Mass Criminalization and Racial Disparities in Conviction Rates

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A staggering number of Americans experience criminal justice contact each year, ranging from arrest to long-term incarceration. One 2014 Wall Street Journal report estimated that approximately one in three Americans are represented in the FBI's master criminal database. Many scholars and commentators have questioned the desirability of mass criminalization and the resulting large-scale arrests.

I add new empirical context to this ongoing discussion by examining conviction rates among a nationally representative sample of young men. I find that, conditional on having been arrested, Black men are 29% less likely than their similarly situated White counterparts to experience conviction. This result may come as a surprise, given that existing research shows that Black men experience worse outcomes at the arrest and sentencing stages of criminal justice processing.

Upon further examination, the result makes sense in the context of selection effects. Supplemental analyses show that the lower conviction rate of Black men is likely driven by over-arrest (i.e., that police are likely to use discretion in arrest decisions in a discriminatory manner). This apparent disconnect between policing decisions and prosecutorial screening raises serious questions of the validity and desirability of arresting so many Black men each year.

My empirical analysis further suggests that more than 50% of Black men have been arrested by young adulthood. Each arrest is psychologically and financially costly to the arrestee, cultivates lasting stigma directed at the arrestee, limits the arrestee's future labor market opportunities, costs taxpayer money in the form of policing budgets, and increases the likelihood of police violence. My results highlight the distributional costs of mass criminalization—often borne by Black individuals—and add context to the discussion of whether the costs of large-scale arrests exceed their benefits.

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INTRODUCTION

Factors affecting criminal justice outcomes can be categorized as either warranted (i.e., legally relevant and related to criminal involvement) or unwarranted (i.e., legally irrelevant characteristics of an individual).[1] In a perfectly fair criminal system, outcomes would be based solely on warranted factors. However, very few—if any—social systems operate in a perfectly fair manner.

Many studies investigate whether race acts as an unwarranted factor that affects criminal justice outcomes. Arrest statistics consistently show racial differences in arrests that disfavor the Black population. For instance, Black individuals made up approximately 12.7% of the U.S. population in 2018 but 27.4% of the arrests that year.[2] Statistics such as these are sometimes cited to support the proposition that Black individuals are more likely to commit crimes than White individuals.[3] However, this characterization grossly oversimplifies the criminal justice process.[4] Indeed, differing criminal behavior by race is only one of multiple possible explanations that could underlie arrest rate disparities.

Most research on racial disparities in criminal justice processing focuses on the endpoints of arrest and sentencing, with far less attention paid to the middle stages of charging and conviction.[5] We know from existing data and empirical research that Black individuals are more likely to be arrested and receive harsher sentences than their White counterparts, even after controlling for self-reported criminal behavior and other legally relevant factors.[6] By

1. Lauren Nichol Gase, Beth A. Glenn, Louis M. Gomez, Tony Kuo, Moira Inkelas & Ninez A. Ponce, *Understanding Racial and Ethnic Disparities in Arrest: The Role of Individual, Home, School, and Community Characteristics*, 8 RACE & SOC. PROBS. 296, 297 (2016); Cydney Schleiden, Kristy L. Soloski, Kaitlyn Milstead & Abby Rhynehart, *Racial Disparities in Arrests: A Race Specific Model Explaining Arrest Rates Across Black and White Young Adults*, 37 CHILD & ADOLESCENT SOC. WORK J. 1, 2–3 (2020).

2. *Table 43*: *Arrests by Race and Ethnicity, 2018*, FED. BUREAU OF INVESTIGATION, https://ucr.fbi.gov/crime-in-the-u.s/2018/crime-in-the-u.s.-2018/topic-pages/tables/table-43 (last visited Apr. 15, 2022); *ACS Demographic and Housing Estimates*, U.S. CENSUS BUREAU, https://data.census.gov/cedsci/table?d=ACS%205-Year%20Estimates%20Data%20Profiles&tid=ACSDP5Y2018.DP05 (last visited Apr. 15, 2022).

3. *See, e.g.*, Legendary Diogenes, *Black vs. White Crime Statistics*, WHITE PRIVILEGE ISN'T REAL (Feb. 8, 2022), https://whiteprivilegeisntreal.org/black-vs-white-crime-statistics/#gref (using arrest statistics for violent crime to support the proposition that Black individuals commit more violent crime than White individuals).

4. *See* Sharon Dolovich & Alexandra Natapoff, *Introduction: Mapping the New Criminal Justice Thinking*, *in* THE NEW CRIMINAL JUSTICE THINKING 8–9 (Sharon Dolovich & Alexandra Natapoff eds., 2017) ("American culture has so long associated criminality with blackness and continues to do so, even though the racial makeup of the criminalized population is itself a result of law enforcement selection and prosecution policies.").

5. *See* discussion *infra* Part II.A (summarizing research on racial disparities in arrests*)*; *see also* discussion *infra* Part II.B (summarizing research on racial disparities in convictions).

6. For examples of research on racial disparities in arrest, see generally Tia Stevens Andersen, *Race, Ethnicity, and Structural Variations in Youth Risk of Arrest: Evidence from a National Longitudinal Sample*, 42 CRIM. JUST. & BEHAV. 900 (2015); Gase et al., *supra* note 1; Schleiden et al., *supra* note 1. For examples of research on racial disparities in sentencing, see generally Jill K. Doerner & Stephen Demuth, *The Independent and Joint Effects of Race/Ethnicity, Gender, and Age on Sentencing Outcomes in U.S. Federal Courts*, 27 JUST.

focusing on the endpoints of arrest and sentencing, existing research has left a gap in understanding the role that race plays at the charging and conviction stages. Indeed, many scholars have noted and expressed concerns about the lack of empirical research on middle stages of criminal justice processing, such as prosecutorial screening, charging decisions, pretrial detention, and conviction rates.[7]

Some recent research has attempted to fill this gap by examining racial differences in prosecutors' decisions to dismiss charges.[8] However, these studies have yielded conflicting results,[9] and the relationship between race and charging and conviction rates is an open question.

Two Department of Justice (DOJ) investigations highlight the uncertain nature of racial disparities in conviction rates. A DOJ investigation of the Baltimore, Maryland police department found equal case dismissal rates by race for serious offenses, but a higher rate of case dismissals for Black individuals for crimes where police officers had wide discretion to make arrests.[10] The DOJ posited that this finding indicates that Baltimore police use their discretion in a racially discriminatory manner.[11] In contrast, another DOJ investigation of the Ferguson, Missouri police department found a higher rate of overall case dismissal for White individuals compared to Black individuals.[12] Thus,

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Q. 1 (2010); Ronald S. Everett & Roger A. Wojtkiewicz, *Difference, Disparity, and Race/Ethnic Bias in Federal Sentencing*, 18 J. QUANTITATIVE CRIMINOLOGY 189 (2002); Theodore R. Curry & Guadalupe Corral-Camacho, *Sentencing Young Minority Males for Drug Offenses: Testing for Conditional Effects Between Race/Ethnicity, Gender and Age During the US War on Drugs*, 10 PUNISHMENT & SOC'Y 253; Joshua B. Fischman & Max M. Schanzenbach, *Racial Disparities Under the Federal Sentencing Guidelines: The Role of Judicial Discretion and Mandatory Minimums*, 9 J. EMPIRICAL LEGAL STUDS. 729 (2012); Traci Schlesinger, *The Cumulative Effects of Racial Disparities in Criminal Processing*, 7 J. INST. JUST. & INT'L STUDS. 261 (2007).

7. *See* Eric P. Baumer, *Reassessing and Redirecting Research on Race and Sentencing*, 30 JUST. Q. 231, 240 (2013).

8. While not the focus of this Article, another subset of this research is more granular and examines results such as procedural outcomes (for example, differences in pretrial detention by race) and the types of crimes an individual is charged with or convicted of (for example, differences in charging crimes associated with mandatory minimums by race). Many studies in this line of research find outcomes disfavoring black arrestees at these stages. *See* sources cited *infra* notes 16–18.

9. *See, e.g.*, Carlos Berdejó, *Criminalizing Race: Racial Disparities in Plea-Bargaining*, 59 B.C. L. REV. 1187, 1190–91 (2018) (finding a lower likelihood of dropped or reduced charges for Black individuals compared to White individuals); Travis W. Franklin, *Community Influence on Prosecutorial Dismissals: A Multilevel Analysis of Case- and County-Level Factors*, 38 J. CRIM. JUST. 693, 699 (2010) (observing mixed findings); Besiki L. Kutateladze, Nancy R. Andiloro, Brian D. Johnson & Cassia C. Spohn, *Cumulative Disadvantage: Examining Racial and Ethnic Disparities in Prosecution and Sentencing*, 52 CRIMINOLOGY 514, 531 (2014) (finding a higher likelihood of dropped charges for Black and Latino individuals compared to White individuals); Aleksandar Tomic & Jahn K. Hakes, *Case Dismissed: Police Discretion and Racial Differences in Dismissals of Felony Charges*, 10 AM. L. & ECON. REV. 110, 135 (2008) (observing mixed findings).

10. U.S. DEP'T OF JUST., CIV. RTS. DIV., INVESTIGATION OF THE BALTIMORE CITY POLICE DEPARTMENT 64 (2016), https://www.justice.gov/crt/file/883296/download [hereinafter BALTIMORE POLICE INVESTIGATION]; Amanda D'Souza, Ronald Weitzer & Rod K. Brunson, *Federal Investigations of Police Misconduct: A Multi-City Comparison*, 71 CRIME, L. & SOC. CHANGE 461, 468–69 (2019).

11. BALTIMORE POLICE INVESTIGATION, *supra* note 10, at 64.

12. *See* U.S. DEP'T OF JUST., CIV. RTS. DIV., INVESTIGATION OF THE FERGUSON POLICE DEPARTMENT 69 (2015), https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_

answering the question of what role race plays in conviction appears to vary significantly by jurisdiction and crime type.

This variation across jurisdictions indicates that a nationally representative dataset can be useful in gaining a picture of the average racial disparity in conviction rates across the United States. I use the National Longitudinal Survey of Youth – 1997 (NLSY97) to examine racial disparities in charging and conviction rates of adult, male respondents.

My analysis adds to empirical research on charging and conviction rates in four ways. First, prior studies examining charging and conviction rates use administrative datasets, rather than longitudinal surveys.[13] While administrative datasets have detailed procedural data that the NLSY97 lacks, they contain very limited data on the characteristics of arrested individuals.[14] Scholars have noted that the lack of information in administrative datasets on characteristics such as socioeconomic status and marital status make it difficult to draw strong conclusions about race effects in studies of criminal justice processing.[15]

The NLSY97, in contrast, contains rich individual data and allows me to isolate the relationship between race and conviction by controlling for respondents' education, work experience, financial wellbeing, self-reported criminal behavior, drug use, and arrest history. I use this information to perform regression analyses on the likelihood an individual arrestee is convicted, while controlling for all these characteristics, along with race/ethnicity. By doing so, I can isolate the relationship between race/ethnicity and conviction, independent of these other individual characteristics.[16]

Second, the NLSY97 contains data on arrests that do not result in any charges.[17] In contrast, prior studies using administrative data contain only post-charging data.[18] To the extent prosecutors use charging as a meaningful

department_report.pdf [hereinafter FERGUSON POLICE INVESTIGATION]; D'Souza et al., *supra* note 10, at 468–69.

13. *See* Berdejó, *supra* note 9, at 1204–05 (public records of the Wisconsin Circuit Courts); Franklin, *supra* note 9, at 695 (State Court Processing Statistics); Kutateladze et al., *supra* note 9, at 522 (DANY court data); Tomic & Hakes, *supra* note 9, at 123 (State Court Processing Statistics).

14. *See, e.g.*, Dana DeHart & Cheri Shapiro, *Integrated Administrative Data & Criminal Justice Research*, 42 AM. J. CRIM. JUST. 255, 260–261 (2017).

15. To illustrate, socioeconomic status is strongly correlated with race, and it is nearly impossible to determine whether racial disparities in criminal justice outcomes are driven by race or socioeconomic status when using data that do not include a measure of socioeconomic status. *See* Baumer, *supra* note 7, at 245. Baumer also notes that lack of information on things such as evidence quality and victim characteristics make it hard to draw strong conclusions. *Id.* While the NLSY97 does not contain this information, I perform additional analysis that seeks to sort through the interaction between race, victim characteristics, and strength of evidence as they relate to conviction rates.

16. "One of the most useful aspects of the multiple regression model is its ability to identify the independent effects of a set of variables on a dependent variable." WILLIAM H. GREENE, ECONOMETRIC ANALYSIS 10 (6th ed. 2008).

17. *See infra* Part III (describing that NLSY97 survey respondents are asked about all arrests they experience).

18. *See* Berdejó, *supra* note 9, at 1205 ("The analyses presented later in the Article restrict the sample to cases *filed and adjudicated* in Dane County.") (emphasis added); Franklin, *supra* note 9, at 695 ("Information

screening mechanism, prior studies miss any racial/ethnic differences in arrestee processing that occur at the charging stage.

Third, the NLSY97 contains nationally representative data that reflect arrests for all crime types.[19] In contrast, prior studies have been limited to either specific jurisdictions or specific crime types.[20] The NLSY97 allows me to provide a broad picture of national conviction rate disparities reflecting all crime types, rather than a snapshot of specific locales or limited crimes.

Finally, given that prior research on racial disparities of charging and conviction has yielded mixed results,[21] I discuss sample differences that may account for the variation. In doing so, I attempt to provide a more robust theory on the relationship between race and charging and conviction, on average, at the national level.

For reasons discussed later, I combine the outcomes of charging and conviction for my main analysis.[22] Thus, my outcome of interest is the probability an individual is convicted, conditional on having been arrested. Additionally, I examine racial disparities in arrest and sentencing rates to confirm my analysis aligns with previous studies' finding of worse outcomes for Black individuals at those stages.[23]

I find that Black men are convicted at significantly lower rates than White men, even after controlling for other potentially relevant individual characteristics, such as education, work experience, financial wellbeing, self-reported criminal behavior, drug use, and arrest history. My regression analyses indicate that a Black male arrestee is approximately 29% less likely to be convicted than a similarly situated White male arrestee.[24] Some results indicate that Hispanic arrestees are less likely to be convicted than their White counterparts, but these results are less consistent and limited to the charging stage. Because the results on the relationship between Hispanic ethnicity and charging and conviction rates are less robust, this Article focuses on the conviction disparity between Black and White arrestees.

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provided by the 1998 SCPS was based on felony cases *filed* in thirty-nine of the nation's seventy-five largest counties.") (emphasis added); Kutateladze et al., *supra* note 9, at 522 ("The data consist of 159,206 misdemeanors and 26,069 felonies *accepted for prosecution* . . .") (emphasis added); Tomic & Hakes, *supra* note 9, at 123 ("The file contains 72,602 observations on felony *defendants* in fifty-four of the nation's seventy-five most populous counties.") (emphasis added).

19. *See Crime, Delinquency & Arrest*, U.S. BUREAU OF LAB. STATS., NAT'L LONGITUDINAL SURVS., https://www.nlsinfo.org/content/cohorts/nlsy97/topical-guide/crime/crime-delinquency-arrest (last visited Apr. 15, 2022).

20. *See* sources cited *infra* notes 84–85 and accompanying text.

21. *See* sources cited *supra* note 9 and accompanying text.

22. *See infra* Part I.B.

23. *See* sources cited *supra* note 6.

24. It is worth noting the difference between percent and percentage points. The regression analysis presented in Appendix Table B.I shows that Black arrestees are 15.7 percentage points less likely to be convicted than White arrestees. Given that the baseline conviction rate for White arrestees is approximately 54%, the 15.7 percentage point lower conviction rate translates to a conviction rate that is 29% lower than the white conviction rate (calculated as 15.7 / 54).

I consider four possible explanations for the racial disparity. First—and what I ultimately conclude is the most likely explanation—the disparity could reflect the systemic over-arrest of Black men (i.e., that police officers use discretion in the arrest decision in a racially discriminatory manner). Second, the disparity could reflect victim and witness characteristics in combination with the intraracial nature of crime. It is possible that prosecutors exhibit racial bias against Black victims and pursue their cases less vigorously, or that there is general mistrust of the police among the Black community and, thus, Black victims or witnesses are less likely to cooperate in police investigations. Both possibilities would lead to a lower conviction rate for Black arrestees. Third, it may be that more Black arrestees are already on probation or parole than White arrestees at the time of arrest and, as a result, prosecutors decide to revoke probation or parole rather than pursuing charges or a conviction. Fourth and finally, it is theoretically possible that prosecutors exhibit racial bias against non-Black arrestees in terms of filing charges or fully pursuing a conviction.

I investigate each of these possibilities and find that the most likely explanation is systemic over-arrest. At the outset, I argue that racial bias against non-Black arrestees is highly unlikely. Researchers have found consistent evidence of unexplained disparities against Black individuals at nearly all other points of criminal justice processing.[25] Some researchers have even examined outcomes under the discretion of the prosecutor—such as pretrial detention,[26] the decision of whether to bring charges with a mandatory minimum,[27] or charge reduction[28]—and found evidence of unexplained racial disparities reflecting worse outcomes for Black arrestees at these stages. It is unlikely that the decision to not charge an arrestee or later drop the charge is the sole stage in which racial bias appears in favor of Black individuals.

To determine whether differing rates of probation or parole could be driving the results, I perform a supplemental analysis that uses data on respondents' first arrest only.[29] I find that a large conviction disparity persists in these first-time arrests, with Black arrestees being 30% less likely to be convicted than White arrestees. Given that individuals arrested for the first time are not already on probation or parole, this finding suggests that the disparity is not driven by differences in rates of probation or parole across race.

To determine which of the two remaining mechanisms—over-arrest or victim/witness differences—is most likely, I look to see whether there are

25. *See* sources cited *supra* note 6.

26. *See, e.g.*, BESIKI KUTATELADZE, VANESSA LYNN & EDWARD LIANG, DO RACE AND ETHNICITY MATTER IN PROSECUTION?: A REVIEW OF EMPIRICAL STUDIES 11 (2012) (summarizing empirical research finding that Black and Hispanic defendants were treated harsher in the decision on pretrial release).

27. *See, e.g.*, M. Marit Rehavi & Sonja B. Starr, *Racial Disparity in Federal Criminal Sentences*, 122 J. POL. ECON. 1320, 1323 (2014).

28. *See, e.g.*, Lauren O'Neill Shermer & Brian D. Johnson, *Criminal Prosecutions: Examining Prosecutorial Discretion and Charge Reductions in U.S. Federal District Courts*, 27 JUST. Q. 394, 415 (2010).

29. This sample also excludes anyone who was arrested as a juvenile.

differences in conviction rates by type of crime. For those individuals who are charged with a crime, the NLSY97 has data on the type of crime charged. I split crimes into two categories, following methodology used by Tomic and Hakes in their 2008 article.[30] The first includes drug possession, drug sales, public disorder, and major traffic offenses. This category comprises the crime types for which police are likely to have high levels of on-the-spot discretion in the arrest decision.[31] The second category includes assault, burglary, robbery, theft, destruction of property, and other property crimes. Arrests for these crimes are less likely to involve on-the-spot police decision-making.[32] The first category also generally includes "victimless" crimes, while the second category of crimes generally involves a victim.

To the extent racially biased policing and over-arrest drive lower conviction rates, one would expect to see the disparities concentrated among crimes for which police have greater discretion in the arrest decision. To the extent victim and witness cooperation or prosecutor bias against non-White victims drive lower conviction rates, the disparity would likely arise in the second category of crimes that generally involve victims. I find that the disparity is heavily concentrated in the first category of crimes, with no statistically significant difference in conviction rates among those charged with the second category of crimes. Given this pattern, I propose that racial disparities in conviction rates are driven by systemic over-arrest of Black men for crimes in which police have large discretion in the arrest decision.

Previous research finds that Black men are arrested at rates that exceed any difference in self-reported criminality and other relevant factors.[33] By looking to post-arrest outcomes, my analysis provides additional evidence of over-arrest of Black men. To the extent that convictions reflect prosecutors' determinations that an arrest is (1) based on sound evidence and (2) for the type of crime that is worth expending resources to prosecute, the large difference between Black and White men's conviction rates raises serious questions of the validity and desirability of arresting so many Black men each year.

If arrests were costless, my findings would be positive, at best, and unimportant, at worst. My findings indicate that prosecutors are, to some extent, correcting for the over-arrest of Black men, which some might interpret as indicative of a fair legal system. However, arrests are far from costless. Policing is costly, and many would consider undertaking many arrests that are ultimately not fully prosecuted to be a large waste of tax dollars.[34] One 2014 Wall Street

30. *See* Tomic & Hakes, *supra* note 9, at 127–28.

31. *See id.*

32. *See id.*

33. *See* sources cited *infra* notes 50–54 and accompanying text.

34. *See Criminal Justice Expenditures: Police, Corrections, and Courts*, URB. INST., https://www.urban.org/policy-centers/cross-center-initiatives/state-and-local-finance-initiative/state-and-local-backgrounders/criminal-justice-police-corrections-courts-expenditures (last visited Apr. 15, 2022) (showing that

Journal report estimated that approximately one in three Americans are represented in the FBI's master criminal database.[35] Further, my findings show that current policing practices result in more than half of Black men being arrested at least once by young adulthood. Arrests can cause immediate harm to the arrested individual in terms of job loss, financial costs, and psychological stress.[36] Arrest records can further close doors to future opportunity in education and the labor market.[37] Large-scale arrests of Black men also cultivate stigma, leading to misperceptions about criminality as well as distrust of police among the Black community.[38] Further, the more stops and arrests occur, the higher the likelihood of police violence.

This Article proceeds as follows: Part I begins by reviewing prior research on racial disparities in arrest. Given that individuals who are charged or convicted are a subset of those arrested, it is important to first discuss issues that arise at the arrest stage. Part I then turns to drivers of charging and conviction outcomes and discusses potential mechanisms through which a lower conviction rate of Black arrestees may arise. Part II summarizes prior empirical research on the middle criminal justice stages of charging and conviction. Part III describes the data I use in my analysis. Part IV presents both my main results and supplemental analyses that seek to determine the mechanism driving the lower conviction rates for Black men. These supplemental analyses ultimately suggest that over-arrest of Black men drives the disparity. Part V seeks to reconcile my results with prior researchers' mixed findings and discusses the implications of my results. This Article then briefly concludes, and an Appendix provides the details of my empirical analysis.

I. BACKGROUND

My analysis focuses on conviction rates of male, adult arrestees. Empirical research on criminal justice outcomes is often split along the lines of age and gender.[39] Because the adult criminal justice system differs significantly from the

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the policing budget as a percent of the overall budget was 6% for local governments, 13% for city governments, 8% for county governments, and 10% for township governments in 2017).

35. Gary Fields & John R. Emshwiller, *As Arrest Records Rise, Americans Find Consequences Can Last a Lifetime*, WALL ST. J. (Aug. 18, 2014, 10:30 PM), https://www.wsj.com/articles/as-arrest-records-rise-americans-find-consequences-can-last-a-lifetime-1408415402 ("[T]he FBI currently has 77.7 million individuals on file in its master criminal database—or nearly one out of every three American adults.").

36. *See* Mark Theoharis, *How a Criminal Record Affects Your Finances & Your Life*, MONEY CRASHERS, https://www.moneycrashers.com/criminal-record-affects-finances-life (last updated Sept. 14, 2021).

37. *See* Benjamin D. Geffen, *The Collateral Consequences of Acquittal: Employment Discrimination on the Basis of Arrests Without Convictions*, 20 U. PA. J. L. & SOC. CHANGE 81, 81 (2017).

38. *See* Rod K. Brunson & Jody Miller, *Gender, Race, and Urban Policing: The Experience of African American Youths*, 20 GENDER & SOC'Y 531, 533 (2006).

39. *See, e.g.*, Tia Stevens & Merry Morash, *Race/Ethnic Disparities in Boys' Probability of Arrest and Court Actions in 1980 and 2000: The Disproportionate Impact of "Getting Tough" on Crime*, 13 YOUTH VIOLENCE & JUV. JUST. 77 (2015).

juvenile justice system in both its goals and processes,[40] researchers generally do not analyze them together.[41] Similarly, men are often studied separately from women, as their offending and arrest patterns vary drastically from one another.[42] Thus, for example, a single study might focus specifically on sentencing decisions for juvenile boys.[43]

In general, men's criminal justice outcomes are studied more often than women's because they make up most of the criminal-justice-involved population. For instance, men made up 72.8% of arrests in 2018.[44] The NLSY97 also reflects this, as men make up approximately 68% of those arrested in the sample.[45] Thus, because of their higher rates of criminal justice involvement and larger sample size of arrests within the NLSY97, this Article focuses on adult men.

Criminal justice processing consists of four major decision points: arrest, charging, conviction, and sentencing. In this Article, I focus on the previously understudied middle stages of charging and conviction. My discussion and analysis of sentencing disparities by race is limited to confirming that the results conform with prior research that finds worse sentencing outcomes for Black individuals.[46] However, because those charged and convicted are a subset of those arrested, it is necessary to understand the arrest process before turning to the middle stages of charging and conviction.

A. ARREST AND SELECTION EFFECTS

Arrest represents the entry point into the criminal justice system and is undertaken by police officers or other law enforcement agents.[47] Prosecutors and judges occasionally play a role through coordination and approval of search and arrest warrants.[48]

The various explanations for arrest-rate disparities by race can be split into "warranted" and "unwarranted" factors.[49] Differing underlying crime rates by

40. *See Juvenile vs Adult Justice*, PBS: FRONTLINE, https://www.pbs.org/wgbh/pages/frontline/shows/juvenile/stats/juvvsadult.html (last visited Apr. 15, 2022).

41. *See, e.g.*, Stevens & Morash, *supra* note 39.

42. *See* Jennifer Schwartz & Darrell Steffensmeier, *The Nature of Female Offending: Patterns and Explanation*, *in* FEMALE OFFENDERS: CRITICAL PERSPECTIVES AND EFFECTIVE INTERVENTIONS 43 (Ruth T. Zaplin ed., 2d ed. 2008).

43. *See, e.g.*, Stevens & Morash, *supra* note 39.

44. *Table 42: Arrests by Sex, 2018*, FED. BUREAU OF INVESTIGATION, https://ucr.fbi.gov/crime-in-the-u.s/2018/crime-in-the-u.s.-2018/tables/table-42 (last visited Apr. 15, 2022).

45. Author's own analysis.

46. Many researchers using administrative datasets have found a sentencing disparity favoring White individuals that remains after controlling for legally relevant variables. *See, e.g.*, Curry & Corral-Camacho, *supra* note 6; Doerner & Demuth, *supra* note 6; Everett & Wojtkiewicz, *supra* note 6; Fischman & Schanzenbach, *supra* note 6; Schlesinger, *supra* note 6.

47. *See* YALE KAMISAR, WAYNE R. LAFAVE, JEROLD H. ISRAEL, NANCY J. KING, ORIN S. KERR & EVE BRENSIKE PRIMUS, MODERN CRIMINAL PROCEDURE: CASES, COMMENTS, AND QUESTIONS 8–9 (14th ed. 2015).

48. *Id.*

49. Gase et al., *supra* note 1, at 297; Schleiden et al., *supra* note 1, at 1.

race would be a warranted factor. In contrast, police racial bias—such as racial profiling in police stops or applying different evidentiary thresholds for arrest depending on an individual's race—would be considered unwarranted factors driving arrest disparities. Given the striking differences in Black and White arrest rates, much research attempts to determine whether warranted or unwarranted factors drive these differences.

One approach for determining whether unwarranted factors play a role in arrest rate disparities is to run regression analyses on self-reported data that include a measure of underlying criminal activity. This research has generally found that self-reported delinquency and other individual characteristics cannot account for the large arrest disparities, indicating that there are at least some unwarranted factors contributing to the discrepancies.[50] Schleiden et al.'s 2020 analysis is perhaps the most striking, which found, after adjusting for contextual and behavioral factors, that Black young adults (ages twenty-four to thirty-two) had experienced an arrest rate[51] seven times higher than their White counterparts.[52]

Given that drug arrests make up the largest single category of annual arrests, many studies using the same methodology to examine drug-related arrests specifically reach similar conclusions.[53] Some studies even find that Black respondents are less likely to report using drugs but are nonetheless more likely to report having been arrested for drug use.[54] In sum, this line of literature indicates that unwarranted factors play a role in arrest disparities by race, given researchers' consistent inability to explain away arrest disparities using various warranted factors in regression analyses.

B. DETERMINANTS OF CHARGING AND CONVICTION

Once an individual is arrested, prosecutors, judges, and juries are responsible for several decisions that ultimately affect the case's outcome. First is the prosecutor's decision to bring charges against an arrestee.[55] This step often acts as a screening mechanism that accounts for factors such as:

- strength of evidence

50. Gase et al., *supra* note 1, at 309; Schleiden et al., *supra* note 1, at 10–11.

51. This included both juvenile and adult arrests. Schleiden et al., *supra* note 1, at 4.

52. *Id.* at 9.

53. *See, e.g.*, Paula J. Fite, Porche' Wynn & Dustin A. Pardini, *Explaining Discrepancies in Arrest Rates Between Black and White Male Juveniles*, 77 J. CONSULT. CLINICAL PSYCH. 916 (2009); David W. Koch, Jaewon Lee & Kyunghee Lee, *Coloring the War on Drugs: Arrest Disparities in Black, Brown, and White*, 8 RACE & SOC. PROBS. 313 (2016).

54. Meghana Kakade, Cristiane S. Duarte, Xinhua Liu, Cordelia J. Fuller, Ernest Drucker, Christina W. Hoven, Bin Fan & Ping Wu, *Adolescent Substance Use and Other Illegal Behaviors and Racial Disparities in Criminal Justice System Involvement: Findings from a US National Survey*, 102 AM. J. PUB. HEALTH 1307, 1307 (2012); Ojmarrh Mitchell & Michael S. Caudy, *Examining Racial Disparities in Drug Arrests*, 32 JUST. Q. 288, 303 (2015).

55. *See Criminal Charges: How Cases Get Started*, NOLO, https://www.nolo.com/legal-encyclopedia/charged-with-crime-how-29677.html (last visited Apr. 15, 2022).

- seriousness of the offense
- evidence of police misconduct in the arrest
- likelihood of victim and witness cooperation
- characteristics of the individual defendant
- participation as a witness in a related case
- parole/probation status[56]

Once an arrestee has been charged, prosecutors, judges, and juries are involved in the conviction step, through either charge dismissal, plea bargaining and its subsequent approval, or trial.[57] Prosecutors may decide to drop the charge for any of the above reasons, or the judge may decide to dismiss the case.[58] Since the vast majority of cases either end in dropped charges or a plea bargain, a jury is rarely involved in the conviction decision.[59]

In some jurisdictions, prosecutors charge nearly all arrestees and screen cases by later dismissing charges. For instance, Kutateladze et al. (2014) report that, in New York County, the prevailing practice in the prosecutor's office is to charge arrestees nearly universally, but later to drop charges against a significant number of arrestees.[60] In contrast, other jurisdictions have lower initial charging rates, meaning that prosecutors are meaningfully screening at the charging stage rather than afterward. For example, the average percent of cases declined for prosecution in Florida for the years 2009 to 2013 was 22%,[61] in comparison to Kutateladze et al.'s finding that only 4% of cases were declined for prosecution at the outset in New York County from 2010 to 2011.[62]

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56. *See* AM. BAR ASS'N, CRIMINAL JUSTICE STANDARDS: PROSECUTION FUNCTION 3-4.3 (2017), https://www.americanbar.org/groups/criminal_justice/standards/ProsecutionFunctionFourthEdition/#:~:text=(a)%20A%20prosecutor%20should%20seek,in%20the%20interests%20of%20justice (stating that a prosecutor should only seek or file criminal charges if "the prosecutor reasonably believes the charges are supported by probable cause" (speaking to strength of evidence), "the admissible evidence will be sufficient to support conviction beyond a reasonable doubt" (speaking to evidence of police misconduct in arrest, which could lead to suppressed evidence, and likelihood of victim and witness cooperation), and "the decision to charge is in the interests of justice" (speaking to seriousness of the offense, evidence of police misconduct in the arrest, characteristics of the individual defendant, and participation as a witness in a related case)); Sara J. Berman, *Probation Revocation*, NOLO, https://www.nolo.com/legal-encyclopedia/probation-revocation.html (last visited Apr. 15, 2022).

57. *See Plea Bargains*, JUSTIA, https://www.justia.com/criminal/plea-bargains/ (last visited Apr. 15, 2022) (describing the plea bargain process); *Stages of a Criminal Case*, JUSTIA, https://www.justia.com/criminal/docs/stages-of-a-criminal-case/ (last visited Apr. 15, 2022) (describing the trial process).

58. AM. BAR ASS'N, *supra* note 56, at 3-4.3, https://www.americanbar.org/groups/criminal_justice/standards/ProsecutionFunctionFourthEdition/#:~:text=(a)%20A%20prosecutor%20should%20seek,in%20the%20interests%20of%20justice (noting prosecutors should only maintain charges if they continue to "reasonably believe probable cause exists and that admissible evidence will be sufficient to support conviction beyond a reasonable doubt").

59. *Plea Bargains*, *supra* note 57 ("The overwhelming majority of criminal convictions (over 90 percent) result from plea bargains.").

60. Kutateladze et al., *supra* note 9, at 537–38.

61. *Data Portal: Florida Measures*, MEASURES FOR JUST., https://measuresforjustice.org/portal/FL?c=1 (last visited Apr. 15, 2022).

62. Kutateladze et al., *supra* note 9, at 527–28.

These statistics suggest that across jurisdictions, prosecutors may use the decision not to charge someone (charging conditional on arrest) and the decision to drop a charge (conviction conditional on charging) in nearly identical manners. Indeed, Measures for Justice, an organization that collects data on criminal justice outcomes, recommends combining charges rejected for prosecution with cases dismissed when analyzing data.[63] Given the cross-jurisdictional nature of my data, my main analysis combines the outcomes of charging and conviction to examine the likelihood an individual is convicted, conditional on having been arrested.

C. POTENTIAL RACIAL DISPARITIES

Racial differences in charging and conviction rates are plausible—and have indeed been found in previous empirical research—in either direction. Given that I ultimately find lower conviction rates for Black arrestees, I focus the discussion in this section on plausible explanations for lower conviction rates.[64] Either racial bias (an unwarranted factor) or race-neutral prosecutorial screening mechanisms (a warranted factor) could explain the lower conviction rates. This section discusses each in turn.

1. Racial Bias

Ample empirical research has established the existence of unexplained worse outcomes for Black individuals at the arrest and sentencing stages.[65] Researchers have presented evidence that some aspects of prosecutorial decision making—such as pretrial detention,[66] the decision of whether to bring charges with a mandatory minimum,[67] or charge reduction[68]—disfavor Black arrestees. As such, it is highly unlikely that prosecutors exhibit racial bias against non-Black arrestees solely in the decisions to bring an initial charge or later drop that charge.

However, prosecutors' racial bias against Black victims could translate into a lower interest in pursuing crimes with Black victims.[69] This type of racial bias could potentially result in lower conviction rates for Black arrestees, given the intraracial nature of crime.

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63. *Data Portal: Measures*, MEASURES FOR JUST., https://measuresforjustice.org/portal/measures (last visited Apr. 15, 2022).

64. Explanations for Black arrestees to experience higher conviction rates could include either prosecutor racial bias against Black arrestees or prosecutor charging based on prior criminal records, as Black arrestees statistically have more criminal justice contact.

65. *See* sources cited *supra* note 6.

66. *See* KUTATELADZE ET AL., *supra* note 26, at 11 (summarizing empirical research finding that Black and Hispanic defendants were treated harsher in the decision on pretrial release).

67. *See, e.g.*, Rehavi & Starr, *supra* note 27, at 1323.

68. *See, e.g.*, Shermer & Johnson, *supra* note 28, at 415.

69. *See* KUTATELADZE ET AL., *supra* note 26, at 8 (discussing studies finding that defendants with minority victims were treated more leniently).

2. Race-Neutral Screening Mechanisms

Various race-neutral screening mechanisms may lead to lower conviction rates for Black arrestees. First, selection effects at the arrest stage could lead to this result. As mentioned above, prosecutors often screen cases based on the strength of evidence, seriousness of the offense, and any evidence of police misconduct in the arrest.[70] To the extent that police over-arrest Black individuals in a discriminatory manner, these race-neutral screening mechanisms could lead to a lower conviction rate for Black arrestees. Namely, if police officers are more willing to arrest Black individuals than White individuals (1) in situations when evidence of a crime is weak, (2) for relatively minor crimes, or (3) via use of any form of police misconduct, one would expect to see a higher conviction rate for White individuals based on prosecutorial (as well as judicial) screening.

Second, race-neutral screening based on victim or witness cooperation could lead to lower rates of conviction for Black arrestees. Crime is most often intraracial in nature.[71] Mistrust of the criminal justice system among the Black population might lead to a lower willingness of victim or witness cooperation,[72] which could ultimately lead to lower conviction rates for Black arrestees.

Third, racial differences in existing criminal records could plausibly result in lower conviction rates for Black arrestees. If Black individuals are more likely to already be on parole or probation at the time of arrest, prosecutors may be less likely to pursue a conviction against them and instead revoke parole or probation, which would yield a technically lower conviction rate.

II. LITERATURE REVIEW

A. AVAILABLE DATA

Empirical researchers study criminal justice outcomes using two categories of data. Some studies are based on longitudinal datasets that collect self-reported data on criminal justice involvement. The two major, nationally representative datasets that fall into this category are the National Longitudinal Survey of Youth (NLSY79 or NLSY97)[73] and the National Longitudinal Study of Adolescent to Adult Health (ADD Health).[74] While both studies focus on youth, they contain years' worth of information on respondents once they reach

70. *See supra* Part I.B.

71. Kutateladze et al., *supra* note 9, at 538.

72. *Id.*

73. *See National Longitudinal Surveys: NLSY79 Data Overview*, U.S. BUREAU LAB. STAT., https://www.bls.gov/nls/nlsy79.htm (last visited Apr. 15, 2022); *National Longitudinal Surveys: NLSY97 Data Overview*, U.S. BUREAU LAB. STAT., https://www.bls.gov/nls/nlsy97.htm (last visited Apr. 15, 2022) [hereinafter *NLSY97 Data Overview*].

74. *See Data*, ADD HEALTH, https://addhealth.cpc.unc.edu/data (last visited Apr. 15, 2022).

adulthood. Smaller longitudinal studies also occur at the local level and have been used in some instances to study criminal justice outcomes.[75]

In the alternative, some studies use administrative datasets. A few databases compile data on criminal justice processing across jurisdictions,[76] but most of these datasets tend to be jurisdiction specific. These datasets typically contain detailed data on the procedural aspects of criminal justice processing but lack information on arrestees' personal backgrounds and characteristics. For example, the Bureau of Justice Statistics data "State Court Processing Statistics: Felony Defendants in Large Urban Counties"—a dataset used in two of the studies looking at the relationship between race and case dismissals—contains detailed procedural data.[77] The available information includes the "arrest charges, criminal justice status at time of arrest, prior arrests and convictions, pretrial release and detention, court appearance record, rearrests while on pretrial release, type and outcome of adjudication, and type and length of sentence."[78] The dataset, however, lacks any information on defendants' personal characteristics beyond age, race, and sex.[79]

Studies that have previously examined racial disparities in conviction rates have used administrative datasets,[80] whereas I use the NLSY97, a self-reported dataset. Three main benefits come from using the NLSY97 to expand on prior studies. First, the NLSY97 contains a wealth of information on personal background and characteristics, such as respondents' income, work history, education, household structure, neighborhood characteristics, and self-reported criminal activity and substance use.[81] To the extent that criminal justice outcomes are related to income, neighborhood, and education level (among other variables)—which research has established are correlated with race[82]—examining administrative datasets that do not include these variables may capture an effect, or lack of effect, of race that is attributable to other factors. I

75. *See, e.g.*, Fite et al., *supra* note 53, at 917 (using longitudinal data from the Pittsburgh Youth Study to examine racial disparities in juvenile arrests).

76. *See, e.g.*, *Data Collection: State Court Processing Statistics (SCPS)*, BUREAU JUST. STATS., https://www.bjs.gov/index.cfm?ty=dcdetail&iid=282 (last visited Apr. 15, 2022).

77. *Id.*

78. *Id.*

79. *Id.*

80. *See supra* note 13 and accompanying text.

81. *See infra* Part IV.

82. *See* Neil Bhutta, Andrew C. Chang, Lisa J. Dettling & Joanne W. Hsu, *Disparities in Wealth by Race and Ethnicity in the 2019 Survey of Consumer Finances*, BD. OF GOVERNORS OF THE FED. RSRV. SYS.: FEDS NOTES (Sept. 28, 2020), https://www.federalreserve.gov/econres/notes/feds-notes/disparities-in-wealth-by-race-and-ethnicity-in-the-2019-survey-of-consumer-finances-20200928.htm (race and wealth); Tracy Hadden Loh, Christopher Coes & Becca Buthe, *The Great Real Estate Reset: Separate and Unequal: Persistent Residential Segregation is Sustaining Racial and Economic Injustice in the U.S.*, BROOKINGS (Dec. 16, 2020), https://www.brookings.edu/essay/trend-1-separate-and-unequal-neighborhoods-are-sustaining-racial-and-economic-injustice-in-the-us (race and neighborhood); *United States Population Trends and Educational Attainment: Educational Attainment, by Race and Ethnicity*, AM. COUNCIL ON EDUC., https://www.equityinhighered.org/indicators/u-s-population-trends-and-educational-attainment/educational-attainment-by-race-and-ethnicity (last visited Apr. 15, 2022) (race and education).

can account for this possibility by controlling for these characteristics in regressions and exploiting the longitudinal nature of the data. I am also able to control for self-reported delinquent activity, which minimizes any concern that differences in conviction rates reflects racial differences in criminal offending.

Second, the NLSY97 questions on criminal justice involvement are not limited to certain types of crimes or specific jurisdictions. Rather, the NLSY97 asks all respondents, who constitute a nationally representative sample, about all arrests they experience.[83] Where many studies based on administrative datasets are limited to specific jurisdictions[84] or specific crime types, such as felonies,[85] the NLSY97 accounts for a nationally representative sample of all arrests.

Finally, the NLSY97 contains data on both arrests that do not ultimately result in a criminal charge and charges that do not ultimately result in conviction.[86] As described above, prosecutorial screening can occur at either the charging stage or after charges have already been filed.[87] Many administrative datasets contain only post-charging data and therefore may miss a major aspect of prosecutorial screening, depending on the jurisdiction being studied.[88]

In sum, using the NLSY97 gives a broad, nationally representative picture of arrest-level outcomes. While I cannot look closely at the mechanisms through which any racial disparities arise—for instance, through pretrial detention and bail decisions—this Article provides a broad understanding of racial disparities in conviction rates that has not yet been quantified.

B. PRIOR MIXED FINDINGS

Consistent patterns have emerged in the extensive research on the relationship between race and arrests and sentencing, but prosecutorial discretion wielded during the middle stages of charging and conviction have been referred to as a black box as far as empirical research goes.[89] Theory on the direction of racial disparities in conviction rates is ambiguous, as discussed above in Part I.C., and empirical research has yet to provide consistent evidence in either direction. Some studies find that Black individuals experience higher

83. *See Crime, Delinquency & Arrest*, *supra* note 19.

84. *See, e.g.*, Berdejó, *supra* note 9, at 1205 (Dane County, Wisconsin); Kutateladze et al., *supra* note 9, at 514 (New York County, New York).

85. *See, e.g.*, Franklin, *supra* note 9, at 695 (felonies only); Tomic & Hakes, *supra* note 9, at 514 (felonies only).

86. *See Crime, Delinquency & Arrest*, *supra* note 19.

87. *See supra* Part I.B.

88. *See, e.g.*, Berdejó, *supra* note 9, at 1205 ("The analyses presented later in the Article restrict the sample to cases *filed and adjudicated* in Dane County.") (emphasis added); Franklin, *supra* note 9, at 695 ("Information provided by the 1998 SCPS was based on felony cases *filed* in thirty-nine of the nation's seventy-five largest counties.") (emphasis added); Kutateladze et al., *supra* note 9, at 522 ("The data consist of 159,206 misdemeanors and 26,069 felonies *accepted for prosecution* by DANY and disposed of in 2010–2011.") (emphasis added); Tomic & Hakes, *supra* note 9, at 123 ("The file contains 72,602 observations on felony *defendants* in fifty-four of the nation's seventy-five most populous counties.") (emphasis added).

89. *See* Shermer & Johnson, *supra* note 28, at 395.

rates of case dismissal than White individuals, some find no difference, and some find that Black individuals are treated more harshly at this decision point.[90]

Tomic and Hakes (2008) examine Bureau of Justice Statistics data on 1990s felony defendants in highly populated U.S. counties, which account for approximately one third of the U.S. population.[91] Franklin (2010) performs a similar analysis using the same dataset but with a more limited timeframe, which focused on felony defendants in 1998.[92] When pooling all felony defendants, both studies find no impact of race on likelihood of case dismissal.[93]

However, both studies find differences in case dismissal rates by race when examining certain subsets of felony defendants. When Franklin splits his analysis by region, he finds that charges against Black defendants in the South are less likely to be dropped than charges against White defendants in the South.[94] Tomic and Hakes split their analysis by crime type and find some evidence of a higher case-dismissal rate for Black arrestees when the type of crime arrested for is one that involves police making on-scene, snap judgments.[95]

Kutateladze et al. (2014) use a large dataset from the New York County District Attorney's office in 2010–2011 to examine the cumulative effects of race and ethnicity on criminal justice outcomes.[96] They find that, compared with White individuals, Black and Latino[97] individuals experience many harsher outcomes in that they are more likely to be detained pretrial, be offered a plea agreement that includes incarceration (as compared to being offered a plea agreement with no incarceration), and be ultimately sentenced to a period of incarceration.[98] However, they find that, of arrestees who are charged by the District Attorney's office, Black and Latino individuals are more likely to have their charges dropped than White individuals.[99]

Kutateladze et al. note two possible explanations for this finding, corresponding to two of the theories described above in Part I.C. First, police

90. Berdejó, *supra* note 9, at 1191 (lower likelihood of dropped or reduced charges for Black individuals); Franklin, *supra* note 9, at 699 (mixed findings); Kutateladze et al., *supra* note 9, at 538 (higher likelihood of dropped charges for Black and Latino individuals); Tomic & Hakes, *supra* note 9, at 135 (mixed findings). Note that the only study finding worse outcomes for Black arrestees in terms of charge dismissals combined the outcomes of charge reduction and charge dismissal. Berdejó, *supra* note 9, at 1218–19. The implications of this are discussed in more depth in Part V.A.

91. *See* Tomic & Hakes, *supra* note 9, at 123.

92. Franklin, *supra* note 9, at 695.

93. *Id.* at 699 ("It should be noted that in the current study, race was found to have no influence on case dismissals when its effect was averaged across the entire sample of counties."); Tomic & Hakes, *supra* note 9, at 134 (reporting a statistically insignificant race coefficient in the "All Crimes" category).

94. Franklin, *supra* note 9, at 699.

95. Tomic & Hakes, *supra* note 9, at 110.

96. Kutateladze et al., *supra* note 9, at 522.

97. I switch between using the terms "Hispanic" and "Latino" throughout this Article. I do so to reflect the language used by the data and prior research I use. For instance, the NLSY97 uses the term "Hispanic," while Kutateladze et al. use the term "Latino."

98. Kutateladze et al., *supra* note 9, at 514.

99. *Id.*

may be more willing to arrest Black and Latino individuals "even when insufficient evidence exists to support prosecution."[100] In other words, police may be acting in a racially discriminatory manner. Second, they suggest the possibility that victims in crimes involving Black or Latino perpetrators—who tend to be Black or Latino themselves due to the often intraracial nature of crime—may be less willing to cooperate with police, which may lead to lower conviction rates.[101]

Berdejó (2018) uses detailed data from Dane County, Wisconsin to examine conviction outcomes by race.[102] He finds that, of individuals charged with a crime, White defendants were 25.49% more likely to have their principal charge either dropped or reduced.[103] He finds that these disparities are most pronounced in low-level crimes and in cases when the individual had no prior criminal record.[104]

Notably, all four of these studies contain data only on those arrests in which prosecutors filed initial charges. To the extent that the prosecutors' offices represented in the studies' data use charging as a meaningful screening point, these studies may be capturing only a portion of relevant prosecutorial decisionmaking.

Studies that focus on other outcomes also contain information on the relationship of race with charging and conviction. For instance, Stevens & Morash (2014) use the NLSY79 and NLSY97 to determine whether the trend towards a punitive focus in juvenile justice policy between 1980 and 2000 impacted boys' likelihood of various juvenile justice outcomes.[105] While not their question of interest, one of their findings is that, overall, arrested Black juveniles experience lower conviction rates than arrested White juveniles, and note that "[c]ontext-specific research is needed to sort out occasional findings of this apparent break in a pattern of harsher treatment of Black youth."[106] Rehavi and Starr (2014) examine how charging decisions affect sentencing outcomes of federal defendants.[107] The main result is that prosecutors are more likely to bring a charge that comes with a mandatory minimum sentence against Black arrestees than White arrestees, leading to longer sentences.[108] However, the descriptive statistics of whether an arrestee was charged and convicted present practically identical rates for Black and White defendants.[109]

100. *Id.* at 538.

101. *Id.*

102. Berdejó, *supra* note 9, at 1239–40.

103. Berdejó combines the outcomes of dropping charges with reducing charges. *Id.* at 1214–24. It is possible that splitting the outcomes and examining dropped charges only would yield different results.

104. *Id.* at 1191–92.

105. Stevens & Morash, *supra* note 39, at 77.

106. *Id.* at 89.

107. Rehavi & Starr, *supra* note 27, at 1320.

108. *Id.*

109. *Id.* at 1329.

In sum, existing research on the middle stages of criminal justice processing is mixed in its results and taken as a whole, leaves open questions about how race impacts conviction outcomes. In contrast, studies concerning race and ethnicity's relation to arrests and sentencing decisions consistently reveal worse outcomes for Black individuals at the arrest stage and for Black and Latino individuals at the sentencing stage.[110] My study is the first to use the extensive, nationally representative data available in the NLSY97 to examine charging and conviction outcomes by race and ethnicity, while controlling for other individual-level variables that could impact criminal justice outcomes.

III. DATA

I use data from the NLSY97 to examine the relationship between race/ethnicity and conviction rates. The NLSY97 is a nationally representative[111] dataset that follows the lives of 8,984 American individuals who were born between 1980 and 1984.[112] The initial survey was conducted in 1997, when the respondents were ages twelve to seventeen. Follow-up surveys were conducted annually from 1997 to 2011 and biennially after. The most recent available data comes from the eighteenth wave of the survey in 2017, when the respondents were ages thirty-two to thirty-six.

This dataset is particularly well-suited to examine criminal justice processing in depth because of its longitudinal, nationally representative nature, extensive information on respondents' underlying characteristics, and detailed data on self-reported criminal activity, arrests, charges, convictions, and incarcerations.[113] Further, because youth and young adults commit the vast majority of crimes,[114] my use of the NLSY97 captures data for the years in which individuals are most likely to commit crimes.

At each interview, respondents were asked whether they were arrested since the date of their last interview and, if so, how many times.[115] Respondents can report an unlimited number of arrests for each period, which sometimes

110. *See* sources cited *supra* note 6.

111. The NLSY97 sample is representative of the U.S. civilian, noninstitutional population who were ages twelve to sixteen as of December 31, 1996. The survey consists of an original cross-sectional sample of and an additional, supplemental sample that oversampled Hispanic and non-Hispanic Black youth. The supplemental sample was included to provide statistical power when analyzing outcomes specific to these two groups. *NLSY97 Data Overview*, *supra* note 73.

112. *Id.*

113. *See Crime, Delinquency, & Arrest*, NAT'L LONGITUDINAL SURVEYS, U.S. BUREAU OF LAB. STAT., https://www.nlsinfo.org/content/cohorts/nlsy97/topical-guide/crime/crime-delinquency-arrest (last visited Apr. 15, 2022).

114. *See* Jeffrey T. Ulmer & Darrell Steffensmeier, *The Age and Crime Relationship: Social Variation, Social Explanations*, *in* THE NURTURE VERSUS BIOSOCIAL DEBATE IN CRIMINOLOGY: ON THE ORIGINS OF CRIMINAL BEHAVIOR AND CRIMINALITY 377–78 (Kevin M. Beaver et. al eds., 2014).

115. *See Crime, Delinquency, & Arrest*, *supra* note 113 (the information cited for notes 115–23 was taken from the raw data in the NLS Investigator).

yields very high numbers of reported arrests.[116] Through 2002, the NLSY collected arrest-specific charging, conviction, and incarceration data on up to nine arrests. In the 2003 round and later, the NLSY did not collect charging, conviction, or incarceration data at the individual arrest level for survey periods in which a respondent reported more than three arrests.[117] Because of this, I limit my main regression analysis to the first three arrests reported each survey period.[118]

For each of the first three arrests, the survey then collects detailed information on each arrest.[119] For each arrest, respondents are asked whether they were charged and, for each charge, whether they were convicted.[120] Subsequently for each conviction, the individual is asked about sentencing outcomes.[121]

For individuals who were charged, the data also contains information on the type of charge.[122] Individuals can select multiple charges and can report being charged with one crime and convicted of a different crime.[123] The options for charge type include assault,[124] robbery,[125] burglary,[126] theft,[127] destruction of property,[128] other property crimes,[129] possession of illegal drugs,[130] selling

116. For instance, in 2004, three respondents reported having experienced more than ten arrests since the date of their last interview.

117. *See Crime, Delinquency, & Arrest*, *supra* note 113.

118. For those respondents who reported more than three arrests in 2003 and later, the NLSY asked for outcomes about all arrests combined. I treat their responses as a single arrest for that period and include a flag variable to indicate these observations. I additionally run two robustness checks. First, I treat these respondents' data as three separate arrests (i.e., I include the observation for that year in the regression three times) and again include a flag variable for those observations. Second, I exclude the data from these individuals. Neither of these meaningfully changes my results. *Id.* (the information cited was taken from the raw data in the NLS Investigator).

119. *See id.*

120. *See id.*

121. Note that sentencing data is not available for the 2003 wave of the survey.

122. *See id.*

123. *See id.*

124. Answered yes to: "Did the police charge you with assault, that is, an attack with a weapon or your hands, such as battery, rape, aggravated assault, or manslaughter?" *Questionnaire Public Report*, NAT'L LONGITUDINAL SURVEYS, U.S. BUREAU OF LAB. STAT., YSAQ-456 (2012), https://www.nlsinfo.org/sites/default/files/attachments/121128/nlsy97r1ysaq.html.

125. Answered yes to: "Did the police charge you with robbery, that is taking something from someone using a weapon or force?" *Id.* at YSAQ-457.

126. Answered yes to: "Did the police charge you with burglary and breaking and entering, that is, breaking into private property without permission in order to steal?" *Id.* at YSAQ-458.

127. Answered yes to: "Did the police charge you with theft, that is, stealing something without the use of force, such as auto theft, larceny, or shoplifting?" *Id.* at YSAQ-459.

128. Answered yes to: "Did the police charge you with destruction of property, that is, vandalism, arson, malicious destruction, or shoplifting?" *Id.* at YSAQ-460.

129. Answered yes to: "Did the police charge you with other property offenses, such as, fencing, receiving, possessing or selling stolen property?" *Id.* at YSAQ-461.

130. Answered yes to: "Did the police charge you with possession or use of illicit drugs?" *Id.* at YSAQ-462.

illegal drugs,[131] major traffic offense,[132] public order offense,[133] and other offense.[134]

Unfortunately, the NLSY97 does not contain data indicating whether each charge was for a misdemeanor or felony. While some charge categories are almost always felonies, such as robbery, and some are clearly misdemeanors, such as public disorder, most of the charge categories make it difficult to differentiate.

I use respondents' answers to the questions on criminal justice contact to create my outcome of interest. For each arrest that occurred after age eighteen, I create a dichotomous variable that is equal to zero if the respondent is not convicted of a crime and equal to one if the respondent is convicted. Running regression analyses where this variable is my outcome of interest allows me to determine the likelihood of conviction based on various individual characteristics.

Many individual characteristics that may impact a respondent's likelihood of conviction are available in the NLSY97 data. First and foremost is my outcome of interest: race and ethnicity. Based on two questions the NLSY asks about race and ethnicity, I create three mutually exclusive categories for Non-Hispanic White, Black, and Hispanic.[135]

By measuring and controlling for many characteristics that may be associated with criminal justice outcomes, I can isolate the relationship between race/ethnicity and conviction. I include seven basic categories of control variables that may impact conviction rates: geographic (region of residence, lives in high-risk neighborhood[136]), household (living with partner, living with child), labor market (employed), education (currently enrolled in school, college graduate), finances (household below 200% of the poverty line), criminal activity (delinquency index, drug use), and criminal history (number of prior arrests).

131. Answered yes to: "Did the police charge you with the sale or trafficking of illicit drugs?" *Id.* at YSAQ-463.

132. Answered yes to: "Did the police charge you with a major traffic offense, such as, driving under the influence of alcohol or other drugs, reckless driving, or driving without a license?" *Id.* at YSAQ-464.

133. Answered yes to: "Did the police charge you with a public order offense, such as, drinking or purchasing alcohol while under the legal age, disorderly conduct or a sex offense?" *Id.* at YSAQ-465.

134. Answered yes to: "Did the police charge you with any other offense we have not talked about?" *Id.* at YSAQ-466.

135. I additionally have another category for those who identified as Mixed Race (Non-Hispanic), "Asian or Pacific Islander," and "American Indian, Eskimo, or Aleut." I exclude these observations due to the small sample size (146 male respondents). *See Crime, Delinquency, & Arrest*, *supra* note 113 (the information cited was taken from the raw data in the NLS Investigator).

136. Following Mitchell & Caudy, *supra* note 54, at 300, I combine whether the respondent resides in an inner-city neighborhood with whether the respondent reports that their neighborhood or school has gangs, creating a single dichotomous variable that reflects whether an individual lives in a high-risk neighborhood.

IV. RESULTS

I begin by checking whether the NLSY97 data reflect reasonable conviction rates by comparing them to other publicly available data on criminal justice outcomes. Measures for Justice, an organization dedicated to providing access to accurate criminal justice data, has data available for fifteen states on the percentage of cases filed in court that result in a conviction in years 2009–2013,[137] which corresponds to my data on convictions per charge. Unfortunately, data on the rate of charges that were declined for prosecution—which corresponds to my data on charges per arrest—are only available for one state.[138] I do, however, find that my convictions per charge is reasonable as compared to the fifteen states with that available data, which average 68.1%.[139] My average conviction rate per charge across the entire sample is 71.2%.[140]

I next turn to discussing arrest, conviction, and incarceration rates by race/ethnicity. To isolate the impact of race/ethnicity on arrest, conviction, and incarceration rates, I conduct a multiple regression analysis, which accounts for geographic, household, labor market, education, financial, and criminal history characteristics, along with measures for self-reported delinquent behavior and drug use. For convictions and sentencing, I run one additional set of regressions in which I control for the type of crime the respondent was charged with. By controlling for these variables, I can determine that any remaining difference in conviction rates by race are not driven by systematic differences in these variables.

I first present estimates on the relationship between race/ethnicity and arrest and incarceration to confirm that my NLSY97 analysis reflects prior research findings. I do so by comparing both raw disparities and those that remain after controlling for other individual characteristics in regression analyses.

Figure 1 shows the percent of male respondents arrested each year, split by race and ethnicity. The NLSY97 reflects prior findings that Black men are at the highest risk of arrest as compared with White and Hispanic men, with a yearly arrest rate of 9.5%.

This disparity is not eliminated by controlling for other characteristics in regression analysis. Appendix Table B.I (column 1) shows that Black men experience a 6.7 percentage-point higher likelihood of arrest than their White counterparts after controlling for other individual characteristics (as compared with the approximately 3.5 percentage-point raw difference as shown in Figure

137. *See Data Portal*, MEASURES FOR JUST., https://measuresforjustice.org/portal (last visited Apr. 15, 2022). States with available state-wide conviction rates for years 2009–2013 include Alabama, Arkansas, Arizona, Florida, Indiana, North Carolina, North Dakota, Oregon, Pennsylvania, South Dakota, Tennessee, Utah, Virginia, Washington, and Wisconsin.

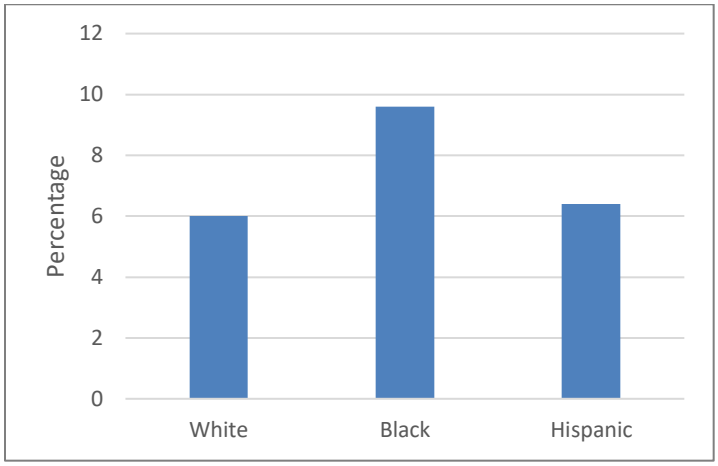
138. *Id.*

139. *Id.*

140. I include both women and juveniles in this number, as the Measures for Justice data are missing data on age and sex for many of the fifteen states.

1). This means that after controlling for other factors that impact arrest rates—such as a delinquency index, drug use, region, living in a high-risk neighborhood, household characteristics, and education[141]—the disparity between Black and White male annual arrest rates is larger than the raw disparity. There is no statistically significant disparity in annual arrest rate between White men and Hispanic men in either the raw data or the regression analysis.

FIGURE 1: ARRESTED (PER YEAR)



All values are calculated using the NLSY sample weights. https://www.nlsinfo.org/weights/nlsy97. Arrest rates (per year) exclude those who were in prison or living out of the country during the prior survey round.

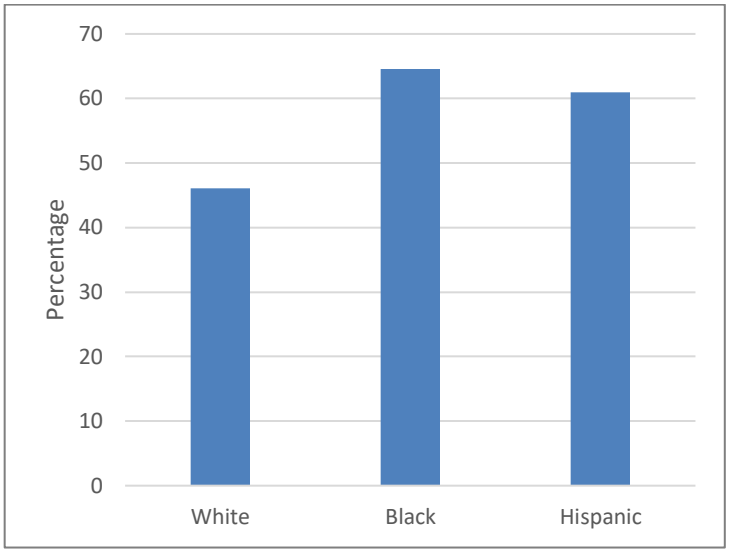
Arrest disparities disfavoring the Black population are also borne out in cumulative statistics. For instance, as of 2017, 50.35% of Black men had been arrested as an adult at least once, while 39.34% of Hispanic men and 34.73% of White men had been arrested as adults. This translates to a 28% and 45% higher probability of arrest for Black men than Hispanic and White men, respectively.

Figure 2 shows sentencing disparities by race/ethnicity. This figure represents the percent of convicted individuals who were sentenced to a term in jail or prison. Here, there is a clear and statistically significant disparity in comparing both Black men and Hispanic men's incarceration rates to White men's incarceration rate. Again, these disparities are not eliminated by

141. Individual characteristics associated with higher risk of arrest include higher delinquency index, marijuana use, hard drug use, living in a high-risk neighborhood, or living in the North Central region of the United States. Individual characteristics associated with lower risk of arrest include living with a partner/spouse, living with a child, and being a college graduate. Prior arrests were associated with a lower risk of arrest, but this is only because of the way the regression function is set up. *See* discussion *infra* App. Part B for further discussion of this issue.

controlling for other relevant characteristics in regression analysis, as can be seen in Appendix Table B.I (column 3).[142]

FIGURE 2: INCARCERATED (PER CONVICTION)



All values are calculated using the NLSY sample weights. https://www.nlsinfo.org/weights/nlsy97.

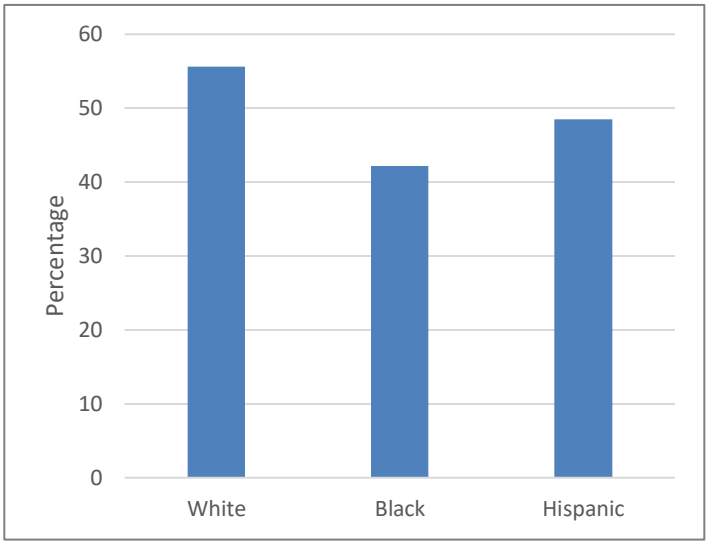
Given these outcomes, one might expect similarly poor outcomes for Black individuals at the conviction stage. However, as seen in Figure 3, relative to both Hispanic and White men, Black respondents have the lowest conviction rate at approximately 40%. These raw differences align with the subset of the existing empirical literature that finds Black individuals receive more favorable treatment in terms of case dismissals.[143] Hispanic men also have lower conviction rates than their White counterparts, but the difference is not as drastic.[144]

142. In the regression analysis, both Black and Hispanic men were approximately 23 percentage points more likely to experience incarceration, conditional on conviction, than their White counterparts. Other predictors of incarceration include a higher delinquency score and living in the Southern region (positive association), as well as living with a child and being enrolled in school (negative association).

143. Kutateladze et al., *supra* note 9, at 531; Tomic & Hakes, *supra* note 9, at 111.

144. This reflects Kutateladze et al.'s finding of higher charge dismissal rates for Latino defendants in New York County. *See* Kutateladze et al., *supra* note 9, at 531. I also run my regression analysis by region and find that the disparity for Hispanic arrestees is limited to the Northeast region of the United States. This disparity is less robust than the Black-White disparity and will need to be explored further in future work.

FIGURE 3: CONVICTED (PER ARREST)



All values are calculated using the NLSY sample weights. https://www.nlsinfo.org/weights/nlsy97.

The conviction rate differences from my regression analysis generally follow that of the disparities from descriptive statistics. My regression of interest, shown in Appendix Table B.I (column 2) indicates that Black arrested men were 15.7 percentage points less likely to be convicted than White arrested men, and Hispanic arrested men were 7.2 percentage points less likely to be convicted than their White counterparts. The 15.7 percentage-point difference for Black men translates to a 29% lower conviction rate for Black men as compared with White men.[145]

One possible explanation for the lower conviction rate for Black and Hispanic individuals is that they are arrested for different types of crimes than White individuals—namely, crimes that are less likely to result in a conviction. To check this, I estimate regressions that also include charge type. This regression is the same as my main analysis but estimates conviction conditional on charging (as opposed to conditional on arrest) and controls for the type of crime for which the arrestee was charged. The results from this regression are presented in Appendix Table B.II. The racial disparity does not disappear, and Black arrestees charged with a crime are 11.4 percentage points less likely to be convicted of any crime than their White counterparts. In this regression, however, the disparity between Hispanic and White arrestees disappears,

145. This is calculated by dividing the 15.7 percentage point difference by the mean conviction rate for White men of approximately 54%.

indicating that the conviction rate disparity by ethnicity either can be explained by differences in the types of crimes Hispanic and White men are arrested for or is limited entirely to the charging stage.

A. POTENTIAL MECHANISMS

As discussed above, four potential explanations could account for the result in lower conviction rates for Black men: over-arrest of Black men, differences in victim and witness characteristics, different rates of existing parole or probation, and racial bias against non-Black arrestees.[146]

First, as I argue in Part I.C. above, racial bias against non-Black arrestees is highly unlikely, given that researchers have found consistent unexplained disparities that result in worse outcomes for Black individuals at nearly all other decision points in the criminal justice system.[147] I provide some insight into which of the three remaining explanations is true through supplementary analysis.

To determine whether higher rates of active probation or parole among Black arrestees could be driving the results, I perform a supplemental analysis that includes first arrests only. The results of this analysis are presented in Appendix Table B.III. I find that a large disparity persists in these first-time arrests, with Black arrestees being 14 percentage points less likely to be convicted. These results indicate that differing parole or probation rates by race are not driving the results, given that those who are arrested for the first time are not on active probation or parole.

Next, I consider the remaining two possibilities of over-arrest and differences in victim and witness characteristics. The conviction disparity could reflect policing practices that result in discriminatory arrest of Black men. Prosecutors use screening processes that should, in theory, eliminate cases with weak evidence,[148] for some minor crimes,[149] or that involve police misconduct.[150] If police are more likely to arrest Black men—as opposed to White men—in these scenarios, prosecutors' screening would result in lower charging and conviction rates for Black men. Second, given the intraracial nature of crime, this disparity could be explained by victim and witness characteristics. It is possible either that prosecutors are less inclined to pursue cases with Black victims due to racial bias or that there is a lower rate of victim and witness cooperation rate among Black victims, given mistrust of the criminal justice system.

146. *See supra* Part I.C.

147. *See supra* notes 66–68 and accompanying text (discussing research on racial disparities in prosecutorial decision-making); *see supra* Part I.A (summarizing research on racial disparities in arrests); *infra* Part I.B (summarizing research on racial disparities in conviction).

148. ANGELA J. DAVIS, ARBITRARY JUSTICE: THE POWER OF THE AMERICAN PROSECUTOR 13 (2007).

149. *Id.*

150. *Id.*

To investigate both possibilities, I model my analysis off Tomic and Hakes (2008). They find some evidence that Black defendants experience higher rates of charge dismissal than White defendants in cases for which police have high discretion and make on the spot decisions.[151] Their category of high-discretion crimes is described as those that "lead to on-scene arrests."[152] In this category, they include driving offenses, weapons offenses, drug trafficking, other drug charges, public offenses, and "other violent" crimes, which tend to involve domestic violence.[153] Their non-high-discretion crimes include murder, rape, robbery, assault, theft, other property, and burglary.[154] I follow their methodology and map my crimes onto their two categories, as follows:

High Police Discretion Crimes	Low Police Discretion Crimes
Drug Possession	Assault
Drug Sale	Burglary
Major Traffic Offenses	Robbery
Public Disorder	Theft
	Destruction of Property
	Other Property Crime

In addition, the split of high-discretion and low-discretion crimes also conveniently maps onto crimes that likely involve victims. The category of high-discretion crimes generally includes those crimes that do not involve victims.

I split my sample by the type of crime arrestees are charged with to see where the disparity is most concentrated. The results from this regression are presented in Appendix Table B.IV. I find that disparity in conviction rates is concentrated in high police discretion crimes, with no statistically significant racial disparity among low police discretion crimes. Given that high discretion crime types are generally victimless and are those where police bias is most likely to arise, the most likely explanation is over-arrest of Black men for high-discretion crimes.

Also notable from this regression analysis is that in the category of high-discretion crimes, poverty is a large predictor of conviction. Namely, those charged with drug possession, drug sales, public disorder, or major traffic offenses who fall below two times the federal poverty line are 20% more likely to be convicted of a crime than those with incomes at least two times the federal poverty line. This highlights problems with cash bail and the criminalization of poverty more generally and should be explored in future research.

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151. Tomic & Hakes, *supra* note 9, at 135–36.

152. *Id.* at 128.

153. *Id.*

154. I exclude observations that do not indicate a specific crime type or chose "other crime" for charge type, as these cannot map specifically onto high or low discretion crimes. However, I run robustness checks in which I include these observations in both categories, and their inclusion does not change my results.

V. DISCUSSION

A clear pattern of criminal justice processing emerges in my analysis. First, Black individuals are at a higher risk of arrest each survey period, even after controlling for other relevant factors such as socioeconomic status, living in a high-risk neighborhood, region, education, family, and self-reported delinquency. Second, the likelihood of conviction for Black arrestees is significantly lower than for White arrestees. There is some evidence that Hispanic arrestees experience lower conviction rates than White arrestees, but the disparity loses statistical significance when controlling for the type of crime charged. Finally, of those who are convicted, Black and Hispanic individuals are incarcerated at much higher rates than White individuals.

My findings of disparities that favor White respondents at the arrest and sentencing stage offer nothing more than confirmation of previous researchers' findings. My findings on conviction rates, however, provide new and important information on the experiences of Black male arrestees throughout the United States. Specifically, I find that they are 29% (approximately 16 percentage points) less likely to be convicted of a crime than their White counterparts, conditional on having been arrested. Given that this disparity is limited to crimes for which police make on-the-spot decisions about arrest, I suggest that racial bias in policing likely drives the results.

A. RECONCILIATION WITH PRIOR RESEARCH

Given the lack of consensus in the literature, it is worth considering the differences between my underlying sample and those studies that found either no difference or a disparity in favor of White defendants during the charging and conviction stages.

First, the only study to my knowledge that has found an association between Black arrestees and higher case dismissal rates is Berdejó's 2018 study.[155] Berdejó combines the outcomes of case dismissal with charge reduction when analyzing racial disparities, and these two outcomes may be subject to different decision rules.[156] Thus, it is possible Berdejó's results are being driven mostly by the outcome of charge reduction and not that of case dismissal.

Next, studies that use only post-charging data may not capture meaningful prosecutorial screening if prosecutors in the jurisdiction being studied engage in screening at the initial charging decision. Finally, the type of crime appears to matter. To the extent that drug possession, traffic offenses, and public disorder drive my results, it is unsurprising that studies including only felony crimes do not find overall lower conviction rates for Black arrestees, given that many of these crimes are not felonies.

155. *See* Berdejó, *supra* note 8, at 1190.
156. *Id.* at 1188.

In sum, I propose that large-scale arrests for low-level crimes, for which police maintain large amounts of discretion, likely result in significantly lower conviction rates for Black arrestees on a national scale. One driver of arrests for low-level crimes is Broken Windows policing. Broken Windows policing reflects the practice of arresting individuals for relatively minor public disorder crimes based on the theory that such arrests will prevent more serious crimes.[157] Issa Kohler-Hausman shows in her book, *Misdemeanorland*, that upon the introduction of Broken Windows policing in New York City in the early 1990s, the number of case dismissals rose dramatically, and, in turn, conviction rates dropped.[158]

Research has shown that the Black community and other disadvantaged communities have borne the brunt of costs from Broken Windows policing.[159] Advocates for racial justice have cited these types of arrests as a problem that is "central to the racial contours of American criminal justice."[160] My findings likely reflect some of the consequences of the implementation of Broken Windows policing across the country.

B. IMPLICATIONS

If arrests were costless, my findings would be positive, at best, and unimportant, at worst. It appears that prosecutors are, to some extent, correcting for the over-arrest of Black men, which some might interpret as indicative of a fair legal system.[161] However, arrests are costly in and of themselves. Policing requires a substantial government budget.[162] Many would consider undertaking many arrests that are ultimately not fully prosecuted to be a large waste of tax dollars.

Further, arrests create large costs on the individuals and communities in which they occur. My research shows that, on a national level, current policing practices result in more than half of Black men being arrested at least once by

157. *See Broken Windows Policing*, GEORGE MASON CTR. FOR EVIDENCE-BASED CRIME POL'Y, https://cebcp.org/evidence-based-policing/what-works-in-policing/research-evidence-review/broken-windows-policing (last visited Apr. 15, 2022).

158. ISSA KOHLER-HAUSMANN, MISDEMEANORLAND: CRIMINAL COURTS AND SOCIAL CONTROL IN AN AGE OF BROKEN WINDOWS POLICING 68 (2019).

159. *See, e.g.*, Jeffrey Fagan & Garth Davies, *Street Stops and Broken Windows: Terry, Race, and Disorder in New York City*, 28 FORDHAM URB. L. J. 457 (2000); Andrew Gelman, Jeffrey Fagan & Alex Kiss, *An Analysis of the New York City Police Department's "Stop-and-Frisk" Policy in the Context of Claims of Racial Bias*, 102 J. AM. STAT. ASS'N 813 (2007).

160. ALEXANDRA NATAPOFF, PUNISHMENT WITHOUT CRIME: HOW OUR MASSIVE MISDEMEANOR SYSTEM TRAPS THE INNOCENT AND MAKES AMERICA MORE UNEQUAL 163 (2018).

161. Note that this is not to say that racial bias is not present in prosecutorial decision-making, but rather, that race-neutral prosecutorial screening mechanisms combined with selection effects at the arrest stage appear to drive racial disparities in conviction rates at the national level.

162. *See Criminal Justice Expenditures: Police, Corrections, and Courts*, URB. INST., https://www.urban.org/policy-centers/cross-center-initiatives/state-and-local-finance-initiative/state-and-local-backgrounders/criminal-justice-police-corrections-courts-expenditures (last visited Apr. 15, 2022) (showing that the policing budget as a percent of the overall budget was 6% for local governments, 13% for city governments, 8% for county governments, and 10% for township governments in 2017).

young adulthood.[163] These large-scale arrests likely contribute to socioeconomic inequality on an expansive basis.[164]

Arrests can cause immediate harm to the arrested individual in terms of job loss, financial costs, and psychological stress.[165] Arrest records can further close doors to future opportunities in education and the labor market.[166] Large-scale arrests of Black men that appear arbitrary lead to distrust of police among the Black community.[167] Further, the more stops and arrests that occur, the higher the likelihood of police violence.

An example of a major problem arising from the large number of conviction-less arrests of Black men is related to how employers use arrest information as bases for adverse employment actions. Employees can legally lose their jobs for missing work due to detention related to an arrest, even if the arrest itself was baseless.[168] As far as stigma from an arrest goes, when applying for future jobs, Eisha Jain provides an apt explanation of this problem: "If an employer relies on drug screening, for instance, it cannot disproportionately target minorities. But when employers and licensing authorities rely on arrests, they leave front-end decisions about whom to screen to the police, without similar regard for racially disparate impact."[169]

Finally, racially disparate arrests also exacerbate the perception of "black criminality."[170] No empirical study to date has documented the nationwide disparity in conviction rates between Black and White men that I document. As a result, people are largely unaware that many of the arrests undergone by Black men are deemed by prosecutors to not be worth pursuing a conviction. This conviction disparity makes the argument that differences in arrest rates between Black and White individuals provide evidence of a higher Black crime rate even more incorrect and concerning.

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163. As discussed in *supra* Part IV, I find that 50.35% of Black men in the NLSY97 had been arrested as an adult at least once as of 2017.

164. *See generally* BRUCE WESTERN, PUNISHMENT AND INEQUALITY IN AMERICA (2006) (discussing the closely related prison boom's impact on inequality in the United States).

165. *See* Mark Theoharis, *How a Criminal Record Affects Your Finances & Your Life*, MONEY CRASHERS, https://www.moneycrashers.com/criminal-record-affects-finances-life (last updated Mar. 21, 2022).

166. *See* Benjamin D. Geffen, *The Collateral Consequences of Acquittal: Employment Discrimination on the Basis of Arrests without Convictions*, 20 U. PA. J.L. & SOC. CHANGE 81, 81 (2017).

167. *See* Rod K. Brunson & Jody Miller, *Gender, Race, and Urban Policing: The Experience of African American Youths*, 20 GENDER & SOC'Y 531, 533 (2006).

168. For example, Virginia has a state law that provides employment protection for individuals who take time off of work because they are required to be in court, either as a jury member or because they are summoned or subpoenaed. However, the law explicitly excludes criminal defendants. *See* VA. CODE ANN. § 18.2–465.1 (West 2005).

169. Eisha Jain, *Arrests as Regulation*, 67 STAN. L. REV. 809, 841 (2015).

170. NATAPOFF, *supra* note 160, at 167 ("Historian Khalil Gibran Muhammad explains that the very idea of a 'black crime rate' has undermined the social and political status of African Americans since the Civil War.").

CONCLUSION

This Article is the first to look at racial disparities in conviction rates for a nationally representative sample of arrests for all crime types in the United States. I find a large disparity of 29% in comparing Black and White male arrestees' conviction rates, with Black men being convicted at lower rates than White men. Further, this disparity is concentrated in crimes for which police typically have high levels of discretion in the arrest decision. Low conviction rates for Black men thus likely reflect over-arrest among the Black population, raising cause for concern.

Each arrest is psychologically and financially costly to the arrestee, cultivates lasting stigma directed at the arrestee and limits their future labor market opportunities, costs taxpayer money in the form of policing budgets, and increases the likelihood of police violence. To the extent that Black men are being arrested for crimes that prosecutors do not ultimately pursue, policing practices that disproportionately target Black men waste government resources and create problematic arrest records that limit social mobility.

APPENDIX

A. DESCRIPTION OF REGRESSION ANALYSES

I perform regression analyses on three main outcomes: arrests (per year), convictions (per arrest), and incarcerations (per conviction). I limit my analyses to adult men, so respondents only enter the analysis sample after they turn eighteen.

Table 1 summarizes my sample for each regression equation. Regression (2) is the focus of this Article, but I also include results from regressions (1) and (3) to ensure that the patterns for arrest and sentencing in the NLSY97 reflect those of prior research. As of the 2017 survey, 1,820 of the 4,453 men in my sample had been arrested at least once as an adult (approximately 41%).

TABLE A1: DESCRIPTION OF MAIN REGRESSION ANALYSES

	(1)	**(2)**	**(3)**	**(4)**
	Outcome of Interest	**Observation Level**	**Dependent Variable Description**	**Number of observations** (Adult Men)
(1)	Arrests	Individual-Year (*it*)	0 if respondent *i* is not arrested in year *t* 1 if respondent *i* is arrested in year *t*	53,491 - 562 (missing arrest data) **52,929**
(2)	Convictions	Arrests (*a*)	0 if arrest *a* does not result in conviction 1 if arrest *a* results in conviction	5,450 arrests - 491 (missing charge data) - 370 (missing conviction data) **4,589**
(3)	Incarcerations	Convictions (*c*)	0 if conviction *c* results in noncustodial sentence 1 if conviction *c* results in custodial sentence	2,271 convictions - 204 (missing sentencing data) **2,067**

My main regression equation is as follows:

$$Y_{j=1,2,3} = \alpha_0 + \beta X_{it} + \delta Z_i + \gamma_t + u_i + \varepsilon_{it}$$

Y_j is an indicator variable for the three sets of outcomes as described in column (3) of Table 1. α_0 is the intercept term. X_{it} is a vector of individual, time-varying characteristics (e.g., census region where currently residing), while Z_i is a vector of individual, time-invariant characteristics (e.g., race/ethnicity). γ_t is a set of year fixed effects that captures overall time trends.

The individual error term is represented by u_i, and ε_{it} is the random error term. ε_{it} captures random variation over time, while u_i captures all unobserved, time-invariant characteristics of individual i that impact outcome Y.

1. Explanatory Variables

My coefficients of interest are those associated with the variables for race/ethnicity (contained in vector Z_i). The NLSY directly asks respondents one question about race and one about ethnicity.[171] The survey then combines these two variables into a single category for race/ethnicity, consisting of Black, Hispanic, Mixed Race (Non-Hispanic), and Non-Black/Non-Hispanic.[172] For race/ethnicity, I generally follow the NLSY-created variable for race/ethnicity, with one exception. While the NLSY's Non-Black/Non-Hispanic category contains "White," "Asian or Pacific Islander," and "American Indian, Eskimo, or Aleut" individuals,[173] I separate White individuals from the other two categories. Ultimately, I have four mutually exclusive indicator variables for Black, Hispanic, White, and other race. The category for other race includes respondents marked as Mixed Race (Non-Hispanic), "Asian or Pacific Islander," and "American Indian, Eskimo, or Aleut." Because of the small sample size (143 male respondents), I exclude anyone in the other race category from my analysis. In my regressions, I include indicator variables for Black and Hispanic, while White is the omitted reference group. Thus, my race/ethnicity regression coefficients indicate how each racial/ethnic group compares to their White counterparts.

Because the NLSY has a vast array of information on each individual respondent, I can observe and control for many characteristics that may be associated with criminal justice outcomes. To isolate the relationship between race/ethnicity and criminal justice outcomes, I control for other observable characteristics that may be correlated with race and impact an individual's criminal justice outcomes.

X_{it} (Z_i) is a vector of time-variant (time-invariant) characteristics that are likely to predict criminal justice processing outcomes. Geographic characteristics within X_{it} include an indicator variable for whether the respondent lives in a high-risk neighborhood[174] and mutually exclusive indicator variables for whether the respondent lives in the Southern, North Central, or Western regions (with the Northeastern region as the reference group). Age at the beginning of the survey is included in Z_i. I include this as a time-invariant variable rather than age each year because of the close correlation between age and year, which I control for in the year fixed effects, γ_t.

171. *Race, Ethnicity & Citizenship*, NAT'L LONGITUDINAL SURVS., https://www.nlsinfo.org/content/cohorts/nlsy97/topical-guide/household/race-ethnicity-citizenship (last visited Apr. 15, 2022).

172. *Id.*

173. *Id.*

174. Following Mitchell and Caudy, *supra* note 54, I combine whether the respondent resides in an inner-city neighborhood with whether the respondent reports that their neighborhood or school has gangs, creating a single dichotomous variable that reflects whether an individual lives in a high-risk neighborhood.

Household characteristics are captured by indicator variables for whether the individual lives with a spouse or child. Respondents' labor market status is captured within X_{it} by indicator variables for whether the individual was employed or enrolled in school (either high school or college). I also include an indicator variable for whether the respondent was a college graduate. I capture respondents' financial wellbeing by an indicator variable for whether a respondent's family falls below 2x the poverty line. All household, labor market, education, and financial variables mentioned in this paragraph are measured at time *t*-1, to reduce concerns of simultaneity bias.

Within X_{it} and Z_i, I also include a measure of respondents' likely criminal activity by including variables that capture their self-reported criminal/delinquent activity and illegal substance use. Ideally, I would control for each of these as time-variant variables at each survey date. However, the NLSY stopped asking questions regarding criminal activity of most respondents after 2003. Because of the age range of NLSY respondents, the youngest respondents were eighteen as of their 2003 interview, while the oldest respondents were twenty-four at the time of their 2003 interview. I therefore limit my measure of criminality to criminal activity reported prior to age eighteen, to have a consistent measure of criminality across ages. Because my analysis is limited to adult men, my variable for delinquency is time-invariant and is represented in Z_i.

The NLSY creates its own delinquency scale that takes on values from 0–10.[175] In 1997, the survey asks respondents ten separate questions about whether they have engaged in various types of delinquent activities.[176] These include:

1. Have you ever run away, that is, left home and stayed away at least overnight without your parent's prior knowledge or permission?
2. Have you ever carried a hand gun? When we say hand gun, we mean any firearm other than a rifle or shotgun.
3. Have you ever belonged to a gang?
4. Have you ever purposely damaged or destroyed property that did not belong to you?
5. Have you ever stolen something from a store or something that did not belong to you worth less than 50 dollars?
6. Have you ever stolen something from a store, person or house, or something that did not belong to you worth 50 dollars or more including stealing a car?
7. Have you ever committed other property crimes such as fencing, receiving, possessing or selling stolen property, or cheated someone by selling them something that was worthless or worth much less than what you said it was?

175. CHILD TRENDS, INC. & CTR. FOR HUM. RES. RSCH. OHIO STATE UNIV., NLSY97 CODEBOOK SUPPLEMENT MAIN FILE ROUND 1, at 150 (1999).

176. *Id.* at 149.

8. Have you ever attacked someone with the idea of seriously hurting them or have a situation end up in a serious fight or assault of some kind?
9. Have you ever sold or helped sell marijuana (pot, grass), hashish (hash) or other hard drugs such as heroin, cocaine or LSD?
10. Have you ever been arrested by the police or taken into custody for an illegal or delinquent offense (do not include arrests for minor traffic violations)?[177]

The NLSY then sums the number of questions that respondents answered yes to, creating a discrete variable that can take on values 0–10.[178] In follow up surveys, this same variable is created, except the questions change from "have you ever" to "since the last interview date," have you.[179] Rather than use one value of this measure in a single survey year, I combine respondents' answers to these questions up through age eighteen to create a similar, cross-year delinquency measure. I exclude juvenile arrests from this measure, as this measure is subject to the same selection concerns as adult arrests, rather than directly reflecting delinquent activity. My ultimate delinquency measure reflects the number of the above-listed activities (0–9) that an individual respondent reports having engaged in prior to the survey in which he turned eighteen.

For drug use, I include indicator variables for whether the individual used marijuana or hard drugs at time t-1. Finally, I include a variable for the number of arrests the respondent had experienced at the time of arrest to capture the effects of a criminal record.

2. Panel Data Considerations

The data I am using are panel data, meaning that each respondent is interviewed multiple times, and the *N* observations in my dataset are made up of $t = (1, 2, \ldots, T)$ observations across $i = (1, 2, \ldots I)$ individuals. The panel nature of the NLSY data is useful because it allows for examination of both between-individual and within-individual variations.[180] This means that I can study the between-individual relationship between race and criminal justice outcomes—as I would be able to do using cross-sectional data—while also gaining the added benefit of being able to study within-individual impact of characteristics that vary over time.

Another benefit of panel data over cross-sectional data is the ability to account for some omitted variables that might otherwise introduce bias in a standard regression analysis. By using panel data, researchers can control for

177. *Id.*

178. *Id.* at 150.

179. *See, e.g.*, *Round 1 Questionnaire*, NAT'L LONGITUDINAL SURV., https://www.nlsinfo.org/sites/default/files/attachments/121128/nlsy97r1ysaq.html (last visited Apr. 15, 2021) ("Have you ever belonged to a gang?"); *Round 2 Questionnaire*, NAT'L LONGITUDINAL SURV., https://www.nlsinfo.org/sites/default/files/attachments/130411/nlsy97r2saqquex.html (last visited Apr. 15, 2021) ("Have you been a member of a gang since the last interview date on [date of last interview]?").

180. *See* Andrew Bell & Kelvyn Jones, *Explaining Fixed Effects: Random Effects Modeling of Time-Series Cross-Sectional and Panel Data*, 3 POL. SCI. RSCH. & METHODS 133, 137 (2015).

unobserved, time-invariant factors (represented by u_i in my equations outlined above), reducing concerns of omitted variables bias.[181] An example of a potential omitted variable is parental criminal justice contact—a measure not included in the NLSY—which may influence a respondent's knowledge and perception of the criminal justice system and impact likelihood of conviction.

The most basic means to achieve this goal is the use of a fixed-effects regression model. The fixed-effects model treats u_i as a time-invariant, individual-specific effect, which is netted out in the estimation.[182] An important strength of fixed-effects estimation is that no assumptions about the correlation between u_i and the right-hand-side variables is required for the estimator to be unbiased and consistent.[183]

An alternate regression model used in panel data analysis is that of random effects. The random effects model requires stronger assumptions about the underlying data than the fixed effects model.[184] Namely, the random effects model assumes that the individual error term, u_i, is a set of random variables that follows a specified probability distribution.[185] Most important is that consistent estimation of a random effects model requires that u_i be uncorrelated with the right-hand-side variables.[186]

While the fixed effects estimator does not require that the individual effect u_i be uncorrelated with the right-hand-side variables,[187] it also comes with one major drawback. Fixed effects regressions eliminate the ability to estimate the coefficient on any time-invariant characteristic.[188] Given that the relationship between race/ethnicity—a time-invariant characteristic—and criminal justice outcomes is my question of interest, I am unable to use a fixed-effects model. The random-effects model also proves potentially problematic because of the assumption I must make that u_i is independent of X_{it} and Z_i.[189]

One can test whether the more stringent assumptions of a random-effects model are appropriate by comparing the results from a fixed-effects model with a random-effects model. This is done using a Hausman test.[190] If the Hausman test reveals that the time-variant coefficients resulting from each model are sufficiently similar, one can assume that the results from the random-effects model are consistent.[191] However, if the Hausman test reveals that the coefficients from each model are sufficiently different, it indicates that the

181. *See* JEFFREY M. WOOLDRIDGE, ECONOMETRIC ANALYSIS OF CROSS SECTION AND PANEL DATA 255–56 (2001).

182. *Id.*

183. *Id.*

184. PAUL D. ALLISON, FIXED EFFECTS REGRESSION MODELS 21–22 (2009).

185. *Id.*

186. *Id.*

187. *Id.*

188. *Id.* at 21.

189. WOOLDRIDGE, *supra* note 181, at 288 ("[T]he key consideration in choosing between a random effects and fixed effects approach is whether [u_i] and X_{it} are correlated.").

190. ALLISON, *supra* note 184, at 23; WOOLDRIDGE, *supra* note 181, at 288–89.

191. Badi H. Baltagi, Georges Bresson & Alain Pirotte, *Fixed Effects, Random Effects, or Hausman-Taylor? A Pretest Estimator*, 79 ECONOMETRIC LETTERS 361, 362 (2003).

random-effects model is biased and that the fixed-effects results should be preferred.[192]

After running each model and using a Hausman test, I find that the traditional random-effects model is biased. This is problematic due to the fixed-effects model's inability to estimate my coefficient of interest. As such, I use an alternate model: random effects with a Hausman-Taylor correction.[193] This is known as a "hybrid" model, as it seeks to incorporate the benefits of the fixed-effects model (relaxed assumptions) with the benefits of the random-effects model (ability to estimate the coefficient on time-invariant characteristics).[194]

The Hausman-Taylor estimator uses an instrumental variables approach.[195] I outline the steps of the H-T process below:[196]

1. Split the right-hand-side variables into four categories: time-variant exogenous (X_{1it}), time-variant endogenous (X_{2it}), time-invariant exogenous (Z_{1i}), and time-invariant endogenous (Z_{2i}). These groupings are based on theoretical assumptions, where X_{1it} and Z_{1i} are assumed to be uncorrelated with both u_i and ε_{it}, and X_{2it} and Z_{2i} are assumed to be uncorrelated with ε_{it} but may be correlated with u_i. Thus, my regression equation (1) from above becomes:
$$Y_j = \alpha_t + \beta_1 X_{1it} + \beta_2 X_{2it} + \delta_1 Z_{1i} + \delta_2 Z_{2i} + u_i + \varepsilon_{it}$$
2. Use a within-effects estimator to consistently estimate the fixed effects coefficients $\hat{\beta}_1$ and $\hat{\beta}_2$.
3. Use these estimates to obtain within residuals, $\hat{d}_i$.
4. Regress $\hat{d}_i$ on Z_{1i} and Z_{2i}, using X_{1it} and Z_{1i} as instruments. This regression provides intermediate, consistent estimators, $\hat{\delta}_{1IV}$ and $\hat{\delta}_{2IV}$.
5. Use $\hat{\beta}_1$, $\hat{\beta}_2$, $\hat{\delta}_{1IV}$, and $\hat{\delta}_{2IV}$ to obtain an estimate of σ_u^2, an estimate of the variance of the individual random error effect.
6. Perform a standard random-effects GLS transform on each variable.
7. Fit an instrumental-variables regression of the GLS transformed variables.

I make the following assumptions about endogeneity of the right-hand-side variables:

- Exogenous, time variant variables (X_{1it}): Year indicators, region indicators
- Endogenous, time variant variables (X_{2it}): Indicator for living below 2x the poverty line, indicator for enrolled in school, indicator for college graduate, indicator for employed, indicators for hard drug and marijuana

192. *Id.*

193. *See generally* Jerry A. Hausman & William E. Taylor, *Panel Data and Unobservable Individual Effects*, 49 ECONOMETRICA 1377 (1981).

194. *See* Reinhard Schunck, *Within and Between Estimates in Random-Effects Models: Advantages and Drawbacks of Correlated Random Effects and Hybrid Models*, 13 STATA J. 65, 67 (2013).

195. Baltagi et al., *supra* note 191, at 361.

196. STATACORP, STATA LONGITUDINAL-DATA/PANEL-DATA REFERENCE MANUAL: RELEASE 13, at 167–79 (2013).

use, indicator for living in a high-risk neighborhood, and number of prior arrests

- Exogenous, time invariant variables (Z_{1i}): Race/ethnicity indicators
- Endogenous, time invariant variables (Z_{2i}): Measure of delinquency

B. RESULTS

1. Main Regressions

Regression analysis is important to determine whether the raw disparities reflect underlying differences between racial and ethnic groups in other characteristics that might be legally relevant for case processing. Columns (1), (2), and (3) of Appendix Table B.I report my results from the Hausman-Taylor specification for the outcomes of arrested per survey period, convicted per arrest, and incarcerated per conviction, respectively.

Those with a higher delinquency index, based on self-reported delinquent activity as juveniles, are significantly more likely to be arrested and incarcerated. These results lend support for these self-reported measures being valid proxies for an individual's actual criminal behavior as an adult. Other than the indicator for Black and Hispanic, the only other statistically significant predictor of conviction is whether the respondent is a college graduate. The fact that arrestees with college degrees are less likely to be convicted may reflect prosecutors', judges', and juries' perceptions that these individuals are less likely to commit future crimes or are less blameworthy for the crimes they have been arrested for.

APPENDIX TABLE B.I:
LIKELIHOOD OF ARREST, CONVICTION, AND INCARCERATION

	(1) Arrest (Per Year)	(2) Conviction (Per Arrest)	(3) Incarceration (Per Conviction)
Black	0.067***	-0.157***	0.228***
	(0.009)	(0.028)	(0.048)
Hispanic	0.013	-0.072**	0.229***
	(0.008)	(0.031)	(0.051)
Delinquency Index	0.049***	0.002	0.099***
	(0.015)	(0.019)	(0.038)
Southern Region	0.001	-0.044	0.092*
	(0.008)	(0.033)	(0.055)
North Central Region	0.023**	0.015	0.083
	(0.009)	(0.033)	(0.053)
Western Region	0.011	-0.017	0.032
	(0.009)	(0.034)	(0.058)
High Risk Neighborhood	0.021***	-0.047	-0.036
	(0.007)	(0.046)	(0.070)
Household Below 2x Poverty Line	-0.001	0.022	-0.001
	(0.003)	(0.029)	(0.038)
Spouse in Household	-0.018***	-0.070	0.106
	(0.004)	(0.055)	(0.085)
Child in Household	-0.018***	-0.053	-0.115*
	(0.004)	(0.042)	(0.067)
Enrolled in School	-0.002	-0.002	-0.107*
	(0.004)	(0.040)	(0.065)
Employed	-0.005	-0.048	0.000
	(0.005)	(0.032)	(0.054)
College Graduate	-0.021***	-0.222*	0.193
	(0.005)	(0.126)	(0.179)
Hard Drug User	0.038***	-0.027	0.075
	(0.008)	(0.037)	(0.060)
Marijuana User	0.017***	0.022	-0.039
	(0.005)	(0.030)	(0.048)
Number of Prior Arrests[197]	-0.083***	0.000	0.013

197. It may appear odd that having a more extensive arrest record yields lower arrest and rates. However, this result can be explained by the nature of the regression. The Hausman-Taylor regression coefficients on time-variant variables reflect the within variation for individual respondents, and not the variation between different respondents. When comparing between two respondents—one with a prior arrest and one without—it is true that the individual who has been arrested in the past is more likely to be arrested in a future period. However, when comparing the variation within individuals who are ultimately arrested, the likelihood of future arrest decreases with each arrest, since not all individuals who are arrested once will be rearrested in the future.

	(0.004)	(0.006)	(0.010)
Observations	50,540	4,388	1,963
Respondents	4,304	1,631	1,036

All values are calculated using the NLSY sample weights. https://www.nlsinfo.org/weights/nlsy97. ***p<0.01, **p<0.05, *p<0.1. Controls for age (in 1997) and survey year (at time t) are included in all regressions. Robust standard errors in parentheses. Note that sample observations do not match exactly to those in Appendix Table B.I due to some missing data in explanatory variables.

2. Main Regressions (Including Charge Type)

One possible explanation for the lower conviction rate for Black individuals is that they are arrested for different types of crimes than White individuals—namely, crimes that are less likely to result in a conviction. To check this, I estimate regressions that also include charge type.

The regressions in Appendix Table B.II take the same form as my main regressions, with two changes. First, I add a vector of indicator variables, W_c, on the right-hand side of the equation. W_c is a vector of indicator variables that captures the type of crime the individual was charged with, as this is highly likely to impact conviction outcome. The charges are not mutually exclusive, in that an individual can report multiple charges for a single arrest.

Second, because I do not have data on the type of charge unless the individual was charged with a crime, my outcome is limited to conviction conditional on charging (as opposed to conviction conditional on arrest in Appendix Table B.I).

Including charge type does not eliminate the racial effect, indicating that my results on conviction and incarceration are not explained by systematic differences in the types of crimes Black and White individuals are arrested for. The magnitude of my result in this regression is smaller than in my main regression (11 percentage points as compared with 16 percentage points). This result is expected, given that this regression is limited to individuals who are charged with a crime and thus does not capture any racial disparity in the original charging decision. This regression does, however, eliminate the ethnicity effect on conviction.

The coefficients on likelihood of conviction by charge type align with a recent report from the Bureau of Justice Statistics (BJS) on conviction rates of felony defendants.[198] The BJS reported that in 2018, felony defendants originally charged with assault were the least likely to ultimately be convicted (45%) and that those charged with motor-vehicle theft (74%), driving-related offenses (73%), murder (70%), and burglary (69%) were the most likely to be convicted. While the NLSY97 also includes misdemeanors and does not have

198. *What is the Probability of Conviction for Felony Defendants?*, BUREAU JUST. STAT., https://www.bjs.gov/index.cfm?ty=qa&iid=403 [https://web.archive.org/web/20210318125307/https://www.bjs.gov/index.cfm?ty=qa&iid=403] (last visited Mar. 15, 2021).

separate charging categories for motor-vehicle theft or murder,[199] my coefficients generally align with the report. I find a relatively lower conviction likelihood for those charged with assault, which aligns with it being the lowest conviction rate for felony defendants, and I find relatively higher conviction likelihoods for those charged with burglary and driving-related offenses, which aligns with those crimes being among the four highest conviction rates for felony defendants.

APPENDIX TABLE B.II
LIKELIHOOD OF CONVICTION, CONDITIONAL ON CHARGING
(CONTROLLING FOR CHARGE TYPE)

	(1) Conviction
Black	-0.114***
	(0.031)
Hispanic	-0.023
	(0.032)
Delinquency Index	-0.016
	(0.018)
Southern Region	-0.004
	(0.034)
North Central Region	0.070**
	(0.033)
Western Region	0.062*
	(0.036)
High Risk Neighborhood	-0.070
	(0.050)
Household Below 2x Poverty Line	0.038
	(0.028)
Spouse in Household	-0.077
	(0.062)
Child in Household	-0.044
	(0.046)
Enrolled in School	-0.017
	(0.046)
Employed	-0.056
	(0.037)
College Graduate	-0.127
	(0.147)
Hard Drug User	0.010
	(0.038)
Marijuana User	-0.034
	(0.032)

199. *See supra* Part IV.

Number of Prior Arrests	0.009
	(0.006)
Charged with Assault	-0.064**
	(0.032)
Charged with Burglary	0.102**
	(0.040)
Charged with Robbery	0.060
	(0.044)
Charged with Theft	0.009
	(0.041)
Charged with Destruction of Property	0.010
	(0.045)
Charged with Other Property Crime	0.004
	(0.046)
Charged with Drug Possession	0.061**
	(0.029)
Charged with Drug Sale	0.060
	(0.040)
Charged with Major Traffic Offense	0.095***
	(0.024)
Charged with Public Disorder	0.043
	(0.032)
Charge with Other Crime	-0.002
	(0.026)
Observations	3,092
Number of Respondents	1,320

All values are calculated using the NLSY sample weights. https://www.nlsinfo.org/weights/nlsy97. ***p<0.01, **p<0.05, *p<0.1. Controls for age (in 1997) and survey year (at time t) are included in all regressions. Robust standard errors in parentheses.

3. First Arrest Only Analysis

To determine whether higher rates of active probation or parole among Black men could be driving the results, I perform a supplemental analysis that includes first arrests only. The results of this analysis are presented in Appendix Table B.III. I find that a large disparity persists in these first-time arrests, with Black arrestees being 14 percentage points less likely to be convicted. These results indicate that differing parole or probation rates by race are not driving the results.

APPENDIX TABLE B.III
LIKELIHOOD OF CONVICTION: FIRST ARREST ONLY

	(1) Conviction
Black	-0.141***
	(0.032)
Hispanic	-0.106***
	(0.035)
Delinquency Index	-0.005
	(0.005)
Southern Region	-0.048
	(0.037)
North Central Region	0.015
	(0.039)
Western Region	-0.016
	(0.042)
High Risk Neighborhood	-0.029
	(0.036)
Household Below 2x Poverty Line	0.006
	(0.027)
Spouse in Household	-0.006
	(0.071)
Child in Household	-0.070
	(0.053)
Enrolled in School	-0.049
	(0.030)
Employed	-0.011
	(0.032)
College Graduate	-0.039
	(0.076)
Hard Drug User	0.033
	(0.041)
Marijuana User	0.015
	(0.028)
Observations	1,902

All values are calculated using the NLSY sample weights. https://www.nlsinfo.org/weights/nlsy97. ***p<0.01, **p<0.05, *p<0.1. Controls for age (in 1997) and survey year (at time t) are included in all regressions. Robust standard errors in parentheses.

4. Crimes Split by Discretion Level

Finally, the results in Appendix Table B.IV present my regression analysis, with the sample split by the type of crime charged in the arrest. The racial disparity is concentrated in high-discretion crimes, with no difference in conviction rates between Black and White arrestees in low-discretion crimes. Also notable is the statistically significant coefficient on the variable for financial wellbeing (2x below the poverty line), which indicates that those

falling 2x below the federal poverty line are 13 percentage points more likely to be convicted than their counterparts.

APPENDIX TABLE B.IV
LIKELIHOOD OF CONVICTION: HIGH- AND LOW-DISCRETION CRIMES

	(1) High-Discretion Crimes	(2) Low-Discretion Crimes
Black	-0.157***	-0.079
	(0.056)	(0.066)
Hispanic	-0.029	-0.030
	(0.058)	(0.076)
Delinquency Index	0.013	0.028
	(0.030)	(0.062)
Southern Region	-0.001	0.115
	(0.056)	(0.075)
North Central Region	0.043	0.218**
	(0.057)	(0.101)
Western Region	0.055	0.208**
	(0.057)	(0.092)
High Risk Neighborhood	0.065	-0.170*
	(0.114)	(0.089)
Household Below 2x Poverty Line	0.130***	-0.030
	(0.047)	(0.104)
Spouse in Household	-0.131	-0.482*
	(0.121)	(0.273)
Child in Household	0.097	-0.111
	(0.089)	(0.132)
Enrolled in School	0.007	-0.208**
	(0.069)	(0.093)
Employed	0.014	-0.029
	(0.057)	(0.087)
College Graduate	-0.261	0.239
	(0.332)	(0.299)
Hard Drug User	-0.043	0.079
	(0.062)	(0.096)
Marijuana User	-0.009	-0.045
	(0.053)	(0.069)
Number of Prior Arrests	0.011	-0.003
	(0.012)	(0.017)
Charged with Assault		-0.054
		(0.067)
Charged with Burglary		0.107

		(0.074)
Charged with Robbery		0.119
		(0.077)
Charged with Theft		0.030
		(0.053)
Charged with Destruction of Property		0.002
		(0.059)
Charged with Other Property Crime		0.034
		(0.066)
Charged with Drug Possession	-0.046	
	(0.058)	
Charged with Drug Sale	-0.024	
	(0.061)	
Charged with Major Traffic Offense	0.031	
	(0.046)	
Charged with Public Disorder	0.008	
	(0.059)	
Observations	1,324	646
Number of Respondents	791	453

All values are calculated using the NLSY sample weights. https://www.nlsinfo.org/weights/nlsy97. ***p<0.01, **p<0.05, *p<0.1. Controls for age (in 1997) and survey year (at time t) are included in all regressions. Robust standard errors in parentheses.

***