to assess what would lead to the best outcome for their client (e.g., no charges). As few studies have previously applied the focal concerns perspective to defense decisions, particularly in this context, we hypothesize as follows:

Hypothesis 1: Legally relevant (i.e., offense severity and type) and extralegal factors (i.e., race/ethnicity, age, and sex) will significantly predict defendants' decisions to waive the right to grand jury proceedings.

As previously discussed, the focal concerns perspective emphasizes the influence of legally relevant and extralegal factors on decision-making. However, prior research also suggests that a number of case-processing factors also influence case outcomes (Brennan, 2006; Farrell et al., 2009; Feldmeyer & Ulmer, 2011; Franklin & Henry, 2020; Kutateladze et al., 2014; Tartaro & Sedelmaier, 2009; Wang et al., 2013; Wooldredge, 2012). These factors are not directly related to the instant offense or defendants' prior criminal behavior, nor are they tied to defendant or victim case characteristics. Instead, they describe factors related to the legal process itself. For example, attorney type, pretrial detention status, and mode of conviction are notable case-processing factors that can influence case outcomes.

Charging process decisions may be grouped with other case-processing decisions. Although charges filed via grand jury or information are not directly related to offense characteristics, charging pathways may have consequences for later case-processing decisions and disposition outcomes. For example, charges filed via grand jury may allow prosecutors to gather additional evidence, reducing uncertainty surrounding the likelihood of conviction. As such, they may be less inclined to dismiss cases charged via grand jury indictment. In contrast, defendants charged via information have the opportunity to learn what evidence the prosecution may have and be better prepared to refute charges against them at trial. This benefit may decrease the likelihood that an individual is found guilty.

Moreover, deviations from traditional charging processes (i.e., forgoing grand jury proceedings) may result in penalties for defendants if doing so affects court efficiency. Similar to a trial penalty, those who exercise certain legal rights that affect court resources may receive more punitive sanctions. In this context, that may include reduced chances of case dismissal or withholding deferred adjudication options. As prior research has yet to examine the influence of charging processes on case, we hypothesize that

Hypothesis 2: Charging process decisions will significantly influence case outcomes. Specifically, the likelihood of case dismissal, deferred adjudication, and conviction will be related to charging process decisions (i.e., grand jury vs. information charging).

We discuss the relationship between legally relevant, case processing, and extralegal factors and case outcomes below.

LEGALLY RELEVANT, CASE-PROCESSING, AND EXTRALEGAL INFLUENCES ON LEGAL OUTCOMES

CHARGING AND CASE DISMISSALS

Although little is known about the factors that influence prosecutor's decisions to use the grand jury or information charging mechanisms to file charges, prior research has examined these determinants for other early case-processing decisions and case outcomes (see Spohn, 2000, 2018). For example, prosecutor charging decisions (e.g., initial screens and dismissals) have been a focus of scholarly inquiry. Although prosecutors may decide to reject cases (i.e., not file charges) for a number of reasons during case screening, including believing the suspect is innocent, the perceived inability to obtain a conviction, and prosecution not being in the interest of justice (see Silberman, 1978), evidence suggests that legally relevant and extralegal factors routinely influence this outcome (see Spohn, 2018). Offense severity, strength of evidence, suspect culpability, offense type, the number of charges against a suspect, pretrial detention, and conditional release status are legally relevant factors associated with charge dismissals (Franklin, 2010a, 2010b; Hartley & Tillyer, 2018; Kutateladze et al., 2014).

Moreover, research suggests that extralegal factors have subtle effects on charging decisions. However, the extent to which these factors influence decision-making is equivocal (Franklin, 2010a; Hartley & Tillyer, 2018; Kutateladze et al., 2012). For example, Hartley and Tillyer (2018) find that federal prosecutors are more likely to dismiss charges against Black, Asian, and Native American suspects. In addition, males, U.S. citizens, and older suspects are also more likely to have charges dismissed. Notably, Hartley and Tillyer's (2018) study analyzes charges dismissed by the prosecutor and those that were declined concurrently. Doing so limits the ability to differentiate the influence of race on these distinct decisions. Examining the singular decision to dismiss, Franklin (2010a) finds that while Black suspects faced higher charge attrition, Latinx suspects are more likely to retain charges, compared with White suspects.

Scholars suggest that the extent to which these factors matter may be a consequence of offense type. Among a sample of individuals convicted of felony drug offenses, Franklin (2010b) found no significant relationship between extralegal factors (including race, sex, and age) and dismissal decisions. In addition, in cases involving sexual assault, child abuse, intimate partner violence, and domestic violence, evidence suggests that prosecutors rely on unique extralegal factors emphasizing convictability (Alderden & Ullman, 2012; Brady & Reynolds, 2020; Henning & Feder, 2005; Kingsnorth & MacIntosh, 2007; Holleran et al., 2010; Wooldredge & Thistlethwaite, 2004). Specifically, victim–perpetrator relationship, victim credibility, and *real* victim stereotypes may weigh more heavily on prosecutors' charging decisions in these cases (La Free, 1980; O'Neal & Spohn, 2017; Spohn et al., 2001; Spohn & Tellis, 2014).

DEFERRED ADJUDICATION

Deferred adjudication acts as an alternative sanction designed to allow individuals an opportunity to avoid the negative consequences associated with a felony conviction. Judges consider this alternative sanction to reduce the pains of imprisonment experienced by justice-involved individuals through community-oriented sanctions (Sykes, 1958). Like other discretionary decision points, a number of legally relevant and extralegal factors influence whether the justice-involved are granted deferred adjudication, instead of traditional probation sentences, intermediate sanctions, and incarceration sentences (Bontrager et al., 2005; Fernando Rodriguez et al., 2006; Hayes-Smith & Hayes-Smith, 2009; Ryon, 2013; Ryon et al., 2017; Spohn et al., 1998).

Prior research examining the decision to withhold adjudication suggests that those with prior criminal justice involvement are more likely to be incarcerated rather than being granted a deferred sentence. For example, individuals with prior convictions, those who pleaded not guilty, and those charged with higher counts were more likely to be incarcerated, as opposed to receiving a withheld adjudication sentence (Fernando Rodriguez et al., 2006). Moreover, individuals convicted of more severe offenses, particularly violent or drug offenses, those with prior supervision violations, and extensive prior records were also less likely to receive deferred adjudication (Bontrager et al., 2005; Ryon, 2013; Ryon et al., 2017).

Moreover, significant racial and ethnic disparities have been found in the application of deferred adjudication penalties. African Americans and Black and Latinos are significantly less likely to have adjudication withheld (Bontrager et al., 2005; Ryon, 2013; Ryon et al., 2017). These effects were more pronounced among Black and Latinx individuals convicted of drug and violent crimes (Bontrager et al., 2005). Furthermore, some studies suggest that contextual factors also affect disparities in the use of deferred adjudication; however, the extent to which these factors influence this case outcome varies. For example, Bontrager and colleagues (2005) found that Black and Latinx individuals sentenced in counties with higher levels of concentrated disadvantaged were less likely to have adjudication withheld. In contrast, Hayes-Smith and Hayes-Smith (2009) failed to find a moderating effect of race and county variation.

CONVICTION

The conviction of an individual is a consequential decision-point in case processing. It is the culmination of early case-processing decisions and initiates the formal punishment process. Unfortunately, little is known about the factors that influence this outcome. Given the inequalities in punishment, prior research has focused on decision-making in sentence outcomes (e.g., incarceration and sentence length decisions), as opposed to the finding of guilt itself. Research that has examined conviction outcomes highlights cases resulting in wrongful convictions (Free & Ruesink, 2012; M. B. Johnson, 2020; Ruesink & Free, 2005), the death penalty (Harmon, 2004; Holcomb et al., 2004; Keil & Vito, 2006; Ulmer et al., 2020; Williams et al., 2007), and specific types of violent offenses (e.g., rape, domestic violence, and child sexual assault; Golding et al., 2007; La Free, 1980; Lundrigan et al., 2020; Nelson, 2013). For example, Wagner and colleagues (2016) explore the factors that influence the odds of conviction in Stand Your Ground (SYG) cases adjudicated in Florida and found that cases with non-White victims and those in which a gun was used in the attack were less

likely to result in conviction. In contrast, SYG cases resulting in a fatality, as well as those occurring in counties with a higher non-White population were more likely to result in a guilty verdict. Relatedly, La Free (1980) also found that race of the victim, as well as real rape stereotypes were less likely to result in conviction. However, legally relevant factors such as prior record increased the odds of conviction.

To date, few studies have examined the factors that influence convictions among non-capital felony offenses. Williams and Burek (2008) address this gap in the literature by investigating case outcomes for Black defendants charged with noncapital offenses. Using a sample of felony cases from four U.S. jurisdictions, they found that Black defendants were more likely to be convicted when represented by a private attorney, when prosecutors presented the jury with more evidence, and when the jury included more White jurists. Notably, criminal history, victim race, and offense type had no effect on the odds of conviction. Similarly, Anwar and colleagues (2012) also found a relationship between jury composition and odds of conviction. Specifically, data from Florida's felony trial courts suggest that juries formed from all White jury pools were more likely to convict Black defendants.

More recently, Lee (2019) examined the impact of early case-processing decisions on the likelihood of conviction. Specifically, she explored the influence of pretrial detention on conviction outcomes. Findings suggest that pretrial detention significantly increases the odds of receiving a guilty verdict, compared with those released prior to trial. This finding suggests that other case-processing decisions may also affect the likelihood of conviction. Moreover, Lee found that male defendants, those with prior arrest records, those with more extensive charges, and having an attorney appointed by the state, rather than a private attorney, were more likely to be convicted. In addition, offense type also influenced the odds of conviction. Notably, neither race/ethnicity nor age was significantly related to conviction outcomes.

CURRENT STUDY

A growing body of literature has explored factors that influence case processing. Missing from this examination is the influence of important charge process decisions and their potential impact on case outcomes. Scholars have long recognized that the charging mechanisms greatly affect procedural protections provided to defendants at early stages of justice involvement (Lombardo, 2000; Richardson, 1981; R. Simmons, 2016). However, little research has examined the factors that influence the decision to rely on either the grand jury or information and preliminary hearing, respectively. Notably, this process highlights how discretionary decisions made by other courtroom workgroup members can influence case processing. Specifically, it illustrates the extent to which discretionary decision-making by the defense, an often-overlooked courtroom workgroup authority, can affect case processing and prosecutorial decision-making. As such, the current study builds on prior research by examining the factors that influence the pathways to charging, highlighting decisions made by both prosecutors and defense attorneys during early case processing.

Moreover, research has yet to examine how the filing mechanism may affect case outcomes such as case dismissals, deferred adjudication, and conviction. Evidence suggests that case-processing factors (i.e., pretrial detention and mode of conviction) significantly affect case outcomes (Farrell et al., 2009; Feldmeyer & Ulmer, 2011; Franklin & Henry, 2020; Lee, 2019; Wang et al., 2013; Wooldredge et al., 2015). Insofar as the charging

mechanism is an important case-processing decision-point, it may also influence later decisions made by courtroom workgroup members.

METHOD

SAMPLE

To address the proposed research questions, we relied on data from a large prosecutor's office in the southern United States from 2013 to 2018. District attorneys in the state are county elected officials. In an effort to increase transparency and strengthen community relationships in the county from which the data were collected, the current prosecutor's administration shared administrative data with the research team to address a series of research questions regarding discretion and decision-making.³ The current analysis is based on secondary data collected and internally coded by the prosecutor's office. These data provide detailed information on offense and individual characteristics, early stage case-processing decisions, and case disposition outcomes. The final sample for the current analysis was based on several criteria. First, the sample was limited to those charged with felony offenses.⁴ Next, the sample was limited to cases that had been legally resolved by the prosecutors' office (i.e., disposed cases). Finally, cases missing information on key variables and cases where the grand jury delivered a no bill ($n = 2,682$) were also excluded from the analyses. This resulted in a final analytic sample size of $n = 136,845$ cases.⁵

DEPENDENT MEASURES

The primary purpose of this study is to examine defense decision-making during the charging process and the extent to which these decisions influence case outcomes. Of primary interest is the defendant's choice of venue during the charging process. As discussed, defendants have the ability to waive their right to a grand jury and instead allow the presiding judge to determine probable cause during a preliminary hearing. This decision was measured dichotomously, where defendants processed through grand jury proceedings were coded 0 (i.e., felony indictment) and those who waived grand jury proceedings were coded 1 (i.e., felony information).

Case outcomes are measured using a series of dummy variables. Once charged, cases may be disposed of in three ways. First, prosecutors may choose to dismiss a case. In addition, cases may also be resolved via deferred adjudication, where individuals may plead guilty or no contest to charges and be placed on probation. After successfully completing the terms and conditions set during the probation period, the case is dismissed. Finally, defendants may be convicted of an offense (via trial or plea agreement). Case dismissal, deferred adjudication, and conviction are coded 1, in comparison with all other case outcomes (coded 0).

INDEPENDENT MEASURES

Because this study is exploratory in nature, a series of extralegal and legally relevant measures shown to influence other case processes and outcomes are included in the analyses to address the proposed research questions. Race/ethnicity is captured using a set of four dummy variables (0 = no; 1 = yes), indicating whether the defendant is non-Latinx White, non-Latinx Black, Latinx, or Asian. Sex is measured dichotomously with males coded 1 and

female defendants coded as 0. Finally, age is a continuous measure capturing the defendant's age in years at the time of filing.

In addition to these extralegal factors, several legally relevant factors that should influence prosecutorial decision-making are also included in the analyses. Offense level measures the severity of the offense on an 8-point scale, with higher numbers indicating more severe offenses. Offense type is captured using a series of dummy variables (0 = no; 1 = yes) indicating that the current offense was a violent, drug, property, public order, or some other crime.

The primary measure of interest for the case outcome analyses is the charging mechanism employed at the initial stage of case management. As such, the charging mechanism is also treated as an independent measure. Specifically, felony information (coded 1) indicates that charges were established via felony information, whereas charges filed via felony indictment are coded 0. Finally, the analyses control for fiscal year of filing (measured through a series of dummy variables) to account for variation in charging practices over time.

ANALYTIC STRATEGY

The current analysis proceeds in two stages. First, descriptive analyses of cases in which formal charges were filed are examined. Second, two sets of multivariate logistic regression models are estimated: (a) a model predicting decisions to waive the right to grand jury proceedings and (b) a model examining the effect of a selected charging mechanism on case outcomes, controlling for individual and case characteristics.

RESULTS

DESCRIPTIVE ANALYSES

Table 1 displays descriptive statistics for cases charged via grand jury proceedings or via information filing. The majority of cases were charged via grand jury proceedings (82%), while almost one fifth (18%) of cases were charged via felony information. Black defendants accounted for a plurality of the sample (49%), followed by Latinx defendants (28%), non-Latinx White defendants (21%), and Asian defendants (1%).⁶ The majority of defendants in the sample were male (83%) and approximately 34 years old, on average. In addition, drug and property offenses accounted for approximately 30% and 31% of cases in the sample, respectively. Violent crimes made up one fifth (20%) of offenses, while public order offenses and other crimes both accounted for smaller proportions of the sample at 9% and 10%, respectively. Moreover, 58% resulted in a conviction. However, a nontrivial portion were dismissed (25%) or received deferred adjudication (17%).

MULTIVARIATE ANALYSES

Defendants and their attorneys can decide the venue, and more importantly, the process, in which charges can be established. Specifically, they may waive the right to grand jury proceedings, initiating preliminary hearing/information process. Table 2 presents the factors that influence a defendant's decisions to waive their right to a grand jury hearing in favor of a preliminary hearing and charging via information. Results indicate that both extralegal and legally relevant factors influence decisions to select the preliminary hearing

TABLE 1: Descriptive Statistics

Variables	Charging process (<i>n</i> = 136,845)		Case disposition (<i>n</i> = 135,369)	
	<i>M</i>	<i>SD</i>	<i>M</i>	<i>SD</i>
Outcome measures				
Felony information	0.18	0.39	0.19	0.39
Case dismissed	—	—	0.25	0.43
Deferred adjudication	—	—	0.17	0.38
Conviction	—	—	0.58	0.49
Extralegal factors				
Non-Latinx White (reference)	0.21	0.41	0.21	0.41
Non-Latinx Black	0.49	0.50	0.49	0.50
Asian	0.01	0.10	0.01	0.10
Latinx	0.28	0.45	0.28	0.45
Male	0.83	0.38	0.83	0.37
Age	33.87	11.32	33.67	11.31
Legally relevant factors				
Offense level	3.95	0.99	3.94	0.99
Violent (reference)	0.20	0.40	0.20	0.40
Drug	0.30	0.46	0.31	0.46
Property	0.31	0.46	0.31	0.46
Public order offense	0.09	0.29	0.09	0.29
Other crime	0.10	0.29	0.10	0.29
FY 2013 (reference)	0.13	0.33	0.13	0.33
FY 2014	0.23	0.42	0.23	0.42
FY 2015	0.21	0.41	0.21	0.41
FY 2016	0.21	0.41	0.21	0.41
FY 2017	0.15	0.36	0.15	0.36
FY 2018	0.07	0.25	0.07	0.25

process instead of the grand jury. For example, race/ethnicity of defendants is significantly related to charging process decisions. Black ($OR = 0.896$; $d = -.060$), Asian ($OR = 0.633$; $d = -.250$), and Latinx ($OR = 0.845$; $d = -.093$) defendants are all less likely to waive their rights to grand jury proceedings, compared with White defendants. Similarly, male defendants are also less likely to rely on the preliminary hearing process ($OR = 0.840$; $d = -.095$). In contrast, older defendants are more likely to waive their rights to grand jury proceedings ($OR = 1.007$; $d = .004$).

Several legally relevant factors are also significantly related to this decision. Defendants accused of more severe offenses are significantly less likely to decline grand jury proceedings ($OR = 0.538$; $d = -.339$). Moreover, those accused of drug ($OR = 1.386$; $d = .174$), property ($OR = 1.110$; $d = .055$), and other crimes ($OR = 1.120$; $d = .059$) are more likely to waive this option. Those accused of public order offenses, however, are less likely to relinquish this right, compared with those accused of violent offenses ($OR = 0.867$; $d = -.082$).

The next set of analyses, presented in Table 3, examine the extent to which charging mechanisms influence case outcomes. Results displayed in Model 1 suggest that the charging mechanism greatly influences decisions to dismiss cases after a charge has been filed. Specifically, the likelihood of case dismissal significantly decreases when cases are filed

TABLE 2: Logistic Regression Assessing the Effect of Legally Relevant and Extralegal Factors on the Decision to Waive Right to Grand Jury Proceedings (n = 136,845)

Independent Variables	<i>b</i>	<i>SE</i>	<i>OR</i>
Extralegal factors			
Non-Latinx White (reference)	—	—	—
Non-Latinx Black	-.110***	.018	0.896
Asian	-.457***	.080	0.633
Latinx	-.169***	.021	0.845
Male	-.175***	.018	0.840
Age	.007***	.001	1.007
Legally relevant factors			
Offense level	-.620***	.010	0.538
Violent (reference)	—	—	—
Drug	.326***	.025	1.386
Property	.104***	.025	1.110
Public order offense	-.142***	.033	0.867
Other crime	.113***	.031	1.120
Pseudo- <i>R</i> ²	.110		

Note. Dummy variables for filing year are accounted for in models but not shown. Analytic sample includes only cases accepted for charging.

p* < .05. *p* < .01. ****p* < .001.

TABLE 3: Logistic Regression Assessing the Impact of Charging Mechanism on Case Outcomes (n = 135,369)

Independent Variables	Model 1: Dismissed		Model 2: Deferred adjudication		Model 3: Convicted	
	<i>b</i>	<i>OR</i>	<i>b</i>	<i>OR</i>	<i>b</i>	<i>OR</i>
Extralegal factors						
Non-Latinx White (reference)	—	—	—	—	—	—
Non-Latinx Black	-0.023	0.977	-0.384***	0.681	0.229***	1.258
Asian	0.289***	1.336	0.581***	1.789	-0.648***	0.523
Latinx	-0.103***	0.902	-0.227***	0.797	0.210***	1.234
Male	-0.114***	0.892	-0.675***	0.509	0.505***	1.657
Age	-0.015***	0.986	-0.044***	0.957	0.034***	1.034
Legally relevant factors						
Felony information	-2.251***	0.105	0.626***	1.871	0.754***	2.126
Offense level	0.059***	1.061	-0.145***	0.865	0.033**	1.033
Violent (reference)	—	—	—	—	—	—
Drug	0.161***	1.175	-0.009	0.991	-0.150***	0.861
Property	-0.256***	0.775	-0.348***	0.706	0.383***	1.467
Public order offense	-0.243***	0.784	-1.307***	0.271	0.745***	2.106
Other crime	0.140***	1.150	-0.170***	0.844	-0.015	0.985
Pseudo- <i>R</i> ²	.132		.209		.116	

Note. Dummy variables for filing year are accounted for in models but not shown.

p* < .05. *p* < .01. ****p* < .001.

via information (*OR* = 0.105; *d* = -1.241). In addition, several extralegal factors influenced the odds of case dismissal after charging. While Black defendants are no more likely

to have cases dismissed ($OR = 0.977$; $d = -.013$), compared with White defendants, Asian defendants are more likely to have their cases dismissed ($OR = 1.336$; $d = .159$). In contrast, Latinx defendants are less likely to receive a dismissal ($OR = 0.902$; $d = -.057$). Males ($OR = 0.892$; $d = -.062$) and older defendants ($OR = 0.986$; $d = -.008$) are also less likely to have cases dismissed.

Offense level and offense type also significantly influenced the odds of dismissal. Contrary to expectations, those charged with more severe offenses are more likely to have their cases dismissed ($OR = 1.061$; $d = .033$). In addition, the odds of case dismissal increases for those charged with drug offenses ($OR = 1.175$; $d = .089$), while the odds of dismissal decreases for those charged with property ($OR = 0.775$; $d = -.141$) and public order offenses ($OR = 0.784$; $d = -.134$). Those charged with other offenses are also more likely to receive a dismissal ($OR = 1.150$; $d = .077$).

Turning to Model 2, which displays the effects of the charging mechanism on the likelihood of receiving deferred adjudication, results indicate that those charged via a felony information are more likely to be granted deferred adjudication ($OR = 1.871$; $d = .345$), compared with those charged via felony indictment. Moreover, race/ethnicity, sex, and age all significantly influenced the likelihood of receiving deferred adjudication. While the odds of receiving deferred adjudication are approximately 32% and 20% lower for Black ($OR = 0.681$; $d = -.211$) and Latinx ($OR = 0.797$; $d = -.125$) defendants, respectively, Asian defendants ($OR = 1.789$; $d = .320$) are more likely to benefit from this sentencing alternative.

Unlike the case dismissal model, offense severity was significantly related to deferred adjudication in the predicted manner. Those charged with more severe offenses are less likely to receive deferred adjudication ($OR = 0.865$; $d = -.080$). Moreover, the odds of defendants charged with property ($OR = 0.706$; $d = -.192$), public order ($OR = 0.271$; $d = -.721$), and other crimes ($OR = 0.844$; $d = -.093$) to be granted the sentence reprieve is significantly reduced. However, those charged with drug offenses are no more or less likely to be granted deferred adjudication ($OR = 0.991$; $d = -.005$, compared with those charged with violent offenses).

Finally, Model 3 addresses the relationship between charging mechanism and the likelihood of conviction. Similar to the previous outcomes, the charging path significantly affects disposition outcomes. Specifically, the likelihood of conviction significantly increases when charged via felony information ($OR = 2.126$; $d = .416$), compared with those charged via grand jury indictment. Other legally relevant and extralegal factors continue to influence this outcome, as well. The odds of conviction for Black ($OR = 1.258$; $d = .126$) and Latinx ($OR = 1.234$; $d = .116$) defendants is greater compared with White defendants, while Asian defendants are significantly less likely to face conviction ($OR = 0.523$; $d = -.357$). Compared with female defendants, male defendants have higher odds of conviction ($OR = 1.657$; $d = .278$). Older defendants are also more likely to be convicted ($OR = 1.034$; $d = .018$).

Severity of offenses also affects the likelihood of conviction. As offense severity increases, defendants are significantly more likely to be convicted ($OR = 1.033$; $d = .018$). Defendants charged with property offenses ($OR = 1.467$; $d = .211$) and public order offenses ($OR = 2.106$; $d = .411$) are also more likely to be convicted. Those charged with drug offenses ($OR = 0.86$; $d = -.083$), however, are less likely to be convicted, compared with those charged with violent offenses.

TABLE 4: Race × Charging Mechanism Interaction Effects (n = 135,369)

Independent Variables	Model 1: Dismissed		Model 2: Deferred adjudication		Model 3: Convicted	
	<i>b</i>	<i>OR</i>	<i>b</i>	<i>OR</i>	<i>b</i>	<i>OR</i>
Information	-2.073***	0.126	0.622***	1.862	0.655***	1.926
Black	0.007	1.007	-0.409***	0.664	0.194***	1.214
Black × Information	-0.756***	0.469	0.103***	1.109	0.200***	1.222
Latinx	-0.117***	0.889	-0.197***	0.821	0.202***	1.223
Latinx × Information	0.361***	1.435	-0.153***	0.858	0.015	1.016
Asian	0.285***	1.330	0.612***	1.844	-0.687***	0.503
Asian × Information	0.155	1.167	-0.194	0.824	0.228	1.256
Pseudo- <i>R</i> ²	.134		.209		.116	

Note. The models presented here also control for the full spectrum of covariates from the initial models presented in Table 3.

* $p < .05$. ** $p < .01$. *** $p < .001$.

SUPPLEMENTAL ANALYSES

After discovering the direct race effects reported above, we elected to conduct supplemental interaction analyses to determine the extent to which race/ethnicity effects may be moderated by the charging mechanism. It was not our intent to make this a central focus of our analysis. However, prior research suggests that legally relevant and case-processing factors may interact with extralegal factors such as race in ways that influence discretionary decision-making (Franklin & Henry, 2020; Hester & Hartman, 2017; Ulmer, 2012; Ulmer et al., 2016). As such, we examined a series of race-charging mechanism interactions. Findings for these analyses are presented in Table 4.

Results indicated that for Black defendants charged via felony information, the odds of dismissal are significantly lower ($OR = 0.469$). In contrast, the likelihood of dismissal is approximately 1.4 times higher for Latinx defendants. No significant differences emerged for Asian defendants charged via information. Notably, these effects are reversed for the deferred adjudication outcome. Specifically, the odds of receiving a deferred sentence is significantly higher for Black defendants who waived their right to grand jury ($OR = 1.109$), whereas the likelihood of deferred adjudication was reduced for Latinx defendants charged via felony information ($OR = 0.858$). Again, no significant effects resulted for Asian defendants. Finally, the likelihood of being convicted increases for Black defendants who waive their rights to grand jury proceedings ($OR = 1.222$). However, the charging mechanism does not moderate the likelihood of conviction for Latinx and Asian defendants.

DISCUSSION

As the importance of prosecutor discretion is increasingly recognized, an extensive body of research has emerged examining the factors that influence case processing and, to some extent, sentence outcomes affected by prosecutor decision-making (Alderden & Ullman, 2012; Farrell et al., 2014; Spohn, 2018; Spohn & Tellis, 2014). Much of this research highlights the extent to which prosecutors routinely rely on legally relevant and extralegal factors to determine whether cases should be dismissed (Franklin, 2010a;

Hartley & Tillyer, 2018; Kutateladze et al., 2014) and the context in which these factors are most salient (Alderden & Ullman, 2012; Brady & Reynolds, 2020; Franklin, 2010b; Kingsnorth & MacIntosh, 2007). Missing from this growing body of research is an examination of the charging process itself, specifically, the decision-makers involved and the strategies used to navigate this process. Moreover, few studies have explored how charge processing decisions may affect case outcomes (e.g., case dismissals, convictions). The current study sought to fill this gap by examining the legally relevant and extralegal factors which may influence defendants' decisions to waive their rights to grand jury proceedings and the extent to which the charging mechanism affects case outcomes. Our findings demonstrate that legally relevant and extralegal factors are significantly related to defense strategies during early case processing. In addition, we find that the pathway to charging has significant implications for case outcomes. Implications for research and practice are discussed below.

First, the current study highlights factors that influence defendants to waive their right to the grand jury process. Extralegal factors significantly predicted this decision. Black, Latinx, and Asian defendants were all less likely to decline the opportunity to have their cases presented to the grand jury, compared with White defendants. Male defendants were also less likely to allow a magistrate to determine probable cause. Our data also demonstrated that the decision to waive the right grand jury proceedings was dependent on legally relevant factors, specifically offense severity and offense type. Those facing more severe offenses were less likely to waive their rights to a grand jury indictment. In contrast, those accused of nonviolent offenses (e.g., drug and property crimes) were more likely to decline the grand jury process and instead, opt for a preliminary hearing. In support of Hypothesis 1, these findings highlight the significant predictors associated with decisions to waive one's right to grand jury proceedings.

Differences in these decisions may be a consequence of defense attorneys' downstream orientation toward other court actors. As members of the courtroom workgroup, defense attorneys are acutely aware of court processing norms and court culture (Eisenstein et al., 1988; Ulmer, 1997). This familiarity, coupled with assessments of client culpability, perceived dangerousness, and the practical constraints associated with case processing may lead defense counsel to advise foregoing the grand jury process. For example, the decision to waive the right to a grand jury hearing for drug offenses may be a consequence of policy changes enacted by the prosecutor's office or shifts in judicial philosophy regarding drug offenses. Recently, shifts away from tough-on-crime policies, particularly regarding drug offenses, to smart-on-crime policies emphasizing diversion and deferred adjudication have been adopted across jurisdictions (McQuade & Yates, 2019; U.S. Department of Justice, 2013). As such, defense attorneys may advise different strategies for certain types of offenses. Our findings suggest that defense attorneys are making calculated decisions when considering case characteristics and the most advantageous venue for establishing probable cause.

Second, our findings demonstrate the importance of accounting for charging mechanisms in case outcomes. Similar to other case-processing measures such as pretrial detention and mode of conviction, our findings bolster the assumption that decision-makers consider a number of factors outside of legally relevant case characteristics when making decisions (Brennan, 2006; Farrell et al., 2009; Feldmeyer & Ulmer, 2011; Franklin & Henry, 2020; Kutateladze et al., 2014; Tartaro & Sedelmaier, 2009; Wang et al., 2013; Wooldredge,

2012). Specifically, case-processing factors are particularly important, even after accounting for factors theoretically and practically central to determining punishment (i.e., culpability and dangerousness). In support of Hypothesis 2, our findings highlight how the charging mechanism may have differential effects on case processing and punishment outcomes across decision points.

For example, the likelihood of case dismissal was significantly lower for defendants charged via information compared with those charged by grand jury indictment. Prosecutors may dismiss charges for a number of reasons, including lack of evidence, compromises during the plea-bargaining process, victim cooperation, and so on (Silberman, 1978). However, the differences in the likelihood of dismissal between these two charging mechanisms is noteworthy. Given the importance of efficiency to manage heavy prosecutor caseloads, diversions from established processes may reflect negatively on defendants. Similar to those who choose trial over the plea-bargaining process (Farrell et al., 2009; Metcalfe & Chiricos, 2018; Ulmer et al., 2010), defendants who waive their rights to a grand jury hearing may experience a case-processing penalty in that they are less likely to have their cases dismissed.

In contrast, those who waive their rights and are subsequently charged via information are much more likely to be granted deferred adjudication. This may be the result of court norms. For example, in collaboration with prosecutors, defense attorneys may work together to establish going rates, or routine sentencing processes, for particular offenses (Eisenstein et al., 1988). Certain aspects of the charging process may be a by-product of this phenomenon, including the reliance on charges via preliminary hearings/informations. If preliminary hearings support case-processing efficiency for certain offenses, selecting into this process may create an opportunity for the defense to negotiate for deferred adjudication.

Similarly, the likelihood of conviction may also be a consequence of courtroom workgroup norms and prosecutor–defense relationships. Individuals charged via felony informations were more likely to be convicted. As with deferred adjudication proceedings, courtroom workgroup members rely on plea-bargaining to aid case-processing efficiency, resulting in systems in which defendants are encouraged to plead to lesser offenses in exchange for leniency (Hollander-Blumoff, 1997). An unintended, yet significant consequence of this system is that defendants may plead guilty to offenses (regardless of actual guilt) to limit the disruption to their lives (e.g., loss of employment/wages, impacts on caregiving responsibilities). This may be especially true for those accused of low-level nonviolent offenses.

As noted earlier, those accused of low-level nonviolent offenses were more likely to waive their rights to grand jury proceedings, and in all cases except drug offenses (i.e., property and public order offenses) were more likely to be convicted. These findings suggest that defendants may find it more reasonable to plead guilty to an offense, especially if the negotiated plea is perceived as advantageous, as opposed to allowing the case to work through the traditional court processes. The extent to which defense attorneys balance their client's needs and their familiarity with the local plea-bargaining processes will likely inform how they advise clients at this decision point. Future research should attempt to account for the charging pathway through which defendants are processed through the system.

Although not the primary focus of this study, these findings corroborate patterns found at other points in case processing and case outcomes (Bontrager et al., 2005; Fernando

Rodriguez et al., 2006; Franklin, 2010a; Hartley & Tillyer, 2018; Kutateladze et al., 2014; Lee, 2019; Ryon, 2013; Ryon et al., 2017). Specifically, our results provide evidence of disparate treatment among racial/ethnic minorities during case processing. Once charged, Latinx defendants were less likely to have charges dismissed. Black defendants, however, were treated statistically similar to their White counterparts, while Asian defendants were more likely to receive a dismissal. Moreover, Black defendants were less likely to receive deferred adjudication and were more likely to be convicted. Latinx defendants were the most disadvantaged group, as they were less likely to have their cases dismissed or receive deferred adjudication, but more likely to be convicted. Asian defendants continued to be advantaged at each decision point, compared with White defendants.

Overall, these findings support the assumptions outlined in the focal concerns perspective (Steffensmeier, Ulmer, & Kramer, 1993). Racial and ethnic minorities perceived as crime-prone, dangerous, and other negative stereotypes received more punitive justice outcomes, across case-processing decision points. In contrast, defendants with fewer negative criminal associations were advantaged throughout case processing, even compared with White defendants. This suggests that prosecutors and judges may be relying on perceptual shorthands when making decisions that can be influenced by stereotypes linked to race. The influence of negative stereotypes may lead to adverse outcomes for stereotyped groups. These results highlight the extent to which this process may be occurring across case-processing decisions.

Moreover, our results highlight the impact of cumulative disadvantage, primarily on Black and Latinx defendants, resulting from case-processing decisions. Individuals from these groups were disadvantaged from early dismissal to conviction. They were also less likely to benefit from intermediate sanctions, like deferred adjudication. These findings, again, lend support for the focal concerns perspective as members of marginalized racial/ethnic groups are treated more punitively and highlights the extent to which individual decisions during early stages of case processing can have compounding effects on case outcomes (Kramer & Wang, 2019; Kutateladze et al., 2014; Wooldredge et al., 2015). In accord with evidence from prior research, our findings suggest that race/ethnicity influences these decisions and can increase legal obstacles faced by minorities during legal processing (Chin, 2016; Spohn, 2015; Stolzenberg et al., 2013).


Finally, our findings add to prior research examining the moderating effects of case processing and legally relevant factors on race/ethnicity (B. D. Johnson, 2003, 2014; Donnelly & MacDonald, 2018; Wooldredge et al., 2015). As with prior research, these effects are concentrated among Black and Latinx defendants. In general, Black defendants were less likely to receive deferred adjudication and more likely to be convicted, with case dismissal rates similar to Whites. However, when charged via information, Black defendants were less likely to have their cases dismissed but more likely to receive deferred adjudication. In contrast, Latinx defendants benefited when charged via information, as the likelihood of case dismissal increased when charged via this mechanism. Unlike Black defendants, however, the advantage did not extend to deferred adjudication outcomes. Taken together, these findings suggest that moderating effects of charging mechanisms vary across groups and decision points. Generally, however, non-White defendants may be penalized when exercising the rights afforded to them during early stages of case processing. Future research should continue to examine the relationships between case-processing factors and race/ethnicity on case outcomes.

LIMITATIONS

The current study is not without limitations. Most notably, due to limitations of institutional data, the analysis did not control for a defendant's prior record which is often considered in combination with offense severity as a basis for punishment (Blumstein et al., 1983; Kleck, 1981; Klepper et al., 1983). This limitation is noteworthy as prior research suggests criminal history significantly influences justice-related outcomes, including some case-processing decisions (Franklin, 2010a, 2010b; Kutateladze et al., 2014). However, some studies examining early case-processing decisions do not always account for prior criminal history (see Hartley & Tillyer, 2018) due to data limitations similar to this study. Regardless, the limitation is notable, and future research should make every attempt to account for it.

Moreover, we were also unable to control for additional case-processing and legally relevant factors in the current analyses. Prior research suggests that strength of evidence, mode of conviction, attorney type, and pretrial detention may influence case and sentence outcomes. However, our data limit our ability to control for these factors. In addition, analyses for the current study are conducted using data from one jurisdiction with varying charging mechanisms. As such, generalizability of our findings is limited to jurisdictions that (a) have both indictment and information charging mechanism, and (b) allow defendants the discretion to waive rights to a grand jury process. Moreover, our data are derived from a large, culturally diverse urban jurisdiction. As such, our findings may not be easily translated to court processes in suburban or rural jurisdictions with more racially/ethnically homogeneous populations. Future research should examine similar pathways of charging in other jurisdictions. Finally, our study relies on quantitative methods to examine a previously unexplored research question. Qualitative research methodologies would be useful in further understanding these processes and their consequences.

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NOTES

1. The ability to waive grand jury proceedings is dependent on the jurisdiction in which the defendant is charged. For the current study, all defendants facing a felony charge have the right to grand jury proceedings. However, they can waive this right during arraignment. At which point, a judge will hear evidence to establish probable cause during a preliminary hearing. If probable cause is established, prosecutors may file charges directly with the court through an information.

2. Grand jury indictments are required for certain crimes in the following states: Alabama, Alaska, Delaware, Florida, Kentucky, Louisiana, Maine, Massachusetts, Minnesota, Mississippi, Missouri, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Rhode Island, South Carolina, Tennessee, Texas, Virginia, and West Virginia. Moreover, Connecticut and Pennsylvania abolished the use of grand jury indictments in criminal proceedings. Grand jury indictments are optional in the remaining 25 states (T. Simmons, 2019; Taylor, 2014).

3. Institutional Review Board approval was received for all data collection and data sharing agreements.

4. In the jurisdiction of interest, the primary mode for charging misdemeanor offenses is through an information filing. In contrast, felony charges can be brought by either an information or as a result of a true bill from the grand jury. A no bill by a grand jury is a legal finding by the grand jury that probable cause that a crime was committed was not established. Given the nature of the proposed research questions, only felony offenses were included in analyses.

5. The current study analyzes the population of cases received by the prosecutor's office from 2013 to 2018. Doing so results in a large n of cases which may limit meaningful interpretations of p values. However, we believe assessments of larger samples and population data, particularly for case-processing and sentencing analyses, are useful for several reasons. First, it is not uncommon for studies examining prosecutorial and/or judicial decision-making to do so using large samples (see Feldmeyer & Ulmer, 2011; Franklin, 2015; Franklin & Henry, 2020; Light, 2014; Steffensmeier, Kramer, & Streifel, 1993; Yang, 2015). Doing so allows for an examination of a broad range of offenses from least to most serious. Moreover, relying on larger samples allows researchers to capture groups with less representation among the justice-involved (e.g., Asian, Native American, and female defendants); essentially allowing the researcher to oversample these groups to ensure

representativeness. Finally, larger sample sizes reduce issues of statistical power (Barnes et al., 2020). To clarify the substantive significance of these results, effect sizes are presented below. The majority of cases accepted for prosecution were charged via grand jury indictment ($n = 111,632$) while $n = 25,213$ were charged via felony information. Subsequently, $n = 1,623$ were dismissed after charging due to defendant death, case dismissals and refiling, and other dispositions. As such, the final case outcome analytic sample is $n = 135,369$.

6. Given their limited representation in the sample ($n = 1,408$), findings regarding Asian defendants should be interpreted with caution.

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