Boulder County District Attorney’s Office Data Presentation

July 7, 2022
Welcome
Agenda

• Who is Reshaping Prosecution
• Our Role
• What is Racial Disparity
• Power of the Prosecutor
• Role of data
• Boulder County DAO Analysis
• National Solutions/Reforms
• Boulder DAO
• Q&A
• Closeout
Vera Institute of Justice is a nonprofit criminal justice reform organization. We partner with government and civic leaders to produce ideas, analysis, and research that inspire change in the systems people rely upon for safety and justice.
Reshaping Prosecution

Akhi Johnson
Mona Sahaf
Lola Akinlade
Nicole Battle
Savannah Castaneda
Sarah Darwiche
Seleeke Flingai
Izzy Gibson
Nicholas MacDonald
Meghan Nayak
Adureh Onyekwere
Jaclyn Quiles-Ohar
Stephen Roberts
Erin Ross
Maria Starzmann
Eric Sutton III
Andrew Taylor
Reshaping Prosecution is committed to

- Shrinking the front end of the system
- Addressing systemic racial disparities
- Increasing accountability to directly impacted communities
Facilitate conversations on mass incarceration, why it’s problematic, and explore what a new system might look like.

Offer examples, resources, relationships from a national perspective of offices & communities organizing around prosecutor accountability.

Analyze office’s data and consult with community to identify and implement reforms, as well as evaluate their impact.
What is Racial Disparity?
What is Racial Disparity?

Racial disparity in the criminal justice system exists when the proportion of a racial or ethnic group within the control of the system is greater than the proportion of such groups in the general population.
Why do we see Racial Disparities in the criminal legal system?
Racial disparities in the criminal justice system are no accident, but rather are rooted in a history of oppression and discriminatory decision making that have deliberately targeted Black people and helped create an inaccurate picture of crime that deceptively links them with criminality.
13th Amendment

Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.
In lieu of slavery, incarceration has been and continues to be used as a weapon to control communities of color. Policies that stem from that system of control further exacerbate that impact (intentionally and unintentionally) leading to the racial disparities.
A lens for looking at history

Slavery

Black Codes

Wars on Drugs/Crime

13th Amendment

Separate but Equal and Jim Crow

Mass Incarceration
Action and reaction

- Slavery
- 13th Amendment
- Emancipation Proclamation
- Black Codes and Terror Lynchings
- Reconstruction
- Separate but Equal and CR Criminalization
- Civil Rights Movement
- War on Drugs
- Mass Incarceration
We see this in the crack-cocaine sentencing disparity; the over policing of Black, Indigenous and Immigrant communities; the excessive criminal fines and fees imposed on defendants; and a bail system that relies on payment to secure one’s freedom.
Land Use in Boulder

- Indigenous Land Stolen
- Slavery
- Emancipation Proclamation
- 13th Amendment
- Reconstruction
- Little Rectangle
- Black Codes and Terror Lynchings
- Olmstead Report
- Movement to Urban Areas
- Separate but Equal and CR Criminalization
- War on Drugs
- Civil Rights Movement
- The Blue Line
- Commercial Boom
- Mass Incarceration
An Unjust Burden: The Disparate Treatment of Black Americans in the Criminal Justice System

By Elizabeth Hinton, Assistant Professor, Department of History and Department of African and African American Studies, Harvard University, LeShae Henderson, Special Assistant, Research, Vera Institute of Justice, and Cindy Reed, Senior Editor, Vera Institute of Justice

Native Americans are the unseen victims of a broken US justice system

Sofía Espinoza Álvarez, Contributor
Director, Empower Global Foundation

Latinos In The U.S And The Road To Prison: A Historical Reminder

06/19/2017 05:52 am ET | Updated Jun 20, 2017
The Power of the Prosecutor
The prosecutor has more control over life, liberty, and reputation than any other person in America...[T]he citizen's safety lies in the prosecutor who tempers zeal with human kindness, who seeks truth and not victims, who serves the law and not factional purposes, and who approaches his task with humility.

THE FEDERAL PROSECUTOR
BY ROBERT H JACKSON
We know that no local police force can strictly enforce the traffic laws, or it would arrest half the driving population on any given morning. What every prosecutor is practically required to do is to select the cases for prosecution and to select those in which the offense is the most flagrant, the public harm the greatest, and the proof the most certain. If the prosecutor is obliged to choose his cases, it follows that he can choose his defendants.

THE FEDERAL PROSECUTOR
BY ROBERT H JACKSON
“When Colorado prosecutors lobbied, they were often successful. On average, the legislature only passed 59.5% of criminal justice bills that were introduced. When prosecutors lobbied in favor of a bill, the bill was significantly more likely to pass (79.7% pass rate); when they lobbied against a bill it was somewhat less likely to pass (48.4% pass rate).”
The Power of Prosecutors

A prosecutor’s decision making can be organized into:

- Charging, Declination & Diversion
- Discovery, Diversion, Guilty pleas or Trials
- Bail
- Sentencing
What is the burden of proof at trial?

The burden of proof is on the prosecution to prove each element of the crime charged beyond a reasonable doubt for a jury to convict.
What is the burden of proof at charging?

A prosecutor may ethically bring charges if that charge is supported by probable cause.

Rule 3.8, Colorado Rules of Professional Conduct
“[I]t is common for parties to be convicted of a different crime category from the one they were originally charged with, particularly in the case of violent charges. Only 56 percent of [Colorado] cases in 2019 resulted in a conviction of the original charge.”
How a **Case** Comes into the Office
**Criminal Justice Terminology**

**Probable Cause:** Probable Cause is a legal standard that there is sufficient reason based upon known facts that a crime has been committed by the person accused. Arrests, summons, and charges must be supported by probable cause for the case to move forward.

**Arraignment:** A hearing where the Defendant is informed of the charges they are facing. At arraignment, the Defendant may enter a plea of either “guilty” or “not guilty.” Trial must typically take place within six (6) months after a “not guilty” plea.

** Bail / Bond:** Bail is set by the Court. Bail is a written promise signed by the Defendant, sometimes supported by collateral or supervision requirements, to ensure that the Defendant will appear in court at the scheduled date and time.

**Diversion Program:** The DA’s Diversion Program provides an alternative to prosecution for eligible defendants who are taking responsibility for their offense. Diversion supervision matches services to needs and incorporates restorative justice to meet victims’ needs and repair harm from the offense. After successful completion of diversion, the case is dismissed.

**Motions Hearing:** A Motions Hearing is held prior to trial to decide constitutional, legal, or evidentiary issues such as which evidence, if any, should be excluded.

**Jury Trial:** Defendants may request a trial in most cases. At trial, the Prosecutor has the Burden of Proof and the Defendant is presumed innocent throughout the trial. This means that the Prosecutor must present evidence to prove each element of each offense beyond a reasonable doubt and that a Defendant may present a defense, but does not have to. Jurors are members of the public. Jury trials are decided by juries of six (6) for misdemeanors; and juries of twelve (12) for felonies. All jurors must unanimously agree in finding the Defendant guilty or not guilty. If the Defendant is found guilty, the sentence is decided by the judge.

**Plea Offer:** A Plea Offer is an offer from the Prosecutor to the Defendant to reach a Plea Agreement. A Plea Agreement is an agreement between the Defendant and the Prosecutor in which the Defendant agrees to give up their right to trial by pleading guilty to certain charge(s) in exchange for having more serious charges dismissed. In some cases, and with the consent of the parties and the Court, sentencing or a deferred judgement can be agreed to as part of the plea agreement.
The role of data

“We hear so often of the need for good data, of the need for proven programs…The way that you prove that a program is working or understand the scope of a problem is to measure it. You can’t have a solution without measuring the scope of the problem.”

Joshua Rovner,
The Sentencing Project
The role of data

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The role of data

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Using data to help contextualize the cumulative impact of a prosecutor’s individual decisions during the life of a case within Contra Costa County.
The role of data

Reshaping Prosecution is committed to

- Shrinking the front end of the system
- Addressing systemic racial disparities
- Increasing accountability to directly impacted communities

Using data to measure the racialized impacts of the prosecutorial system, informing racially equitable policy change
The role of data

Reshaping Prosecution is committed to

Shrinking the front end of the system

Addressing systemic racial disparities

Increasing accountability to directly impacted communities

Explore the potential of public-facing data to increase the office’s accountability to the community.
Mass incarceration and racial disparities, in (data) context
Driver vs. the car
The United States is a world leader in mass incarceration.

<table>
<thead>
<tr>
<th>Country</th>
<th>Incarceration Rate per 100,000</th>
</tr>
</thead>
<tbody>
<tr>
<td>United States</td>
<td>655</td>
</tr>
<tr>
<td>El Salvador</td>
<td>618</td>
</tr>
<tr>
<td>Rwanda</td>
<td>464</td>
</tr>
<tr>
<td>Russia</td>
<td>383</td>
</tr>
<tr>
<td>Brazil</td>
<td>333</td>
</tr>
<tr>
<td>Australia</td>
<td>172</td>
</tr>
<tr>
<td>Spain</td>
<td>127</td>
</tr>
<tr>
<td>China</td>
<td>118</td>
</tr>
<tr>
<td>Canada</td>
<td>114</td>
</tr>
<tr>
<td>France</td>
<td>104</td>
</tr>
<tr>
<td>Germany</td>
<td>77</td>
</tr>
<tr>
<td>Denmark</td>
<td>63</td>
</tr>
<tr>
<td>Sweden</td>
<td>59</td>
</tr>
<tr>
<td>India</td>
<td>33</td>
</tr>
</tbody>
</table>
Policies through the criminal legal system — from policing to charging and sentencing — have contributed to racial disparities.

Federal data on drug arrests and sentencing, 2016

Figure 1
Racial disparities in drug arrests and sentencing, 2016

<table>
<thead>
<tr>
<th>Category</th>
<th>Black</th>
<th>White</th>
</tr>
</thead>
<tbody>
<tr>
<td>U.S. population</td>
<td>13%</td>
<td>73%</td>
</tr>
<tr>
<td>Drug users in the past year</td>
<td>15%</td>
<td>77%</td>
</tr>
<tr>
<td>Drug possession and distribution</td>
<td>27%</td>
<td>71%</td>
</tr>
<tr>
<td>sentenced for drug offenses</td>
<td>31%</td>
<td>31%</td>
</tr>
<tr>
<td>sentenced to federal prison for</td>
<td>38%</td>
<td>22%</td>
</tr>
</tbody>
</table>
But we must first face where this racialized system has gotten us

If the system in America continues as is:

- one of every three black males,
- one of every six Latino males,
- and one of every 17 white males born in 2001 can expect to go to prison.

Source: Bureau of Justice Statistics; The Sentencing Project
Example: Racial disparities in state prison rates – Colorado and Boulder County

Latinx/White Prison Incarceration Disparity, 2019
Racial disparity in state prison incarceration rates for Latinx and white U.S. residents in each state.

<table>
<thead>
<tr>
<th>Rank</th>
<th>State</th>
<th>Latinx/White Disparity Ratio</th>
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<td>U.S. Average (2019)</td>
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Source: Bureau of Justice Statistics (2019); The Sentencing Project; Boulder County DAO Case Management System
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**Question:**
Is Colorado above or below the national average?

Source: Bureau of Justice Statistics (2019); The Sentencing Project; Boulder County DAO Case Management System
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</tr>
<tr>
<td>2</td>
<td>Connecticut</td>
<td>3.7</td>
</tr>
<tr>
<td>3</td>
<td>New York</td>
<td>3.0</td>
</tr>
<tr>
<td>4</td>
<td>North Dakota</td>
<td>2.4</td>
</tr>
<tr>
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<td>Pennsylvania</td>
<td>2.3</td>
</tr>
<tr>
<td>6</td>
<td>Colorado</td>
<td>2.2</td>
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Source: Bureau of Justice Statistics (2019); The Sentencing Project; Boulder County DAO Case Management System
Data can help shine a light on the disparities and harms caused by the system – a key step in bringing about change and addressing racial disparities.
Boulder County DAO Data Analysis
Data overview

• Data inclusive of all case types received by Boulder County DAO
  • Adults and juveniles
  • District and county courts
  • Felonies, misdemeanors, petty offenses and traffic offenses

• Final dataset includes 58,520 total cases (44,349 of which have accompanying charging data) between the years 2013 and 2019, involving 38,621 unique people accused of a crime

• Hispanic/Latinx ethnicity was determined using a statistical model based on the 2010 U.S. Census Surname List and Spanish Surname List
Key takeaways

• Racial disparities in case filings, convictions, and incarceration sentences are greatest for non-Hispanic Black residents, followed by Hispanic/Latinx residents

• Incarceration is most prevalent for Black, Hispanic/Latinx, and Native American convicted cases compared to non-Hispanic white cases

• Those experiencing homelessness make up a disproportionate share of cases within the Boulder County DAO caseload

• The rate at which cases involving Black people are referred to diversion is often much less than that of non-Hispanic white people

• Juvenile diversion disparities have shrunken since 2018, but adult diversion disparities have widened
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General Case
Demographics and Disparities
• Black youth and adults have a rate of case filing at least 4-5 times that of non-Hispanic white youth and adults – and this has remained consistent for nearly a decade

• This disparity balloons to 7.5 times when we focus specifically on adult district court cases

• The share of adult district court cases involving someone experiencing homelessness is 12.5 to 25 times the county population share of those experiencing homelessness.
All: Case filings in Boulder County have been steady for much of the seven years studied, with large increase in 2018-2019 due to case data entry shift.
All: Of the cases with charging information, the share of non-Hispanic white cases has decreased – increase in cases with Hispanic/Latinx, Black, and “missing” race

44,349 cases with charging information

<table>
<thead>
<tr>
<th>Defendant race/ethnicity</th>
<th>Cases filed, 2013</th>
<th>Cases filed, 2019</th>
<th>% change</th>
</tr>
</thead>
<tbody>
<tr>
<td>Non-Hispanic White</td>
<td>4,224</td>
<td>4,124</td>
<td>-2%</td>
</tr>
<tr>
<td>Non-Hispanic Black</td>
<td>219</td>
<td>306</td>
<td>40%</td>
</tr>
<tr>
<td>Hispanic/Latinx</td>
<td>1,341</td>
<td>1,571</td>
<td>17%</td>
</tr>
<tr>
<td>Non-Hispanic Asian</td>
<td>47</td>
<td>49</td>
<td>4%</td>
</tr>
<tr>
<td>Non-Hispanic Native American</td>
<td>37</td>
<td>28</td>
<td>-24%</td>
</tr>
<tr>
<td>Another Race</td>
<td>24</td>
<td>57</td>
<td>138%</td>
</tr>
<tr>
<td>Missing/Unknown</td>
<td>87</td>
<td>622</td>
<td>615%</td>
</tr>
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Source: Boulder County DAO Case Management System
All: The demographics of the BCDAO caseload differs significantly from that of the general Boulder County population.
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Cases at each stage and county population by race and ethnicity, Boulder County, 2018-2019

- Non-Hispanic White
- Hispanic/Latinx
- Non-Hispanic Black
- Non-Hispanic Asian
- Non-Hispanic Native American
- Another Race

- Boulder County Population (U.S. Census Bureau average, 2018-2019)
  - 79% Non-Hispanic White
  - 13% Hispanic/Latinx
  - 2% Non-Hispanic Black
  - 0% Non-Hispanic Asian
  - 2% Non-Hispanic Native American
  - 5% Another Race

- Case filing (with charges)
  - 68% Non-Hispanic White
  - 25% Hispanic/Latinx
  - 1% Non-Hispanic Black
  - 0% Non-Hispanic Asian
  - 0% Non-Hispanic Native American
  - 5% Another Race

- Convicted cases
  - 69% Non-Hispanic White
  - 24% Hispanic/Latinx
  - 1% Non-Hispanic Black
  - 1% Non-Hispanic Asian
  - 1% Non-Hispanic Native American
  - 1% Another Race
All: The demographics of the BCDAO caseload differs significantly from that of the general Boulder County population.
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Cases at each stage and county population by race and ethnicity, Boulder County, 2018-2019

- Non-Hispanic White
- Hispanic/Latinx
- Non-Hispanic Black
- Non-Hispanic Asian
- Non-Hispanic Native American
- Another Race

Boulder County Population (U.S. Census Bureau average, 2018-2019)

- Case filing (with charges)
- Convicted cases
- Cases Sentenced to Incarceration (Jail + Prison)
- Cases Sentenced to Prison
All: The case filing disparity in Boulder County shows that the Black-white disparity is consistently significant across age groups.

Disparity in the rate of case filings compared to white residents, by race/ethnicity, Boulder County, 2013-2019,
Adults: For cases with referred felony charges, the racial disparities of the Boulder County system are both heightened and consistent across decision points.

Average racial disparities in case filings, convictions, and incarceration sentences, 2018-2019

- Non-Hispanic Black
- Non-Hispanic Asian
- Non-Hispanic Native American
- Hispanic/Latinx

Calculated by comparing to the case filing/conviction/incarceration sentence population rate for Non-Hispanic white people to the same rate for a given race/ethnicity. For example, if the case filing rate for white people was 1,000 per 100,000 cases, this rate would be compared to the same calculation for another race/ethnicity. The ratio of the two would reveal the [insert race/ethnicity here]-white case filing (or conviction or incarceration sentence) disparity ratio.

Source: Boulder County District Attorney’s Office • Created with Datwraper
Adults: Those who are experiencing homelessness are disproportionally brought into the system

0.4% - 0.8%

The share of Boulder County’s adult population who are experiencing homelessness between 2018 and 2020†

† Population counts of those experiencing homelessness were obtained from the Homeless Solutions for Boulder County reports on Boulder County in 2018 and 2020; 2,448 adults in 2018 were screened for HSBC services (0.8% of Boulder County population), and 1,170 adults in 2020 were screened (0.4% of Boulder County population).
Adults: Those who are experiencing homelessness are disproportionately brought into the system

0.4% - 0.8%
The share of Boulder County’s adult population who are experiencing homelessness between 2018 and 2020

10%
of adult cases referred to the DA’s office for felony charges between 2018 and 2019 in Boulder County where the person accused was experiencing homelessness*

* Homelessness in the dataset is defined as a person in the Boulder County DAO case management system having a home address listed either as “homeless,” “transient,” “shelter,” or the address of one of Boulder County’s homeless/emergency shelters. For all adult cases across both district and county court types, the share of cases in which the person accused was experiencing homelessness is closer to 7% of adult cases.
Adults: The disproportionality is especially strong for Black people who are experiencing homelessness.

Proportion of adult cases filed in Boulder County district court which the person accused is experiencing homelessness:

- Non-Hispanic Black: ~1 in 5
- Non-Hispanic White: ~1 in 9
- Non-Hispanic Native American: ~1 in 20
- Hispanic/Latinx: ~1 in 20
- Non-Hispanic Asian: ~1 in 33
Those experiencing homelessness are...

- more likely to have a drug charge (32% homeless vs. 28% non-homeless)
- less likely to have a VRA charge (27% vs. 35%)
- more likely to be convicted by guilty plea (81% vs. 72%)
- less likely to have their case dismissed (8% vs. 12%)
- more likely to receive an incarceration sentence (52% vs. 32%)
  - this is mostly due to jail sentencing (46% vs. 27%); prison sentencing likelihood is comparable (~6% for both those experiencing homelessness and those not)
- more likely to have credit for time served (9% vs. 6%)
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    - this is mostly due to jail sentencing (46% vs. 27%); prison sentencing likelihood is comparable (~6% for both those experiencing homelessness and those not)
  - more likely to have credit for time served (9% vs. 6%)
Those experiencing homelessness are...

- more likely to have a drug charge (32% homeless vs. 28% non-homeless)
- less likely to have a VRA charge (27% vs. 35%)
- more likely to be convicted by guilty plea (81% vs. 72%)
- less likely to have their case dismissed (8% vs. 12%)
- more likely to receive an incarceration sentence (52% vs. 32%)
  - this is mostly due to jail sentencing (46% vs. 27%); prison sentencing likelihood is comparable (~6% for both those experiencing homelessness and those not)
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  - this is mostly due to jail sentencing (46% vs. 27%); prison sentencing likelihood is comparable (~6% for both those experiencing homelessness and those not)
- more likely to have credit for time served (9% vs. 6%)
Takeaways

• Black youth and adults have a rate of case filing at least 4-5 times that of non-Hispanic white youth and adults – and this has remained consistent for nearly a decade (2009-2019)

• This disparity balloons to 7.5 times when we focus specifically on adult district court cases

• The share of adult district court cases involving someone experiencing homelessness is 12.5 to 25 times the county population share of those experiencing homelessness.
Charging, Pleas, and Sentencing
Charging, pleas, and sentencing findings

• Probation-only sentences and prison sentences decreased while successful diversion and jail with probation became more prevalent

• Black and Hispanic/Latinx people are disproportionately sentenced to prison, while non-Hispanic white people are disproportionately sentenced to probation only outcomes

• Most of the top lead charges in cases filed in adult district court are common across race and ethnicity
Prison admissions from Boulder County have steadily decreased since 2013.

Total cases sentenced to incarceration, probation, or successfully diverted per year, by type, Boulder County, 2013-2019

Source: Boulder County DAO Case Management System
Probation only sentences and prison sentences decreased while successful diversion and jail with probation became more prevalent.
When it comes to sentencing outcomes, cases with non-Hispanic white people are overly represented in probation, less so in prison.

### Demographics of cases sentenced to incarceration or probation only compared to all cases, by race/ethnicity, Boulder County, 2013-2019

<table>
<thead>
<tr>
<th>Category</th>
<th>Non-Hispanic White</th>
<th>Non-Hispanic Black</th>
<th>Hispanic/Latinx</th>
<th>Non-Hispanic Asian</th>
<th>Another Race</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sentenced to Probation Only (14,237 cases*)</td>
<td>72%</td>
<td>22%</td>
<td>4%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sentenced to Prison (1,542 cases*)</td>
<td>61%</td>
<td>29%</td>
<td>8%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sentenced to Jail w/o Probation (4,994 cases*)</td>
<td>69%</td>
<td>23%</td>
<td>6%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sentenced to Jail w/ Probation (1,225 cases*)</td>
<td>66%</td>
<td>26%</td>
<td>6%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>BCDAO General Caseload (52,630 cases*)</td>
<td>68%</td>
<td>26%</td>
<td>4%</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Source: Boulder County DAO

*Cases with race/ethnicity data only
From 2013 to 2019,
One in 12 people sentenced to prison in Boulder County was Black,
despite Black people only making up one in 25 cases in the county’s overall caseload.
Incarceration sentences are most prevalent for cases involving Native American and Black people, and Black people have highest share that go to prison.

<table>
<thead>
<tr>
<th>Sentences of convicted cases, by race/ethnicity, Boulder County, 2018–2019</th>
</tr>
</thead>
<tbody>
<tr>
<td>Non-Hispanic White (4,614 cases)</td>
</tr>
<tr>
<td>Hispanic/Latinx (1,580 cases)</td>
</tr>
<tr>
<td>Non-Hispanic Black (325 cases)</td>
</tr>
<tr>
<td>Non-Hispanic Asian (69 cases)</td>
</tr>
<tr>
<td>Non-Hispanic Native American (37 cases)</td>
</tr>
</tbody>
</table>

*“Other” case outcomes are defined as fine/fees/restitution, surveillance (e.g., electronic monitoring), deferred outcomes, etc. that don’t also include a prison or jail sentence.

Source: Source: Boulder County DAO Case Management System
A greater share of cases with Black and Latinx people are sentenced to prison for VRA cases than cases with white defendants; Black people are most incarcerated.

Sentences of convicted VRA cases, by race/ethnicity, Boulder County, 2018-2019

<table>
<thead>
<tr>
<th>Race/Ethnicity</th>
<th>Prison</th>
<th>Jail Only</th>
<th>Jail with Probation</th>
<th>Probation Only</th>
<th>Other*</th>
</tr>
</thead>
<tbody>
<tr>
<td>Non-Hispanic White (1,371 cases)</td>
<td>4%</td>
<td>21%</td>
<td>7%</td>
<td>42%</td>
<td>27%</td>
</tr>
<tr>
<td>Hispanic/Latinx (514 cases)</td>
<td>7%</td>
<td>15%</td>
<td>6%</td>
<td>43%</td>
<td>29%</td>
</tr>
<tr>
<td>Non-Hispanic Black (122 cases)</td>
<td>7%</td>
<td>25%</td>
<td>7%</td>
<td>37%</td>
<td>23%</td>
</tr>
<tr>
<td>Non-Hispanic Asian (15 cases)</td>
<td>7%</td>
<td>7%</td>
<td>7%</td>
<td>52%</td>
<td>27%</td>
</tr>
<tr>
<td>Non-Hispanic Native American (19 cases)</td>
<td>58%</td>
<td>7%</td>
<td>21%</td>
<td>21%</td>
<td></td>
</tr>
</tbody>
</table>

*“Other” case outcomes are defined as fine/fees/restitution, surveillance (e.g., electronic monitoring), deferred outcomes, etc. that don’t also include a prison or jail sentence.

Source: Source: Boulder County DAO Case Management System
Black and Latinx people are sentenced to incarceration for drug cases more than white defendants

<table>
<thead>
<tr>
<th>Race/Ethnicity</th>
<th>Prison</th>
<th>Jail Only</th>
<th>Jail with Probation</th>
<th>Probation Only</th>
<th>Other*</th>
</tr>
</thead>
<tbody>
<tr>
<td>Non-Hispanic White (694 cases)</td>
<td>5%</td>
<td>36%</td>
<td>10%</td>
<td>41%</td>
<td>8%</td>
</tr>
<tr>
<td>Hispanic/Latinx (209 cases)</td>
<td>9%</td>
<td>33%</td>
<td>13%</td>
<td>36%</td>
<td>9%</td>
</tr>
<tr>
<td>Non-Hispanic Black (45 cases)</td>
<td>7%</td>
<td>36%</td>
<td>13%</td>
<td>42%</td>
<td>9%</td>
</tr>
<tr>
<td>Non-Hispanic Asian (12 cases)</td>
<td>8%</td>
<td>25%</td>
<td>8%</td>
<td>51%</td>
<td>8%</td>
</tr>
<tr>
<td>Non-Hispanic Native American (2 cases)</td>
<td>100%</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**“Other” case outcomes are defined as fine/fees/restitution, surveillance (e.g., electronic monitoring), deferred outcomes, etc. that don’t also include a prison or jail sentence.**

*Source: Source: Boulder County DAO Case Management System*
What did charging for filed cases in adult district court look like between 2018 and 2019?

• “Controlled Sub-Poss Sch 1/2/FL/KT/CT” was the most common lead charge for cases filed in adult district court between 2018 and 2019 for every racial/ethnic group (between 11-19% of lead charges) except for Native Americans
  • Legislation in 2020 reduced the charge severity of this offense from a felony to a misdemeanor
• “ID Theft-Uses Info to Obtain” and “Felony Menacing – Real/Stimulated Weapon” are in the top 5 most common lead charges for every racial/ethnic group besides Native Americans (not in top 10, and 8th most common, respectively)
• Burglary 2 (of either Dwelling or Building) accounted for a total of...
  • 10.3% of lead charges for Black adult defendants,
  • 5.9% of white adult defendants,
  • 4.3% of Native American adult defendants,
  • 3.3% of Hispanic/Latinx adult defendants,
  • and were not in the top 10 for Asian adult defendants.
What did charging for filed cases in adult district court look like between 2018 and 2019?

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  - 4.3% of Native American adult defendants,
  - 3.3% of Hispanic/Latinx adult defendants,
  - and were not in the top 10 for Asian adult defendants.
“Controlled Sub-Poss Sch 1/2/FL/KT/CT” was the most common lead charge for cases filed in adult district court between 2018 and 2019 for every racial/ethnic group (between 11-19% of lead charges) except for Native Americans

- Legislation in 2020 reduced the charge severity of this offense from a felony to a misdemeanor

“ID Theft-Uses Info to Obtain” and “Felony Menacing – Real/Stimulated Weapon” are in the top 5 most common lead charges for every racial/ethnic group besides Native Americans (not in top 10, and 8th most common, respectively)

Burglary 2 (of either Dwelling or Building) accounted for a total of...

- 10.3% of lead charges for Black adult defendants,
- 5.9% of white adult defendants,
- 4.3% of Native American adult defendants,
- 3.3% of Hispanic/Latinx adult defendants,
- and were not in the top 10 for Asian adult defendants.
Snapshot of recent legislative changes

- “Controlled Sub-Poss Sch 1/2/FL/KT/CT”: Legislation in 2020 reduced the charge severity of this offense from a felony to a misdemeanor
- “ID Theft-Uses Info to Obtain”: SB21-271 makes this an M2
- “Felony Menacing”: “Deadly weapon” has been more specifically defined as a “firearm, knife, bludgeon, simulated firearm, knife, or bludgeon” and is an F5 and “placing, or attempting to place, a person in fear of imminent serious bodily injury” without a deadly weapon is an M1.
- Burglary 2 is more clearly defined.
  - F3: dwelling or theft of controlled substance, firearms, or ammunition
  - F4: “building or occupied structure”
  - M2: Added Subsection (c) person knowingly violated a written notice by a retailer (given upon trespass) or an order by a court of lawful jurisdiction specifically restraining a person from entering a particular retail location during hours which the retail store is open to the public.
Takeaways

• Probation-only sentences and prison sentences decreased while successful diversion and jail with probation became more prevalent

• Black and Hispanic/Latinx people are disproportionately sentenced to prison, while non-Hispanic white people are disproportionately sentenced to probation only outcomes

• Most of the top lead charges in cases filed in adult district court are common across race and ethnicity
Diversion
Diversion findings

- Youth disparities in referral have decreased for Black youth and nearly disappeared for Latinx youth
- Adult disparities in diversion referral have increased
- Differences in contact with the system across race/ethnicity – and how those differences factor into diversion referrals for adults – is worth further exploration
Adult diversion cases are catching up to juvenile diversion year-to-year numbers

Number of cases diverted, by age category, Boulder County, 2013-2019

Total: 2,097

Adults: 777

Juveniles: 1,320

Total diverted cases per year, by age category, Boulder County, 2013-2019

Source: Boulder County DAO Data Analysis
Since 2018, the demographics of juvenile diversion are increasingly mirroring that of the overall juvenile caseload.

### Demographics of juvenile diversion cases compared to all cases, by race/ethnicity, Boulder County

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Juvenile Diversion Caseload (579 people)</strong></td>
<td>70%</td>
<td>61%</td>
</tr>
<tr>
<td><strong>BCDAO Juvenile Caseload (2,492 people)</strong></td>
<td>58%</td>
<td>58%</td>
</tr>
<tr>
<td><strong>Boulder County Juvenile Population (43,829 people)</strong></td>
<td>70%</td>
<td>69%</td>
</tr>
<tr>
<td><strong>Juvenile Diversion Caseload (705 people)</strong></td>
<td>26%</td>
<td>32%</td>
</tr>
<tr>
<td><strong>BCDAO Juvenile Caseload (922 people)</strong></td>
<td>5%</td>
<td>6%</td>
</tr>
<tr>
<td><strong>Boulder County Juvenile Population (44,584 people)</strong></td>
<td>20%</td>
<td>21%</td>
</tr>
</tbody>
</table>

Source: Boulder County DAO
While the demographics of adult diversion have remained stable, it hasn’t kept pace with the increasing share of Latinx cases.

**Demographics of adult diversion cases compared to all cases by race/ethnicity, Boulder County**

**2016-2017**
- Adult Diversion Caseload (128 people): 71% Non-Hispanic White, 19% Hispanic/Latinx, 2% Another Race
- BCDAO Adult Caseload (13,714 people): 68% Non-Hispanic White, 25% Hispanic/Latinx, 5% Another Race
- Boulder County Adult Population (245,088 people): 81% Non-Hispanic White, 11% Hispanic/Latinx, 2% Another Race

**2018-2019**
- Adult Diversion Caseload (624 people): 71% Non-Hispanic White, 18% Hispanic/Latinx, 3% Another Race
- BCDAO Adult Caseload (16,783 people): 64% Non-Hispanic White, 29% Hispanic/Latinx, 5% Another Race
- Boulder County Adult Population (249,712 people): 81% Non-Hispanic White, 11% Hispanic/Latinx, 3% Another Race

Source: Boulder County DAO
A smaller share of cases involving Black and Latinx youth are sent to juvenile diversion, but diversion has become much more prevalent across race/ethnicity.

**Share of juvenile cases referred to diversion, by race/ethnicity, Boulder County**

- **Non-Hispanic White**
  - 2013-2017: 28.0%
  - 2018-2019: 81.0%
- **Non-Hispanic Black**
  - 2013-2017: 8.0%
  - 2018-2019: 41.0%
- **Hispanic/Latinx**
  - 2013-2017: 18.0%
  - 2018-2019: 70.0%

*The percentage of total cases for a given race/ethnicity and age that were referred to diversion (regardless of whether those cases were accepted/declined or successful/unsuccessful).*

*Source: Boulder County District Attorney’s Office • Created with Datawrapper*
Adult diversion is making up a larger share of outcomes for adult cases, but generally, Black and Latinx adults receive diversion at lower levels.
Native American and Black adults are more likely to have had multiple cases come through the office, with 27-32% having had multiple case files in the CMS.

<table>
<thead>
<tr>
<th>Race/Ethnicity</th>
<th>One case</th>
<th>Two cases</th>
<th>3-5 cases</th>
<th>5+ cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>Non-Hispanic White (18,803 people)</td>
<td>77%</td>
<td>12%</td>
<td>7%</td>
<td></td>
</tr>
<tr>
<td>Hispanic/Latinx (5,538 people)</td>
<td>73%</td>
<td>14%</td>
<td>8%</td>
<td>5%</td>
</tr>
<tr>
<td>Non-Hispanic Black (1,050 people)</td>
<td>70%</td>
<td>15%</td>
<td>10%</td>
<td>5%</td>
</tr>
<tr>
<td>Non-Hispanic Asian (297 people)</td>
<td>87%</td>
<td>13%</td>
<td>9%</td>
<td>10%</td>
</tr>
<tr>
<td>Another Race (130 people)</td>
<td>76%</td>
<td>12%</td>
<td>7%</td>
<td>5%</td>
</tr>
<tr>
<td>Non-Hispanic Native American (97 people)</td>
<td>68%</td>
<td>13%</td>
<td>9%</td>
<td>10%</td>
</tr>
</tbody>
</table>

Interpretation guide: "77% of non-Hispanic white people in the database have only one case record in the CMS between 2013 and 2019. 12% of non-Hispanic white people have 2 case records in the CMS."

Source: Source: Boulder County DAO Case Management System
• Adult disparities in diversion referral have increased while youth disparities in referral have decreased for Black youth and nearly disappeared for Latinx youth
• Differences in contact with the system across race/ethnicity – and how those differences factor into diversion referrals for adults – is worth further exploration
Conclusions
Conclusions

• Substantial racial disparities can be found in case filings, sentencing outcomes, and adult diversion referral

Black youth and adults have a case filing rate at least 4-5 times that of non-Hispanic white youth and adults

From 2013 to 2019, one in 12 people sentenced to prison in Boulder County was Black, despite Black people only making up one in 25 cases in the county’s overall caseload
Conclusions

- Those experiencing homelessness are disproportionately brought into the system, and their outcomes once in the system are, on average, worse than those not experiencing homelessness.

The share of adult district court cases involving someone experiencing homelessness is **12.5 to 25 times** the county population share of homeless people.
Conclusions

• Shrinking of disparities in juvenile diversion referral suggests that policy steps within office control can directly target racial inequities

![Average racial disparities in juvenile diversion case referrals compared to white people accused of a crime, Boulder County](image_url)

Shrinking disparity

- Case rate disparity (rate compared to non-Hispanic white cases)
- Non-Hispanic Black
- Hispanic/Latinx
- Non-Hispanic White
National Reform Landscape
Some forms of data may inadvertently increase the "empathy gap"
Open data gives a more transparent, disaggregated view of the people in the data.
Data, when led by equitable goals and values, can help shine a light on stories, problems, and solutions.

Pretrial risk assessment instruments perpetuate racially biased results

“...the risk assessment industry, led by private corporations, foundations, and hedge-fund billionaires, seeks a new way to profit from mass incarceration, while claiming to support reform. Policymakers, drawn to its promise of technological efficiency, continue to ignore evidence of the mechanized racial profiling of the risk assessment tools.”

— Jette Abd, Senior Policy Lead of Dignity and Power New & Campaign Coordinator of The Justice & Coalition

Almost all of the states and counties that have ended money bail have replaced it with risk assessment instruments, which are algorithms intended to determine whether a person is at risk of flight or reoffense. However, this perpetuates the disproportionate incarceration of people who are historically and structurally marginalized. There is a variety of risk assessment instruments that states and local jurisdictions have used to reform pretrial incarceration, some proprietary and others public. Information about a person’s criminal record, previous sentences, current bond, and employment status...
Suffolk County declination policy

What Happened When Boston Stopped Prosecuting Nonviolent Crimes

Jamie Hodge
Former Project Director

Selamse Silegdu
Research Associate

Suffolk County District Attorney Rachael Rollins
Suffolk County declination policy

“Most commonly driven by poverty, substance use disorder, mental health issues, trauma histories, housing or food insecurities...”

- Trespassing
- Shoplifting
- Larceny under $250
- Disorderly conduct
- Disturbing the peace
- Receiving stolen property
- Resisting arrest
- Minor driving offenses (driving with suspended/revoked license)

- Breaking and entering (if to seek refuge/sleep and no damage)
- Wanton or malicious destruction of property
- Threats (except DV)
- Minor in possession of alcohol
- Drug possession (and intent to distribute)
Study of policy shows benefits of declination

Key findings

For the two years after the arraignment of a case, where the only key difference was the lenience of the screening prosecutor, non-prosecution reduced the rates at which people:

- were subsequently charged with any new criminal complaint by 58 percent;
- were subsequently charged with violent offenses by 64 percent;
- were subsequently charged with disorderly conduct or property offenses by 91 percent;
- were subsequently charged with motor vehicle offenses by 63 percent;
- obtained a criminal record by 69 percent.

Did not increase the number of related nonviolent misdemeanor crimes reported by the Boston Police Department.
Arlington County Community-Based Felony Diversion Program

As part of the Vera Motion for Justice Initiative, Commonwealth Attorney Parisa Dehghani-Tafti partnered with community organization OAR Arlington (Offender Aid and Restoration) to implement an adult felony diversion program:

- Pre-Plea
- Larceny, Robbery, and Burglary
- Does not exclude based on a person’s criminal history
- Is based within the community through OAR
  - They offer wraparound services and individual therapy to program participants
Nationally, momentum is growing for limiting non-public safety traffic stops

Philly bill to ban minor traffic stops will be reintroduced after months of negotiations

By Aaron Moselle - June 24, 2021

Minneapolis police cut back on pretextual traffic stops in effort to reduce racial profiling

Tom Crann, Megan Burks and Alex Cheng

August 17, 2021 6:23 p.m.
Across the country, the research on police stops are clear

• Many police stops are racially biased.
  • Black and Latinx drivers are disproportionately targeted and more likely to be searched than white drivers despite lower or comparable contraband “hit rates”

• Non-public safety stops drive racial disparities.
  • When researchers compared “must stop” public safety stops vs. non-public safety stops, they found that most of the racial disparities in stops were attributable to non-public safety stops

• Communities aren’t made safer by non-public safety stops
  • Drugs or weapons are rarely found, and little evidence shows that these stops reduce crime
  • Physical and psychological harms to targeted communities; Community mistrust and reduced confidence in law enforcement
An Empirical Assessment of Pretextual Stops and Racial Profiling

Stephen Rushin & Griffin Edwards *

This Article empirically illustrates that legal doctrines permitting police officers to engage in pretextual traffic stops may contribute to an increase in racial profiling. In 1996, the U.S. Supreme
Stanford study documents racial profiling in traffic stops

• Study of 100 million traffic stops found significant racial disparities
• Disparities disappear when stops focus on safety
• “Vast majority” don’t result in evidence recovery: 95% - 99%
Research confirms effect of enhancements on mass incarceration

“[Stanford Computational Policy Lab] results show that while enhancements are sentenced in a relatively small portion of felony cases, they more than double the sentence imposed for the base crime in these cases.”
Research confirms effect of enhancements on mass incarceration

• Risk of criminal activity decreases with age.
• Deterrence is achieved through certainty of *punishment* not *severity*.
• Social interventions produce greater public safety benefits than expanding incarceration.
Firearm Felony Policy
Lansing, MI

Original firearm felony statute: if someone is carrying a firearm or pneumatic gun while committing a felony, that person is imprisoned for two years on first conviction, five years on second conviction and 10 years on third conviction.

Even if:

- The person legally owned the firearm
- The weapon was not discharged during commission of the offense

The impact of the statute was racially disparate 12% Black population but 80% of the people serving a felony firearm sentence were Black

New policy from Ingham DA: prosecutors will “no longer charge the offense except under most extreme circumstances”
Boulder DA’s Office Policy and Reform Efforts

• Expansion of Adult Diversion
  • Harm Reduction Approach
  • Have included many violent crimes successfully
  • Recognized leader across the state and nationally

• Juvenile Diversion
  • For years now we have diverted more kids than we prosecute
  • As of 2022, now all juveniles are screened for diversion per statute (the only exception is F1s and F2s)

• Mental Health Diversion Implementation & Continued Expansion

• Drug Diversion Program (prior to de-felonization of drug possession)

• Driver’s License Diversion Program

• PPI & Data Dashboard

• Conviction Integrity unit

• Bias & Hate Crimes Initiative

• Workplace Sexual Misconduct Task Force

• Implicit Bias Training for Staff

• Immigration Policy

• Diversity, Equity, and Inclusion Policy

• Moving on from MJ Policy

• Fresh Start Warrant Forgiveness Policy
Important Colorado Legislative Changes

• 2020 De-Felonization of most drug possession
• 2020 Bond Reform
• 2022 Misdemeanor Sentencing Reform
  • DA Dougherty is Co-Chair of the CCJJ Sentencing Reform Task Force
  • Misdemeanor changes
    • Max sentence is 364 days (significant for immigration consequences and puts us in line with other states)
    • 2 levels versus 3 levels
    • Importantly, these changes address many of the Top 10 Charges identified by Vera’s Data Analysis
      • Menacing, Criminal Impersonation, Burglary, Criminal Trespass, Burglary Tools, ID Theft, Motor Vehicle Theft, Violation of Bail Bonds
      • Note, the #1 felony charge was drug possession, which moved to a drug misdemeanor in March 2020
    • The task force is currently looking at felony sentencing grid and felony charges
Q&A
Closeout