Study: Black prosecutors are more punitive toward Black and Latinx defendants

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Prosecutors exert considerable power in the criminal justice system, and while defendants are predominantly Black and Latinx, prosecutors are overwhelmingly White. Despite calls for addressing racial disparities in this field, we know little about whether recruiting minority prosecutors would yield more equitable outcomes for defendants.

A new study analyzed data from a large prosecutorial office to examine the extent to which prosecutors’ race is associated with racial disparities in prosecutors' decision making. The study found that Black prosecutors' decisions are more punitive toward Black and Latinx defendants than they are to similarly situated White or Asian defendants.

The study, by researchers at Florida International University (FIU), appears in Justice Quarterly, a publication of the Academy of Criminal Justice Sciences.

"The criminal justice system—from lawmaking to law enforcement—has been criticized as being based on racism," says Besiki Luka Kutateladze, associate professor of criminology and criminal justice at FIU, who led the study. "In our study, we sought to determine the extent to which Black prosecutors exercise disparate punitiveness based on the race of the defendant."

Researchers used internalized racism theory—which in this context suggests that Black prosecutors may have internalized negative perceptions of and insecurities about their race—to examine levels of punitiveness among Black prosecutors toward defendants of various racial and ethnic groups.

To gauge punitiveness, they focused on two highly discretionary and consequential prosecutorial decisions: whether to make plea offers that include jail or prison sentences (as opposed to probation, fine, or community service), and whether to reduce the severity of charges (e.g., from a felony to a misdemeanor).

The data came from a study on racial disparities in prosecution, on which Dr. Kutateladze served as a principal investigator. Researchers considered thousands of cases from 2010 to 2011 in the Manhattan District Attorney’s office; after merging this data with information about prosecutors' racial and ethnic identity, the study identified nearly 200,000 cases. Of the more than 450 prosecutors associated with the cases, 347 were White, 55 were Black, 31 were Asian, and 28 were Latinx.

Among the study’s findings, Black prosecutors’ decisions were particularly punitive toward Black defendants, somewhat less punitive toward Latinx defendants, and least punitive toward White and Asian defendants. Specifically:

- Among Black prosecutors, Black defendants had an estimated 77 percent greater likelihood of receiving custodial sentences than similarly situated White defendants. Latinx defendants had a 43 percent greater likelihood of receiving custodial plea offers than similarly situated
White defendants.

- In terms of reductions in charges, Asian defendants with a Black prosecutor were 38 percent more likely to have charges reduced than White defendants. Although Black prosecutors were less likely to reduce charges against Black and Latinx defendants, the difference did not reach statistical significance.

- Among White prosecutors, Black defendants were the most likely of all racial and ethnic groups to receive custodial plea offers and the least likely to have their charges reduced. Latinx defendants were the next most likely to get custodial plea offers and like Black defendants, were less likely than Asian or White defendants to have charges reduced.

- Among Latinx and Asian prosecutors, Asian defendants received the most leniency in both custodial plea offers and reductions in charges. The study did not find statistically significant disparities in either decision for Black, Latinx, or White defendants.

Among the study's limitations, the authors point out that they could not articulate why and how Black prosecutors reached their decisions, which limits the applicability of internalized racism theory beyond the hypothetical. In fact, the researchers argue that this theory is not the only explanation for why minority prosecutors may make more punitive decisions about Black, Latinx, and other minority defendants, and they acknowledge that the theory is inherently difficult to test because it requires inferences about cognitive processes from case outcomes.

"Without more direct assessments of prosecutorial attitudes and beliefs, as well as efforts to connect these to actual decision making, it is difficult to understand fully the origin and nature of prosecutorial bias," explains Lin Liu, assistant professor of criminology and criminal justice at FIU, who coauthored the study.

"But we believe that as long as the prosecutorial field remains dominated by White managers and historically racist policies, minority prosecutors may overcompensate with harsher decisions to prevent being perceived as an outsider or biased in favor of their own race."


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