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## The Anatomy of Discretion: An Analysis of Prosecutorial Decision Making – Technical Report

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Requests for additional information about the research described in this report should be directed to [contactvera@vera.org](mailto:contactvera@vera.org).

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## Abstract

Prosecuting attorneys enjoy broader discretion in making decisions that influence criminal case outcomes than any other actors in the American justice system. That they do so with little or no public scrutiny suggests questions about justice and fairness. This study examines the impact of legal, quasi-legal, and extra-legal factors on case outcomes throughout the prosecutorial process. It then examines how prosecutors weigh these factors in their decision making and explores the formal and informal mechanisms that constrain or regulate prosecutors' decision-making.

The study examines case screening decisions, charging decisions, plea offers, sentence recommendations, and dismissals in two moderately large county prosecutors' offices. It includes *statistical analyses* of actual case outcomes, responses to a standardized set of hypothetical cases, and responses to a survey of prosecutors' opinions and priorities, as well as *qualitative analyses* of two waves of individual interviews and focus groups. It addresses the following questions:

- How did prosecutors define and apply the concepts of justice and fairness?
- What factors were associated with prosecutorial outcomes at each stage?
- How did prosecutors interpret and weigh different case-specific factors in making decisions at each stage?
- How did contextual factors constrain or regulate prosecutorial decision making?
- How consistent were prosecutors' decisions across similar cases? What case-level and contextual factors influenced the degree of consistency?

Two county prosecutors' offices participated in the study—labeled Northern County and Southern County in project reports. Analyses of administrative data for Northern County examined 76,721 felony and misdemeanor cases screened between January 2009 and June 2011 that involved person, property, drug, public order, domestic violence, weapons, or driving under the influence offenses. Analyses of administrative data for Southern County examined 4,890 felony drug cases screened between May 2007 and July 2009 and 1,164 felony person and property cases screened

between January 2007 and June 2007. Analyses of a 76-item opinion survey conducted in the fall of 2010 examined responses from 62 Northern County prosecutors (a 67 percent response rate) and 65 Southern County prosecutors (a 94 percent response rate). Analyses of decisions in hypothetical cases examined responses to 10 vignettes by each of 62 prosecutors in Southern County in the fall of 2011. Finally, two waves of interviews and focus groups were conducted in Southern County during October 2010 and December 2010, and in Northern County during November 2010 and March 2011.

Researchers found that prosecutors' decisions were guided by two basic questions: "Can I prove the case?" and "Should I prove the case?" The relative influence of these questions was found to shift over the course of a case. The first question was most influential at the outset of a case, where the objective strength of evidence was the determining factor in most screening decisions. Later, factors such as the seriousness of the offense, the defendant's criminal history, characteristics of the defendant and victim, and contextual factors became increasingly influential, as prosecutors evaluated whether a case should go forward.

While prosecutorial discretion is generally seen as very broad and unconstrained, prosecutors often rely on a fairly limited array of legal and quasi-legal factors to make decisions, and their decision making is further constrained by several contextual factors.. These contextual constraints—rules, resources, and relationships—sometimes trump evaluations of the strength of the evidence, the seriousness of the offense, and the defendant's criminal history. Future evaluations of prosecutorial outcomes should consider these contextual constraints when assessing the impact of case-level factors, and chief prosecutors and criminal justice policy makers should be alert to the potential for contextual factors to influence and possibly distort the exercise of prosecutorial discretion.

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## **Part 1. Introduction and Research Questions**

### **1.1 Introduction**

In the American criminal justice system, discretion is perhaps broader, more often available, and less constrained in the hands of the prosecuting attorney than in the hands of any other system actor (see, e.g., Davis, 2008). While discretion plays an important role in other parts of the criminal justice system – police discretion at arrest, judicial discretion at sentencing, parole board discretion at release – prosecutors have not been subject to the same level of public and scientific scrutiny and formal regulation as their law enforcement, judicial, or parole board colleagues. Moreover, how prosecutors utilize their discretion, and what goes into prosecutorial decision-making, is little understood outside of the community of prosecutors.

In recent years, a growing body of scholarship has examined those factors that affect case outcomes throughout the prosecutorial process, from the initial screening decision to final sentence recommendation (see, e.g., Free, 2002; Hartley, Maddam, & Spohn, 2007; Kingsnorth & MacIntosh, 2004; Spohn and Holleran, 2001). Research has shown that outcomes are affected by legal factors (e.g., strength of the evidence, type and seriousness of the offense, and defendant’s culpability), quasi-legal factors (e.g., legally non-relevant though potentially influential factors, such as defendant-victim relationship, victim age, and defendant age), and extra-legal factors (e.g., legally impermissible factors pertaining to defendant and victim, such as race, ethnicity, or gender). While this literature has begun to illuminate variables that may impact prosecutorial decision-making, it is limited in three critical ways. First, prior studies tend to analyze a single decision point – primarily the charging or screening decision – and are unable to determine the impact of different factors across the prosecutorial process. Second, while studies have examined factors that relate to characteristics of the defendant, offense, and victim, few have looked at the impact of prosecutor

characteristics or contextual characteristics on these decisions (see, e.g., Franklin, 2010). Finally, much of the prior research has focused on quantitative examination of the factors affecting case outcomes; but little attention has been devoted to the qualitative study of how and when prosecutors weigh these factors.

This project expands what is known about prosecutorial decision-making in several ways. Using data from two large urban/suburban county prosecutors' offices – Southern County and Northern County – the project examines case outcomes and prosecutors' decision-making processes through a sequence of mutually reinforcing qualitative and quantitative research approaches, including administrative data analysis, surveys of prosecutors, and focus groups with prosecutors and managers. The study goes beyond the existing literature by looking at a wide variety of individual and organizational factors that might affect prosecutors' decisions throughout the entire prosecutorial process. Furthermore, it looks at *how* prosecutors weigh both legal and extra-legal factors and *when* these factors enter into their decisions in the course of a case. Finally, the study examines internal and external, formal and informal mechanisms that regulate prosecutors' decision making, including office policies, office and court resources, and relationships with other actors in the criminal justice system. Such information is central to facilitating and expanding the principled use of prosecutorial discretion and to identifying and intervening in conditions conducive to its unprincipled use.

## 1.2 Review of Relevant Literature

### *1.2.1 Theoretical Perspectives on Prosecutorial Decision-Making*

Law may be seen as a balance between formally rational law and substantively rational law. Formally rational law occurs when courtroom decision making is based only on legally relevant factors and consistent rules of action; in other words, outcomes under a formally rational system

“are primarily the result of legal rules and criteria applied equally” to all cases (Dixon, 1995, p. 61). In contrast, substantively rational law occurs when courtroom decision making is based on factors *outside* the law (e.g. defendant’s characteristics, needs, or circumstances) *individually* applied to particular cases; moreover, substantive rationality is not guided solely by adherence to processes but also by reference to “extralegal” goals and outcomes, such as social equality and justice or the practical consequences of decisions for individuals (e.g. the defendant, the victim, etc.) and organizations (e.g. the court, the prosecutor, etc.) (for a review see, e.g., Mears 1998).

Several theoretical perspectives seek to explain how substantively rational criteria interact with formally rational criteria in criminal justice decision making. According to Albonetti (1991), decision making reflects the use of bounded rationality, with courtroom actors making decisions based on limited information about a defendant’s character or a particular case. This limited access to information produces uncertainty that courtroom actors seek to minimize by engaging in “uncertainty management” behavior (see, e.g., Ulmer et al. 2007). Albonetti (1991) combines the uncertainty avoidance perspective with causal attribution, arguing that courtroom actors make subjective attributions from stereotypes of defendant and case characteristics to reduce decision-making uncertainty, linking these characteristics to evaluations of the likelihood of future criminality or the potential impact of sentences. In the end, according to Albonetti, courtroom actors rely on substantively rational criteria to make decisions in order to reduce uncertainty. Prosecutorial outcomes, thus, result from an interaction between the formal considerations of laws and the substantive considerations of prosecutors about individual offender and case characteristics.

Steffensmeier and colleagues (Steffensmeier & Demuth, 2000; Steffensmeier, Ulmer, & Kramer, 1998; see also Johnson, 2003; Johnson, 2005; Kramer & Ulmer, 2002; Ulmer, Kurlycheck, & Kramer, 2007) argue that these substantive considerations revolve around three primary “focal



concerns:” blameworthiness of the offender, dangerousness of the offender, and practical constraints and consequences of sentences for offenders and organizations. Courtroom actors then relate their interpretations of these focal concerns to particular offender and case characteristics. Similar to Albonetti’s (1986; 1987; 1991) uncertainty/attribution theory, courtroom actors make decisions by making subjective determinations of blameworthiness, dangerousness, and the consequences of sentences based on particular case/defendant characteristics. The focal concerns perspective recognizes that courtroom actors’ decision-making begins with legal factors (e.g. offense severity, defendant criminal history) as “benchmarks” for decisions but then incorporates “situational attributions” about defendants’ character and risk based on case characteristics and defendant characteristics (e.g. race, gender) (Steffensmeier & Demuth, 2000; Steffensmeier et al., 1998).

While these attributions of offender/case characteristics and interpretations of focal concerns may be idiosyncratic to particular courtroom actors, scholars often combine the focal concerns perspective with a court communities perspective (Eisenstein et al. 1988; Eisenstien & Jacob 1977; Johnson 2003; 2006; Ulmer 1997). The court communities perspective argues that decision making is also the product of courtroom social contexts (Eisenstein, Flemming, and Nardulli, 1988; Eisenstien & Jacob 1977; Johnson, 2003; Johnson, 2006; Ulmer 1997). According to this perspective, a community is formed between regular courtroom workgroup members – judges, prosecutors, defense attorneys, law enforcement, courtroom personnel (Eisenstein and Jacob, 1977). Through regular interactions over a long period of time, this workgroup forms a set of interdependent relationships and produces a local legal culture characterized by shared traditions, values, and norms (Eisenstein et al., 1988). For example, day-to-day interactions produce a set of

shared expectations about the value or prioritization of cases, the proper resolution of cases, and how other courtroom actors will behave in future interactions (Ulmer, 1997).

In response to uncertainty, these workgroups establish “going rates” and norms that determine decisions in most cases and that make the decision-making process more predictable (Eisenstein & Jacob, 1977; Eisenstein et al., 1988; Ulmer, 1997). The focal concerns and court communities perspectives acknowledge that these going rates and norms are often developed to ensure efficiency; indeed, courtroom actors operate under the need for or goal of organizational efficiency (Dixon, 1995; Engen & Steen, 2000). The need to dispose of cases, avoid court and case backlogs, and conserve resources are goals often shared among courtroom actors that contribute to outcomes. Although efficiency is an “extralegal” goal, it is generally seen as separate from other substantively rational concerns and one that may supersede both formally rational rules *and* substantively rational concerns of courtroom actors (Engen & Steen, 2000; Kramer & Ulmer, 2002). Moreover, members of the courtroom workgroup generally find it in their professional interests to abide by the values and norms of the court community or face informal sanctioning by other members of the workgroup (Eisenstein & Jacob, 1977). Prosecutors also appear to have a “downstream orientation” that leads them to anticipate and consider how other actors not yet involved in the process, such as judges and juries, will respond to a case (Frohmann, 1997; Spohn and Holleran, 2001). Thus, rather than efficiency, some argue that decision making is often governed by a need to maintain good relationships with other courtroom actors to achieve desired outcomes (Eisenstein & Jacob, 1977; Ulmer, 1997).

### *1.2.2 Empirical Analyses of Prosecutorial Outcomes*

Research on prosecutorial discretion conducted over the last two decades has attempted to identify factors influencing prosecutorial decision making. The bulk of the research in this area has

focused on unraveling how prosecutors balance and blend “legal” and “extra-legal” factors in estimating convictability. Much of this research supports the uncertainty avoidance thesis and focal concerns/court communities perspectives.

Studies have shown that prosecutors rely heavily on legal factors, including the type of offense (Albonetti, 1987; Hartley et al., 2007; Jacoby, Mellon, Ratlidge, & Turner, 1982a; Schmidt & Steury, 1989), strength of the evidence (Albonetti, 1987; Jacoby et al., 1982a; Spohn & Holleran, 2001; Miller & Wright, 2008), and defendant culpability (Adams & Cutshall, 1987; Albonetti, 1987; Schmidt & Steury, 1989). Moreover, some have argued that in more serious cases the outcome is determined primarily by legal factors but that discretion, and the role of extra-legal factors, plays a larger part in less serious cases (Spohn and Holleran, 2001; Hartley et al., 2007; in contrast, Adams and Cutshall, 1987, argue that extra-legal factors matter less in less-serious cases).

Defendant demographic characteristics have received a significant amount of research attention, particularly race, ethnicity, and gender. There is mixed evidence that race plays a role in prosecutorial decision making. In a review of 24 studies of prosecutorial charging decisions and 19 studies of decisions by prosecutors to seek the death penalty, Free (2002) found that race clearly affected the decision to seek the death penalty. However, evidence on the role of race in charging was less clear; 15 of the 24 studies found no effect of race on charging decisions. More recently, Ulmer et al. (2007) found that prosecutors were almost twice as likely to seek mandatory sentences against Hispanic defendants as white defendants. Chen (2008) found that black defendants were more likely to be charged with and receive third-strike sentences than white defendants, particularly for offenses known as “wobblers,” which can be prosecuted either as a felony or a misdemeanor. The few studies that look at the impact of defendant sex on the decisions of prosecutors agree that, after controlling for other factors, women tend to be treated differently than men at a variety of

decision points. In a study of pre-trial diversion of drug offenders, Alozie and Johnston (2000) found that women were more likely to be diverted than men. Albonetti (1986) found that prosecutors were generally more likely to file charges against men than women. Finally, research has shown that prosecutors generally charge men with more serious offenses than women for similar conduct (Miethe, 1987) and are more likely to seek mandatory sentences against men than similarly eligible women (Bjerk, 2005; Ulmer et al., 2007).

Characteristics of the victim and the victim-defendant relationship have also been shown to play a part (Albonetti, 1986; Kingsnorth & MacIntosh, 2004; Schmidt & Steury, 1989; Spears & Spohn, 1997; Spohn & Holleran, 2001; Stanko, 1981-82). Most studies, particularly of sexual assault, have found that prosecutors rely a combination of legal and extra-legal factors to make decisions. Spohn and Holleran (2001), for example, found that prosecutors were more likely to file charges when there was corroborating physical evidence, the defendant had a prior felony conviction, the victim did not engage in risk taking behavior, and there were no questions about the victim's moral character. They also found that the victim-defendant relationship impacts decision making; in cases involving acquaintances and intimate partners, prosecutors were less likely to file charges if there were questions about victims' character or behavior at the time of the incident. In cases involving strangers, however, prosecutors were more likely to file charges if the suspect used a weapon or the victim was white. Studies of domestic violence and sexual assault cases have also demonstrated the important role of prosecutors' perceptions of victim credibility on decision making (see e.g., Kingsnorth & MacIntosh, 2004; Spears and Spohn, 1997; Stanko, 1981-82). Schmidt and Steury (1989) also found that in domestic violence cases a defendant's current and past behavior, in particular use of alcohol or drugs, were better predictors of whether charges would be filed than any legal factors.

Although, as a group, the studies investigate the effects of a wide variety of factors on prosecutors' decisions, two areas long suspected of being important – but that have remained unstudied – are the effects of prosecutor characteristics, such as demographics and experience (Spears & Spohn, 1997) and organizational constraints, such as caseloads and inter-agency relationships (Stanko, 1981-82). A growing body of literature has begun to explore the impact of presiding judges and county contextual effects on sentencing outcomes (see, e.g., Johnson, 2005; Ulmer et al., 2007). Similar aspects of prosecutors and contextual factors also may be expected to impact case outcomes during the prosecutorial process. Indeed, idiosyncratic evaluations of focal concerns or attributions of case characteristics by prosecutors may lead to variation in case outcomes across prosecutors. Similarly, organizational differences across offices or within offices over time may similarly lead to variation and change in prosecutorial decision making.

The uncertainty/attribution theory, focal concerns perspective, and court communities model imply that prosecutors primarily are concerned with convictability and efficiency; generally overlooked in such discussions, however, is the issue of justice. According to the American Bar Association's General Standards for the Prosecution Function (American Bar Association, 1993, Standard 3- 1.2(c)), "the duty of the prosecutor is to seek justice, not merely to convict." Thus, one may expect prosecutors to be motivated not just by uncertainty avoidance, focal concerns, or convictability, but by a desire to achieve or ensure justice. The ABA standards, however, do not define justice nor do they instruct the prosecutor in what factors to use in ensuring justice in their decision making.

In evaluating criminal justice decision making, legal philosophers and social scientists have generally differentiated between distributive justice and procedural justice (Rawls, 1999; Tyler, 2002). Distributive justice is focused on outcomes and whether the outcome of legal decision

making is equitable. In the case of prosecutorial decision making, distributive justice is achieved if outcomes are consistent across social groups or across prosecutors. In contrast, procedural justice is focused on processes and whether the procedures used in legal decision making are fair. In the case of prosecutorial decision making, procedural justice is achieved if decision making processes are consistently applied across social groups or across prosecutors. Researchers have identified several attributes of decision making that contribute to perceptions of procedural justice; these include: whether individuals involved in the case have an opportunity to state their case (“voice”); whether decision makers are unbiased, honest, and principled (“neutrality”); whether decision makers were benevolent, caring, and consider the needs of individuals (“trustworthy”); and whether others involved in the case were treated with dignity and respect (“respect”) (Tyler, 2003; Tyler & Hua, 2002).

Research has consistently found that the extent to which decision making processes are perceived as fair shapes perceptions of the legitimacy of the legal authorities responsible for the decision; in other words, individuals are more likely to perceive prosecutors as legitimate if those individuals feel a sense of procedural justice (for a review, see Tyler, 2002). A dearth of research exists, however, examining how prosecutors define justice or whether their decision making is oriented toward ensuring distributive justice or procedural justice. Although the uncertainty/attribution theory, focal concerns perspective, and court communities provide necessary insights into how legal and extra-legal factors may influence outcomes, it may also be necessary to understand how prosecutors define and operationalize justice within these contexts and how prosecutors orient decision making toward ensuring distributive and procedural justice.

### *1.2.3 The Limitations of Prior Research*

Despite the welcome growth in research on prosecutorial decision making, this work suffers from a number of limitations relating to generalizability and research design and analysis. Results from prior studies are not typically generalizable. To date, research overwhelmingly has examined just one jurisdiction, just one decision point (e.g., whether to prosecute a case and what to charge), or just one offense type. As a consequence, results cannot be applied more generally across jurisdictions, decision points, or offenses. Spohn and Holleran (2001) are the only researchers of whom we are aware to have focused on more than one jurisdiction in their analysis of the prosecution of sexual assault cases. Similarly narrow in focus, prior studies have mainly examined the initial decision whether to prosecute a case, and if so, what charges to file. No studies, of which we are aware, have looked at whether factors affecting decision making differ at different stages or decision points in the prosecutorial process (e.g., dismissal of charges, plea offers, sentence recommendations) or whether there is a cumulative effect of different factors as cases advance toward their conclusion. Furthermore, although there are several studies on domestic violence and sexual assault (see, e.g., Kingsnorth & MacIntosh, 2004; Schmidt & Steury, 1989; Spears & Spohn, 1997), there are no recent studies that look at factors affecting decisions for multiple offense types or severity levels.

Prior research has also been limited with respect to research designs and analyses. First, few studies adopt a comparative design, whether across time or place. There are just two exceptions, Miethe (1987) and Spohn and Holleran (2001). Miethe gauges the effect of sentencing guidelines on prosecutorial discretion in Minnesota by comparing cases from 1978 (pre-guidelines) with cases from 1980 and 1982 (post-guidelines). Spohn and Holleran's examination of prosecutorial discretion is one of the only studies to use data from more than one site (Kansas City, Missouri and

Philadelphia, Pennsylvania); however, surprisingly, they aggregate data from the two sites, obviating cross site comparisons. Second, most prior research in this area is *quantitative*, using administrative data to examine *what* factors affect decision making, but do not consider *how* and *when* prosecutors weigh these factors. We are aware of just two qualitative studies. Stanko (1981-82) observed the felony-arrest screening process in New York County (Manhattan), New York, and Frohmann (1997) conducted an ethnographic field study of a sexual assault unit in an unnamed prosecutor's office on the West Coast. Although methodologically groundbreaking, both studies are limited, relying on anecdotal and non-rigorous analytical techniques (Stanko, 1981-82) or focusing on just one unit that handles just one offense type (Frohmann, 1997).

Despite the gaps and weaknesses just discussed, the existing research has been instrumental in showing that prosecutors take multiple factors into account, both legal and extra-legal, when making case-processing decisions. The current study builds on this tradition by addressing some of its deficiencies. The project (1) adopts a *dual-site, comparative design*, (2) incorporates *multiple offense types and decision points*, (3) includes factors relating to *prosecutor characteristics and organizational constraints*, and (4) collects and analyzes data from a *variety of sources using an integrated set of methodologically rigorous quantitative and qualitative techniques*. These components are specifically designed and integrated to bolster the study's comprehensiveness, validity, and, ultimately, utility to policymakers and practitioners.

### 1.3 Research Questions

The study is driven by several research questions. First, there is considerable evidence that both legal and extralegal factors affect prosecutorial case outcomes. There is little research, however, into the effect of those factors at different stages of the prosecutorial process or the effect of individual prosecutors on case outcomes. The study examines the following research question: *What*



*factors influence case outcomes?* Specifically, using administrative data on case outcomes, the study examines how defendant, victim, offense, case, and prosecutor characteristics affect the decision to accept or reject a case for prosecution, the number and level of charges to file, the amendment or dismissal of charges after filing, the number and level of charges offered during plea negotiations, or the recommendation of an incarceration or non-incarceration sentence at trial. Using a factorial survey design, the study further explores these questions: *How does decision making vary within a prosecutor's office for a similar set of cases? How do factors such as strength of the evidence and defendant criminal history affect case outcomes? Do evaluations of these case factors vary by prosecutor characteristics?*

Second, although prior research has examined the factors that predict case outcomes, little of that research has explored how prosecutors evaluate these factors or weigh them in making decisions. Indeed, the analyses of case outcomes provide only a partial glimpse of decision making; specifically, it does not provide any information about *why* particular factors affect outcomes. Understanding these issues requires a different methodological approach that considers how prosecutors make decisions and how formal and informal mechanisms impinge or control prosecutorial decisions. The study is motivated by the following research question: *How do prosecutors evaluate and weigh the different factors affecting a case?* Specifically, using interviews and surveys with prosecutors, the study examines how prosecutors interpret and use defendant, victim, offense, and case characteristics in making decisions and how do they balance organizational needs for efficiency and resource management with the maintenance of inter-agency relationships and the just outcome of cases. Building on this analysis, the study further explores these questions: *How do prosecutors' offices regulate prosecutorial decision making? How do*

*office structures, policies, and practices regulate decision making? What formal and informal, internal and external controls are placed on prosecutors when making decisions?*

## 1.4 Site Selection

The study relies on data from two county prosecutors' offices – Northern County and Southern County. The two offices provide ideal sites for examining issues of prosecutorial decision-making. On the one hand, both sites are similar in several important ways that facilitate cross-site comparisons: medium-sized offices serving urban/suburban populations and handling large numbers and varied types of cases. On the other hand, the sites differ in two key ways that facilitate cross-site contrasts: organizational structures and operational approaches.

Both Northern County and Southern County have populations of just less than 1 million people, with one large central urban center and several surrounding suburban municipalities (Table 1.4-1). While Northern County witnessed a flat population growth over the last decade (increasing just 0.8 percent between 2000 and 2010), Southern County experienced rapid population growth, growing 32 percent over the last decade and making it one of the fastest growing urban regions in the country. The two counties are very similar demographically; roughly 50 percent of the general populations in both counties are white, 30 percent are African American, and 12 percent are Hispanic. The defendants prosecuted in each county are also similar demographically – although roughly 42 percent of the general population is non-white, approximately 66 percent of the defendant population in each county is non-white.

The minority populations in both counties are largely concentrated in the central urban areas, while the non-minority populations are largely concentrated in the suburban municipalities. Between 2000 and 2010, both counties also saw increases in the proportion of African American and Hispanic residents in the population and decreases in the proportion of white residents. These

fluctuations were relatively small in Northern County; in contrast, in Southern County the relative proportion of white residents in the population decreased 10 percentage points (from 61 percent to 51 percent) as the proportion of Hispanic residents increased 5 percentage points (from 7 percent to 12 percent) and the proportion of African American residents increased 3 percentage points (from 28 percent to 31 percent).

**Table 1.4-1 Characteristics of the population served, by research site**

Selected Characteristics	Northern County		Southern County	
	2000	2010	2000	2010
<b>Approximate total population</b>	<b>900,000</b>	<b>950,000</b>	<b>700,000</b>	<b>900,000</b>
<b>% white, non-Hispanic</b>	<b>58%</b>	<b>54%</b>	<b>61%</b>	<b>51%</b>
<b>% black, non-Hispanic</b>	<b>26%</b>	<b>27%</b>	<b>28%</b>	<b>31%</b>
<b>% Hispanic, any race</b>	<b>11%</b>	<b>13%</b>	<b>7%</b>	<b>12%</b>
<b>Median household income (2010\$)</b>	<b>\$40,500</b>	<b>\$43,000</b>	<b>\$64,000</b>	<b>\$55,000</b>
<b>% of housing owner occupied</b>	<b>53%</b>	<b>51%</b>	<b>62%</b>	<b>61%</b>
<b>% of population below poverty</b>	<b>21%</b>	<b>19%</b>	<b>11%</b>	<b>13%</b>

The median household income is significantly higher in Southern County relative to Northern County (\$55,000 versus \$43,000 in 2010). Northern County, however, experienced an increase in median household income between 2000 and 2010, while Southern County experienced a decrease. Moreover, while Northern County saw a 2 percentage point decrease in the poverty rate between 2000 and 2010, Southern County experienced a 2 percentage point increase.

The sentencing and corrections systems are similar in each research site as well. Both jurisdictions operate within states that have abolished discretionary parole release from prison; yet both states have maintained some form of mandatory supervision after release. Both jurisdictions also operate within states with some form of sentencing guidelines. The guidelines under which Northern County operates are advisory (meaning that judges are not required to follow the sentence recommendations in the guidelines and neither the prosecutor or defense can appeal sentences that do not adhere to the guidelines); guidelines sentences are determined according to seriousness of offense and a subjective assessment of several factors related to future risk of re-offending. In contrast, the guidelines under which Southern County operates are presumptive (meaning that judges are required to follow the sentence recommendations in the guidelines and both the prosecutor and defense can appeal sentences that do not adhere to the guidelines); guidelines sentences are determined according to seriousness of the offense and prior criminal history of the defendant.

The Northern County prosecutor's office employs approximately 125 Assistant District Attorneys (ADAs) who handle roughly 30,000 felony and misdemeanor cases per year (Table 1.4-2). The office is organized into a series of eighteen specialized units that handle specific offense types (e.g. homicide, domestic violence, felony drug, guns) and five general crimes units that handle all felony and misdemeanor cases not handled by specialized units. All new ADAs in Northern County are assigned to one of the five general crimes unit comprised of both new and experienced ADAs; ADAs may remain in a general crimes unit for their entire careers. All ADAs are responsible for screening cases within their unit; cases accepted for prosecution are then assigned to specific ADAs and prosecuted vertically (i.e. a single ADA handles the case throughout the entire prosecutorial process). The office is structured along a three-tiered system of management, with

ADAs reporting to twenty-three unit managers who are supervised by five deputy prosecutors who, in turn, report to the District Attorney. The District Attorney in Northern County was first elected within the last ten years and has implemented innovative prosecution models, such as creating community-prosecution units, organizing units around geographic areas, and instituting programs based on restorative-justice models.

The Southern County prosecutor's office employs roughly 75 ADAs who handle approximately 13,500 felony and misdemeanor cases per year (Table 1.4-2). The office is organized around seven specialized felony units that handle broad categories of offense types (e.g. property, person, drugs) and one misdemeanor unit that handles all misdemeanor and criminal traffic cases. All new ADAs in Southern County are assigned to the misdemeanor unit which is comprised solely of new ADAs; ADAs are then transferred to another unit, usually the drug unit, after nine to eighteen months. Experienced ADAs are responsible for screening cases; cases accepted for prosecution are then assigned to specific ADAs within units and prosecuted vertically, with the exception of felony drug offenses which are prosecuted horizontally (i.e. cases are handled by multiple ADAs, each handling the case at one stage of the prosecutorial process). The Southern County prosecutor's office is a flat system, with ADAs reporting to unit managers who report directly to the District Attorney; two deputy prosecutors in Southern County function as office managers, but do not act as intermediaries between unit managers and the District Attorney. At the time of the study, the District Attorney in Southern County had retained the office for more than two decades and followed a fairly traditional prosecution model.

**Table 1.4-2 Selected characteristics of participating prosecutors' offices**

<b>Characteristics</b>	<b>Southern County</b>	<b>Northern County</b>
<b>Typical number of ADAs</b>	75	125
<b>Approximate number of criminal cases per year</b>	13,500	30,000
<b>Office organization</b>	<ul style="list-style-type: none"> <li>• 7 felony units, specialized by crime type</li> <li>• 1 misdemeanor unit</li> </ul>	<ul style="list-style-type: none"> <li>• 18 units that handle both felonies and misdemeanors, specialized by crime type</li> <li>• 5 general crimes units that handle all other felony and misdemeanor cases</li> </ul>
<b>Managerial structure</b>	ADAs report to 8 unit heads who report to the DA	ADAs report to 23 unit heads, who are supervised by 5 deputies who report to the DA
<b>Vertical or horizontal prosecution</b>	Horizontal for felony drug cases; vertical for other cases after initial screening	Vertical after initial screening
<b>Strong orientation toward diversion programs and community prosecution?</b>	No	Yes
<b>Tenure of the DA (at start of project)</b>	30 years	2 years

We derived a limited amount of demographic information about prosecutors in each jurisdiction from a general survey of prosecutors, in which prosecutors were asked their age, gender, race/ethnicity, and level of experience; some descriptive statistics were also available in administrative data maintained by the Northern County District Attorney's office. Although we had limited demographic information about ADAs, the few characteristics we were able to capture indicate that the ADAs in the two research sites are quite different (Table 1.4-3). Although

prosecutors in both jurisdictions are similar in terms of gender (roughly 56 percent of ADAs in each jurisdiction are male), prosecutors in Northern County tend to be older and have more experience than prosecutors in Southern County. For example, roughly 46 percent of ADAs in Northern County were 40 years of age or older, compared to just 19 percent of ADAs in Southern County. In addition, while roughly 40 percent of ADAs in Northern County have 10 or more years experience as a prosecutor, just 9 percent of ADAs in Southern County have a similar level of experience.

**Table 1.4-3 Characteristics of prosecuting attorneys, by jurisdiction**

Characteristic	Southern County Survey Data <sup>a</sup>	Northern County	
		Survey Data <sup>a</sup>	Administrative Data <sup>b</sup>
<b>Number of prosecutors responding</b>	65	62	145
<b>Percentage male</b>	56%	71%	56%
<b>Percentage nonwhite or Hispanic</b>	17%	10%	-
<b>Age distribution</b>			
<b>Less than 30 years old</b>	26%	15%	-
<b>30 – 39 years old</b>	55%	39%	-
<b>40 years old or older</b>	19%	46%	-
<b>Distribution of experience in present DA’s office</b>			
<b>Less than 1 year</b>	11%	13%	14%
<b>1 – 9 years</b>	80%	49%	46%
<b>10 or more years</b>	9%	38%	40%

Notes: <sup>a</sup>From responses to the general survey for ADAs assigned to adult felony cases. The response rate for that group was 95 percent in Southern County and 67% in Northern County.

<sup>b</sup>From administrative data for ADAs who screened cases between January 2009 and June 2011. Comparison with the survey data suggests that the survey responses were biased toward male respondents in Northern County.

## 1.5 Methods Overview

This study used a multi-method approach, relying on both quantitative and qualitative methods to examine prosecutorial decision making in Northern and Southern Counties (Figure 1.5-1). To examine actual case outcomes and the factors associated with those outcomes, the study relied on

analyses of administrative data derived from the case management systems in each office and a review of case files in Southern County. Using logistic regression and hierarchical linear modeling, the analyses examined the impact of defendant, offense, victim, and prosecutor characteristics on outcomes at several decision points – screening, charging, dismissal/amendment, and plea offer. The study further explored case outcomes using a factorial survey containing a series of hypothetical cases in which prosecutors were asked to make and justify screening, charging, and plea offer decisions; the analyses considered the impact of evidence strength, offense severity, defendant criminal history, and prosecutor characteristics on outcomes and provided an opportunity to examine consistency in evaluations across prosecutors.

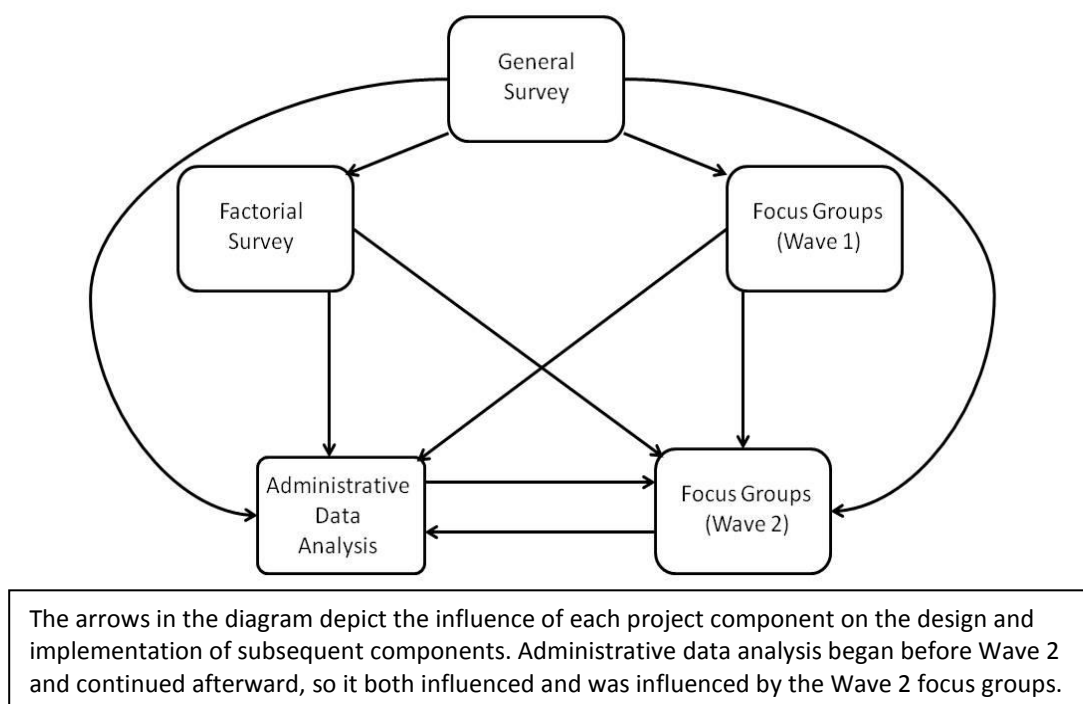
The analyses of actual and hypothetical case outcomes were complemented by an attitudinal survey of prosecutors and series of interviews/focus groups with prosecutors. Prosecutors in both jurisdictions were invited to respond to a structured survey, designed to elicit general attitudes about definitions of individual and organizational success; the influence of relationships among prosecutors, police, defense attorneys, and judges; resource and policy constraints; principles that guide screening decisions and plea offers; the general goals and functions of the criminal justice system; and internal training and oversight. Two waves of interviews with the District Attorney (DA) and Deputy District Attorneys (Deputies) in each site and two waves of focus group sessions with line prosecutors and unit managers also were conducted in each of the research sites. The first wave of interviews/focus groups focused primarily on contextual conditions and circumstances that influence decision making (e.g., guiding philosophies, policies, relationships with other system actors and colleagues, resource constraints). The second wave of interviews/focus groups focused primarily on case-specific factors that influence decision making (e.g., strength of evidence,



seriousness of the instant offense, defendant’s criminal history, and special aggravating/mitigating circumstances).

Rather than provide a full methods section at the beginning of the report or separate detailed methods sections within each chapter, we include relatively brief methods sections detailing the approaches used in each chapter and detailed methods for the entire study in Appendix A.

**Figure 1.5-1 Overview of Research Methods**



## 1.6 Report Overview

This study documents prosecutorial decision making in two county prosecutors’ offices, examining legal and extra-legal factors influencing decision making. Our observations and recommendations are based on the analysis of administrative data tracking case outcomes, focus groups with prosecutors and supervisors, an attitudinal survey of prosecutors, and a factorial survey using case vignettes. Drawing on these data, Part 2 first examines prosecutors’ perspectives of the

factors influencing decision making – prosecutorial philosophy, case-specific factors, contextual constraints – and explores how prosecutors balance these varied influences at different stages of the prosecutorial process. Part 3 then examines actual case outcomes and assesses the extent to which different legal and extra-legal factors predict outcomes at different stages of the process. Part 4 discusses the policy implications of the findings. Parts 2 and 3 provide short descriptions of the methods used in each section; detailed appendices provide information on the methods, additional descriptive analyses of the data, and instruments used in the study.

## **Part 2. The Prosecutor's Perspective**

### **2.1 Introduction**

Much of the prior research on prosecutorial decision making has been devoted to examining the influence of case characteristics on outcomes, exploring those legal and extra-legal case-specific characteristics (e.g. defendant/victim demographics, offense severity, strength of the evidence) that determine whether a case is declined or prosecuted, the level of charges ultimately filed, or the sentence recommended upon conviction. Less research, however, has explored how prosecutors weigh these case characteristics in making decisions or what contextual factors may influence how prosecutors evaluate such characteristics.

This study employed a combination of qualitative and quantitative analyses to examine how prosecutors evaluate and weigh the different factors affecting a case and how prosecutors' offices regulate prosecutorial decision making. Specifically, this chapter seeks to answer several questions: What do prosecutors see as the primary goals of prosecution? How do prosecutors evaluate strength of the evidence and how do these evaluations change throughout the life of a case? How do prosecutors balance organizational needs for efficiency and resource management with the maintenance of inter-agency relationships and the just outcome of cases? How do office structures, policies, and practices regulate decision making? What formal and informal internal and external controls guide prosecutors when making decisions about cases?

### **2.2 Summary of Research Methods: Focus Groups and General Survey**

To answer these questions, the study relied on focus group interviews with prosecutors and supervisors and a general survey of prosecutors in the participating jurisdictions (for a detailed description of methods, see Appendix A).

### 2.2.1 Focus Groups

Two waves of interviews and focus group sessions were conducted in each of the research sites. Individual interviews were conducted with the District Attorney (DA) and Deputy District Attorneys (Deputies) in each site; focus group interviews were conducted with ADAs and unit managers. Focus group participants were divided by years of experience as a prosecutor (less than one year experience, one to ten years experience, unit managers) and efforts were made to interview the same prosecutors during each wave of focus groups. In Southern County, focus groups included six prosecutors with less than one year experience, eight prosecutors with one to ten years experience, and seven unit managers. In Northern County, there were not enough participants to divide focus groups by years of experience; instead, focus groups included five prosecutors responsible for different types of cases (general crimes, domestic violence, drugs, weapons) and seven unit managers.

The first wave of interviews and focus groups focused primarily on contextual conditions and circumstances that influence decision making (e.g., guiding philosophies, policies, relationships with other system actors and colleagues, resource constraints). The second wave of interviews and focus groups focused primarily on case-specific factors that influence decision making (e.g., strength of evidence, seriousness of the instant offense, defendant's criminal history, and special aggravating/mitigating circumstances).

The feedback received from prosecutors was recorded as field notes and analyzed across topics and sites, noting the clustering of responses around specific issues or actors, as well as outliers and other unique data. Since interviews/focus groups were not recorded, the discussion of interview and focus group responses below is not able to produce exact quotes in all instances; thus, phrases appearing in *italics* are partial or paraphrased quotes derived from interviewer notes.

### 2.2.2 *General Survey*

Prosecutors in both jurisdictions were invited to respond to a structured survey, designed to elicit general attitudes in eight substantive areas: 1) factors that define individual success; 2) factors that define organizational success; 3) the influence of relationships among prosecutors, police, defense attorneys, and judges; 4) resource and policy constraints; 5) principles that guide screening decisions; 6) principles that guide the development of plea offers; 7) general goals and functions of the criminal justice system; and 8) training and oversight. The survey instrument was accompanied by a background questionnaire that captured respondent age, race, ethnicity, gender, and years of experience as a defense attorney and prosecutor. Copies of the complete survey instrument, the instructions to respondents, and the background questionnaire are included in Appendix D.

In Southern County, survey responses were received from 74 respondents from a pool of 78 prosecutors (95 percent response rate). Excluding the district attorney, the deputy district attorneys, and juvenile court prosecutors, the sample analyzed for this report included 65 respondents from a pool of 69 prosecutors (93 percent response rate). In Northern County, responses were received from 81 prosecutors from a pool of 135 prosecutors (60 percent response rate). Excluding the district attorney, the deputy district attorneys, and juvenile court prosecutors, the sample analyzed for this report included 62 respondents from a pool of 93 prosecutors (67 percent response rate).

Preliminary analyses found that respondents tended to cluster their ratings at the upper or lower end of the scale for most items which produced ratings with restricted variability. To examine the consequences of these response biases, standardized responses (z-scores) were created for each item, relative to the personal means and standard deviations of each respondent's ratings for items within each of the item categories listed above. The resulting z-scores were then grouped to create a 5-level standardized scale. For ease of interpretation, this report focuses primarily on the original

scaling of responses as structured in the survey instrument, but de-emphasizes items for which the results of analyses differ according to which scaling is adopted. Finally, to reduce the amount of detail in the presentation of results, principal components analyses were conducted to determine the number of underlying dimensions of response for each category of items and then to identify the one to three specific items that most strongly represented the underlying dimensions within each category. The items selected for illustrative purposes are ones that (a) yield consistent patterns of results using either the original scaling or the standardized scaling of responses and (b) are among the items found to be most representative of a relevant underlying dimension within one of the eight categories listed above. Table B34 in Appendix B identifies the underlying dimensions in each category and lists the specific items most representative of each dimension.

### 2.3 The Goals of Prosecution: Justice, Consistency, and Efficiency

Prosecutors in both jurisdictions maintained that they were provided few specific guidelines or rules for how to handle cases. Indeed, prosecutors at all levels recognized not only the power that the office of the district attorney holds within the criminal justice system, but also the wide discretion that they as individual prosecutors exercise in individual cases. Nonetheless, prosecutors in both jurisdictions argued that their discretion was not unguided. Rather, prosecutors maintained that the DAs in both sites articulated three primary goals of prosecution that governed decision making in all cases: justice, consistency, and efficiency.

#### 2.3.1 *Justice*

In both jurisdictions, the DA set out a simple philosophy for prosecuting cases that unit managers and ADAs clearly understood – *do justice*.<sup>1</sup> The DA in Southern County maintained that he wanted *people to do the right thing*. This guided not only decisions on outcomes but also

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<sup>1</sup> Throughout the report, statements made by prosecutors in the individual interviews and focus group sessions are presented in italics to indicate that the statements have been paraphrased rather than quoted verbatim.

interactions with police officers, defense attorneys, judges, and defendants. The DA expected ADAs to exercise *complete candor* when discussing cases with other system actors and instructed ADAs that *part of their job is to set the right tone*. In the end, the DA argued that the *critical part of the prosecutor's job was about ethics and how you treat people*. For the DA, that meant that prosecutors should *try to do justice, be open-minded, and treat people fairly and with respect*. Indeed, as discussed in Section 2.5 below, many ADAs in Southern County said that this philosophy of justice, openness, and respect governed their interactions and led to better outcomes for the office.

The DA in Northern County communicated a similar philosophy, stating that prosecutors were told to *do the right thing, to do justice, to help the community*. For the DA in Northern County, doing the right thing consisted of two things: *keeping the community safe and protecting the constitutional rights of defendants*. This articulation of philosophy as an overarching desire to do justice shaped how the DA viewed success; success was *not necessarily about winning cases and getting convictions, but about protecting constitutional rights of citizens and safety*. In some instances, it also acted as a constraint, forcing prosecutors to *do what is appropriate, not everything that you can*. As we discuss in Part 2.4, it also set up a fundamental question with which prosecutors must contend: *even if the defendant is guilty, is a conviction the right outcome?* The DA in Northern County recognized this tension and the difficulty in communicating how to balance *ensuring justice for the defendant with ensuring justice for the victim and the community*.

Indeed, with a philosophy of doing justice as the primary guideline for handling cases, the interpretation of “doing justice” in each case is left to individual ADAs, which, as the DA in Southern County acknowledged, can vary from person to person. To gain some consistency in the meaning of justice, each office relied heavily on unit managers and office peer pressure to

communicate and ensure adherence to the philosophy. As one unit manager in Northern County noted, the office seeks to *hire good people and teach them certain virtues*. The unit approach in each office also allowed for direct supervision of a small number of ADAs by one supervisor and for the routine communication among unit members about the just or fair decision in individual cases. This did not, however, always lead to the same evaluation of justice since, as one unit manager acknowledged, *a supervisor's idea of "do the right thing" may be different than an ADAs*. In such instances, most prosecutors in both sites agreed that deference was often given to the individual ADA's definition of justice, noting that *as long as ADAs can explain how they got to a decision, that is acceptable*. This response underscores the power of the individual ADA – with a strong acceptance of office philosophy and close supervision, the individual ADA's perception of justice or decision on an individual case is allowed to prevail even when it conflicts with a supervisor's perception of justice or of the right decision in a particular case. In both offices, respondents noted that *the office only functions if the DA and supervisors trust ADAs to make the right decisions*.

This puts a lot of pressure on ADAs to make the “right” decision. Absent more explicit guidance at the office level, prosecutors will necessarily pursue objectives that reflect their personal and collective beliefs concerning the fundamental purposes of the criminal justice system and the appropriate role of the prosecutor in serving those purposes. Often, the office philosophy conflicts with the general perceptions of the role of the prosecutor, which some see as *ensuring tough sanctions for violations of the law*. Several items from the general survey help to better understand personal beliefs that may influence individual perceptions of justice. What is most striking about the survey results is the amount of variation in responses; while focus group responses indicated a



consensus on the overarching philosophy of the office, survey responses indicated much more divergence in opinions about the goals of prosecution.

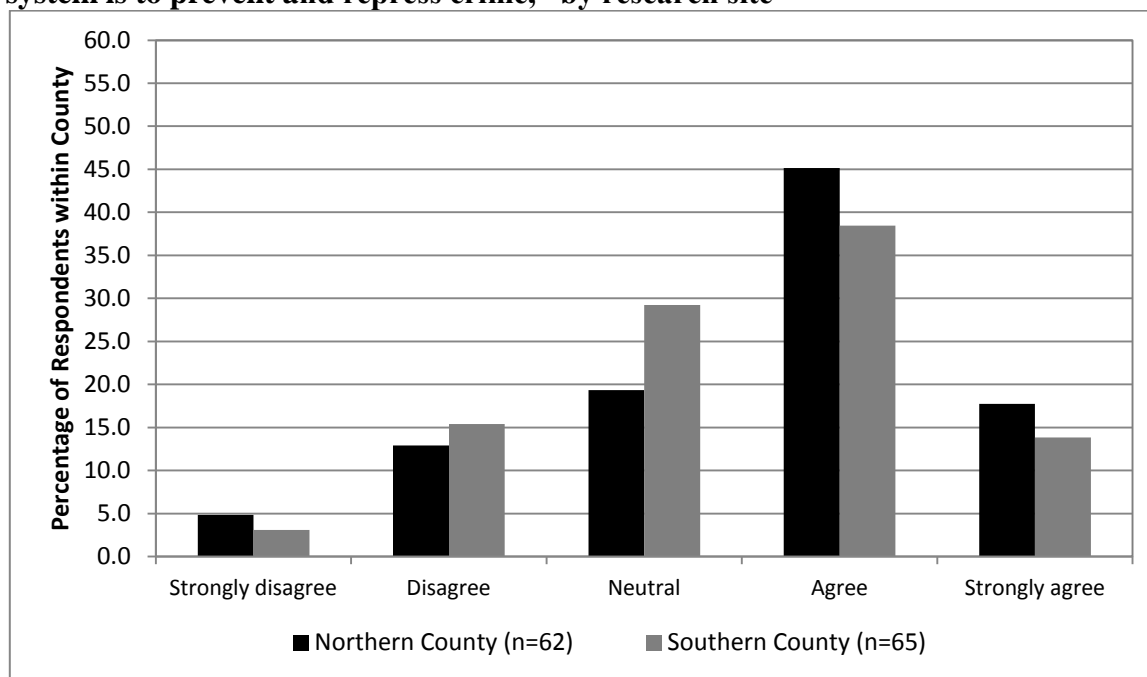
### Perceptions of the goals of the criminal justice system

Responses to items pertaining to the goals of the criminal justice system varied along three underlying dimensions: the most important functions of the system, punishment orientation, and the rights and rehabilitation of defendants. Overall, a majority of respondents (58 percent) agreed or strongly agreed that the most important function of the criminal justice system is to prevent and repress crime, but 22 percent disagreed or strongly disagreed that this was the most important function (Figure 2.3.1-1). The tendency to emphasize a crime prevention function varied systematically by jurisdiction and level of experience. The average level of agreement that crime prevention is the most important function was marginally higher in Northern County than in Southern County ( $p = .055$ ,  $F = 3.760$ ,  $df = 1$ ). Controlling for differences between jurisdictions,<sup>2</sup> agreement that crime prevention is the most important function declined significantly with increasing years of experience ( $p = .046$ ,  $F = 2.823$ ,  $df = 3$ ), with more experienced ADAs disagreeing that crime prevention was the most important function (Figure 2.3.1-2).

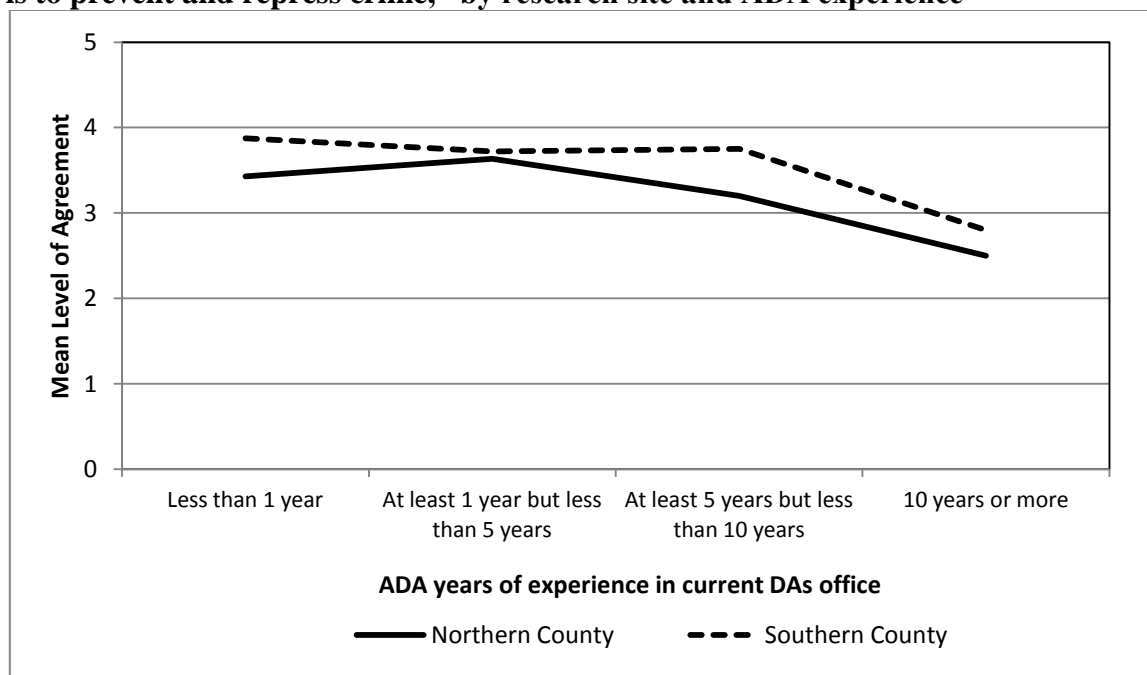
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<sup>2</sup> Because there were significant differences in response patterns between jurisdictions for some items, and there also was a significant difference between jurisdictions in average level of experience, analyses of the differences in responses across levels of experience controlled for differences in responses between jurisdictions.

**Figure 2.3.1-1 Responses to the question “The most important function of the criminal justice system is to prevent and repress crime,” by research site**

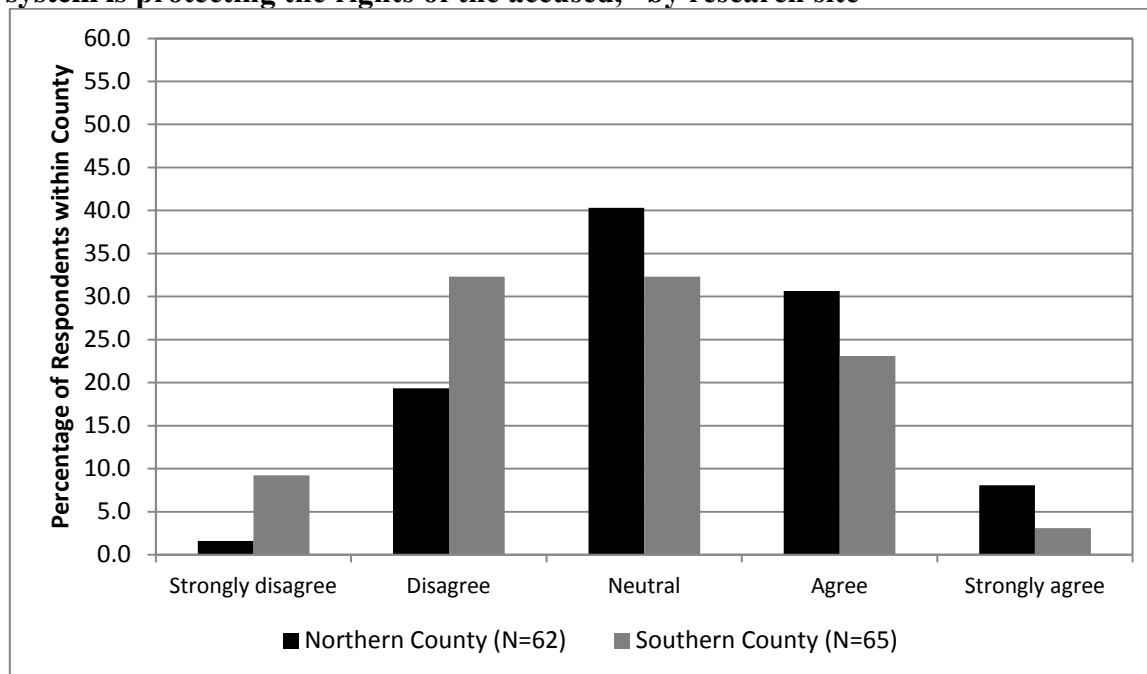


**Figure 2.3.1-2 Responses to question “The most important role of the criminal justice system is to prevent and repress crime,” by research site and ADA experience**



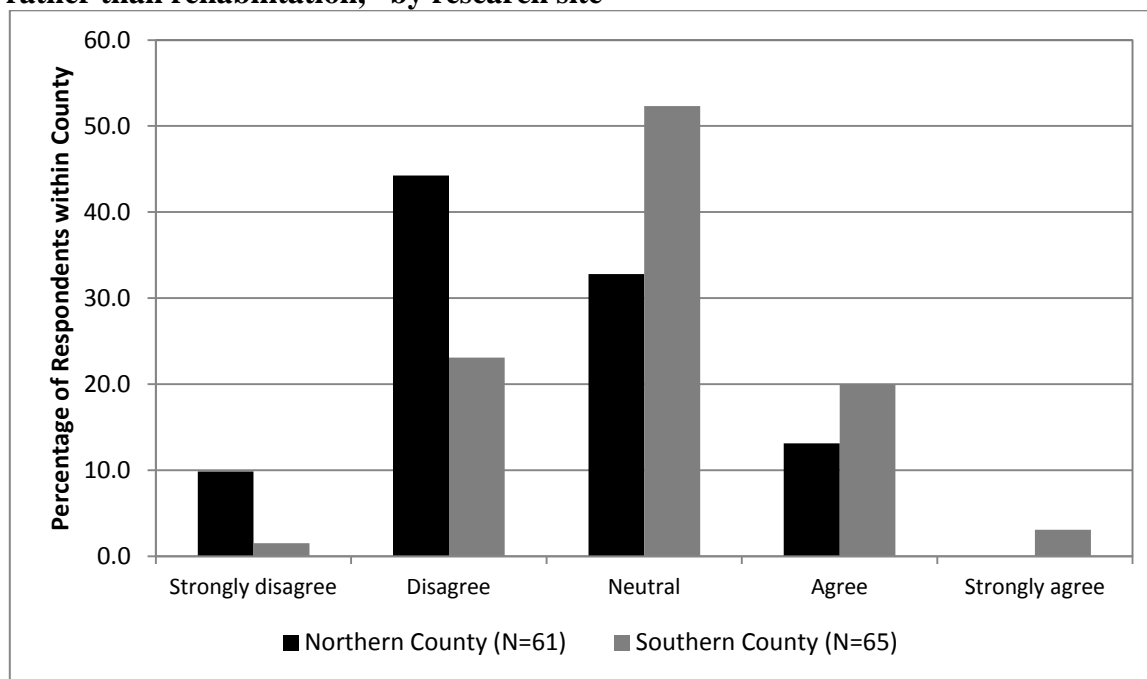
Overall, prosecutors were evenly divided as to whether the most important function of the criminal justice system is protecting the rights of the accused: 32 percent agreed or strongly agreed and 32 percent disagreed or strongly disagreed (Figure 2.3.1-3). Prosecutors in Northern County were more likely than prosecutors in Southern County (39 percent vs. 26 percent) to agree or strongly agree that the most important function is protecting the rights of the accused, and the difference in average ratings of agreement was highly statistically significant ( $p = .009$ ,  $F = 7.13$ ,  $df = 1$ ). Controlling for differences between jurisdictions, the average ratings did not vary significantly across levels of experience. Thus, prosecutors within the same offices hold very conflicting views of the criminal justice system’s function. Many agree that the system functions primarily to prevent crime, while a very large group also agrees that the system functions primarily to protect the rights of the accused. Moreover, as prosecutors gain experience, they believe less in the crime prevention function of the system.

**Figure 2.3.1-3 Responses to the question “The most important function of the criminal justice system is protecting the rights of the accused,” by research site**



Prosecutors also expressed surprisingly non-punitive orientations. For both offices, only 18 percent of prosecutors agreed that sanctioning offenders should involve punishment rather than rehabilitation, while 39 percent disagreed (Figure 2.3.1-4). The responses in Southern County reflected a significantly stronger punishment orientation than the responses in Northern County. In Southern County, 23 percent agreed that sanctioning should involve punishment rather than rehabilitation and 25 percent disagreed; in Northern County, only 13 percent agreed that sanctioning should involve punishment rather than rehabilitation and 54 percent disagreed ( $p = .001$ ,  $F = 12.106$ ,  $df = 1$  for difference in average ratings).

**Figure 2.3.1-4 Responses to the question “Sanctioning offenders should involve punishment rather than rehabilitation,” by research site**

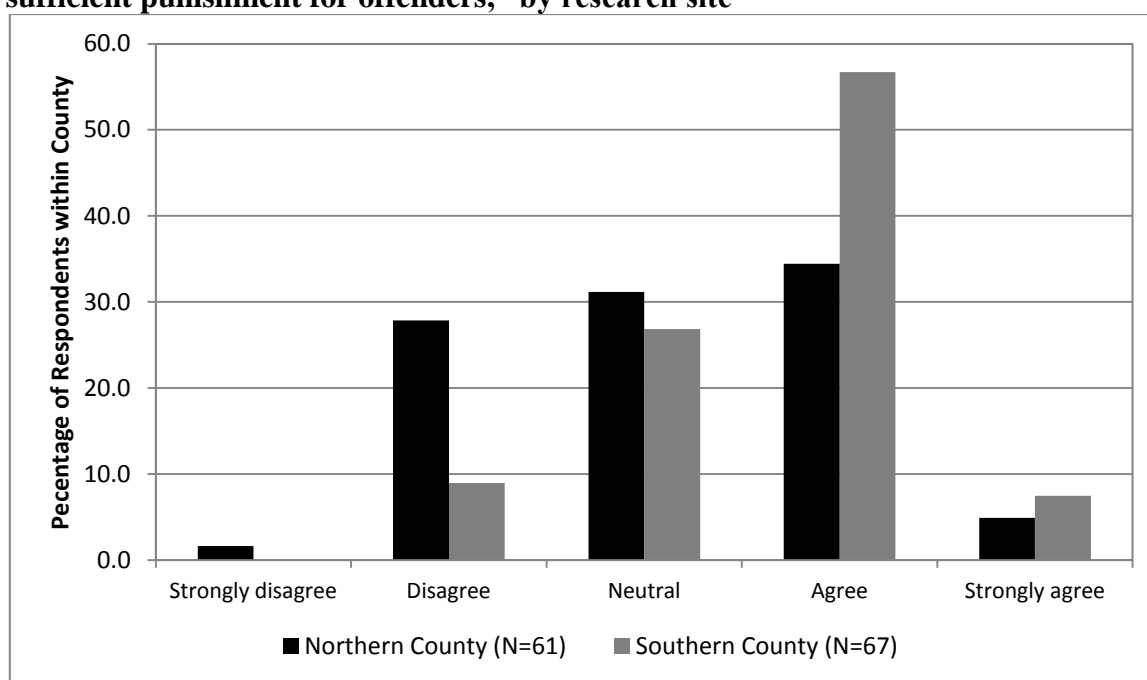


In addition, respondents in Southern County were significantly more likely than respondents in Northern County (63 percent vs. 39 percent) to agree that many community-based programs do not provide sufficient punishment for offenders ( $p=.002$ ,  $F=10.129$ ,  $df=1$  for difference in average ratings) (Figure 2.3.1-5). Finally, prosecutors’ opinions were divided as to whether many offenders currently imprisoned could be adequately handled in non-prison sanctions; 26 percent agreed that

offenders could be handled in non-prison sanctions, but 44 percent disagreed (Figure 2.3.1-6).

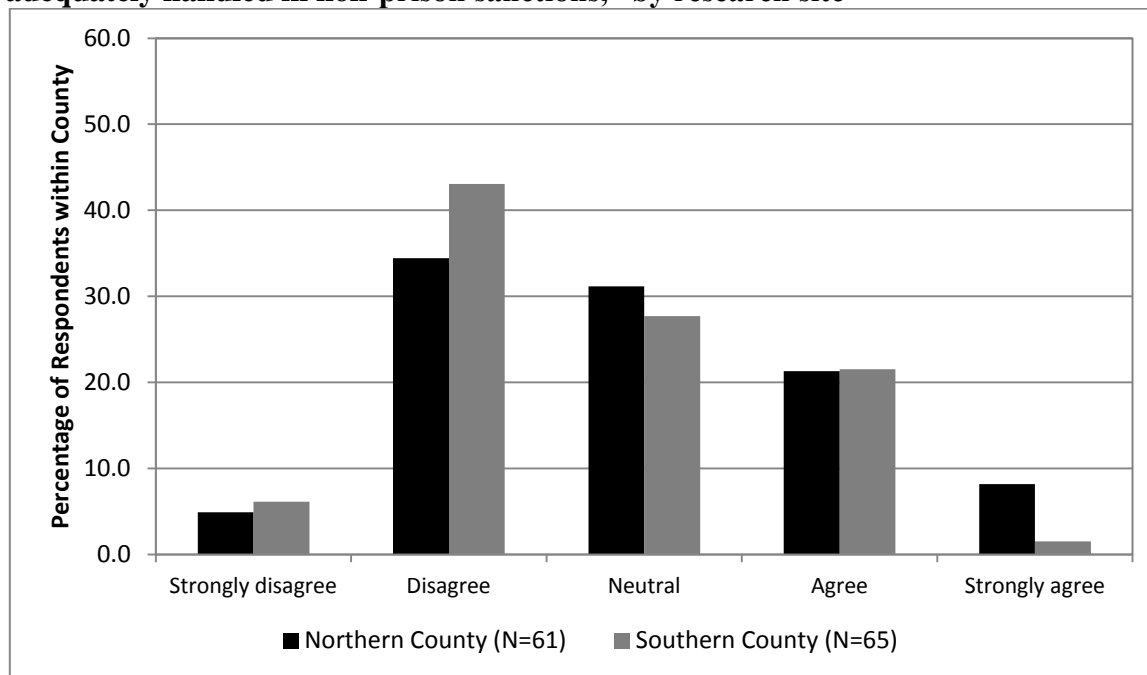
Controlling for differences in responses between jurisdictions, the average level of agreement with the statement “Offenders do not need to be punished in order to be rehabilitated,” did not differ significantly across levels of experience; the average level of agreement initially decreased with increasing experience, but then increased sharply for those with 10 years experience or more ( $p = .024$ ,  $F = 3.265$ ,  $df = 3$ ) (Figure 2.3.1-7).<sup>3</sup>

**Figure 2.3.1-5 Responses to the question “Many community-based programs do not provide sufficient punishment for offenders,” by research site**

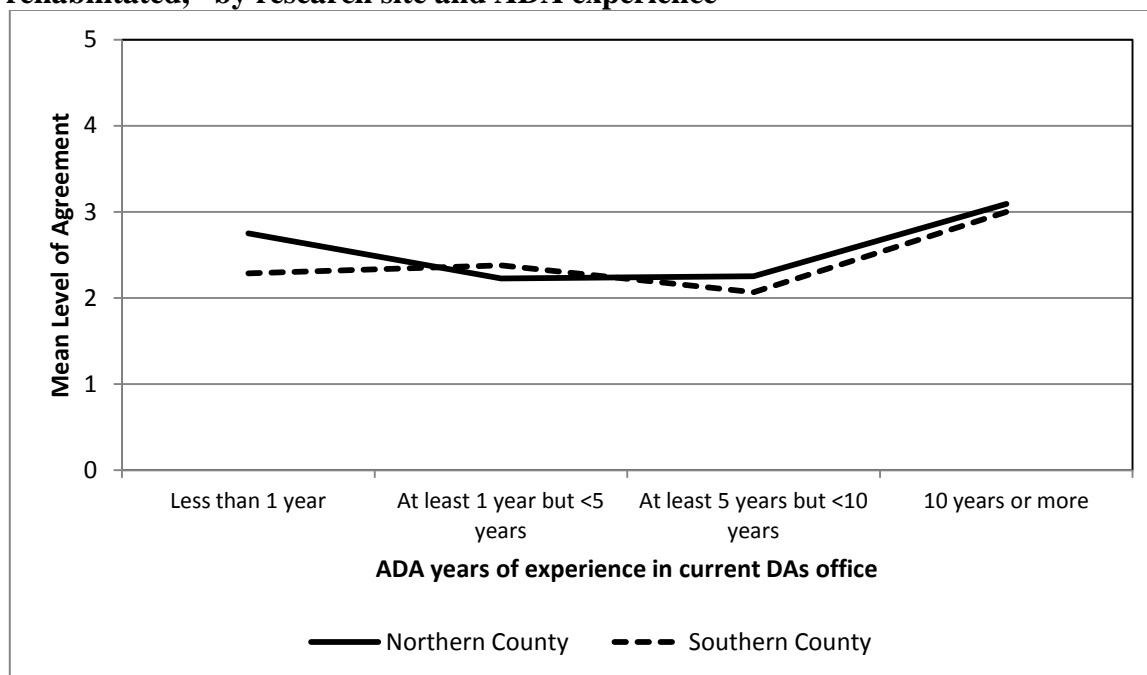


<sup>3</sup> The group of respondents with 10 or more years of experience yielded results at odds with the patterns evident across the other levels of experience for a number of the survey items. These inconsistencies are only partially accounted for by differences in levels of experience between jurisdictions. It could not be determined from the limited data available on prosecutor characteristics how this group might differ systematically from those with less experience with respect to other characteristics. While it is reasonable to speculate that this group might include some or all of the unit managers, that could not be confirmed from the data available for this study.

**Figure 2.3.1-6 Responses to the question “Many offenders currently imprisoned could be adequately handled in non-prison sanctions,” by research site**



**Figure 2.3.1-7 Responses to the question: “Offenders do not need to be punished in order to be rehabilitated,” by research site and ADA experience**



The most striking pattern emerging from the analyses of items relating to criminal justice system goals is the considerable divergence of opinion regarding the system’s most important

functions, the importance of punishment, and the extent to which the system responds appropriately to the rights and rehabilitation potential of criminal defendants. It is reasonable to ask whether this wide variation in a few basic beliefs might be accompanied by similar variation in beliefs and attitudes that were not measured, and whether such variation translates into unwarranted differences in the operational objectives pursued by different prosecutors and different prosecution teams. The general survey explored convergence and divergence of these more concrete objectives by asking prosecutors about the factors that define personal success and success for the office as a whole.

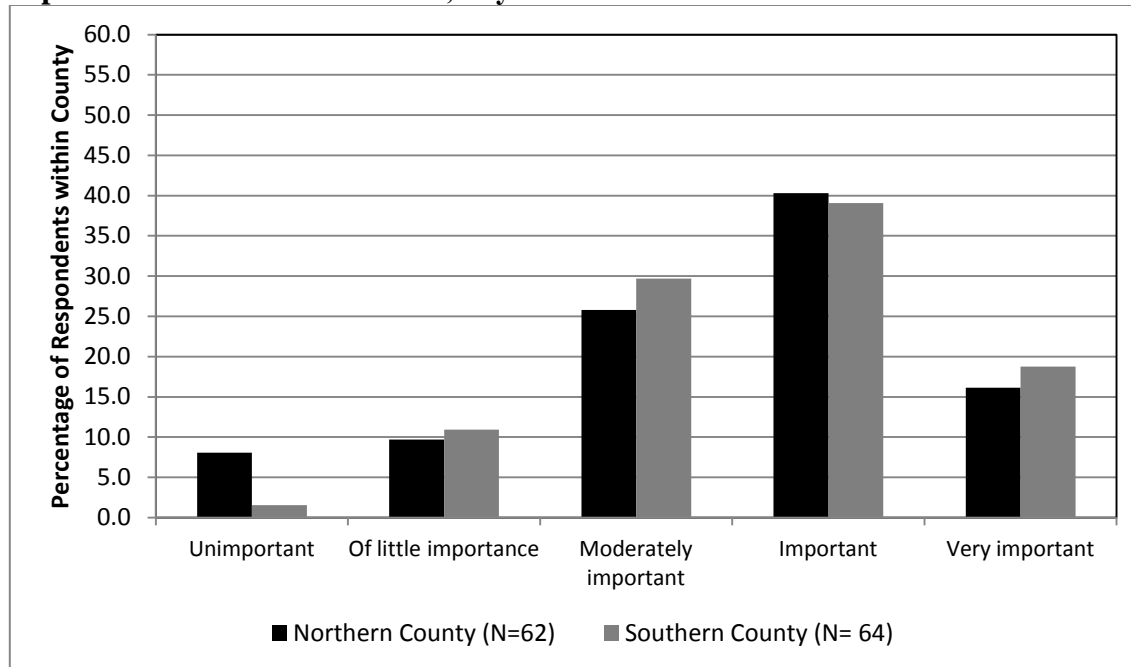
### Perceptions of individual success

Respondents rated 15 potential outcomes as to their importance for defining personal success as a prosecutor. Responses varied along four underlying dimensions: accuracy in charging and diverting cases; respect and relationships (in working with colleagues, supervisors, police, defense attorneys, and judges); obtaining convictions and guilty pleas; and fairness. Responses to items reflecting respect and relationships are discussed later in a section focusing specifically on working relationships. Items representing the remaining three dimensions are discussed below.

The general survey explored prosecutors' perceptions of three potential performance indicators that could be used to gauge accuracy in charging and diverting cases: dismissal rates, deferral/diversion rates, and successful diversions. Low dismissal rates after charges are filed were considered important or very important by 27 percent of respondents, but were considered of little importance or unimportant by 44 percent of respondents. Ratings of the importance of low dismissal rates, however, differed dramatically by jurisdiction ( $p = .000$ ,  $F = 49.751$ ,  $df = 1$ ) (Figure 2.3.1-8). Low dismissal rates were rated important or very important by 53 percent of respondents in Northern County but only 1.5 percent (1 respondent) in Southern County. Controlling for differences between jurisdictions, ratings of the importance of low dismissal rates also differed

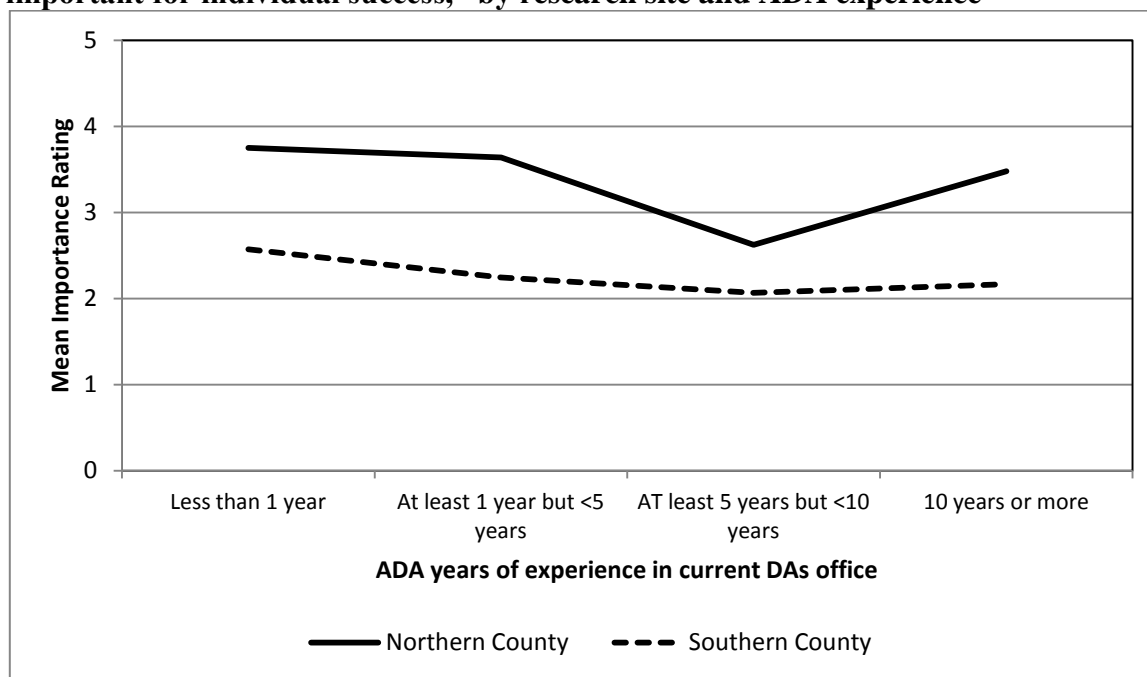
significantly by level of experience ( $p = .039$ ,  $F = 2.870$ ,  $df = 3$ ) (Figure 2.3.1-9). Average ratings declined with increasing levels of experience, but increased for respondents with 10 or more years of experience (see footnote 3 above). In other words, low dismissal rates were more important for both the least experienced and most experienced prosecutors.

**Figure 2.3.1-8 Responses to the question: “Low dismissal rates after charges are filed is important for individual success,” by research site**





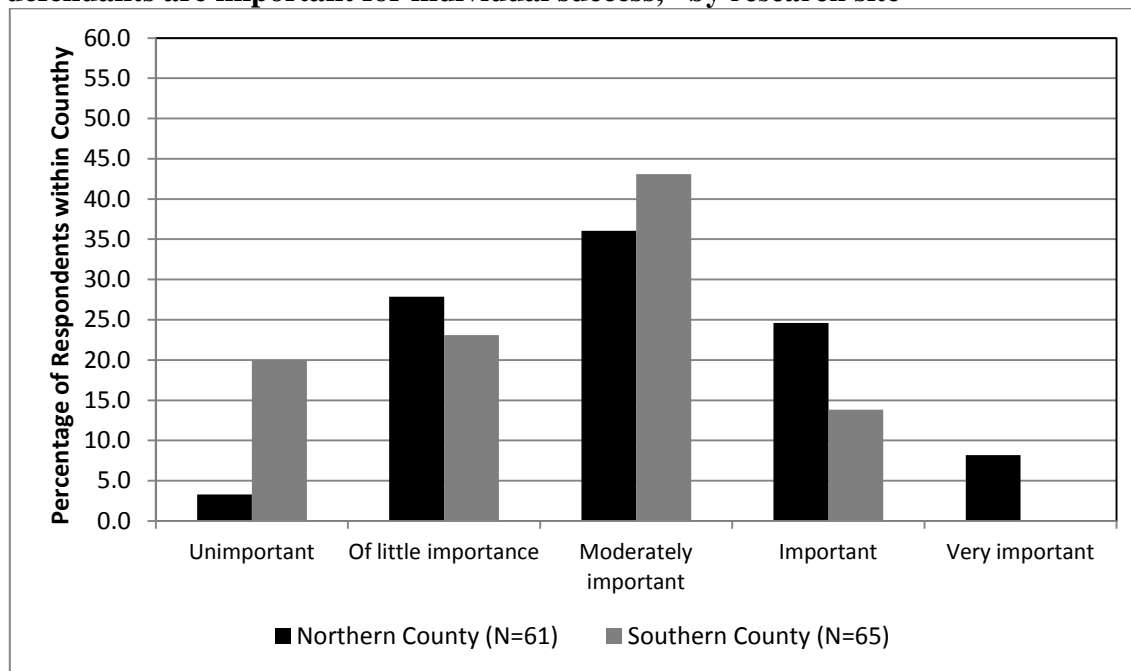
**Figure 2.3.1-9 Responses to the question: “Low dismissal rates after charges are filed is important for individual success,” by research site and ADA experience**



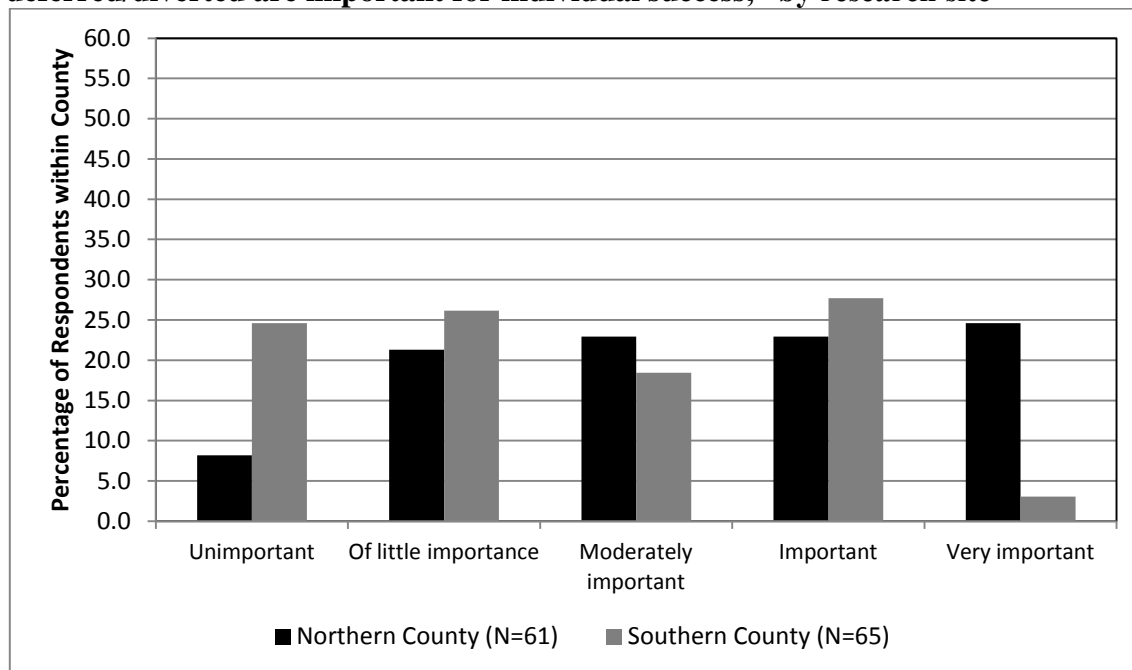
Prosecutors had similar perceptions of deferral/diversion rates for eligible defendants. High deferral/diversion rates were rated important or very important by 23 percent of respondents, but were rated of little importance or unimportant by 37 percent of respondents. In addition, prosecutors were evenly divided in their ratings of the importance of high success/completion rates for defendants who were deferred or diverted, with 39 percent considering it important or very important and 41 percent considering it of little importance or unimportant. There were significant differences between jurisdictions in prosecutors’ average ratings of the importance of both high deferral/diversion rates ( $p = .002$ ,  $F = 10.122$ ,  $df = 1$ ) and high success/completion rates ( $p = .001$ ,  $F = 11.515$ ,  $df = 1$ ). High deferral/diversion rates were considered important by 33 percent of respondents in Northern County but only 14 percent of respondents in Southern County (Figure 2.3.1-10). High success/completion rates were considered important by 48 percent of respondents in Northern County but only 31 percent of respondents in Southern County (Figure 2.3.1-11). Controlling for differences between jurisdictions, average ratings of the importance of high

deferral/diversion rates also differed significantly by levels of experience ( $p = .028$ ,  $F = 3.142$ ,  $df = 3$ ), with the perceived importance declining substantially with increasing experience (Figure 2.3.1-12).

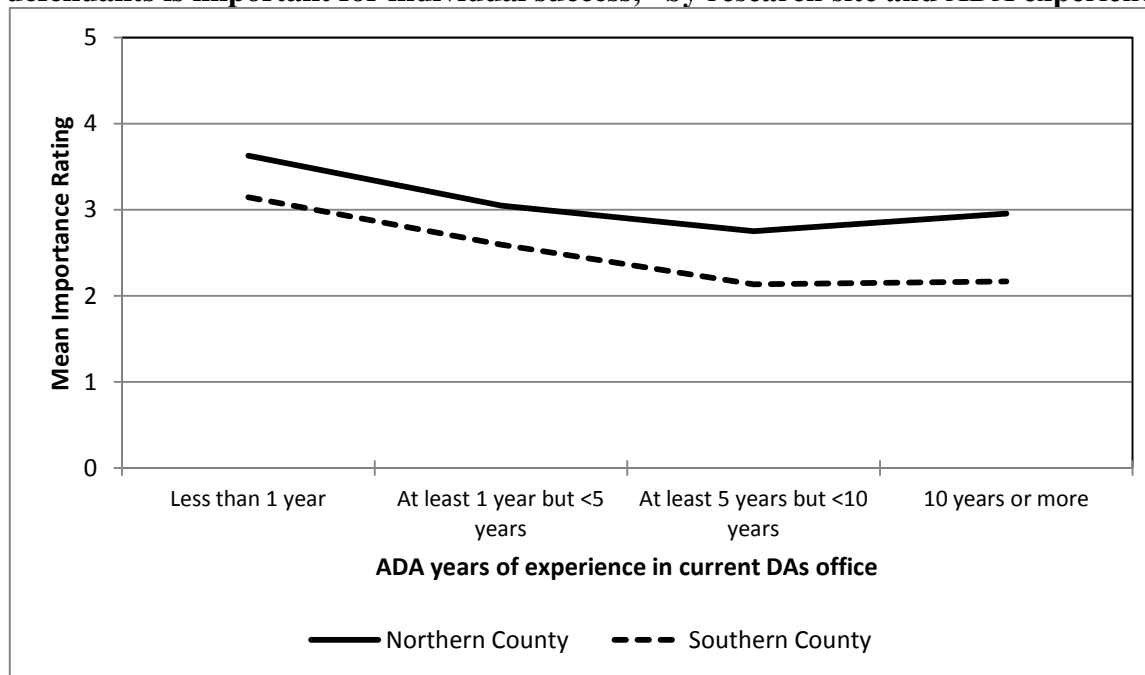
**Figure 2.3.1-10 Responses to the question: “High deferral/diversion rates for eligible defendants are important for individual success,” by research site**



**Figure 2.3.1-11 Responses to the question: “High success/completion rates for defendants deferred/diverted are important for individual success,” by research site**



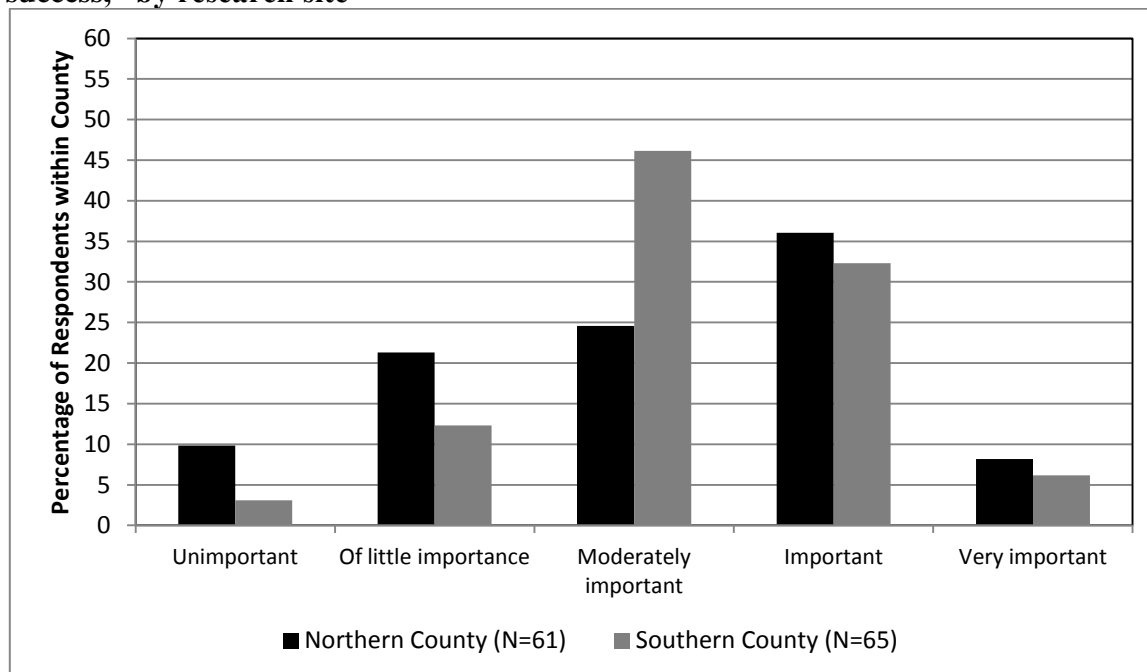
**Figure 2.3.1-12 Responses to the question: “High deferral/diversion rates for eligible defendants is important for individual success,” by research site and ADA experience**



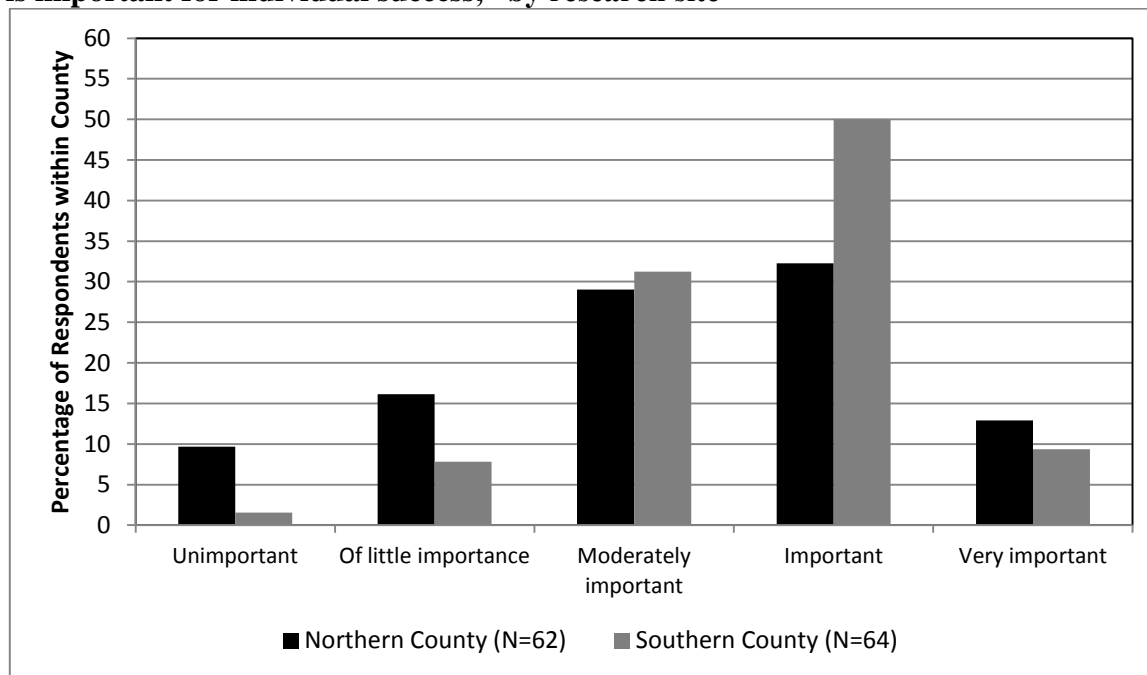
While respondents did not maintain a highly punitive attitude, the survey clearly indicated that a large majority of prosecutors assessed their success in terms of convictions, guilty pleas to the

highest charges filed, and incarceration for serious offenses. Forty-one percent of respondents indicated that achieving high conviction rates was an important or very important criterion for evaluating their own success (Figure 2.3.1-13). A majority (53 percent) responded that a high rate of guilty pleas to the most serious charge(s) was important or highly important (Figure 2.3.1-14). Finally, 57 percent also thought high imprisonment rates for serious crimes were important or very important (Figure 2.3.1-15). The average rating of the importance of high rates of guilty pleas to most serious charge(s) was slightly lower among prosecutors in Northern County than among prosecutors in Southern County ( $p = .05$ ,  $F = 3.833$ ,  $df = 1$ ); otherwise, the average orientation toward these measures was similar across the two participating counties. The average rating of the importance of high rates of guilty pleas to most serious charges was also strongly related to level of experience ( $p = .016$ , weighted  $F$  for linear effect = 5.931,  $df = 1$ ), with the perceived importance declining substantially with increasing experience (Figure 2.3.1-16).

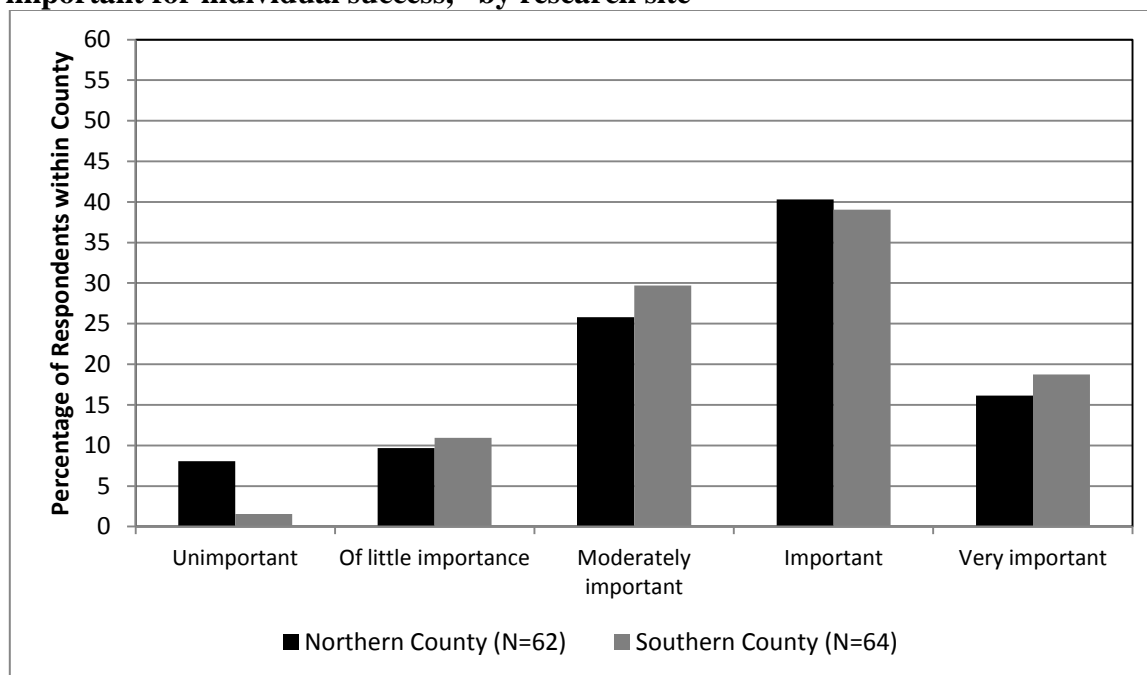
**Figure 2.3.1-13 Responses to the question: “High conviction rates is important for individual success,” by research site**



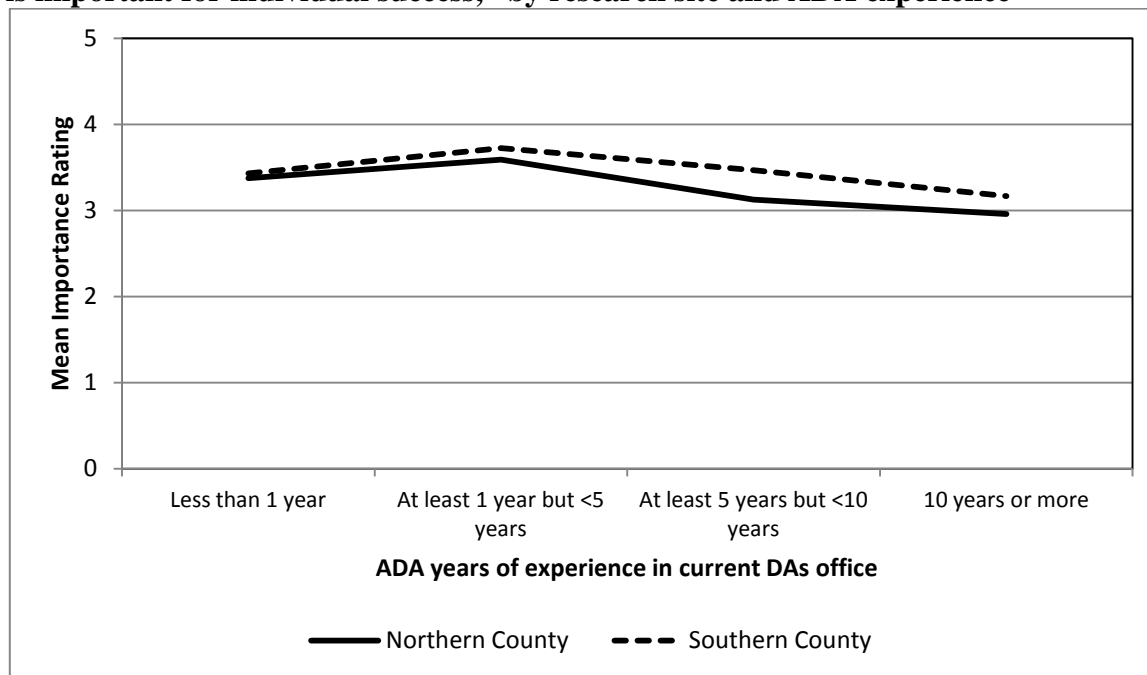
**Figure 2.3.1-14 Responses to the question: “High rate of guilty pleas to most serious charge(s) is important for individual success,” by research site**



**Figure 2.3.1-15 Responses to the question: “High rate of imprisonment for serious crimes is important for individual success,” by research site**

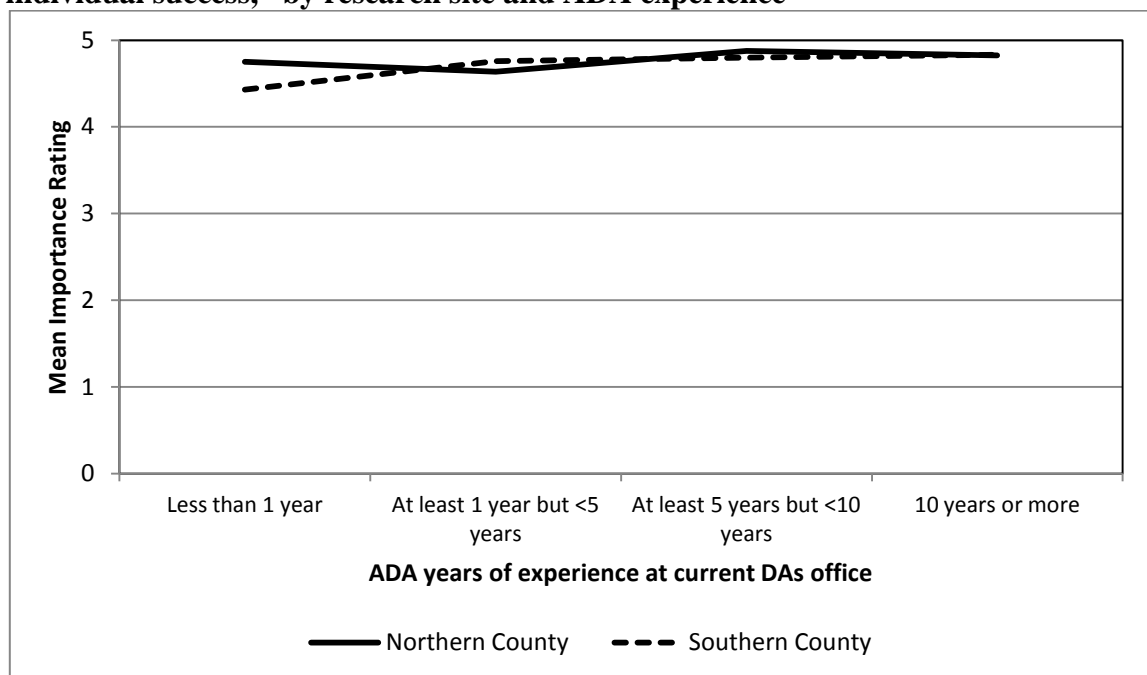


**Figure 2.3.1-16 Responses to the question: “High rate of guilty pleas to most serious charge(s) is important for individual success,” by research site and ADA experience**



Finally, 96 percent of prosecutors responded that fair treatment of defendants was important or very important for evaluating their own success. The average rating of the importance of fair treatment of defendants did not vary significantly by jurisdiction; ratings did increase with increasing levels of experience, but the effect was small and not statistically significant (overall effect,  $p=.446$ ,  $F = .895$ ,  $df = 3$ ; linear effect,  $p = .127$ , weighted  $F = 2.366$ ,  $df = 1$ ) (Figure 2.3.1-17).

**Figure 2.3.1-17 Responses to the question: “Fair treatment of defendants is important for individual success,” by research site and ADA experience**



By a large margin, the outcome considered by prosecutors to be most important for defining their own success was fair treatment of defendants, with an average rating of 4.75 on a 5-point scale and very little variation across sites, levels of experience, or individual respondents. Items indicating an orientation toward convictions, guilty pleas, and incarceration all elicited average ratings slightly above the mid-point of the importance scale, with substantial variability of ratings across individual respondents and levels of experience. Finally, items emphasizing an orientation toward dismissals and deferrals all elicited average ratings slightly below the mid-point of the importance scale, with substantial variation across individual respondents, jurisdictions, and levels of experience.

#### Perceptions of organizational success

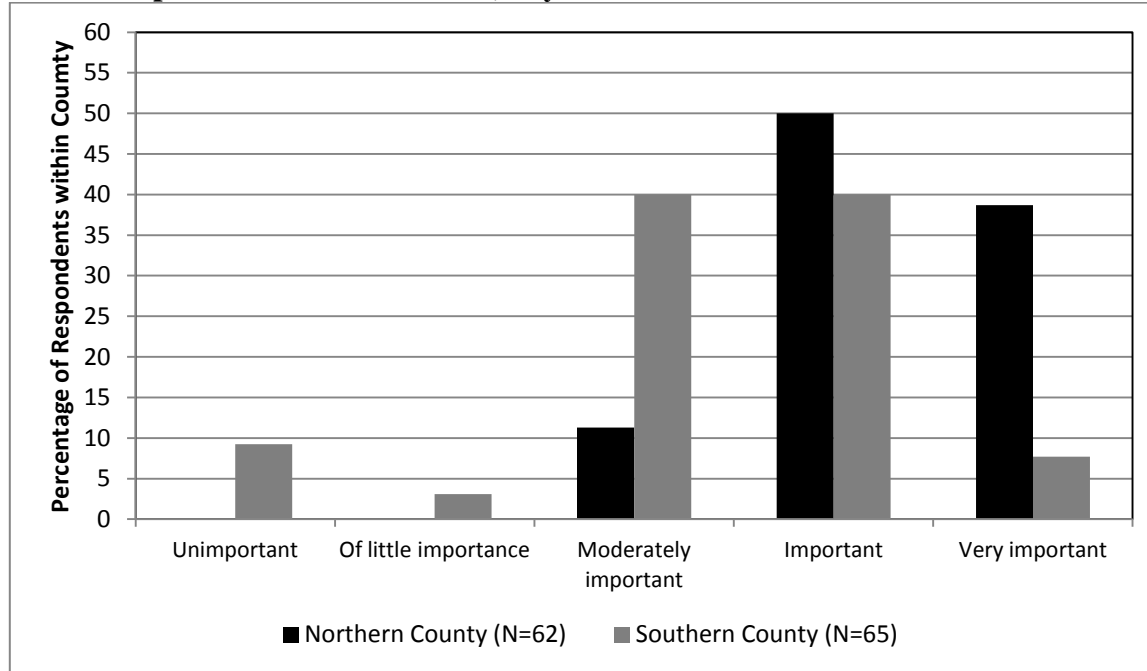
Prosecutors were also asked to differentiate evaluations of their own success from evaluations of the success of the district attorney's office. Several dimensions were important to both individual success and organizational success and some new dimensions emerged (See Table B34 in Appendix

B). Respondents rated nineteen potential outcomes in their importance for defining success for the district attorney's office. Responses varied along five underlying dimensions: community orientation, obtaining convictions and guilty pleas, crime control, consistency/fairness, and relationships. The items addressing relationships and consistency are discussed in later sections of the report. The presentation of importance ratings for organizational success focuses primarily on dimensions that were not apparent in the ratings for individual success, or on items that yielded different ratings for organizational success.

Respondents clearly saw the satisfaction of the community as a strong measure of the success of the district attorney's office. A high level of citizen satisfaction with the DA's office was considered to be important or very important by 68 percent of respondents, and was only considered to be of little importance or unimportant by 6 percent (Figure 2.3.1-18). The average rating of the importance of citizen satisfaction was significantly higher for Northern County than for Southern County ( $p=.000$ ,  $F=38.211$ ,  $df=1$ ); but, controlling for the difference in average ratings between jurisdictions, the ratings did not differ significantly across levels of experience.



**Figure 2.3.1-18 Responses to the question: “A high rate of citizen satisfaction with the DA’s office is important for office success,” by research site**



The orientation favoring convictions and guilty pleas as one of the defining characteristics of a successful prosecutor’s office was best represented by responses to the same three items that defined individual success: high conviction rates, high imprisonment rates for serious crimes, and low dismissal rates after charges are filed. However, these dimensions were rated as even more important for defining organizational success. Achieving high conviction rates was rated important or very important for organizational success by 57 percent of respondents, compared to 41 percent of respondents who rated this as important or very important for individual success. Similarly, achieving high imprisonment rates for serious crimes was rated important or very important for organizational success by 74 percent of respondents, compared to 57 percent who saw it as important or very important for individual success. Achieving low dismissal rates was rated important or very important for organizational success by 46 percent of respondents, while just 27 percent of respondents found it important or very important as a measure of individual success. Finally, high deferral/diversion rates were much more frequently rated by prosecutors as important

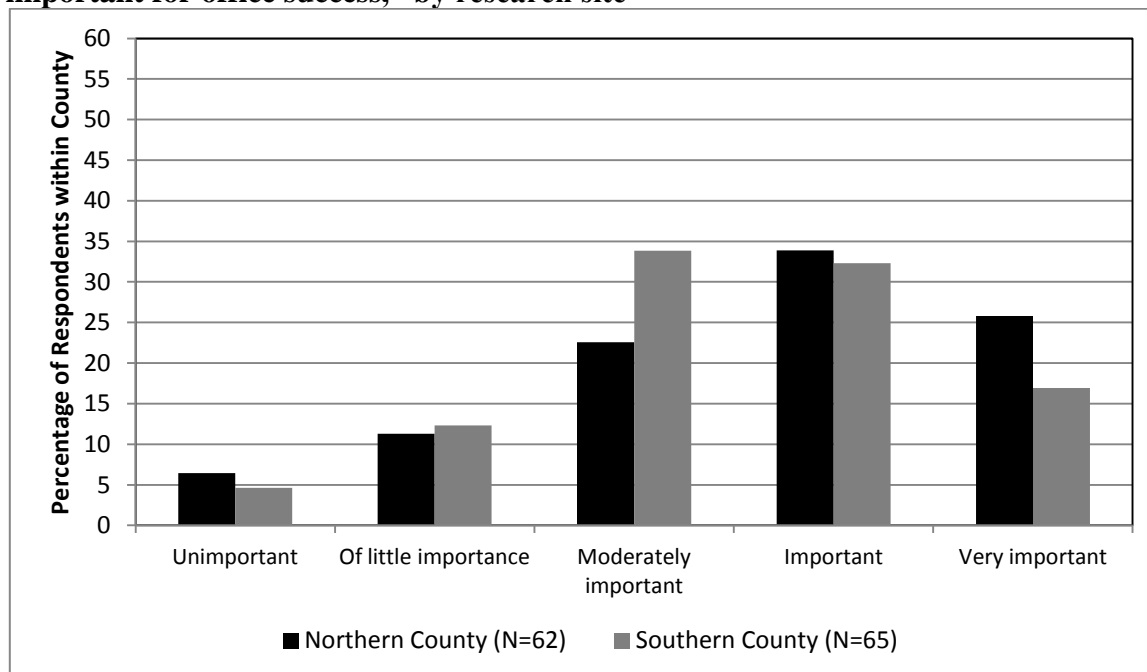
or very important for organizational success (46 percent) than for their own individual success (23 percent). For organizational success, average ratings of the importance of high conviction rates were significantly higher for Northern County than for Southern County ( $p=.007$ ,  $F=7.607$ ,  $df=1$ ); there were no significant differences across jurisdictions for other measures. Similarly, controlling for differences between jurisdictions, ratings of the importance of these measures did not differ significantly across levels of experience.

Similar to ratings of individual success, prosecutors saw the fair treatment of defendants as very important to defining organizational success. The distribution of ratings of the importance of fair treatment of defendants was nearly identical to the distribution of responses to the same item with respect to defining individual success. These ratings did not differ significantly by jurisdiction, but the ratings of the importance of fair treatment for defining organizational success did increase significantly with increasing levels of experience ( $p=.044$ ,  $F=2.775$ ,  $df=1$ ). As with the prosecutors' ratings of criteria for defining individual success, the outcome considered by prosecutors to be most important for defining organizational success was fair treatment of defendants, with an average rating of 4.65 on a 5-point scale, with very little variation across sites or individual respondents.

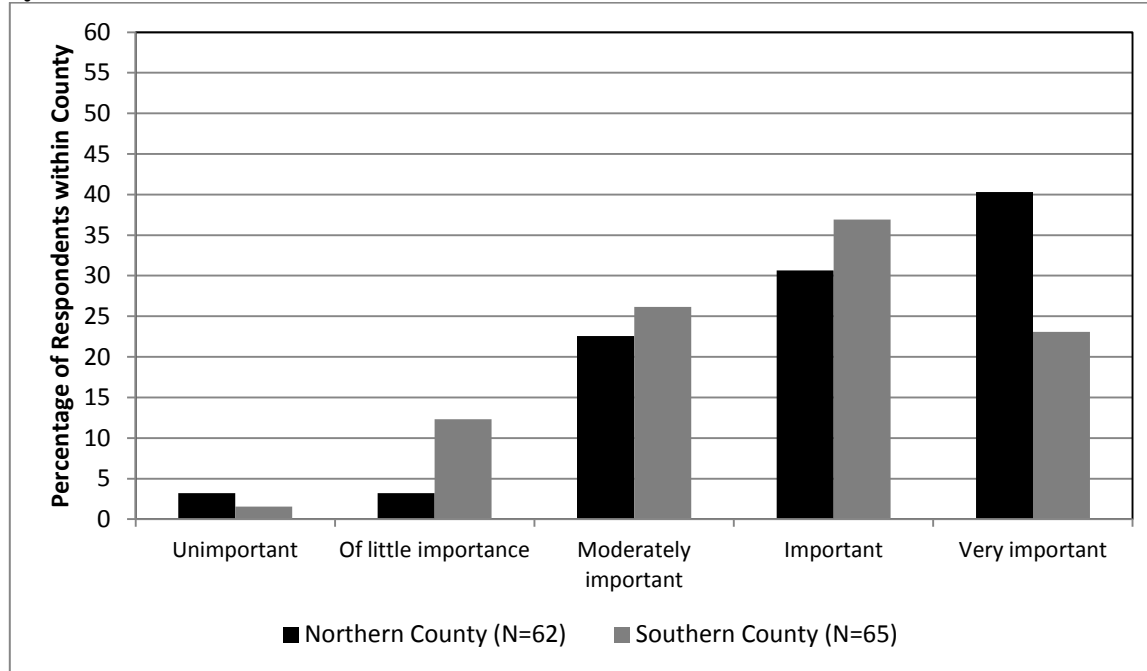
Finally, prosecutors were asked to rate the importance of crime control as a measure of the success of the district attorney's office. This dimension was not included in the section of the survey pertaining to individual success (the reason being that no individual prosecutor can or should be seen as affecting crime rates). For organizational success, the dimension was best represented by two items, pertaining to fewer defendants re-arrested after prosecution and lower crime rates. Having fewer re-arrests among defendants after prosecution was considered important or very important for defining organizational success by a majority of respondents (54 percent), while 17 percent judged lower re-arrest rates to be of little importance or unimportant (Figure 2.3.1-19).

Similarly, nearly two-thirds (65 percent) of prosecutors considered lower crime rates to be important or very important, while only 10 percent considered lower crime rates to be of little importance or no importance (2.3.1-20). The importance of both re-arrest rates and crime rates for defining organizational success was rated higher among respondents in Northern County than among respondents in Southern County. The observed differences were not statistically significant for ratings of the importance of re-arrest rates but were significant for crime rates ( $p=.027$ ,  $F=5.034$ ,  $df=1$ ); moreover, there was a significant interaction between jurisdiction and level of experience ( $p=.045$ ,  $F=2.764$ ,  $df=3$ ), such that the difference between jurisdictions was only evident among respondents with 5 to 10 years of experience. For both re-arrest rates and crime rates, importance ratings declined slightly with increasing levels of experience. However, the differences across levels of experience were not statistically significant, after controlling for differences between jurisdictions and the interaction between jurisdiction and experience.

**Figure 2.3.1-19 Responses to the question: “Fewer defendants re-arrested after prosecution is important for office success,” by research site**



**Figure 2.3.1-20 Responses to the question: “Lower crime rates is important for office success,” by research site**



### Individual perceptions and justice

Prosecutors generally defined their jobs in terms of justice. They routinely noted that their job was to *do justice*, to *ensure justice for defendants, victims, and the community*, and to *get a just outcome in every case*. Justice was not defined in terms of convictions or severe sentences. Rather it was defined as *doing the right thing*. Sometimes, this meant ensuring a conviction or a severe sentence. But often this meant declining to prosecute a case, reducing the charges in a case, or offering a lower plea. In the end, it was often simply stated as *getting the right outcome given the circumstances*.

### 2.3.2 Consistency and Flexibility

Although there was a clearly articulated philosophy of “doing justice” in each jurisdiction, this was not necessarily seen as the same thing as consistency in outcomes. Doing justice was seen as being fair or considering the implications of decisions for defendants, victims, and society.

Consistency was seen as uniformity in outcomes or, at the least, uniformity in decision-making.

Yet, in some cases, ADAs recognized that the difficulties in determining just outcomes often led them to see consistency *as* justice. One ADA in Northern County observed that while ADAs were told to do justice, this did not tell them how to handle a case – *there is no way to do justice in an absolute sense*. Therefore, some ADAs *focus on treating similarly situated defendants the same* since, according to some ADAs, *this is the only approach that makes sense*.

Indeed, in both offices, managers put mechanisms in place that were designed to ensure consistency in outcomes and decision-making processes. As the deputy district attorney in Southern County noted, supervisors wanted to ensure that *personal opinions are not allowed to translate into inconsistency in outcome*. The goal was to *discuss the general expectations and norms of the office and mediate personal opinions*. This was achieved through strategies like division of staff into small units or teams, routine case review within units, supervisor approval of pleas, and review of overall case statistics. In Southern County, most units relied on routine “roundtables” in which individual cases were discussed and, in some instances, plea offers and dismissal decisions made. As one unit manager in Southern County noted, these roundtables were *where peoples’ opinions tend to stick out* and where such opinions *are corrected*. The offices also took steps to avoid hiring individuals with opinions that differed widely from those of the DA. As the deputy in Southern County noted, the office tried *to avoid hiring zealots* – or those *not open to prioritization of cases and who do not realize that they cannot go to the max on every case*. In other words, the office tried to avoid hiring prosecutors who would tend to be overly punitive or harsh, supporting the discussion above that the *norm* in the office was an adherence to less punitive attitudes or, at least, mixed punitive attitudes.

In the end, inconsistency in Southern County was generally not a concern; the office was divided into units by crime type with no two units prosecuting the same offenses. As the DA in Southern County noted, *within teams inconsistency is likely attenuated* due to *tight supervision* and

*roundtabling of cases.* The use of roundtabling was discussed by all respondents in Southern County. In this particular office, the practice was nearly universal and occurred on a very regular basis, with the exception of the misdemeanor unit which was comprised of the least experienced ADAs. Thus, ironically, the least experienced ADAs in Southern County – those likely with opinions furthest from the norm – are not corrected through the use of roundtables. For other units, however, the roundtable is often used to determine the charges to file and the plea offer to make, resulting in a great deal of consistency in outcomes across cases. As discussed in Section 2.5, this particular strategy often determines the outcomes of cases in other ways, particularly in the face of limited resources and time constraints. When court space was limited, the group rather than the individual prosecutor often made the decision to alter a plea offer or dismiss a case in order to make space for *more important* cases.

Similar roundtables did not occur in Northern County. The domestic violence unit in Northern County had formal monthly meetings to discuss cases and monthly trainings in which they went over files; according to the unit manager, this was largely because many young ADAs were in the domestic violence unit and *needed that direction*. In contrast, the sensitive crimes unit in Northern County (which handles all sex offenses) never met as a group to discuss cases but encouraged informal interactions among unit members to discuss cases. Northern County did have a similar structure of small units which was intended to similarly attenuate inconsistency. However, this attenuation was seen as dependant largely on peer pressure from colleagues. As a unit manager in Northern County noted, *people in units try to be consistent with each other*. A perceived need for greater consistency led to a change in the structure of the office into general crimes teams, which prosecute both felony and misdemeanor offense types not handled by specialized units, and the staffing of these general crimes teams with both experienced and inexperienced ADAs. The goal

was to have inexperienced ADAs working alongside experienced ADAs, who would act as a sounding board for new ADAs and teach new ADAs office norms for handling cases. Moreover, Northern County has several general crimes units which handle identical cases. As such, there is more potential for inconsistency across the office in handling similar cases. This potential was recognized by ADAs, who noted that *there is a great deal of consistency within units, but across units there may be some inconsistency*. In fact, ADAs in Northern County indicated that consistency in the office was likely impossible. Several ADAs expressed concern about *inconsistency across judges*, noting that there is no need to worry about inconsistency in the office *because judges are so different that once you get to court, inconsistencies will be introduced anyway*. In the end, in Northern County the only strict level of supervision over decision making comes at the plea offer stage in which any recommendation for prison must be run by a supervisor; no other decisions need be discussed with colleagues or supervisors.

While consistency was seen as important, many respondents also maintained that there was a need for flexibility. In fact, in both jurisdictions, there was a sense that the office could *use the fact that people have different opinions to make things better, by getting people to debate how to handle cases*. In some respects, consistency was not always seen as a clear goal of prosecution. In fact, inconsistency was often seen as acceptable, particularly by new ADAs in Southern County. As noted above, new ADAs work on the misdemeanor unit and do not roundtable cases like other units; rather, they are supervised by one unit manager who monitors decisions after the fact. As several new ADAs noted, each individual prosecutor has *particular types of offenses that they care about more* and for which they are *more opinionated* and *take a particular approach that may be [their] own*. As one ADA noted, he *hated people who pass stopped school buses*. While the ADA acknowledged that he could *offer something similar to his colleagues*, he did not; other ADAs may

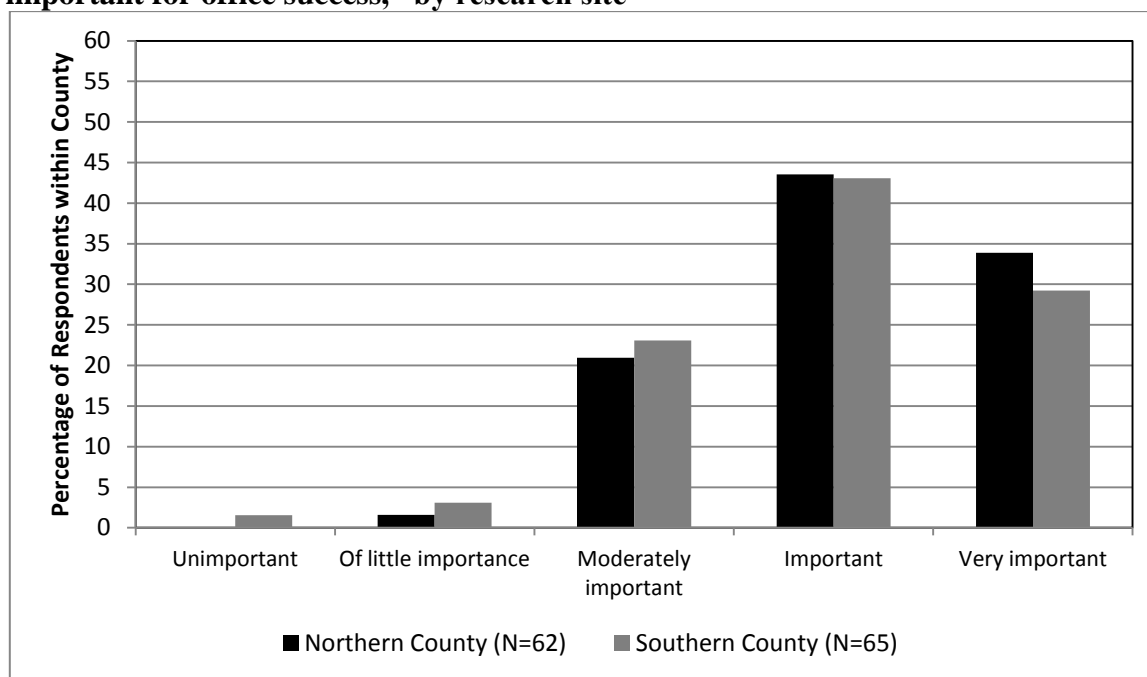
*not care about passing a stopped school bus and will plead it down to something else*, but he told defendants that *they can either plead guilty to that offense or go to trial*. Other new ADAs in Southern County saw consistency as consistency in approach rather than outcome, noting that *consistency lies in supporting each other on decisions, not necessarily in giving the same deals or getting identical outcomes*. Again, as noted above, this approach was supported by supervisors in Southern County who maintained that individual prosecutors were allowed to seek outcomes outside the norm as long as the prosecutor could justify the result. In Northern County, ADAs also were generally willing to accept a certain level of inconsistency in outcomes. Since prosecutors *are dealing with facts that control what is done*, prosecutors argued that *inconsistencies are bound to occur because no two cases have the same facts*. According to some ADAs, *they were comfortable with other prosecutors coming to different conclusions than their supervisors*, as long as *unit managers know what ADAs on their unit are doing*. Thus, according to some ADAs in Northern County, inconsistency in outcomes was acceptable as long as it was supervised.

As this discussion indicates, prosecutors who participated in the focus groups expressed a mixture of concern about consistency, confidence in the processes in place to promote consistency, and acceptance of a certain degree of inconsistency. Ratings by the broader sample of prosecutors who responded to the general survey were less mixed. Large majorities identified consistency as an important goal. Nearly three-quarters of respondents (74.8 percent) considered similar outcomes for similar cases *within* units to be important or very important in defining organizational success, while only 3 percent considered it to be of little importance or unimportant (Figure 2.3.2-1). Consistent with the focus group responses, respondents were slightly less concerned about consistency *across* units. Sixty-three percent of respondents considered similar outcomes across units to be important or very important, whereas only 10 percent considered it to be of little

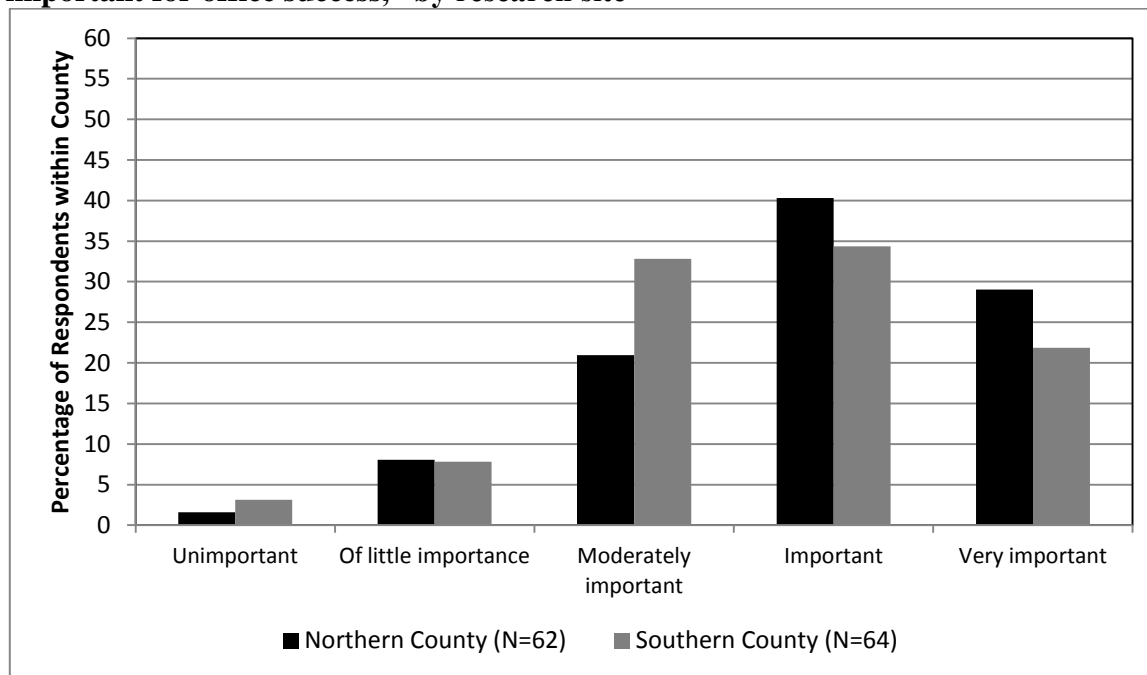


importance or unimportant (Figure 2.3.2-2). Roughly 87 percent respondents agreed or strongly agreed with the statement: “For similar cases, there should be a great deal of consistency across prosecutors *in the factors that influence the decision* in a case [emphasis added],” while only 4 percent disagreed, and none disagreed strongly (Figure 2.3.2-3). The average level of agreement did not vary significantly across jurisdictions or level of experience for any of the three items related to consistency.

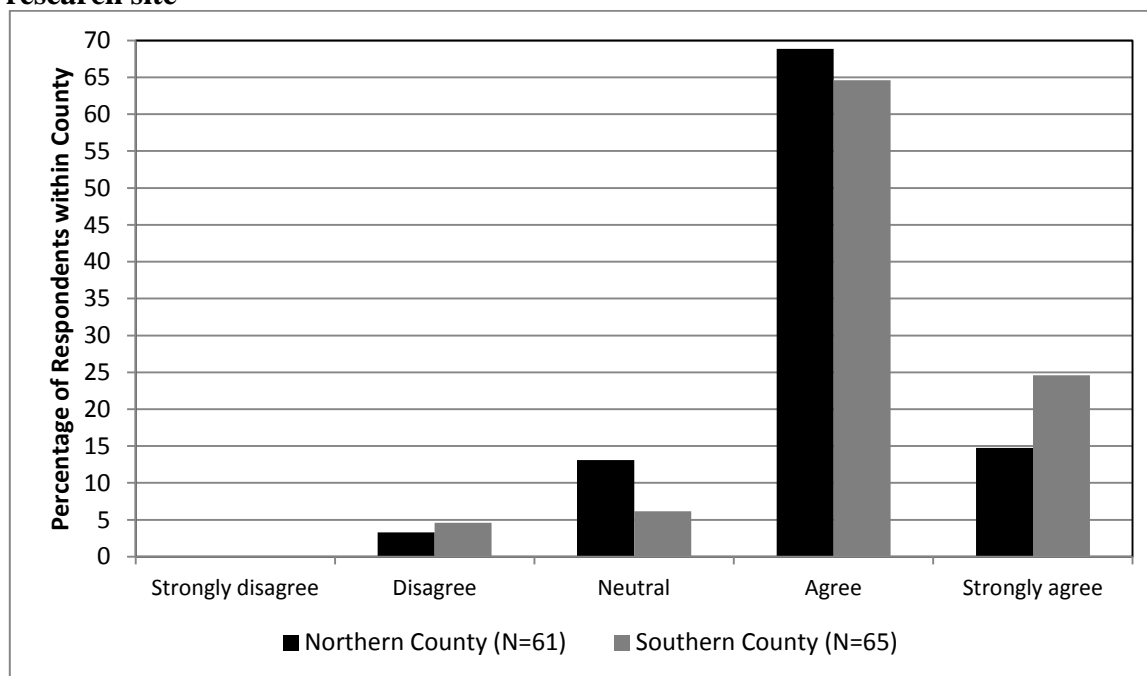
**Figure 2.3.2-1 Responses to the question: “Similar outcomes for similar cases within units is important for office success,” by research site**



**Figure 2.3.2-2 Responses to the question: “Similar outcomes for similar cases across units is important for office success,” by research site**



**Figure 2.3.2-3 Responses to the question: “For similar cases there should be a great deal of consistency across prosecutors in the factors that influence the decision on a case,” by research site**



There is some question as to the appropriate interpretation of these findings. Some of the focus group discussions explicitly distinguished between consistency of outcomes and consistency of

approach while others did not; as a result, it was not always clear which form of consistency prosecutors were discussing, which may explain variation in responses. However, prosecutors' responses to the general survey showed less variation in their support for consistency in both decision criteria and outcomes. The statement that elicited the strongest agreement (87 percent) referred explicitly to consistency in decision criteria, but substantial majorities of respondents also rated consistent outcomes within units (75 percent) and consistent outcomes across units (63 percent) to be important objectives for defining organizational success. It is possible that the survey responses reflected primarily abstract ideas, while the focus group discussions may have reflected more pragmatic views about what it is possible to achieve.

### 2.3.3 Efficiency

Unlike justice and consistency--which focus on process and how case outcomes affect defendants, victims, and society--efficiency was a goal of the prosecutor's office that clearly focused on how cases affected the office itself and the court system generally. Moreover, unlike justice and consistency, efficiency as a goal was also difficult for supervisors to convey to new ADAs. The deputy in Southern County noted that *the toughest thing to get across to new ADAs is that they cannot try all cases* and, as ADAs are promoted from the misdemeanor unit to felony units, *supervisors must keep repeating the lesson*. This was echoed by unit managers in Southern County, who routinely instruct new ADAs *that they have to dismiss, plead down, or otherwise get rid of cases*. And newer ADAs in Southern County clearly recognized the tension between doing their job and ensuring efficiency; one new ADA in Southern County saw the job as *to get rid of every case*.

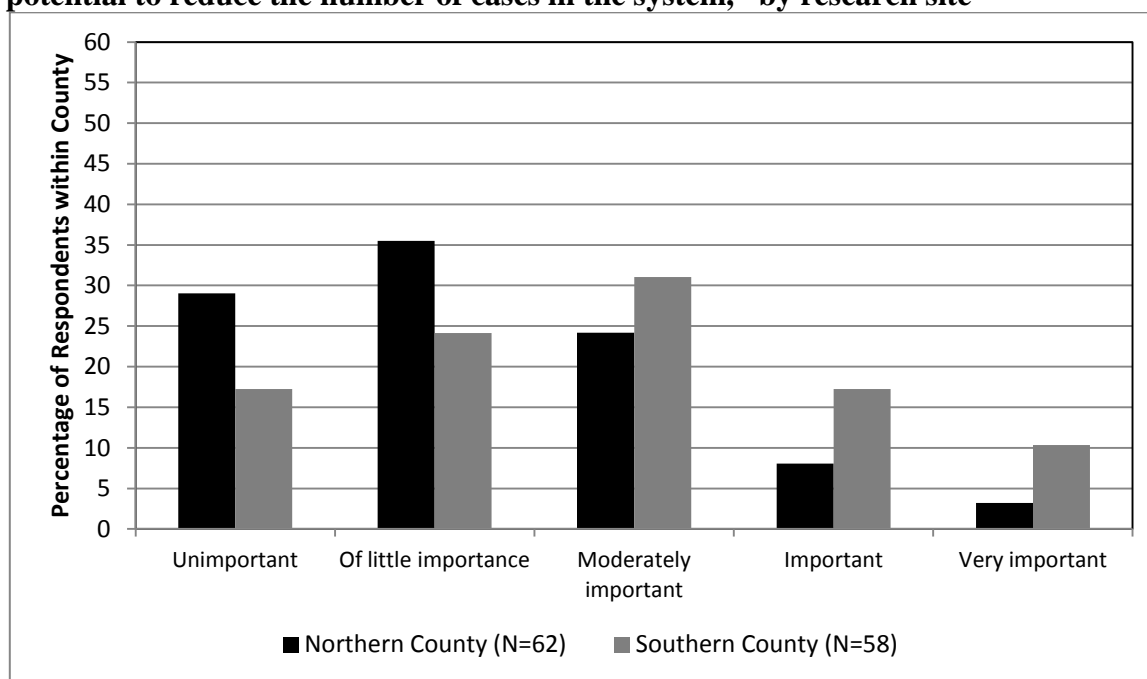
In some instances, prosecutors saw their role more broadly as gatekeepers to the criminal justice system. As such, they often saw themselves as ensuring efficiency not just in the district attorney's

office but for the entire system as well. One ADA in Northern County argued that *prosecutors see themselves as stewards of criminal justice resources* and seek to *move minor cases to municipal court* so they could *do better justice to more serious crimes*. Often, the prosecutor's office was seen by ADAs as the only party interested in efficiency. This was particularly true in Southern County, in which judges do not carry dockets, rather they rotate through courtrooms according to a set schedule which lasts just a few weeks. As the deputy in Southern County noted, *in most jurisdictions, judges, the public defender, and the DA have a need for efficiency*, but with judges not having their own calendar, *judges have no need for efficiency except to get out of court*; in turn, the deputy maintained that *the public defender has some interest in delay which means it is only the prosecutor that has an interest in efficiency*.

The general survey revealed similarly mixed opinions regarding the importance of efficiency, which may be a reflection of the difficulty in communicating the need for efficiency to new ADAs and the clear tension that exists when decisions on individual cases must be made for efficiency reasons. On the one hand, 88 percent of respondents agreed or strongly agreed that the quick resolution of cases is a legitimate goal of the criminal justice system, with no significant differences in average level of agreement by jurisdiction or level of experience. On the other hand, prosecutors were divided in their ratings of the importance of expediting cases. A majority of respondents (53 percent) considered it to be of little importance or unimportant to examine cases at screening in terms of their plea bargaining potential, their potential for early disposition, and their potential to reduce the number of cases in the system, while 19 percent considered it important or very important. Among the choices offered in the general survey for priority consideration at screening—expediting cases, examining the appropriateness of diversion, assessing convictability, and considering constitutional or evidentiary issues—expediting cases received the lowest ratings of

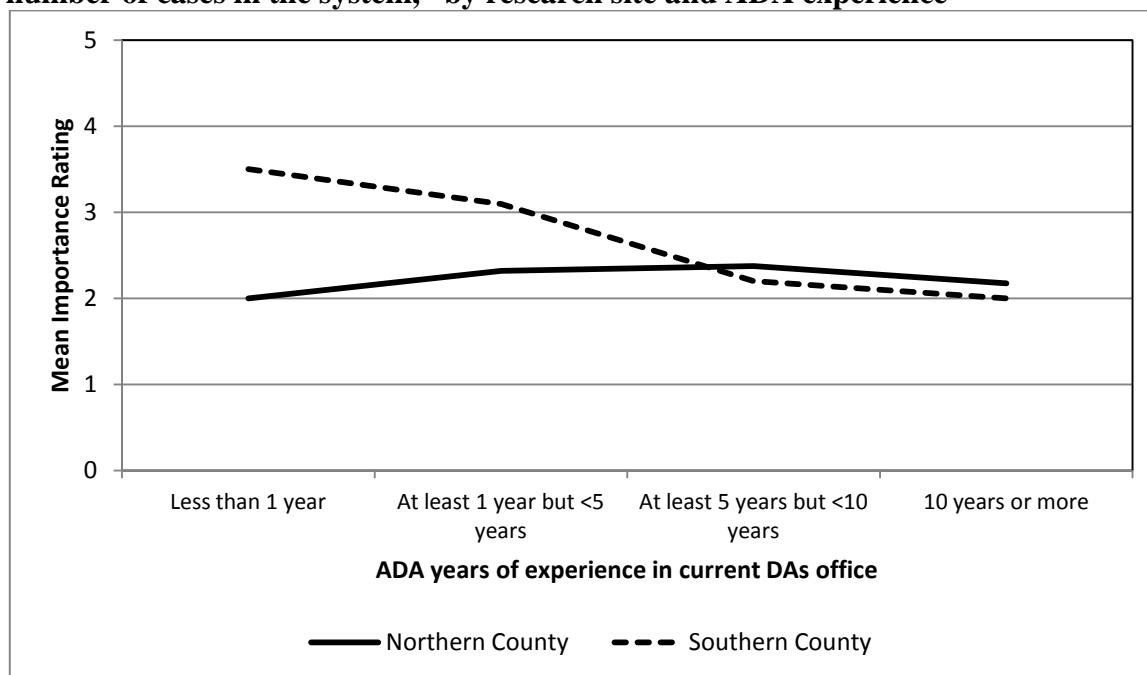
importance. The average rating for the importance of expediting cases was significantly higher among prosecutors in Southern County than among prosecutors in Northern County ( $p=.050$ ,  $F=3.925$ ,  $df=1$ ) and the average ratings declined with increasing levels of experience for Southern County ( $p=.069$ ,  $F=2.428$ ,  $df=3$ , for the interaction between jurisdiction and level of experience) (Figure 2.3.3-2).<sup>4</sup>

**Figure 2.3.3-1 Responses to the question: “How important is it to examine cases at screening in terms of their plea bargaining potential, their potential for early disposition, and their potential to reduce the number of cases in the system,” by research site**



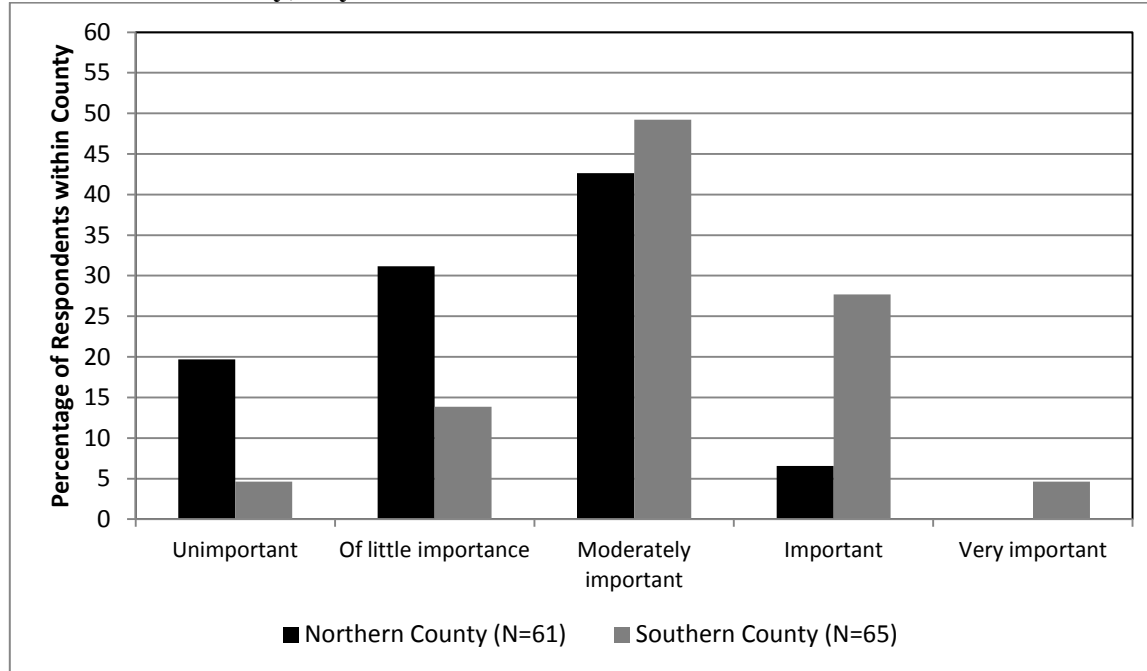
<sup>4</sup> The decline in the importance of expediting cases associated with increasing levels of experience may be an artifact of confounding between experience and unit assignment in Southern County. All first-year ADAs and some second-year ADAs are assigned to the misdemeanor unit, where the pressure to expedite cases is the greatest. Unfortunately, the survey data available for these analyses did not include unit assignment of the respondents.

**Figure 2.3.3-2 Responses to question: “I examine cases at screening in terms of their plea bargaining potential, their potential for early disposition, and their potential to reduce the number of cases in the system,” by research site and ADA experience**



Prosecutors were also divided in how frequently they said they were willing to adjust their decisions in order to increase courtroom efficiency. Only 20 percent said they were willing to do so frequently or very frequently, whereas 34 percent said they were rarely willing or never willing to adjust their decisions for the sake of efficiency (Figure 2.3.3-3). The average frequency rating for willingness to adjust decisions for the sake of efficiency was significantly higher among respondents in Southern County than among respondents in Northern County ( $p=.000$ ,  $F=13.946$ ,  $df=1$ ). Controlling for the difference between counties, there were no significance differences in average frequency rating across levels of experience.

**Figure 2.3.3-3 Responses to the question: “I am willing to adjust my decisions to increase courtroom efficiency,” by research site**



The goal of efficiency – and to some extent the *need* for efficiency – is discussed in greater detail in Section 2.5, in which resource constraints and their impact on decision making are discussed. The higher ratings of the need to expedite cases and adjust decisions in order to increase courtroom efficiency in Southern County are likely the result of specific constraints on access to courtrooms in that jurisdiction. As we discuss below, the limited court space for trying cases has led prosecutors in Southern County to routinely re-evaluate cases to determine which are the most important to try; as a result, more cases are considered for early pleas and dismissals in order to free court space for more serious cases.

#### *2.3.4 Prosecutors’ Perspective on the Goals of Prosecution*

In both offices, the District Attorney had a simple philosophy to “do justice.” Individual prosecutors and prosecution units were granted considerable discretion with little formal guidance for translating that broad philosophy into operational objectives. As a result, there is the potential for the decision making of individual prosecutors to reflect their personal beliefs and for the

definition of “justice” to take on several conflicting meanings. Taken together, the focus group discussions and the survey responses revealed substantial variation in prosecutors’ beliefs and opinions concerning the general goals and functions of the criminal justice system, objectives that define success for individual prosecutors, and objectives that define success for the district attorney’s office. The question is whether these variations translate into differences in how prosecutors evaluate cases or in actual case outcomes.

## 2.4 Strength of the Evidence and Severity of the Case: Case-Specific Factors in Decision Making

As expressed by many prosecutors in the focus groups, a clear philosophy does not provide clear guidance on how to handle a case; rather, as one prosecutor noted, *decisions are based on the facts of the case*. Thus, when examining how prosecutors make decisions, case specific factors are paramount. Prior research has consistently shown that case-specific factors – primarily, strength of the evidence, seriousness of the offense, and defendant criminal history – drive prosecutorial decision making (Spohn & Holleran, 2001). According to prosecutors, these three factors come together to determine how to process a case. Understanding how these factors are used in processing a case, however, is less clear. Interviews with prosecutors revealed that these factors are used to answer two fundamental questions. Strength of the evidence is used to answer the question: Can I prove the case? In other words, prosecutors look to the strength of the evidence to determine if a case can be prosecuted and result in a conviction. Seriousness of the offense and defendant criminal history are then used to answer the question: Should I prove the case? In other words, while strength of the evidence may indicate that a case can succeed at trial, prosecutors then look to other factors to determine if a case should be prosecuted and result in a conviction. Answers to both of these questions may evolve over time, as evidence deteriorates or new evidence comes to light,



as more complete information about defendant characteristics and circumstances becomes available, and as external circumstances influence prosecution strategies or the prioritization of cases. The following sections examine how prosecutors evaluate strength of the evidence and other case-specific factors and how these ultimately affect decision making.

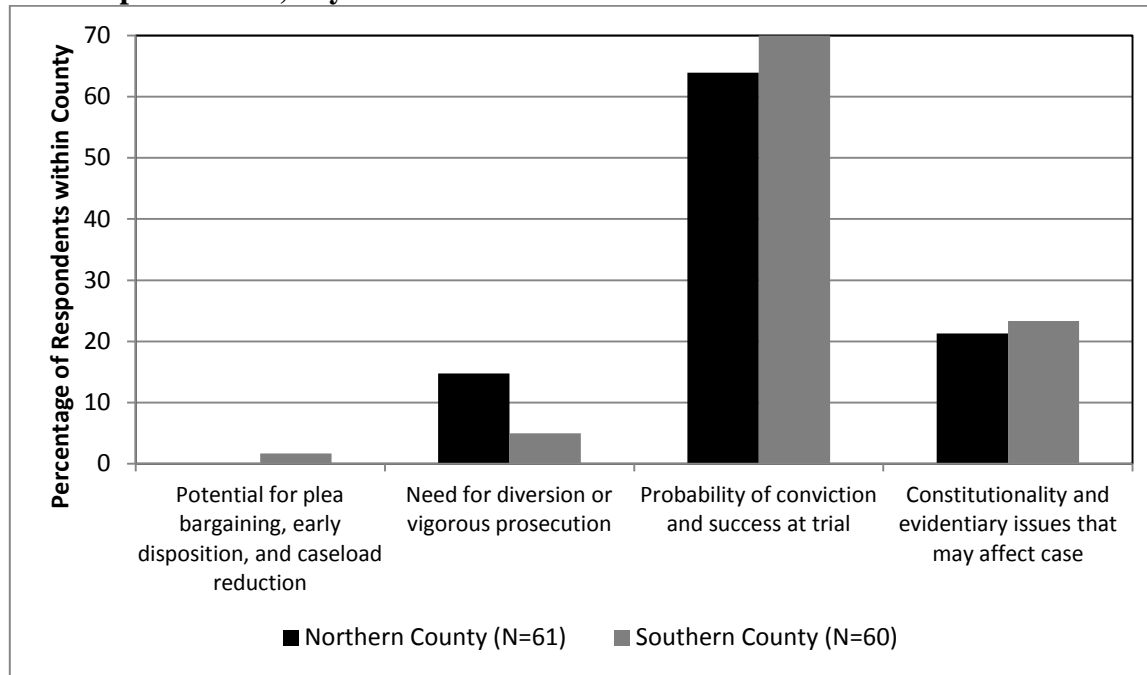
#### 2.4.1 *Strength of the evidence*

According to prosecutors, the most important factor considered in determining whether a case will go forward is the strength of the evidence. In all of the focus groups, all prosecutors stated that a case will not be accepted for prosecution unless it has strong evidence. As the DA in Southern County noted *if the prosecutor cannot prove the case, it does not matter if the crime is the worst imaginable or the defendant is the worst you have ever seen – if you cannot prove the case then it doesn't matter*. In both counties, the standard used to evaluate strength of the evidence was likelihood of success at trial. Prosecutors *examined the case on the merits*, determining first, *if the facts are present* and, second, *if the evidence was there to support the facts*.

This consensus extended to the broader sample of prosecutors who responded to the general survey. Over 95 percent of respondents said that convictability and probability of success at trial were important or very important considerations in screening cases. Asked to choose which of four factors is the most important consideration in screening cases, two-thirds chose probability of conviction and success at trial, three times the fraction that chose constitutional issues (22 percent), and nearly seven times the fraction that chose deciding between diversion and vigorous prosecution (10 percent) (Figure 2.4.1-1). (Only one respondent chose the fourth option—relating to aspects of the potential for expediting the case—as the most important consideration at screening.) Average responses did not vary significantly by jurisdiction or level of experience for either the importance

rating for convictability considered alone or for the choice of the most important factor to consider at screening.

**Figure 2.4.1-1 Responses to question: “The most important consideration when screening a case for prosecution,” by research site**



While prosecutors agreed that strength of the evidence guided decisions, particularly at screening, the study sought to explore how prosecutors defined strong evidence, what determined strong evidence, and how the evaluation of the strength of evidence varied throughout the life of a case. Three general themes emerged from the focus groups that begin to unpack the nuances of strength of the evidence: the quality of information received, the types of information received, and the variation in the importance of information by crime type.

### Quality of information

Evaluating and determining strength of the evidence is not a straightforward decision. Access to information and the timing of information delivery are the first obstacles that must be overcome in the evaluation of evidence. While a case may have strong evidence, if it is not delivered to the prosecutor in a timely fashion, the case may not proceed. The primary hindrance to properly

evaluating strength of the evidence is access to information or, at the least, access to information in a timely manner. The goal is to get as much information as early in the process as possible. At the earliest stages of the process, however, prosecutors are completely reliant on law enforcement to supply the information, which, according to the DA in Northern County, *is not contextualized information – information that allows a prosecutor to see multiple angles of a case*. In other words, the information is necessarily incomplete. And, as one ADA in Southern County noted, *there is information that the prosecutor does not even know to ask for*. As a result, prosecutors in both jurisdictions push officers to get more information to prosecutors at screening. Often prosecutors will pend cases at screening (i.e. not make a decision) and request officers to acquire additional information before the prosecutor will make a decision to accept or decline a case. In Southern County, prosecutors give law enforcement ten to fourteen days to produce the additional information. As we discuss in the following chapter, this creates some tension between the prosecutor and law enforcement.

When discussing strength of the evidence, prosecutors focused primarily on the initial screening decision as the stage at which the evaluation of the strength of the evidence is paramount. And, since all of the information at screening is derived from law enforcement, prosecutors agreed that *the evaluation of the quality of evidence is affected by who collects it*. As we discuss in the following chapter, the relationships with officers – knowing who the “good” officers are and who the “bad” officers are – is important to determining how a case proceeds. To a certain extent, these relationships also determine how evidence is evaluated. Moreover, as we discuss in the following chapter, recent changes in the primary municipal police departments in each jurisdiction have affected the quality of information delivered to the DA’s office. According to prosecutors in both jurisdictions, the primary police department has started to devote fewer resources to investigation;

as a result, less information is delivered to prosecutors at screening and, according to most prosecutors, the quality of information delivered has decreased. In other words, prosecutors maintained that they now received less information and the information that they do receive is of a lower quality. While an evaluation of the actual quality of information currently delivered to prosecutors is beyond the scope of this study, the responses clearly indicated that the amount and quality of information was vitally important to prosecutors' feelings that they could carry out their jobs and effectively prosecute cases.

The quality of the evidence also may change over time. Although evidence may be strong at the beginning of a case, it may weaken over time. As one ADA in Northern County noted, *as soon as you put a case through intake, the expiration date starts*. This is primarily because *there are always holes in the information*. The declining strength of evidence is also particularly true for cases that rely on victim and witness testimony. Prosecutors noted that *witnesses are passionate right after an event, but are less passionate three years later, particularly marginal witnesses*. Prosecutors also noted the problem of *simple memory loss over time which makes witnesses look bad*. This *expiring of information* over time determined how prosecutors evaluated different types of information in their determination of the strength of evidence.

### Types of information

Obviously, not all evidence is equal. In determining whether evidence is strong or weak, prosecutors look to several things. According to ADAs in Northern County, *strong evidence includes scientific evidence, confessions, witnesses*; prosecutors were quick to point out that it is generally not one piece of evidence that makes a case strong, but *all of the pieces together determine when evidence is strong*. Moreover, strong evidence also involves having *the right evidence for the case*. As a unit manager in Northern County noted, *it comes down to what you*

*would expect the evidence to be, or whether the evidence is there when you expect it to be there.*

What prosecutors expect is also driven by what juries will expect. As noted above, the primary metric in evaluating strength of the evidence is probability of success at trial. As a result, evaluating the types of information depends partially on how a jury may evaluate the information. As one unit manager in Northern County noted, *there are expectations among juries now of certain evidence in certain cases.* For example, prosecutors noted that *videos are now used in all arrests for DUI and people are expecting to see a person very drunk in the videos;* however, as one ADA pointed out, *not everyone looks really drunk in the videos.*

Although prosecutors must rely on witnesses in many cases, credibility issues with witnesses or victims often require prosecutors to re-evaluate the strength of the evidence. Evidence that may appear strong at the beginning of a case may, indeed, be weak once witnesses are interviewed. Thus, physical evidence is weighed more heavily than testimonial evidence, *which may change over time and is open to cross examination.* As one ADA in Northern County noted, *the quality of physical evidence is less likely to change over time and is less open to interpretation.* Physical evidence *is generally seen by all parties as the same thing – everyone will agree that a gun is a gun;* in contrast, *testimonial evidence will be interpreted differently by different people and the jury may interpret it very differently than the prosecutor.*

Testimonial evidence, particularly from victims, was discounted by many of the prosecutors in the focus groups. As one unit manager in Northern County noted, when screening a case *prosecutors often think about if they can prove the case without the victim showing up and look for evidence that allows the prosecutor to prove the case without a witness.* In some instances, prosecutors took hostile attitudes toward victims. As one ADA in Northern County noted, “If the victim does not care about the case, why should I?” The evaluation of the victim is often subjective

as well. A new ADA in Southern County noted that *it is very difficult to determine which witnesses are credible*; as a result, this particular ADA tried *to read people and body language and evaluate what people were telling her*.

Evaluating victim or witness testimony is also problematic when a victim or witness was also once a defendant. Prosecutors in both jurisdictions commented that most of the crime in their jurisdictions occurs in fairly concentrated areas and that many of their victims are also defendants in prior or pending cases. A unit manager in Southern County admitted that in felony cases it was *very difficult to work with victims who were once defendants*, but maintained that *if the evidence is there and the victim is accessible, then the case will proceed*. However, in one case screening observed in Northern County, the victim's prior criminal record and pending criminal cases were weighed heavily in the screening decision. In this particular case the individual was the victim of a shooting, but also had been prosecuted several times and had open cases. The credibility of the victim's potential testimony was weighed heavily in the decision to prosecute; while not unsympathetic to the victim's injuries, the screening ADA also saw the victim as a liability to the case and chose not to accept it for prosecution.

While there was general agreement about what types of evidence were stronger than others, it also was clear that this evaluation varied by offense type. Respondents were in general agreement that evidence in drug and gun cases was generally strong relative to other offense types, largely because such cases relied primarily on physical evidence. This may explain the generally lower declination rates and higher conviction rates for drug offenses relative to other offense types (see Part 3). Also, while physical evidence was generally seen as stronger than testimonial evidence for all offense types, testimonial evidence was often seen as equally or more important in sex crimes and domestic violence cases. As the unit manager of the sensitive crimes unit in Northern County

noted, “testimonial evidence is always important because often that may be all that you have.” Indeed, prosecutors handling sex crimes and domestic violence pointed out that *there is often very little evidence to evaluate in sex offenses and domestic violence*. As a result, *the strength of the evidence may depend on a single witness – the victim in the case*. In turn, according to prosecutors, *the lowest common denominator is: will the jury believe the victim?*

Since victims and witnesses are primarily involved in person offenses, cases involving these types of offenses are more likely to be affected by the re-evaluation of evidence over time and, as a result, more likely to be dismissed or amended as the case proceeds. Thus, domestic violence cases are often subject to re-evaluation of evidence over time. As the unit manager of the domestic violence unit in Northern County noted, *the longer it takes a DV case to get to trial, the less chance there is to get the victim to show up*. Another ADA in Northern County expressed it this way, “Actually, anything that involves people, after time passes, the reward just isn’t enough.” As discussed in Section 2.5, the significant delays in court processing time, largely the result of fewer courts in each jurisdiction, may be affecting person offenses more than other offenses, largely because of this reliance on victims.

#### 2.4.2 *Severity of the offense, defendant criminal history, and other case-specific factors*

Prosecutors clearly saw a distinction between the strength of the evidence and the merits of the case. Strength of the evidence is a necessary but not sufficient condition for a case to proceed. It merely answers the question, “Can I prove the case?” Once a prosecutor determines that there is strong evidence and they can, indeed, prove the case, they answer a second question, “Should I prove the case?” As one unit manager in Northern County noted, “the volume of evidence determines if I can prove a case, but the specific circumstances determine whether I should prove a case.” Basically, prosecutors determine if the case is serious enough to merit charges. In answering

this question, prosecutors consider the severity of the offense, the defendant's criminal history, and other defendant and case-specific factors. Prosecutors admitted that while a serious offense with weak evidence may proceed, a non-serious offense with strong evidence may, in turn, not proceed. As we discuss in Section 2.5, often this is due to resource constraints that prevent the district attorney's office from pursuing all viable cases; with limited staff and court time, units or individual prosecutors may choose, for example, to pursue person offenses involving injury or weapons over cases involving threats of injury or no weapons.

While statutory offense categories clearly delineate the severity of one offense relative to other offenses, these statutory provisions often do not align with local evaluations of offense severity; as a result, prosecutors' evaluations of offense severity are often determined by practical considerations. As one ADA in Northern County noted, *prosecutors have to worry about the 'I don't care' sentiment of the jury in bringing less serious cases*. Even if there is strong evidence, prosecutors may not bring a case *if the jury just wouldn't care*. This was seen as particularly true for drug offenses. As the unit manager of the drug unit in Northern County noted, *drug cases have a higher bar to prove to the jury; most people see all drug cases as non serious*. As a result, prosecutors in drug cases often look for *some other factor to get the jury excited – a long criminal record, gang affiliations*. As discussed above, prosecutors also rely on their own evaluations of offense severity. As one ADA in Southern County pointed out, every prosecutor has their own specific offense that they care about; as a result, individual prosecutors may rank certain offenses as more severe than their colleagues and, in turn, pursue these cases when their colleagues would not.

Defendant criminal history was the third axis nearly all prosecutors mentioned as determining whether a case would go forward. Criminal history worked in two directions in determining whether a case should be prosecuted: defendants with more serious criminal histories were more likely to be



prosecuted even when faced with weaker evidence and defendants with less serious criminal histories were sometimes considered for no prosecution even faced with stronger evidence. Again, prosecutors sought to answer the question “should I prove the case,” and often determined that *this case should proceed because this defendant is a ‘bad guy’ or this case should not proceed because this defendant is not a bad guy*. Indeed, prosecutors expressed some tension in declining cases that had weak evidence but involved a “really bad guy.” But, this also poses challenges; as unit managers in Southern County noted, *it is easy to fall into the trap of taking cases when there is serious injury or a ‘bad’ defendant*.

Although prosecutors agreed that defendant criminal history was a primary factor in determining whether a case would proceed, prosecutors noted many defendant characteristics that appeared to affect decisions as much as criminal history. In determining whether a case should be proved, *the answer often comes down to determining what is fair for the defendant*. As one ADA in Northern County noted, *the ultimate resolution of a case should be based on what is fair, not about what can be proved*. As a result, several defendant characteristics are considered: the age of the defendant, the potential impact of a conviction on the defendant, and the *demeanor* of the defendant.

Age of the defendant was often a fairly straightforward consideration. As one ADA noted, prosecutors often get cases involving *kids getting in fights in response to broken video games or some prior interaction*; prosecutor often consider it *enough to explain to the defendant, ‘you can’t do that.’* More often, however, the age of the defendant interacts with considerations of the impact of a conviction on the defendant. Prosecutors noted that they ask the questions: *what is this going to do to the defendant’s life? Do we want to have a 17 year old with a felony conviction?* Often prosecutors concluded that *pursuing a case will do more harm than good* and will choose not to

prosecute. But this is also influenced by the demeanor of the defendant. As one unit manager in Northern County noted, *the way the defendant handles himself matters*. This can include *taking responsibility for their actions* or *showing disrespect to courtroom actors*; in the former, if the offense is not severe, the case may not be pursued because the defendant is remorseful; in the latter, even if the offense is not severe, some ADAs (particularly newer ADAs) argued that the case may be pursued *to teach the defendant a lesson*. Moreover, as discussed above, new ADAs in Southern County working in misdemeanor court have very little information and very little time to devote to assessing a case when it comes in. As a result, *rather than relying on concrete information about a case*, these ADAs *rely on a feeling about a person*. Thus, in these particular cases, it appeared that demeanor of the defendant mattered a great deal. As discussed in Section 2.5, prosecutors also noted that much of the evaluation of defendant characteristics was dependant on information supplied by the defense attorney. Thus, the evaluation of defendant characteristics becomes largely dependent on the amount and quality of information supplied by the defense attorney.

While credibility and probable participation of victims may go into evaluating the strength of the evidence, *victim wishes also matter in determining whether a case should proceed*. This is a slightly different calculation than determining whether victims will actually show up for trial. Victims may not show up for trial *because they cannot be contacted or the prosecutor believes that they will not show up for trial*, which goes to the question of *ability to prove a case or the probability of success at trial*. In other instances, however, the express wishes of the victim also determine whether a case *should* proceed. As one unit manager in Northern County noted, *the system makes it worse for the victim – making them go through the process*. As a result, some prosecutors felt it was *often unfair to make victims go through it if they do not want to*. This is particularly true for certain offenses, such as sex offenses. As the unit manager of the sensitive

crimes unit in Northern County noted, in sex crimes, prosecutors *ask the victims if they want to proceed and place a lot of weight on what the victim wants*. However, this was markedly different for domestic violence cases in Northern County. As the unit manager of the domestic violence unit in Northern County argued, *most of victims of domestic violence do not want to proceed, so prosecutors do not factor in victim willingness to proceed or testify*; rather in domestic violence cases, prosecutors *try to keep the victim out of the process*. The approach of the domestic violence unit was largely shared by other prosecutors (with the noted exception of the sex crimes unit): uncooperative victims were considered when evaluating the strength of the evidence (i.e. whether victims were central to the case and whether victims could be counted on to appear at trial); but uncooperative victims or victims who did not want the case to proceed were not considered when evaluating whether a case *should* proceed.

#### *2.4.3 Improving the evaluation of evidence*

Because evaluating strength of the evidence is often difficult, the DA in Southern County reorganized the office so that more experienced ADAs were the only ones evaluating cases at screening. Part 3 of this report presents empirical analyses that examine the relationships between strength of evidence and both screening decisions and plea offers, as well as consistency of screening and plea bargaining decisions among prosecutors for cases with similar evidence profiles. Part 3 also examines the relationship between defendant, offense, and victim characteristics and case outcomes for a series of offense types. Before turning to the analyses of case outcomes, however, the following section examines contextual factors – factors outside the confines of a case – that also impact prosecutorial decision making.

## 2.5 Rules, Resources, and Relationships: Outside Influences on Decision Making

As discussed above, prosecutors determine whether a case will proceed based on case specific factors – strength of the evidence, severity of the offense, and defendant criminal history. Recent empirical research has shown that contextual factors also affect decision making in the criminal justice system. Case loads, office policies, and relationships among courtroom actors can influence charging decisions (Ulmer et al., 2007) as well as sentencing outcomes (Johnson, 2005). As prosecutors noted, *cases do not exist in a vacuum*; they exist within a system that acts as a help or a hindrance to decision making. For example, office policies may screen out certain cases even if evidence is strong or may require a specific charge or sentence in a plea offer. A lack of available support staff to track down witnesses or a lack of courtroom space may alter the ability to fully pursue a case, requiring prosecutors to reassess whether a case will proceed. A close relationship with law enforcement may lead prosecutors to accept less evidence when screening a case, while an antagonistic relationship may lead them to discount officers' version of events. The study explored three primary contextual factors that may affect decision making – rules, resources, and relationships.

### 2.5.1 Rules

While formal criminal procedural rules govern how a case may proceed, these rules do not necessarily govern decision making. Policies within the district attorney's office, however, may. For example, both jurisdictions in the current study had rules pertaining to specific offenses that, for example, required a deferred prosecution, or could not be pled down to a lesser offense, or required a recommendation of a prison sentence following conviction. Nonetheless, in both jurisdictions

prosecutors noted a general absence of formal policies or rules that governed decision making except in a very few select cases. Even when formal policies existed, the policies were often not well-publicized or well-communicated to staff. As one ADA in Northern County noted, “Office policies are urban legends.” This comment indicated a tension that existed, at least in Northern County, between a desire for some policy or guidance on decision making and a desire for unguided discretion. As the District Attorney in Northern County noted, “ADAs want 100% discretion with 100% guidance.”

While craving some guidance, few saw the absence of formal policies as a problem; rather, most noted that crafting formal policies was impossible given the complexity and uniqueness of cases. In place of formal written policies, a set of informal policies and practices pervaded each office. In many instances, these were described as “cultural norms of practice” illustrative of the guiding philosophies discussed above. As the District Attorney from Northern County noted, “You can only give guidance on basic principles.” These basic principles were then used to guide more formal policy-making within specialized units. It was the formal and informal policies within these units that more closely guided or constrained decision making in individual cases.

#### Office-wide policies

In both jurisdictions a limited number of office-wide policies dictated how ADAs were to handle a few specific cases. For example, in Southern County, ADAs were required to prosecute DUI cases above a certain blood-alcohol level and could not reduce felony residential breaking and entering to a misdemeanor. According to the deputy in Southern County, *except for DUI and residential breaking and entering, all other policies are advisory*. While the deputy did not articulate additional advisory policies, he did note the office response to those ADAs who did not follow such policies; in such advisory instances, *the ADA has to evaluate how they will feel sitting*

*across from the DA explaining why they did not follow the advisory policy.* Thus, there was a sense among prosecutors that, although additional advisory policies existed, they functioned much like formal policies since ADAs generally feared a confrontation with the DA. New ADAs in Southern County noted two additional formal policies: ADAs could not reduce a speeding ticket to driving school and could not reduce or dismiss cases involving the possession of weapons on school grounds; according to prosecutors, the latter offenses *must result in plea of guilty or a trial – only the DA can bargain these.* More experienced ADAs detailed two additional policies: residential break-ins involving defendants with no criminal history much receive at least a 30 day split sentence and armed robbery cannot be pled down to an unarmed robbery. The fact that each focus group detailed different formal policies or added formal policies not mentioned by previous groups underscores the lack of communication of policies that many prosecutors expressed. The DA in Northern County also noted that *there was conscious decision not to constrain the discretion of ADAs with written policies.* Indeed, prosecutors in Northern County described just one formal policy: *residential burglary cases should be treated as violent crimes with the expectation that the defendant will get prison.*

While office-wide policies were largely absent, the district attorney in each jurisdiction recognized the potential need for some formality. As the DA from Northern County noted, the job of prosecution *is as much about working with your heart as working with your head*, and, as a result, *sometimes decision making gets a little loose.* Thus, at times, it appeared that formal policies would provide needed direction and consistency in decision making. Indeed, some ADAs in Northern County recognized this need as well, particularly for ensuring consistency across teams that handle the same types of crimes and when changes in management occur. At the same time, ADAs and the DAs in both jurisdictions noted the problems inherent in creating formal policies. As

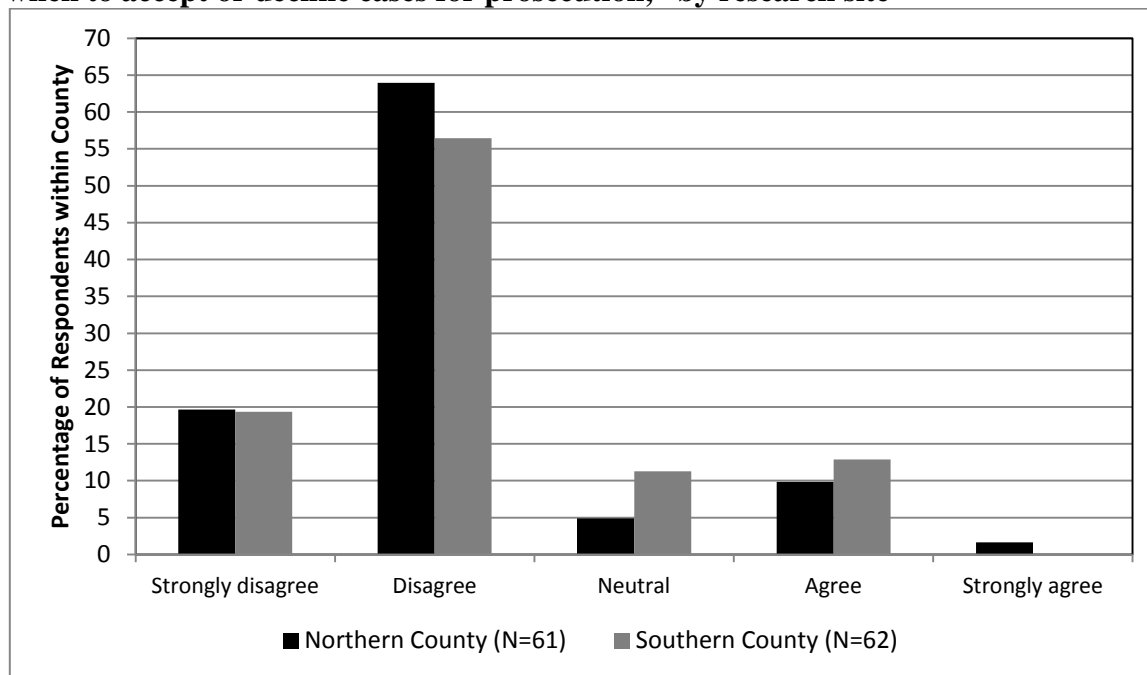
the DA in Southern County noted, *it is difficult to write a policy for screening each case due to the variation in the factors of cases. A written policy would be such a matter of judgment that it would not be of much value and would create more problems than it solves.* ADAs in Northern County also noted that rigid formal policies potentially disrupt interactions with defense attorneys and judges, *forcing defense attorneys to more aggressively argue to have charges initially filed that are not bound by the written policy and affecting prosecutors' credibility in front of the judge by tying prosecutors' hands without clearly knowing the context.* This was echoed by the DA from Northern County who described the reaction following the creation of the office-wide policy on residential burglary. Residential burglary in the jurisdiction involved a high degree of overlap between the juvenile and adult system, with many offenses committed together by a 16 year old juvenile and an 18 year old adult offender; the formal policy created a disparity between juvenile and adult court which created problems with defense attorneys who saw the disparity in treatment for defendants who were nearly identical in age. As a result, many ADAs referred to the written policy when negotiating cases with defense attorneys and, in turn, the public defender *felt concerned that ADAs were just covering their ass by following the guideline.* As ADAs in Northern County noted, *policies should be flexible and evolve over time; written policies are not flexible.* This was echoed by ADAs in Southern County, who maintained that *you could not build a rule book big enough for all the different types of cases; rather, prosecutors have a lot of flexibility and that is the only way it could work.*

The general survey did not include items that addressed directly the prevalence or advisability of office-wide policies. However, it did include items that support indirect inferences about beliefs and opinions relating to the assertions summarized above. Most respondents did not believe that their decisions were unduly constrained by office policies. Eighty percent disagreed that they felt

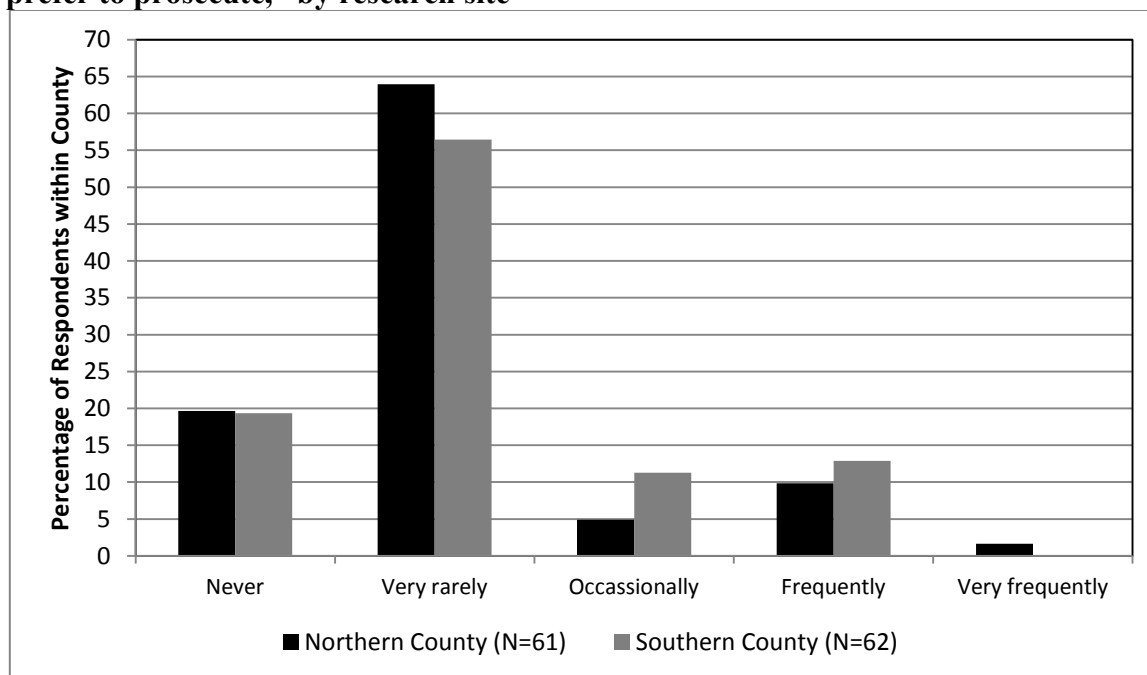
constrained by office policies and practices about when to accept or decline cases for prosecution (Figure 2.5.1-1). Over 85 percent said that office policies never or rarely compelled them to decline cases they would have preferred to prosecute (Figure 2.5.1-2). Less than 9 percent agreed that office policies require outcomes with which they disagree (Figure 2.5.1-3). These response patterns were consistent across jurisdictions and levels of experience. They could reflect an overall lack of policies at the office level, or a high degree of congruence between office policies and the individual judgments of most prosecutors. However, there was evidence presented in earlier sections of this report suggesting considerable divergence of opinion among prosecutors with respect to the fundamental purposes of the criminal justice system, the goals of prosecution, and the most effective strategies for pursuing prosecutorial objectives. In addition, more than three-quarters of respondents disagreed with the statement that “There should be more constraints on the discretion of officials in the criminal justice system.” Thus, it seems most likely that these survey responses simply reflect the general lack of formal office policies and general agreement that the high degree of discretion granted ADAs is appropriate.



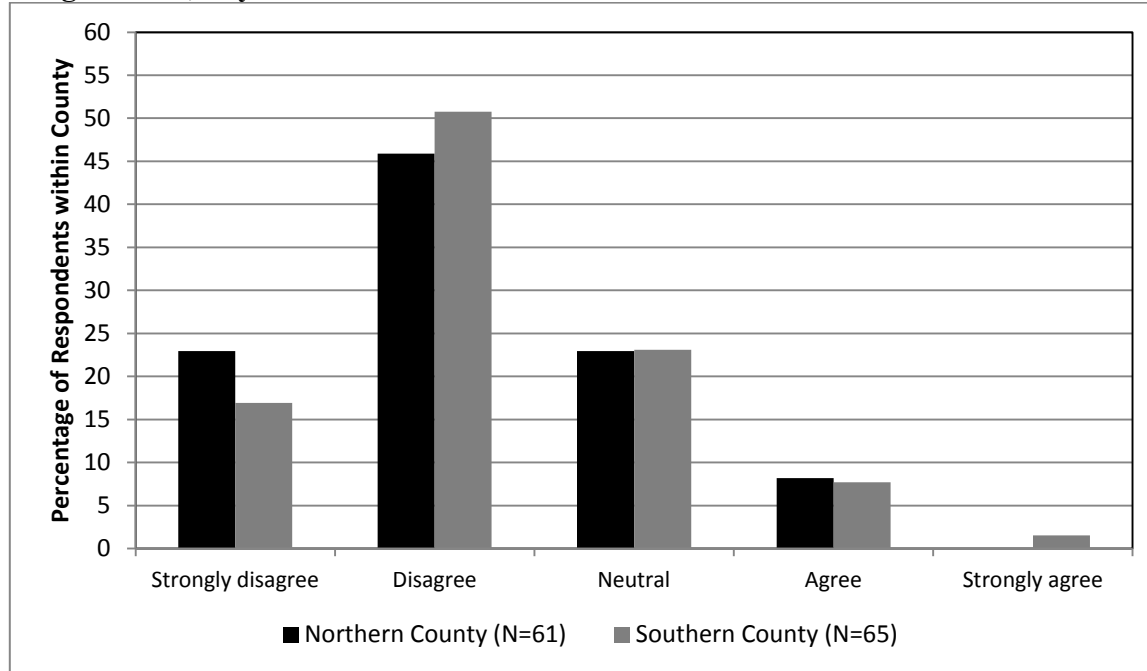
**Figure 2.5.1-1 Responses to question: “I feel constrained by office policies and practices about when to accept or decline cases for prosecution,” by research site**



**Figure 2.5.1-2 Responses to question: “Office policies compel me to decline cases that I would prefer to prosecute,” by research site**

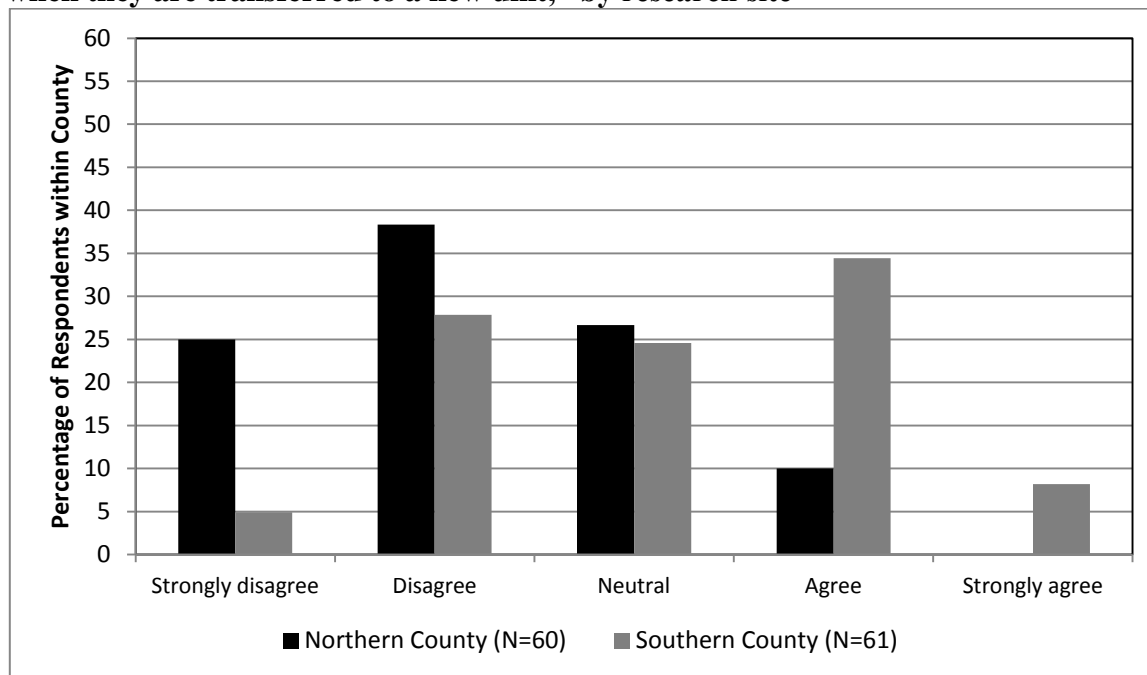


**Figure 2.5.1-3 Responses to question: “Office priorities require case outcomes that I often disagree with,” by research site**

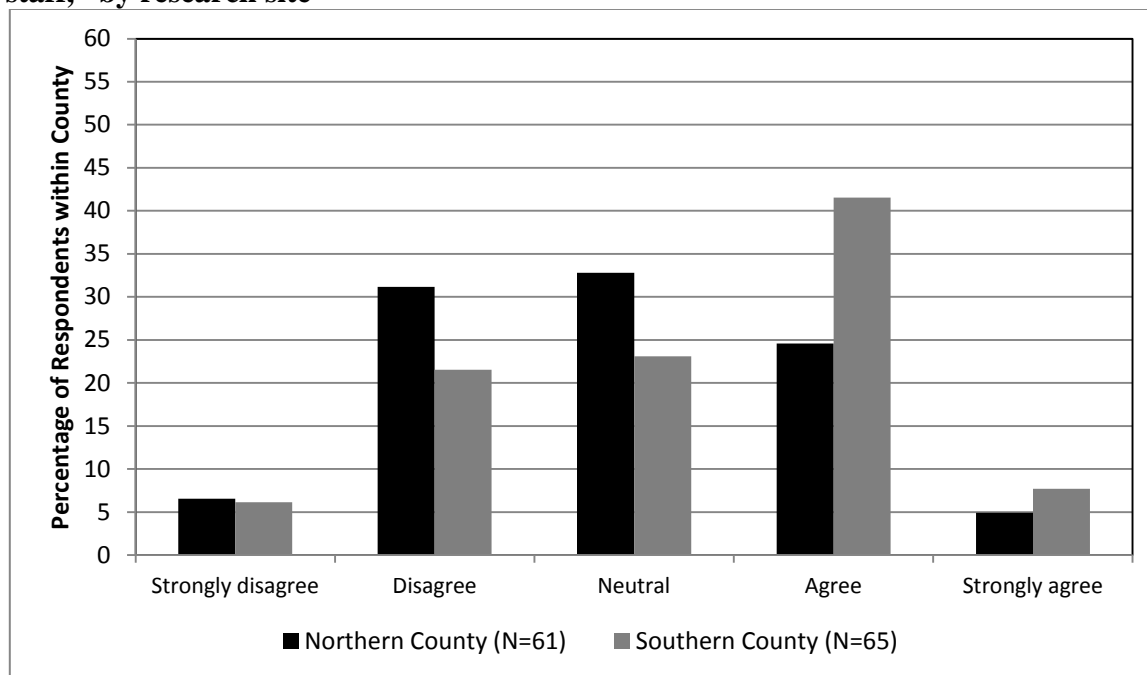


On the other hand, prosecutors who responded to the general survey in Northern County expressed a need for greater formal guidance for new prosecutors and prosecutors being transferred to new units. Only 10 percent agreed that new prosecutors receive adequate training before they start independently handling cases and only 10 percent agreed that prosecutors receive adequate training when they are transferred to new units (Figure 2.5.1-4). The opposite pattern was observed for Southern County, with 43 percent of respondents indicating that new prosecutors and transfers received adequate training. In both jurisdictions, respondents were divided with respect to whether office goals and priorities are clearly communicated to staff. For the two jurisdictions combined, nearly 40 percent agreed or strongly agreed that there was clear communication of office goals and priorities, but roughly 30 percent disagreed or strongly disagreed (Figure 2.5.1-5).

**Figure 2.5.1-4 Responses to question: “Prosecutors in my office receive adequate training when they are transferred to a new unit,” by research site**



**Figure 2.5.1-5 Responses to question: “Office goals and priorities are clearly communicated to staff,” by research site**



### Unit-specific policies

Rather than formal office-wide policies, prosecutors argued that unit-specific policies often governed decision making in both jurisdictions. Both offices are highly decentralized, with ADAs assigned to small units of four to ten prosecutors; in most cases, these units subject-specialized (e.g. drugs, weapons, person offenses, etc.), with the exception of the general crimes units in Northern County and the misdemeanor unit in Southern County. The DA in both counties then delegated supervisory and policy-making responsibilities to unit managers. As the DA in Southern County stated, *policy making was delegated to individual teams because the problems of each unit are different based on the nature of the crimes each unit prosecutes*. As the deputy in Southern County noted, *unit managers are free to make up new policies, but they must rise to some level of justification – they have to be able to justify it to the DA*. This was echoed by the DA in Northern County who *structured the office so that policy leaders are the unit managers – they are to be the people to whom young ADAs go to for advice*.

According to the DAs, this unit level approach allows for flexibility. However, it also allows for potential inconsistency across teams that handle similar cases and across time, as new unit managers are promoted. For example, in Southern County a unit captain had a policy of accepting all or nearly all cases brought by the police department and dismissing problem cases later in the process; in effect, the unit was not screening cases at the start of the process. As a result, declinations were very low but dismissals were high. When a new unit manager was promoted, the unit began screening cases more vigorously and declination rates rose; in turn, dismissal rates dropped since many problematic cases were disposed of at screening.

While it was widely acknowledged that unit-specific policies existed, it was not clear if these were written or unwritten policies. As such, it did not appear that there was a formal policy-making

process that occurred at the unit-level; rather, policy-making was more informal, with policies evolving out of practice. Some ADAs described these policies as *norms of practice* that *grew out of office philosophy*. These policies were *learned through interactions with colleagues* and *often articulated clear outcomes for cases*. This was echoed by the DA in Southern County who argued that *rather than policies we have norms – a regular way of handling cases and expectations about outcomes*. ADAs in Northern County noted a similar creation of policy through routine practice stating that there were *not necessarily policies in the office but longstanding practices about how to handle cases; these are practices that have become routine*.

ADAs of varying experience levels noted the presence of several such policies. For example, new ADAs in Southern County stated that defendants arrested on five or more charges must plead to the top charge, community service could not be given in exchange for a dismissal for any offense, and defendants charged with possession of a gun may not receive deferred prosecution including simple safety classes. New ADAs in Southern County also noted that many of these informal policies come not from more experienced ADAs, but from colleagues at the same level. In Southern County, new ADAs are assigned to a unit that deals only with misdemeanors, are paired with one other new ADA, and are assigned to one courtroom in which to work. As a result, a norm of practice develops among these two, relatively inexperienced ADAs. As one newer ADA noted, “Everyone just seems to go with what your partner suggests.”

Whether written or unwritten, the unit-level policies were clearly seen as binding on prosecutors. While there are too many units to describe all unit-specific policies, it was clear that these policies governed decision making in certain circumstance, calling for prosecutors to decline certain cases at screening, charge cases in a particular way, and offer specific criteria in plea offers. Moreover, DAs in both offices were fairly comfortable with this approach; essentially, *the unit*

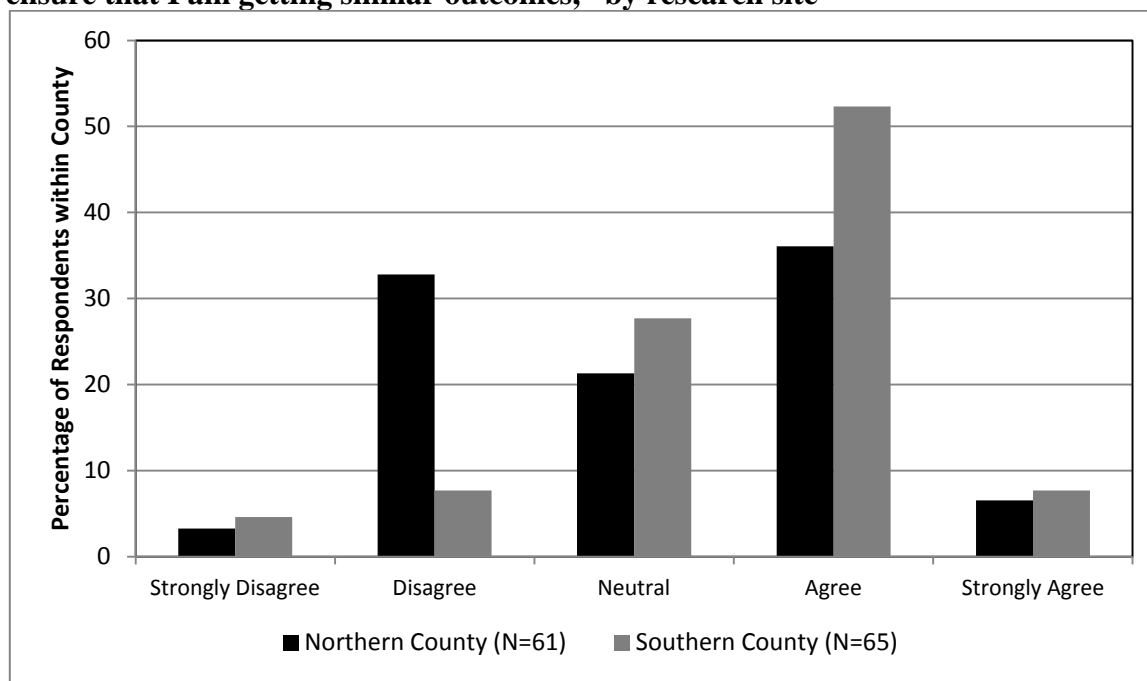
*structure allows for a delegation of authority and supervision to very experienced ADAs who are then responsible for articulating the philosophy into practice.* The DA in Northern County also recognized the danger of allowing informal policies to develop, particularly if those policies are unorganized or lead to conflicting outcomes across units. Indeed, unit managers also recognized the problem of allowing each unit to develop policies autonomously. As one unit manager noted, *this may be a negative or it may be a positive. Too many policies are a bad thing; but not enough policies leads to a potential problematic culture.* Indeed, several prosecutors noted that this could lead to inconsistencies in priorities and outcomes across units.

The ability to achieve consistent results through heavy reliance on unit structure and informal processes depends critically on various forms of internal communication. Responses to the general survey clustered around four ways in which information about practices and norms was shared within the offices: office policies, training, supervision, and consultation among colleagues. Office policies and training were previously discussed in the subsection addressing formal policies. The following examines other kinds of communication within units.

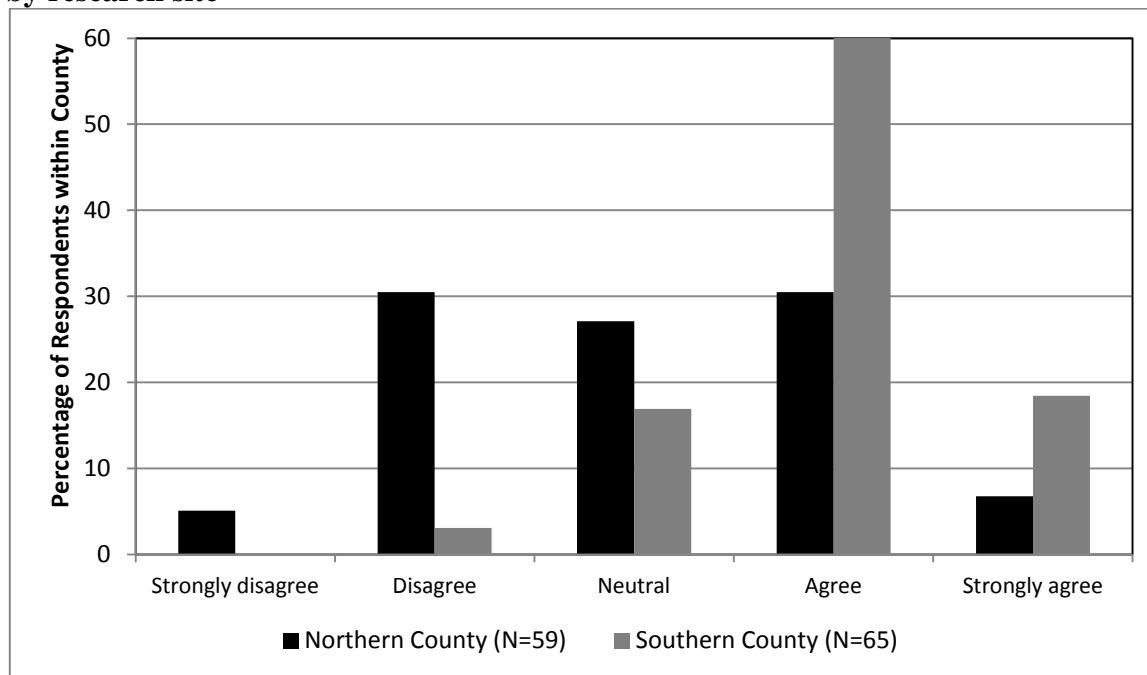
A slight majority of respondents (52 percent) agreed that supervisors let them know how well they were doing in their jobs. A larger majority (66 percent) said that supervisors provided adequate guidance on when to accept or decline a case for prosecution. Average responses to these items did not differ significantly across jurisdictions or levels of experience. In contrast, clear majorities said they often discussed how to handle cases with their colleagues (92 percent), that they often compared their cases to those of their colleagues to ensure they were getting similar outcomes (52 percent) (Figure 2.5.1-6), and that it was important to routinely review cases as a group (60 percent) (Figure 2.5.1-7). Nevertheless, 60 percent also agreed that there needed to be more communication among staff to ensure consistency of outcomes (Figure 2.5.1-8). The average levels of agreement

were significantly higher among respondents in Southern County than among those in Northern County for the statements about reviewing cases as a group ( $p=.000$ ,  $F=21.572$ ,  $df=1$ ) and comparing cases to those of colleagues ( $p=.039$ ,  $F=4.376$ ,  $df=1$ ). This is likely due to the routine use of roundtables to determine how to handle cases in Southern County and the near absence of this approach in Northern County. Controlling for differences between counties, prosecutors with less than one year experience or more than ten years' experience were less likely than others to say they often discussed how to handle cases with their colleagues ( $p=.017$ ,  $F=3.536$ ,  $df=3$ ).

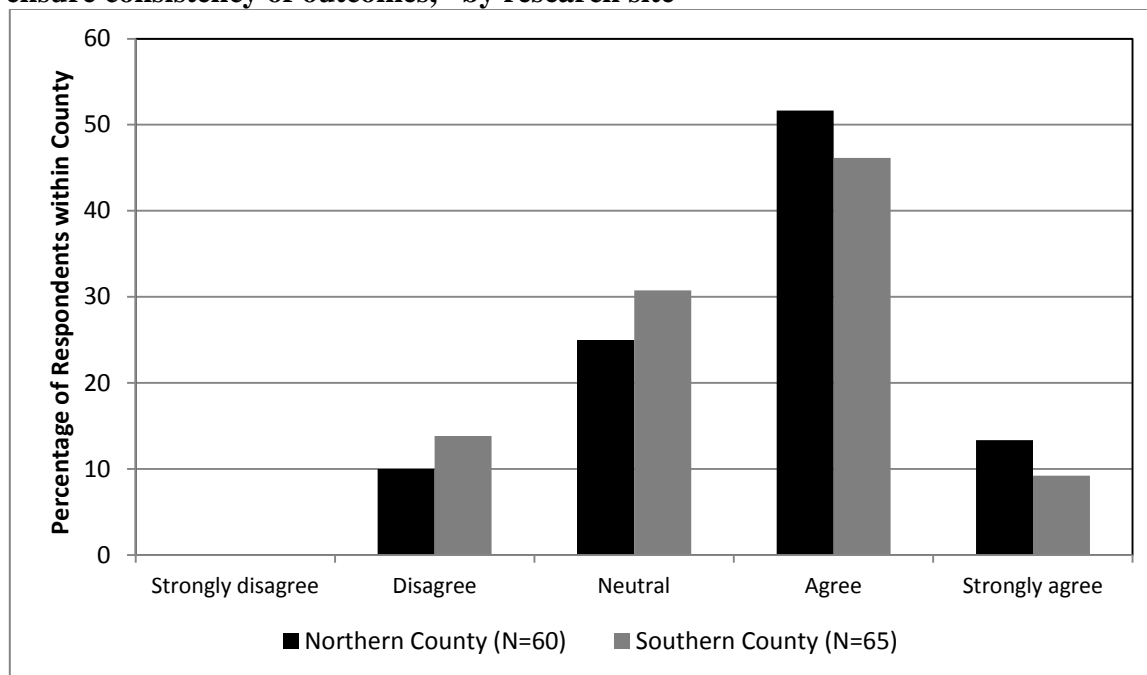
**Figure 2.5.1-6 Responses to question: “I often compare my cases to those of my colleagues to ensure that I am getting similar outcomes,” by research site**



**Figure 2.5.1-7 Responses to question: “It is important to routinely review cases as a group,” by research site**



**Figure 2.5.1-8 Responses to question: “There needs to be more communication among staff to ensure consistency of outcomes,” by research site**





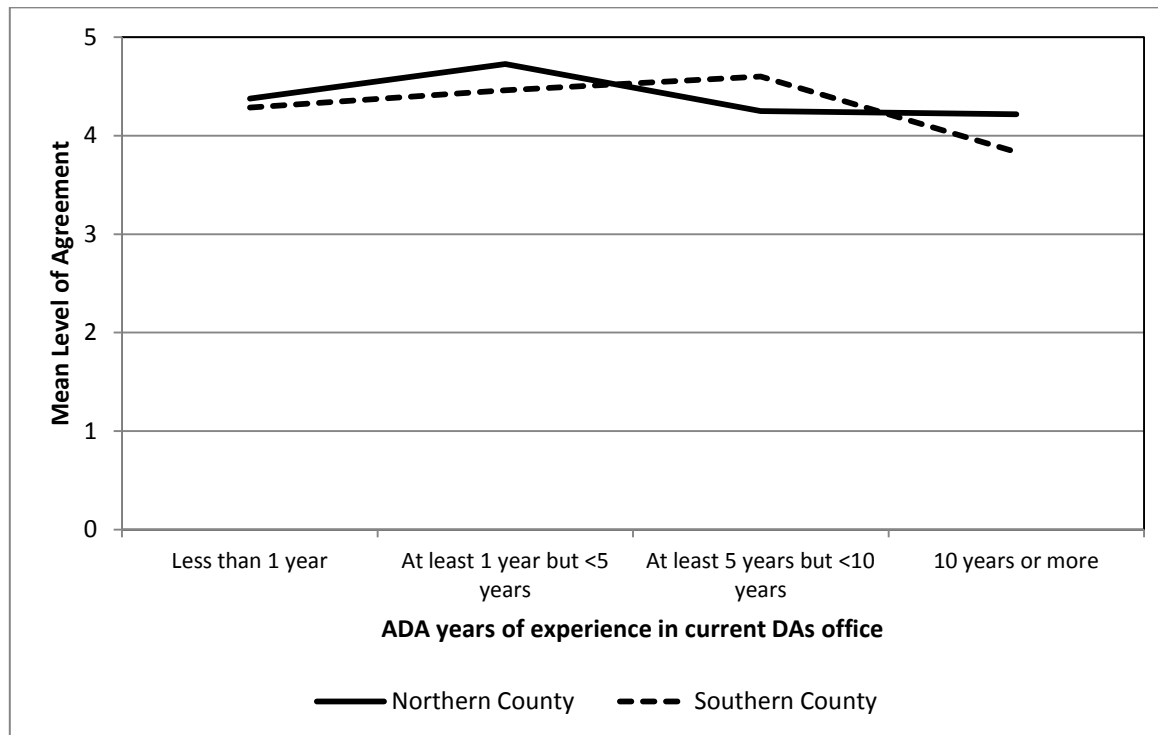
Overall, the survey responses suggest that substantial percentages of prosecutors in both jurisdictions were comfortable with a philosophy that relies heavily on unit-level supervision and communication among colleagues to establish guidelines and norms of practice that foster consistency of results. According to respondents' claims about their own collaborative activity, adherence to these principles appears to be even more prevalent among prosecutors in Southern County than among prosecutors in Northern County. In addition, there was a perceived need for still more communication among staff, which could also be interpreted as a commitment to the informal norming process.

However, some of the more detailed patterns are difficult to interpret. In particular, the patterns of association between average ratings of agreement and levels of experience are erratic and sometimes counter-intuitive. If routine communication between supervisors and staff and collaborative communication among staff are effective in promoting consensus on basic objectives and establishing norms of practice, then we might expect to find increasing commitment to the approach with increasing levels of experience in the office. However, the expected pattern was only evident for Southern County, and only then if the view is limited to results for the first 10 years of experience (See Figures 2.5.1-9 through 2.5.1-12). Some of the divergence from expected patterns is undoubtedly due to the very small number of respondents with less than one year experience in the offices (eight in Northern County and seven in Southern County for most analyses).<sup>5</sup> In addition, as with other analyses presented earlier in this report, the average level of responses from prosecutors with more than 10 years' experience often do not conform to the pattern (if there is one) established across the three levels covering 10 years of experience or less.

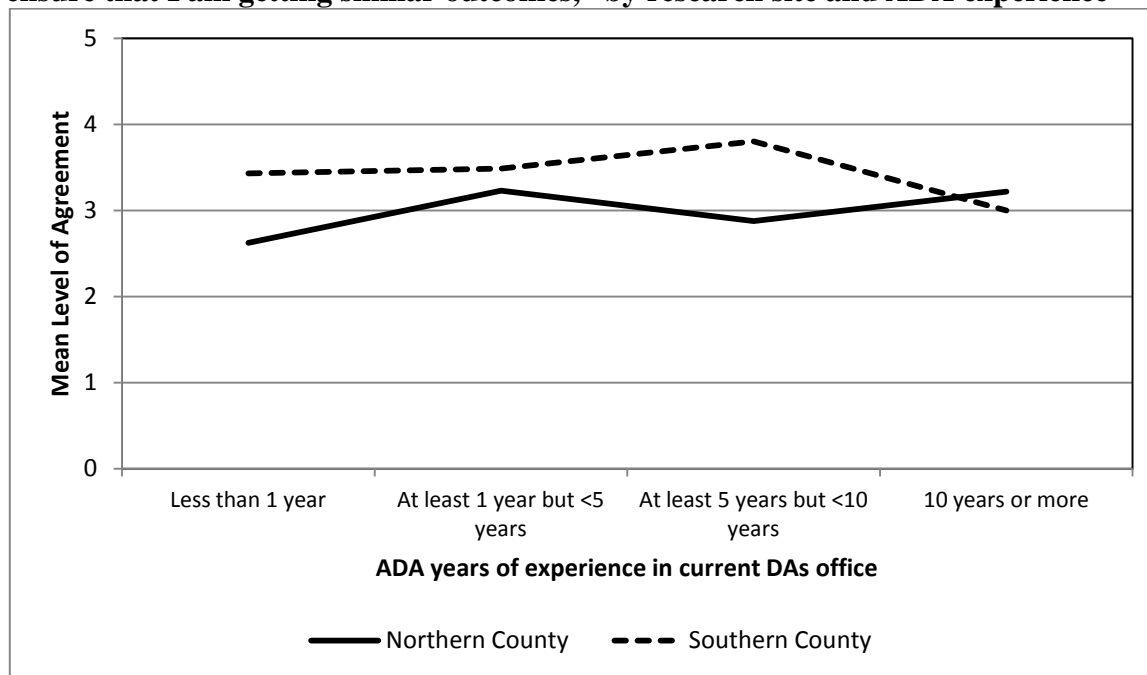
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<sup>5</sup> We experimented with other ways of categorizing length of experience, but the responses of those with less than one year's experience were so often substantially different from the responses of those with more experience, it was decided that it was best to keep that group separate to avoid inflating the variance or otherwise distorting the findings for the more experienced groups.

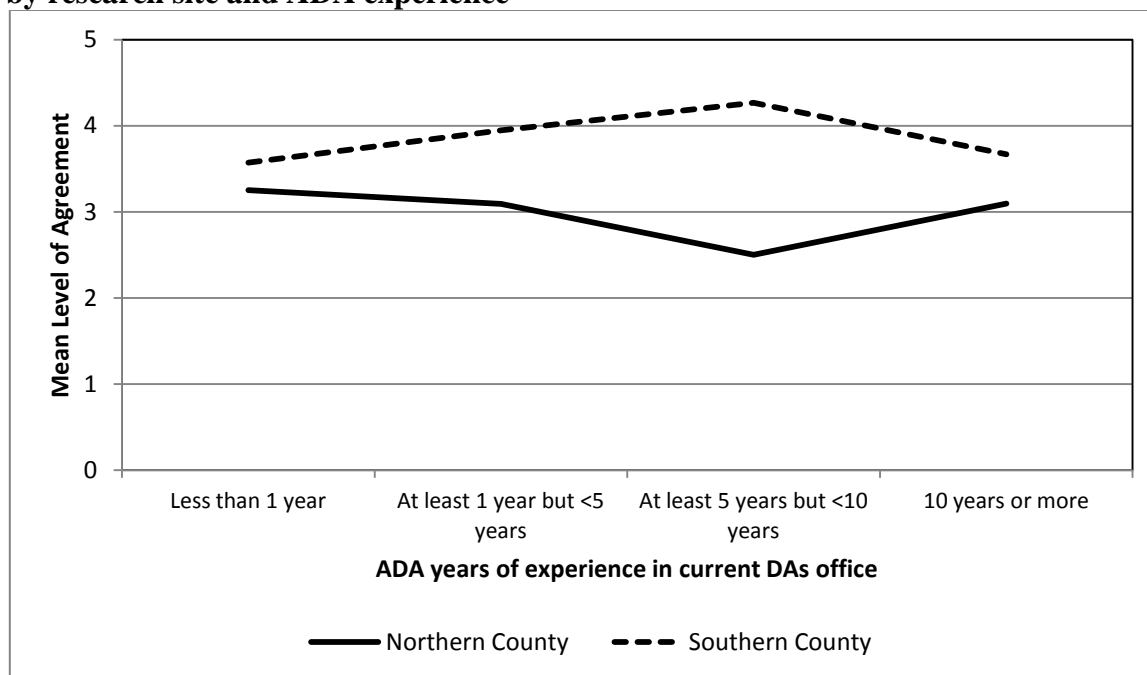
**Figure 2.5.1-9 Responses to question: “I often discuss how to handle cases with my colleagues,” by research site and ADA experience**



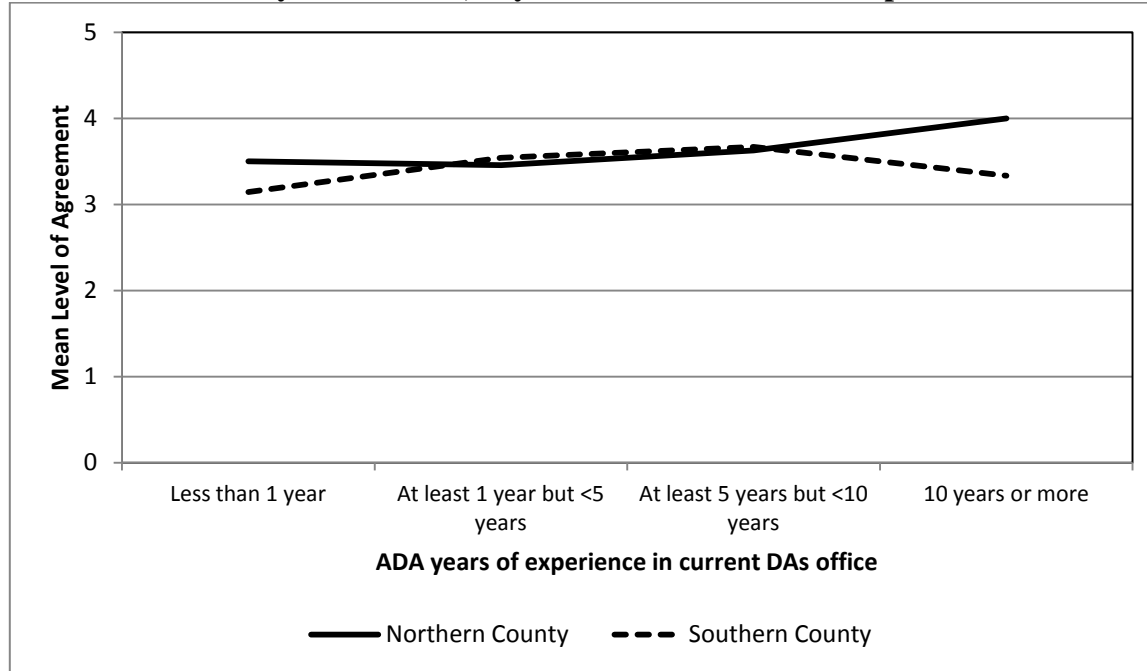
**Figure 2.5.1-10 Responses to question: “I often compare my cases to those of my colleagues to ensure that I am getting similar outcomes,” by research site and ADA experience**



**Figure 2.5.1-11 Responses to question: “It is important to routinely review cases as a group,” by research site and ADA experience**



**Figure 2.5.1-12 Responses to question: “There needs to be more communication among staff to ensure consistency of outcomes,” by research site and ADA experience**



These findings are only indicative of prosecutors’ beliefs, opinions, and priorities. How their beliefs, opinions, priorities, and length of experience relate to consistency in case-level decisions is explored in Part 3 of this report. Nonetheless, the preceding discussion reflects general agreement on several key points. First, formal, office-wide policies were largely absent in both participating jurisdictions, though there were a few policies governing decisions for specific types of cases under narrowly defined circumstances. Second, prosecutors believed that office-wide policies should generally emphasize ethical standards and guiding principles, rather than rules that specify particular dispositions for particular types of cases. Third, despite this, in theory, more formal policies might be desirable to promote consistency across prosecutors and across time; however, it is nearly impossible to develop formal office-wide policies that can adequately accommodate the wide variety of case characteristics and contextual circumstances that prosecutors encounter. Fourth, prosecutors are comfortable with the creation of unit-specific policies that function like formal policies governing decision-making. Moreover, fifth, in many instances these policies dictate

a clear outcome for a case, regardless of case-specific factors such as strength of the evidence, severity of the offense, or defendant characteristics.

### 2.5.2 Resources

While rules influenced decision making in specific cases, prosecutors argued that a more important influence on the outcomes of many cases was resources. The DA in Southern County felt that *rather than written policies prosecutors need more flexibility to survive the problem of resource constraints*. Concerns about resources dominated much of the discussion in both offices and referred to resource constraints both inside and outside the prosecutor's office. For example, in both jurisdictions the restricted availability of courtrooms limited the ability of prosecutors to bring cases to trial. The lack of internal resources for support staff and investigations limited the ability of prosecutors to devote time to "legal" work. In Northern County, a shortage of ADAs and high caseloads limited the capacity of ADAs to pursue all cases. In some instances, it resulted in the dismissal of cases; in others, it resulted in the changing of plea offers to expedite a resolution. In the end, the lack of resources often resulted in prosecutors having to dispose of cases in ways they would not otherwise have to if adequate resources were available.

#### Court space and court resources

In both jurisdictions, a lack of court space (i.e. the lack of available court time to try all cases prosecutors believe should be tried) was expressed as a persistent problem facing prosecutors. According to prosecutors, in Southern County, the lack of court space was the product of a limited number of superior courtrooms and not enough judges, clerks, and court reporters to staff all courtrooms. As a result, there are more triable cases than available slots to hear those cases. In Northern County, prosecutors maintained that there were not enough courtrooms and that judges routinely opened court late in the day or closed court early, which significantly shortened the

amount of time available each day for hearing cases. According to the DA in Northern County, this led to a decrease in jury trials, with a particular decrease in misdemeanor trials; according to the DA, *the message from the judiciary is that they do not have enough time to handle misdemeanor jury trials.*

In Southern County the lack of available court space was due not only to a lack of resources; it was also due to a quirk in the system in which felony court judges do not carry inventories of cases. Rather, cases are assigned to a courtroom and judges rotate through the courtroom. Thus, a judge handles whatever cases are in the courtroom during their assigned week and then the judge rotates out. If a case is unresolved when the judge is scheduled to rotate out, the judge is supposed to stay in the courtroom until the case is resolved. However, if the case is continued, then the judge may rotate out. According to prosecutors in Southern County, this results in judges either closing court mid-week to avoid starting a trial that may extend beyond the time at which they are to rotate out or a continuance which would move the trial to another week and, in turn, to another judge. According to the DA in Southern County the office experiences roughly 100 judicially initiated continuances per week. More importantly, perhaps, the lack of available court space and high rate of continuances in Southern County significantly affected the ability of the office to try cases and altered the way the office handled cases. Knowing that all triable cases could not be tried, prosecutors *had to change plea offers to ensure a high volume of cases were disposed of before trial.* As the DA in Southern County noted, “[The county] has the capacity to try about 450 trials per year. Our office processes about 10,000 felonies per year. In almost every case we make a plea offer because we do not have the capacity to try all cases... Therefore, we are trying to avoid trials in most cases.” According to the DA, the prosecutors are *forced to resolve cases in ways they would*

*not otherwise do.* As one experienced ADA stated, “To deal with this, you give away the farm.” In other words, prosecutors *do everything they can to get a guilty plea.*

The DA in Northern County argued that the lack of court resources did not affect how cases were handled, but it did affect how resources were allocated within the office. According to the DA, *cases are evaluated the same and views about the right thing to do on a case remains unchanged;* however, *the low trial numbers should free up ADAs to do more work on cases at the front end and, as a result, the office can restructure the criminal justice process to get people out of the system early.* In other words, since the office knows that court resource constraints prevent it from trying all triable cases, prosecutors work harder to evaluate cases for declination and deferral. Thus, while the DA did not see resource constraints as affecting decision making, it appeared that resource constraints did affect outcomes by funneling more cases out of the system earlier than would have occurred in the absence of such a constraint. Indeed, the DA in Northern County recognized this, noting that the resolution of cases early in the process *comes with a political cost and pushes staff to make different decisions.*

The lack of courtroom space or the continuance of cases required prosecutors *to re-evaluate pleas and to try to come up with better pleas to get rid of cases.* Staff *have to pick and choose what to do – some cases are continued and some cases are simply dismissed.* In some instances, prosecutors in Southern County work as a group *to get rid of the worst cases the unit had on its caseload.* It was a process of deciding whether they *wanted to waste a trial on a particular case.* Prosecutors described a process of *prioritizing* in which *cases are ranked from strongest to weakest, from the worst to least bad offense, from a high amount of victim cooperation to a low amount, from newest to oldest, from in custody defendants to not in custody.* All of this *changed the threshold of what prosecutors were willing to accept or dismiss* and often cases were dismissed *simply because*

*they sat at the bottom of the trial calendar. According to some, this resulted in prosecutors making decisions that they may not be comfortable with because of court constraints and time.*

In Southern County, the decision of what to do on a particular case is often outside of the control of an individual prosecutor; rather, when resource constraints push the office to re-evaluate the cases to be tried, roundtables are used. This generally means that all cases are evaluated together and *the unit* decides which cases the entire unit will dispose of. As the unit manager of the drug unit noted, roundtables were used *to decide which cases to keep or re-evaluate and what to try and when*. Another unit manager in Southern County argued that prosecutors *may consider our entire inventory of cases when making a plea offer*; for example, if there is not enough trial time for all cases if they went to trial, *prosecutors may make an offer that the defendant is more likely to take*. So, there is *an incentive to make the best offer to get the case resolved*. According to one experienced ADA in Southern County, prosecutors *compare the merits of one case to the merits of other cases*. Delays in cases present a similar problem. As one unit manager in Southern County noted, *continuances mean that some cases will have to be dismissed*. When there are more cases scheduled for trial than available court space, prosecutors *roundtabled cases to decide what will be dismissed or have a new plea offer made*.

### Staffing

Available court space limits the number of cases that can be tried and, as a result, affects the way prosecutors evaluate cases and craft plea offers. But the availability of internal resources affects the prosecutor's ability to prepare a case in the first place. Even if courtroom space is available, if the prosecutor does not have resources to track down witnesses or access information, this may also change how cases are handled. The lack of internal resources affected both jurisdictions and revolved primarily around the availability of support staff.



In Southern County, the DA noted that internal resources were routinely a problem. As the DA noted, *the lack of support staff forces ADAs to do clerical work* – track down files, set appointments, keep track of victims and witnesses – which *constrains their ability to make timely, well informed decisions*. Experienced ADAs in Southern County estimated that *about 50 percent of ADA's time is spent doing clerical and support staff work*. ADAs in Northern County noted similar problems with a lack of support staff, arguing that a lack of support staff *means that prosecutors have to spend a lot of time searching for files, typing letters, doing paper work and then have no time for legal work*. The result, according to experienced ADAs, is that *the quality of legal work is poor*.

ADAs also noted that the lack of support staff particularly affected cases that involved a lot of preparatory or investigative work, such as person and property cases; drug cases, on the other hand, were less affected since they did not involve witnesses or victims. Since there was little support staff to assist in following up with victims and witnesses, prosecutors said they are *more inclined to not issue a case in such circumstances*. Moreover, the lack of support staff, particularly for assistance with follow-up after a case was charged, was seen as more problematic for general crimes teams and less problematic of specialized units such as drugs or sensitive crimes. Specialized police units continued investigations for specialized prosecution units after charging; however, general crimes prosecution units that dealt only with general crimes investigators *did not get the same level of investigation from the police*. As discussed below, this was primarily due to recent changes in the police departments in both jurisdictions.

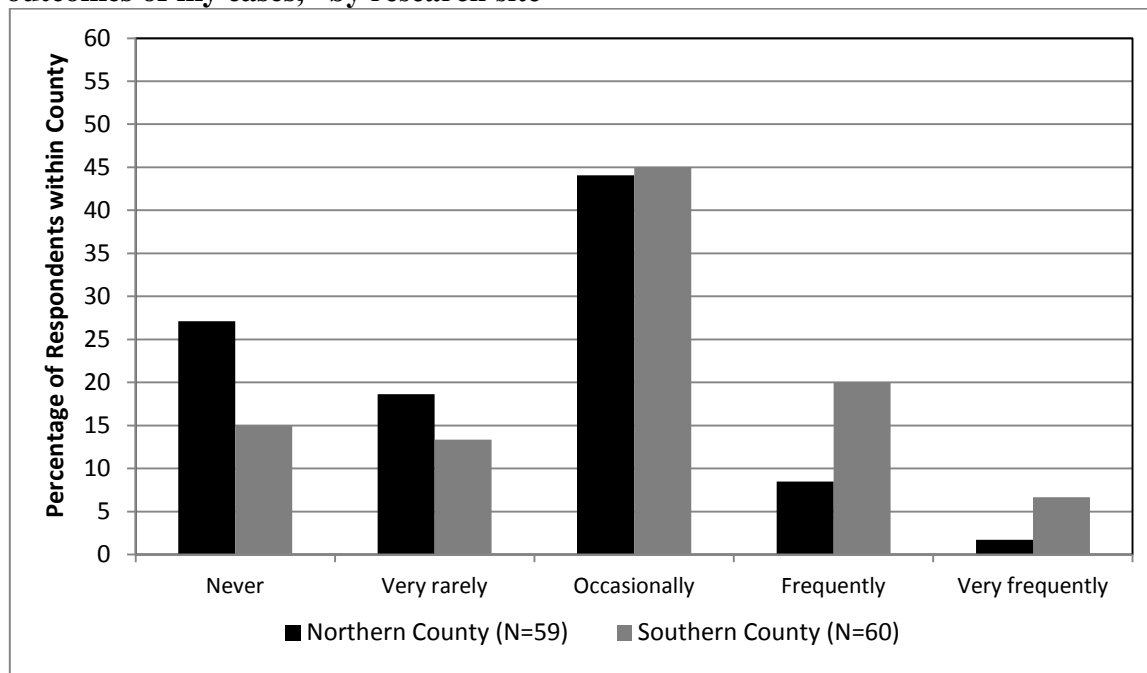
Other practical constraints affected how cases were handled as well. For example, ADAs in both jurisdictions noted a lack of case management systems that would allow them to keep track of cases. Even in Northern County, which has a sophisticated case management system, the system was not

available to ADAs in court; ADAs were still required to carry paper files to court, which was, again, hampered by a lack of support staff to track and store files. Moreover, the lack of laptops, TVs, CD burners, etc. prevented the effective presentation of electronic evidence in court, which, in turn, affected the type or quality of evidence available to present.

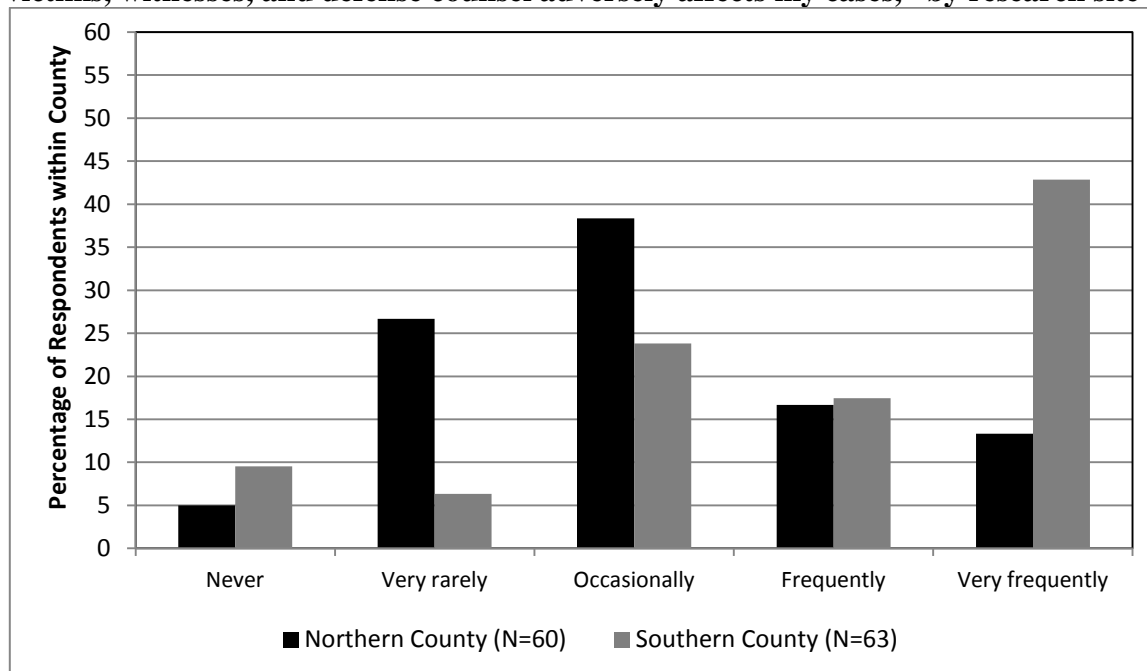
Despite the myriad of problems potentially associated with lack of staff support, prosecutors who responded to the general survey were far from unanimous in their evaluations of the consequences of such problems. Only 18 percent of respondents said that a lack of investigators frequently or very frequently affected the outcomes of their cases (Figure 2.5.2-1). Less than half of respondents (45 percent) indicated that lack of support staff to coordinate contacts with victims, witnesses, and defense counsel frequently or very frequently adversely affected their cases (Figure 2.5.2-2). Lack of support staff to coordinate contacts was seen as frequently or very frequently problematic by a significantly higher percentage of Southern County prosecutors (60 percent) than Northern County prosecutors (30 percent), and in Southern County, average ratings of the frequency of these problems tended to increase with increasing levels of experience.

Prosecutors' greatest concerns over lack of staff resources appeared to be centered around paperwork, paper file maintenance, and the implications of the lack of technology resources for clerical workload. Nearly two-thirds of respondents indicated that there was very rarely or never enough clerical staff to assist with paperwork on all their cases, and only 18 percent indicated there was frequently or very frequently enough clerical assistance. Forty-six percent of respondents indicated that the lack of technology resources frequently or very frequently made work difficult, whereas only 14 percent said it was very rarely or never a problem.

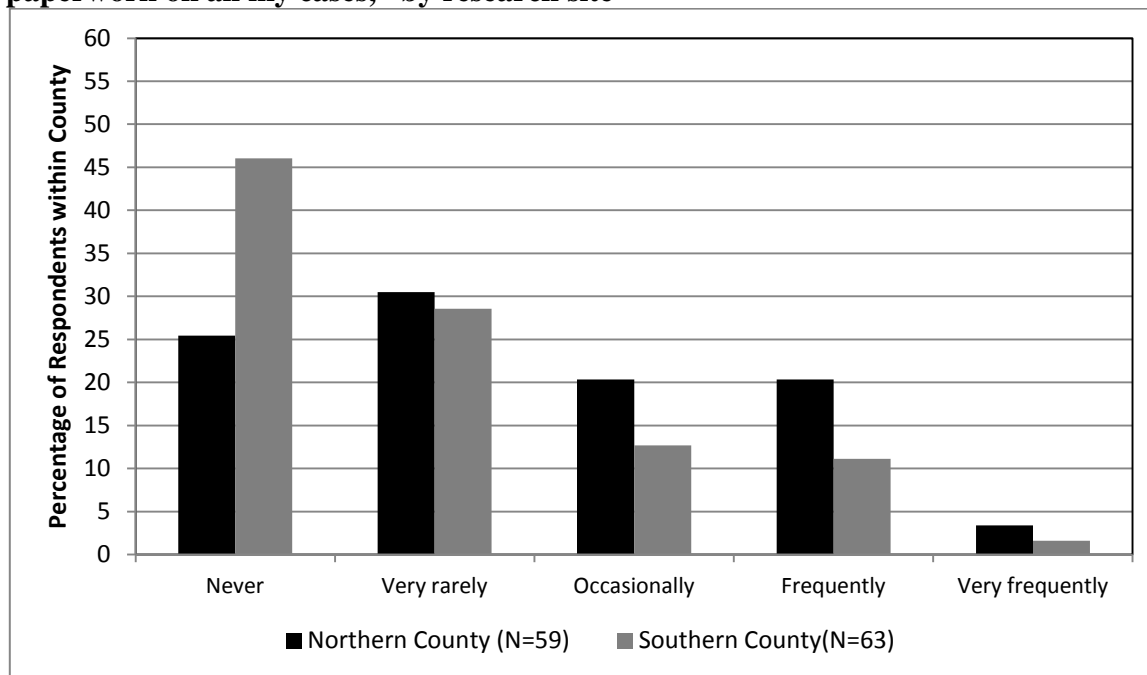
**Figure 2.5.2-1 Responses to question: “The lack of investigators in my office affects the outcomes of my cases,” by research site**



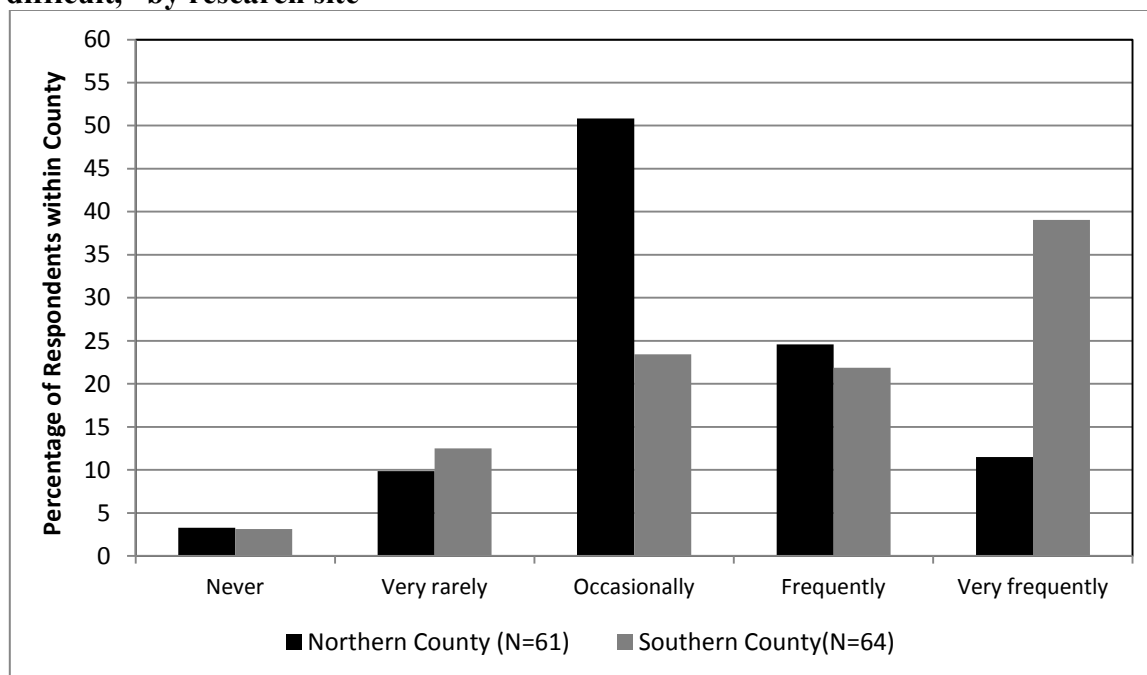
**Figure 2.5.2-2 Responses to question: “The lack of support staff to coordinate contacts with victims, witnesses, and defense counsel adversely affects cases,” by research site**



**Figure 2.5.2-3 Responses to question: “There is enough clerical staff to assist me with paperwork on all my cases,” by research site**



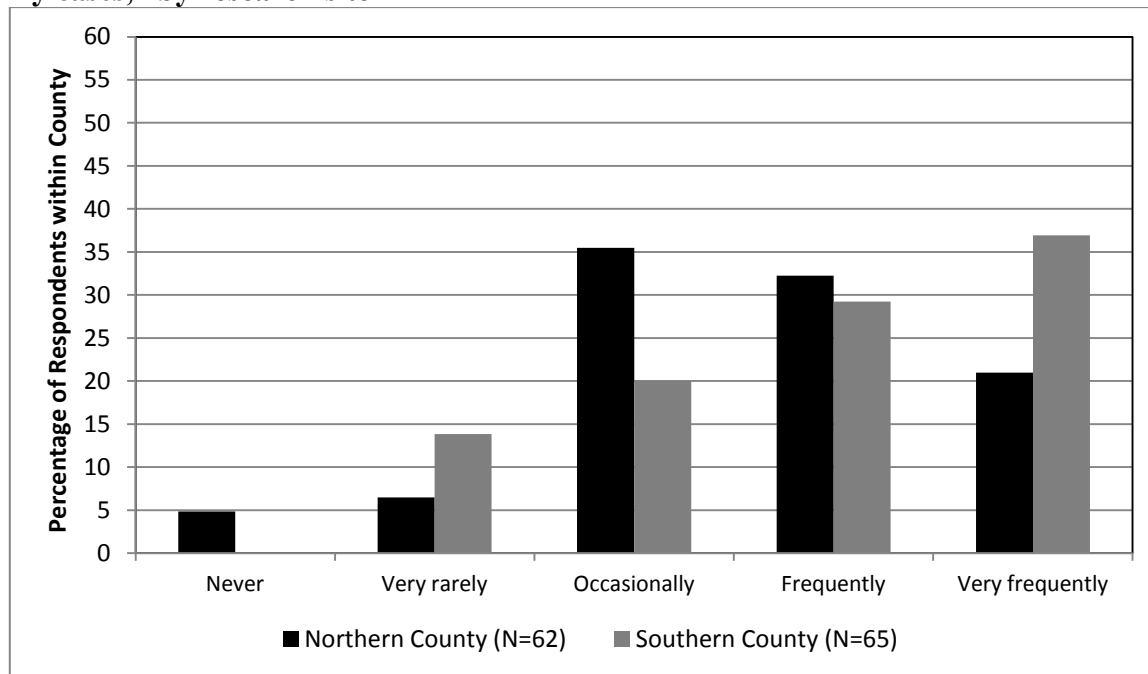
**Figure 2.5.2-4 Responses to question: “The lack of technology in the office makes work difficult,” by research site**



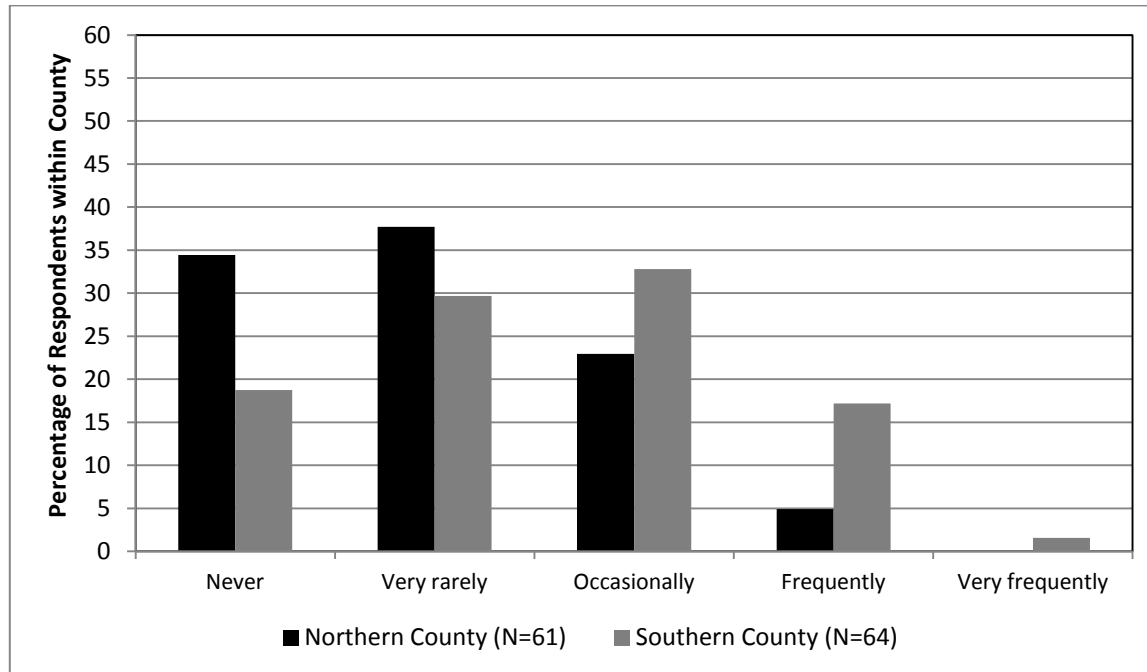
A final problem of internal resources expressed in Northern County was the lack of ADAs and resulting high caseloads. As one unit manager noted, *high caseloads forced prosecutors to decide to*

*get rid of some cases, to not prosecute certain cases.* ADAs recognized the problem as well, noting that the high caseloads prevented them from devoting enough time to cases. Although a majority of the prosecutors who responded to the general survey (60 percent) indicated that caseloads frequently or very frequently prevented them from devoting enough time to all their cases, a majority also indicated that they very rarely or never declined or dismissed cases when the amount of time and effort needed to obtain a conviction exceeded the benefits of the potential sentence (Figure 2.5.2-5; Figure 2.5.2-6). In both jurisdictions, prosecutors noted that a lack of resources did not affect whether a case would be accepted. As the deputy in Southern County noted, “We work with the idea that we do not spend money on cases we will not win. So we push police to exhaust all resources on investigation before we make that decision. But to take a perfectly good winnable felony and say that we will not accept it because we do not have resources – we do not do that.”

**Figure 2.5.2-5 Responses to question: “Caseloads prevent me from devoting enough time to all my cases,” by research site**



**Figure 2.5.2-6 Responses to question: “I decline or dismiss cases when the amount of time and effort need to obtain a conviction exceeds the benefits of the potential sentence,” by research site**



Again, these findings are only indicative of prosecutors’ opinions and may represent general dissatisfaction with perceived resource constraints; in other words, while prosecutors maintain that resource constraints influence decision making, in actuality they may have little real import. This seems particularly true for internal resource constraints. While prosecutors may argue that a lack of support staff or perceived inadequate staffing affects cases, on the general survey few admitted that these constraints actually led them to handle cases differently. Rather, prosecutors described a lack of internal resources generally leading to additional paper work and clerical work rather than an actual need to dispose of cases. In contrast, external resource constraints clearly affected case outcomes. In Southern County, prosecutors at all levels discussed several specific ways in which the lack of available court space led directly to the re-evaluation of evidence and the eventual dismissal or downgrading of plea offers in many cases.

### 2.5.3 Relationships

Prosecuting cases relies on a web of relationships with other justice system actors – law enforcement, defense attorneys, judges, other prosecutors. The quality of relationships with these actors, like rules and resources, may affect how a prosecutor approaches a case. While a good or bad relationship may not determine the outcome of a case, these relationships certainly affect how a case may be handled or how certain information is evaluated. Moreover, routine interactions with other system actors creates a set of expectations, for example, about how a specific judge will sentence or what types of pleas a specific defense attorney will be receptive too. In this sense, relationships with other actors may influence the outcome of a particular case.

#### Judiciary

Prosecutors in both jurisdictions noted that the judge on a particular case can affect how the case is handled. In several instances, ADAs noted that prosecutors had to *know their judge*. This meant that prosecutors had to know, for example, what the judge would view as an acceptable charge, what motions would likely be looked on favorably, or what evidence the judge would expect to see. As one newer ADA in Southern County noted, “There is a diverse array of what judges want and do not want. A judge will let you know what they want. You need to learn the different styles of judge and develop approaches to everything.” As another newer ADA noted, “The judges have different stands on different issues. Certain statutes they do not necessarily agree with. There is certain evidence that they will not accept and certain evidence that they expect to see.” However, the ADAs were quick to maintain that the particular judge on a case *did not determine decisions*; however, they also stated that they *know what judges will do and tailor charges, pleas, etc. based on that*. Indeed, as one ADA in Northern County noted, “We must work within the confines of the system – who the judge is will affect pleas and trials. Judges affect what ADAs CAN do.”

Surprisingly, only 6 percent of prosecutors who responded to the general survey indicated that they frequently tailored their decisions to fit the expectations of judges, while 30 percent said they very rarely or never did. Moreover, only three percent of respondents indicated that the specific charges they filed in a case were affected by the judge that will hear the case, while 88 percent indicated that the specific charges they filed were very rarely or never affected by the judge that will hear the case. In spite of this apparent consensus among the prosecutors who responded to the general survey, prosecutors who participated in the focus groups explained in some detail a variety of ways that knowing what judge will hear a case and understanding that judge's style and preferences can affect how a prosecutor handles a case—apparently, according to the focus group participants, including what charges to file.

The ADAs in Southern County did state that a case may be continued if assigned to a particular judge. While newer ADAs claimed that they did not *judge shop*, they also admitted that occasionally they would *continue a case if they got a judge with whom they did not agree*; in some instances they would *punt a case and continue it until they were out of the courtroom, thus leaving it for another ADA to handle*. This was true only for newer ADAs in Southern County assigned to the misdemeanor unit; in misdemeanor court, ADAs appear before the same judge all the time. As such, they have a good sense of the judge. Unit managers and more experienced ADAs who handle felonies in Southern County did not see the judge affecting a case. According to this group of prosecutors it was *impossible to tailor decisions to judges because they did not know who the judge will be on a case*. However, they did acknowledge that *the judge may affect which motions to file and when a case is called*; overall, *it may affect the approach but not a decision (e.g. what to offer in a plea) because we do not know who the judge will be*. Rather than tailoring a decision to a particular judge, the more experienced ADAs in Southern County tailored decisions to the *typical*



*judge. Prosecutors know what the extremes are in judges' sentencing decisions and shoot for the middle. Basically, there is a sense of what the going rate is among the collective of judges in the district and prosecutors tailor decisions to what the going rate or norm is.*

In contrast, in Northern County, all ADAs appear before the same judge for roughly one year before the judge is rotated out. Moreover, ADAs screen cases that will be assigned to their teams; thus, when screening and charging a case, the screening ADA knows who the assigned judge will be. As a result, in all cases – felony and misdemeanor – ADAs are very familiar with how the judge runs their courtroom. Some unit managers argued that, as a result, ADAs alter screening, charging, and plea offer decisions based on the judge. As one unit manager noted, “ADAs are cognizant of what judges are willing to accept in terms of charges and plea offers and what kinds of evidence the judge will admit. All of this determines what charges to file, what offer to make, etc. because the ADA gets tired of being rejected and fighting with the judge.” Indeed, a deputy in Northern County hinted that tailoring decisions to the judge was a matter of efficiency, arguing that prosecutors *have to get a resolution with the defense attorney and knowing what the judge will accept is important.* While some unit managers agreed with this statement, others disagreed, arguing that “for the most part, we issue cases based on what we can prove and do not modify it for the judge.” Indeed, an ADA noted that “The judge should not pull the ADA; rather the ADA must pull the judge to the appropriate place. Our job is to decide what is just and worthwhile regardless of what the judge will do. The DA has the right to have put on the record what they think is just and fair.”

Prosecutors in both jurisdictions also argued that cases revolved around assessments of who the “good” judges were. In this sense, prosecutors scheduled cases for trial in order to *trust the “good” judges with the cases prosecutors really care about.* For example, if a case turns on complicated issues, prosecutors may want a certain judge and, therefore, may not fight a defense request for a

continuance. In Northern County, ADAs had a slightly different notion of a “good” judge. As one ADA pointed out, *some judges make doing the job difficult*; he maintained that *it is not about ideology, but about inconsistency in how the judge will respond to facts*. Indeed, several prosecutors noted that predictability or consistency in judicial decision making was very important. As another ADA noted, *if the judge is predictable, it is easier to negotiate with the defense; if the judge is inconsistent, this makes it harder to make a deal*. To combat such inconsistency, prosecutors may *try to limit the judge’s discretion by limiting the number of charges that the defendant must plead to, which then limits the judge’s sentencing options*. However, if the judge is predictable, then ADAs may alter practice and avoid a sentence recommendation in a plea offer. In other words, if prosecutors can *trust the judge and are sure that he will be fair, they are willing to offer a plea of “sentence at discretion of the court.”*

### Defense

While judges may affect what the prosecutor can do, the relationship with the defense attorney may affect the ease with which prosecutors do their job. In Southern County, prosecutors had very different opinions about their relationship to defense attorneys, with opinions varying by experience level. For example, some newer ADAs, who work exclusively in misdemeanor court, had very antagonistic relationships with defense attorneys. As one ADA noted, “The PD [public defender] needs a good relationship with the ADA to get good deals. But if there is a bad relationship with a PD, the worst that can happen for an ADA is that they will have to try every case, which is what I love to do.” As this ADA stated, the antagonistic relationship often resulted in “punishing” the public defender in some way, for example, calling cases early or scheduling several cases for that particular defense attorney in a row to make it tougher for the defense attorney to prepare. Other newer ADAs in Southern County saw the defense as very important, primarily as conduits for

information about cases; moreover, these newer ADAs noted that if defense attorneys were cooperative, then they would get more cooperation from the ADAs in the form of uncontested continuances or a break without an objection. Experienced ADAs saw the importance of a good relationship with defense attorneys as well, but noted that a good relationship did not affect decision making. Specifically, like newer ADAs, they argued that they *did not tailor decisions to defense attorneys*, but were *willing give trusted defense attorneys more time to prepare a case*. They noted that if they *trust and respect a defense attorney*, they *will listen to what he has to say about a client and may reconsider a plea offer or outcome*. In contrast, for those defense attorneys that prosecutors do not respect, they will *make them work for it*. However, prosecutors at all levels were quick to point out that they *do not make it tough for the defendant or punish the defendant for the behavior of the attorney*; they simply *try to make it tough for the defense attorney*.

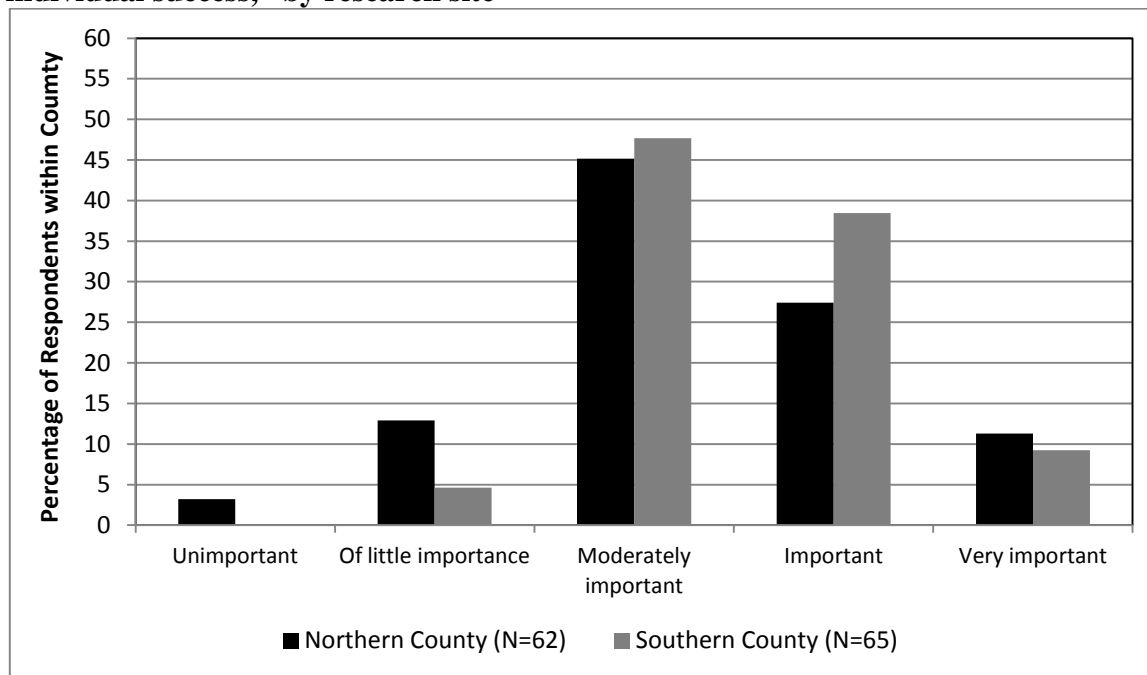
More experienced prosecutors also noted the need for a good relationship with defense attorneys to ensure an efficient system, noting that *the defense can penalize the ADA with a lot of motions and continuances*. This was echoed by ADAs in Northern County as well, who argued that courthouses were *small enough towns that all parties know each other so that no one benefits from having a bad relationship*; but *a good relationship gets a more efficient outcome*. Indeed, unit managers in both jurisdictions claimed that *it was imperative that prosecutors work with the public defender's office to ensure case flow*. According to one unit manager in Northern County, public defenders were *willing to bend the rules to make the system work smoother*, and, in turn, *prosecutors were willing to bend rules for them*. This bending of the rules pertained to procedural rules, such as changing the way cases were set for trial to accommodate the public defender's schedule.

Prosecutors generally saw the largest benefit of a good relationship with defense attorneys as a better flow of information and a more just resolution of a case. According to several ADAs

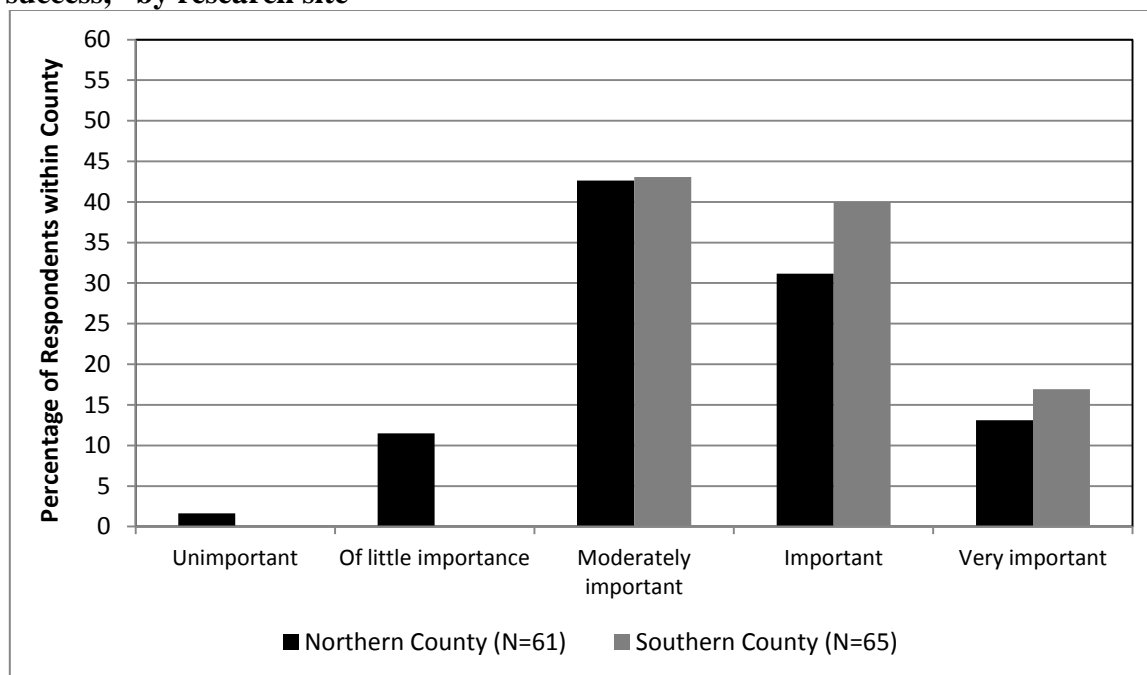
prosecutors *rarely have enough information about a defendant or his social background and that is what a good defense attorney will give you*. Given the limited amount of information with which prosecutors work, they felt that a good relationship with defense attorney brought a great deal more information to the case; an antagonistic relationship made defense attorneys less inclined to come to ADAs with additional information, waiting until trial to introduce it. A good relationship with the defense was also seen as benefiting the prosecution. The judge *sees a good relationship between the prosecutor and defense and is more willing to listen to an ADA's arguments. It narrows the issues if you trust someone and you can focus only on what the differences are about*, for example, why a party is seeking a continuance or why one party is filing a particular motion.

The idea expressed in focus groups that prosecutors value good working relationships with defense attorneys but do not change their decisions based on relationships alone was reinforced in the responses of prosecutors to the general survey. Forty-three percent of respondents considered good relationships with defense attorneys to be an important or very important criterion for evaluating their individual success as prosecutors, while only 10 percent considered it to be of little importance or unimportant (Figure 2.5.3-1). As a criterion for organizational success, 51 percent of respondents considered good relations with the defense bar to be important or very important, while only 6 percent considered it to be of little importance or unimportant (Figure 2.5.3-2). Nearly three-quarters of respondents (72 percent) also indicated that they would very rarely or never consider altering their decisions for defense attorneys they respect; yet, this indicates that some proportion of prosecutors do alter decisions for defense attorneys (Figure 2.5.3-3). Eighty-five percent said they would very rarely or never tailor their decisions to gain or maintain the trust of defense attorneys; again, indicating that some proportion would (Figure 2.5.3-4).

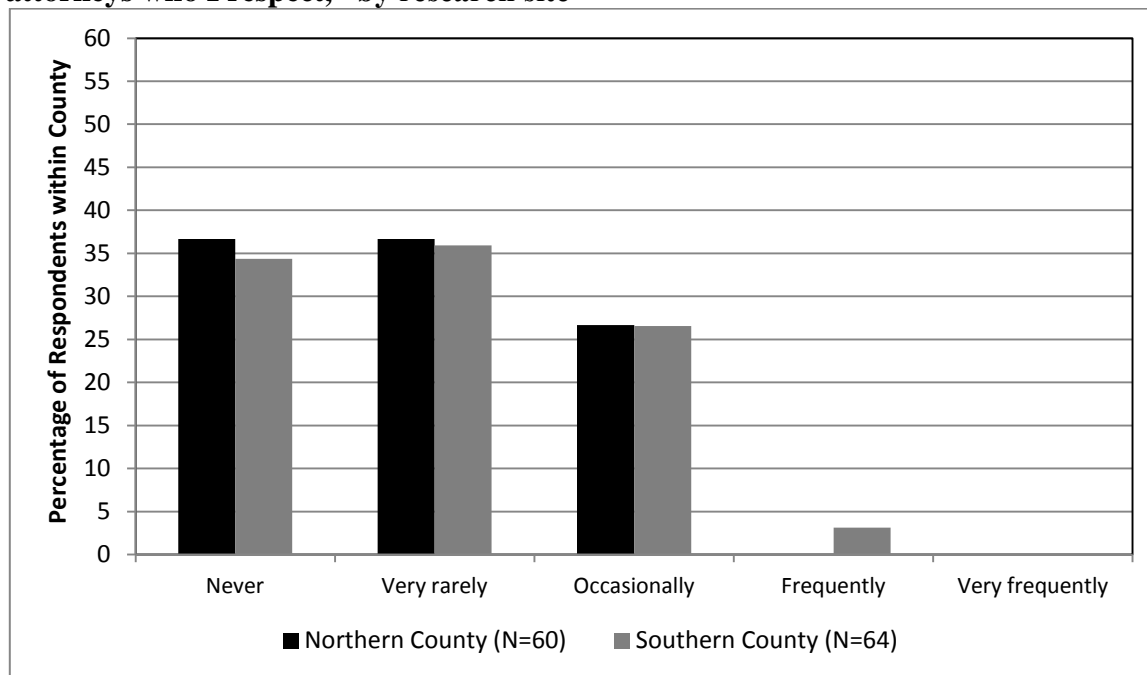
**Figure 2.5.3-1 Responses to question: “Good relations with defense attorneys is important to individual success,” by research site**



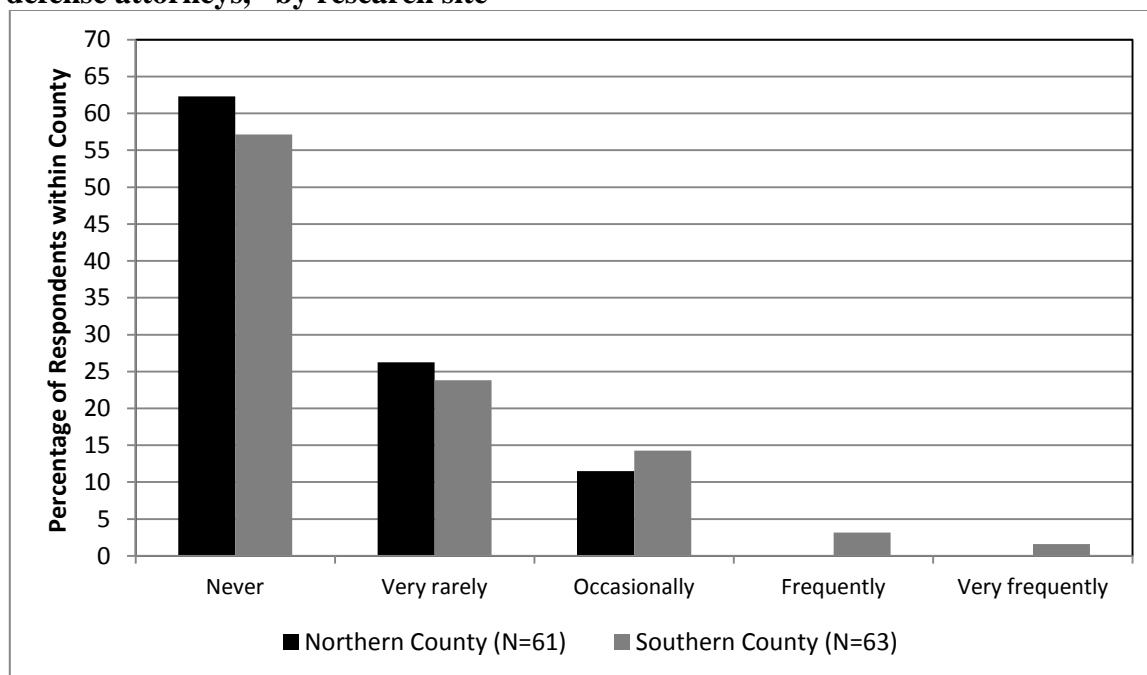
**Figure 2.5.3-2 Responses to question: “Good relations with defense bar is important to office success,” by research site**



**Figure 2.5.3-3 Responses to question: “I would consider altering my decisions for defense attorneys who I respect,” by research site**



**Figure 2.5.3-4 Responses to question: “I tailor my decisions to gain or to maintain the trust of defense attorneys,” by research site**



Thus, prosecutors do not alter their decisions merely because of good relationships with defense attorneys. Rather, good relationships are valued for other reasons—because good working

relationships promote efficiency in case processing, and because mutual trust fosters open and case-relevant communication. Good communication, in turn, can affect prosecutors' decisions indirectly by providing prosecutors with important information about defendants or the circumstances surrounding a case that may not otherwise come to their attention.

### Law enforcement

Of primary concern in both jurisdictions was the relationship between prosecutors and law enforcement officers. In both jurisdictions, relationships with law enforcement have deteriorated somewhat in recent years, primarily due to a change in leadership in each jurisdiction's primary urban police department. This has affected the political relationship between law enforcement and prosecution that has then trickled down to the daily interactions between individual police officers and ADAs. In turn, this has influenced relationships that are already characterized by tension and has introduced a new level of acrimony between the two groups.

As the DA in Southern County noted, *there is an institutional tension that always exists with law enforcement, since prosecutors have an obligation to scrutinize cases brought by law enforcement and must decline to prosecute some cases.* Generally, ADAs saw this tension as good. As unit managers in Southern County noted, *police officers should not agree with everything prosecutors are doing and prosecutors should not accept everything that law enforcement brings.* Some ADAs in Northern County *welcomed pressure from law enforcement because it shows that officers care about the case.*

However, this tension often resulted in pressure being applied to ADAs to accept cases. Generally, this pressure was felt most directly by newer ADAs who may be less confident in their ability to confront law enforcement officers or decline their cases; in turn, they may be more likely to accept questionable cases due to such pressure. As the deputy in Southern County noted, *young*

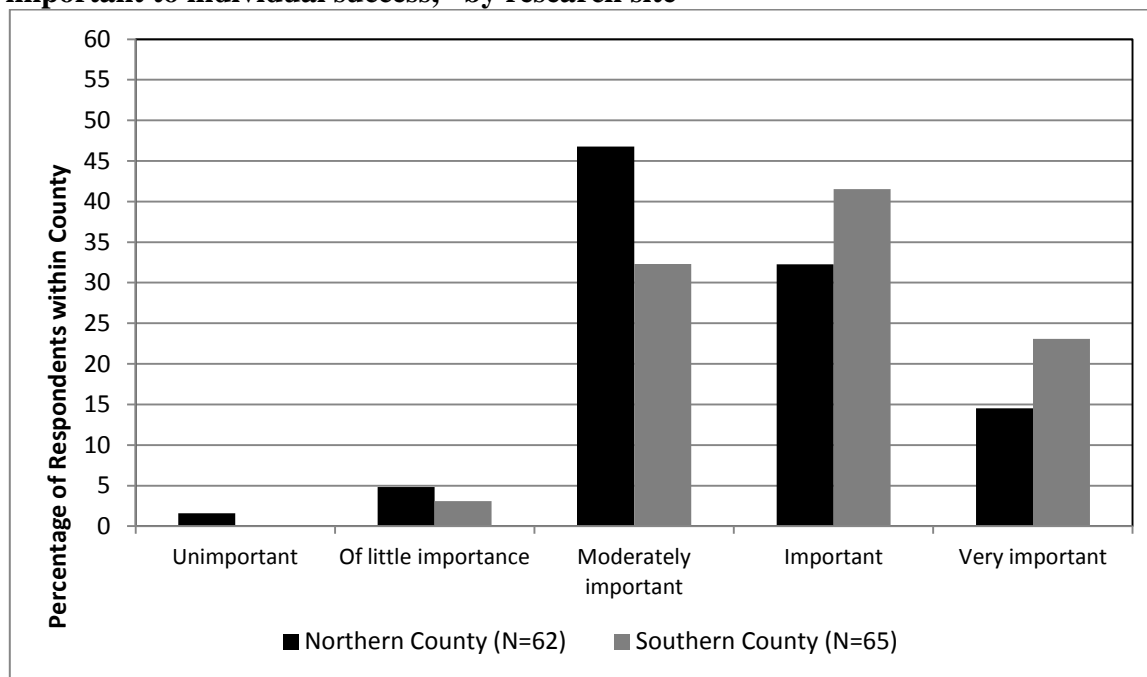
*ADAs feel tension when they have face to face interactions with officers because the ADA may have to tell the officer “no”, which people do not say to law enforcement; he pointed out that it is difficult to instruct young ADAs how to overcome this tension because of the authority of law enforcement that comes with the gun, badge, uniform.* The mechanisms for dealing with such pressure generally involved making arguments about the justification for not taking a case or deflecting responsibility for decisions to other actors in the system. Other ADAs make the “*efficiency argument*” that it will be easier if they just disposed of the case and some make the “*fairness argument*” that the defendant really does not deserve to be punished. In contrast, more experienced ADAs appear to be more comfortable discussing the legal aspects of the case with officers. Experienced ADAs in Southern County stated that *the tactic is to let them know about problems since this is usually what the tension is about.* In some instances, prosecutors succumb to the pressure from law enforcement and accept cases they would not otherwise accept. This happens even with experienced ADAs, who admitted that they had on several occasions accepted bad cases due to pressure during screening. Often acceptance of weak cases derives from pressure applied by officers with whom prosecutors have a good relationship. Nonetheless, ADAs were instructed to build good working relationships with law enforcement. Much like defense attorneys, law enforcement was seen as a conduit for quality information.

This contrast between operational tensions between police and ADAs and a philosophical commitment to good working relationships was also evident in responses to the general survey. Over half of respondents (56 percent) considered good relationships with law enforcement officers to be an important or very important criterion for evaluating their individual success, while only 5 percent considered it to be of little importance or unimportant (Figure 2.5.3-5). As a criterion for organizational success, nearly three-quarters of respondents (72 percent) considered good relations



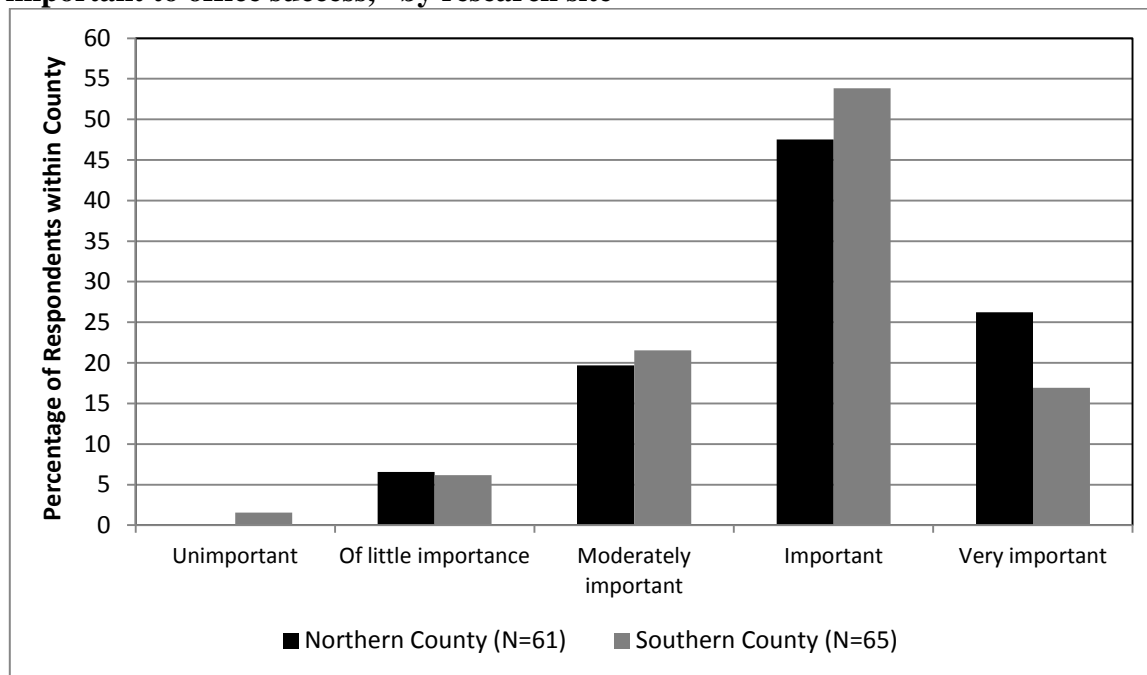
with law enforcement agencies to be important or very important, while only 6 percent considered it to be of little importance or unimportant (Figure 2.5.3-6). The survey results were somewhat mixed with respect to case level interactions with the police officers who submit cases for prosecution. Thirty-six percent of respondents indicated that they frequently or very frequently felt pressure from law enforcement officers to accept cases for prosecution and 50 percent said it occurred occasionally (Figure 2.5.3-7). Average ratings of the frequency of occurrence did vary significantly across levels of experience ( $p=.021$ ,  $F=3.364$ ,  $df=3$ ), but did not follow the expected pattern (Figure 2.5.3-8). Instead, the perceived frequency of pressure from police officers was lowest among ADAs with less than one year experience,<sup>6</sup> then peaked among ADAs with 1 to 5 years' experience and declined with increasing experience thereafter.

**Figure 2.5.3-5 Responses to question: “Good relationships with law enforcement officers is important to individual success,” by research site**

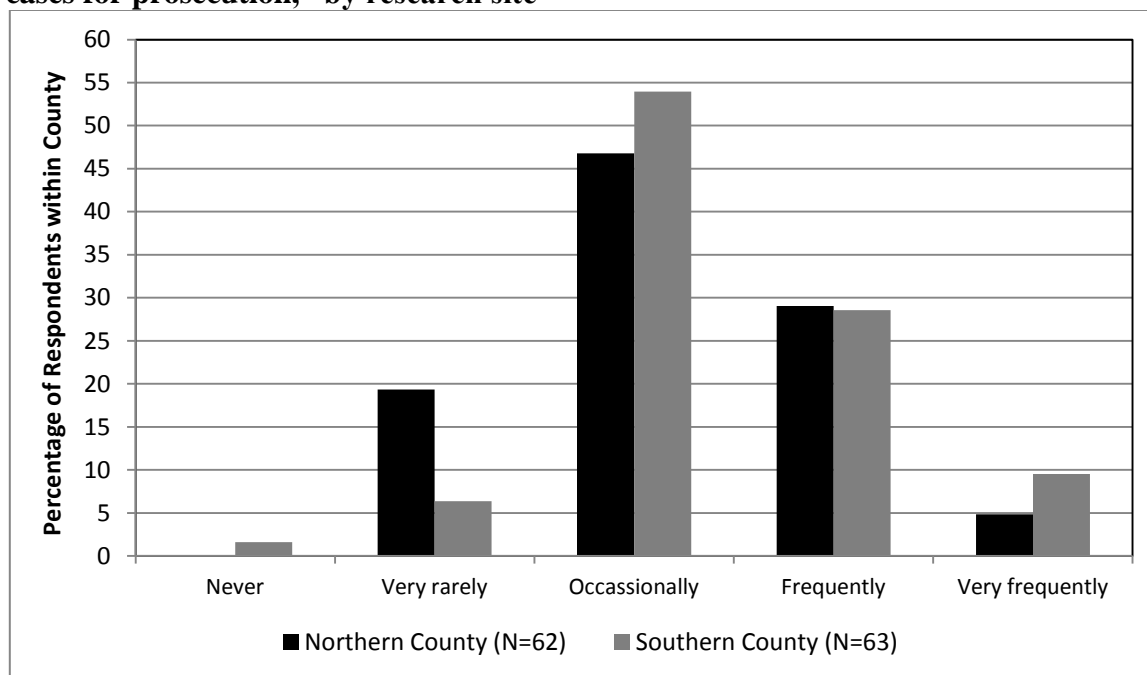


<sup>6</sup> The apparently anomalous results for the least experienced group could be due to the very small number of respondents in that group. However, the same pattern was found in both jurisdictions.

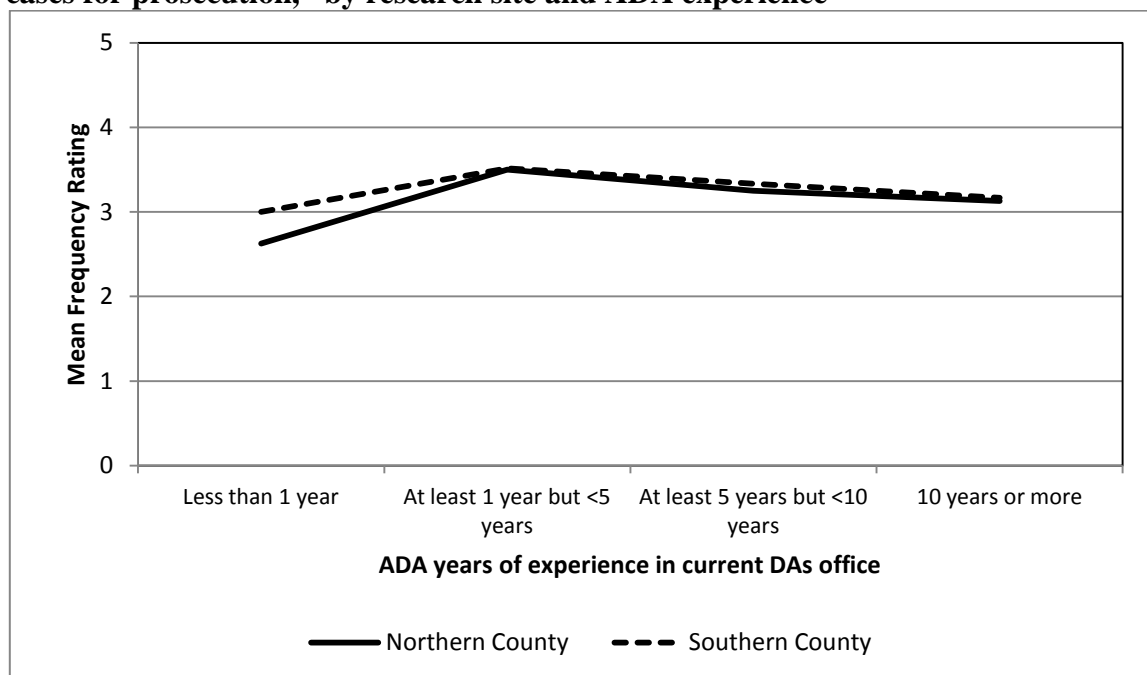
**Figure 2.5.3-6 Responses to question: “Good relations with law enforcement agencies is important to office success,” by research site**



**Figure 2.5.3-7 Responses to question: “I feel pressure from law enforcement officers to accept cases for prosecution,” by research site**



**Figure 2.5.3-8 Responses to question: “I feel pressure from law enforcement officers to accept cases for prosecution,” by research site and ADA experience**



While prosecutors recognized the conflicts in working relationships with law enforcement, some did acknowledge that the law enforcement officer assigned to a case does impact the way a case is handled. For example, *if an officer is not very good at testifying on the stand*, ADAs will avoid calling the officer to testify at trial. This may affect plea offers, as ADAs seek to dispose of a case in order to avoid having an officer testify. As one experienced ADA in Southern County noted, *prosecutors learn quickly the difference between officers who want to do a good job and those who do not and that is considered when prioritizing cases*. This was echoed in Northern County where prosecutors noted that *if they have less confidence in the use of police at trial, they may work harder to get a plea*. Another ADA in Northern County argued that *past experiences or knowledge of particular cops affects a case from start to finish*. According to this ADA, prosecutors were less likely to charge a case if a “bad cop” is on the case and more likely to give a light offer in a plea when a “bad cop” is involved.

Both jurisdictions have also been affected by changes in the largest municipal police departments in each county. According to all respondents in each jurisdiction, the municipal police department focuses on arrests but not investigations of cases. As a result, according to nearly all respondents, the quality of information and the quality of cases coming from the police department has deteriorated. In turn, many cases are not prosecuted or are dismissed because of a lack of quality information.

In Northern County the change in focus from investigations to arrests accompanied a reorganization within the police department, which affected the quality of information delivered to prosecutors. According to the DA in Northern County, *the police chief disbanded the specialized units and put the emphasis on response to crime rather than resolution of cases; as a result, the quality of cases is going down dramatically because the most experienced law enforcement officers are not working on investigating cases.* According to the DA, *all of this leads to high no process and high dismissal rates in the office.* The reorganization in the police department has also affected the types of cases the DA's office gets. As one deputy in Northern County commented, the DA's office *can only deal with the cases brought to them by the police department.* And according to many, the police department *has started to deemphasize certain cases such as officer-initiated offenses and undercover police investigations.* For the drug unit, specifically, this meant *a significant decrease in large-scale drug offenses and an increase in low-level drug cases.*

The deputy in Southern County pointed out a similar pattern of law enforcement focusing on arrest and not investigation. As the deputy noted, this had practical implications for the DA's office: *the police officer's goal is to get probable cause to make an arrest, but they do not finish the investigation necessary to move from probable cause to beyond a reasonable doubt.* In both jurisdictions, prosecutors described increasing conflict with officers on a regular basis. This was

echoed by experienced ADAs in the office as well, who maintained that *officers get increasingly focused on the arrest but not the investigation* and that *this has gotten worse with the new chief*. In Southern County, the DA responded by putting experienced ADAs at the screening desk *who know what to look for and can get more respect from the officer*. As a result of more stringent screening processes, the primary police department in Southern County has also stopped seeking pre-warrant approval by the district attorney's office; in the past, police would get cases pre-screened by the DA's office before seeking a warrant to arrest a suspect. Given the change in focus of the police to make arrests and the increased scrutiny in screening by the DA's office, police are now avoiding the pre-warrant screening. As a result, many more cases are declined at the screening stage. The result of changes in law enforcement in both jurisdictions has been an increase in cases declined for prosecution, pended for additional information, or dismissed due to poor follow-up investigation.

### Colleagues and supervisors

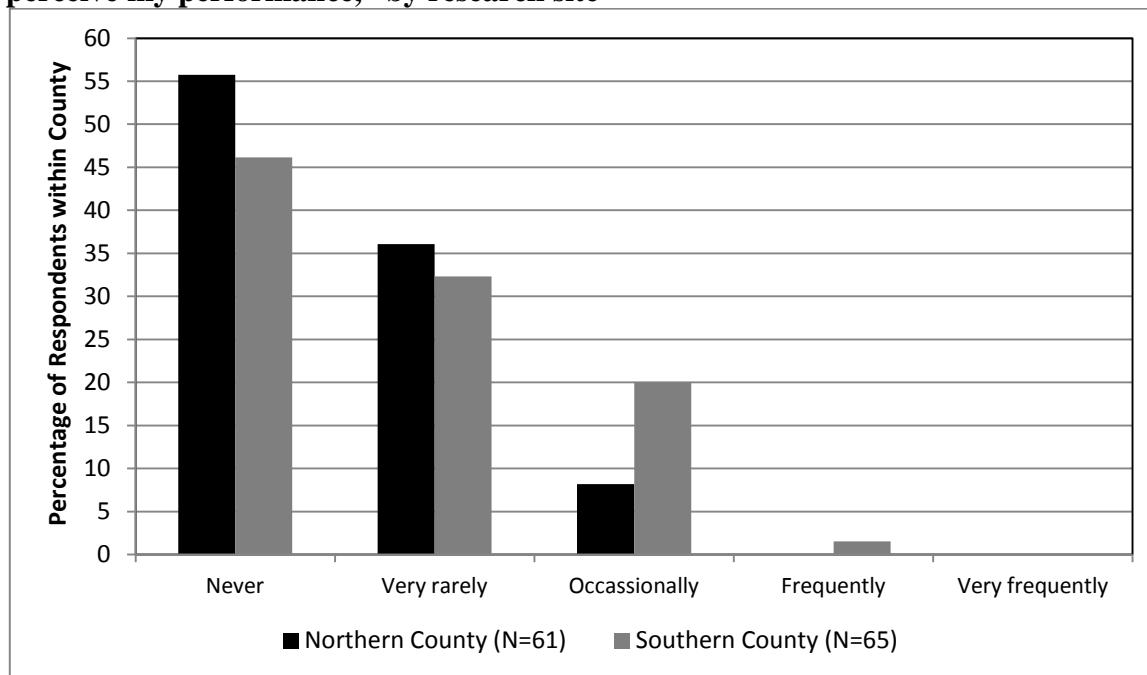
Relationships to colleagues also impact decision making. ADAs often look to colleagues to gauge performance and to ensure that their decisions are within office norms. At one level, colleagues communicate the over-riding philosophy of the department. As one experienced ADA in Southern County noted, "There are a lot of different ideas of justice – to the victim, to the community, to the defendant. It takes a lot of experience to balance these. A person who only pushes for one type of justice or with one view of justice will not survive because their offers and decisions will be outside the norm." The office generally relies on colleagues to train new ADAs. As the deputy in Southern County noted, *ADAs learn from their peers and from supervisors about how this office wants them to make decisions*. For example, *colleagues and supervisors let new ADAs know the range of acceptable pleas or what offers should be accepted*. Moreover, the reliance

on colleagues is by design; supervisors *want ADAs to look to their colleagues about what to do and what is acceptable.*

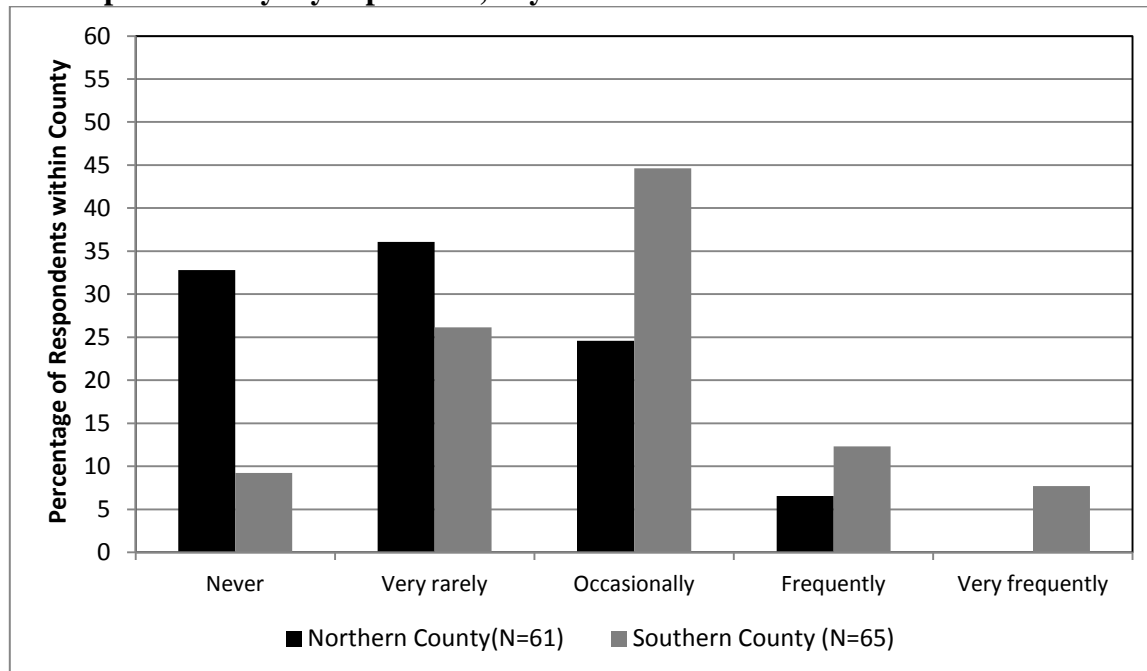
But colleagues affect decisions not just through training, but as barometers for what is acceptable or the right decision in a case. As one new ADA noted, new ADAs *are often concerned about doing something wrong or something that someone doesn't like.* Unit managers expressed this as a desire to make sure decisions *were consistent with those of colleagues.* As one unit manager noted, *colleagues definitely affect decisions – you want your decisions to be consistent. It shapes what we do even if it does not dictate actual decisions... We do not want to make decisions that you will have to explain later.*

The importance of relationships with colleagues and supervisors was also reflected in prosecutors' responses to the general survey. There was considerable consensus among respondents that having the respect of their colleagues and supervisors were important or very important criteria for evaluating their own personal success. Surprisingly, though, a majority of respondents indicated that they very rarely or never make decisions based on how their colleagues perceive their performance (85 percent) and that the decisions they make are very rarely or never affected by how they think they will be perceived by their supervisors (52 percent) (Figure 2.5.3-9 and Figure 2.5.3-10). Nevertheless, non-negligible percentages of respondents did indicate that their decisions were occasionally affected by the perceptions of colleagues and supervisors, and the average frequency ratings declined significantly with increasing levels of experience for both the perceptions of colleagues ( $p=.001$ ,  $F=5.741$ ,  $df=3$ ) and the perceptions of supervisors ( $p=.046$ ,  $F=2.745$ ,  $df=3$ ) (Figures 2.5.3-11 and 2.5.3-12). This latter finding suggests that the least experienced prosecutors rely somewhat on the judgments of their colleagues and supervisors, while the more experienced prosecutors are perhaps more comfortable with their own judgments.

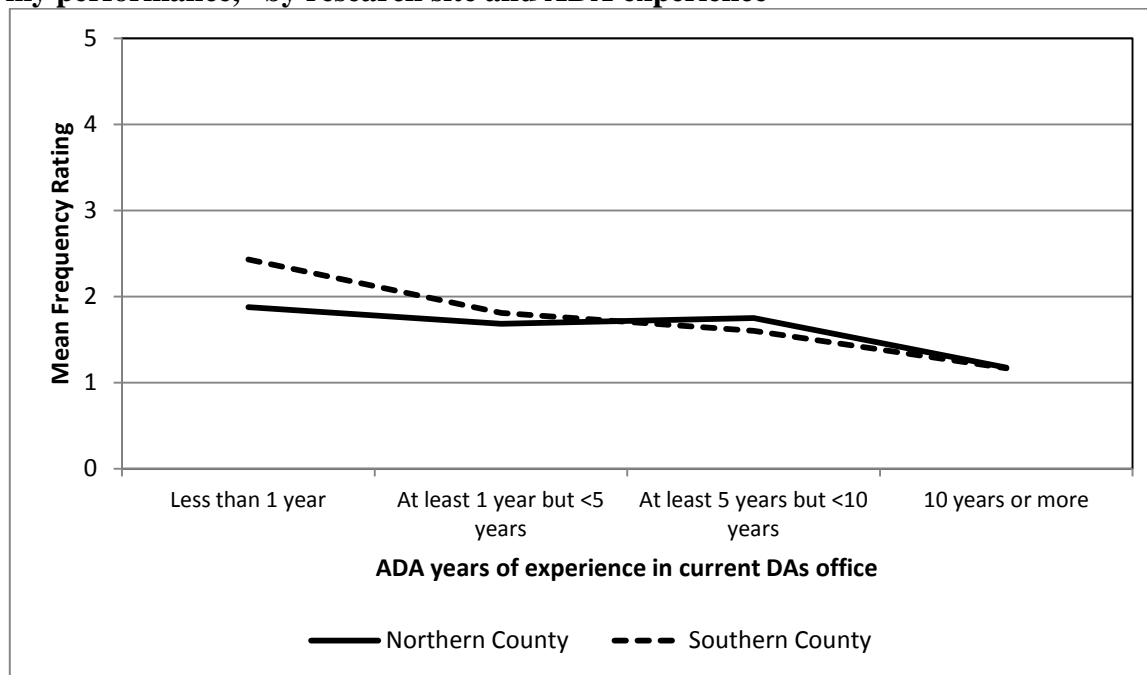
**Figure 2.5.3-9 Responses to question: “I make decisions based on how my colleagues will perceive my performance,” by research site**



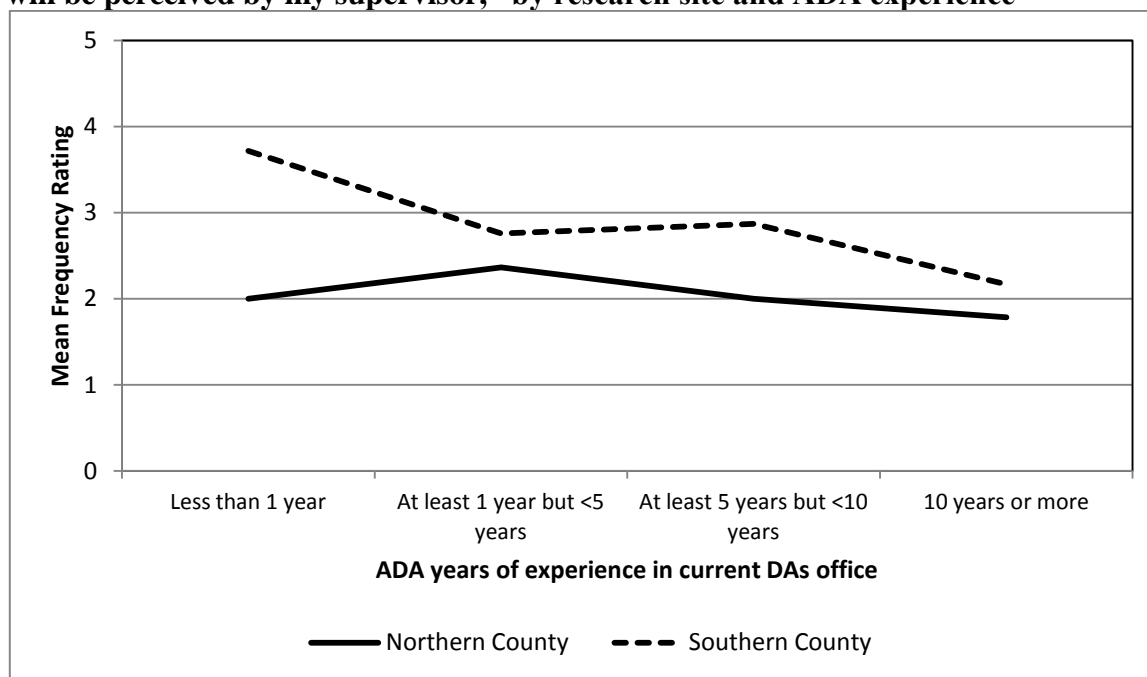
**Figure 2.5.3-10 Responses to question: “The decisions I make are affected by how I think they will be perceived by my supervisor,” by research site**



**Figure 2.5.3-11 Responses to question: “I make decisions based on how my colleagues perceive my performance,” by research site and ADA experience**



**Figure 2.5.3-12 Responses to question: “The decisions I make are affected by how I think they will be perceived by my supervisor,” by research site and ADA experience**





## 2.6 Understanding the Prosecutor's Perspective

According to the prosecutors in Northern and Southern Counties, prosecution involves continually considering two fundamental questions: 'Can I prove the case?' and 'Should I prove the case?' Answering the first question requires the seemingly objective evaluation of the evidence—a case can proceed if the evidence is strong enough to obtain a conviction. Prosecutors must answer the first question in the affirmative before the second question can even be asked; but the fact that a case *can* proceed does not imply that it *should* proceed. Answering the second question requires the subjective evaluation of the merits of the case. To determine whether a case should be prosecuted, prosecutors said they consider multiple factors, including the seriousness of the offense, the defendant's criminal history, and other factors internal to a case.

But prosecutors also noted that cases do not exist in a vacuum; rather, individual cases exist within a system that often constrains prosecutorial decision-making. Internal *rules or policies* within the prosecutor's office sometimes determine whether a case is accepted for prosecution or how to craft an appropriate plea. The lack of *resources* of the prosecutor's office and the local court system may require prosecutors to reject, dismiss, or amend charges in order to work within available resource limits. *Relationships* with law enforcement officers, judges, and defense attorneys may alter how a case will be handled. These constraints may trump evaluations of strength of the evidence, severity of the offense, and defendant criminal history, forcing prosecutors to make decisions that they may not make in the absence of such constraints.

In Part 3 we explore the effect of case-specific factors on case outcomes. Although we do not examine empirically the impact of rules, resources, and relationships on case outcomes, we begin to explore how prosecutors view other case factors at different stages of the prosecutorial process and how prosecutor characteristics may influence variation in case outcomes.

## **Part 3. The Stages of the Prosecutorial Process: Analyzing Case Outcomes**

### **3.1. Introduction**

Prosecutors' perspectives provide the necessary context for understanding how prosecutorial decisions are made and for illuminating the factors that prosecutors report they reference when making decisions. A separate question remains regarding how much these factors affect the outcomes of cases. A growing body of research has empirically examined the extent to which legal and extra-legal factors affect prosecutorial outcomes. Studies have shown that variation in outcomes is associated primarily with legal factors, including the type of offense (Albonetti, 1987; Hartley et al., 2007; Jacoby et al., 1982a; Schmidt & Steury, 1989), strength of the evidence (Albonetti, 1987; Jacoby et al., 1982a; Spohn & Holleran, 2001), and defendant culpability (Adams & Cutshall, 1987; Albonetti, 1987; Schmidt & Steury, 1989). Several studies have also found that variation in outcomes is associated with extra-legal factors, including defendant race (Chen, 2008; Free, 2002; Frohmann, 1997; Hartley et al., 2007; Ulmer et al., 2007), defendant gender (Albonetti, 1986; Alozie and Johnston, 2000; Bjerck, 2005; Farrell, 2003; Frohmann, 1997; Miethe, 1987; Hartley et al., 2007; Ulmer et al., 2007), and characteristics of the victim (Albonetti, 1986; Kingsnorth & MacIntosh, 2004; Schmidt & Steury, 1989; Spears & Spohn, 1997; Spohn & Holleran, 2001; Stanko, 1981-82).

The following sections explore the impact of legal and extra-legal factors on case outcomes in Southern and Northern Counties. The analyses explore several outcomes throughout the prosecutorial process: screening, charging, plea offers (including sentence recommendations), and dismissals. This part of the report is organized into four sections, each addressing one of these four decision points. Within each section, we present prosecutors' perspectives on the respective

decision point; we then turn to analyses of case outcomes to examine the influence of legal and extra-legal factors.

### 3.2. Summary of Research Methods: Administrative Data, Factorial Survey, Focus Groups, and Surveys

The analyses of case outcomes rely primarily on two strategies: an analysis of administrative data documenting outcomes in actual cases and an analysis of a factorial survey documenting prosecutors' responses to hypothetical cases. These analyses were supplemented with additional information gleaned from focus groups and the general survey of prosecutors. (For a detailed description of methods, see Appendix A.).

#### 3.2.1 Examining Case Outcomes in Southern County

The analyses of case outcomes in Southern County relied on individual-level administrative data collected from two sources. Data pertaining to the processing of felony cases assigned to the drug crimes unit were extracted from an automated case management system maintained by the District Attorney's office. Data pertaining to felony cases assigned to the person crime unit and property crime unit were coded manually from paper case files using a structured data entry routine with pre-established response lists for the coded data fields. Data from both sources identified unique individuals, individual complaints, individual charges within complaints, and unique "cases" (defined as a complaint-defendant combination).

The drug unit data tracked the status of individual charges from intake to initial screening, through acceptance or rejection at screening, lower court processing, grand jury preparation, grand jury decision, plea offer, felony court processing, and final disposition. The person unit and property unit data collected from paper case files were less finely articulated, capturing the point at which a charge first appeared in the file and the latest point at which it appeared, for initial

screening, at some undefined point after acceptance but prior to entry to upper (felony) court, at the plea offer, and at some undefined point in upper court processing following the plea offer. Data from both sources included basic defendant characteristics (age, race, gender), charge details (offense type and statutory classification), reasons for dismissal, case-level disposition, statutorily defined prior record level as reported in the plea offer, prosecutors' sentence recommendations, and the identities of the assigned prosecutors. While the data coded from paper case files were less precise than the drug unit data with respect to processing stages, the paper case files yielded additional information not available for the drug cases, most notably characteristics of the victims, victim-offender relationships, victims' willingness to testify, and physical evidence cited in the police report. However, neither source yielded information about the characteristics of the prosecutors.

The drug unit data included information on all closed felony drug cases screened by the office from May 1, 2007 through July 31, 2009. These included a total of 12,225 unique charges in 4,890 unique cases. The person unit and property unit data included all closed felony cases initially forwarded from the largest urban police agency in Southern County and screened between January 1, 2007 and June 30, 2007. Homicide cases were excluded during data collection and cases in which the top charge was for kidnapping or any sex offense were excluded later during data file preparation. The final person unit sample included 1,118 unique charges in 508 unique cases; and the property unit sample included 1,316 unique charges in 658 unique cases. Since cases often involved multiple charges, a procedure was devised to categorize and track cases according to the "controlling offense" at each stage of the prosecutorial process based on offense severity (using a 11-point severity scale, ranging from 1=most serious felony to 11=any misdemeanor).

Analyses were conducted for the following outcome measures: whether a case was accepted or rejected at screening (0=rejected, 1=issued); the number of charges filed for each case accepted for screening (continuous); the statutory rank of the top filing charge (ordinal, 1=most serious, 11=least serious); the number of charges requiring guilty pleas in the formal plea offer (continuous); the statutory rank of the top plea offer charge (ordinal, 1=most serious, 11=least serious); whether the plea offer recommended a period of incarceration (0=no incarceration recommended, 1=incarceration recommended); whether all charges in a case were disposed in favor of the defendant—that is, no conviction in the case (0=convicted on one or more charges, 1=all charges disposed in favor of the defendant); potential exposure to incarceration if sentenced to incarceration for top charge (in months); and aggregate exposure to incarceration if sentenced to incarceration for all charges (in months).

Potential explanatory variables incorporated in the analyses included: four measures of defendant characteristics (age, race, gender, and a statutorily defined prior record level); five measures of case seriousness (number of intake charges, statutory rank of the top intake charge, whether the top intake charge was robbery, whether the top intake charge was burglary, and whether there were codefendants in the case); over a dozen measures of type and amount of physical evidence (e.g., total number of items of evidence, number of items of evidence per charge, presence of evidence with the potential for forensic identification, and items of evidence relating to weapons, drugs, and several other categories); and over two dozen measures of victim characteristics and victim-offender relationships (e.g., victim age, race, and gender; total number of victims; number of victims willing to prosecute; and victims to whom the defendant was a stranger).

The influence of the above factors on case outcomes was analyzed using standard multivariate regression techniques. For outcomes measured with ordinal or interval measures, we estimated

standard ordinary least squares (OLS) linear regression models. For the three outcomes measured in dichotomous measures—the probability of acceptance at screening, the probability that a plea offer recommended a period of incarceration, and the probability of non-conviction—we estimated binary logistic models (Hosmer & Lemeshow, 2000). Regression analyses were conducted separately for person unit cases, property unit cases, and drug unit cases. Each of these analytic strategies is explained in more detail in sections reporting the associated analyses.

### *3.2.2 Examining Case Outcomes in Northern County*

The analyses of case outcomes in Northern County relied on individual-level administrative data collected in the case management system of the District Attorney’s office. These data identified unique individuals, charges, and cases and featured a number of substantive data fields: offender demographics (age, race, gender), victim demographics (age, race, gender), charge characteristics (arresting agency, arrest offense, charged offense, offense disposition, charge enhancers), and prosecutor information (arbitrary prosecutor ID, prosecutor unit). The data included information on all misdemeanor and felony arrest charges screened by the office between January 1, 2009 and June 16, 2011.

The initial sample included 111,704 unique arrest charges. Each charge carried a unique identifier which linked all charges corresponding to a single case/defendant. The sample included a total of 77,987 unique cases/defendant records (hereafter, cases). This study sample was further reduced once covariates were introduced into analytic models and cases were deleted due to missing data for some covariates (listwise deletion was employed). The final sample included 110,437 unique arrest charges and 76,721 unique cases. Since cases often involved multiple charges, a procedure was devised to categorize and track cases according to the “controlling offense” at each

stage of the prosecutorial process based on offense severity (using a 13 point severity scale, ranging from ordinance violation=0 to Class A Felony=13).

The analyses of case outcomes focused on measures at three stages of the prosecutorial process: screening, charging, and dismissal. At screening, a single dichotomous variable measured whether a case was accepted for prosecution (0=rejected, 1=issued). A case was considered accepted for prosecution if any single arrest charge was prosecuted. In other words, all arrest charges had to be rejected for a case to be considered rejected for prosecution, but any single charge accepted was sufficient for a case to be considered accepted for prosecution. At charging, two outcome measures were used to measure the severity and scope of charges issued: most serious arrest charge issued and number of charges reduced. A single dichotomous variable measured whether the most serious arrest charge was one of the charges issued at initial charging (0=most serious arrest charge rejected, 1=most serious arrest charge issued). For cases involving multiple arrest charges, a measure of the reduction in the number of charges issued was created; this compared the number of charges issued to the number of arrest charges screened. If a case has fewer issued charges than arrest charges, it was considered to have a charge reduction. The measure was operationalized as a dichotomous variable (0=number of charges not reduced, 1=number of charges reduced). These measures were used to measure outcomes only for cases that were issued; in other words, cases rejected for prosecution at screening were not included in the charging analyses. Finally, a single dichotomous variable measured whether a case was dismissed after charging (0=not dismissed, 1=dismissed). A case was considered dismissed if all issued charges within the case were dismissed. In other words, all issued charges had to be dismissed or otherwise disposed of without a guilty verdict for a case to be considered dismissed.

Several variables measuring defendant characteristics, victim characteristics, offense characteristics, and case characteristics were derived from the administrative data and were used as predictor variables in outcome analyses. The influence of these factors on case outcomes was analyzed using hierarchical linear modeling (HLM) procedures designed to account for the nested nature of multilevel prosecution data. A two-level hierarchy represents the current data, with individual cases nested within prosecutors. All variables were centered on their grand means and results reported are based on offense-specific models using robust standard errors (Raudenbush & Bryk, 2002, pp. 276–280). Seven separate models were run, one for each offense type – person, property, drugs, public order, domestic violence, weapons, and DUI. This allowed us to examine the impact of defendant, victim, offense, and case characteristics on case outcomes varied by offense type.

Several tables of descriptive statistics of cases at each stage of the prosecution process in Northern County are presented in Appendix C.

### *3.2.3 Factorial Survey*

The term “factorial survey” refers to an approach in which respondents are asked to make judgments about a structured set of hypothetical cases or “vignettes” (Jasso, 2006; Rossi & Anderson, 1982). In this study, each participant was asked to respond to 10 vignettes, each of which described the circumstances surrounding an arrest (summary of incident, offenses charged by the police, evidence presented to the prosecutor by the police, suspect and victim information). These base scenarios were selected from a standard case set developed and studied extensively by Joan Jacoby and colleagues (Jacoby, Mellon, Ratlidge, & Turner, 1982b). A list of 30 vignettes from this standard case set were ranked by offense seriousness and strength of evidence, classifying them as low, medium, or high on each dimension; one vignette was then selected from each of the nine



combinations of offense seriousness and evidence levels and an additional vignette was added to ensure inclusion of a drug offense. The vignettes presented to prosecutors in the factorial survey represented several different offense types (person, property, drugs). All respondents received the same base scenarios, but two factors were systematically varied across vignettes – defendant criminal history and defendant race. As a result, each respondent received a packet of 10 vignettes that was unique with respect to combinations of the basic scenarios, defendant prior criminal history, and defendant race. The resulting classification of vignettes is displayed in Table 3.2.3-1.

**Table 3.2.3-1 Arrest charges in factorial survey vignettes, classified by strength of evidence and seriousness of top arrest charge**

Seriousness of Top Arrest Charge	Strength of Evidence (Design Level)		
	Low	Medium	High
<b>High-level felony</b>	<b>Vignette #1</b> -Burglary (Residential) -Assault	<b>Vignette #4</b> -Aggravated Assault with a Deadly Weapon (a pistol) -Carrying Concealed Weapon -Assault in the Third Degree (2 counts)	<b>Vignette #6</b> -Burglary (commercial) -Theft -Possession of a Stolen Vehicle
<b>Low-level felony</b>	<b>Vignette #2</b> -Robbery 2 -Conspiracy	<b>Vignette #5</b> -Robbery 1 -Conspiracy  <b>Vignette #7</b> -Possession of a Controlled Substance (Heroin)	<b>Vignette #9</b> -Forgery (4 counts) -Theft: under \$300 (4 counts)
<b>Misdemeanor</b>	<b>Vignette # 8</b> -Failure to move on	<b>Vignette #3</b> -Criminal Mischief -Criminal Trespass	<b>Vignette #10</b> -Possession of a stolen credit card -Attempted Illegal Use of a Credit Card

The resulting vignettes were reformatted to resemble a standardized arrest report. Each hypothetical report was accompanied by a questionnaire, asking prosecutors to indicate whether

they would accept or reject the case for prosecution, give their reasons for rejection if applicable, specify the charges they would file initially, specify the charges to which the defendant must plead guilty in connection with a plea bargain, and indicate what sentence recommendation they would make, if any. The packet also included a questionnaire asking the respondents about some of their characteristics: age, race, gender, and professional experience in various capacities as attorneys handling criminal cases. The instructions to respondents, the survey questionnaires, and arrest report templates for each vignette are included in Appendix E. We were also able to link participants' responses to the factorial survey with their responses to the general survey. This made it possible to include information about prosecutors' beliefs and attitudes in the analyses of their decisions in the hypothetical cases presented in the factorial survey.

In Southern County, participation in the factorial survey was solicited from 67 prosecutors who had previously responded to the general survey. Sixty-two prosecutors completed the survey for a response rate of 93 percent. Each respondent answered questions about 10 different case vignettes, yielding up to 620 observations for each question. Unfortunately, the number of responses to the factorial survey received from Northern County was not adequate to reflect the variation of factors built into the survey design and was not sufficient to support valid statistical analyses of the influences of those factors. Only 18 responses were received initially from Northern County, and a concerted follow-up effort yielded only three additional responses. Consequently, only the factorial survey data from Southern County were analyzed.

Six dependent variables were defined for statistical modeling purposes: whether the respondent would reject the case at screening (0=accept, 1=reject); the number of filing charges the respondent listed (continuous); the rank of the statutory class of the top filing charge (ranging from 1=most serious to 11=least serious); the number of charges to which the plea offer would require a guilty

plea (continuous); the rank of the statutory class of the top plea offer charge (from 1=most serious to 11=least serious); and whether or not the sentence recommendation would include a period of incarceration (0=no incarceration recommended; 1=incarceration recommended).

The independent variables retained for analysis included case seriousness (misdemeanor arrest, low level felony arrest, or high level felony arrest), prosecutor's rating of the strength of evidence, prosecutor's rating of the seriousness of defendant criminal history, the respondents' years of experience in the current prosecutor's office, and several measures and items pertaining to respondents' beliefs and attitudes from the general survey (see Appendix A for a description of these measures). Defendant age was confounded with defendant criminal history, and defendant gender was determined by the facts of the case in a given scenario, so neither of those factors was incorporated in analyses as independent variables. In addition, preliminary analyses found no associations of any of the outcome variables with defendant race, respondent race, respondent age, or respondent gender, so those variables were dropped early in the modeling process to conserve degrees of freedom in the face of a small sample size.

In the factorial survey design adopted for this study, unique vignettes are nested within respondents, and variables are measured at both the case level and the respondent level. The appropriate approach for this design is a multi-level analysis using hierarchical modeling techniques (Raudenbush & Bryk, 2002). To conduct these analyses, we used the Hierarchical Linear and Nonlinear Modeling statistical package (HLM6; Raudenbush, Bryk, Cheong, & Congdon, 2004). By keeping the models relatively simple, we were able to estimate multi-level binary logistic models for the rejection decision and incarceration recommendation, but we were forced to settle for estimating continuous dependent variable models for the other four outcome variables.

### *3.2.4 Focus Groups and General Survey*

Interpretation of our quantitative analyses of case outcomes were guided, in part, by discussions in the same focus group sessions and general survey responses previously presented in Part 2. The following sections draw on the participants' more concrete discussions and responses concerning the detailed stages in case processing – screening and charging cases, voluntarily dismissing or adjusting charges, recommending sentences – as well as the procedures, processes, and strategies that are employed at each stage. It also examines charging and plea bargaining strategies employed by ADAs, variation in approach across prosecutors, the factors that govern the choice of strategy, and prosecutors' evaluations and use of case specific factors. The discussion of interviews and focus group responses is not able to produce exact quotes in all instances; thus, phrases appearing in *italics* are partial quotes or paraphrases derived from interviewer notes.

## 3.3 Case Processing Overview

Our quantitative analysis of the factors that affect case outcomes begins by examining selected measures of those outcomes across key stages in case processing. The results are presented separately for Southern County and Northern County because the available data captured outcomes at different stages and for different crime types in the two counties.

### *3.3.1 Case Processing Overview for Southern County*

In Southern County, the data described the processing of cases through several stages of the prosecutorial process: initial screening (either as a result of arrests or in connection with pre-arrest warrants), filing (charges either accepted at screening or introduced by the prosecutor shortly after screening), indictment by the grand jury, plea offers, and final disposition. Table 3.3.1-1 presents descriptive statistics on the number of cases processed through each of these stages. A “case” was defined as a complaint-defendant; that is, if more than one defendant was named on a single

complaint, they were treated as separate cases in our analyses, regardless of whether they were prosecuted together or separately. The drug unit cases were divided into two cohorts – the Early Drug Unit Sample (cases entering May 2007 through March 2008) and the Late Drug Unit Sample (cases entering April 2008 through July 2009) – to reflect a change in the unit manager supervising the unit and a resulting change in policy (from a “loose” approach to screening to a “strict” approach to screening.)

The percentage of cases accepted for prosecution varied substantially across crime types, ranging from nearly 90 percent for the early drug unit sample to slightly less than two-thirds for the property unit sample. The acceptance rate was slightly lower in the more recent drug unit sample. Both the person and property unit samples were limited to earlier cases (screened from January 2007 through June 2007), so it cannot be determined whether acceptance rates have also declined for cases screened by those two units. Despite the differences in case-level acceptance rates, however, the average numbers of charges filed were quite similar across crime types.

**Table 3.3.1-1 Selected outcome measures by crime type and selected processing stages in Southern County**

Selected Outcome Measures	Screened	Accepted/ Filed <sup>b</sup>	Indicted	Plea Offer: Must Plead	Convicted
<b>Early Drug Unit Sample (Cases entering May 2007 through March 2008)</b>					
N of cases with final disposition	2475	2185	1527	1359	1133
% of screened cases	100.0%	88.3%	61.7%	54.9%	45.8%
Average N of charges	2.5	2.6	2.4	1.5	1.4
Avg. statutory rank of top charge <sup>a</sup>	9.1	9.2	8.5	8.6	8.9
<b>Late Drug Unit Sample (Cases entering April 2008 through July 2009)</b>					
N of cases with final disposition	2415	1981	1106	873	842
% of screened cases	100%	82.0%	45.8%	36.1%	34.0%
Average N of charges	2.5	2.5	1.1	1.3	1.3
Avg. statutory rank of top charge <sup>a</sup>	9.0	9.4	7.9	8.0	8.4
<b>Person Unit Sample</b>					
N of cases with final disposition	508	372	317	253	226
% of screened cases	100%	73.2%	62.4%	49.8%	44.5%
Average N of charges	2.2	2.4	2.5	1.6	1.5
Avg. statutory rank of top charge <sup>a</sup>	7.3	7.4	7.2	7.9	8.2
<b>Property Unit Sample</b>					
N of cases with final disposition	658	426	289	249	224
% of screened cases	100%	64.7%	43.9%	37.8%	34.0%
Average N of charges	2.0	2.1	2.3	1.7	1.6
Avg. statutory rank of top charge <sup>a</sup>	9.2	9.2	9.0	9.3	9.2

<sup>a</sup>Highest rank = 1. Larger values indicate less serious statutory classification.

<sup>b</sup>Initial charging includes a few charges active in lower court that were added after initial screening.

For all four samples examined, the average number of charges screened and the average number of charges filed were nearly identical, indicating that when prosecutors accepted a case for prosecution they tended to file all charges requested by the police. For the early drug unit, the person unit, and the property unit samples, there also was little change in the average number of active charges between initial filing and indictment, but in all three cases there were substantial reductions in the average number of indicted charges and the average number of charges for which the plea offer required guilty pleas; thus, prosecutors tend to retain all charges until the plea offer and then reduce charges at that stage. The pattern was somewhat different for the late drug unit sample, for which it appears that reductions in the average number of charges occurred before

indictment. For the person and property unit samples, the average statutory rank of the top charge remained virtually unchanged throughout the process. However, the pattern was quite different for drug unit cases, the average statutory rank of the top charge *increased* between initial filing and indictment and then maintained through plea offer and ultimate conviction.

Overall, it appears that the decisions with the greatest consequences for defendants occurred at the initial decision to accept or reject a case and in the preparation of plea offers. Consequently, our analyses of factors affecting case processing decisions in Southern County focused most heavily on the initial screening decision and the changes between initial filing and the plea offer.

### *3.3.2 Case Processing Overview for Northern County*

The analyses of case outcomes in Northern County focused primarily on three stages of the prosecutorial process: initial screening, filing, and final disposition (whether dismissed or convicted). Table 3.3.2-1 presents descriptive statistics on the number of cases processed through each of these stages. As above, a “case” was defined as a charge or set of charges for a single defendant prosecuted as a result of a single complaint. Because of the detail available at the charge level, it was possible to distinguish between cases in which all charges were dismissed prior to adjudication and cases in which at least one charge was not dismissed and remained active to be adjudicated by guilty plea or verdict at trial. Cases in which at least one charge remained active are counted in the column labeled “Adjudicated” in Table 3.3.2-1, followed by a column that presents results for cases in which at least one charge resulted in a guilty plea or a guilty verdict. Analyses focused on cases in which the top charge was for one of seven crime types: person, property, drugs, public order, domestic violence, weapons, or DUI.

**Table 3.3.2-1 Selected outcome measures by crime type and selected processing stages in Northern County**

Selected Outcome Measures	Screened	Accepted/ Filed	Adjudicated <sup>b</sup>	Convicted
<b>Drugs</b>				
<b>N of cases with final disposition</b>	4,214	3,057	2,363	2,320
<b>% of screened cases</b>	100%	72.5%	56.0%	55.0%
<b>Average N of charges</b>	1.5	1.5	1.6	1.1
<b>Avg. statutory rank of top charge<sup>a</sup></b>	8.2	8.3	8.2	8.4
<b>Person</b>				
<b>N of cases with final disposition</b>	2,761	1,082	890	849
<b>% of screened cases</b>	100%	39.1%	32.2%	30.7%
<b>Average N of charges</b>	1.3	2.1	2.3	1.3
<b>Avg. statutory rank of top charge<sup>a</sup></b>	6.9	6.6	6.3	6.7
<b>Property</b>				
<b>N of cases with final disposition</b>	5,301	2,970	2,518	2,490
<b>% of screened cases</b>	100%	56.0%	47.5%	46.9%
<b>Average N of charges</b>	1.5	1.7	1.8	1.2
<b>Avg. statutory rank of top charge<sup>a</sup></b>	7.6	7.9	7.8	7.7
<b>Public Order</b>				
<b>N of cases with final disposition</b>	9,221	6,358	4,633	4,262
<b>% of screened cases</b>	100%	68.9%	50.2%	46.2%
<b>Average N of charges</b>	1.2	1.4	1.5	1.0
<b>Avg. statutory rank of top charge<sup>a</sup></b>	9.6	9.7	9.7	9.7
<b>Domestic Violence</b>				
<b>N of cases with final disposition</b>	9,582	2,433	1,526	1,485
<b>% of screened cases</b>	100%	25.3%	15.9%	15.4%
<b>Average N of charges</b>	1.1	1.5	1.8	1.2
<b>Avg. statutory rank of top charge<sup>a</sup></b>	9.8	9.7	9.7	9.7
<b>Weapons</b>				
<b>N of cases with final disposition</b>	1,267	729	606	596
<b>% of screened cases</b>	100%	57.5%	47.8%	47.0%
<b>Average N of charges</b>	1.8	1.7	1.8	1.1
<b>Avg. statutory rank of top charge<sup>a</sup></b>	8.3	8.3	8.4	8.4
<b>DUI</b>				
<b>N of cases with final disposition</b>	2,498	2,173	2,126	2,073
<b>% of screened cases</b>	100%	87.0%	85.1%	82.9%
<b>Average N of charges</b>	1.8	2.1	2.1	1.0
<b>Avg. statutory rank of top charge<sup>a</sup></b>	9.8	9.8	9.9	9.8

<sup>a</sup> Highest rank = 1. Larger values indicate less serious statutory classification.

<sup>b</sup> Refers to cases in which at least 1 charge remained active to be adjudicated through guilty pleas or trials



Similar to Southern County, acceptance rates in Northern County varied widely across crime types, from a low of roughly 25 percent for domestic violence cases to nearly 87 percent for DUI cases. The average statutory rank of the top filing charge varied considerably across crime types, in a pattern generally consistent with expectations. Despite large differences in acceptance rates across crime types and some differences in the average seriousness of filed charges, there were two patterns that were extremely consistent across crime types. First, for every crime type, there was a substantial drop in average number of active charges between initial filing and eventual conviction. Second, for every crime type, there were virtually no changes in average statutory rank of the top charge across any of the stages captured in this analysis. Later in this report, we discuss the relative consequences to defendants of reductions in the number of active charges versus reductions (or lack of reductions) in the seriousness of top charge as they related to the potential threat of incarceration.

### *3.3.3 Comparison and Summary*

Both counties experienced substantial variation across crime types in the percentage of screened cases accepted for prosecution. However, for comparable crime types, the acceptance rates were consistently higher in Southern County than in Northern County. Neither county experienced any significant change in average number of charges or average seriousness of the top charge between intake to screening and initial filing of accepted cases. Neither county experienced reductions in average seriousness of the top charge between initial filing and final disposition, and there were noticeable increases in average seriousness for drug unit cases in Southern County. In contrast, both counties experienced considerable reductions in the average numbers of active charges between initial filing and final disposition. In Southern County, those reductions took place largely between indictment and plea offer, except for the late drug sample, where it appears the decision to drop charges may have occurred somewhat earlier. In Northern County, the lack of specific data on

indictment charges and plea offers makes it difficult to determine exactly when and how the reductions in number of charges took place. However, it is quite plausible, given what is understood from common knowledge and reinforced by the findings of the focus group discussions, that the reductions in Northern County were also a product of plea negotiations.

### 3.4 Screening

The prosecutor is often seen as the gatekeeper for the criminal justice system. After the police respond to a criminal incident, the prosecutor must review the facts of the case and determine whether the state will formally charge an individual with a crime. This is generally referred to as screening. In each jurisdiction, the timing of when a prosecutor screens a case depends on whether an officer seeks a warrant for arrest or the defendant is arrested at the scene of an incident. Where there has been an investigation and an officer wants to make an arrest, the case may be screened by the district attorney's office prior to obtaining a warrant from a magistrate. In neither jurisdiction is this pre-warrant screening mandatory; rather, the district attorney's office sees it as an efficient and just process of ensuring that evidence is strong enough prior to the arrest and possible detention of individuals. According to prosecutors, the notion is that *if the evidence is not strong enough prior to arrest, then the case will be rejected for prosecution after the arrest anyway; this just prevents unnecessary or premature arrests*. If the defendant is already arrested, the process works essentially the same way. In both situations, law enforcement delivers a full case file – including all relevant evidence, arrest charges, and circumstances of arrest – to the district attorney's office for a face-to-face meeting between a law enforcement officer and an ADA. At this stage the ADA determines whether a person should be charged with a crime and what the charges should be.

In felony cases, an ADA will speak with the arresting/investigating officer and review all reports and records, including witness statements and the suspect's prior record. In Northern

County, witnesses may also be available for the ADA to interview; in Southern County witnesses are not available and ADAs rely solely on the report filed by law enforcement. The screening ADA has the option to reject the case for prosecution, send the case back to the police for follow-up investigation, or accept the case for prosecution and issue a complaint. The ADA will put the initial file together at this time, which includes all police reports, the initial charges filed, and generally a recommendation for final disposition. In both jurisdictions, screening takes place seven days a week and teams rotate through the screening area generally on a weekly basis, with each unit taking several days or a week to screen cases for their unit. In Southern County, only experienced ADAs screen felony cases; in Northern County all ADAs screen cases.

Misdemeanors in Northern County follow the same process. As with felonies, misdemeanor cases are screened by ADAs of all experience levels and are generally handled within a general crimes unit which prosecutes both misdemeanor and felony offenses. The primary difference in the screening process for misdemeanors is that ADAs may speak with liaison officers from the relevant precinct/agency rather than the arresting officer and may review files in bulk rather than one at a time with the officer. Misdemeanors in Southern County, however, follow a completely different process with no formal screening conference with law enforcement; rather, ADAs screen, charge, and plea cases as part of the same process. Moreover, unlike felony cases in Southern County which are screened by experienced ADAs, all misdemeanor cases are handled by the least experienced ADAs in the office. Misdemeanor cases are processed in a lower court which includes both misdemeanor offenses and criminal traffic offenses; as such, the courtroom handles an extremely high volume of cases (approximately 100,000 cases per year). Individuals arrested for misdemeanor offenses are generally given a citation with a date to come to court for a first appearance (for those in custody, this is done via video conference). At this appearance, defendants will be told of the

charges against them and asked if they would like counsel to be assigned or if they are interested in taking a plea and waiving counsel. All plea offers are made on the spot and are not subject to any review by a supervisor; pleas are based only on the information contained on the charge sheet and the defendant's record. If a defendant does not express interest in a plea, or the case is not appropriate to plead at this point, then counsel will be assigned (if necessary) and the case will be adjourned approximately six weeks for trial. The trial date will depend on who the arresting officer is; officers are assigned court dates two days per month.

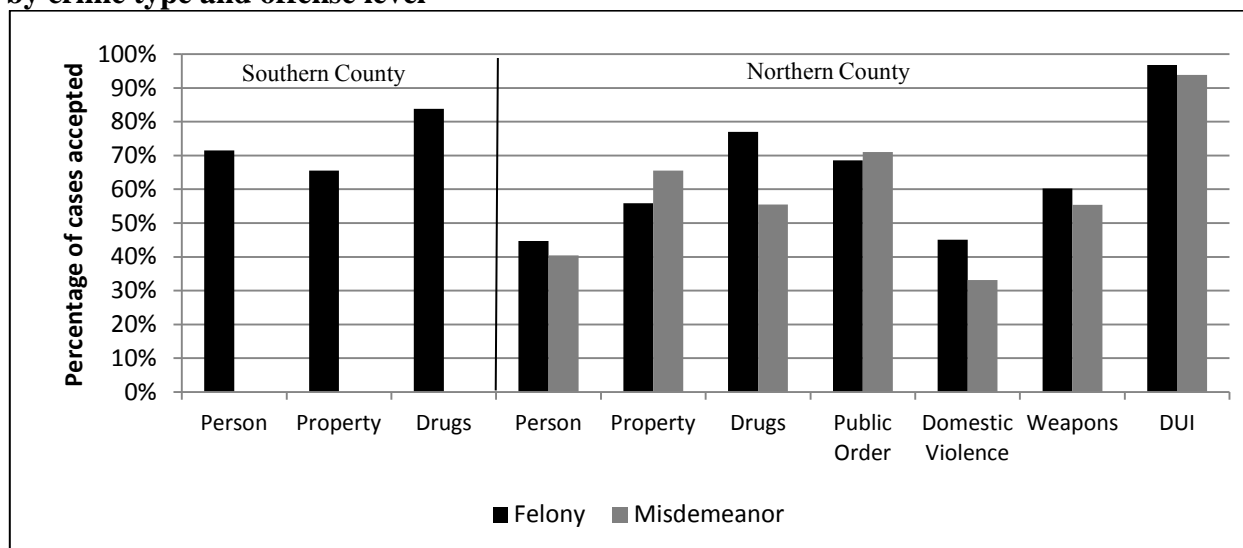
The screening decision is generally seen as the most important decision in the processing of a case. The DA in Southern County described screening as *a mean task – it is stressful, requires experience and patience, and requires training of the police*. Moreover, at no other stage of the process is the prosecutor's decision more obscured and less reviewed than at screening; indeed, one deputy in Northern County described the screening decision as *unfettered discretion*. While the screening decision may be the most important, it is also the decision which prosecutors have the least time to make. Prosecutors described having *just enough time to make a decision of whether the facts are present*. As unit managers in Northern County noted, the minimal amount of time available for screening meant that *many cases may be dismissed immediately after screening because the assigned ADA looks closer*.

The screening decision is also much more complex than simply rejecting or accepting a case to prosecute. Many cases—if not most—involve multiple arrest charges and, potentially, multiple filed charges. Determining whether a case *can* go forward and whether a case *should* go forward involve decisions at the individual charge level *and* decisions at the overall case level. Evaluating the probability of conviction is first a charge-by-charge determination concerning whether there is sufficient evidence to support each potential charge. The evaluation that a *case* (the collection of all

the charges) go forward implies a judgment that there is sufficiently strong evidence to support one or more of the potential charges and that there are no known case-level characteristics (e.g., a sympathetic defendant or contextual factors) that would make a jury likely to discredit or ignore the evidence, lead a judge to exclude key evidence, or lead the prosecutor to otherwise reject a case. Thus, the screening decision involves decisions about individual charges and the overall case: individual charges may be rejected while the case itself is accepted. To account for this, we consider the screening decision as it affects the entire case; a case may be rejected for prosecution or accepted for prosecution. We consider the charging decision (in the following section) as it affects the individual charges within a case; if the case is accepted for prosecution, for example, the most serious arrest charge may be accepted or rejected.

Overall, the outcomes of screening decisions differed substantially between counties and across crime types (Figure 3.4-1). Acceptance rates in Southern County were significantly higher than those in Northern County for all three comparable offense types – felony drug, felony person, and felony property offenses. The difference may be a reflection of different approaches to the screening process. In Northern County, the District Attorney relies heavily on a strict screening decision to divert cases from prosecution and to reject weak cases. Only recently has the District Attorney in Southern County placed a greater emphasis on a strict screening, historically relying on dismissals as a mechanism for rejecting weak cases after acceptance.

**Figure 3.4-1 Percentage of cases accepted for prosecution in Southern and Northern Counties, by crime type and offense level**



We examined case-level and prosecutor-level factors influencing screening decisions using two methods. First, we examined administrative data capturing the initial decision to accept or reject actual cases. Second, we examined factorial survey data capturing prosecutors' decisions to reject or accept hypothetical cases for prosecution.

### *3.4.1 Screening Decisions in Southern County*

#### Descriptive Statistics

The analyses of screening decisions in Southern County were based on 508 person unit cases, 653 property unit cases, 2,403 early drug sample cases, and 2,316 late drug sample cases. The acceptance rates at screening in Southern County ranged from a low of 65.5 percent for property crimes to a high of 80.1 percent for the more recent drug crime sample (Figure 3.4.1-1).

**Figure 3.4.1-1 Acceptance rates for cases screened in Southern County**

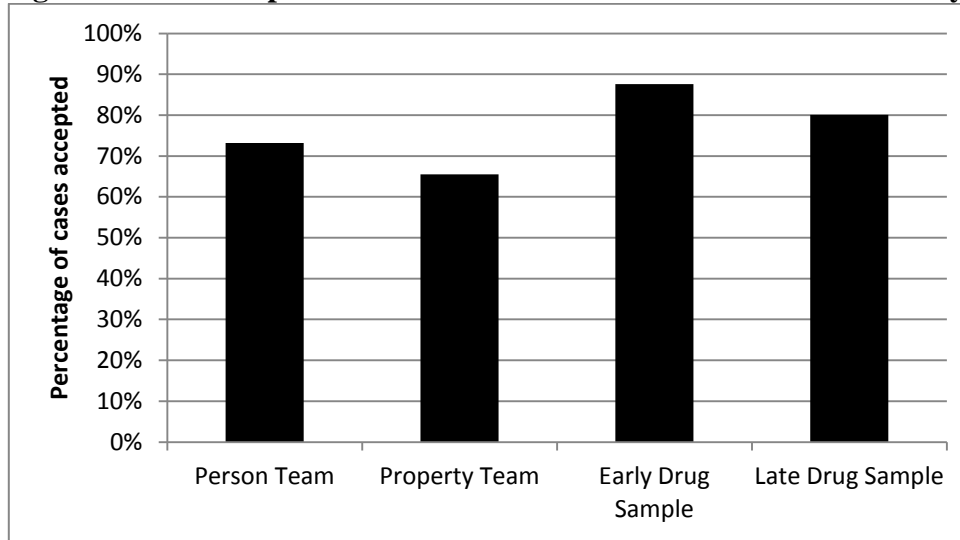


Table 3.4.1-1 displays simple descriptive statistics showing how acceptance rates varied across several case-level factors. The case characteristics presented in Table 3.4.1-1 are limited to ones that proved to be significant factors in one or more of the final logistic regression models. A much larger set of case factors and their interactions was tested for possible inclusion in the models. A complete list of variables tested in the logistic regression analyses is given in Appendix A.

**Table 3.4.1-1 Percentage of screened cases accepted for prosecution in Southern County, by selected case characteristics**

Case Characteristics	Person Unit	Property Unit	Early Drug Sample	Late Drug Sample
Number of charges presented for screening				
1	52%	49%	77%	67%
2	84%	74%	86%	78%
3	88%	84%	95%	87%
4	87%	78%	94%	91%
5	89%	87%	96%	92%
Rank of top charge presented for screening				
4	91%	-	100%	-
5	72%	-	98%	97%
6	70%	-	90%	82%
7	73%	-	-	-
8	80%	-	97%	94%
9	78%	66%	86%	80%
10	78%	69%	85%	76%
Codefendants				
No	76%	63%	91%	83%
Yes	72%	70%	79%	70%

**Table 3.4.1-1 (cont'd) Percentage of screened cases accepted for prosecution in Southern County, by selected case characteristics**

Case Characteristics	Person Unit	Property Unit	Early Drug Sample	Late Drug Sample
Black defendant				
No	62%	63%	90%	81%
Yes	75%	67%	87%	80%
Male defendant				
No	71%	53%	89%	81%
Yes	74%	68%	87%	80%
Defendant age at screening				
<21	72%	73%	84%	74%
21-25	80%	58%	87%	82%
26-30	77%	64%	(21-30)	
31-35	73%	55%		
36-40	53%	70%	84%	74%
41+	67%	61%	(31+)	
Number of items of evidence per charge				
<1	69%	65%		
1-2	82%	62%		
2+	80%	78%		
Total number of items of evidence listed				
0	54%	56%		
1	84%	61%		
2	76%	75%		
3	84%	91%		
4	95%	94%		
5	96%	92%		
Evidence with potential for forensic ID				
No	73%	65%		
Yes	72%	83%		
Number of weapon-related items of evidence				
0	66%	66%		
1	86%	53%		
2+	85%	80%		
Number of victims				
1	71%	65%		
2+	77%	75%		
Number of victims willing to prosecute				
0	42%	46%		
1	80%	70%		
2+	86%	77%		
Any non-person victims				
No	69%	61%		
Yes	81%	72%		
Number of victim strangers				
0	68%	53%		
1	74%	70%		
2+	79%	76%		
Any victims need medical attention				
No	69%	66%		
Yes	81%	-		

-N < 10 cases



As Table 3.4.1-1 indicates, perceived seriousness of the offense appears to influence the screening decision. Higher statutory class of the top charge presented for screening was associated with higher acceptance rates, though the number of cases was small for some specific statutory classes, and the resulting pattern was somewhat erratic. Among the measures of offense characteristics, the most consistent pattern was found for the total number of charges presented for screening. For all four samples, a greater number of charges was associated with substantially higher acceptance rates. The meaning of this latter pattern is unclear. This may reflect an effect of case seriousness, or it may be an evidence-related effect in which more charges provide a greater opportunity that some charge or charges will be provable.<sup>7</sup>

In the two samples for which evidence and victim information was available, the descriptive statistics show highly consistent relationships between acceptance rates and direct evidence measures and between acceptance rates and evidence-related victim characteristics. For both the person unit cases and the property unit cases, acceptance rates were substantially higher for cases with a greater total number of items of physical evidence listed in the police report, more items of evidence per charge, more weapons-related items of evidence, a greater number of victims (especially the number of victims willing to prosecute), and any non-person victims (such as a business or “the state,” for which testimonial evidence is more likely to be reliable or pertinent records may be supplied). Cases in which the defendant was a stranger to the victim were more likely than others to be accepted for prosecution, as were cases involving crimes against persons in which the victims required medical attention.

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<sup>7</sup> On the other hand, cases involving more charges may be inherently more complex and more vulnerable to dismissal later in the process. We present evidence later in this report suggesting that cases with more charges and more serious top charges are likely to experience greater reductions between initial charging and plea offers but are less likely to be dismissed completely.

Other measures displayed in Table 3.4.1-1 exhibited less consistent results. The presence of codefendants was associated with lower acceptance rates for drug crimes but somewhat higher acceptance rates for property crimes. Cases involving black defendants had noticeably higher acceptance rates for person crimes but showed no clear pattern for property crimes or drug crimes, whereas cases involving male defendants had noticeably higher acceptance rates for property crimes but no clear pattern for person crimes or drug crimes. There also was a slight but inconsistent tendency for older defendants to experience lower acceptance rates for person and property crimes, but no clear pattern for drug crimes.<sup>8</sup> Finally, the presence of forensic evidence with the potential for identifying the defendant (DNA, fingerprints, blood, etc.) was associated with substantially higher acceptance rates for property crimes but not for person crimes. However, it should be noted that sex offenses were excluded from all of these analyses, and forensic evidence may be less commonly collected in higher volume crimes against persons such as assaults and robberies.

### Logistic Regression Analyses

Separate logistic regression models for the probability of acceptance were estimated for person unit cases and property unit cases. The early drug unit sample and the late drug sample were combined in a single analysis to permit explicit tests of the effect of historical period and the interactions between historical period and other factors. We employed binary logistic regression modeling to determine which among the potential explanatory variables had the strongest unique effects on the probability of acceptance at screening. However, as we have mentioned elsewhere in this report, the relatively small samples available for some of the analyses, combined with the relatively large number of candidate variables, means the selection of a particular variable among a

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<sup>8</sup> Prior criminal history scores were available for the defendants included in the samples from each unit. However, prior criminal history was not included among the potential explanatory variables in analyses of screening outcomes, because prior record was generally not available to prosecutors at the time of initial screening for felony cases. A statutorily defined prior record score becomes available to prosecutors somewhat later in the processing of a case; analyses of plea offers and dismissals presented later in this report examine the potential influence of prior record at those stages.

related set of variables may often be a matter of chance. Thus, we caution readers not to attach too much importance to which among related variables happens to show significant effects in a single given model. Rather, we are attending to the overall pattern of findings across samples, measures, and conditions.

Table 3.4.1-2 presents the final models for the effects of selected factors on the probability of acceptance for cases screened by the person unit, property unit, and drug unit in Southern County. The values in the body of the table are odds ratios. A ratio greater than one indicates that an increase in the value for the variable is associated with an increase in the odds of acceptance. A ratio less than one indicates that an increase in the value for the variable is associated with a decrease in the odds of acceptance. Thus, for example, an odds ratio of 1.50 indicates an increase of 50 percent in the odds of acceptance, and an odds ratio of .50 indicates a decrease of 50 percent in the odds of acceptance.<sup>9</sup>

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<sup>9</sup> Odds are not probabilities. Odds are related to probabilities by the function  $\text{odds} = p/(1-p)$ . For example, if the probability of acceptance is .80, the odds of acceptance are 4-to-1 ( $.80/.20 = 4$ ). If the probability is .50, the odds are 1-to-1 ( $.5/.5 = 1$ ). The magnitude of an effect in the probability metric depends on the reference level. For example, if the probability of acceptance for some reference group is .20 (odds of .25-to-1) and the probability for some target group is .50 (odds of 1.0-to-1), then the odds ratio would be 4.0, and the ratio of probabilities would be 2.5. However, if the probability for the reference group is .50 (odds of 1.0-to-1), an odds ratio of 4.0 would imply a probability of .80 for the target group, and the ratio of probabilities would only be 1.6.

**Table 3.4.1-1 Final logistic regression models for effects of selected factors on the odds of acceptance at screening in Southern County**

Independent Variables	Odds Ratios		
	Drug Unit	Person Unit	Property Unit
<i>Offense Characteristics</i>			
Late drug sample	.544***		
N of charges screened (up to 5)	1.682***	1.595***	1.496***
Statutory class of top charge at screening <sup>a</sup>	.900***	.902	ns
Codefendants	ns	.470***	ns
Burglary			2.712***
<i>Defendant Characteristics</i>			
Race (black)	.773**	ns	ns
Gender (= male for drugs; female otherwise)	ns	ns	.485
Defendant age (3 levels for drug; 6 otherwise)	1.238***	ns	.851***
<i>Victim Characteristics</i>			
N of victims		.632	.475*
N of victims willing to prosecute		ns	2.188***
N of victims to whom defendant was a stranger		ns	1.397*
Any nonperson victims		ns	2.210***
<i>Evidence</i>			
Total N of items of evidence listed (up to 5)		ns	1.606***
N of items of evidence per intake charge (3 levels)		3.803***	ns
N of weapons-related items of evidence		ns	.329***
<i>Interactions</i>			
Robbery BY N of victims willing to prosecute		1.911***	ns
Multiple charges BY race		2.508**	ns
Multiple charges BY N of vics willing to prosecute		2.446***	ns
Multiple charges BY evidence for forensic ID		.418**	ns
<i>Ns</i>	4383	479	616
<i>Nagelkerke R<sup>2</sup></i>	.11	.36	.28

p<=.10; \*\*p<=.05; \*\*\*p<=.01; for coefficients without asterisks p<=.15

<sup>a</sup>Statutory class was coded as 1 = highest rank; larger values correspond to less serious charges. Thus, odds ratios greater than one denote inverse relationships with seriousness.

The direct and indirect influences of evidence are apparent in the results for both the person unit cases and the property unit cases, but they show up differently in the two samples. For person unit cases, there was a highly significant effect of the number of items of evidence per charge, as well as

effects for the number of victims willing to prosecute in robbery cases and cases with multiple intake charges. For property unit cases, there were highly significant effects for the total number of items of evidence, for the involvement of nonperson victims, and for the number of victims willing to prosecute. However, for both samples, the effects of the number of victims willing to prosecute were offset somewhat by a reduction in the odds of acceptance for greater overall numbers of victims; the combination of these two variables perhaps suggest that greater numbers of victims only enhance a case if the victims are willing to prosecute and may be detrimental otherwise. Similarly, for person unit cases, there was a tendency for the positive effect of the number of items of evidence per charge to be offset in cases with multiple charges by a negative effect of evidence with the potential for forensic identification. There were only 29 person unit cases with such evidence, so it is not clear whether this finding is merely a random anomaly, or whether it represents a substantive influence, such as, for example, if cases dependent on forensic evidence were especially prone to some damaging flaw.

A few of the significant effects were confined to one of the samples or were inconsistent across samples. Cases in the late drug sample were much less likely to be accepted than earlier cases, perhaps reflecting general efforts in Southern County to improve case screening or a specific change in policy associated with the change in drug unit supervisor. Person unit cases involving codefendants were less likely than other cases to be accepted; this could be a result of inducing defendants to cooperate with the prosecution, but it is not clear why that would not also apply to property cases and especially drug cases. Drug cases involving black defendants were less likely than drug cases involving nonblack defendants to be accepted for prosecution, but the opposite was true for person unit cases with multiple charges. Finally, cases involving female defendants were less likely to be accepted than those involving male defendants for property crime cases but not for

the other two samples, and older defendants were more likely than younger ones to have their cases accepted for prosecution in drug cases but less likely in property cases. Consistent with the caution expressed earlier, we are inclined to view most of these inconsistencies as non-findings, rather than attaching much substantive import to the pattern of inconsistencies.

Perhaps the most surprising result of these analyses was the consistent influence of case seriousness across measures and samples. More serious top charge at intake was associated with greater odds of acceptance for both the drug unit cases and the person unit cases. Greater numbers of charges at intake were strongly associated with greater odds of acceptance in all three samples. In addition, for property crimes, acceptance rates were higher for cases in which the defendant was a stranger to the victim, and for burglaries (reflecting an explicit office policy in Southern County). As noted in the discussion of the descriptive summaries, the number of charges could be influential in more than one way—as an indication of case seriousness or as an influence on the ability to obtain a conviction. Either way, it appears from these findings that case seriousness begins to influence case decisions from the outset.

#### *3.4.2 Screening Decisions in Northern County*

Unlike Southern County, data in Northern County was available for all offense types and all offense levels and was not limited to samples of data; rather, we were able to examine screening decisions for all cases reviewed by the office over the entire study period. Therefore, we provide additional descriptive statistics on the distribution of cases across offense types and offense levels in Northern County.

#### Descriptive Statistics

The analyses of screening decisions in Northern County were based on 46,358 misdemeanor cases and 28,274 felony cases. The largest portion of cases screened involved domestic violence

offenses (28.2 percent of all cases), followed by public order offenses (22.9 percent), property offenses (15.8 percent), and drug offenses (13.9 percent) (Figure 3.4.2-1). While roughly 38 percent of all cases involved a felony offense, this distribution was not true for all offense types. Roughly 76 percent of person cases, 64 percent of property cases, 84 percent of drug cases, and 57 percent of weapons cases involved a felony as the top arrest charge. In contrast, just 19 percent of public order cases, 9 percent of domestic violence cases, and 6 percent of DUI cases involved a felony.

**Figure 3.4.2-1 Number of cases screened in Northern County, by offense type and offense severity level**

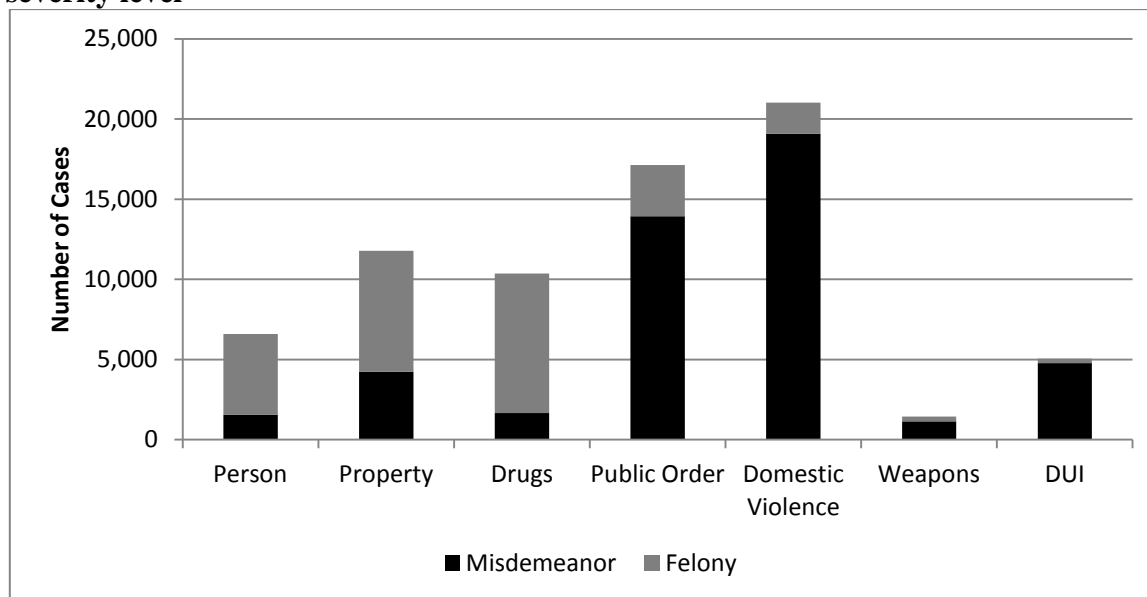
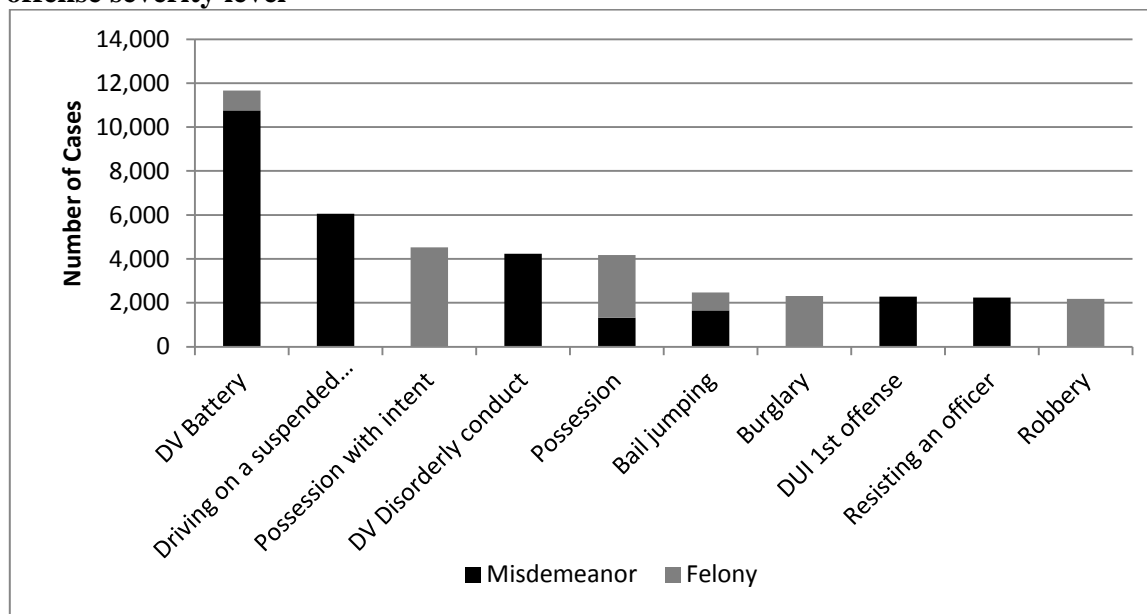


Figure 3.4.2-1 also indicates that a large portion of cases were misdemeanor domestic violence cases (25.6 percent of all cases) and misdemeanor public order cases (18.7 percent of all cases); these two offense type/offense severity categories accounted for roughly 44 percent of all cases and 71 percent of all misdemeanor cases screened in the office. As Figure 3.4.2-2 shows, domestic violence battery cases were the most frequent cases screened in the office, accounting for nearly 16 percent of all cases screened, followed by driving on a suspended license (8 percent of all cases) and possession with intent to distribute a controlled substance (6 percent of all cases).

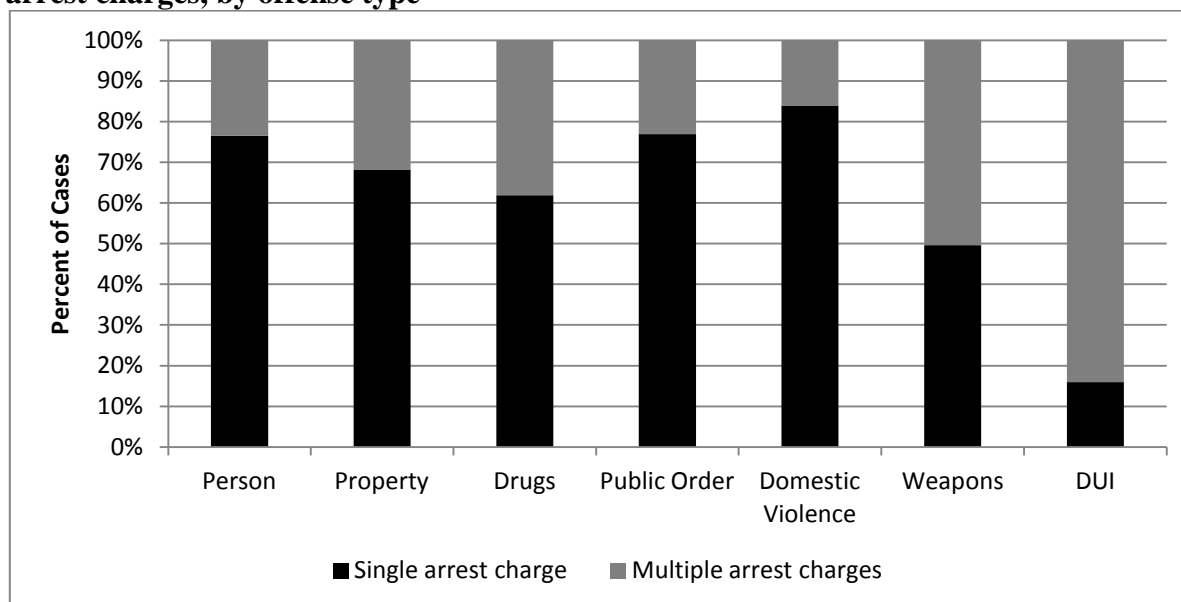
Overall, 30 percent of cases screened involved multiple arrest charges. This distribution was not true for all offense types. As Figure 3.4.2-3 indicates, roughly 84 percent of DUI cases and 50 percent of weapons cases involved multiple arrest charges. In contrast, just 16 percent of domestic violence cases, 23 percent of person offense cases, and 23 percent of public order offenses cases involved multiple arrest charges.

**Figure 3.4.2-2 Ten most frequently screened cases in Northern County, by offense type and offense severity level**



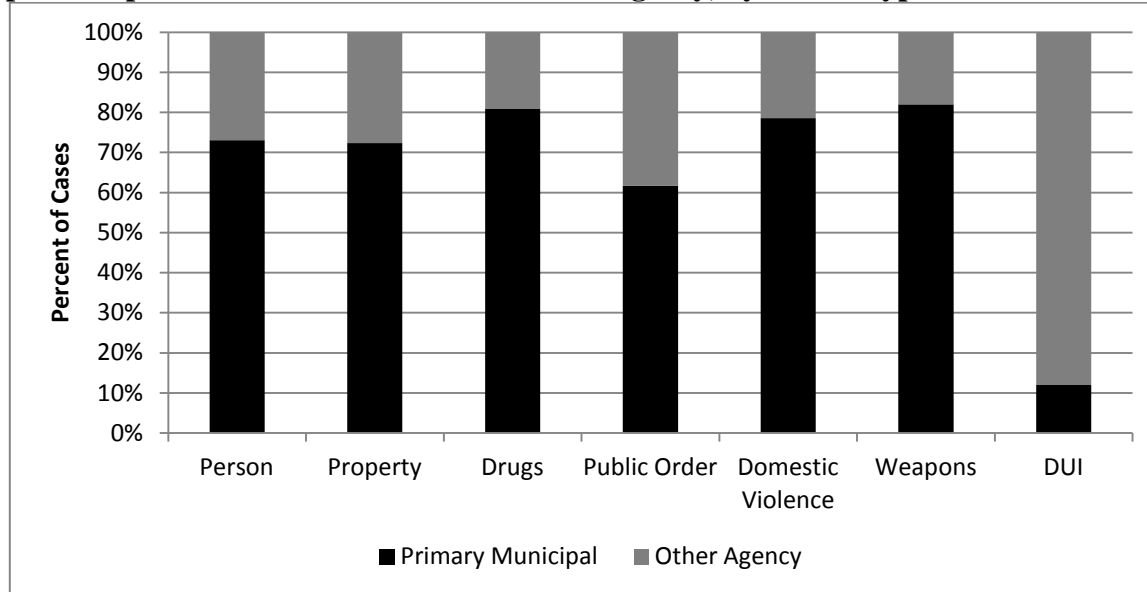


**Figure 3.4.2-3 Percent of cases screened in Northern County involving single or multiple arrest charges, by offense type**



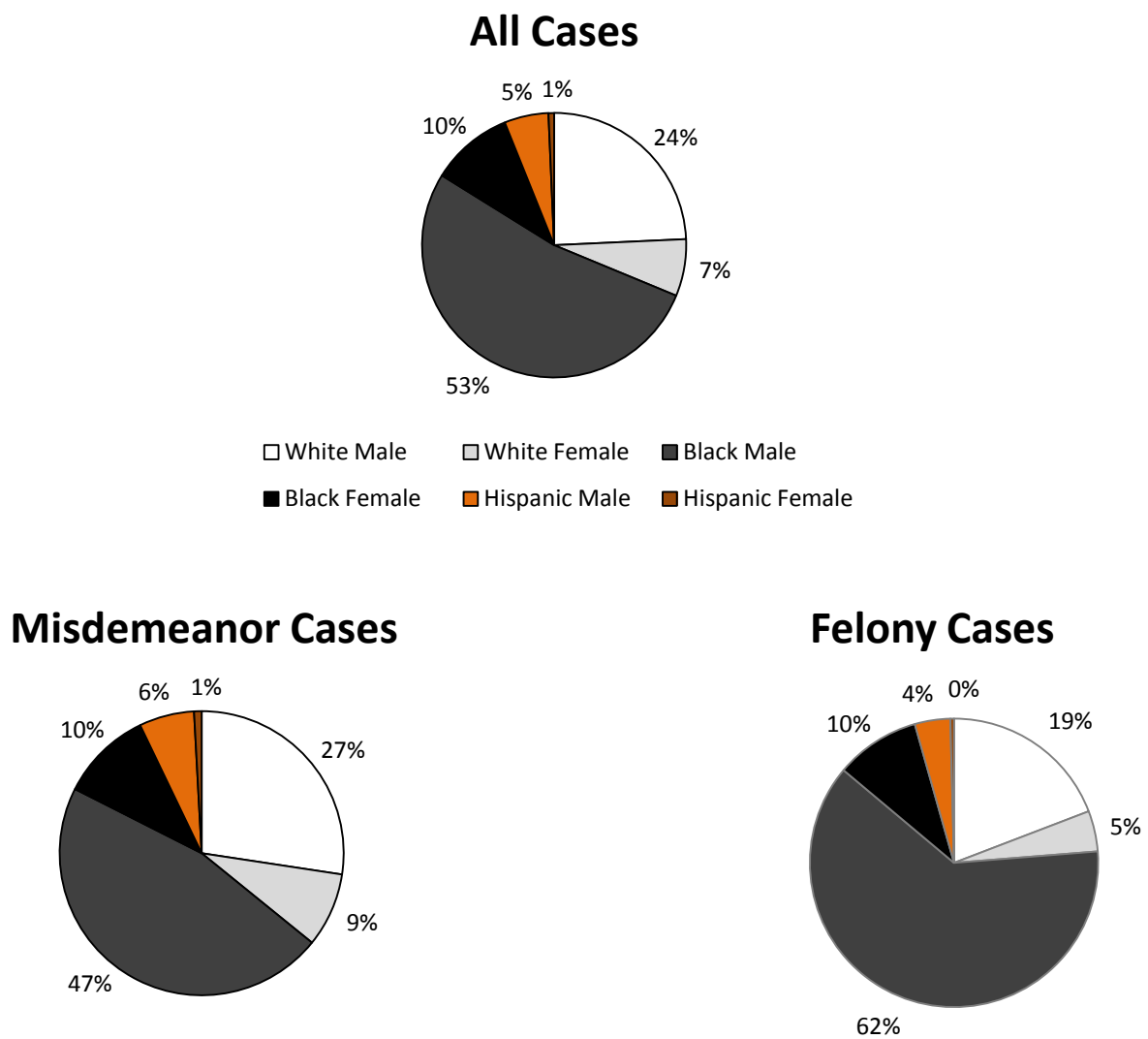
As noted in Part 2, Northern County contains one primary municipal police department and several suburban municipal police departments. Roughly 69 percent of all cases screened involved arrests made by the primary municipal police department. This distribution was fairly stable across offense types, with the exception of public order and DUI cases; for both of these offense types a markedly lower percentage of cases involved arrest made by the primary agency (Figure 3.4.2-4).

**Figure 3.4.2-4 Percent of cases screened in Northern County involving primary municipal police department or other law enforcement agency, by offense type**



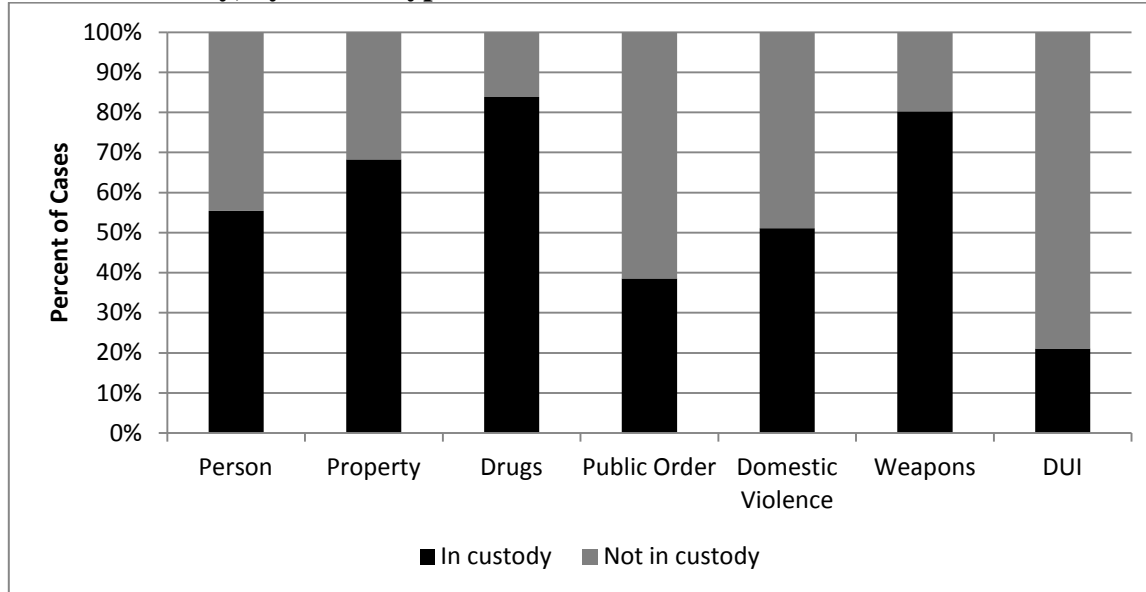
Roughly 82 percent of the cases screened in Northern County involved male defendants. Over 62 percent of defendants were black, 31 percent were white, 6 percent were Hispanic, and 1 percent were of other racial backgrounds. When gender and racial characteristics of defendants are combined, black males clearly represented the largest racial/gender group of defendants with nearly 52 percent of all cases screened in the office involving black male defendants (Figure 3.4.2-5); however, felony cases were more likely to involve black men than misdemeanor cases, with over 62 percent of felony cases involving black male defendants compared to 46 percent of misdemeanor cases. The distribution of racial/gender groups was fairly constant across offense types, with the exception of weapons offenses and DUI offenses. Roughly 74 percent of weapons offense cases involved a black male defendant, while over 55 percent of DUI offense cases involved a white male defendant; in fact, over 80 percent of weapons offense cases involved black defendants and over 75 percent of DUI offense cases involved white defendants.

**Figure 3.4.2-5 Percent of cases screened in Northern County, by defendant race/gender**



Roughly 55 percent of defendants were in custody at the time their cases were screened. Again, the custody status of defendants varied widely for each offense type (Figure 3.4.2-6). As Figure 3.4.2-6 indicates, 84 percent of defendants in drug cases, 80 percent of defendants in weapons cases, and 68 percent of defendants in property cases were in custody at the time of screening. In contrast, just 21 percent of defendants in DUI cases and 38 percent of defendants in public order cases were in custody at the time of screening.

**Figure 3.4.2-6 Percent of cases screened in Northern County involving defendants in custody or not in custody, by offense type**

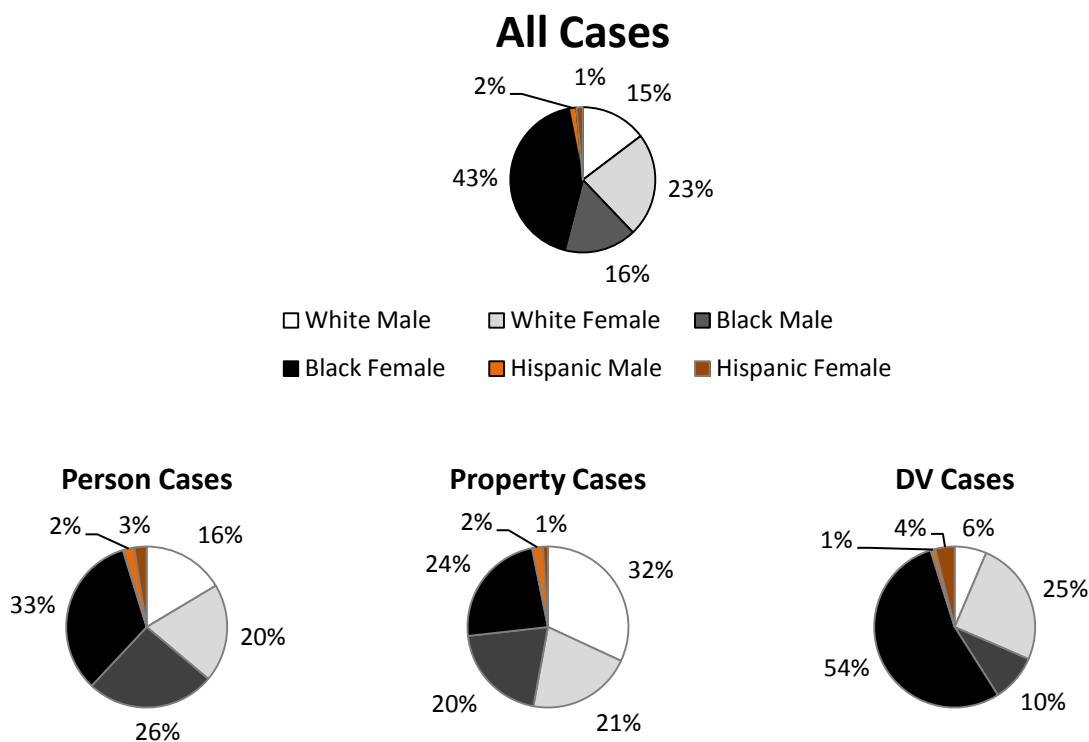


Overall, roughly 50 percent of the cases screened in Northern County involved an identifiable victim; victim information was available in 99 percent of person offenses, 95 percent of domestic violence cases, and 64 percent of property cases.<sup>10</sup> The demographic characteristics of victims were quite different than those of defendants (Figure 3.4.2-7). While the racial composition of victims was similar to that of defendants – roughly 57 percent of victims were black compared to 62 percent of defendants – the gender composition was quite different – nearly 60 percent of victims were female compared to 18 percent of defendants. When gender and racial characteristics of victims were combined, black females clearly represented the largest racial/gender group of victims screened in the office (over 41 percent of all cases screened) followed by white females (over 22 percent of all cases screened). The high percentages of female victims were due largely to domestic violence cases. As Figure 3.4.2-7 shows, over 54 percent of domestic violence cases involved black

<sup>10</sup> Naturally, some types of offenses – drug offenses, public order offenses, and DUI offenses specifically and some property and weapons offenses – do not involve victims. In addition, some cases categorized as, for example, drug cases in our analyses have victims listed; however, these victims are not involved in the controlling offense (i.e. the most severe charge). These cases are rare, however, and victim information is not included in such cases. Thus, victim information is included only when it pertains to the most serious arrest offense.

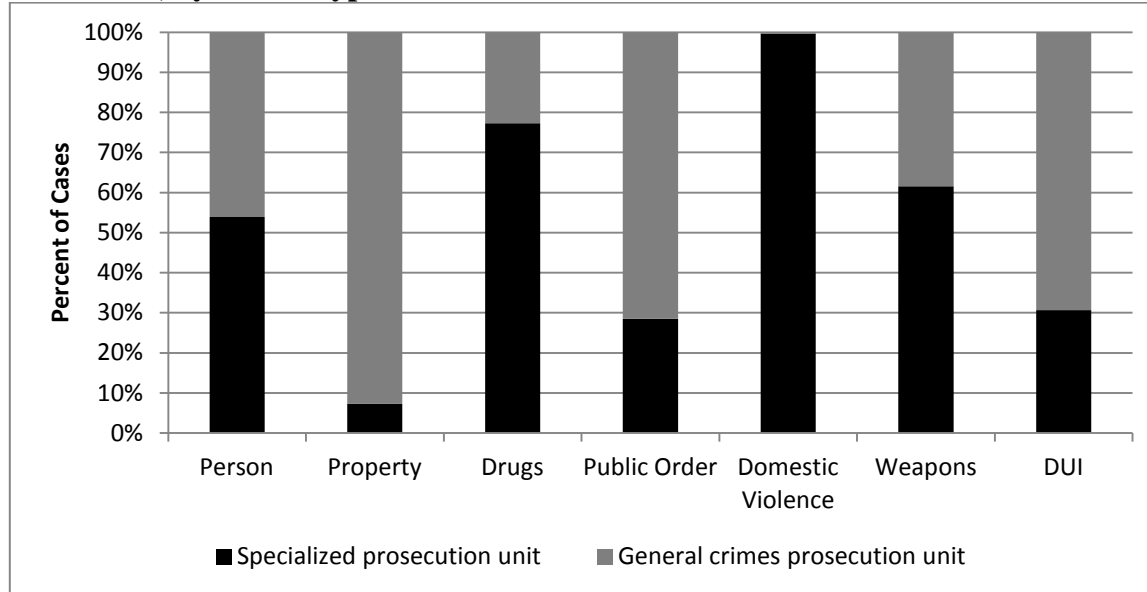
female victims and nearly 25 percent involved white female victims. Person cases showed similar high rates of black female victims (nearly 33 percent of all person cases) and black victims generally (roughly 56 percent of all person cases); property cases displayed higher rates of white male victims (over 31 percent of all property cases) and white victims generally (roughly 52 percent of all property cases).

**Figure 3.4.2-7 Percent of cases screened in Northern County, by victim race/gender**



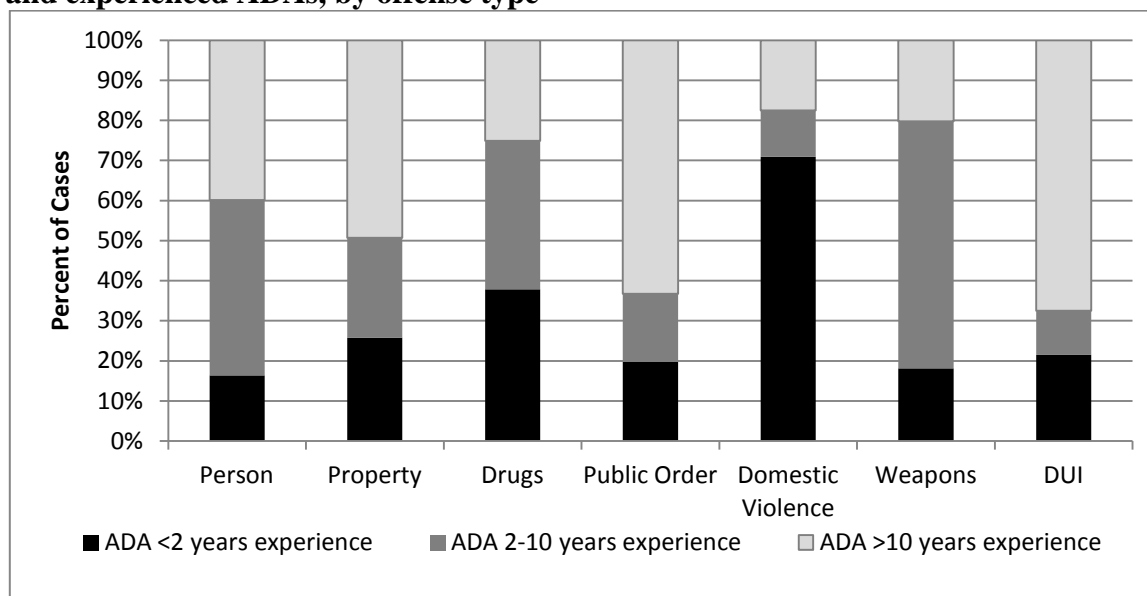
Given the division of the district attorney’s office into specialized units, a high percentage of cases – over 55 percent – were screened by specialized units. Naturally, this was higher for those offenses targeted by such specialized units (Figure 3.4.2-8). For example, nearly 100 percent of domestic violence cases, 77 percent of drug cases, and 62 percent of weapons cases were screened by specialized units dedicated to these offense types, respectively; just 7 percent of property cases, 29 percent of public order cases, and 30 percent of DUI cases were screened by a specialized unit.

**Figure 3.4.2-8 Percent of cases screened in Northern County by a specialized or general crimes unit, by offense type**



A total of 145 unique ADAs screened cases during the study period. While the case management system requires screening ADAs to identify themselves, this information was missing in 9.7 percent of cases. For those cases with screening ADA information, just over 65 percent were screened by male ADAs; this was fairly stable across offense types, with the exception of weapons cases and DUI cases, in which over 80 percent of cases were screened by male ADAs. Overall, approximately 38 percent of cases were screened by ADAs with less than two years of experience, 23 percent were screened by ADAs with two to ten years of experience, and 39 percent were screened by ADAs with more than ten years of experience (Figure 3.4.2-9). Again, this varied dramatically across offense types. For example, while just 18 percent of weapons offenses were screened by ADAs with less than two years of experience, over 70 percent of domestic violence cases were screened by these ADAs. For most offense types, ADAs with less than two years of experience screen between 20 percent and 35 percent of cases, consistent with their representation in the office.

**Figure 3.4.2-9 Percent of cases screened in Northern County by inexperienced, mid-career, and experienced ADAs, by offense type**



Overall, roughly 57 percent of cases were accepted for prosecution during the study period; in other words, of the 74,632 cases screened in Northern County, 42,420 cases (56.8 percent) were accepted for prosecution and 32,212 cases (43.2 percent) were rejected (Table 3.4.2-1). Cases involving felonies were accepted at a slightly higher rate (63.0 percent) than cases involving misdemeanors (54.7 percent). Moreover, acceptance rates differed markedly by offense type. Over 94 percent of DUI cases, 75 percent of drug cases, and 71 percent of public order cases were accepted for prosecution, compared to just 34 percent of domestic violence cases and 44 percent of person cases. This is fairly consistent with prosecutors' impressions as described in Part 2; those cases that rely heavily on victim participation or testimony, such as person offenses and domestic violence offenses, tend to have lower acceptance rates than other types of cases. Conversely, cases that rely primarily on physical evidence, such as drug offenses and weapons offenses, tend to have higher acceptance rates. Table 3.4.2-1 displays simple descriptive statistics showing how acceptance rates varied across several case-level factors.

**Table 3.4.2-1 Percentage of screened cases accepted for prosecution in Northern County, by selected case characteristics**

	<b>Person</b>	<b>Property</b>	<b>Drugs</b>	<b>Public Order</b>	<b>DV</b>	<b>Weapons</b>	<b>DUI</b>
Overall	44%	60%	75%	71%	34%	59%	94%
<i>Offense Characteristics</i>							
Charge Severity							
Misdemeanor	41%	66%	56%	71%	33%	56%	94%
Felony	46%	57%	78%	69%	34%	62%	97%
Number of charges							
Single charge	37%	54%	71%	69%	30%	47%	73%
Multiple charges	67%	72%	80%	76%	56%	70%	98%
Enhancement Offense							
No	44%	60%	74%	71%	30%	58%	94%
Yes	53%	75%	83%	57%	43%	71%	100%
Arresting Agency							
Primary municipal	47%	55%	75%	65%	35%	60%	88%
Other	38%	73%	72%	81%	34%	56%	95%
Drug Type							
Cocaine	--	--	80%	--	--	--	--
Heroin	--	--	87%	--	--	--	--
Marijuana	--	--	75%	--	--	--	--
Other	--	--	65%	--	--	--	--
<i>Defendant Characteristics</i>							
Race							
White	45%	64%	71%	77%	32%	54%	95%
Black	44%	58%	76%	66%	34%	60%	91%
Hispanic	49%	66%	77%	74%	42%	61%	93%
Gender							
Female	43%	60%	65%	67%	22%	44%	84%
Male	45%	60%	76%	71%	37%	60%	95%
Custody Status							
Not in custody	32%	53%	61%	75%	30%	39%	95%
In Custody	54%	63%	77%	66%	39%	64%	92%



**Table 3.4.2-1 (cont'd) Percentage of screened cases accepted for prosecution in Northern County, by selected case characteristics**

	Person	Property	Drugs	Public Order	DV	Weapons	DUI
<i>Victim Characteristics</i>							
Race							
White	46%	59%	--	--	34%	--	--
Black	41%	50%	--	--	32%	--	--
Hispanic	46%	61%	--	--	40%	--	--
Gender							
Male	41%	55%	--	--	22%	--	--
Female	46%	56%	--	--	35%	--	--
<i>Prosecutor Characteristics</i>							
Gender							
Female	45%	56%	77%	68%	31%	60%	93%
Male	44%	63%	73%	71%	37%	59%	95%
Experience							
<2 years	45%	63%	78%	73%	32%	65%	94%
2-10 years	44%	56%	75%	60%	33%	57%	92%
>10 years	45%	60%	68%	73%	46%	57%	95%
Unit							
General crimes unit	36%	59%	70%	72%	--	53%	95%
Specialized unit	50%	63%	76%	67%	34%	61%	83%

As Table 3.4.2-1 indicates, acceptance rates varied considerably along several dimensions of case characteristics, defendant characteristics, and prosecutor characteristics. Across all offense types, cases involving multiple arrest charges were more likely to be accepted for prosecution than cases involving single arrest charges. Cases involving felonies generally were more likely to be accepted, with the exception of property and public order offenses. Acceptance rates also varied by arresting law enforcement agency; however, the patterns were not consistent. For some offenses – drugs, weapons, domestic violence, and DUI – acceptance rates were roughly the same for both the primary municipal police department and other agencies. For property and public order cases, acceptance rates for case involving the primary municipal police department were roughly 20 percentage points higher than other agencies and for person offenses they were roughly 10

percentage points lower. These differences may be a reflection of differences in the quality of cases presented by different agencies, described by prosecutors in Part 2.

Overall acceptance rates were nearly identical for white and Hispanic defendants (roughly 64 percent), which were slightly higher than acceptance rates for black defendants (approximately 55 percent); acceptance rates for men (58 percent) were also higher than rates for women (51 percent). When racial/gender groups were compared, cases involving Hispanic male defendants and white male defendants tended to be accepted at higher rates than cases involving other racial/gender groups, with a few exceptions. Acceptance rates based on the victim racial/gender categories were similar to those based on defendant racial/gender categories, with cases involving black victims accepted at lower rates than cases involving white victims. This is likely an artifact of intra-racial offending patterns for person, property, and domestic violence offenses. Generally, cases involving white female victims tend to be accepted at rates higher than all other racial gender groups. Cases involving defendants in custody at the time of screening also had slightly higher acceptance rates than cases in which the defendant was not in custody (60.1 percent versus 56.1 percent, respectively). This was true for all offense types, except public order and DUI offenses.

Acceptance rates also varied slightly by prosecutor gender and level of experience. Overall, male prosecutors accepted cases at a higher rate than female prosecutors (59 percent versus 51 percent). Less experienced ADAs also tended to accept cases at a higher rate than more experienced ADAs, with the exception of domestic violence cases. Finally, there was no clear pattern to acceptance rates based on the type of prosecution unit screening the case.<sup>11</sup> Specialized prosecution units accepted cases at a higher rate than general crimes units for cases involving person offenses, property offenses, and public order offenses; but specialized units accepted cases at a lower rate

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<sup>11</sup> Since less than 100 domestic violence cases were screened outside the specialized domestic violence unit over the entire study period, the screening decisions for these cases are not included.

than general crimes units for cases involving drug offenses and DUI offenses. The differences in acceptance rates are likely a result of the severity of cases that are referred to specialized units. For example, all felony drug offenses are screened and prosecuted by the specialized drug unit, while most misdemeanor drug offenses are screened by general crimes units; thus, the differences in acceptance rates may be a reflection of differences in the underlying severity of offenses screened by each unit. The same may be true for person offenses. Northern County has a specialized unit which screens and prosecutes all sex offenses and crimes involving children; all other person offenses are screened and prosecuted by general crimes units.

### HLM Analyses

Table 3.4.2-2 presents results from the two-level unconditional models of screening for each offense type. Results suggest that across all models approximately 10 percent of the total variation in the likelihood of a case being accepted can be attributed to differences between prosecutors; the variance attributed to prosecutors ranged from 4 percent in DUI cases to 11 percent in drug cases.<sup>12</sup>

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<sup>12</sup> Since the screening outcome is a dichotomous variable, it lacks a meaningful individual-level variance component,  $\sigma^2$ . The Level 1 model, however, can be conceived of in terms of a latent variable (see Snijders and Bosker, 1999, cited in Raudenbush and Bryk, 2002: 334) and the Level 1 random effect can be assumed to have a standard logistic distribution with a mean of 0 and  $\sigma^2 = \pi^2/3$ . The intraclass correlation can then be estimated using the between variance,  $\tau^2$ , and this estimation of the within variance,  $\sigma^2$ , as follows:  $\tau^2 / (\tau^2 + \sigma^2)$ . This tells us the portion of the total variance that occurs between prosecutors. Others, however, have cautioned that the meaningfulness of this estimation depends on the validity of the underlying distributional assumptions.

**Table 3.4.2-2 HLM unconditional models predicting cases accepted at screening in Northern County**

	Person		Property		Drugs		Public Order		Domestic Violence		Weapons		DUI	
<i>Fixed Effects</i>	b	SE	b	SE	b	SE	b	SE	b	SE	b	SE	b	SE
Intercept	-.28	.08***	.57	.07***	.93	.08***	.77	.06***	-.43	.64***	.37	.09***	2.61	.10***
<i>Random Effects</i>	Var.	SD	Var.	SD	Var.	SD	Var.	SD	Var.	SD	Var.	SD	Var.	SD
Level 1	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Level 2	.38	.62***	.36	.60***	.41	.64***	.36	.60***	.41	.64***	.24	.49***	.13	.37***
Between-prosecutor proportion of variance	.10		.10		.11		.09		.11		.06		.04	

Table 3.4.2-3 presents results for the individual-level influences on screening. Two models examining property offenses are included. Since not all property offenses included an identifiable victim, separate models were run for property crimes with a victim and all property crimes. Table 3.4.2-4 then presents the full two-level models. Coefficients presented in the models represent the increases in the likelihood of a case being accepted generated by each predictor variable. These coefficients are presented as odds ratios – coefficients greater than 1 imply an increased probability of failure and coefficients below 1 indicate a reduction in such probability. In all models, “white” is taken as the reference category when comparing outcomes across defendant and victim racial groups; the coefficients listed for other races are the effects of these races on case outcomes compared to whites. For drug offenses, “cocaine” was used as the reference category when comparing across drug offenses; the coefficients listed for other drug types are the effects of those drug types on case outcomes relative to cocaine.

**Table 3.4.2-3 Individual-level factors predicting cases accepted at screening in Northern County**

	Coefficients (Odds Ratios)							
	Model 1 Person	Model 2a Property	Model 2b Property	Model 3 Drugs	Model 4 Public Order	Model 5 DV	Model 6 Weapons	Model 7 DUI
<i>Offense Characteristics</i>								
Charge Severity	1.067***	1.037***	1.082***	1.154***	.920***	1.142***	.964	1.327***
Number of charges (>1)	1.938***	1.484***	1.539***	1.328***	1.600***	2.200***	1.823***	2.438***
Enhancement Offense (Yes)	1.345	1.277	1.086	1.328**	.635***	1.219***	1.148	--
Arresting Agency (Primary)	1.676***	.412***	.541***	.672***	.396***	1.377***	.964	
<i>Drug Type</i>								
Cocaine (reference)	--	--	--	--	--	--	--	--
Heroin	--	--	--	1.097	--	--	--	--
Marijuana	--	--	--	1.143	--	--	--	--
Other	--	--	--	.584***	--	--	--	--
<i>Defendant Characteristics</i>								
<i>Race</i>								
White (reference)	--	--	--	--	--	--	--	--
Black	.902	.985	.972	.847*	.920	1.275***	1.022	.639*
Hispanic	.905	1.120	1.010	.974	.991	1.265**	1.218	.664
Gender (Male)	1.006	.975	1.232**	1.416***	1.232***	1.680***	1.676**	1.328
Age (Years)	.993*	1.007***	.997	1.009***	1.011***	.997	1.000	.998
Custody Status (In Custody)	2.36***	2.070***	2.017***	2.075***	1.137*	1.616***	2.739***	1.480
<i>Victim Characteristics</i>								
<i>Race</i>								
White (reference)	--	--	--	--	--	--	--	--
Black	.670***	--	.817**	--	--	.692***	--	--
Hispanic	.790	--	1.312	--	--	1.124	--	--
Gender (Male)	.692***	--	.797***	--	--	.636***	--	--
Age (Years)	.999	--	1.007***	--	--	1.005**	--	--

As Models 1 through 7 show, there are no consistent predictors of case outcomes across offense types, with the exception of variables measuring offense characteristics. For all offense types, cases involving multiple arrest charges were more likely to be accepted for prosecution than cases involving a single arrest charge. Having more than one arrest charge increased the likelihood that a case would be accepted by anywhere from 30 percent (for drug offenses) to nearly 140 percent (for DUI offenses) after controlling for other factors. This may be an indication of the seriousness of the case; however, the effect of the number of arrest charges was independent of charge severity (i.e. the severity of the controlling arrest charge) and charge enhancements. In six of the eight models (person, property, drugs, domestic violence, and DUI), cases with more serious arrest charges were more likely to be accepted for prosecution, although the effect size was small for some offenses. For example, each increase in the severity of the controlling arrest offense (e.g. from Class A misdemeanor to Class I felony) increased the likelihood of accepting a person offense by 6 percent; in contrast, the same one level increase in the severity of an offense increased the likelihood of accepting a drug offense by 15 percent. Surprisingly, more serious public order offenses *were less likely* to be accepted for prosecution; similarly, the presence of a charge enhancer *decreased* the likelihood that a public order offense was accepted. Moreover, this was contrary to the impact of charge enhancers on the outcomes for drug and domestic violence offenses. Finally, for drug offenses, the type of drug had little impact on screening decisions; however, cases involving drugs such as prescription drugs, LSD, or other Schedule IV and V drugs were less likely to be accepted for prosecution relative to cocaine.

Arresting agency influenced the screening decision in five of the eight models (person, property, drugs, public order, and domestic violence). For property, drugs, and public order offenses, arrests made by the primary municipal police department were *less likely* to be accepted for prosecution. In

the case of property and drug offenses, this may be an indication of changes in the investigation units within the police department, as discussed in Part 2. Property offenses, in particular, may be more affected by decreases in the quality of investigations, which translates into lower acceptance rates for such offenses, consistent with prosecutors' perceptions. The lower acceptance rates for public order offenses may be due to similar circumstances. As discussed by prosecutors in focus groups, the primary police department is increasingly focused on *making arrests* and *getting their numbers up*; this may result in an increase in weak arrests for low level offenses and, according to prosecutors, little follow through by police officers after the arrest. Conversely, for person offenses, arrests made by the primary municipal police department were more likely to be accepted for prosecution. This may be due to the inclusion of sex offenses within the person offense category. In focus groups, prosecutors noted that specialized investigation units for sex offenses remained in the primary municipal police department; as such, the quality of arrests may remain high and, as a result, such cases may be more likely to be accepted.

Defendant characteristics – particularly gender and age – were fairly strong predictors of screening outcomes. The presence of a male defendant increased the likelihood that a case was accepted in five of the eight models (property, drugs, public order, domestic violence, and weapons), consistent with the descriptive statistics presented above. For most offense types, this may not be surprising; the large majority of defendants in all cases were male and the very large sample sizes may create a problem in which trivial differences are exaggerated and found to be significant. In contrast, it may be an indication that prosecutors view cases involving female defendants differently, and reject cases at higher rates for such defendants. Defendant age was also significant in four of the eight models (person, property, drugs, and public order). For property, drug, and public order offenses, cases involving older defendants were more likely to be accepted



for prosecution. The effect, however, was rather small; overall, each one year increase in a defendant's age increased the likelihood that a case would be accepted by roughly one percent. Nonetheless, this lends some support to prosecutors' focus group statements that defendant characteristics such as age matter when determining whether a case should be prosecuted; in these cases, it appears that prosecutors view cases involving younger defendants as cases that, perhaps, should not be prosecuted. These are also offenses that do not involve violence or potential physical harm to others. In contrast, person offenses, cases involving older defendants were *less likely* to be accepted for prosecution; again, the effect was rather small with each one year increase in a defendant's age decreasing the likelihood that a case would be accepted by roughly one percent.

Defendant race/ethnicity was significant in just two of the eight models (drugs and domestic violence). For drug offenses, cases involving black defendants were *less likely* to be accepted for prosecution than cases involving white defendants; the presence of a white defendant *increased* the likelihood that a drug case was accepted for prosecution by 18 percent relative to cases involving black defendants. Conversely, for domestic violence cases, cases involving black defendants or Hispanic defendants were *more likely* to be accepted for prosecution; specifically, the presence of a black defendant or a Hispanic defendant *increased* the likelihood that a domestic violence case was accepted for prosecution by roughly 27 percent relative to cases involving white defendants.

Defendant custody status was a significant predictor in all eight models. In each model, a case with a defendant in custody was more likely to be prosecuted than a case with a defendant not in custody; in each model, the presence of a defendant in custody increased the likelihood that the case was accepted by over 110 percent.

While defendant race/ethnicity was not a consistent predictor of case outcomes, victim race/ethnicity was. For the three offense types for which victim information was available (person,

property, domestic violence), cases involving black victims were less likely to be accepted for prosecution than cases involving white victims; compared to cases involving black victims, the presence of a white victim increased the likelihood that a case was accepted by 23 percent for property offenses to 49 percent for person offenses. Cases involving male victims were also less likely to be accepted for prosecution in all three models, with the presence of a female victim increasing the likelihood that a case was accepted by 25 percent (property offenses) to 56 percent (domestic violence offenses). Finally, victim age was significant in two models (property, domestic violence). In both models, cases involving older victims were more likely to be accepted for prosecution; like the effect of defendant age, the overall effect was small with each one year increase in the victim's age increasing the likelihood that the case would be accepted by less than 1 percent.

Overall, offense characteristics were strong predictors of screening decisions. Taken together, the effects of offense characteristics on screening outcomes appear to indicate that more serious cases (i.e. with more severe charges, more charges, and charge enhancers) generally are more likely to be accepted for prosecution. This is consistent with the findings in Southern County and with prior research that has found case characteristics generally to be the strongest predictors of decision-making. Moreover, this supports the prosecutors' perceptions as discussed in Part 2. Prosecutors stated that after strength of the evidence, the seriousness of the case (which was partially determined by the severity of the charges) was one of the determining factors in whether a case should be prosecuted.

What is surprising – although also perhaps reassuring – is that defendant characteristics were very inconsistent predictors of screening decisions. For DUI, weapons, and person offenses, for example, defendant characteristics mattered very little. In DUI cases, only the race of the defendant

mattered; defendant gender, age, and custody status had no impact on the screening decision. As noted in Part 2, DUI cases may be driven primarily by physical evidence against defendants (e.g. the results of a breathalyzer) which may be less open to interpretation; as a result, such cases may generally have very strong evidence. Moreover, such cases are increasingly a target for tougher enforcement and, as such, defendant characteristics may not influence prosecutors' decisions to decline cases. This also may be true for weapons offenses – offense types that are increasingly targeted for tougher enforcement and, as such, less open to extra-legal influences. In fact, for weapons and DUI offenses, very few variables were significant predictors of screening decisions; for both offense types, offense characteristics appeared to be more consistent predictors. For other offense types, particularly drug offenses, defendant characteristics appeared to matter more; for drug offenses, defendant race, gender, age, and custody status were all associated with the screening decision. As prosecutors described in focus groups, they rely on defendant characteristics to determine whether a case should be prosecuted. This may be occurring for drug offenses in which black defendants, female defendants, and younger defendants are less likely to be prosecuted.

Table 3.4.2-4 presents the results of the two-stage HLM models with prosecutor-level variables included. As Table 3.4.2-4 indicates, the characteristics of prosecutors available for these analyses mattered very little in the screening decision.

**Table 3.4.2-4 Two-stage HLM models predicting cases accepted at screening in Northern County, prosecutor-level predictors**

	Coefficients (Odds Ratios)							
	Model 1 Person	Model 2a Property	Model 2b Property	Model 3 Drugs	Model 4 Public Order	Model 5 DV	Model 6 Weapons	Model 7 DUI
<i>Offense Characteristics</i>								
Charge Severity	1.062***	1.037***	1.083***	1.147***	.923**	1.143***	.956	1.327***
Number of charges (>1)	1.939***	1.484***	1.539***	1.330***	1.603***	2.200***	1.829***	2.438***
Enhancement Offense (Yes)	1.363	1.277	1.081	1.322**	.636***	1.220*	1.146	--
Arresting Agency (Primary)	1.672***	.414***	.543***	.672***	.396**	1.378***	.962	
<i>Drug Type</i>								
Heroin	--	--	--	1.100	--	--	--	--
Marijuana	--	--	--	1.127	--	--	--	--
Other	--	--	--	.579***	--	--	--	--
<i>Defendant Characteristics</i>								
<i>Race</i>								
Black	.992	.984	.969	.849**	.920	1.275***	1.022	.639*
Hispanic	.909	1.120	1.009	.978	.989	1.266*	1.240	.664
Gender (Male)	1.008	.975	1.232**	1.419***	1.232***	1.679***	1.692**	1.328
Age (Years)	.992*	1.007***	.997	1.009***	1.011**	.997	1.000	.998
Custody Status (In Custody)	2.372***	2.070***	2.024***	2.062***	1.138	1.611***	2.730***	1.480
<i>Victim Characteristics</i>								
<i>Race</i>								
Black	.671***	--	.819**	--	--	.691***	--	--
Hispanic	.792	--	1.318	--	--	1.124	--	--
Gender (Male)	.695***	--	.797**	--	--	.635***	--	--
Age (Years)	1.000	--	1.007***	--	--	1.005*	--	--
<i>Prosecutor Characteristics</i>								
Gender (Male)	1.039	1.248	1.201	.913	.922	.887	.986	--
Experience (years)	1.000	.991	.984*	.997	1.003	1.027***	.994	--
Supervisor	.858	.970	1.082	.997	.958	1.125	.768	--
Specialized unit	1.374	1.220	1.117	.904	.975	1.355	1.747*	--
Caseload	1.000	.999	.999	1.001	1.000	1.003*	.997	--
Percentage offense-specific	1.000	1.007	1.008	1.006*	1.005	.995	.986*	--

While prosecutor-level characteristics explained roughly 10 percent of the variance in outcomes (see Table 3.4.2-2 above), very few prosecutor-level predictors were significant in the models. Surprisingly, prosecutor tenure, supervisory responsibilities, and familiarity with a particular type of offense had little impact on screening outcomes for most offenses. For property offenses, however, more experienced ADAs were less likely to accept cases for prosecution – each one year increase in experience decreased the likelihood of acceptance by just roughly 1.6 percent. For domestic violence cases, more experienced ADAs were more likely to accept cases for prosecution, with each one year increase in experience increasing the likelihood of acceptance by roughly 2.7 percent. The percentage of offense-specific cases screened by the prosecutor was significant in only two models. For drug offenses, prosecutors who had screened more cases involving drug offenses were more likely to accept drug cases for prosecution, although the effect size was very small; in contrast, for weapons offenses, prosecutors who had screened more cases involving weapons offenses were less likely to accept such cases for prosecution. The fact that the prosecutor was a supervisor was not significant in any of the models and the fact that a prosecutor was part of a specialized unit was significant in just one model, with prosecutors in specialized prosecution units being more likely to accept cases involving weapons offenses. Finally, contrary to prosecutors’ perceptions of the impact of caseloads on case outcomes, prosecutor caseloads did not impact screening decisions, although our ability to accurately capture caseloads at particular points in time was limited. The measure used here captures average weekly caseload during the study period; a more accurate measure would be weekly or monthly caseloads tied to the week or month in which the screening decision was made.

### *3.4.3 Factors Influencing the Screening Decision: Hypothetical Cases*

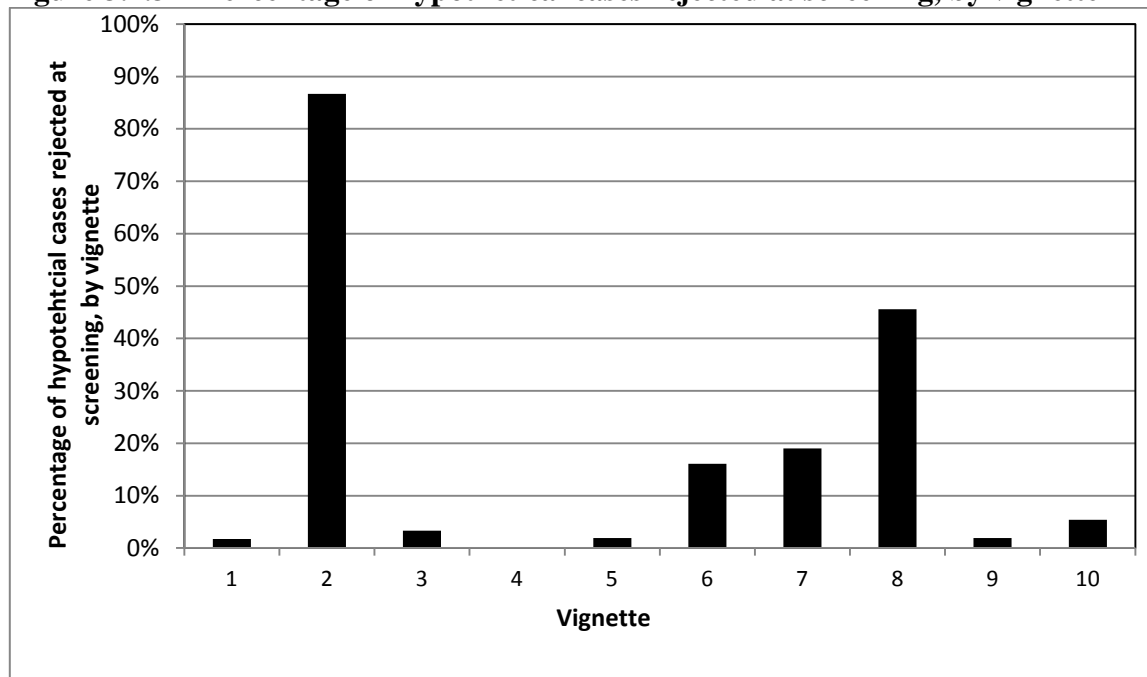
While outcomes in actual cases provide insights into the aggregate effect of case specific factors on outcomes, the study also sought to examine variation in outcomes across prosecutors for identical cases using the factorial survey design and the set of ten case vignettes.

#### Descriptive Statistics

The analyses of hypothetical screening decisions relied on one dependent variable: whether the respondent would reject the case at screening (0=accept, 1=reject). As noted above, sixty-two prosecutors responded to the factorial survey. Respondents were remarkably consistent in their screening judgments (Figure 3.4.3-1). For six of the ten vignettes, nearly all of the respondents (between 95 and 100 percent) indicated they would accept the case for prosecution. For vignette 2 (medium offense seriousness, low evidence strength), 87 percent indicated they would reject the case. Two vignettes (vignette 2 and vignette 8 – low offense seriousness, low evidence strength) accounted for 75 percent of the rejections. Three vignettes—vignette 6 (high offense seriousness, high evidence strength), vignette 7 (medium offense seriousness, medium evidence strength), and vignette 8 (low offense seriousness, low evidence strength)—accounted for most of the variance among prosecutors in screening decisions.

This pattern provides a preliminary suggestion that prosecutors were primarily influenced in their screening decisions either by case seriousness or strength of evidence, since those were the fixed attributes of the vignettes. It suggests they were less likely influenced primarily by criminal history, since criminal history patterns were assigned randomly to vignettes within respondent packets. Thus, if prosecutors were responding primarily to criminal history, more variation in decisions would be expected within vignettes. The statistical modeling addresses these distinctions more directly.

**Figure 3.4.3-1 Percentage of hypothetical cases rejected at screening, by vignette**



Three case-level independent variables were emphasized in the statistical modeling: researchers’ classification of the seriousness of the top arrest charges (*offense seriousness*), prosecutors’ ratings of the strength of evidence (*evidence rating*), and the prosecutors’ ratings of the seriousness of defendant criminal histories (*criminal history rating*). Twelve prosecutor-level independent variables were also included in the analyses: a measure of prosecutors’ experience and eleven measures of prosecutors’ values and preferred prosecution strategies derived from their responses to the general survey. (See Section A.3.4 in Appendix A for detailed explanations and descriptive analyses of the independent variables.)

### HLM Analyses

Multilevel modeling of the factorial survey data was necessary to account for the dependencies among observations due to the hierarchical structure of the data—i.e., the fact that unique cases are nested within respondents. It also makes it possible to examine the potential influence of prosecutor characteristics on case-level decisions.

Sixty-two prosecutors responded to 10 vignettes each, yielding a maximum of 620 observations for each case level decision addressed in the factorial survey. There were 570 cases with complete data across the four case-level variables incorporated in the modeling: the accept/reject decision, offense seriousness level, evidence rating, and criminal history rating. Prosecutor-level data were matched to complete case-level data for 60 of the 62 respondents. For case-level data and prosecutor-level data combined, a total of 560 observations were available for multi-level modeling of the screening decision.<sup>13</sup>

Two-level models of the probability of rejection at screening were estimated using HLM 6 (Raudenbush et al., 2004) with the Bernoulli sampling model and a logit link function. Because the number of observations was somewhat limited, given the number of parameters to be estimated and the sample requirements for stable estimation of non-linear models, modeling proceeded in a cautious, step-wise fashion. First, the case-level parameters (intercept and regression weights) were constrained to be the same across all prosecutors, and a simple model was estimated for the three case-level predictors with no interaction terms. Second, if convergence was achieved on a plausible model, the constraints were removed and the case-level regression parameters were allowed to vary across prosecutors. Third, if convergence was achieved on a plausible unconstrained model, and the model did not imply substantively different conclusions than the constrained model, the three two-way interactions among the case-level predictors were introduced together. Fourth, non-significant interactions were removed one at a time, beginning with the least significant, until only statistically

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<sup>13</sup> With race and gender excluded, 12 of the 14 prosecutor-level measures described above were considered for inclusion in the multi-level modeling. These 12 measures proved to be relatively independent of one another. Of the 66 unique rank order correlations among the 12 measures, only 13 were statistically significant, and all but two of those had absolute values in the range from .27 to .36. These correlations were not expected to pose multi-collinearity problems in estimating model parameters, because the models tested never included more than two or three of the prosecutor-level measures at a time. One measure did exhibit strong correlations with two others: the *all charges* dichotomy had a correlation of -.60 with both the *top charges* dichotomy and the *should plead* dichotomy. However, that was simply because the three dichotomies together constituted a nearly exhaustive set (see Table 3.4.1-3); no more than one of those was ever included in a single model.



significant interactions remained. Main effects of case-level predictors that participated in significant interactions were retained, whether or not they were statistically significant. All models tested survived these four steps. Only the final models are presented in this section.

The final model for probability of rejection at screening is summarized in Table 3.4.3-1. Neither offense seriousness, nor criminal history rating, nor any of the two-way interactions among the case-level measures had a significant effect on the probability of rejecting a case. Consistent with the claims of prosecutors who participated in the focus group sessions, the only case-level measure with a statistically significant influence on the screening decision for the hypothetical cases was prosecutors' rating of the strength of evidence. The effect of evidence was dramatic; on average, each step down on the evidence rating scale was associated with approximately a 257 percent increase in the odds of rejecting the case.

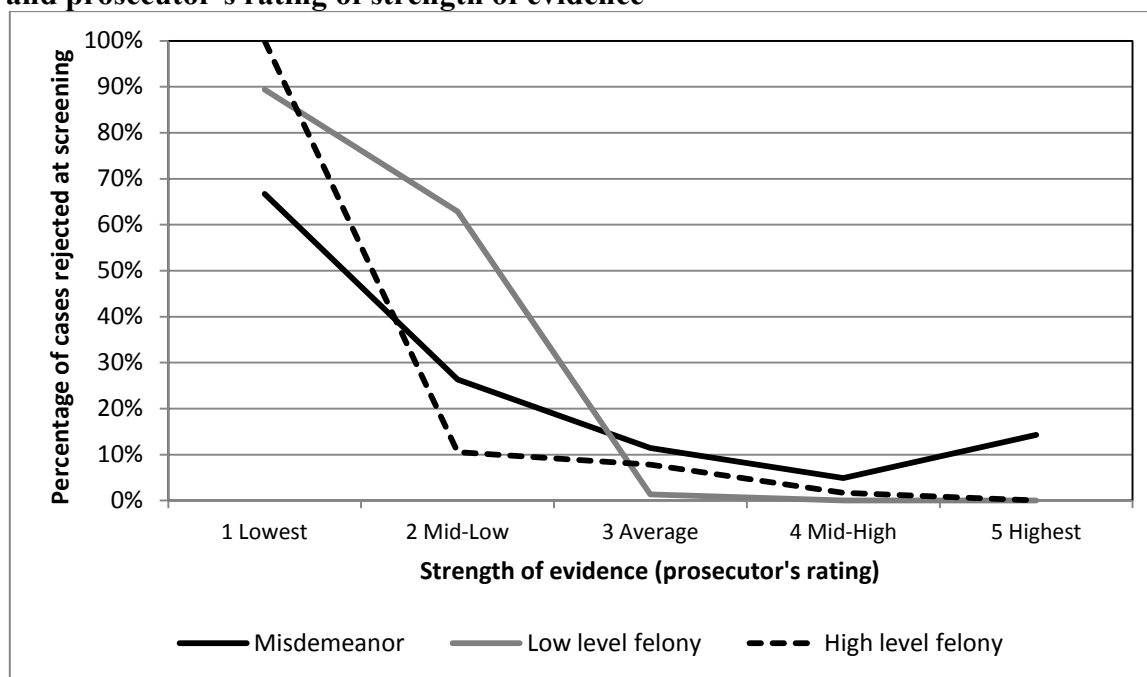
**Table 3.4.3-1 Hierarchical logistic regression model for the decision to reject at screening**

<i>Effect</i>	<i>Coefficient</i>	<i>Odds Ratio</i>	<i>T Ratio</i>	<i>df</i>	<i>P value</i>
<b><i>Case level</i></b>					
Intercept	-1.72	0.18	-21.50	58	.000
Offense seriousness	0.11	1.12	1.004	61	.320
Evidence rating	-1.27	0.28	-15.644	61	.000
Criminal history rating	-0.08	0.92	-1.262	61	.212
<b><i>Prosecutor level</i></b>					
Item Q4c (Low priority if effort exceeds benefits) <sup>a</sup>	-0.23	0.80	-3.07	58	.004
Item Q5a (evaluate early disposition potential) <sup>a</sup>	0.18	1.19	2.64	58	.011
Consistency scale <sup>a</sup>	-0.07	0.93	-2.02	58	.048

<sup>a</sup>See Table A.3-2 for explanations of Q4c, Q5a, and the consistency scale.

Figure 3.4.3-2 displays the observed pattern of screening outcomes across levels of offense seriousness and evidence ratings. The modeling results provided an estimate of the average effect of strength of evidence for each step up in the prosecutors' evidence ratings. Figure 3.4.3-2 suggests the effect was non-linear, with a dramatic drop in the probability of rejecting a case occurring between the lowest evidence rating and the average evidence rating, and relatively little difference in the outcomes across average, mid-high, and highest evidence ratings.

**Figure 3.4.3-2 Percentage of hypothetical cases rejected at screening, by offense seriousness and prosecutor's rating of strength of evidence**



Three prosecutor-level measures had statistically significant associations with variations in the case-level intercepts (viewed here as main effects of prosecutor-level measures on the odds of rejecting a case for prosecution). *Higher* ratings of the importance of consistency in approach and outcomes (consistency scale) were associated with *lower* odds of rejection at screening. Given prosecutors' comments indicating that there is little time to evaluate cases thoroughly at screening, and that cases accepted at screening are often quickly dismissed upon further evaluation, this result may reflect a tendency to continue ambiguous cases, pending more definitive decisions based on

further information. *Higher* ratings of the importance of examining cases at screening in terms of their potential for plea bargaining, early disposition, and caseload reduction (Item Q5a) were associated with *higher* odds of rejection at screening, perhaps reflecting a desire to make valid distinctions among cases at screening with respect to fact patterns and associated strength of evidence. Thus, the effect of the consistency scale and the effect of Item Q5a appear to be generally consistent with each other and with the themes that emerged in the focus group discussions.

Ratings of the frequency of declining or dismissing cases “when the amount of time and effort needed to obtain a conviction exceeds the benefits of the potential sentence” (Item 4c) had an unexpected association with the odds of rejection. The *higher* a prosecutors’ rating of that item, the *lower* the odds of rejecting a case. This appears to contradict the finding for Item Q5a and much of the discussion in the focus groups. We have no clear explanation for this apparent contradiction. The rank-order correlation between responses to Q5a and Q4c in the general survey was, in fact, quite low ( $\rho = .11$ ), indicating respondents did not view those two items as addressing a common issue. However, there are many ways the items could have elicited differing interpretations. For example, respondents could have focused on dismissals rather than declinations in Item Q4c, whereas Item Q5a is more explicit in drawing attention to the screening decision. Or, at a more abstract level, respondents could have viewed Q4c as a more simplistic criterion and item Q5a as reflecting a more reasoned approach, more reflective of their decision-making process.<sup>14</sup>

There were no significant interactions between the effects of prosecutor-level measures and case-level measures on the odds of rejecting a case at screening.

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<sup>14</sup> In a later section of the report concerning reasons for dismissals, we discuss the related finding that the majority of reasons prosecutors cited for rejecting cases at screening were related to deficiencies in evidence, whereas few related to waste of time and effort relative to the potential outcome.

The descriptive analysis of rejection rates presented at the beginning of this section showed that prosecutors who responded to the factorial survey were remarkably consistent in their screening decisions. This conclusion is further supported by an analysis of the variation in case-level model parameters across prosecutors, from an intermediate model (not shown) which included only the three case-level measures and no prosecutor-level predictors other than the average level of responding across prosecutors. The HLM 6 estimates for the corresponding random effects show no statistically significant deviations from the average effects for the case-level intercept ( $\chi^2=50.03$ ,  $df=57$ ,  $p>.500$ ), the offense seriousness coefficient ( $\chi^2=43.68$ ,  $df=57$ ,  $p>.500$ ), the evidence rating coefficient ( $\chi^2=48.38$ ,  $df=57$ ,  $p>.500$ ), or the criminal history rating coefficient ( $\chi^2=32.31$ ,  $df=57$ ,  $p>.500$ ). Although introduction of prosecutor-level variables accounted for still more of the variation among prosecutors and reduced the residual  $\chi^2$  statistics still further, the magnitudes of those effects were necessarily small, since so much of the variation was already accounted for by case characteristics.

#### *3.4.4 Factors Influencing the Screening Decision: The Primacy of Evidence and the Severity of the Case*

Findings from the administrative data analyses and factorial survey analyses clearly support the prosecutors' identification of strength of evidence and severity of the case as the primary considerations at initial screening. In the analyses of factorial survey data, prosecutors' ratings of the strength of evidence was the only case-level variable with a statistically significant influence on the screening decision, and the effect was dramatic. For actual person and property cases screened in Southern County, direct measures of evidence, evidence-related victim characteristics, the number of arrest charges, the type and seriousness of arrest charges, defendant race, and the

presence of codefendants all influenced screening outcomes, but the combined effects of evidence-related measures outweighed the combined effects of the other factors.

Measures of the strength of evidence were not available for the analyses of actual felony drug cases screened in Southern County or for any cases screened in Northern County. However, the results of the statistical analyses indirectly suggested the importance of strength of evidence. Whereas the models that incorporated measures of evidentiary strength for predicting acceptance of person offense and property offense cases in Southern County were moderately strong (Nagelkerke  $R^2 = .36$  and  $.28$ , respectively), the models for predicting acceptance for drug cases in Southern County and all cases in Northern County, which lacked such measures, were much weaker (Nagelkerke  $R^2$  equaled  $.11$  for felony drug cases in Southern County and was similar for all crime types in Northern County). Absent measures of evidence, there were significant effects of other factors, many of which were related to the seriousness of the offense, including multiple arrest charges and more serious arrest charges.

### 3.5 Charging

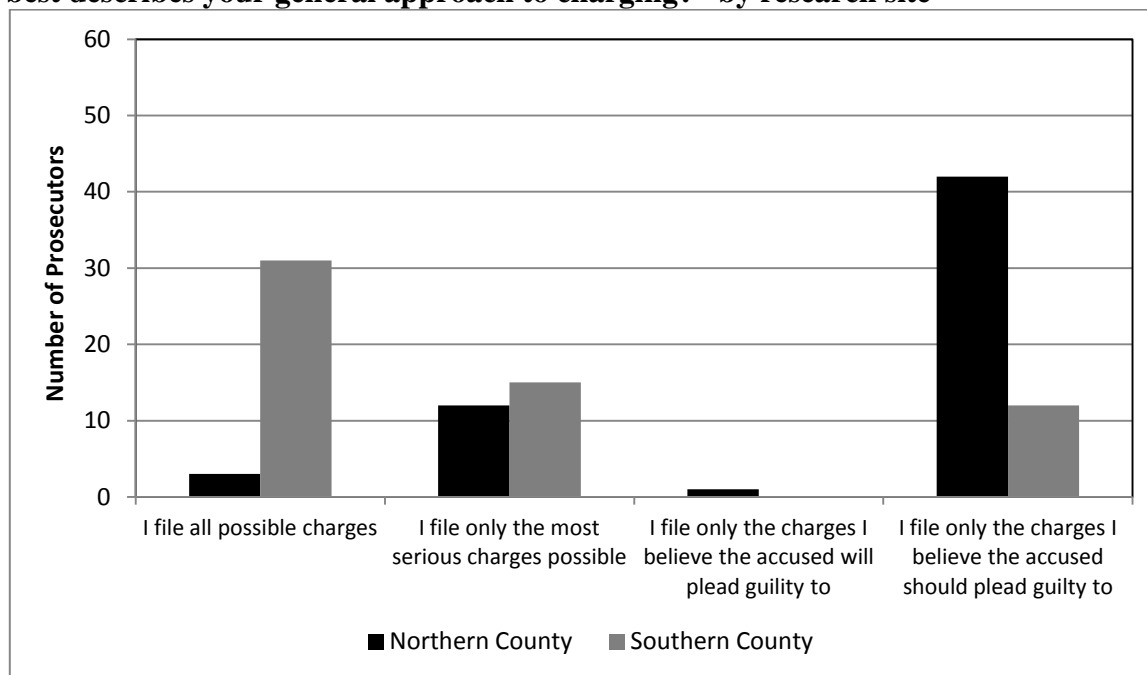
If a case is accepted for prosecution, an ADA determines what charges to file. This occurs nearly simultaneously with the decision to accept or reject a case at screening. Although screening decisions and charging decisions are conceptually distinct, in practice the screening decision is necessarily linked to the initial charging decision. As discussed above, prosecutors must make decisions about multiple arrest charges during the screening process. While a case may be accepted for prosecution, individual charges may be rejected. Moreover, a prosecutor may add additional charges to the case that were not part of the original arrest charges. The result may be an increase or decrease in the severity of charges filed relative to the original arrest charges or an increase or decrease in the aggregate number of charges filed relative to the original arrest charges.

In focus groups, several prosecutors also argued that the screening and charging decisions are based on different information. As noted in Part 2, ADAs decide whether they can prove a case using the strength of the evidence; they decide whether they should prove a case using primarily offense severity and defendant criminal history. According to prosecutors, these latter factors determine the charging decision. The DA in Southern County argued that *evidence determines whether a case gets in the door. Offense severity and defendant's record determine the charge.* Indeed, prosecutors noted that *strong cases do not necessarily result in more severe charges*; in other words, *if two cases involve the same underlying conduct, one will not get a higher charge simply because it has stronger evidence.* As one unit manager in Northern County noted, “More evidence does not make the defendant more culpable or the offense more serious.” Rather, a separate calculation occurs in which prosecutors determine what should be charged based on similar evaluations of convictability and fairness to the defendant, victim, and society.

The result of the charging decision determines the amount of exposure that defendants will face – the number of charges that they may be convicted of and the most severe charge that they may be convicted of. There were noticeable differences of opinion among the prosecutors regarding the optimum approaches for deciding how many charges and which charges to file at initial screening. In the general survey, prosecutors were asked to choose which of four options best describes their general approach to charging. A plurality of respondents (47 percent) said they file only the charges they believe the defendant *should* plead guilty to, while 23 percent said they file only the charges they believe the defendant *will* plead guilty to, and 29 percent said they file all charges possible. The pattern of responses differed significantly by jurisdiction ( $p=.000$ ,  $\chi^2=41.059$ ,  $df=1$ ), with respondents in Northern County more oriented toward filing only charges the defendant should plead to and respondents in Southern County more oriented toward filing all charges possible. A

substantial majority (63 percent) also agreed or strongly agreed that the charging decision should include the highest charges that could be proven at trial with the realization that these may be reduced later through a plea bargain, but a non-negligible minority (17 percent) disagreed or strongly disagreed. The average level of agreement was significantly higher among Southern County prosecutors than among Northern County prosecutors ( $p=.000$ ,  $F=39.000$ ,  $df=1$ ).

**Figure 3.5-1 Responses to question: “Realizing that each case is unique, which of the following best describes your general approach to charging?” by research site**



The charging decision involves a balancing act, particularly when multiple charges are possible. Prosecutors have to balance being tough with efficiency. Some prosecutors want to charge the most serious charges available and then negotiate down from those charges; others choose to charge what they would like the defendant to plead guilty to and negotiate up if the defendant chooses not to plead guilty. But there are dangers in both approaches. As one unit manager in Northern County noted, if a prosecutor *wants a case to be resolved, it is easier to resolve a case if you have “throw away” charges*; but eventually *the defense attorney will know that this is what will happen if you always include throw away charges and you will never get a top charge to stick*. Others noted

dangers in charging all possible offenses, particularly when there are multiple counts of the same offense. One ADA argued that *it is good to avoid charging a lot of counts because a lot of counts confuses the jury*. For example, *you would not want 300 counts of child pornography – one for every photo on someone’s computer – because neither the judge, jury, nor ADA could keep track of each count*.

Some of the observed variability in opinions about charging strategies may be explained by differences in the contingencies faced by prosecutors handling different types of cases. For example, for misdemeanor cases in Southern County, initial charging is controlled by the magistrate, and the ADA’s decisions about charges enter at the point of making a plea offer. Review of the magistrates’ charges, the plea offer, the defendant’s response, and scheduling a trial if necessary all take place in the courtroom within a span of a few minutes. Similarly, the initial charging decision may tend to be closer to the final outcome for crime types for which cases are frequently expedited (e.g., drug cases), and one unit manager in Southern County noted that the initial charging decisions *tend to stick*. Conversely, unit managers in both jurisdictions noted that charging decisions are affected by the likelihood of going to trial. A unit manager in Southern County noted that *if a guilty plea is likely, a prosecutor may get rid of extra charges early*, whereas *if a case appears headed for trial, retaining multiple charges may help obtain a guilty plea or a conviction at trial*. Similarly, a unit manager in Northern County explained *that if a case is likely to go to trial, the prosecutor will charge enough crimes to ensure that all of the key facts of a case will be presented to the jury*, while trying to *avoid introducing too much for the jury to handle*.

Furthermore, prosecutors assigned to units that handle cases that often go to trial (e.g., domestic violence and sex crime cases) tend to charge all cases as if they were going to trial. ADAs in the domestic violence unit in Northern County described their charging style as “the boy scout way – be



prepared. When we charge, we are thinking about the trial. So, we charge enough so it represents the incident and reflects all of the facts of the case.” This does not necessarily mean that ADAs charge everything possible; only that the charges represent all *conduct* in the incident.

The starkest difference in opinion was seen between new ADAs and more experienced ADAs, particularly in Southern County. As one new ADA in Southern County argued: *it is better to be the toughest person in the office rather than the easiest person. If you are the easiest person in the office, then you should be a defense attorney.* More experienced ADAs argued that a style of always charging high and dismissing charges later undermined a prosecutor’s credibility when the case actually warranted a very high charge; *the defense and the judge will assume it is like other cases in which the ADA simply reduced charges.* This was echoed by an ADA in Northern County who noted that *charging based on desired exposure shows the prosecutor’s credibility to the defense attorney and judge. We do not have to go through BS arguments about charges.* Although many prosecutors noted potential problems with charging high, they also noted that it was not something that should necessarily be avoided. Unit managers in Southern County argued that *loading up does not mean that you do not charge what is appropriate. This may mean that someone simply takes the time to look at all possible charges.* Conversely, filing a limited number of charges or reducing charges does not necessarily mean that a prosecutor is simply charging what they think the defendant will plead guilty to. One experienced ADA in Southern County saw the charging decision as an opportunity to correct police work, arguing that *most of the time, the police overcharge and the prosecutor can seek to correct this.*

Indeed, while all prosecutors agreed that charging style was completely dependent on the ADA, most also agreed that there was an office philosophy to not charge everything possible. As one unit manager in Northern County noted, the office philosophy is “Charge what you want but do not

overcharge. The goal is to charge with the amount of exposure necessary for the defendant. Therefore, charge enough to get the sentence that is appropriate.” Most of the justifications for charging styles were consistent with prior research (Frohmann, 1997) finding that many prosecutorial decisions are forward looking; in this case, several prosecutors argued that they *think about the harm caused and what the response to that harm should be*. In this sense, most prosecutors had an idea of either the sentence or the ultimate conviction charge that they wanted in a case (this is discussed in more detail in the following section on plea offers).

We examined the charging decision, again, using two methods. First, we examined administrative data capturing the number and severity of charges filed relative to the initial arrest charges. Second, we examined factorial survey data capturing prosecutors’ charging decisions in hypothetical cases.

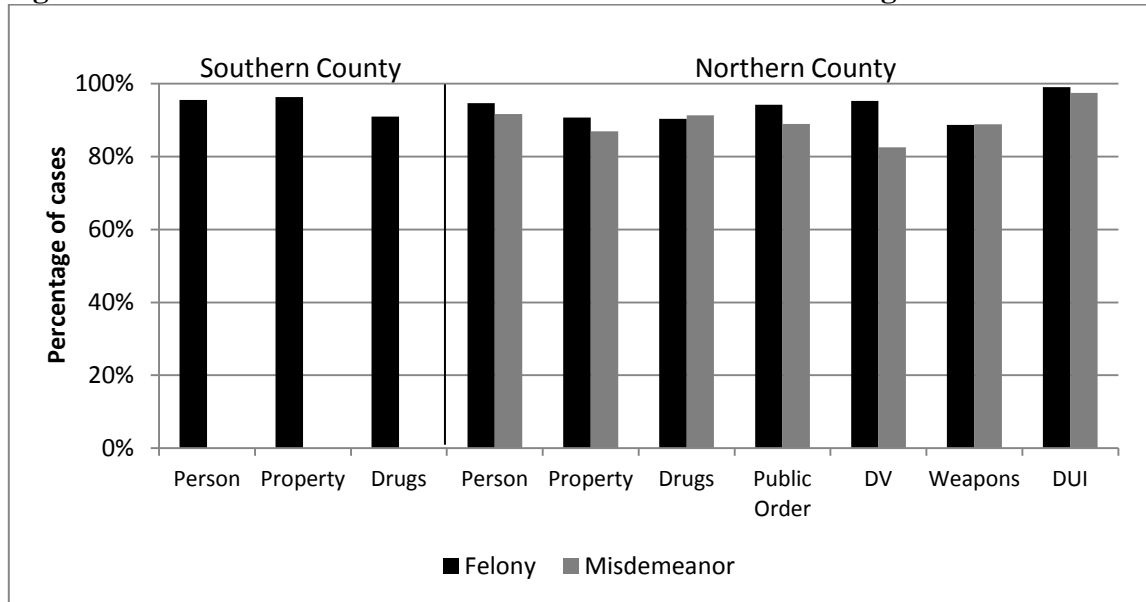
### *3.5.1 Factors Influencing the Charging Decision: Administrative Data from Actual Cases*

Analyses of administrative data in both sites revealed that, among cases accepted for prosecution, there were few differences between the arrest charges and the charges initially filed by the screening prosecutor. There were only slight differences between the average number of arrest charges per case and the average number of filed charges per case; and, there were only slight differences between the average severity of the most serious arrest charge and the average severity of the most serious filed charge. Thus, overall, it appears that prosecutors in both jurisdictions usually tended to either accept all of the charges presented for screening or reject them all.

For example, the most serious arrest charge was filed in roughly 90 percent of cases for all offense types and offense levels for which data were available (Figure 3.5.1-1). In Northern County, prosecutors were more likely to issue the top charge in misdemeanor cases than in felony cases. In Southern County, prosecutors were slightly less likely to file the top arrest charge in drug

cases than in cases involving person or property crimes. The largest reduction in charges occurred in felony domestic violence cases in Northern County, for which prosecutors issued the most serious arrest charge in roughly 80 percent of cases.

**Figure 3.5.1-1 Percent of cases in which most serious arrest charge was issued**



Since, for most crime types, the charging decision did not appear to be functionally separate from the screening decision, we did not conduct a separate statistical analysis of factors affecting the charging decision for actual cases accepted for prosecution in either site. Instead, we emphasize analyses of the factors associated with post-filing dismissals and changes in the number and seriousness of charges between filing and final case disposition (these analyses are described in subsequent sections). Before turning to those analyses, however, we first present prosecutors' charging decisions in the factorial survey.

### 3.5.2 Factors Influencing the Charging Decision: Hypothetical Cases

In addition to asking prosecutors whether they would accept a hypothetical case at screening, the factorial survey also asked prosecutors to specify the number and severity of charge or charges

they would file. Similar to the analyses of screening decisions, we examined case-level and prosecutor-level factors associated with variation in these charging decisions.

### Descriptive Statistics

Among the 570 hypothetical cases with complete data (see section 3.4.3), prosecutors indicated that 470 (82.5 percent) would be accepted for prosecution. However, in fourteen of those cases, the respondents indicated that there was insufficient information provided in the vignette to determine which specific charges should be filed, leaving 456 accepted cases with complete data for the case-level measures. These represented responses from 60 of the 62 prosecutors who completed the survey.

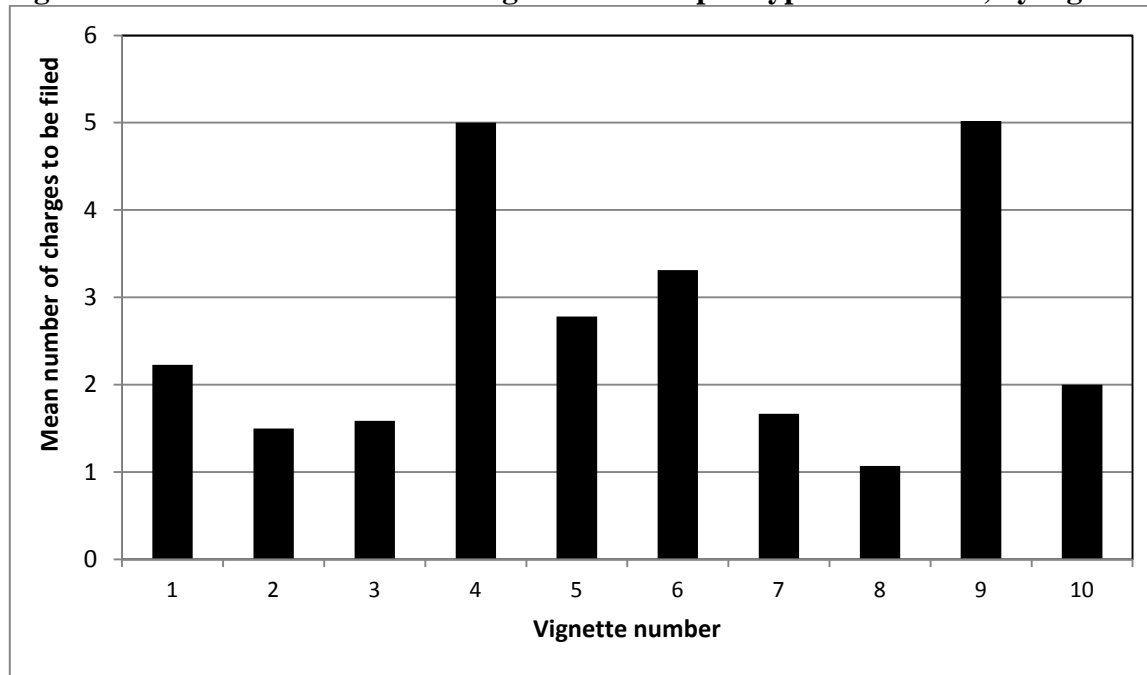
The charges listed by the respondents as those they would charge were coded to indicate the number of charges and the statutory class of the top filing charge. For each case, the statutory class of the top charge was assigned a numerical rank, with a value of “1” corresponding to the most serious felony class and a value of “11” corresponding to any class of misdemeanor. Thus, in all of the analyses reported in this section, *high* values for the rank variable correspond to *low* levels of charge seriousness, and *positive* indices of association reflect *inverse* relationships with charge seriousness.

The average number of charges prosecutors indicated they would file varied substantially by vignette, from a low of 1.07 charges for vignette 8 (low offense seriousness, low evidence strength) to a high of 5.02 charges for vignette 9 (medium offense seriousness, high evidence strength) (Figure 3.5.2-1). The *variation* in the number of filing charges per case also differed among vignettes, from a very narrow range for vignette 8 (range = 1; s.d. = .3) to a much wider range for vignette 9 (range = 11; s.d. = 2.6).<sup>15</sup>

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<sup>15</sup> However, the ratios of standard deviations to vignette means were fairly similar across most vignettes—ranging from 33 percent of the mean to 42 percent of the mean for 8 of the 10 vignettes. The two vignettes with the most extreme

**Figure 3.5.2-1 Mean number of charges to be filed per hypothetical case, by vignette**



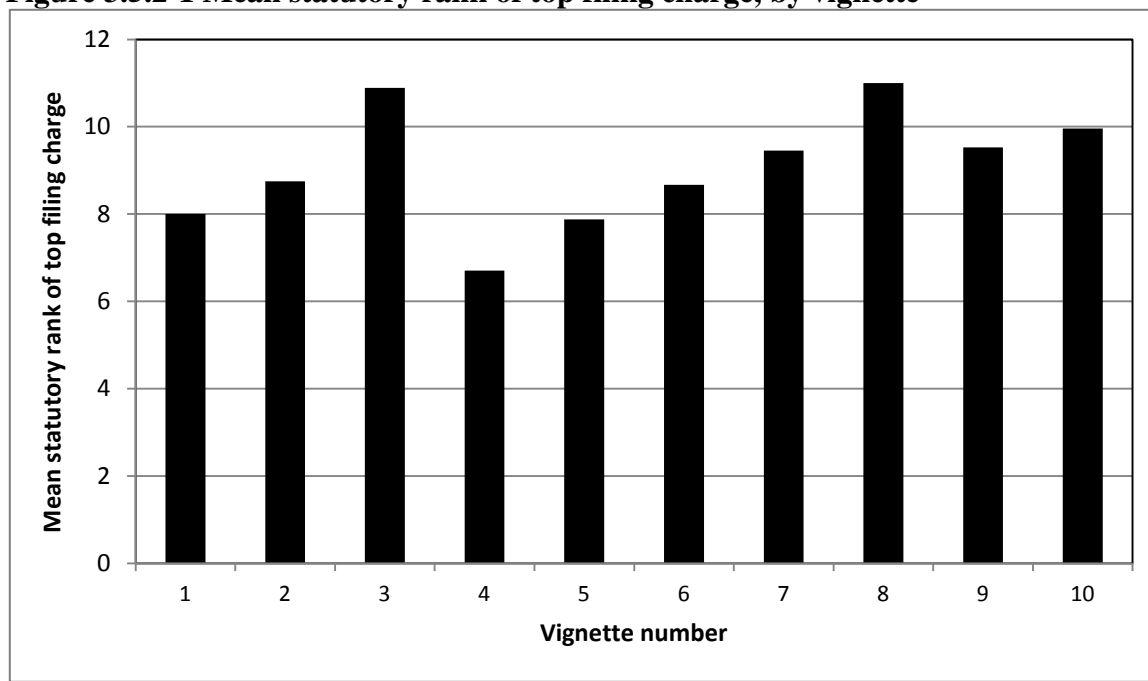
The average statutory ranks of top filing charges varied across vignettes, and were fairly evenly distributed across the range from a mean of 6.70 for vignette 4 (high offense seriousness, medium evidence strength) to a mean of 11.00 for vignette 8 (low offense seriousness, low evidence strength) (Figure 3.5.2-2). Variation in statutory rank of top filing charge within vignette was greatest for vignette 4 (range = 8; s.d. = 2.27) and least for vignette 8 (range = 0, s.d. = 0, all misdemeanors).<sup>16</sup>

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ratios of standard deviation to the mean were vignette 9 (2.581/5.020 => 51%) involving alleged forgery and theft and vignette 8 (.258/1.070 => 24%) involving alleged failure to move on. The distribution for vignette 8 was also strongly positively skewed (skewness = 3.59). The restricted relative variability and positive skew for vignette 8 were consequences of the high rejection rate for that case.

<sup>16</sup> As with the number of charges to be filed, the restricted range in statutory classification of top filing charge for vignette 8 was a function of the high rejection rate and the downgrading of charges by prosecutors who reported they would have accepted the case.

**Figure 3.5.2-1 Mean statutory rank of top filing charge, by vignette**



NOTE: A value of 1 = felony with highest statutory rank; 11 = misdemeanor.

The statistical models exploring factors influencing the charging decision incorporated the same independent variables as the models examining the screening decision (see Section A.3.4 in Appendix A for explanations and descriptive analyses of independent variables). There were only slight differences in the distributions of the independent variables at the charging stage relative to the screening stage, due to the rejection of some vignettes and offender criminal history scores. For example, vignette 2 (medium offense seriousness, low evidence strength) resulted in extremely high rejection rates at screening (87 percent) which resulted in obvious underrepresentation of responses at charging. Whereas the previous analysis showed that the even distribution across categories established by the factorial survey design was maintained among completed surveys, that balance was not maintained among accepted cases. The same is true with respect to representation of prosecutors' ratings of strength of evidence across levels of offense seriousness. Whereas the analysis of all completed surveys found significant numbers of "lowest" and "mid-low" evidence

ratings for low-level felonies, the analysis of accepted cases found relatively few ratings in those categories. Nevertheless, average prosecutors' ratings of strength of evidence and the variability of those ratings were quite well balanced across categories of offense seriousness.<sup>17</sup> Finally, among cases prosecutors indicated they would accept for prosecution, the distribution of prosecutors' ratings of the seriousness of defendants' criminal histories across levels of offense seriousness remained stable relative to screening.

The multi-level modeling of charging decisions incorporated the same prosecutor-level variables as the analyses of screening decisions. Except for minor changes from one analysis to another in the patterns of missing data, the two analyses were also based on responses from the same set of prosecutors. Therefore, descriptive analyses of prosecutor-level independent variables are not repeated here. Descriptions and analyses of the 12 prosecutor-level measures tested for inclusion in multi-level models of charging decisions are provided in Section A.3.4 in Appendix A.

### HLM Analyses

Two different aspects of the initial charging decision were modeled: the number of charges prosecutors indicated they would file and the statutory class of the top filing charge. As with the screening analyses, preliminary analyses found no independent relationship between defendant race and either of the dependent variables, so the race variable was dropped from consideration in order to conserve degrees of freedom given the relatively small sample available for analysis.

Nevertheless, the balance of race across seriousness categories could be indirectly relevant, if for example, prosecutors' ratings of defendant criminal histories were subtly related to defendant race.

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<sup>17</sup> Mean evidence ratings were 3.09, 3.35, and 3.63 for misdemeanors, low-level felonies, and high-level felonies, respectively. The corresponding standard deviations were .89, .85, and .91—representing 29.8 percent, 25.5 percent, and 25.1 percent of their respective means. The distributions of ratings within levels of offense seriousness were close to normal, with skewness values of -.12, -.38, and -.027.

As with the modeling of screening decisions, the statistical modeling of charging decisions focused on three case-level independent variables: researchers' classification of the seriousness of the top arrest charges (*offense seriousness*), prosecutors' ratings of the strength of evidence (*evidence rating*), and the prosecutors' ratings of the seriousness of defendant criminal histories (*criminal history rating*). The analyses show adequate variability of responding for each of the three dimensions, though some caution is warranted due to underrepresentation of low evidence ratings for low-level felonies.<sup>18</sup>

Table 3.5.2-1 summarizes the results of the final two-level model for the number of charges prosecutors indicated they would file.

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<sup>18</sup> The selection bias due to the exclusion of rejected cases does not appear to have resulted in much change in the relationships among case-level independent variables. As was true for the broader sample of cases included in the screening analyses, the inter-correlations among case-level independent measures for accepted cases exhibit substantial independence. The rank order correlations of criminal history rating with offense seriousness and evidence rating were non-significant and negligible ( $\rho = -.002$  and  $.003$ , respectively). Also, as in the analysis of screening decisions, the rank order correlation between evidence rating and offense seriousness was statistically significant but small ( $\rho = .227$ ,  $p = .000$ ,  $n = 463$ ). These inter-correlations were not considered strong enough to threaten the ability to estimate independent effects.



**Table 3.5.2-1 Hierarchical regression model for the number of charges to file**

<i>Effect</i>	<i>Coefficient</i>	<i>T Ratio</i>	<i>df</i>	<i>P value</i>
<b><i>Case level</i></b>				
Intercept	2.77	37.15	57	.000
Offense seriousness	-0.20	-0.90	59	.375
Evidence rating	-0.21	-1.56	58	.124
Criminal history rating	-0.16	-2.33	59	.023
Seriousness by Evidence	0.31	4.66	59	.000
<b><i>Prosecutor level</i></b>				
Should plead (file only charges to which the defendant should plead guilty) <sup>a</sup>	-0.38	-2.72	57	.009
Item Q8d <sup>a</sup> (file highest provable charges)	0.34	3.30	57	.002
<b><i>Prosecutor by case level</i></b>				
Evidence by Item Q8a <sup>a</sup> (defendant should plead to all charges filed)	-0.19	-3.67	58	.001

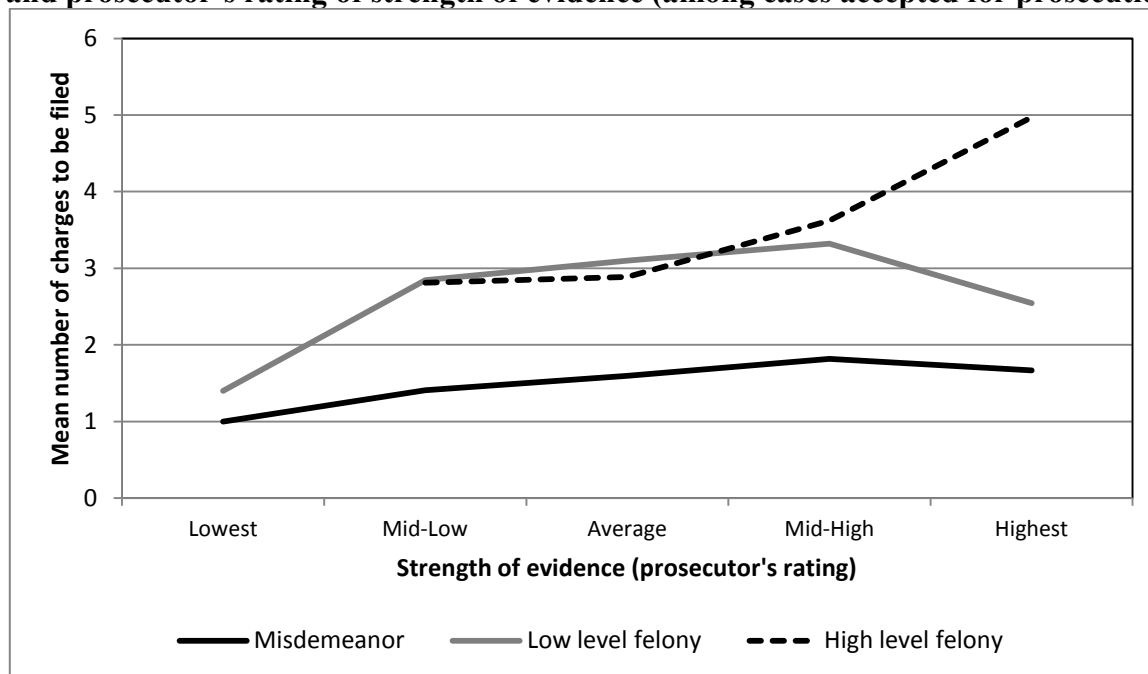
<sup>a</sup>See Table A.3-2 for explanation of items Q8a, Q8d, and Should Plead.

As Table 3.5.2-1 indicates, at the case-level, there was a highly significant interaction between the influence of offense seriousness and the influence of evidence rating. Though they were not statistically significant, the main effects for seriousness and evidence were retained in the model to aid in the interpretation of the interaction effect. The combined effect of the interaction and its component main effects were such that the expected number of charges filed was approximately the same across levels of offense seriousness when strength of evidence was rated at the lowest level. The expected number of charges filed increased as the evidence rating increased, and the rate of increase was much greater for more serious offenses than for less serious offenses. That is,

according to the model, offense seriousness mattered more when the evidence was perceived to be strong, and, equivalently, strength of evidence mattered more for more serious cases.

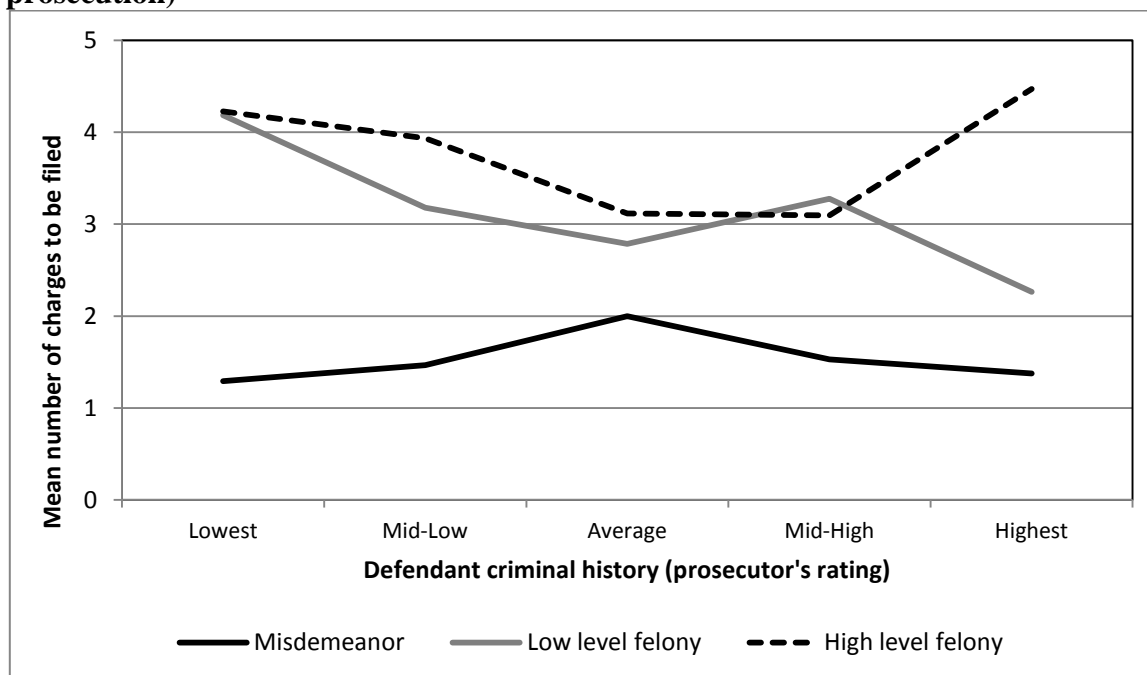
The expected numbers of charges resulting from the combined evidence and seriousness effects depend on choices of reference levels for the other variables in the model. However, a sense of the magnitudes of the effects can be gained from Figure 3.5.2-3, which displays the pattern of the raw numbers of charges specified by the respondents. In this case, the model and the raw data yield nearly identical conclusions, except that the graph of the raw data suggests that the evidence effect may be nonlinear for low-level felonies, and that the effect of evidence for low-level felonies may only diverge from the effect for high-level felonies at the highest levels of evidentiary strength. However, for low-level felonies, there were only 5 observations at the lowest evidence level and 11 observations at the highest level. It may be that the only reliable distinction is the greater effect of strength of evidence for felonies, relative to the effect for misdemeanors.

**Figure 3.5.2-3 Mean number of charges to be filed per hypothetical case by offense seriousness and prosecutor's rating of strength of evidence (among cases accepted for prosecution)**



The model also suggests a counter-intuitive effect of criminal history rating—with *higher* ratings of the seriousness of criminal history being associated with slightly *fewer* filing charges. The graph of the raw data in Figure 3.5.2-4 also hints at complex interactions, in which the average number of filing charges increases in the range from lowest to average criminal history ratings for misdemeanors but decreases for felonies, and then the numbers of charges diverge again in the range from average to highest criminal history ratings. Even if reliable, these would be interactions among nonlinear effects, and our linear modeling found no statistically significant interaction effects for criminal history ratings. While the exact nature of the relationship is difficult to discern and interpret, it is clear that, overall, *ratings* of the seriousness of criminal history were *not* consistently associated with *greater* numbers of filing charges. Thus, at least for these hypothetical cases, the role of criminal history in the initial charging decisions appears to be more complex than might be inferred from the focus group discussions.

**Figure 3.5.2-4 Mean number of charges to be filed per hypothetical case by offense seriousness and prosecutor’s rating of defendant’s criminal history (among cases accepted for prosecution)**



Three of the prosecutor-level measures incorporated in the analyses were significantly related to the average number of filing charges. The measures that proved significant were prosecutors' responses to three individual items on the general survey. The *more strongly* prosecutors agreed that “the charging decision should include the highest charges that could be proven at trial, with the realization that these may be reduced later through a plea bargain” (item Q8d), the *greater* the average number of charges the prosecutors indicated they would file. Similarly, prosecutors who indicated that their general approach to charging was to “. . . file only the charges I believe the accused should plead guilty to” (item Q7, response option 4) identified *fewer* charges for initial filing than prosecutors who chose other responses. In addition, there was a significant prosecutor-level by case-level interaction, such that the modeled influence of strength of evidence was attenuated among prosecutors who agreed more strongly that “a plea offer should include all of the charges filed, with an offer to forego additional charges if the offer is accepted” (item Q8a). This latter result could simply reflect the influence of a general “seek-everything” orientation; if a prosecutor aims to file as many charges as possible, the strength of the evidence may become less relevant. On the other hand, it is possible that prosecutors do tend to file fewer charges initially if they believe that defendants should ultimately plead guilty to all charges filed.

The variation in case-level model parameters across prosecutors was analyzed by examining the results for an intermediate model (not shown) which included only the three case-level measures and the case-level seriousness-by-evidence interaction, as well as prosecutor-level intercepts reflecting average estimates of the random case-level parameters. The HLM 6 estimates for the corresponding random effects show no statistically significant deviations from the average offense seriousness coefficient ( $\chi^2=26.75$ ,  $df=46$ ,  $p > .500$ ), the average evidence rating coefficient ( $\chi^2=23.22$ ,  $df=46$ ,  $p > .500$ ), or the coefficient for seriousness-by-evidence interaction ( $\chi^2=28.74$ ,

df=46,  $p > .500$ ). However, there was significant variation among prosecutors in the influence of criminal history ratings ( $\chi^2$  for slope coefficient = 78.03, df=46,  $p = .002$ ) and marginally significant variation among prosecutors in the average number of charges they indicated they would file ( $\chi^2$  for intercept = 60.05, df=46,  $p = .080$ ). In the final model, some of the variation among prosecutors in average response was accounted for by their responses to selected general survey items (resulting  $\chi^2$  for intercept = 48.80, df=44,  $p = .286$ ), demonstrating that at least some of the variation in decisions among prosecutors was attributable to differences among prosecutors in their beliefs about appropriate prosecutorial strategies. However, inclusion of the general survey items did not reduce the residual variance for the criminal history coefficient, leaving unexplained the differences among prosecutors in the influence of criminal history on charging decisions.

Table 3.5.2-2 summarizes the results of the final two-level model for the seriousness of top filing charge. It suggests a highly significant effect of prosecutors' ratings of strength of evidence in the counter-intuitive direction—higher statutory rank number (lower seriousness) appears associated with stronger evidence. However, the combination of effects for evidence rating, seriousness of the top arrest charge, and a highly significant interaction between seriousness and evidence together yielded a different overall pattern. None of the prosecutor-level measures we tested exhibited significant relationships with either the average level of response (case-level intercepts) or the average influence of case-level predictors (case-level regression coefficients) (thus, we do not display them in Table 3.5.2-2).

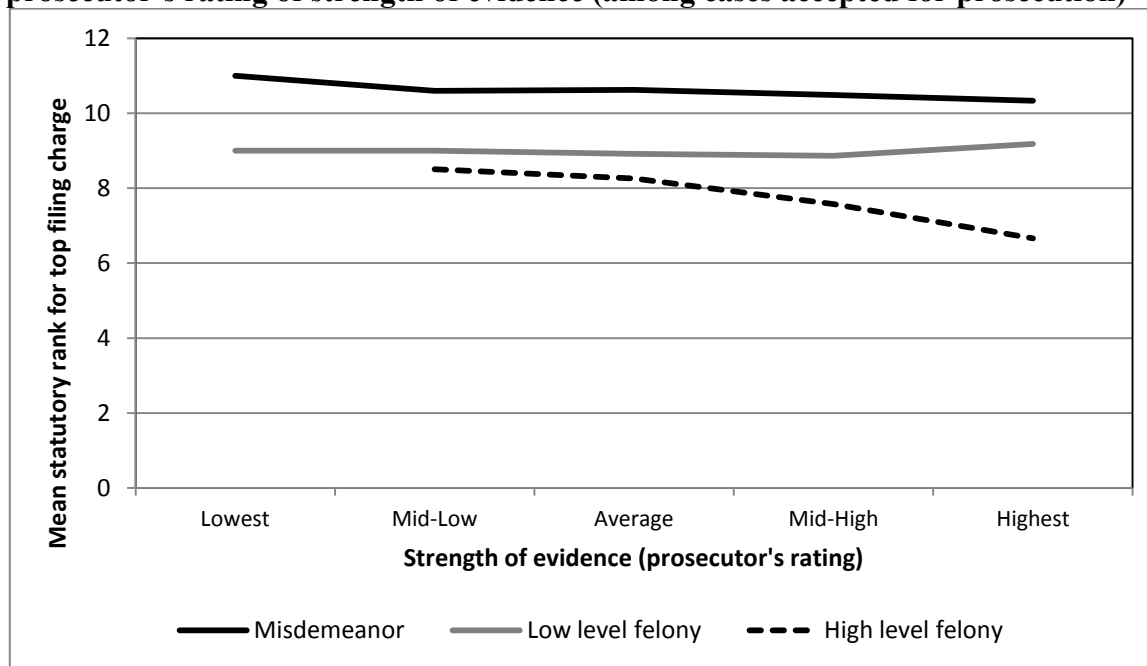
**Table 3.5.2-2 Hierarchical regression model for statutory rank of top filing charge**

<i>Effect</i>	<i>Coefficient</i>	<i>T Ratio</i>	<i>df</i>	<i>P value</i>
<b><i>Case level</i></b>				
Intercept	8.99	115.99	59	.000
Offense seriousness	-0.49	-1.24	59	.221
Evidence rating	0.47	2.74	59	.009
Criminal history rating	-0.27	-2.08	59	.042
Seriousness by evidence	-0.36	-3.70	59	.001
Seriousness by history	0.12	1.45	59	.153
<b><i>Prosecutor level</i></b>				
[No significant effects]	-	-	-	-

Note: The dependent variable, rank of top filing charge, is scaled with smaller numerical values corresponding to more serious charges. Consequently, effects with positive signs in the above table reflect inverse relationships with the seriousness of top filing charge, and vice versa.

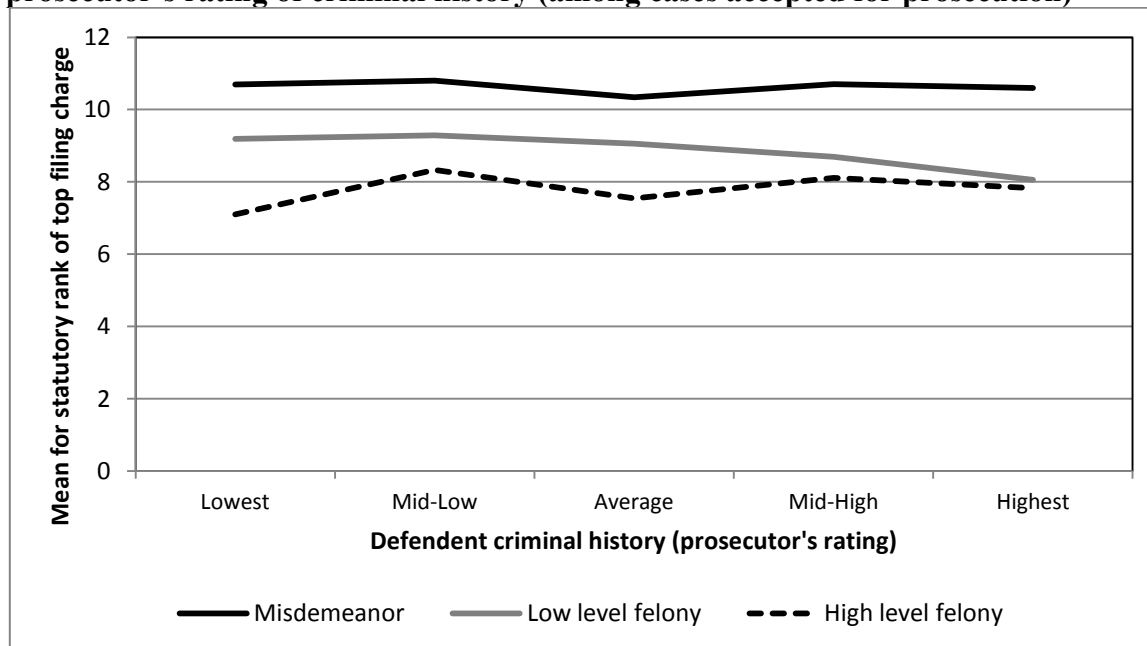
The most serious top arrest charges (high-level felonies) were associated with the most serious top filing charges, the least serious top arrest charges (misdemeanors) were associated with the least serious top filing charges, and low-level felony arrests were associated with intermediate-level top filing charges. For high level felony arrests, *higher* evidence ratings were strongly associated with *more serious* top filing charges. For misdemeanor arrests, seriousness of top filing charge *either decreased slightly* across increasing levels of evidentiary strength (according to the model) *or increased slightly* across increasing levels of evidentiary strength (compare Figure 3.5.2-5, which displays the raw data patterns). For low-level felonies, the results were intermediate with respect to both average level of top filing charge and the slope of the relationship between statutory level of the top filing charge and prosecutors' ratings of the strength of evidence.

**Figure 3.5.2-5 Mean statutory rank of top filing charge by offense seriousness and prosecutor's rating of strength of evidence (among cases accepted for prosecution)**



The model shows no significant relationship between prosecutors' ratings of the seriousness of defendants' criminal histories and the seriousness of the top filing charge, and a graph of the raw data patterns suggests the same interpretation (Figure 3.5.2-6).

**Figure 3.5.2-6 Mean statutory rank of top filing charge by offense seriousness and prosecutor's rating of criminal history (among cases accepted for prosecution)**



The HLM 6 estimates for the random variation of case-level regression parameters across prosecutors show statistically significant deviations from the average coefficients for all of the case-level effects included in the final model: case-level intercept ( $\chi^2 = 71.89$ ,  $df = 45$ ,  $p = .007$ ), offense seriousness ( $\chi^2 = 71.89$ ,  $df = 45$ ,  $p = .002$ ), strength of evidence ( $\chi^2 = 71.89$ ,  $df = 45$ ,  $p = .051$ ), criminal history rating ( $\chi^2 = 71.89$ ,  $df = 45$ ,  $p = .000$ ), and the interaction between offense seriousness and strength of evidence ( $\chi^2 = 71.89$ ,  $df = 45$ ,  $p = .002$ ). None of this residual variation (after controlling for case seriousness, strength of evidence ratings, and criminal history ratings) could be reliably attributed to any of the prosecutor-level measures tested in these analyses. With respect to the seriousness level of the top charges prosecutors indicated they would file in these hypothetical cases, the significant variation among prosecutors in their average levels of responding, and the variation in how they weigh offense seriousness, strength of evidence, and criminal history in their initial charging decisions, remain unexplained by these analyses.

### 3.6 Plea Offers

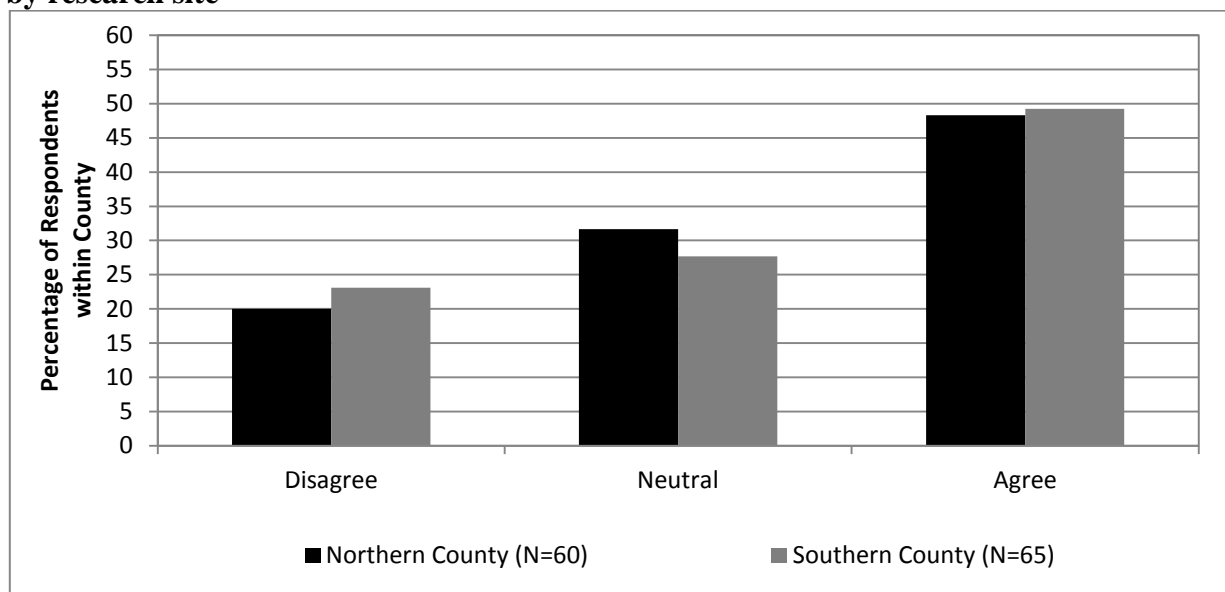
While the charging and plea offer decisions can occur far apart in time, they are not entirely separate. Prosecutors often approach charging in anticipation of the plea offer and outcome. This was evident in prosecutors' discussions of what guided their plea offers. Prosecutors noted that plea offers and changes to plea offers were often guided by a desire to either get a certain sentence or get a conviction on a certain charge. One prosecutor noted that *if we know the amount of time we want the defendant to receive, then we can be creative in what we offer as a plea. It is often about getting the right sentence.* According to the DA in Southern County, *the plea offer is based on the likely sentence that would be imposed at trial. The ADA has to read the file and judge what a jury is likely to do and, if convicted, what the likely sentence would be. Then the ADA says, 'This is the worst thing that will happen to the defendant; therefore, what plea offer would get the defendant to*



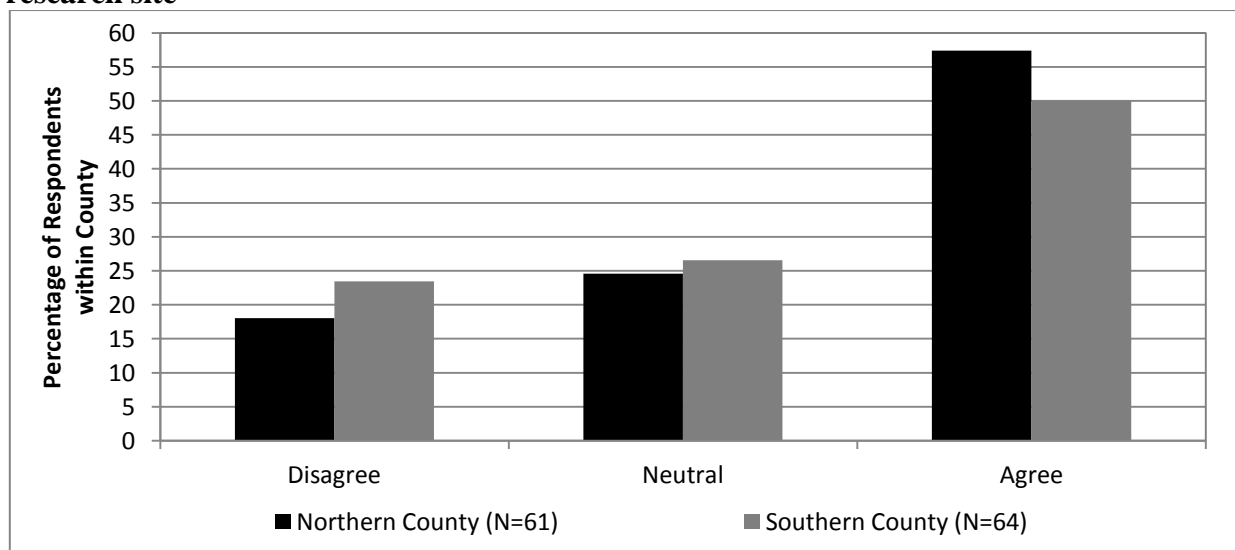
*plead guilty rather than be exposed to the likely sentence.'* Another ADA noted that *in other instances, it is about getting the right conviction offense, such as sex offender notification or a drug offense with a gun. Sometimes we would rather the defendant's record reflects what the defendant did, to better reflect the crime committed, not just what is the appropriate sentence.* This was echoed by the unit manager of the sensitive crimes unit in Northern County who argued that *in sexual assault cases, if the victim does not want to testify, then we make sure to have enough charges to ensure a felony conviction.* Prosecutors also argued that the decision was not always entirely up to the prosecutor. As one ADA in Northern County noted, "This is also dependant on the judge. If the judge changes sentences from those in plea offers, then sometimes all that sticks around is the charge."

These sentiments were echoed in the general survey. There was no clear consensus in the responses to the general survey as to what aspect of charging was most important to consider in preparing plea offers. Half of the respondents (50 percent) agreed or strongly agreed that plea bargaining should focus primarily on the expected sentence the defendant is facing, while 19 percent disagreed or strongly disagreed (Figure 3.6-1). Fifty-five percent of respondents agreed or strongly agreed that plea bargaining should focus primarily on the severity of the most serious charge, while 18 percent disagreed or strongly disagreed (Figure 3.6-2). A slight majority (54 percent) disagreed or strongly disagreed that plea bargaining should focus primarily on the number of charges the defendant is facing, while only 10 percent agreed.

**Figure 3.6-1 Responses to question: “Plea offer should focus primarily on length of sentence,” by research site**



**Figure 3.6-2 Responses to question: “Plea offer should focus primarily on offense severity,” by research site**



While prosecutors agreed that plea offers often reflected a desire to ensure a certain sentence, they disagreed about whether the plea offer should include a recommendation for a particular sentence or whether the sentence was something that could be negotiated. For example, some ADAs maintained that they do not make specific sentence recommendations, but rather *leave it up to the judge*. Others disagreed and maintained that *it is the prosecutor’s responsibility to declare what the*

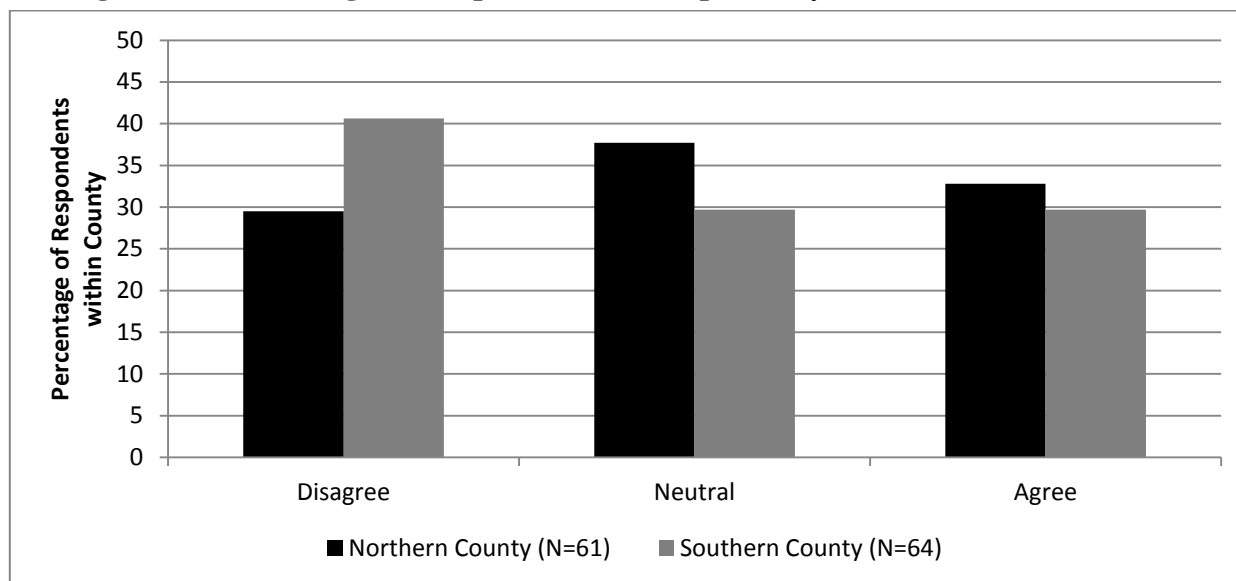
*state believes the proper sentence would be.* As one ADA in Northern County noted, *the sentence recommendation also is about the credibility of the ADA. If the ADA is seen as fair to the defendant, then extraordinary recommendations – for example, sentence recommendations that are very high or very low – will be taken seriously by everyone involved.* Others argued that the sentence recommendation in the plea offer did not mean much in the end. One ADA in Northern County maintained that *the sentence recommendation is symbolic – the judge will do whatever he or she wants to do.*

Given this conflicted view of the sentence recommendation, prosecutors had conflicted views about whether they would negotiate the sentence with the defense. In most cases, prosecutors stated that they did not negotiate the sentence. However, some argued that it was about *balancing efficiency concerns.* As one ADA in Northern County noted, “If the sentencing recommendation is holding up the plea, then I may bend on the sentencing recommendation.” Prosecutors also varied in their opinion of whether the plea stage was simply an offer or a negotiation. Generally, prosecutors felt the plea was an offer that could be accepted or rejected, but not negotiated. However, the DA in Southern County noted that *if the defendant can provide additional information, the ADA should listen and re-evaluate the plea offer.*

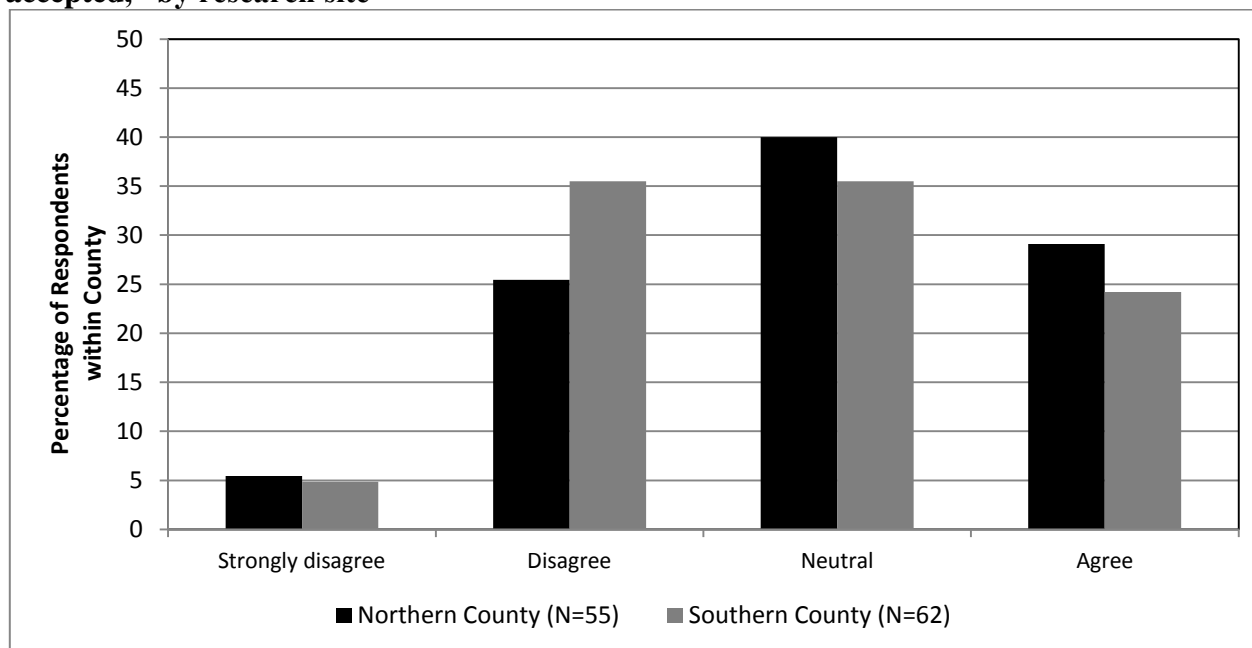
Prosecutors who responded to the general survey had differing opinions about the best strategies for achieving the desired end results. They were equally divided as to whether a plea offer should include all of the charges filed with an offer to forego additional charges if the plea is accepted (31 percent agreed, 33 percent disagreed, and 36 percent were neutral) (Figure 3.6-3). A nearly opposite approach, suggesting that a plea offer should include only the charges the defendant should plead guilty to with a threat to add additional charges if the plea is not accepted, also elicited divergent opinions (27 percent agreed, 46 percent disagreed, and 37 percent were neutral) (Figure 3.6-4). Our

analyses of hypothetical cases in the factorial survey suggest that strategic preferences such as these account for some of the inconsistency among ADAs in critical case processing decisions.

**Figure 3.6-3 Responses to question: “Plea offer should include all charges filed with an offer to forego additional charges if the plea offer is accepted,” by research site**



**Figure 3.6-4 Responses to question: “A plea offer should include only the charges the defendant should plead guilty to with a threat to add additional charges if the plea offer is not accepted,” by research site**



One concern among prosecutors was the need for consistency across ADAs in plea offers. In Southern County, a common practice across the units is to do a roundtable involving all members of the unit to discuss plea offers. This promotes *consistency and uniformity in plea offers*. As the unit manager of the drug unit in Southern County noted, the unit *roundtables all cases before a plea offer; whatever the majority vote is, that is the offer*. The drug unit prosecutes cases horizontally, meaning that no single attorney handles an entire case; rather, different ADAs may handle different aspects of the case. Therefore, *the unit is concerned with consistency because everyone on the unit will see the work*. The roundtable approach, however, can lead to unintended consequences; *since the person offering the plea is not the person taking the case to trial, there is an incentive to be tough at plea offer*. In contrast, the person crimes unit in Southern County prosecutes cases vertically, so that each ADA has his or her own inventory; as a result, according to the unit manager of the person crimes unit, *unit members are less cognizant about consistency across ADAs. There is less peer pressure, but there is still a concern for consistency*. In Northern County, prosecutors were similarly conflicted about the need for consistency in plea offers. As one ADA in Northern County argued, “What we decide a person should get often depends on the judge. So, we tailor offers to the judge.” Others disagreed and argued that *the offer for a specific offense should be the same every time*. Similar to the charging decision, the plea offer was based primarily on defendant characteristics rather than strength of the evidence.

Prosecutors maintained that *the strength of the evidence will bring a recommendation down but it will not bring it up. In other words, we negotiate downward later if the case is weak, but we do not raise the charges upward just because it is strong*. The focus on the characteristics and circumstances of defendants in the preparation of plea offers is a reflection of prosecutors’ efforts to *do the right thing* with respect to appropriate consequences for the defendants. Potential

consequences include a wide range of possibilities, such as expected sentence type and sentence length, the length and seriousness of the resulting official criminal record, payment of fines and restitution, obligations such as community service or participation in treatment, and restrictions on personal liberty – all of which can depend wholly or in part on the number and severity of conviction charges.

We examined the plea offer decision using two methods. First, we examined administrative data capturing the plea offers made in Southern County. Data on plea offers was unavailable in Northern County. Therefore, the following section details plea offers in Southern County only. Second, we examined factorial survey data capturing prosecutors' plea offer decisions in hypothetical cases.

### *3.6.1 Factors Influencing the Plea Offer Decision: Administrative Data from Actual Cases*

The analyses of plea offers in Southern County examined several aspects of the plea offer decision. First, we examined changes in the number of charges facing defendants, by comparing the filed charges to the charges listed in the plea offer. Second, we examined changes in the seriousness of charges a defendant was facing, by comparing the seriousness of the top charge at filing to the top charge to which the plea offer required a guilty plea. Finally we examined the associated sentence recommendations, looking at three variables related to sentencing: 1) top charge incarceration exposure – an estimate of the number of months of incarceration a defendant could face if convicted of the top charge; 2) aggregate incarceration exposure – an estimate of the number of months of incarceration a defendant could face if convicted of all the active charges; and 3), whether the plea offer recommended a period of incarceration.<sup>19</sup>

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<sup>19</sup> The actual threat of incarceration is also strongly determined by a statutorily defined prior record scale under Southern State's sentencing guidelines; prior record level, however, is not subject to prosecutorial discretion. Thus, these exposure measures reflect only the potential consequences of charge seriousness, but array those consequences on interval scales.

The following sections detail separate analyses for each of these outcome variables. The analyses in each section rely on the same samples of cases that advanced beyond indictment/grand jury in Southern County. These included 253 person unit cases, 249 property unit cases, and 2,232 drug unit cases. Rather than summarize descriptive statistics here, brief summary statistics for the outcome variables are presented at the beginning of each section.

Explanatory variables included in the analyses differed somewhat across the three data sets. Measures of defendants' personal characteristics, prior record, and case seriousness at intake were available from all three sources. Victim characteristics and strength of evidence were available only for the person unit and property unit cases. Finally, a measure of *concurrent experience* was constructed by counting the number of cases handled by each prosecutor within each of the three teams during the time period covered by the associated data set.

The potential influences of available case-level factors on changes from initial filing to plea offer were evaluated using linear regression modeling. Analyses of the changes in number of charges were restricted to cases in which more than one charge was filed initially. For the analyses of actual drug cases, the early drug unit sample and the late drug unit sample were combined to permit explicit tests of the differences between time periods in outcomes and difference between time periods in the relative influence of case characteristics. Analyses of factors influencing the probability of an incarceration recommendation were based on logistic regression models. In addition, logistic regression modeling and a series of one-way ANOVAs were conducted to explore the variability in average outcomes across ADAs.

#### Number of charges requiring guilty pleas.

Overall, the average number of charges for which the plea offer would require guilty pleas was similar across the broad crime categories, ranging from an average of 1.3 charges requiring a guilty

plea for the late drug unit cases to 1.7 charges requiring a guilty plea for the property unit cases (See Table 3.6.1-1).<sup>20</sup> For the drug unit samples, this represented substantial reductions from the average number of charges initially filed. Late drug unit cases involved 1.5 fewer charges in the plea offer than initially filed; early drug unit cases involved 1.2 fewer charges in the plea offer than initially filed. Property unit cases saw the smallest reduction, with these cases involving just 0.6 fewer charges in the plea offer than initially filed.

**Table 3.6.1-1 Number of charges filed and requiring a guilty plea in plea offers**

<b>Selected Outcome Measures</b>	<b>Person Unit</b>	<b>Property Unit</b>	<b>Early Drug Unit</b>	<b>Late Drug Unit</b>
<b>Total N of cases with plea offer</b>	253	249	1359	873
<b>% of initially screened cases</b>	49.8%	37.8%	54.9%	36.1%
<b>Avg. N of charges filed in cases with plea offers<sup>a</sup></b>	2.5	2.3	2.7	2.8
<b>Avg. N of charges requiring guilty plea in offer</b>	1.6	1.7	1.5	1.3
<b>Avg. reduction in N of charges</b>	0.9 (251) <sup>b</sup>	0.6 (248)	1.2 (1335)	1.5 (857)

<sup>a</sup>Calculations for N of filing charges and reduction in N of charges are limited to cases with plea offers.

<sup>b</sup>Numbers in parentheses indicate N of cases with non-missing values for both N of filing charges and N of plea offer charges.

Table 3.6.1-2 presents the results of the linear regression models examining changes in the number of charges per case from initial filing to plea offer. Changes in the number of drug charges per case were reliably associated with several case-level characteristics (N = 1653, R<sup>2</sup> = .56). However, the average effects were relatively small in absolute magnitude. Factors that tended to increase the average number of charges were black defendant (+.11 charges) and prior record (+.05 charges per increase in level). Factors that tended to reduce the average number of charges were class of the top charge at screening (-.03 charges per increase in statutory class), number of charges at screening (-.95 plea offer charges per charge screened), and the time period during which the case

<sup>20</sup> The somewhat lower average number of charges for the late drug unit sample appears to have been more than offset by retention of more serious charges. See the analyses of incarceration exposure.



was processed (-.27 charges for cases processed in the more recent time period). Clearly, more serious cases with more room for plea bargaining did, in fact, experience greater reductions in the number of charges between initial filing and plea offers. The same effect was observed for both the early drug unit sample and the late drug unit sample, but the reductions between initial charging and plea offer were somewhat greater overall in the later sample.

**Table 3.6.1-2 Final linear regression models for effects of selected factors on change in number of charges from initial filing to plea offer in Southern County**

Independent Variables	Coefficients		
	Model 1 Person Unit	Model 2 Property Unit	Model 3 Drug Unit
<i>Model Constant</i>	-.534	-1.035	+.823
<i>Case Characteristics</i>			
Late drug sample			-.271***
N of charges screened (up to 5)	ns	ns	-.951***
Statutory class of top charge at screening <sup>a</sup>	ns	ns	+.031**
Top charge screened was burglary		+.797***	
<i>Defendant Characteristics</i>			
Race (black)	ns	ns	+.112**
Prior record level	ns	ns	+.045***
<i>Victim Characteristics</i> (none significant)	ns	ns	
<i>Evidence</i>			
Total N of items of evidence listed (up to 5)	-.534***	-.342**	
N of items of evidence per intake charge (3 levels)	+.667**	+1.236***	
<i>Interactions</i>			
Robbery BY N of charges screened	-.690***		-
Robbery BY gender (male)	+1.021***		-
Robbery BY N of evidence items	+.443***		-
Burglary BY female victim		-.681*	-
<i>Pairwise Ns</i>	159-192	161-171	1653 - 1776
<i>Model R<sup>2</sup></i>	.32	.11	.56

\*p<=.10; \*\*p<=.05; \*\*\*p<=.01; for coefficients without asterisks p<=.15

<sup>a</sup>Statutory class was coded as 1 = highest rank; larger values correspond to less serious charges. Thus, coefficients with positive signs denote inverse relationships with seriousness.

Prediction models for changes in the number of charges were much weaker and somewhat more complicated for the person unit sample ( $N = 159-192$ ,  $R^2 = .32$ ) and the property unit sample ( $N = 161-171$ ,  $R^2 = .11$ ).<sup>21</sup> For the person unit sample, several effects were limited to the subset of cases arrested for robbery. For the property unit sample, several effects were limited to the subset of cases arrested for burglary. That is, they were governed by significant interactions with robbery and burglary, respectively. In the person unit sample, the net result was that, for robberies, a greater number of items of evidence per charge and whether the alleged robber was female were associated with increases or smaller reductions in the number of plea offer charges, and a greater number of charges at intake was associated with greater decreases in the number of plea offer charges. For other crimes against persons, none of the factors tested explained the observed reduction in the number of charges. In particular, it was somewhat surprising that neither defendant characteristics, nor prior record level, nor any of the measures of victim characteristics were significantly related to the reduction in number of charges for crimes against persons, and that strength of evidence remained as the dominant consideration.

Strength of evidence also emerged as the most influential factor in analyses of the number of plea offer charges in the property unit sample. A three-level grouping of the number of items of evidence per charge (<1, 1 to 2, 2 or more) was associated with an average increase of 1.2 charges per level between the number filed and the number for which the plea offer would require guilty pleas. However, this was partially offset by the total number of items of evidence forwarded to the prosecution from the police (-.34 charges per item, up to a maximum of 5 items). This combination of effects and the similar combination observed for the person unit sample suggest that more

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<sup>21</sup> Sample sizes are reported as ranges for regressions performed with pairwise deletion for missing values. For those analyses, the larger value for  $N$  is the number of cases that had non-missing values for the dependent variable, and the smaller value for  $N$  is the smallest number of cases involved in estimating the covariance between any pair of variables—among only the variables included in the final model. Though listwise deletion is usually preferred, it was decided for these analyses that the potential selection bias associated with listwise deletion could be more damaging than the problems associated with pairwise deletion.

complex cases may be more vulnerable to reductions in the number of charges. In addition, burglaries were associated with a significant average increase in the number of charges (+.80 charges), except when one or more of the victims was female, perhaps reflecting prosecutors' greater confidence in the testimony and other evidence associated with institutional victims (businesses, "the State", etc.).<sup>22</sup>

Statutory rank of the most serious charge requiring a guilty plea.

Overall, there were only slight changes in average statutory rank of the top charge between initial filing and plea offer (Table 3.6.1-3). Statutory rank of charges is coded so that less serious charges have a higher value in the coding (i.e. highest level felony =1 and misdemeanor =11); thus, a positive change in the statutory rank of charges would imply a reduction in the seriousness of charges and a negative change would imply an increase in seriousness of charges. As Table 3.6.1-3 indicates, person unit and property unit cases experienced a decrease in charge seriousness from initial filing to plea offer, with late drug unit cases experiencing a slight increase.

**Table 3.6.1-3 Average statutory rank of top filed charge and top charges requiring a guilty plea in plea offers**

Selected Outcome Measures	Person Unit	Property Unit	Early Drug Unit	Late Drug Unit
<b>Total N of cases with plea offer</b>	253	249	1359	873
<b>% of initially screened cases</b>	49.8%	37.8%	54.9%	36.1%
<b>Avg. statutory rank of top filed charge for cases with plea offers<sup>a</sup></b>	7.2	9.1	8.7	8.1
<b>Avg. statutory rank of top plea offer charge<sup>c</sup></b>	7.9	9.3	8.6	8.0
<b>Avg. change in statutory rank of top charge</b>	+0.7 (251) <sup>b</sup>	+0.2 (248)	0.0 (1335)	-0.1 (857)

<sup>a</sup>Calculations for statutory rank and change in statutory rank are limited to cases with plea offers.

<sup>b</sup>Numbers in parentheses indicate N of cases with non-missing values for both rank of top filed charge and rank of top plea offer charge.

<sup>c</sup>Highest rank = 1. Positive change in rank value indicates a reduction in seriousness.

<sup>22</sup> Presence of a female victim in a burglary case may serve here as a proxy for household burglary.

Table 3.6.1-4 presents the results of the linear regression models examining changes in the statutory rank of the top charge from initial filing to plea offer. As Table 3.6.1-4 indicates, the relatively small changes in statutory rank of the top charge resulted in a relative inability to identify significant influences. This was particularly true for the person unit sample due to the small available sample size ( $N = 176 - 251$ ,  $R^2 = .05$ ). There was, however, a statistically significant effect of the number of charges presented at intake, such that each increase in the number of charges (up to a maximum of 5) was associated with an average reduction of .33 levels in statutory class (recall, the relationship is inverse). This is consistent with other findings suggesting that higher initial starting points tend to be associated with greater reductions later.

**Table 3.6.1-4 Final linear regression models for effects of selected factors on change in statutory class of top charge from initial filing to plea offer in Southern County**

Independent Variables	Coefficients		
	Model 4 Person Unit	Model 5 Property Unit	Model 6 Drug Unit
<i>Model Constant</i>	-.010	4.194	+2.417
<i>Case Characteristics</i>			
Late drug sample			ns
N of charges screened (up to 5)	+.331***	+.131*	ns
Statutory class of top charge at screening <sup>a</sup>	ns	-.497***	-.171***
Top charge screened was robbery	ns		
Top charge screened was burglary		-.625***	
<i>Defendant Characteristics</i>			
Race (black)	ns	ns	-.212***
Gender (= male for drugs; female otherwise)	ns	+.364*	-.206***
Prior record level	ns	ns	-.144***
Defendant age at screening (4 levels)	ns	ns	-.079**
<i>Victim Characteristics</i>			
(none significant)	ns	ns	
<i>Evidence</i>			
Total N of items of evidence listed (up to 5)	ns	ns	
N of items of evidence per intake charge (3 levels)	ns	ns	
<i>Interactions</i>			
Late drug sample BY prior record level			-.059**
<i>Pairwise Ns</i>	<b>176-251</b>	<b>198-248</b>	
<i>Model R<sup>2</sup></i>	<b>.05</b>	<b>.26</b>	<b>.08</b>

\*p<=.10; \*\*p<=.05; \*\*\*p<=.01; for coefficients without asterisks p<=.15

<sup>a</sup>Statutory class was coded as 1 = highest rank; larger values correspond to less serious charges. When the independent variable is statutory class of top charge screened, the sign of the coefficient represents a “double negative”; a positive sign means more serious intake charge is associated with increase in seriousness between filing and plea offer. For all other independent variables, the inverse is true; a positive sign denotes a decrease in seriousness of the top charge between initial filing and plea offer.

Analysis of the property unit sample yielded somewhat stronger prediction (N = 198 – 248, R<sup>2</sup> = .26). Greater reductions in seriousness of top charges between initial filing and the plea offer were associated with greater numbers of charges at intake, higher statutory class of the top charge at

intake, and female defendants. Cases in which the top charge at intake was for burglary experienced less reduction, on average, than other cases.

For drug cases, the much larger sample yielded statistically significant effects for several predictors. Consistent with the findings for property cases, reductions in statutory class between initial filing and plea offer were greater in cases with higher statutory class at intake. However, defendants with more serious prior records, black defendants, male defendants, and older defendants experienced *less* reduction, on average, than other defendants. In addition, the enhancing effect of prior record was stronger for the more recent drug unit sample than for the earlier cases. Yet, overall, these measures did not account for much of the slight variation in changes in class rank ( $N = 2045 - 2192$ ,  $R^2 = .08$ ).

#### Change in top charge exposure

The potential minimum number of months of incarceration implied by the most serious active charge increased only slightly between initial filing and plea offer for drug cases and declined only slightly for person and property cases (Table 3.6.1-5).

**Table 3.6.1-5 Average months of exposure for top filed charge and for top charges requiring a guilty plea in plea offers**

<b>Selected Outcome Measures</b>	<b>Person Unit</b>	<b>Property Unit</b>	<b>Early Drug Unit</b>	<b>Late Drug Unit</b>
<b>Total N of cases with plea offer</b>	253	249	1359	873
<b>% of initially screened cases</b>	49.8%	37.8%	54.9%	36.1%
<b>Avg. months of exposure for top filed charge among cases with plea offers<sup>a</sup></b>	41.4	9.2	12.2	18.9
<b>Avg. months of exposure for top plea offer charge</b>	36.6	8.2	14.1	21.0
<b>Avg. change in months of exposure</b>	-7.9 (223) <sup>b</sup>	-1.0 (239)	+1.9 (1331)	+2.1 (854)

<sup>a</sup>Calculations for exposure for top filed charge and change in exposure are limited to cases with plea offers.

<sup>b</sup>Numbers in parentheses indicate N of cases with non-missing values for top charge exposure at both filing and plea offer.

Table 3.6.1-6 presents the results of the linear regression models examining changes in months of exposure from initial filing to plea offer. As Table 3.6.1-6 shows, several case-level factors were significantly associated with these changes. For cases in the person unit sample ( $N = 153 - 223$ ,  $R^2 = .26$ ), greater decreases in top charge exposure were associated with more charges at intake, more victims willing to prosecute, and cases in which the top intake charge was for robbery. These seemingly counterintuitive results are consistent with other findings in this study suggesting that cases that start at a higher level, or are more complex, or possibly are more prone to overcharging are more vulnerable to reductions later in case processing. Increases (or lesser decreases) in top charge exposure were associated with a greater number of victims with physical injuries (up to a maximum of 2), but this was offset by an average negative effect if any of the victims' injuries were categorized as "serious." This too is counterintuitive, but may reflect a determination by prosecutors, once victims have been interviewed and medical evidence has been evaluated, that a significant number of such cases were initially overcharged.

For cases in the property unit sample ( $N = 192 - 239$ ,  $R^2 = .49$ ), greater reductions in top charge exposure were associated with older defendants, black defendants (especially in cases with multiple charges), and cases involving codefendants. Lesser reductions<sup>23</sup> in top charge exposure were associated with defendants with more serious prior record, lower statutory rank of the top charge at intake, a greater number of black or Hispanic victims (up to a maximum of 2), cases in which the top charge at intake was burglary, and the number of victims with physical injuries (especially for cases in which the top charge was burglary).

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<sup>23</sup> The model constant was -71.5 months, reflecting some degree of reduction for almost all cases.

**Table 3.6.1-6 Final linear regression models for effects of selected factors on change in top charge incarceration exposure from initial filing to plea offer in Southern County**

Independent Variables	Coefficients		
	Model 7 Person Unit	Model 8 Property Unit	Model 9 Drug Unit
<i>Model Constant</i>	+1.666	-71.501	-28.269
<i>Case Characteristics</i>			
Late drug sample			ns
N of charges screened (up to 5)	-5.250***		ns
Statutory class of top charge at screening <sup>a</sup>	ns	+7.550***	+2.001***
Top charge screened was robbery	-10.081***		
Top charge screened was burglary		+6.581***	
codefendants		-2.632**	
<i>Defendant Characteristics</i>			
Race (black)	ns	ns	+2.698***
Gender (= male for drugs; female otherwise)	ns	ns	+2.355***
Prior record level	ns	+2.674***	+1.688***
Defendant age at screening (4 levels)	ns	-1.718***	+1.105**
<i>Victim Characteristics</i>			
Any victim with serious injury	-12.797***	ns	
Number of injured victims (up to 2)	+5.575***	ns	
N of victims willing to prosecute	-5.043***	ns	
N of black or Hispanic victims (up to 2)	ns	+1.843	
<i>Evidence</i>			
Total N of items of evidence listed (up to 5)	ns	ns	
N of items of evidence per intake charge (3 levels)	ns	ns	
	ns	ns	
<i>Interactions</i>			
Late drug sample BY prior record level			+0.769***
Multiple charges BY class of top charge at screening	+1.120**	ns	ns
Burglary BY N of injured victims	ns	+17.916***	ns
Multiple charges BY black defendant	ns	-3.455**	ns
<i>Pairwise Ns</i>	<b>153-223</b>	<b>192-239</b>	<b>2045-2192</b>
<i>Model R<sup>2</sup></i>	<b>.26</b>	<b>.49</b>	<b>.08</b>

\*p<=.10; \*\*p<=.05; \*\*\*p<=.01; for coefficients without asterisks p<=.15

<sup>a</sup>Statutory class was coded as 1 = highest rank; larger values correspond to less serious charges. Thus, coefficients with positive signs denote inverse relationships with seriousness.



For drug cases, the ability to explain changes in top charge exposure between initial filing and plea offer was substantially more limited ( $N = 2045 - 2192$ ,  $R^2 = .08$ ). The factors found to influence the change in top charge exposure were similar to those identified as influential for the person unit and property unit samples, but not necessarily in the same direction. As with the person and property unit samples, higher statutory classification of the top charge at intake was associated with greater reduction in top charge exposure. Similar to the results for the property unit sample, more serious prior record classification was associated with less reduction in top charge exposure, and the effect was stronger for the more recent drug unit sample than for earlier cases. However, unlike the results for the property unit sample, *lesser reductions* in top charge exposure were associated with older defendants, black defendants, and male defendants.

Most notable is that fact that none of the analyses of changes in top charge exposure found any direct effects of the evidence initially cited by police when the cases were forwarded for screening, though other factors that could later affect the evaluation of evidence did emerge. In general, the findings support statements by the prosecutors who participated in the focus groups that factors such as case seriousness, prior record, and victim characteristics, as well as factors that may affect the evaluation of evidence, become relatively more important as a case progresses.

#### Change in aggregate exposure.

The number of months of incarceration a defendant could face if convicted of all of the active charges was a function of both the number of active charges and the statutory classification of each active charge. The resulting aggregate exposure declined between initial charging and plea offer in all of the samples (Table 3.6.1-7). The average decline was greatest for the person unit sample (21.2 month reduction), but smaller or negligible for the other samples (2.8 month reduction for early drug cases, 0.3 month reduction for property cases, and 5.5 month reduction for late drug cases).

However there were substantial differences in the amount of reduction among individual cases in all samples and analyses identified a number of factors associated with those differences.

**Table 3.6.1-7 Average months of aggregate exposure at filing and for aggregate exposure at plea offer**

<b>Selected Outcome Measures</b>	<b>Person Unit</b>	<b>Property Unit</b>	<b>Early Drug Unit</b>	<b>Late Drug Unit</b>
<b>Total N of cases with plea offer</b>	253	249	1359	873
<b>% of initially screened cases</b>	49.8%	37.8%	54.9%	36.1%
<b>Avg. months of aggregate exposure at filing among cases with plea offers<sup>a</sup></b>	69.1	12.4	17.1	29.4
<b>Avg. months of aggregate exposure at plea offer</b>	47.9	12.1	17.1	23.9
<b>Avg. change in months of aggregate exposure</b>	-21.2 (223) <sup>b</sup>	-0.3 (239)	-2.8 (1331)	-5.5 (854)

<sup>a</sup>Calculations for aggregate exposure at filing and change in exposure are limited to cases with plea offers.

<sup>b</sup>Numbers in parentheses indicate N of cases with non-missing values for aggregate exposure at both filing and plea offer.

Table 3.6.1-8 presents the results of the linear regression models examining changes in aggregate months of exposure. For the person unit sample, analyses identified ten factors associated with change in aggregate exposure (N = 153-223, R<sup>2</sup> = .59). Factors associated with greater reductions in aggregate exposure included the number of charges at intake, cases in which the top charge at intake was robbery, cases in which any victims needed medical attention, the number of victims willing to prosecute, and whether there were codefendants in the case. For example, each additional charge filed at intake (up to a maximum of five charges) resulted in a 30 month reduction of aggregate exposure in the plea offer. Similarly, the presence of any victims needing medical attention resulted in a 26 month reduction in aggregate exposure. For robbery cases only, the number of black or Hispanic victims also reduced the aggregate exposure at plea offer, resulting in a 12 month reduction for each additional black or Hispanic victim (up to 2). Factors associated with lesser reductions or increases in aggregate exposure in person unit cases included the total number of items of evidence cited by the police (+7 months for each increase, up to a maximum of 5 items), the number of victims to whom the defendant was a stranger (+11

months for each increase, up to a maximum of 2 victims), prior record level (+6 months for each increase in level, up through level 4), and, for cases with multiple charges only, the statutory class of the top charge at screening (+5 months for each *decrease* in class).

**Table 3.6.1-8 Final linear regression models for effects of selected factors on change in aggregate incarceration exposure from initial filing to plea offer in Southern County**

Independent Variables	Coefficients		
	Model 10 Person Unit	Model 11 Property Unit	Model 12 Drug Unit
<b>Model Constant</b>	+29.712	-66.714	-51.492
<b>Case Characteristics</b>			
Late drug sample			-2.364***
N of charges screened (up to 5)	-29.989***	-4.244***	-3.629***
Statutory class of top charge at screening <sup>a</sup>	na	+7.273***	+4.241***
Top charge screened was robbery	-11.597		
Top charge screened was burglary		+8.994***	
Codefendants	-10.944*		
<b>Defendant Characteristics</b>			
Race (black)	na	na	+5.286***
Gender (= male for drugs; female otherwise)	na		+2.390**
Prior record level	+6.062**	+2.617***	+3.331***
Defendant age at screening (4 levels)	na	-2.052***	+1.628***
<b>Victim Characteristics</b>			
Any victims need medical attention	-25.697***	na	
N of injured victims (up to 2)	na	+10.122**	
N of victims willing to prosecute	-15.108***	na	
N of victims to whom defendant was a stranger	+11.442***	na	
<b>Evidence</b>			
Total N of items of evidence listed (up to 5)	+7.152***	+1.379*	
N of items of evidence per intake charge (3 levels)	na	na	
<b>Interactions</b>			
Multiple charges BY class of top charge at screening	+4.578***	na	
Robbery BY N of black or Hispanic victims	-11.782**		
<b>Pairwise Ns</b>	<b>153-223</b>	<b>192-239</b>	<b>2039</b>
<b>Model R<sup>2</sup></b>	<b>.59</b>	<b>.38</b>	<b>.21</b>

\*p<=.10; \*\*p<=.05; \*\*\*p<=.01; for coefficients without asterisks p<=.15

<sup>a</sup>Statutory class was coded as 1 = highest rank; larger values correspond to less serious charges. Thus, coefficients with positive signs denote inverse relationships with seriousness.

For the property unit sample, nearly all cases experienced some decline in aggregate incarceration exposure. Starting from an average reduction of 67 months,<sup>24</sup> analyses identified three factors associated with relatively greater reductions in aggregate exposure and four factors associated with relatively lesser reductions ( $N = 192 - 239$ ,  $R^2 = .38$ ). Factors associated with relatively greater reductions included statutory rank of the top charge at intake (-7 months for each increase in statutory class), the number of charges at intake (-4 months for each additional charge, up to a maximum of 5 charges), and defendant age at screening (-2 months for each step up in a 4 category grouping of ages). Factors associated with relatively lesser reductions in aggregate exposure included cases in which the top charge was burglary (+9 months), prior record level (+3 months for each step up in level, up through level 4), the number of injured victims (+10 months for each increase in the number of injured victims, up to a maximum of 2 victims), and the total number of items of evidence cited by the police (1 month for each increase in the number of items, up to a maximum of 5 items).

For drug cases, analyses identified three factors associated with relatively greater reductions in aggregate incarceration exposure and four factors associated with relatively lesser reductions ( $N = 2,039$ ,  $R^2 = .21$ ). Starting from an average reduction of 51 months,<sup>25</sup> factors associated with relatively greater reductions included statutory class of the top intake charge (-4 months for each increase in class), number of charges at intake (-4 months for each increase in the number of charges, up to a maximum of 5 charges), and historical time period (-2 months for cases processed in the more recent period). Factors associated with relatively lesser reduction in aggregate exposure included prior record level (+3 months for each increase in level, up through level 4), defendant race (+5 months if the defendant was black), defendant age at screening (+2 months for each step up

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<sup>24</sup> The model constant was -66.714 months.

<sup>25</sup> The model constant was -51.492.

in a 4-category grouping of ages), and gender (+2 months if the defendant was male). Separate tests of interactions with historical period (early drug sample vs. late drug sample) suggested that the prior record effect was stronger in the later sample and that the race and gender effects were weaker in the later sample. However, the interactions could not all be tested jointly in the same model without introducing multicollinearity problems, so the interaction effects were excluded from the final model reported.

### Sentence recommendations

While sentencing is ultimately the responsibility of the judge, prosecutors may employ different strategies to achieve what they believe are fair outcomes given the offense, the defendant's prior record, the interests of victims, the consequences to the defendant, and other circumstances surrounding the case. They may try to limit a judge's discretion by limiting the number of charges to which the defendant must plead guilty, which then limits the judge's sentencing options. If a judge is predictable, ADAs may avoid making an explicit sentence recommendation and offer a plea of "sentence at the discretion of the court." However, in the majority of cases, plea offers include explicit sentence recommendations. We examined one key aspect of such recommendations—whether or not a plea offer included a recommendation for a period of incarceration.

A series of logistic regression analyses were conducted to identify factors most strongly associated with the probability that a plea offer would recommend a sentence of incarceration. Separate analyses were conducted for the person unit sample, the property unit sample, and the drug unit sample. The resulting statistical models achieved moderately strong predictive power for all three samples (see Table 3.6.1-9).

**Table 3.6.1-9 Final logistic regression models for effects of selected factors on the probability of an incarceration recommendation in Southern County**

Independent Variables	Coefficients		
	Model 13 Person Unit	Model 14 Property Unit	Model 15 Drug Unit
<b>Case Characteristics</b>			
Late drug sample			
N of charges screened (up to 5)		.742*	
Statutory class of top charge at screening <sup>a</sup>	.520***		.423***
Top charge screened was robbery	2.300		
Top charge screened was burglary			
<b>Defendant Characteristics</b>			
Race (black)	.199**		ns
Gender (= male for drugs; female otherwise)	.264		2.583***
Prior record level	3.131***	3.656***	2.013***
Defendant age at screening (4 levels)	.696**	.763**	1.520***
<b>Victim Characteristics</b>			
N of victims	.482		
Any victims need medical attention	.176		
N of black or Hispanic victims (up to 2)		.422**	
Any person victims		2.030	
<b>Evidence</b>			
Total N of items of evidence listed (up to 5)			
N of items of evidence per intake charge (3 levels)	2.487***		
N of weapons-related items of evidence		3.448*	
<b>Interactions</b>			
Late drug sample BY defendant age at screening			.754*
Late drug sample BY class of top charge at screening			1.285***
Late drug sample BY race (black)			.358***
<i>Ns</i>	<b>157</b>	<b>182</b>	<b>2056</b>
<i>Nagelkerke R<sup>2</sup></i>	<b>.47</b>	<b>.35</b>	<b>.47</b>

\*p<=.10; \*\*p<=.05; \*\*\*p<=.01; for coefficients without asterisks p<=.15

<sup>a</sup>Statutory class was coded as 1 = highest rank; larger values correspond to less serious charges. Thus, odds ratios greater than one denote inverse relationships with seriousness.

For the person unit sample, the analysis identified four variables associated with a higher probability of an incarceration recommendation and five variables associated with a lower

probability ( $N = 157$ , Nagelkerke  $R^2 = .47$ ). Variables associated with a higher probability of an incarceration recommendation included robbery as the top charge at intake, higher statutory class of the top charge at intake, a greater number of items of evidence per charge, and a higher prior record level. Variables associated with a lower probability of an incarceration recommendation included older defendant, black defendant, female defendant, higher number of victims, and the number of victims requiring medical attention. As previously noted, the counterintuitive effects for numbers of victims may be related to situations in which victim witnesses may be unreliable or police are especially prone to overcharging.

For the property unit sample, the analysis identified three variables associated with a higher probability of an incarceration recommendation and three variables associated with a lower probability ( $N = 182$ , Nagelkerke  $R^2 = .35$ ). Variables associated with a higher probability of an incarceration recommendation included higher prior record level, any person victim, and weapons included among the items of evidence cited by the police. Variables associated with a lower probability of an incarceration recommendation included older defendant, more black or Hispanic victims, and more charges at intake.

For drug cases, the analysis identified five variables associated with a higher probability of an incarceration recommendation, but three of those were significantly less influential in the more recent sample than in earlier cases ( $N = 2,056$ , Nagelkerke  $R^2 = .46$ ). In both time periods, males and defendants with higher prior record classification were more likely than others to face a recommendation for incarceration in the plea offer. Older defendants, black defendants, and cases in which the statutory classification of the top charge was higher were also more likely to face incarceration recommendations during the early sample. However, the effects of age and class were attenuated in the more recent sample, and the effect of race was reversed, with black defendants

becoming less likely than others to face incarceration recommendations in the more recent time period.

### Concurrent vs. consecutive sentences

The observed changes in top charge incarceration exposure and observed changes in aggregate incarceration exposure lead to different conclusions about the impact of plea bargaining on the likely consequences for defendants. For drug cases, aggregate exposure declined slightly between initial charging and plea offer, but average top charge exposure actually increased. For the person unit sample, average aggregate exposure declined substantially between initial charging and plea offer, but average top charge exposure declined only slightly.<sup>26</sup> Whether top charge exposure or aggregate exposure is the more relevant measure depends critically on whether judges tend to impose concurrent or consecutive sentences in cases with convictions for multiple offenses. If they tend mostly to impose concurrent sentences, then top charge exposure is the more relevant measure of the potential consequences to the defendant. If they tend mostly to impose consecutive sentences, then aggregate exposure is the more relevant measure.

The data available for the present study did not include direct information about the mode of sentencing. However, some indirect inferences are possible by comparing the top charge exposure measure and the aggregate exposure measure for cases actually sentenced to incarceration to the actual sentence lengths for those cases. The results suggest different conclusions depending on crime type. For crimes against persons in which the defendant was actually sentenced to incarceration, even the top charge exposure measure overestimated the potential length of incarceration for crimes against persons. However, the opposite was true for property crimes and drug crimes; for those cases, actual incarceration sentences were much closer to the aggregate exposure measure than to the top charge exposure measure.

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<sup>26</sup> There was little average change in either measure for the property unit sample.



The aggregate exposure measure is driven largely by the number of active charges. The fact that actual incarceration sentences were closer to the aggregate exposure measure than to the top charge exposure measure for drug crimes and property crimes suggests that, for those crime types, prosecutors' offers to drop charges in exchange for guilty pleas provided a clear benefit to defendants. On the other hand, it appears that in reducing the number charges in cases involving crimes against persons, prosecutors gave away relatively little in terms of the ultimate consequences to defendants.

### Consistency among ADAs

A series of analyses were conducted to explore the variation among the ADAs responsible for preparation of plea offers; these analyses examined the reduction in the number of the charges and the reduction in the statutory class of the top charge between initial charging and plea offer. Individual ADAs were ranked according to their "concurrent experience"—the number of cases they handled for the relevant unit during the period covered by the study. ADAs who handled fewer than 10 cases each were grouped into a single analytic unit, as were ADAs who handled between 10 and 19 cases each. ADAs who handled 20 or more cases were each treated as a separate analytic unit, ordered by the number of cases they handled. Then each ADA or ADA grouping was treated as a separate group in a one-way analysis of variance, with either the change in number of charges or the change in statutory rank of the top charge as the dependent variable.

For the early drug unit sample, there was less average reduction in the number of charges among the more experienced ADAs. Both the overall differences among ADAs and the linear component of the differences were highly statistically significant. The average change in number of charges per ADA ranged from -.74 charges to -2.57 charges. There was also significantly less reduction in statutory class among more experienced ADAs, with actual average *increases* among the five

ADAs with the most concurrent experience and average changes in rank across all ADAs that ranged from  $-.33$  (an increase in class) to  $+.52$  (a decrease in class) .

For the late drug unit sample, ADAs with more than approximately 132 cases in the study period were quite consistent with one another, but there was substantial variation among ADAs with less concurrent experience, with average changes in the number of charges that ranged from  $-.79$  charges to  $-2.31$  charges. Regarding changes in statutory class of the top charge, there was no clear association with level of experience, but there was a clear separation between a high group and a low group, for which the low group consisted of the two most inexperienced ADA groups and two much more experienced ADAs.

For the person unit sample, there was much greater variation among ADAs who had handled fewer than 50 cases than among those who had handled more than 50 cases. For the less experienced group, average change in the number of charges ranged from  $-1.15$  to  $-.42$ , whereas the average change ranged only from  $-1.14$  to  $-.75$  for the more experienced ADAs. More striking for this sample were the highly significant differences in within-ADA variation, with standard deviations ranging from  $.67$  to  $2.04$  for ADAs who had handled fewer than 50 cases but only from  $1.00$  to  $1.56$  for the more experienced ADAs. Changes in statutory class were also highly variable for this sample, with average changes in rank number per ADA ranging from  $+.08$  to  $+1.31$  (both of which represent decreases in the reverse coded class), as well as within-ADA standard deviations that ranged from  $.28$  to  $2.59$ , but with no clear pattern of association with concurrent experience. Similar results were found for the property unit sample, with significant differences among ADAs in both the changes in number of charges and the changes in statutory class, but with no clear pattern of association with concurrent experience.

### 3.6.2. Factors Influencing Plea Offers: Hypothetical Cases

Building on the factorial survey analyses from previous sections, for each hypothetical case that prosecutors indicated they would accept for prosecution, prosecutors were asked to specify the charge(s) and sentence that they would suggest in the plea offer. The cases included in the plea offer analyses were the same as those included in the charging decision analyses discussed in Section 3.5.2.

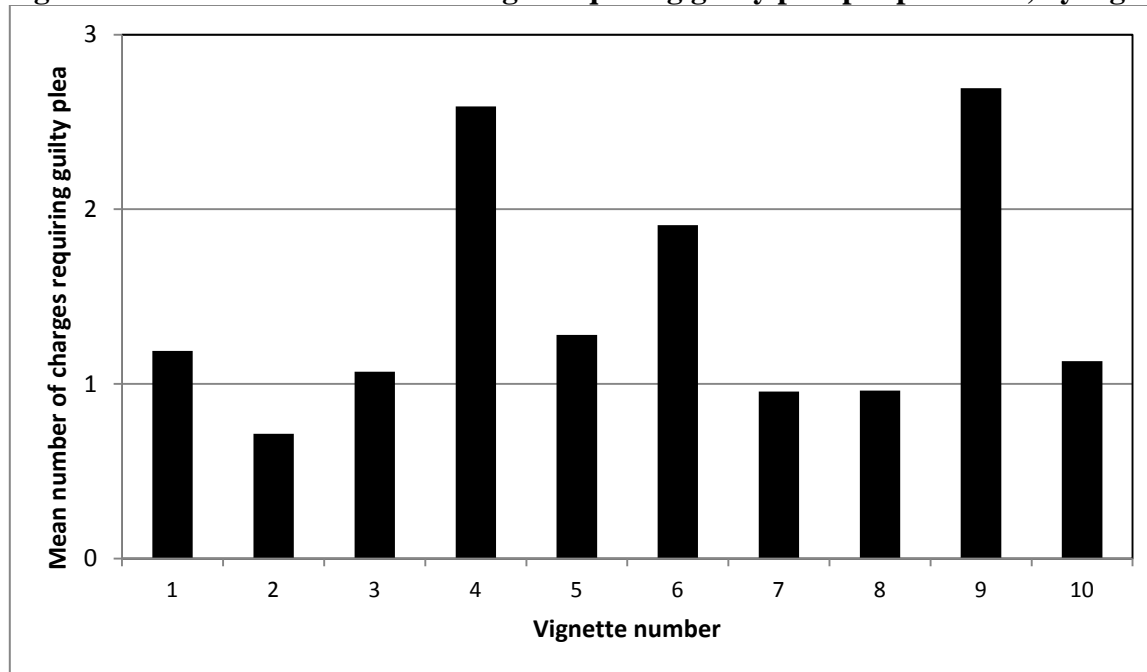
#### Descriptive Statistics

The charges that the prosecutors indicated would require guilty pleas in their plea offers were coded to indicate the number of charges and the statutory class of the top plea offer charge. For each case, the statutory class of the top charge was assigned a numerical rank, with a value of “1” corresponding to the most serious felony class and a value of “11” corresponding to any class of misdemeanor. Thus, in all of the analyses reported in this section, *high* values for the rank variable correspond to *low* levels of charge seriousness, and *positive* indices of association reflect *inverse* relationships with charge seriousness. The sentence recommendations the prosecutors offered were coded to indicate simply whether the recommendations included a period of incarceration (0=no incarceration; 1=incarceration).

Among cases accepted for prosecution, the average number of charges for which prosecutors would have required guilty pleas varied from a low of .71 to a high of 2.69, with the averages for 6 of the 10 vignettes clustered between .96 and 1.28 (Figure 3.6.2-1). The *variation* in numbers of filing charges per case also differed among vignettes, from a very narrow range for vignette 7 (medium offense seriousness, medium evidence strength) (range = 1; s.d. = .2) to a much wider

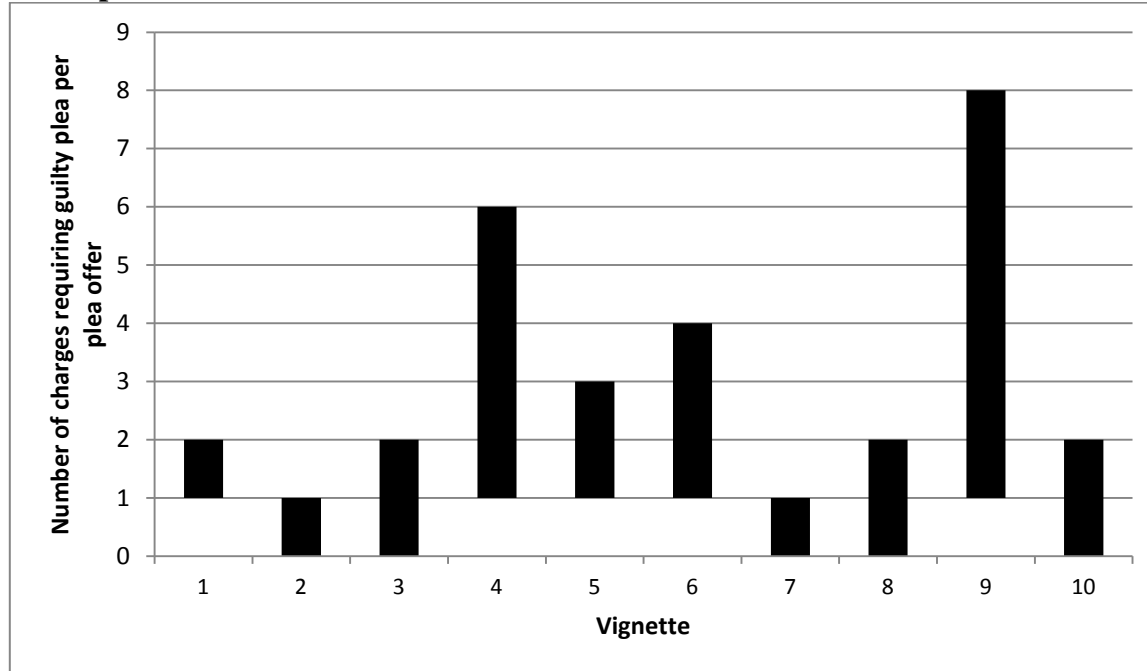
range for vignette 9 (medium offense seriousness, high evidence strength) (range = 7; s.d. = 1.7) (Figure 3.6.2-2).<sup>27</sup>

**Figure 3.6.2-1 Mean number of charges requiring guilty plea per plea offer, by vignette**



<sup>27</sup> However, the ratios of standard deviations to vignette means were fairly similar across a majority of the vignettes—ranging from 33 percent of the mean to 45 percent of the mean for 7 of the 10 vignettes. The three vignettes with the most extreme ratios of standard deviation to the mean were vignette 7 (.208/.96 => 22%) involving an arrest for possession of cocaine, vignette 9 (1.722/2.69 => 64%) involving an arrest for forgery and theft, and vignette 2 (.488/.71 => 69%) involving an arrest for robbery and conspiracy. The within-vignette distributions of numbers of charges requiring guilty pleas were highly skewed for several of the vignettes, reflecting narrow ranges and unequal frequencies across 2 or 3 values. The most highly skewed was the distribution for vignette 7, for which 96 percent of the plea offers specified only one charge, and the remaining 4 percent recommended diversion or deferred prosecution and did not require guilty pleas to any charges. Across all vignettes, the overall mean number of plea offer charges requiring guilty pleas was 1.56, with a range from 0 to 8, a standard deviation of 1.031, and a skewness index of 2.320.

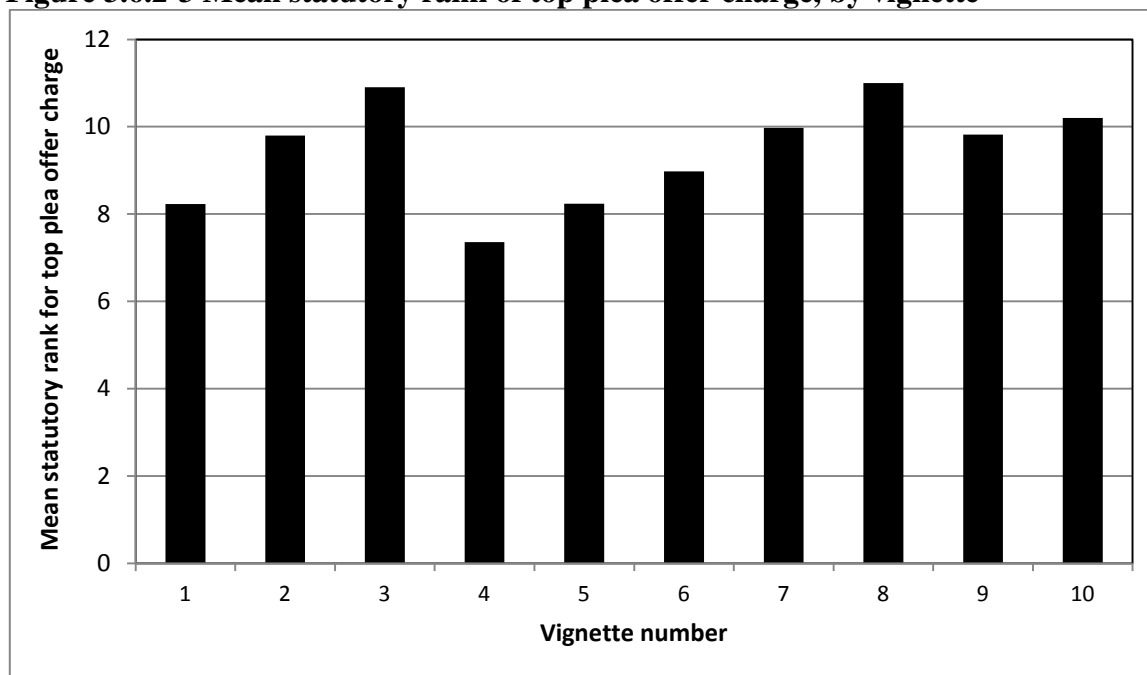
**Figure 3.6.2-2 Range of number of charges requiring guilty plea per plea offer, by vignette, across prosecutors**



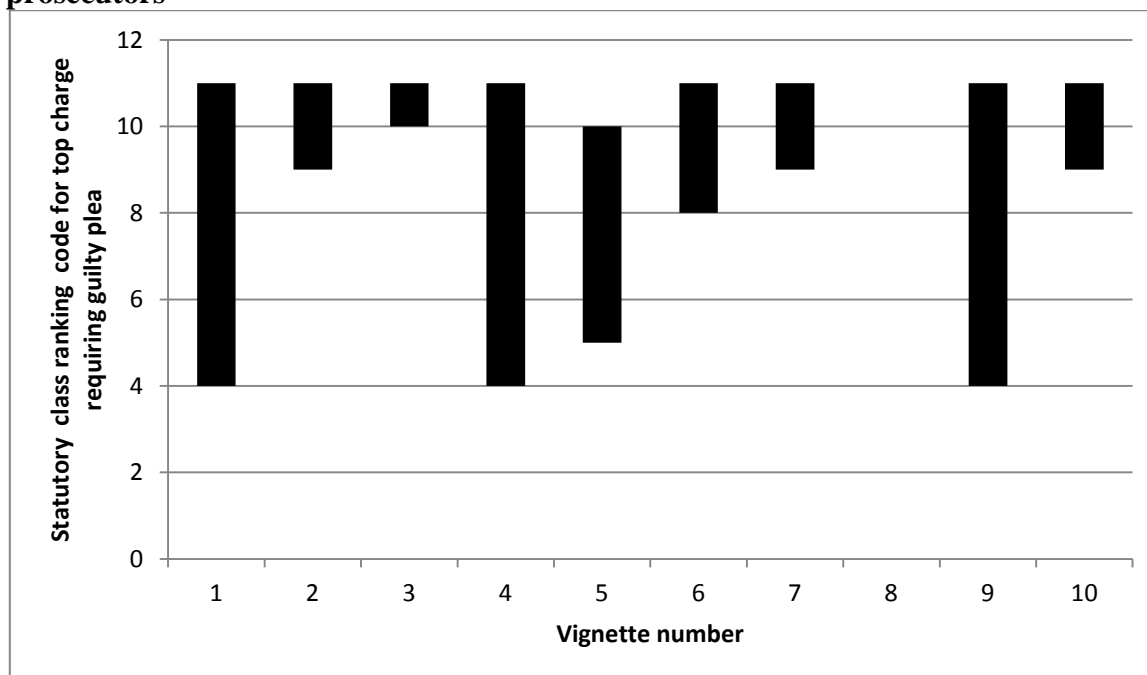
The average statutory ranks of top plea offer charges varied across vignettes, and were fairly evenly distributed across the range from a mean of 7.36 for vignette 4 (high offense seriousness, medium evidence strength) to a mean of 11.00 (all misdemeanors) for vignette 8 (low offense seriousness, low evidence strength) (Figure 3.6.2-3). Variation in statutory rank of top plea offer charge within vignette was greatest for vignette 4 (range = 7; s.d. = 2.58) and least for vignette 8 (range = 0; s.d. = 0, all misdemeanors) (Figure 3.6.2-4).<sup>28</sup>

<sup>28</sup> The ratios of standard deviations to vignette means were fairly similar for most of the vignettes, ranging from 0 percent of the mean to 10 percent of the mean for 8 of the 10 vignettes. The two vignettes with the most extreme ratios were vignette 1 (1.794/8.23 => 22%) involving burglary and assault and vignette 4 (2.576/7.36 => 35%) involving aggravated assault with a pistol. The distributions of statutory rank within vignettes were highly skewed for several of the vignettes, with the most extreme skew (skewness = -4.27) observed for vignette 9. Across all vignettes, the overall mean statutory rank of top plea offer charge was 9.27, with a range from 4 to 11, a standard deviation of 1.731 and a skewness index of 1.731.

**Figure 3.6.2-3 Mean statutory rank of top plea offer charge, by vignette**



**Figure 3.6.2-4 Range of statutory rank of top plea offer charge, by vignette, across prosecutors**



The wide ranges for vignettes 1 (high offense seriousness, low evidence strength), 4 (high offense seriousness, medium evidence strength), and 9 (medium offense seriousness, high evidence strength) were due to the fact that some prosecutors indicated they would require guilty pleas to a

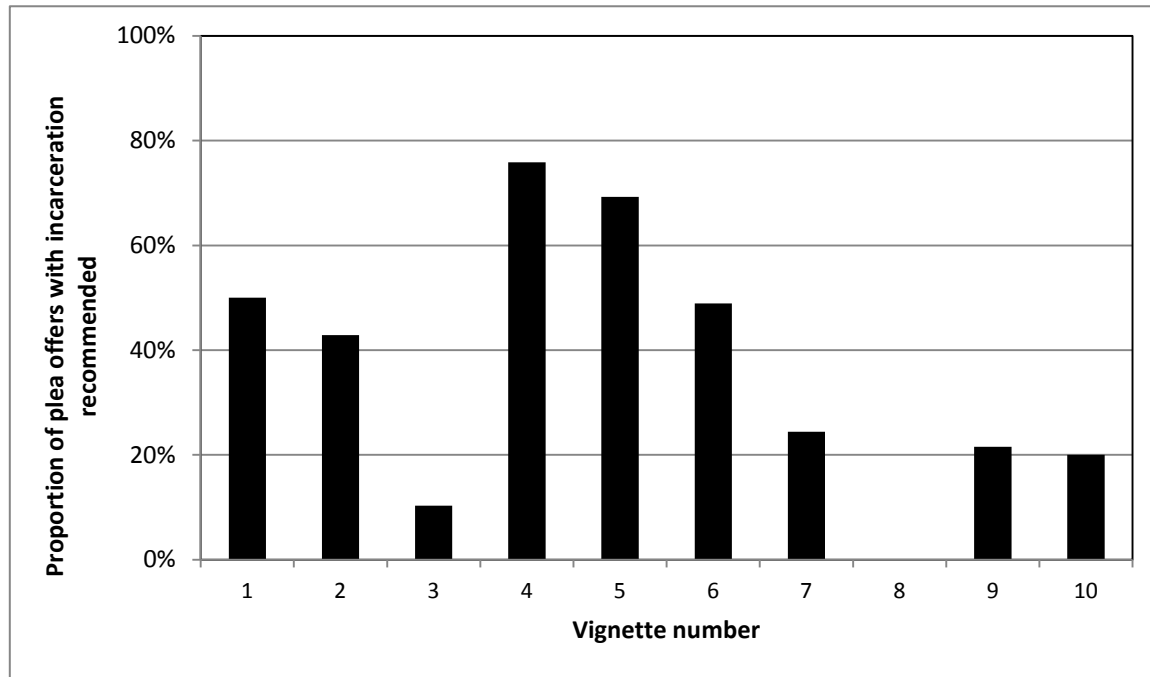
habitual felon charge (statutory rank = 4), based on their interpretation of the prior record profiles with which they were presented. Prior record profiles were paired randomly with vignettes; for a given vignette, different respondents were presented with different prior record profiles. Therefore, a valid analysis of variation in responding requires controls for seriousness of prior record, which are incorporated later in this section.

Among hypothetical cases that respondents indicated they would accept for prosecution, the proportion for which they indicated they would recommend a period of incarceration varied substantially across vignettes, from a low of 0 percent for vignette 8 (low offense seriousness, low evidence strength) to a high of 76 percent for vignette 4 (high offense seriousness, medium evidence strength) (Figure 3.6.2-5). For six of the ten vignettes, the proportions of responses recommending incarceration were in the range from 20 percent to 50 percent, with two falling below that range and two falling above that range.<sup>29</sup> The overall proportion of cases with incarceration recommendations, across all vignettes, was 38 percent.

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<sup>29</sup> Since incarceration recommendation was measured as a dichotomy, the variance is a fixed function of the proportion,  $p(1-p)$ , and is not analyzed separately here.

**Figure 3.6.2-5 Proportion of accepted hypothetical cases for which plea offer would recommend a period of incarceration**



The case-level independent variables tested in statistical models for number of plea offer charges, statutory rank of plea offer charges, and incarceration recommendation were the same as those previously introduced in Sections 3.4.3 and 3.5.2 for modeling screening and charging decisions. The primary variables included researchers' design classification for offense seriousness (based on seriousness of the top arrest charge), prosecutors' ratings of strength of evidence, and prosecutors' ratings of the seriousness of defendants' criminal histories. In addition, the analyses of plea offers presented in this section were based on the same subset of cases used in the analyses of charging decisions—namely, cases that prosecutors indicated they would accept for prosecution at screening (Refer to Section A.3.4 in Appendix A for explanations and descriptive analyses of the case-level independent variables in cases accepted for prosecution).

The prosecutor-level independent variables tested in statistical models for number of plea offer charges, statutory rank of plea offer charges, and incarceration recommendation were also the same



as those previously introduced in Sections 3.4.3 and 3.5.2. They included prosecutors' years of experience in the Southeast County prosecutor's office, three short scales constructed from responses to items on the general survey, and responses to several other individual items on the general survey. (Refer to Section A.3.4 in Appendix A for explanations and descriptive analyses of the prosecutor-level independent variables).

### HLM Analyses

Three different aspects of plea offers were modeled: the number of charges requiring guilty pleas, the statutory class of the top plea offer charge requiring a guilty plea, and whether or not a period of incarceration was recommended.

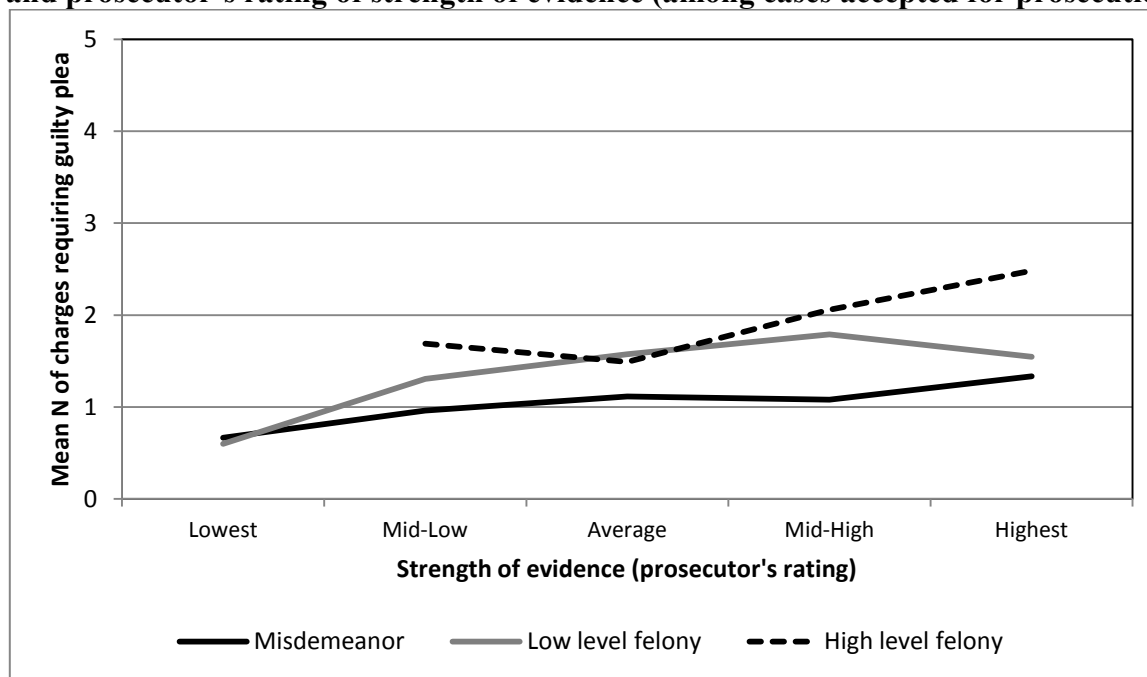
*The number of charges requiring guilty pleas.* Table 3.6.2-1 summarizes the results of the final two-level model for the number of plea offer charges requiring guilty pleas.

**Table 3.6.2-1 Hierarchical regression model for the number of plea offer charges requiring guilty plea**

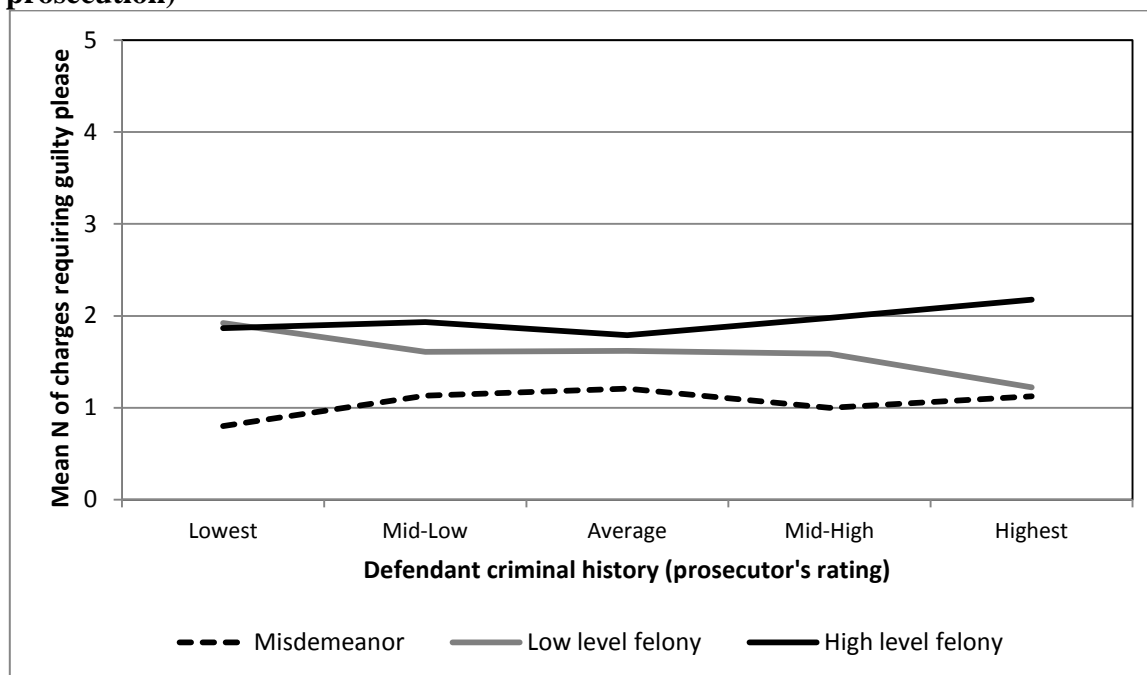
<i>Effect</i>	<i>Coefficient</i>	<i>T Ratio</i>	<i>df</i>	<i>P value</i>
<b><i>Case level</i></b>				
Intercept	1.54	30.42	59	.000
Offense seriousness	-0.15	-1.12	59	.270
Evidence rating	-0.10	-1.09	59	.281
Criminal history rating	-0.01	-0.19	59	.847
Seriousness by Evidence	0.15	3.79	58	.001
<b><i>Prosecutor level</i></b>				
(none)				
<b><i>Prosecutor by case level</i></b>				
Experience by Seriousness by Evidence	0.02	2.37	58	.021

The main effects for offense seriousness and evidence rating were non-significant, but they participated in a highly significant interaction effect. The combined result of the two main effects and their interaction was that the expected number of charges requiring guilty pleas increased across increasing levels of evidentiary strength, and that the amount of the increase was greater for more serious offenses. These modeled expectations for the interaction between case seriousness and strength of evidence were generally consistent with the observed patterns in the raw data graphed in Figure 3.6.2-6. The model shows no statistically significant effect of criminal history, a result that is consistent with the raw data patterns depicted in Figure 3.6.2-7. The interactions between criminal history rating and offense seriousness and between criminal history rating and evidence rating were also both non-significant and were removed from the model.

**Figure 3.6.2-6 Mean number of plea offer charges requiring guilty plea by offense seriousness and prosecutor's rating of strength of evidence (among cases accepted for prosecution)**

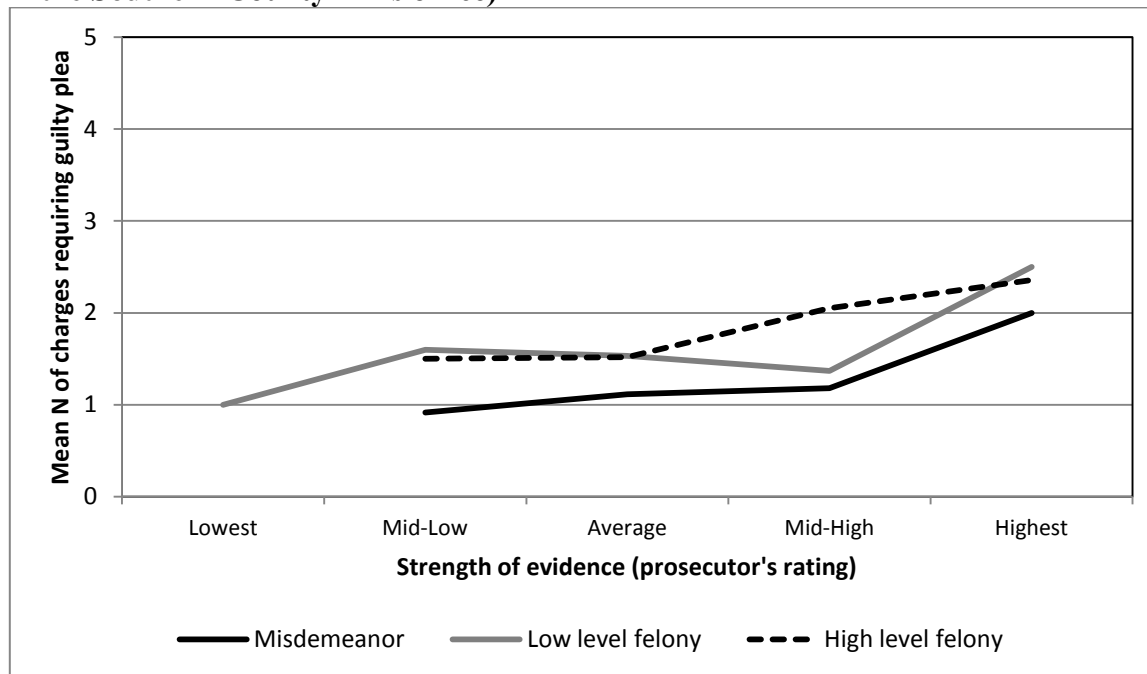


**Figure 3.6.2-7 Mean number of plea offer charges requiring guilty plea by offense seriousness and prosecutor's rating of defendant's criminal history (among cases accepted for prosecution)**

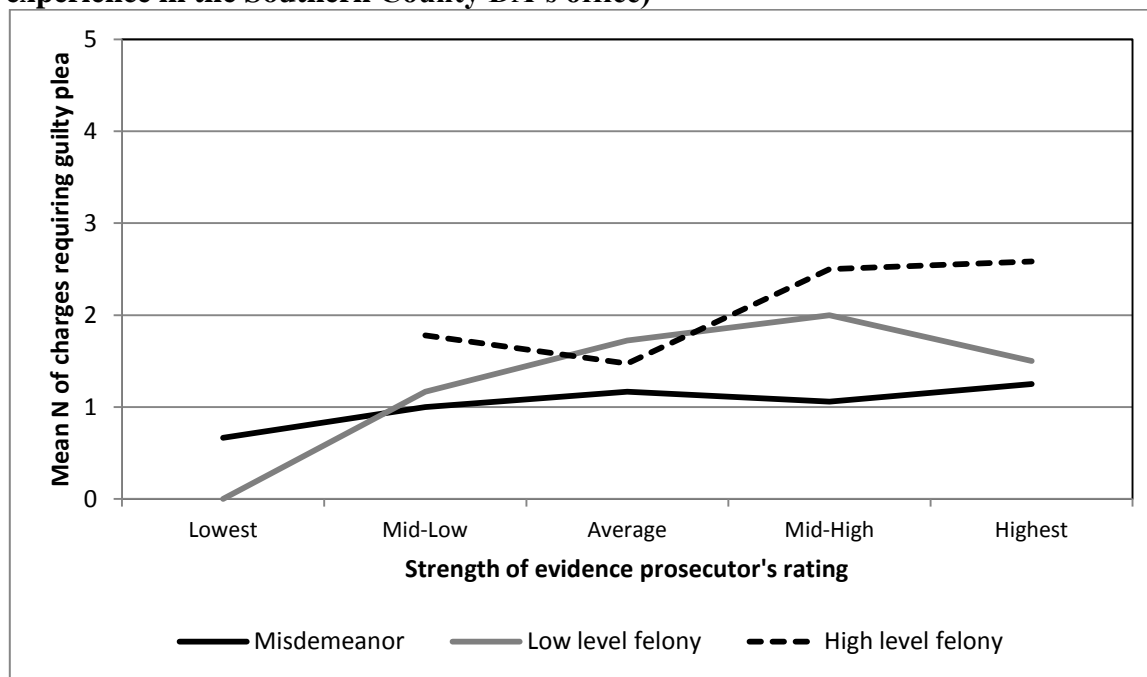


None of the prosecutor-level measures had significant effects on the average case-level intercept or main effect coefficients. However, years of prosecutors' experience in the Southern County prosecutor's office did affect the strength of the case-level interaction between offense seriousness and evidence rating. The more experienced the respondent, the stronger the interaction—that is, the more rapidly the number of plea offer charges for more serious offenses diverged from the number of plea offer charges for less serious offenses across increasing levels of evidentiary strength (Compare Figure 3.6.2-8 with Figure 3.6.2-9). The cumulative effect could be substantial, since the number of years of experience for the respondents ranged from 0 years (less than 6 months) to 40 years, with a majority falling in the range from 0 to 10 years.

**Figure 3.6.2-8 Mean number of plea offer charges requiring guilty plea by offense seriousness and prosecutor's rating of strength of evidence (for prosecutors with 2 to 5 years' experience in the Southern County DA's office)**



**Figure 3.6.2-9 Mean number of plea offer charges requiring guilty plea by offense seriousness and prosecutor's rating of strength of evidence (for prosecutors with more than 5 years' experience in the Southern County DA's office)**



In the focus group discussions, prosecutors indicated that it is often important to charge enough offenses to cover the essential facts of a case, especially if a case is likely to go to trial. More serious cases may often have more complicated fact patterns or be more dependent on forensic evidence and therefore be more sensitive to the strength of the evidence—which could account for the case-level interaction between offense seriousness and evidence rating in the model for number of filing charges (see Section 3.5.2). The model presented in this section suggests that the effect carried over to the number of charges requiring guilty pleas in the plea offers for these hypothetical cases, and that the effect was somewhat stronger among more experienced prosecutors. The raw data patterns depicted in Figures 3.6.2-8 and 3.6.2-9 suggest that the effect of experience was to *decrease* the number of charges requiring guilty pleas in *less* serious cases with strong evidence (rather than to increase it for more serious cases). This may suggest that experienced prosecutors are more likely than less experienced prosecutors to distinguish between a need for retaining complete charging in more serious (more complex) cases and a lesser need for complete charging in less serious (less complex) cases.

The descriptive analyses of the number of charges for which the plea offer would require guilty pleas found considerable variation across prosecutors for several of the vignettes (Figure 3.6.2-2). The focus on individual vignettes effectively controlled for case seriousness and strength of evidence. However, caution is advised due to the fact that different respondents were presented with different pairings of vignettes with criminal history profiles. Thus, a valid analysis of variation in responding among prosecutors requires controlling simultaneously for all of the case level factors, including criminal history, and the interactions among case-level factors.

The HLM analyses provided estimates of the residual variation among prosecutors, controlling for the case level factors. Variability in the average number of plea offer charges was assessed by

examining the variance of case-level intercepts across prosecutors, from an intermediate model (not shown) which included the three case-level measures and the case-level seriousness-by-evidence interaction, but no prosecutor-level predictors. The analysis found significant variation among prosecutors in the case-level intercept ( $\chi^2=59.07$ ,  $df=42$ ,  $p = .042$ ). This significant variation among prosecutors in the average number of plea offer charges was not accounted for by any of the prosecutor-level variables tested in development of the final model and remains unexplained.

The HLM analyses also examined variability among prosecutors in the influence of offense seriousness, evidence rating, and criminal history rating on the number of charges for which the plea offer would require guilty pleas. The HLM 6 estimates for the corresponding random effects showed no statistically significant deviations from the average offense seriousness coefficient ( $\chi^2=24.61$ ,  $df=42$ ,  $p > .500$ ), the average evidence rating coefficient ( $\chi^2=26.78$ ,  $df=42$ ,  $p > .500$ ), the average criminal history rating coefficient ( $\chi^2=48.59$ ,  $df=42$ ,  $p = .224$ ), or the average coefficient for seriousness-by-evidence interaction ( $\chi^2=24.73$ ,  $df=42$ ,  $p > .500$ ). That is, there were no significant differences among prosecutors in the weight they assigned to any of the case-level factors included in these analyses.

*The statutory class of the top plea offer charge requiring a guilty plea.* Table 3.6.2-2 summarizes the results of the final two-level model for the seriousness of top plea offer charge.

**Table 3.6.2-2 Hierarchical regression model for statutory rank of top plea offer charge**

<i>Effect</i>	<i>Coefficient</i>	<i>T Ratio</i>	<i>df</i>	<i>P value</i>
<b><i>Case level</i></b>				
Intercept	9.27	144.75	59	.000
Offense seriousness	-0.28	-0.68	59	.498
Evidence rating	0.52	2.88	59	.006
Criminal history rating	-0.31	-2.85	58	.006
Seriousness by evidence	-0.41	-3.84	59	.000
Seriousness by history	0.16	2.53	58	.015
<b><i>Prosecutor level</i></b>				
(none)				
<b><i>Prosecutor by case level</i></b>				
Item Q8a by seriousness by history	-0.03	-2.08	58	.042

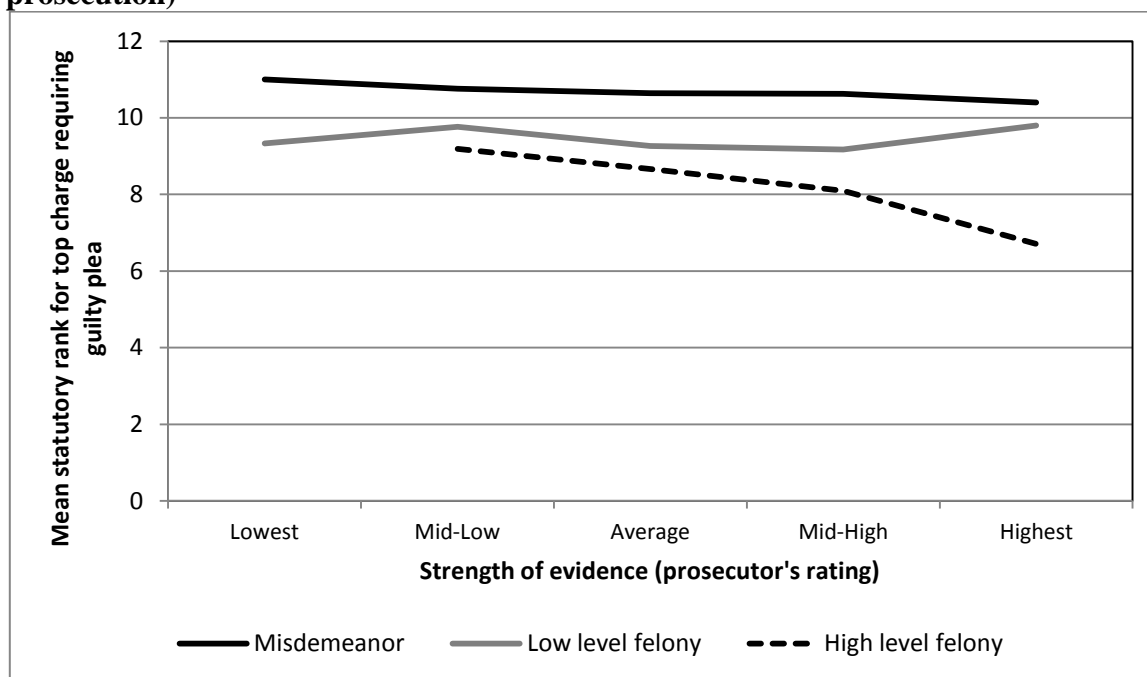
Note: The dependent variable, rank of top plea offer charge, is scaled with smaller numerical values corresponding to more serious charges. Consequently, effects with positive signs in the above table reflect inverse relationships with the seriousness of top plea offer charge, and vice versa.

As Table 3.6.2-2 shows, there were significant effects for evidence rating and the interaction between evidence rating and offense seriousness. Although the main effect of offense seriousness was non-significant, it was retained in the model because it participates in the significant evidence-by-seriousness interaction. Although the main effect for evidence rating was in the counterintuitive direction, the combined result of evidence rating, offense seriousness, and their interaction was that cases with *more serious* top arrest charges were associated with *more serious* (lower numbered rank) top plea offer charges, and the differences in top plea offer charges among levels of offense seriousness *increased* across *increasing levels* of evidentiary strength.

Figure 3.6.2-10 depicts the patterns of relationships among offense seriousness, strength of evidence, and seriousness of the top plea offer charge, as reflected in the raw data. The case-level patterns identified in the statistical model are mostly consistent with the raw data, although the

model calculations imply a slightly positive association between top charge seriousness and strength of evidence for low-level felonies that is not evident in the graph of the raw data.

**Figure 3.6.2-10 Mean statutory rank of top plea offer charge per hypothetical case by offense seriousness and prosecutor's rating of strength of evidence (among cases accepted for prosecution)**

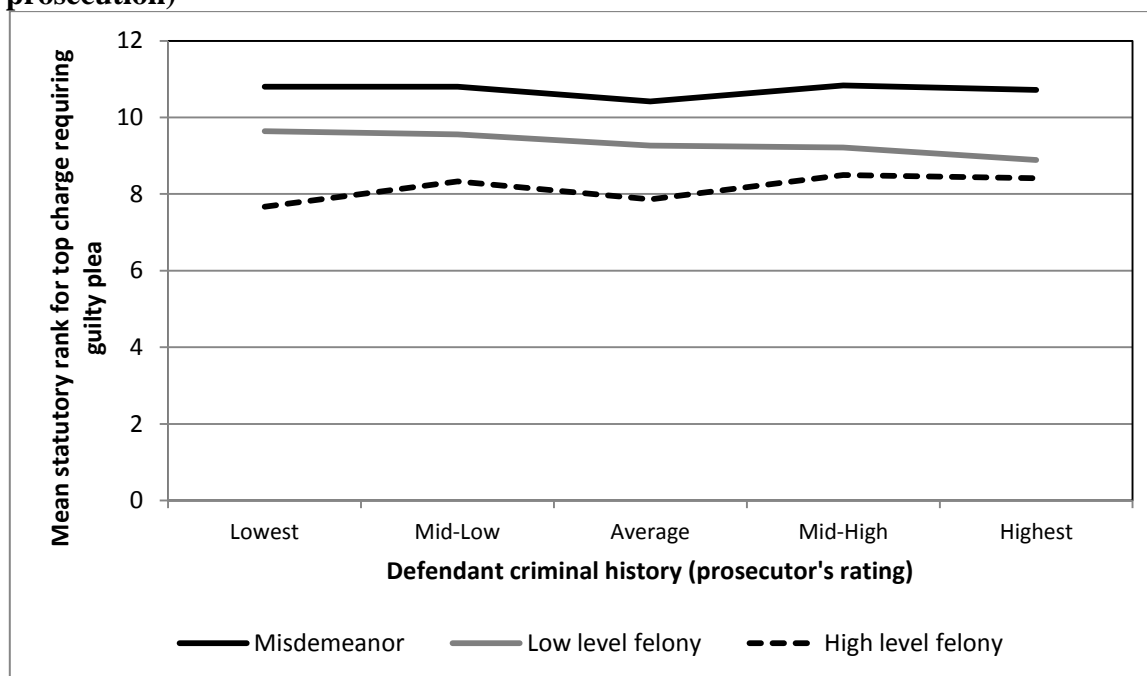


The model also suggests a significant influence of prosecutors' ratings of the seriousness of defendants' criminal histories on the seriousness of top plea offer charge, as well as a significant interaction between offense seriousness and criminal history rating. Calculations based on the model coefficients suggest a combined effect of offense seriousness, criminal history rating, and their interaction in which seriousness of top plea offer charge *increases* with *increasing* seriousness of criminal history to a greater extent for misdemeanors than for low-level or high-level felonies. However, this is not very consistent with the overall pattern in the raw data depicted in Figure 3.6.2-11, which suggests a greater effect of criminal history for low-level felonies. This discrepancy could be due to the fact that the statistical model controls for a significant effect of a prosecutor-level influence on the interaction in questions, whereas the raw data patterns naturally do not.



There was also a discontinuity in the measure of top plea offer charge seriousness which could lead to counter-intuitive results. When prior criminal history warrants it, prosecutors may include a habitual felon charge in the plea offer. Sometimes that was the highest charge requiring a guilty plea. The habitual felon charge is at a fixed statutory class that does not depend on the classification of the underlying offense. Thus, habitual offender charges could be either more serious or less serious than the underlying offenses, and could alter the relationship between seriousness of the top arrest charge (*offense seriousness* in these analyses) and the seriousness of the top plea offer charge.

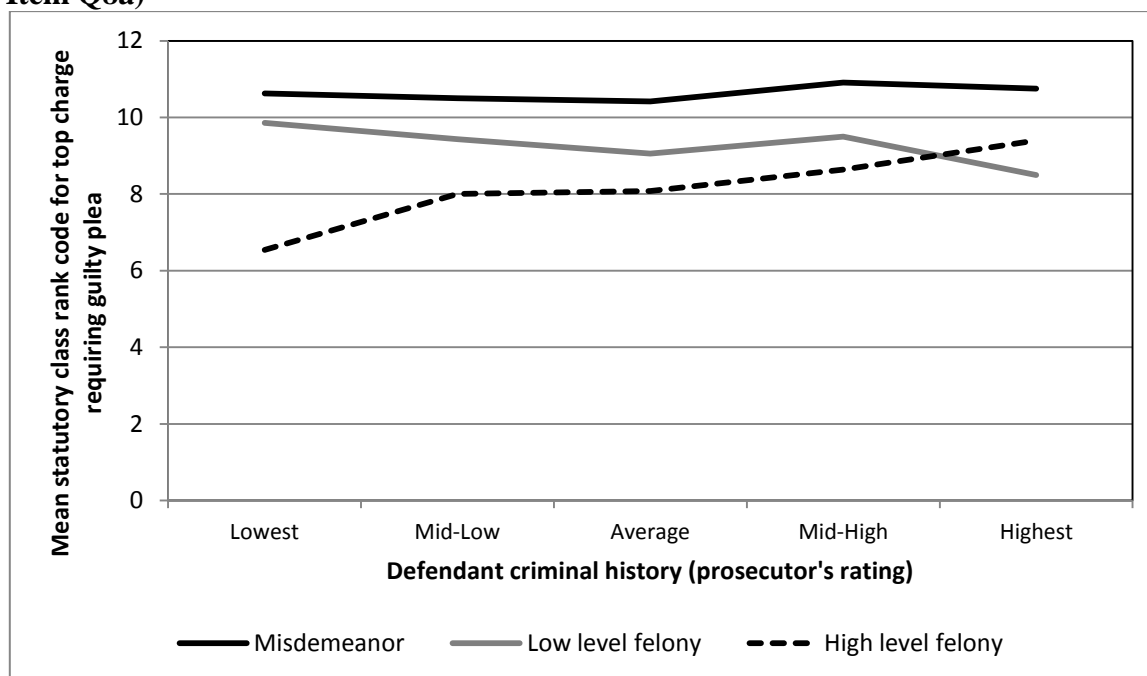
**Figure 3.6.2-11 Mean statutory rank of top plea offer charge per hypothetical case by offense seriousness and prosecutor’s rating of criminal history (among cases accepted for prosecution)**



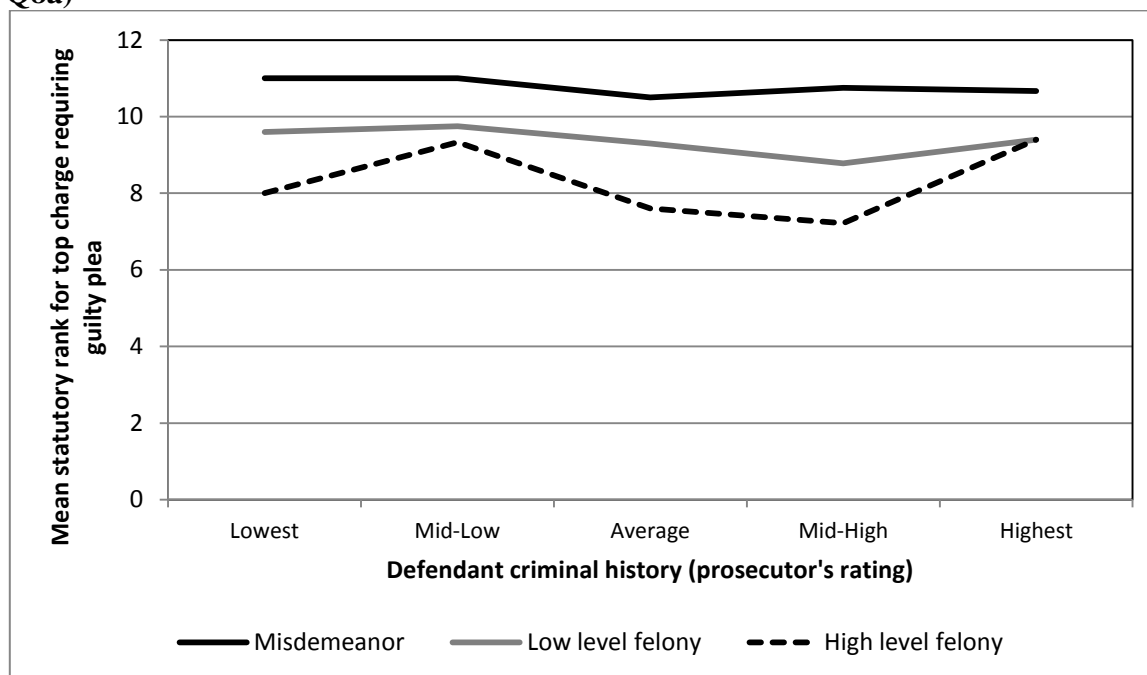
There was a significant effect of prosecutors’ responses to general survey item Q8a on the case-level interaction between seriousness of the top arrest charge and prosecutors’ ratings of defendant criminal history. Item Q8a asked prosecutors how much they agreed or disagreed that “a plea offer should include all of the charges filed, with an offer to forego additional charges if the offer is

accepted.” The *more strongly* prosecutors agreed with that item, the *weaker* the case-level interaction between offense seriousness and criminal history rating. Thus, for prosecutors who disagreed with the all-charges orientation, offense seriousness mattered more for defendants with low criminal history ratings than for defendants with high criminal history ratings (Figure 3.6.2-12). However, for prosecutors who agreed with the all-charges orientation, there was no consistent relationship between criminal history rating and the effect of offense seriousness on seriousness of the top plea offer charge (Figure 3.6.2-13). As suggested in an earlier section, it may be that a strong orientation to pursuing all charges may render other considerations less relevant.

**Figure 3.6.2-12 Mean statutory rank of top plea offer charge by offense seriousness and prosecutor’s rating of criminal history (for prosecutors who *disagreed* with General Survey Item Q8a)**



**Figure 3.6.2-13 Mean statutory rank of top plea offer charge by offense seriousness and prosecutor’s rating of criminal history (for prosecutors who *agreed* with General Survey Item Q8a)**



The descriptive analyses of the statutory rank of the top plea offer charge found considerable variation across prosecutors for several of the vignettes (see Figure 3.6.2-4). However, caution is advised due to the fact that different respondents were presented with different pairings of vignettes with criminal history profiles. A valid analysis of variation in responding among prosecutors requires controlling simultaneously for all of the case level factors. The HLM analyses produced estimates of the residual variation among prosecutors, controlling for the case level factors. Variability in the average statutory rank of top plea offer charges was assessed by examining the variance of case-level intercepts across prosecutors from an intermediate model (not shown), which included the three case-level measures and the case-level seriousness-by-evidence and seriousness-by-history interactions, but no prosecutor-level predictors.

The HLM 6 estimates for the random variation of case-level regression parameters across prosecutors found statistically significant deviations from the average coefficients for all of the

case-level effects included in the final model: case-level intercept ( $\chi^2 =$ ,  $df = 45$ ,  $p = .015$ ), offense seriousness ( $\chi^2 = 71.87$ ,  $df = 35$ ,  $p = .000$ ), strength of evidence ( $\chi^2 = 49.25$ ,  $df = 35$ ,  $p = .055$ ), criminal history rating ( $\chi^2 = 50.54$ ,  $df = 35$ ,  $p = .043$ ), the interaction between offense seriousness and strength of evidence ( $\chi^2 = 59.97$ ,  $df = 35$ ,  $p = .006$ ), and the interaction between offense seriousness and criminal history rating ( $\chi^2 = 56.47$ ,  $df = 35$ ,  $p = .012$ ).<sup>30</sup> The significant residual variation for the case-level intercepts means that the observed differences among prosecutors in the average statutory class rank of their top plea offer charges were not accounted for by the case-level factors included in the analysis. The significant residual variation among prosecutors relative to the average case-level regression weights also means that different prosecutors tended to weigh case characteristics differently in making plea offer decisions for this set of hypothetical cases.

The residual variation in model intercepts was reduced to a non-significant level when prosecutors' orientation toward pleas for all charges was incorporated in the model. The significant variation among prosecutors in how they weigh offense seriousness, strength of evidence, and criminal history in their plea offer decisions remain unexplained by these analyses. Both the fact that some of the variation in plea offer decisions was explained by differences among prosecutors in their choice of prosecutorial strategies and the fact that there remains unexplained random variation in decision making criteria *for these hypothetical cases* are cause to question how consistent the decision making might be among prosecutors deciding real cases.

*The probability of an incarceration recommendation.* Table 3.6.2-3 summarizes the results of the final two-level model for probability that the plea offer would recommend a period of incarceration.

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<sup>30</sup> There was sufficient information to calculate the chi-square statistics for only 36 of the 60 respondents included in the analysis. However, the finding of significant unexplained variance for all of the random parameters in the model for those 36 is sufficient to raise questions about possible lack of consistency in decision criteria across prosecutors.

**Table 3.6.2-3 Hierarchical logistic regression model for the probability of an incarceration recommendation**

<i>Effect</i>	<i>Coefficient</i>	<i>Odds Ratio</i>	<i>T Ratio</i>	<i>df</i>	<i>P value</i>
<b><i>Case level</i></b>					
Intercept	-0.68	0.51	-5.15	60	.000
Offense seriousness	1.16	3.19	10.26	59	.000
Evidence rating	0.49	1.64	4.80	59	.000
Criminal history rating	0.67	1.96	10.56	57	.000
<b><i>Prosecutor level</i></b>					
(none)					
<b><i>Prosecutor by case level</i></b>					
Item Q5a by seriousness	0.20	1.22	2.51	59	.015
Fairness by evidence	-0.17	0.83	-2.54	59	.014
Item Q8a by history	0.17	1.19	2.14	57	.037
Item Q8d by history	0.26	1.30	4.45	57	.000
Top charges by history	0.28	1.33	1.77	57	.082

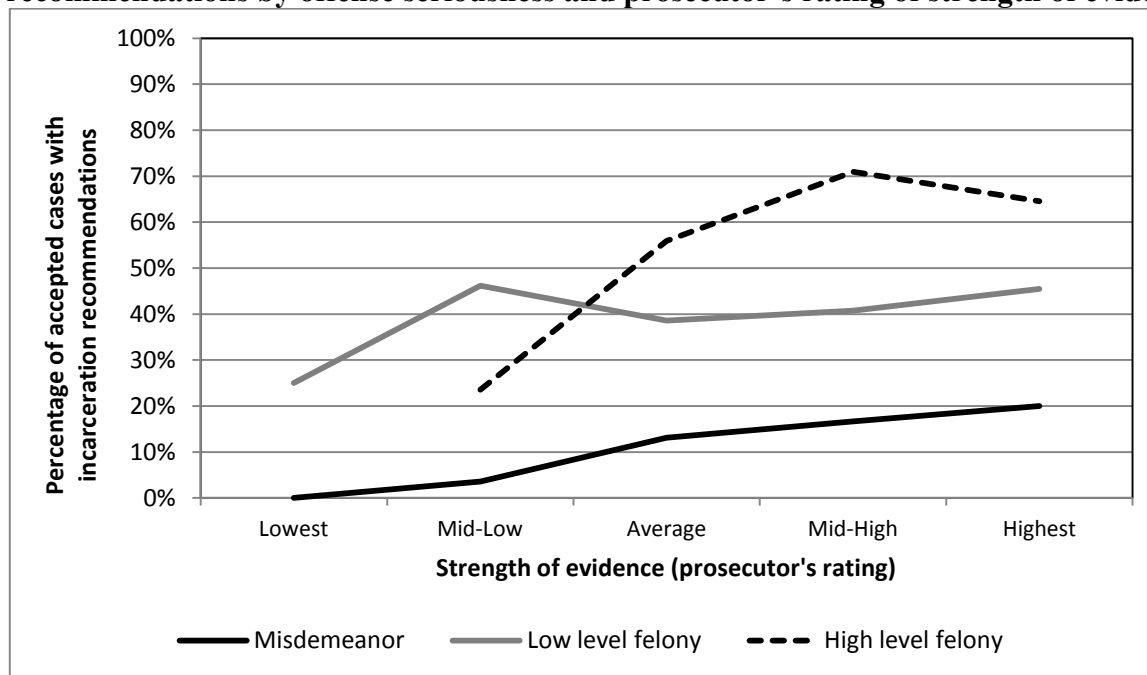
As Table 3.6.2-3 shows, there were highly significant positive effects for all three of the case-level independent variables. Each step up in the 3-level classification of seriousness of the top arrest charge was associated with a 3-fold increase in the odds of an incarceration recommendation. The odds also nearly doubled for each increase in criminal history rating and increased by nearly two-thirds for each increase in evidence rating. Large effects of offense seriousness and criminal history rating might be expected, since sentencing options in Southern State are tightly constrained by statute on the basis of conviction offense and conviction history. However, in these analyses, the variable labeled *offense seriousness* is a broad classification based on top arrest charge. Prosecutors exercise considerable discretion in deciding what charges to file and what charges require guilty pleas, so the seriousness of top arrest charge does not necessarily determine the seriousness of either

the top plea offer charge or the top conviction charge. Thus, ultimate case outcome given offense seriousness as alleged by an arresting officer constitutes one kind of summary of the exercise of discretion across the stages of prosecution, and it is interesting that the statutory level of top arrest charge so strongly influences plea offers and sentence recommendations despite the intervening exercise of prosecutorial discretion.

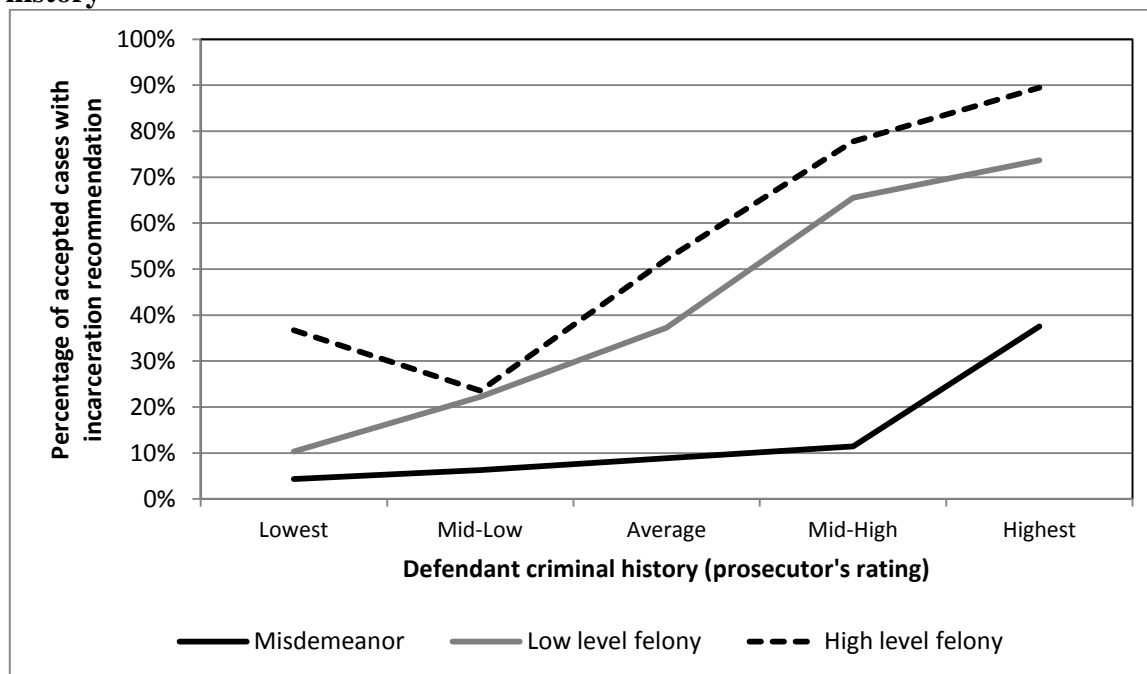
What is perhaps more surprising is the significant effect of strength of evidence on plea offers and the associated sentence recommendations. Prosecutors who participated in the focus group sessions asserted the opposite—that *strong cases do not necessarily result in more severe charges; and if two cases involve the same underlying conduct, one will not get a higher charge simply because it has stronger evidence*. However, the outcome still could reflect the cumulative effects of charging decisions at initial filing and during the preparation of plea offers relating to constraints imposed by deficiencies in the evidence—or the lack of such constraints.

Graphs of the raw data patterns for offense seriousness by strength of evidence (Figure 3.6.2-14) and offense seriousness by defendant's criminal history (Figure 3.6.2-15) suggest possible interaction effects. Figure 3.6.2-14 suggests that the effect of strength of evidence might be stronger for high-level felonies than for low-level felonies or misdemeanors. Figure 3.6.2-15 suggests that the effect of criminal history rating might be stronger for felonies than for misdemeanors and might operate only at the highest level of criminal history for misdemeanors. However, both interactions were tested in the statistical modeling, and neither was statistically significant given the size of the sample available for analysis.

**Figure 3.6.2-14 Proportion of accepted hypothetical cases with incarceration recommendations by offense seriousness and prosecutor's rating of strength of evidence**



**Figure 3.6.2-15 Proportion of accepted hypothetical cases with incarceration recommendations by offense seriousness and prosecutor's rating of defendant's criminal history**



Five prosecutor-level measures had statistically significant effects on case-level regression coefficients. The more importance prosecutors attached to the potential for plea bargaining, early

disposition, and caseload reduction (general survey item Q5a), the more strongly their decisions were influenced by offense seriousness. The more importance prosecutors attached to fair treatment of defendants (fairness scale), the less strongly their decisions were influenced by strength of evidence.

Three measures of prosecutors' preferences for particular prosecutorial strategies affected the model estimates of the influence of prosecutors' ratings of defendants' criminal histories. The positive effect of criminal history rating on the estimated odds of an incarceration recommendation increased further as a function of increasing agreement that a plea offer should include all of the charges filed (general survey item Q8a), that the charging decision should include the highest charges that could be proved at trial (item Q8d), and that the respondent prefers to file only the most serious charges possible (item Q7, response option 2). Each of these items reflects a strategy oriented toward obtaining severe outcomes. In deciding whether or not to recommend incarceration in the plea offer, prosecutors who indicated agreement with that orientation gave greater weight to the criminal history rating than those who disagreed.

The HLM 6 estimates for the variation in case-level model parameters across prosecutors found no statistically significant deviations from the average offense seriousness coefficient ( $\chi^2 = 52.52$ ,  $df = 56$ ,  $p > .500$ ), the average evidence rating coefficient ( $\chi^2 = 61.59$ ,  $df = 56$ ,  $p = .283$ ), or the average criminal history rating coefficient ( $\chi^2 = 54.32$ ,  $df = 56$ ,  $p > .500$ ). However, the residual variation in regression intercepts across prosecutors was highly statistically significant ( $\chi^2 = 92.76$ ,  $df = 56$ ,  $p = .002$ ). None of this residual variation could be reliably attributed to any of the prosecutor-level measures tested in these analyses. The significant variation among prosecutors in their average rates of recommending incarceration remains unexplained by these analyses.



### 3.7 Dismissals

There are many reasons a case or selected charges within a case might be dismissed after initial filing. Throughout the processing of a case, prosecutors must continually re-evaluate the core questions “Can I prove the case?” and “Should I prove the case?” Whole cases or selected charges may be dismissed because prosecutors become less certain of their ability to prove the charges: because information about the victim, the defendant, or the circumstances surrounding the case causes prosecutors to reconsider what would be a fair outcome; because prosecutors plan from the outset to dismiss some charges as part of their prosecution strategy; or simply because resource constraints force prosecutors to dismiss lower priority cases or craft more attractive plea offers.

The most direct reason for dismissals relates to the availability and quality of evidence. Evidence thought to be available and credible at the outset may later be unavailable or found to be flawed in some way. Prosecutors noted that the minimal amount of time available for screening meant that *many cases may be dismissed immediately after screening because the assigned ADA looks closer*. Prosecutors also indicated that changes in law enforcement in both jurisdictions have led to an increase in cases declined for prosecution, pended for additional information, or dismissed due to poor follow-up investigation. New information may cast doubt on the credibility of witness testimony, and victims and other potential witnesses may decide not to cooperate. For a variety of such reasons, evidence may be weaker than initially thought or may weaken as time passes; rarely, according to prosecutors, does the evidence prove to be stronger than initially thought or become strengthened with the passage of time.

Other case characteristics can affect the probability of dismissal either directly or indirectly through their relationship to the strength of evidence. A salient example is the influence of case seriousness. On the one hand, cases involving more charges and more serious charges leave room

for making attractive plea offers if necessary to avoid dismissing the entire case, and we noted in the previous section that such cases do indeed experience greater reductions than less serious, less complicated cases. In addition, more serious cases may be considered higher priority than other cases, perhaps making it less likely that the entire case would be dismissed. On the other hand, such cases may have complicated evidentiary requirements and be more vulnerable than less serious cases due to lack of expected forensic evidence, perceived flaws in the evidence, and poor credibility or declining interest of victims and other witnesses.

In the face of resource constraints such as limited availability of court time, the likelihood of dismissing an entire case or dismissing selected charges to make a plea offer more attractive can also be affected by the priority of the case, relative to the priority of other pending cases. Relative priority, in turn, might be influenced by a variety of factors: the (updated) strength of the evidence; the seriousness of the offense; the prior record and perceived dangerousness of the defendant; whether the defendant is in custody; whether the prosecutor considers time already spent in custody as sufficient consequence given the seriousness of the offense; the wishes of the victim; the age of the case; and so on.

In the previous section, we examined case-level and prosecutor-level factors that influence reductions between initial filing and presentation of a plea offer in the number of charges and the seriousness of the top charge. However, we only had plea offer information for Southern County. In this section, we examine case characteristics associated with the probability of pre-adjudication dismissal of all charges in Northern County and Southern County, and then examine the reasons cited by prosecutors for dismissal of individual charges in Southern County.

### *3.7.1 Dismissal Decisions in Southern County*

For Southern County, we were unable to distinguish between cases dismissed pre-adjudication in trial court and cases disposed by acquittal at trial. However, since only a small fraction of cases were disposed in trial court, and only some fraction of those were disposed by acquittal at trial, we adopted non-conviction as a proxy for dismissal.

#### Descriptive Statistics

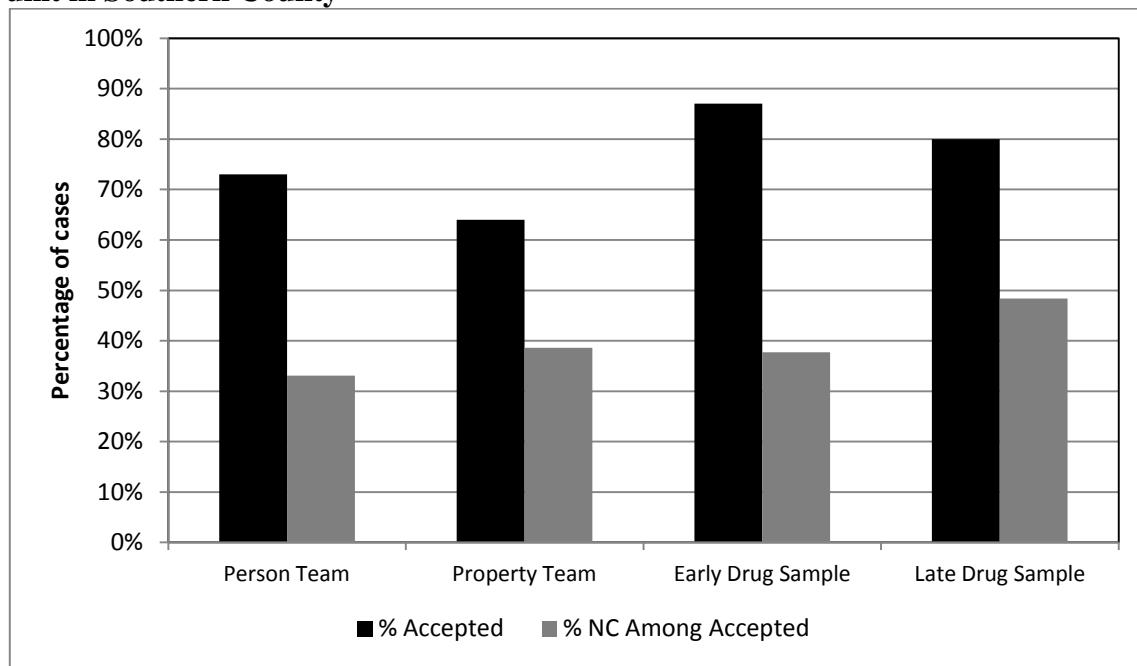
Our analyses of non-conviction rates were based on 372 Person Unit cases, 428 Property Unit cases, 2,105 Early Drug Sample cases, and 1,854 Late Drug Sample cases filed following acceptance at initial screening. Figure 3.7.1-1 displays the acceptance rates at screening and the non-conviction rates among accepted cases for each of the four samples. The non-conviction rates for Southern County were 33.1 percent for felony person crimes, 38.6 percent for felony property crimes, 37.7 percent for the early felony drug crime sample, and 48.4 percent for the late felony drug crime sample. These compare to dismissal rates of approximately 20 percent for felony drug crimes and less than 15 percent for felony person and felony property crimes in Northern County (see below).<sup>31</sup>

The bivariate relationships between non-conviction rates for filed cases and selected case characteristics are displayed in Table 3.7.1-1. The case characteristics presented in Table 3.7.1-1 are limited to ones that proved to be significant factors in one or more of the final statistical models.

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<sup>31</sup> These differences are much larger than could be attributable to the substitution of non-conviction as a proxy for dismissal.

**Figure 3.7.1-1 Acceptance rates and non-conviction rates among accepted cases by prosecutor unit in Southern County**



**Table 3.7.1-1 Percentage of filed cases with non-conviction dispositions in Southern County, by selected case characteristics**

Case Characteristics		Person Unit	Property Unit	Early Drug Sample	Late Drug Sample
N of charges presented for screening	1	45.0	41.9	48.5	60.7
	2	33.8	37.7	39.4	53.4
	3	23.9	39.5	34.5	41.1
	4	24.4	39.3	31.4	39.6
	5	22.6	19.0	23.0	37.4
Rank of top charge presented for screening	4	19.0	*	15.8	*
	5	34.7	*	8.2	16.7
	6	43.8	*	30.7	22.0
	7	12.5	*	*	*
	8	28.1	*	14.8	18.5
	9	26.7	39.0	37.2	46.2
Codefendants	10	40.7	36.0	45.3	61.8
	N	33.9	39.6	36.8	51.0
Black defendant	Y	32.2	35.2	40.9	37.7
	N	16.0	43.5	45.2	58.2
Male defendant	Y	35.7	36.2	34.5	46.0
	N	41.7	35.3	39.5	55.6
Prior record level	Y	32.1	39.0	37.4	47.1
	1	26.7	28.9	25.6	22.0
	2	40.3	29.2	22.9	23.2
	3	16.7	18.2	20.7	13.6
	4	28.6	32.1	21.5	10.5
	5	-	-	19.0	35.5
N of items of evidence per charge	6	-	-	15.4	29.0
	<1	35.7	39.6		
	1-2	26.5	36.0		
Total N of items of evidence listed	2+	33.3	39.6		
	0	53.0	47.9		
	1	27.4	33.7		
	2	26.9	39.8		
	3	22.0	36.6		
	4	20.0	40.0		
N of victims	5	25.0	33.3		
	0	-	-		
	1	35.4	38.9		
N of victims willing to prosecute	2+	28.6	35.6		
	0	63.0	75.9		
	1	29.8	32.6		
N of victims of strangers	2+	26.7	33.3		
	0	44.0	46.3		
	1	29.8	35.6		
N of black or Hispanic victims	2+	26.1	38.7		
	0	28.2	32.9		
	1	39.1	50.4		
Any victims need medical attention?	2+	31.9	57.1		
	N	35.7	-		
	Y	23.1	-		

\*N less than 10

As Table 3.7.1-1 indicates, the number of charges initially forwarded to the prosecutor for screening exhibited the most consistent relationships with the probability of non-conviction. In all four samples, the greater the number of charges screened (regardless of the number filed, which tended to be similar), the lower the ultimate non-conviction rate. The magnitude of the observed differences was minimal for property crimes but substantial for person crimes and drug crimes (reductions in the order of 20 percentage points across increasing numbers of charges). This is consistent with the finding for Northern County that cases with multiple charges filed were less likely to be dismissed than cases in which only a single charge was filed (see below).

The observed relationship of non-conviction rates with race was inconsistent. For person crimes, non-conviction rates were *twice as high* for black defendants as for non-black defendants. In contrast, for property and drug crimes, non-conviction rates were approximately 10 percentage points *lower* for black defendants. Table 3.7.1-1 also shows that cases involving black or Hispanic victims had higher non-conviction rates than others—for both person and property crimes, but especially for property crimes.

Other offense-related factors and defendant characteristics had less consistent relationships with non-conviction rates across crime types. The presence of *codefendants* was associated with lower non-conviction rates for person crimes, property crimes, and the late drug crime sample, but not for the earlier drug crime sample. Cases involving *male defendants* had lower non-conviction rates for person crimes and both drug crime samples, but not for property crimes. *Prior record level* was not consistently related to non-conviction rates for person or property crimes. For drug crimes, increasing prior record level was generally associated with decreasing non-conviction rates. The two highest prior record levels did not fit this pattern for the late drug crime sample, but the apparent deviations may have been due to small numbers of cases at the two highest levels. The

statutory class of the top charge presented at screening showed no consistent pattern of relationships with non-conviction rates for person or drug crimes, and, for property crimes, cases were spread too thinly across higher classes to support reliable estimates for individual classes.

Information about available evidence and victim characteristics was only available for person and property cases. For person crimes, the greater the number of items of physical evidence, the lower the non-conviction rate. For property crimes, the relationship was somewhat less consistent, where the main distinction seemed to be between having some physical evidence and none. Among victim characteristics, more victims, more victims willing to prosecute, more victims to whom the defendant was a stranger, and any victims needing medical attention were all associated with lower non-conviction rates.

### Logistic Regression Analyses

Separate logistic regression models for the probability of non-conviction were estimated for person unit cases, property unit cases, and drug unit cases. The early drug sample and the late drug sample were combined in a single analysis to permit explicit tests of the effect of historical period and the interactions between historical period and other factors. Relatively small samples were available for these analyses, limiting the number of parameters that could be estimated reliably.<sup>32</sup> In addition, the set of potential predictors included subsets consisting of alternative measures of the same or similar constructs, thus presenting a high risk of multicollinearity problems. Consequently, model development proceeded in a stepwise fashion.<sup>33</sup> First, only potential main effects were

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<sup>32</sup> A larger set of potentially predictive factors and their interactions was tested for possible inclusion in the models. Additional information about the variables tested in the logistic regression analyses is given in Appendix A.

<sup>33</sup> It is well known that stepwise selection and elimination procedures are sensitive to small changes in the sample data when candidate variables are substantially intercorrelated; slight differences between samples can lead to differences in the order of selection among correlated variables. In this study that means, for example, that which among the set of measures of victim characteristics or which among the set of evidence measures is included in a final model might have been different as a result of sampling variation. Thus, for example, it is safest to interpret a significant coefficient for a given victim characteristic as an indication that something about victim characteristics or circumstances influenced the

entered and subjected to backward elimination processing. At each step, model parameters were examined for signs of problems in model fitting. If problems were detected, variables likely to be causing the problems were removed and the analysis was repeated. Once reliable results were achieved, variables with significance values greater than  $p = .15$  were discarded.<sup>34</sup> Interactions between robbery and other factors (for the person unit sample), burglary and other factors (for the property unit sample), and historical period and other factors (for the combined drug unit sample) were tested in forward stepwise fashion.

The three final logistic regression models for predicting non-conviction from selected case characteristics, defendant characteristics, victim characteristics, and two measures of physical evidence are summarized in Table 3.7.1-2. The entries in the table are odds ratios, indicating the increase or decrease in the odds of non-conviction.

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probability of non-conviction, but not to place too much emphasis on the particular measure that proved most significant in a given sample.

<sup>34</sup> This liberal inclusion criterion follows a suggestion by Hosmer and Lemeshow (2000, p. 118), who cite evidence that more stringent criteria often result in misspecification (excluding variables from the model that are necessary to avoid spurious effect estimates for other included variables).



**Table 3.7.1-2 Logistic regression models for predicting non-conviction given filing in Southern County**

Independent Variables	Odds Ratios		
	Model 16 Person Unit	Model 17 Property Unit	Model 18 Drug Unit
<i>Case Characteristics</i>			
N of charges presented for screening	ns	0.78	0.82***
Rank of top charge presented for screening <sup>a</sup>	ns	1.38	ns
Codefendants	ns	0.55**	ns
<i>Defendant Characteristics</i>			
Black defendant	5.15**	ns	ns
Male defendant	ns	ns	ns
Prior record level	ns	ns	0.93*
<i>Victim Characteristics</i>			
N of victims	3.29**	2.98	
N of victims willing to prosecute	0.40***	0.17***	
N of victims of strangers	0.59*	ns	
N of black or Hispanic victims	ns	2.42***	
Any victims need medical attention	0.44*	ns	
<i>Evidence</i>			
N of items of evidence per charge	1.74*	ns	
Total N of items of evidence listed	0.70**	ns	
<i>N</i>	220	248	2036
<i>Nagelkerke R<sup>2</sup></i>	.19	.16	.02

\*p<=.10; \*\*p<=.05; \*\*\*p<=.01; an odds ratio displayed without an asterisk indicates p<=.15

<sup>a</sup>Highest statutory class rank = 1; larger values correspond to less serious offenses; thus, odds ratios greater than 1 indicate inverse effects.

For both person unit cases and property unit cases, the odds of non-conviction were strongly associated with various combinations of victim characteristics. Whereas there were significant effects of evidence for person crimes, the odds of non-conviction for property crimes were more strongly associated with the number and seriousness of charges and the presence or absence of codefendants. While it is somewhat surprising that the evidence measures did not exhibit significant effects for property crimes, it may be that the effect of evidence is felt indirectly through victim characteristics and the willingness of victims to prosecute.

The effects of case characteristics on the odds of non-conviction among property unit cases were fairly straightforward. For each increase in the number of charges screened at intake the odds of non-conviction decreased by approximately 20 percent. For each *decrease* in statutory class<sup>35</sup> of the top charge screened at intake, there was nearly a 40 percent increase in the odds of non-conviction. As previously noted, both a greater number of initial charges and more serious charges provide some leeway in negotiating pleas and may also be associated with cases considered high priority by prosecutors. The presence of codefendants reduced the odds of non-conviction by almost half, perhaps reflecting an ability to induce codefendants to cooperate with the prosecution.

It is somewhat surprising that no significant effects of case characteristics were found for person crimes, but it may be that the effects of case seriousness are captured indirectly through the significant effects of victim characteristics and evidence. For example, cases with a greater number of victims and/or a greater number of items of physical evidence are likely also to be ones in which a greater number of offenses were charged.

The size of the effect of race may also seem surprising; it indicates that, controlling for other variables in the model, the *odds* of non-conviction were five times greater in person crime cases involving black defendants than in person crime cases involving non-black defendants. However, that may not translate into a large difference in the *probability* of non-conviction. As a hypothetical illustration, suppose the probability of non-conviction for a non-black defendant with average values on the other predictors in the model were .10; that translates to odds of  $.1/.9 = .11$ . Five times that, odds of .55, would translate to a probability of non-conviction for black defendants of approximately .35 (controlling for other factors), not necessarily an unbelievable value. Nevertheless, the finding that person crime cases involving black defendants were significantly

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<sup>35</sup> Statutory class rank is reverse coded; higher values correspond to less serious statutory classes.

more likely than other cases to result in dismissal or acquittal warrants further investigation into the possibility of systematic overcharging at arrest in cases involving black defendants.

The combined effects of victim characteristics and the combined effects of evidence measures are also somewhat complicated to interpret. Both the modeled effect of number of victims and the modeled effect of number of items of physical evidence are in the counterintuitive direction, relative to the patterns displayed in the raw descriptive statistics. In both cases, the descriptive statistics suggest greater numbers of victims or items of evidence were associated with lower non-conviction rates. However, in the logistic regression models, both variables exhibit the opposite effects—greater numbers appear to be associated with higher non-conviction rates. These are called suppressor effects; they have to be interpreted in combination with other variables. In the case of victim characteristics, the combination of number of victims with number of victims willing to prosecute suggests that more victims yield lower non-conviction rates only if those victims are willing to prosecute. For property unit cases, for example, if there were two victims (an increase of one over the minimum) but neither victim was willing to prosecute (an increase of zero over the minimum), then the odds of non-conviction would be increased almost three-fold. On the other hand, if both victims were willing to prosecute (an increase of two over the minimum), then the combined effect would be  $(2.98)(.17)(.17) = .09$ , more than a 90 percent decrease in the odds of non-conviction.

Similar reasoning applies to the combined effects of number of items of physical evidence and number of items per charge (classified into three levels as less than one item per charge, 1 or more items but less than 2, and 2 or more items per charge). However, the result is still somewhat counterintuitive. The model suggests that each increase in the number of items of evidence was associated with a 30 percent decrease in the odds of non-conviction, as long as there were fewer

items of evidence than there were charges. If the number of items of evidence was roughly equal to the number of charges (odds ratio = 1.74), then there would have to be 2 or more items and charges to yield a combined reduction in the odds of non-conviction. And if the number of items of evidence was double or more than double the number of charges (1 charge and 2 or more items, 2 charges and 4 or more items, etc.), there would be a net *increase* in the odds of non-conviction for 1 charge and only 2 or 3 items of evidence, but a net *decrease* for any combination involving 4 or more items of evidence. We have no substantive explanation to offer for this pattern of results. However, we suspect that combinations of evidence measures are indirectly reflecting some important but unmeasured characteristic of the cases.<sup>36</sup> The extremely weak model for predicting non-conviction in drug cases may be an indirect reflection of the importance of evidence, since neither direct measures of evidence nor the possible indirect effects of evidence through victim characteristics could be incorporated in the analyses.

### 3.7.2 Dismissal Decisions in Northern County

The examination of dismissal decisions in Northern County relies on cases filed between January 1, 2009 and December 31, 2009; we rely on this subsample of cases to ensure time to final disposition before the end of the data collection period. The subsample included a total of 18,802 cases.

#### Descriptive Statistics

Overall, dismissal rates in Northern County were substantially lower than non-conviction rates in Southern County for comparable offense types (see Figure 3.7.1-1 above). Roughly 22 percent of cases were dismissed during the study period; in other words, of the 18,802 cases filed in Northern County between January 1, 2009 and December 31, 2009, 4,140 cases (22.0 percent) were

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<sup>36</sup> We tested more than two dozen measures of types and amount of evidence, but only the two cited here had consistent associations with the modeled outcomes. However, we did not have measures of quality of evidence or the match between available evidence and the evidentiary requirements of a case.

dismissed before adjudication and 14,662 cases (78 percent) were adjudicated through guilty pleas or trials.

Cases involving felonies were generally dismissed at a lower rate than cases involving misdemeanors. Moreover, dismissal rates differed markedly by offense type. For example, nearly 40 percent of misdemeanor domestic violence cases were dismissed during the study period, compared to just 3 percent of misdemeanor DUI cases. Dismissal rates for felony drug, public order, domestic violence, and weapons offenses were remarkably similar at roughly 20 percent, significantly higher than the rates for felony person, property, and DUI offenses. These patterns may be reflections of differences in screening practices and offense characteristics across the different offense types. Recall that person and property offenses generally had lower acceptance rates than other offenses, implying either a stricter screening process or, as indicated by prosecutors, the influence of perceived victim/witness unreliability. Consequently, stronger cases generally made it through the screening process, resulting in lower dismissal rates. Conversely, drug and weapons offenses tended to have higher acceptance rates, implying either a weaker screening process or, as indicated by prosecutors, the influence of perceived evidence reliability. Higher dismissal rates for these offenses may, in turn, be a reflection of this weaker screening pattern or the re-evaluation of evidence later in the process.

By comparison, the non-conviction rates for Southern County were 33.1 percent for felony person crimes, 38.6 percent for felony property crimes, 37.7 percent for the early felony drug crime sample, and 48.4 percent for the late felony drug crime sample. These compare to dismissal rates of approximately 20 percent for felony drug crimes and less than 15 percent for felony person and felony property crimes in Northern County.<sup>37</sup>

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<sup>37</sup> These differences are much larger than could be attributable to the substitution of non-conviction as a proxy for dismissal.

The bivariate relationships between dismissal rates for filed cases and selected case characteristics in Northern County are displayed in Table 3.7.2-1.

**Table 3.7.2-1 Percentage of accepted cases dismissed in Northern County, by selected case characteristics**

	<b>Person</b>	<b>Property</b>	<b>Drugs</b>	<b>Public Order</b>	<b>DV</b>	<b>Weapons</b>	<b>DUI</b>
Overall	18%	15%	23%	27%	37%	17%	2%
<i>Offense Characteristics</i>							
Charge Severity							
Misdemeanor	25%	19%	26%	28%	39%	9%	2%
Felony	14%	11%	21%	21%	23%	23%	8%
Number of charges							
Single charge	31%	20%	29%	38%	51%	19%	6%
Multiple charges	8%	8%	11%	4%	16%	15%	2%
Enhancement Offense							
No	19%	16%	24%	27%	36%	15%	2%
Yes	10%	8%	15%	19%	42%	26%	5%
Arresting Agency							
Primary municipal	18%	15%	21%	28%	41%	18%	2%
Other	16%	15%	28%	26%	25%	14%	2%
Drug Type							
Cocaine (reference)	--	--	23%	--	--	--	--
Heroin	--	--	20%	--	--	--	--
Marijuana	--	--	19%	--	--	--	--
Other	--	--	34%	--	--	--	--
<i>Defendant Characteristics</i>							
Race							
White	18%	17%	32%	26%	26%	15%	2%
Black	18%	14%	19%	29%	42%	17%	1%
Hispanic	14%	16%	18%	20%	36%	16%	3%
Gender							
Male	17%	13%	21%	27%	38%	17%	2%
Female	21%	22%	41%	26%	33%	16%	2%
<i>Victim Characteristics</i>							
Race							
White	15%	13%	--	--	30%	--	--
Black	20%	16%	--	--	44%	--	--
Hispanic	19%	25%	--	--	40%	--	--
Gender							
Male	18%	16%	--	--	32%	--	--
Female	18%	14%	--	--	40%	--	--

Dismissal rates varied considerably along several dimensions of case characteristics and defendant characteristics. Across all offense types, cases involving more serious charges, multiple charges, and enhancement charges were less likely to be dismissed. The only exceptions were for weapons offenses and domestic violence offenses; for both of these, cases involving enhancement charges were more likely to be dismissed than cases without enhancements, and, for weapons offenses, cases involving felonies were more likely to be dismissed than misdemeanors. Combined with the screening outcomes – which found that cases involving multiple arrest charges were more likely to be accepted for prosecution – this indicates that more serious, complex cases are more likely to continue in the prosecutorial process.

Dismissal rates varied only slightly by arresting law enforcement agency. For most offenses – person, property, public order, weapons, and DUI – dismissal rates were roughly the same for both the primary municipal police department and other agencies. For drug cases, however, dismissal rates for cases involving the primary municipal police department were roughly 10 percentage points lower than other agencies. For domestic violence cases, however, dismissal rates for cases involving the primary municipal police department were roughly 15 percentage points *higher* than other agencies.

Overall dismissal rates were nearly identical across racial groups with a few exceptions. For drug offenses, dismissal rates for white defendants were significantly higher than the rates for black and Hispanic defendants (32 percent versus 19 percent). For public order offenses, dismissal rates for black defendants (29 percent) were considerably higher than those for both white defendants (26 percent) and Hispanic defendants (20 percent). Finally, dismissal rates for domestic violence offenses displayed a similar pattern; for these offenses, dismissal rates for black were roughly 6 percentage points higher than the rates for Hispanic defendants and 16 percentage points higher

than the rates for white defendants. Dismissal rates for men were consistently lower than the rates for women, with the exception of public order offenses and DUI offenses (in which they were nearly equal) and domestic violence cases (in which the rates for men were roughly 5 percentage points higher).<sup>38</sup>

Dismissal rates based on the victim racial categories showed markedly different trends than those for defendant racial categories. For person, property, and domestic violence offenses (the only offense types with available victim information), dismissal rates were consistently lower for cases involving white victims. In addition, for property offenses, dismissal rates for cases involving Hispanic victims were markedly higher than rates for cases involving white or black victims (roughly 12 percentage points higher relative to white victims and 9 percentage points higher relative to black victims).

### Logistic Regression Analyses

The following analyses rely on logistic regression models to examine the decision to dismiss a case in Northern County. The subsample of 18,803 cases was used to generate a series of logistic models predicting the likelihood that all charges in a case would be dismissed, controlling for individual-level factors. Models 1 through 7 in Table 3.7.2-2 examine case outcomes for each offense type. Two models examining property offenses are included; since not all property offenses included an identifiable victim, separate models were run for property crimes with a victim and all property crimes. Coefficients presented in Models 1 through 7 represent the increases in the likelihood of a case being dismissed generated by each predictor variable. These coefficients are presented as odds ratios – coefficients greater than 1 imply an increased likelihood of case dismissal

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<sup>38</sup> Unfortunately, defendant custody information was not consistently reported after initial charge filing; thus, the defendant custody variable was not included in the dismissal analyses. Prosecutor information was also missing for more than 50 percent of the cases. As a result, the study was unable to examine the influence of prosecutor characteristics on dismissal decisions.



and coefficients below 1 indicate a reduction in such likelihood. In all models, “white” is taken as the reference category when comparing outcomes across defendant and victim racial groups; the coefficients listed for other races are the effects of these races on case outcomes compared to whites. For drug offenses, “cocaine” was used as the reference category when comparing across drug offenses; the coefficients listed for other drug types are the effects of those drug types on case outcomes relative to cocaine.

**Table 3.7.2-2 Logistic regression predicting case dismissal in Northern County**

	<b>Model 1 Person</b>	<b>Model 2a Property</b>	<b>Model 2b Property</b>	<b>Model 3 Drugs</b>	<b>Model 4 Public Order</b>	<b>Model 5 DV</b>	<b>Model 6 Weapons</b>	<b>Model 7 DUI</b>
<i>Offense Characteristics</i>								
Charge Severity	.897**	.819***	.894*	.939*	.905***	1.190***	1.700***	1.297**
Number of charges	.522***	.436***	.583***	.493***	.107***	.265***	.699***	.670
Enhancement Offense (Yes)	.595	.565	.572	.822	.715	.961	1.343	1.035
Arresting Agency (Primary)	1.026	1.153	1.129	1.022	1.074	1.539**	1.405	.631
<i>Drug Type</i>								
Cocaine (reference)	--	--	--	--	--	--	--	--
Heroin	--	--	--	.996	--	--	--	--
Marijuana	--	--	--	.569***	--	--	--	--
Other	--	--	--	1.052	--	--	--	--
<i>Defendant Characteristics</i>								
<i>Race</i>								
White (reference)	--	--	--	--	--	--	--	--
Black	.648	.822	.849	.589***	1.196*	1.154	1.066	.321
Hispanic	.939	.729	1.193	.506**	.725*	1.056	1.082	1.713
Gender (Male)	1.011	.589	.597***	.478***	1.137	.665	.807	1.099
Age (Years)	1.023**	1.002	.981***	.995	.993**	1.003	1.014	1.036**
<i>Victim Characteristics</i>								
<i>Race</i>								
White (reference)	--	--	--	--	--	--	--	--
Black	2.270*	1.198	--	--	--	1.322	--	--
Hispanic	1.447	2.532*	--	--	--	1.171	--	--
Gender (Male)	.862	1.308	--	--	--	1.905	--	--
Age (Years)	.992	.997	--	--	--	.988*	--	--
Constant	.689	2.200	1.609	3.645***	6.988***	1.010	.021***	.010***
Total cases	876	1,407	1,529	3,053	2,351	1,864	728	2,166
-2 log likelihood	733.08	1,044.80	1,262.07	3,027.14	6,472.32	2,150.76	611.53	423.16
Nagelkerke R2	.166	.153	.081	.117	.202	.225	.104	.073
Chi2	93.76***	127.04***	73.64***	243.30***	952.54***	337.83***	46.62***	29.87***

As Models 1 through 7 show, there were no consistent predictors of case outcomes across offense types, with the exception of variables measuring offense characteristics. For person, property, drug, and public order offenses, the strongest predictor of case dismissal was number of charges issued – for all four offense types, cases involving more serious charges and a greater number of charges were less likely to be dismissed. In other words, it appears that prosecutors were less likely to dismiss cases that were more serious and more complex. For example, each increase in the severity of the controlling filed offense (e.g. from Class A misdemeanor to Class I felony) decreased the likelihood of dismissal of a drug offense by six percent, while the same one level increase in the severity of a public order offense decreased the likelihood of dismissal by 14 percent. Having more than one filed charge decreased the likelihood that a case would be dismissed by anywhere from 50 percent (for drug offenses) to nearly 90 percent (for public order offenses) after controlling for other factors. Moreover, this was consistent with findings for screening, in which cases involving more serious charges and a greater number of charges were less likely to be declined for prosecution for nearly all offense types. In other words, more serious and more complex cases are generally more likely to move forward in the prosecutorial process – more likely to be accepted for prosecution and more likely to avoid dismissal. For domestic violence, weapons, and DUI offenses, this was only partially true – cases involving a greater number of charges were also less likely to be dismissed, but, for all three offense types, cases with more serious charges were *more likely* to be dismissed. The presence of a charge enhancer had no effect in any of the models. Finally, for drug offenses, the type of drug had little impact on screening decisions; however, cases involving marijuana were less likely to be dismissed relative to cocaine.

Unlike the screening decision, arresting agency had very little influence on the decision to dismiss, reaching significance in only two models. For public order and domestic violence offenses,

arrests made by the primary municipal police department were *more likely* to be dismissed; while not significant, the coefficient for arresting agency in all other models indicated a similar trend. Again, this may be an indication of changes in the investigation units within the police department, as discussed in Part 2. Prosecutors maintain that there has been a decrease in the quality of investigations, which translates into less follow-up and cooperation on cases by the police department after charges are filed, increasing the likelihood of dismissal of such cases. The higher dismissal rates, particularly for public order offenses, may be due to what prosecutors argued was the police department's increased focus on *making arrests*.

Defendant characteristics had almost no impact on dismissal decisions, with the exception of drug offenses, public order offenses, and property offenses. For drug offenses, the presence of a black or Hispanic defendant *decreased* the likelihood that a case was dismissed relative to cases involving white defendants; the effect was quite large, decreasing the likelihood of dismissal by roughly 50 percent. Moreover, this was contrary to the impact of race on the screening decision for drug offenses, in which cases involving black defendants were *more likely* to be declined for prosecution than cases involving white defendants. This could be an indication that cases involving black defendants are screened more carefully (resulting in lower dismissal rates later) due to threats of racial bias or over-charging by law enforcement. Conversely, for public order offenses cases involving black defendants were *more likely* to be dismissed, while cases involving Hispanic defendants were *less likely* to be dismissed. For both property and drug offenses, cases involving male defendants were less likely to be dismissed than cases involving female defendants. Finally, defendant age was significant in four of the eight models (Person, Property, Public Order, and DUI). For person and DUI offenses, cases involving older defendants were *more likely* to be dismissed. The effect appears small; overall, each one year increase in a defendant's age increased the

likelihood that a case would be dismissed by less than 2 percent. This, however, could be a non-negligible effect. The cumulative effect of the difference between age 18 and age 28, for example, would be about a 22 percent increase in the odds of dismissal for these crime types. This again lends some support to prosecutors' focus group statements that defendant characteristics such as age matter when determining whether a case should be prosecuted or continued.

Victim characteristics also were not consistent predictors of case outcomes. For person offenses, cases involving black victims were more likely to be dismissed than cases involving white victims; the presence of a black victim increased the likelihood that a case was dismissed by 127 percent. Moreover, this was consistent with screening outcomes, in which the presence of a black victim increased the likelihood that a case was declined for prosecution. Together, these findings imply that cases involving black victims are funneled out of the system at much higher rates than cases involving white victims. For property offenses, cases involving Hispanic defendants were more likely to be dismissed. While not significant, coefficients for race/ethnicity variables hinted similar trends for all three offense types with victim information (person, property, domestic violence). Contrary to analyses of screening decisions, victim gender had no impact on dismissal decisions. Finally, for domestic violence offenses, cases involving older victims were less likely to be dismissed (while not significant, coefficients in other models were in the same direction); like the effect of defendant age, the overall effect was small with each one year increase in the victim's age decreasing the likelihood that the case would be dismissed by just 1 percent; again, this still could be a large cumulative effect, if for example the comparison is between young adults and older adults (e.g. there would be a 40 percent decrease from age 28 to age 48, assuming a linear effect in the log-odds metric).

Overall, as with screening decisions, offense characteristics were strong predictors of dismissal decisions. Taken together, the effects of offense characteristics on dismissal outcomes appear to indicate that more serious cases (i.e. with more severe charges, more charges) generally are more likely to continue in the prosecutorial process. This is consistent with prior research that has found case characteristics generally to be the strongest predictors of decision-making and the perceptions of prosecutors.

### *3.7.3 Reasons for Dismissal in Southern County*

The case management system used in drug unit cases in Southern County included an opportunity for prosecutors to select coded reasons for dismissals at each of several stages in case processing. We incorporated that same coding structure in the instrument used to code data from paper case files for person unit and property unit cases. From both sources, the reasons for dismissal were attached to specific charges and the analyses presented in this section were performed at the charge level rather than the case level. Reasons were not indicated for all of the individual charges that were dismissed; but reasons were found for a large enough number of dismissed charges to support an informative analysis. The distributions of reasons for dismissal for person unit and property unit cases are presented in Table 3.7.3-1 and the distributions of reasons for dismissal for drug unit cases are presented in Table 3.7.3-2. The analyses of drug unit cases are presented separately from those of the person and property units due to differences in the detail of data capturing the stage of the process where the dismissal occurred; the data from the drug unit was much more precise regarding the timing of dismissal.

**Table 3.7.3-1 Distribution of reasons for charge dismissal by processing stage for the Person and Property Teams in Southern County**

<b>Reason for Rejection/Dismissal</b>	<b>Primary Reason for Rejection at Screening</b>	<b>Reason for Voluntary Dismissal Before Upper Court</b>	<b>Reason for Voluntary Dismissal in Upper Court</b>
<b>N of charges with dismissal reasons</b>	<b>760</b>	<b>289</b>	<b>860</b>
Contradictory/inclusive lab results	0.9%	--	--
Evidence only supports misdemeanor charge	0.7%	1.4%	--
Evidence was destroyed or missing	0.4%	0.7%	--
Incomplete/missing witness statements	12.9%	8.0%	7.8%
Insufficient evidence for prosecution	37.4%	16.6%	10.8%
Insufficient nexus	6.2%	1.4%	0.7%
No corroboration of evidence	11.8%	3.8%	1.0%
Physical evidence insufficient	0.1%	--	0.1%
Other evidence problem	0.3%	1.4%	1.0%
<b>Total for evidence-related reasons</b>	<b>70.7%</b>	<b>33.2%</b>	<b>21.5%</b>
<b>Total treated as misdemeanor</b>	<b>9.6%</b>	<b>22.8%</b>	<b>1.4%</b>
Pled guilty to other charge in other complaint	0.4%	2.8%	13.7%
Pled guilty to other charge in this complaint	0.7%	15.2%	47.3%
Prosecuting other charge	5.8%	4.8%	1.3%
<b>Total for pursuit of other charges</b>	<b>6.8%</b>	<b>22.8%</b>	<b>62.3%</b>
Interest of justice	5.4%	4.8%	1.0%
No probable cause for arrest	1.4%	--	--
Defendant found incompetent	0.7%	0.7%	0.7%
Other due process problems	3.6%	5.2%	6.5%
No papering	0.8%	2.4%	--
Feds took the case	--	3.1%	5.6%
Deferred prosecution	1.1%	4.8%	0.1%
Death of defendant	--	--	0.8%
<b>Total for all other reasons</b>	<b>12.9%</b>	<b>21.1</b>	<b>14.8%</b>

**Table 3.7.3-2 Distribution of reasons for charge dismissal by processing stage for the Drug Unit in Southern County**

Reason for Rejection/Dismissal	Screening	District Court	GJ and GJ Prep	Admin Court	Trial Court
<b>N of charges with dismissal reasons</b>	<b>1171</b>	<b>532</b>	<b>964</b>	<b>2844</b>	<b>224</b>
Contradictory/inclusive lab results	--	1.3%	3.9%	2.0%	0.9%
Evidence only supports misdemeanor charge	1.6%	--	.4%	0.1%	0.4%
Evidence was destroyed or missing	--	--	--	--	--
Incomplete/missing witness statements	0.1%	--	1.0%	--	1.3%
Insufficient evidence for prosecution	87.5%	13.3%	13.9%	5.9%	29.0%
Insufficient nexus	3.8%	--	--	--	--
No corroboration of evidence	--	--	.1%	--	--
Victim delay in reporting	0.2%	--	--	--	--
Victim unlocatable	0.1%	--	0.1%	--	--
Witness credibility/bias	0.1%	0.9%	3.0%	1.4%	--
Witness refuses to cooperate	0.3%	0.8%	--	--	--
Analytical results insufficient	--	0.8%	3.1%	1.1%	0.4%
Physical evidence insufficient	0.4%	0.2%	1.5%	0.1%	2.7%
Other evidence problem	2.0%	1.1%	2.1%	0.9%	6.3%
<b>Total for evidence-related reasons</b>	<b>96.1%</b>	<b>18.4%</b>	<b>29.1%</b>	<b>11.5%</b>	<b>41.0%</b>
<b>Total treated as misdemeanor</b>	<b>0.3%</b>	<b>--</b>	<b>--</b>	<b>--</b>	<b>--</b>
Pled guilty to other charge in other complaint	--	6.0%	3.4%	13.9%	16.5%
Pled guilty to other charge in this complaint	--	38.5%	28.4%	66.9%	30.8%
Prosecuting other charge	1.6%	--	--	--	--
<b>Total for pursuit of other charges</b>	<b>1.6%</b>	<b>44.5%</b>	<b>31.8%</b>	<b>80.8%</b>	<b>47.3%</b>
Interest of justice	--	1.5%	0.6%	0.6%	7.1%
No probable cause for arrest	0.5%	--	--	--	--
Unlawful search, no warrant	--	--	0.7%	--	--
Other due process problems	1.1%	0.8%	0.3%	0.1%	--
Affirmative defense	0.1%	--	0.2%	--	--
Defendant found incompetent	--	--	--	0.4%	--
No papering	0.2%	33.1%	--	0.3%	--
Feds took the case	--	1.7%	0.5%	6.3%	4.0%
Deferred prosecution	--	--	--	--	--
Low priority for unspecified reasons	--	--	36.6%	--	--
Resource limitations	--	--	--	--	0.4%
Death of defendant	--	--	--	--	--
<b>Total for all other reasons</b>	<b>1.9%</b>	<b>37.1%</b>	<b>38.9%</b>	<b>7.7%</b>	<b>11.5%</b>



As these tables indicate, prosecutors cited evidence-related reasons for rejecting charges at screening for 70.7 percent of the charges rejected in person and property cases and 96.1 percent of charges rejected in drug cases. For person and property cases, the percentage attributed to evidentiary problems declined to 33.2 percent of charges dismissed prior to filing in upper court and 21.5 percent of the charges dismissed after reaching upper court. For drug cases, the percentage attributed to evidentiary reasons declined dramatically to 18.4 percent of charge dismissed in lower court, 29.1 percent of charges dismissed during grand jury preparation or presentation, and 11.5 percent of charges dismissed in felony administrative court. However, evidence-related reasons were cited for 41.0 percent of the charges dismissed in felony trial court.

As the percentage of dismissals attributable to evidentiary problems declined, other reasons necessarily accounted for increasing percentages of dismissals. The most striking was the increase in the percentage of dismissals attributable to the fact that prosecutors were pursuing other charges or considered guilty pleas to other charges to constitute acceptable outcomes. For person and property cases, the percentage of dismissals attributable to a focus on other charges grew from 6.8 percent of charges rejected at screening, to 22.8 percent of charges dismissed prior to reaching upper court, and to 62.3 percent of charges dismissed in felony administrative court or felony trial court. For drug cases, the percentage grew from 1.6 percent of charges rejected at screening to 44.5 percent of cases dismissed in lower court, 31.8 percent of charges dismissed during grand jury preparation or presentation, 80.8 percent of charges dismissed in felony administrative court, before dropping back somewhat to 47.3 percent of charges dismissed in felony trial court. These patterns almost certainly involve dismissing some charges in exchange for guilty pleas to the charges prosecutors consider most appropriate given case characteristics and the existing circumstances. It is not clear from these data how often prosecutors obtain guilty pleas to the charges they consider

most appropriate, and how often they end up dismissing charges they do not believe should be dismissed due to contextual circumstances that render a case difficult to prove or require lowering its priority relative to other pending cases.

Three other specific items are worth highlighting. For person and property cases, a significant number of charges (22.8 percent of those dismissed prior to reaching upper court) were reduced to misdemeanors and pursued in lower court. For drug cases, 33.1 percent of the cases dismissed in lower court were dismissed for lack of “papering” (the case preparation associated with filing a charge in court). Also for drug cases, 36.6 percent of the cases dismissed during grand jury preparation were assigned an undocumented reason code. However, that code only occurs in connection with a particular type of plea offer. In recording plea offers in the case management system, prosecutors in the drug unit assign a priority code to each charge: “1” for “must plead guilty” and “2” for “will dismiss.” Some charges are assigned a priority code of “3,” which means that the charge has already been dismissed and the fact that it was dismissed is considered a part of the plea bargain. Grand jury preparation and plea offer development occur more or less concurrently, and charges coded as already dismissed in the plea offer usually have the undocumented code mentioned above recorded as the reason for dismissal. Thus, the true reason for dismissal of those charges may be similar to those associated with the category labeled “pursuit of other charges,” which may then account for as many as 65 percent of the charges dismissed during grand jury preparation.

The results of the analyses are highly consistent with our findings from other analyses presented in this report. Prosecutors who participated in the focus group discussions indicated that the strength of evidence was the dominant consideration at initial screening, and that while continual reevaluation of evidence remained important throughout the life of a case, it was balanced by the

increasing importance of other considerations in making charging and plea offer decisions and setting priorities among cases. Our analyses of screening, charging, plea offers, and sentence recommendations across several data sets generally support this conception.

### 3.8 Understanding Case Outcomes across the Prosecutorial Process

The analyses of case outcomes clearly support prosecutors' identification of strength of evidence as the primary consideration at initial screening. In the analyses of hypothetical cases in the factorial survey, prosecutors' rating of the strength of evidence was the only case-level variable with a statistically significant influence on the screening decision and higher ratings of the strength of evidence were associated with greater numbers of charges requiring guilty pleas in a plea offer. For actual person and property cases screened in Southern County, the combined effects of evidence-related measures far outweighed the combined effects of other factors in predicting the screening outcome. In the analyses of reasons for dismissal in Southern County, evidence related reasons were the dominant reasons for dismissal at screening.

Yet, throughout the prosecutorial process, prosecutors continue to ask the question, "Should the case proceed?" as additional information becomes available or prior information changes. In general, the findings support statements by prosecutors that evidence related factors decrease in importance as a case progresses. Indeed, in analyses of reasons for dismissal in Southern County, the percentage of dismissals attributable to evidentiary problems declined dramatically after initial screening, which would be expected if screening is successful in removing weak cases. According to prosecutors, non-evidence related factors – particularly offense seriousness – become relatively more important after initial screening. When making charging decisions in hypothetical cases, for example, prosecutors were more likely to issue additional charges at charging in cases involving felonies than misdemeanors. When making plea offers in hypothetical cases, more serious offenses

were associated with greater numbers of charges requiring guilty pleas. In Northern County, cases involving felonies were less likely to be dismissed than cases involving misdemeanors.

Analyses of case outcomes in both counties indicate that additional factors were also associated with case outcomes. In Northern County, for example, cases involving younger defendants were more likely to be rejected for prosecution and were more likely to be dismissed for several offense types. Overall, race had little impact on case outcomes in either jurisdiction. But, the presence of a black defendant decreased the likelihood that a drug case was accepted for prosecution in both Northern and Southern Counties; conversely, the presence of a black or Hispanic defendant increased the likelihood that a domestic violence case accepted for prosecution in Northern County. For a few offense types in Northern County, the presence of a male defendant increased the likelihood that a case was accepted for prosecution and decreased the likelihood that a case was dismissed. Although defendant race/ethnicity was not a consistent predictor of case outcomes, victim race/ethnicity was. For person, property, and domestic violence offenses in Northern County, cases involving black victims were less likely to be accepted for prosecution than cases involving white victims; and cases involving male victims were also less likely to be accepted for prosecution in all three models. Victim characteristics had little impact on decisions after the initial screening decision in either jurisdiction.

Although prosecutors maintained that unique case factors affected case outcomes, they also expressed a mixture of concern about consistency. A majority of prosecutors considered achieving consistency in *outcomes*—both within and across units—to be an important objective for defining office-level success and nearly all agreed that there should be a great deal of consistency across prosecutors in the case-specific factors that influence decision-making. Yet, there remained significant variation in screening decisions across prosecutors. In Southern County, for example, the

range of acceptance rates among prosecutors screening person crimes varied from a low of 70 percent to a high of 84 percent; for property crimes, prosecutors' acceptance rates ranged from 59 percent to 72 percent and for drug crimes they ranged from 76 percent to 87 percent. Analyses of screening outcomes in Northern County found much wider variations in acceptance rates across prosecutors: for felony person offenses, acceptance rates varied from a low of 32 percent to a high of 61 percent and for felony property offenses ranged from a low of 36 percent to a high of 87 percent. Other offense types showed similarly wide variations, with the exception of weapons offenses and DUI offenses.

Although there was wide variation in acceptance rates across prosecutors, there was little variation in charging decisions for actual cases. Analyses of administrative data in both sites revealed that prosecutors tended to either accept all of the arrest charges presented for screening or reject them all and, overall, few differences existed between the number or severity of arrest charges and the number or severity of charges initially filed by the screening prosecutor. Among the cases accepted for prosecution in Northern County, for example, the most serious arrest charge was filed in roughly 90 percent of cases for all offense types and offense levels. Thus, it appears that the screening decision is the more important decision. It may also indicate that the screening decision and charging decision are even separable; prosecutors may determine what charges they could prove given the case presented at screening and then make the decision to proceed on that basis. The factorial survey results, however, indicated that these decisions may be separable in some instances. In the factorial surveys analyses, there was significant variation among prosecutors in average seriousness of top filing charge (controlling for crime seriousness, strength of evidence, and criminal history), as well as significant variation in how prosecutors weighed crime seriousness, strength of evidence, and criminal history in deciding what to charge.

Given the wide variation in acceptance rates across prosecutors, even for similar cases, some analyses examined the effects of prosecutors' characteristics on decision outcomes. In Northern County, for example, analyses of screening decisions showed that prosecutor-level characteristics explained roughly 10 percent of the variance in case outcomes; however, very few prosecutor-level predictors were significant in the models. Moreover, the few significant results were mixed. For property offenses, more experienced prosecutors were *less likely* to accept cases for prosecution, but for domestic violence offenses more experienced prosecutors were *more likely* to accept cases for prosecution. For drug offenses, prosecutors who had screened more drug cases were *more likely* to accept drug cases for prosecution; in contrast, for weapons offenses, prosecutors who had screened more cases involving weapons offenses were *less likely* to accept such cases for prosecution. The fact that the prosecutor was a supervisor was not significant in any of the models, and the fact that a prosecutor was part of a specialized unit was significant in just one model, with prosecutors in specialized prosecution units more likely to accept cases involving weapons offenses.

Although screening decisions in the factorial survey were very consistent across prosecutors, differences in prosecutors' attitudes did account for some variation in screening decisions. For example, higher prosecutor ratings of the importance of consistency (from responses to the general survey) were associated with *lower* odds of rejection at screening; higher ratings of the importance of examining cases at screening in terms of their potential for plea bargaining, early disposition, and caseload reduction were associated with *higher* odds of rejection at screening. Prosecutors were less consistent in their choices of the most serious charge to file in the factorial survey; the number of charges prosecutors indicated they would file was, again, influenced by their general attitudes toward the most appropriate prosecution strategies. The *more strongly* prosecutors agreed that the charging decision should include the highest charges that could be proven at trial, the *greater* the

average number of charges the prosecutors indicated they would file. Similarly, prosecutors who indicated that their general approach to charging was to file only the charges that the accused should plead guilty to identified *fewer* charges for initial filing.

Overall, the analyses of case outcomes in Northern and Southern Counties supports much of the research on the factors associated with case outcomes. However, the analyses also highlight several new findings – the relative decreasing importance of evidence-related factors over the life of a case, the often conflicting influence of case-specific factors across offense types, the lack of consistency in outcomes across prosecutors and the impact of prosecutor characteristics on case outcomes. These findings point to potential new areas of research that can both deepen our understanding of prosecutorial outcomes and broaden our approach to exploring them.

## Part 4. Conclusions

Understanding the anatomy of prosecutorial discretion is no easy task. In any individual case, prosecutors make innumerable subtle decisions that propel a case forward or hold it back or that increase the exposure a defendant may face upon conviction or decrease that exposure. In any individual case, these decisions are based on a complex evaluation of case-level factors and a calculation of expected and desired outcomes. Although it may be clear which case-level factors are most important in making these decisions and how prosecutors weigh those case-level factors, these subtle decisions about cases are not made in a vacuum. Although prosecutors discuss their discretion in individual cases as being nearly unbounded, external forces significantly shape and constrain that discretion. Case-level decisions are often determined by, or at least limited by, resource constraints, office policies, and a balancing of practical needs for efficiency, consistency, and fairness. Thus, in the end, individual prosecutorial discretion is not nearly as unbounded as traditionally thought.

In this chapter we briefly summarize what we learned about prosecutorial decision-making in Northern and Southern Counties. Rather than compiling findings from each of the substantive chapters included in this report, we sought to highlight several key findings and primary challenges facing prosecutors.

### 4.1 Key Findings

#### *4.1.1 Prosecutors Are Guided by Two Questions: ‘Can I prove the case?’ and ‘Should I prove the case?’*

According to prosecutors, decisions in any individual case are based on the strength of the evidence, the seriousness of the offense, and the defendant’s criminal history. Interviews with prosecutors revealed that strength of the evidence is used to answer the question ‘Can I prove the



case?’ Prosecutors also argued that seriousness of the offense and defendant criminal history are the primary factors then used to answer the question ‘Should I prove the case?’ In other words, while strength of the evidence is used to determine if a case can likely result in a conviction, prosecutors look to other factors to determine if a case should be prosecuted at all, regardless of the likelihood of conviction. In this sense, prosecutors clearly see a distinction between the strength of the evidence and the merits of the case and see strength of the evidence as a necessary but not sufficient condition for a case to proceed.

Analyses of actual case outcomes and hypothetical cases clearly supported prosecutors’ perceptions of the impact of these factors. Moreover, as a case proceeds through the prosecutorial process, the relative importance of each factor changes. Strength of the evidence is very important at initial screening, but its relative importance declines as a case proceeds; in turn, seriousness of the offense and defendant criminal history increase in importance as a case proceeds. Several defendant characteristics also were considered by prosecutors in addition to criminal history when determining whether or how a case should proceed, including defendant age, the potential impact of a conviction on the defendant, and the demeanor of the defendant. Moreover, analyses of actual case outcomes revealed that defendant and victim characteristics such as race and gender were also associated with case outcomes.

The influence of factors beyond strength of the evidence, seriousness of the offense, and defendant criminal history on case outcomes supports the argument made by most prosecutors that prosecutorial decision making is incredibly complex. Decisions are a balance of multiple case-level factors. In the end, prosecutors argued that determining the right outcome for a case or answering the question of whether or how a case *should* proceed revolved around determining what was fair for the particular defendant, a reflection of the guiding philosophy within each office of “doing

justice.” While prosecutors were given discretion to translate that philosophy into practice and could, conceivably, translate it into a focus on crime control, most prosecutors saw their job as ensuring justice for defendants and evaluated their own success and office success in terms of the fair treatment of defendants.

#### *4.1.2 Prosecutorial Decision Making Is Often Affected by External Constraints*

Individual cases exist within a system that often constrains prosecutorial decision-making. Three external constraints operated in both Northern and Southern Counties: rules, resources, and relationships. In some instances, these constraints determined case outcomes. In other instances, they placed limits on available outcomes. And, in some instances, they simply shaped the decisions in a case.

In both jurisdictions, a very limited number of office-wide rules dictated how prosecutors were to handle cases. These rules generally involved specific offenses targeted by the District Attorney and called for specific outcomes at particular stages of the prosecutorial process (e.g. DUI cases above a certain blood-alcohol level cannot be rejected for prosecution, felony residential breaking and entering cannot be reduced to a misdemeanor, residential burglary cases must have a sentence recommendation of prison). A complex system of unit-specific rules, however, dictated outcomes in a much wider array of offenses and decision points. The district attorney in each jurisdiction relied on experienced unit supervisors to develop rules within units. The rules were unorganized, in that rules were not coordinated across units or always expressed as formal practices; rather, rules evolved out of norms of practice and could shift with a change in unit supervisor. Rules did not cover all offenses or decisions; but the rules that did exist were seen as largely binding by prosecutors and called for prosecutors to decline certain cases at screening, charge cases in a particular way, and offer specific charges or sentences in plea offers. Prosecutors did agree that they

could disregard these rules if they could justify their reasoning to supervisors and colleagues; however, prosecutors also noted that peer pressure within each unit tended to normalize most responses.

While rules influenced decision making in specific cases, prosecutors argued that a more important influence on case outcomes was the lack of external resources. In both jurisdictions, a lack of court resources (i.e. a limited number of courtrooms; not enough judges, clerks, and court reporters to staff all courtrooms; closing of courtrooms mid-day or mid-week) was expressed as a persistent problem facing prosecutors. In Southern County, the lack of courtroom space or the continuance of cases due to a lack of space required prosecutors to charge cases differently, to continually re-evaluate and change plea offers, and in some instances, to simply dismiss cases to ensure a high volume of cases were disposed of before trial. Prosecutors described a process of prioritizing in which cases were ranked from strongest to weakest (based on evidence, offense severity, victim cooperation, time since initial filing, etc.), which changed the threshold of what prosecutors were willing to accept or dismiss. According to some, this resulted in prosecutors making decisions that they would not otherwise make. Moreover, the decision of what to do on a particular case was often outside of the control of an individual prosecutor; rather, when resource constraints required a re-evaluation of cases, all cases were evaluated by the unit as a whole and the unit decided which cases to dispose of. In Northern County, the lack of court resources appeared to affect only the screening and charging decisions; since the office knew that court resource constraints prevented it from as many cases as they would otherwise think appropriate, prosecutors worked harder to evaluate cases for declination and deferral at screening.

Prosecuting cases relies on a web of relationships with other justice system actors – law enforcement, defense attorneys, judges. Of primary concern in both jurisdictions was the

relationship between prosecutors and law enforcement officers and the pressure law enforcement officers often applied to prosecutors to accept cases. Prosecutors at all experience levels admitted that, in some instances, they succumb to the pressure from law enforcement and accept weak cases they would not otherwise accept. Prosecutors also acknowledged that the law enforcement officer assigned to a case impacted the way a case was handled in very practical ways; for example, if an officer was not very good at testifying on the stand, prosecutors may seek to dispose of a case early through a generous plea offer in order to avoid having an officer testify. Both jurisdictions have also been affected by changes in the largest municipal police departments in each county, with relationships deteriorating somewhat due to a change in law enforcement leadership. According to all respondents, the quality of information and the quality of cases coming from the police department has deteriorated due to a decrease in law enforcement emphasis on investigations. The result of changes has been an increase in cases declined for prosecution, pended for additional information, or dismissed due to poor follow-up investigation.

The particular judge assigned to a case had limited impact on prosecutorial decision-making. In Southern County, prosecutors argued that the judge did not affect outcomes primarily due to a particular feature of the court structure, in which judges rotated through the county every month and cases were scheduled for trial before the judge was assigned. In contrast, in Northern County, each unit was assigned to a specific courtroom and appeared before the same judge for roughly one year before the judge was rotated out. Some prosecutors acknowledged that, as a result, prosecutors tailored screening, charging, and plea offer decisions based on the judge – e.g. rejecting cases that the specific judge would likely not find serious, increasing or decreasing charges to ensure the judge would impose a particular sentence, or offering a plea based on what the judge was likely to find acceptable.

#### *4.1.3 Inconsistency and Variation in Approach Are Common*

Prosecutors who participated in the focus groups expressed a mixture of concern about consistency. Prosecutors were generally confident that the combination of the unit organization and the supervisory and communication practices within units served to adequately attenuate inconsistency, but they were also accepting of the idea that a certain degree of inconsistency is both inevitable and desirable. Ratings by the broader sample of prosecutors who responded to the general survey were less mixed. Large majorities considered achieving consistency in *outcomes*—both within and across units—to be an important objective for defining office-level success and nearly all agreed that there should be a great deal of consistency across prosecutors in the case-specific factors that influence decision-making.

There was, however, a great deal of variability in opinions and outcomes across prosecutors. In the general survey, prosecutors displayed widely divergent views about the goals of the criminal justice system, charging philosophies, and plea bargaining strategies. These differences in views accounted for some of the variation in screening, charging, and plea offer decisions in hypothetical cases. Greater variation among prosecutors was observed for screening decisions in actual cases, with the ranges of acceptance rates for individual prosecutors varying widely for nearly all offense types. In analyses of screening decisions in Northern County, prosecutor-level characteristics explained roughly 10 percent of the variance in case outcomes. In some instances, prosecutor experience – either tenure as prosecutor or familiarity with a particular offense type – affected opinions and outcomes; in other instances, such variation was not explained by any measured prosecutor characteristic.

The difference between the high degree of consistency in the screening judgments in responses to the factorial survey and the greater variability in outcomes among prosecutors screening actual

cases is interesting. It suggests that the factorial survey responses may be closer to what the prosecutors believed would be the ideal responses, unconstrained by contextual influences. If so, it could be that a primary source of inconsistency in prosecutors' decision making in actual cases may be found in how prosecutors respond to the pressures of contextual circumstances, rather than how they evaluate case characteristics.

## 4.2 Continuing Challenges

### *4.2.1 External Resources*

A significant challenge facing prosecutors' offices is the lack of resources. Prosecutors often struggle with securing adequate resources within their own offices for maintaining staffing levels, updating technology, and investigating cases. Often overlooked, however, is the impact that external resources – primarily court resources – may have on the prosecution process. While not entirely constrained by resources, prosecutors clearly see the lack of adequate court resources as limiting their ability to fully prosecute cases. Moreover, in several instances, resource constraints force prosecutors to dismiss cases or reduce plea offers although they feel such decisions are not the appropriate or right decisions.

Addressing this challenge may be beyond the ability of any individual district attorney. In Northern County, the solution has been to shift internal resources to the screening decision and the diversion of cases out of the system. Stricter screening procedures result in lower acceptance rates which alleviate some of the pressure in courtrooms; working with outside agencies to develop and implement programs can also help divert cases away from courtrooms. In Southern County, the solution has been to 'roundtable' cases. When court resource constraints begin to affect case flow, individual units evaluate cases to determine which cases are the best candidates for dismissal, decreases in plea offers, or continuance for trial.

Both solutions work to ensure that the most important cases move forward and both solutions have benefits. In Northern County, the stricter screening process may produce more efficient outcomes as the office expends fewer resources on cases that may ultimately necessitate a dismissal. In Southern County, the use of roundtables may produce more consistent outcomes as the office considers the totality of cases in making decisions and weighs the relative merits of cases against each other.

#### *4.2.2 Training*

District Attorneys also struggle with training new prosecutors who must learn everything from practical skills, such as filling out paper work or properly addressing the court, to more nuanced skills, such as evaluating evidence and crafting the appropriate plea offer. At the same time, new prosecutors must be ‘normalized’ to ensure that their attitudes conform to office philosophy and the outcomes in their cases are consistent with those of their colleagues.

District Attorneys can address this challenge in several ways – by having new prosecutors ‘shadow’ more senior prosecutors, by having supervisors review the decisions of new prosecutors, by creating training and orientation periods for new prosecutors. In Southern County, the solution has been to create a unit comprised solely of new prosecutors who handle only misdemeanor cases for six to eighteen months and are supervised closely by an experienced prosecutor. The idea is to teach new prosecutors how to work independently, to give them extensive courtroom experience, and to allow them to explore the use of discretion; after new prosecutors are transferred to felony units, they are then normalized through unit-specific rules, greater interaction with colleagues, and roundtables in which they must justify and debate their decisions with colleagues. In Northern County, the solution has been to create general crimes units comprised of both new and experienced prosecutors who handle both misdemeanor and felony cases. The idea is to normalize new

prosecutors to the guiding philosophy of the office and to teach them the unit-specific rules and expectations right away; new prosecutors still learn to work independently, gain extensive courtroom experience, and explore the use of discretion, but do this largely with more experienced mentors.

Again, both solutions work to ensure that prosecutors learn to balance independence with office norms. In Southern County, the approach is to allow independence to grow and then teach prosecutors to fit decisions to office policies and priorities. In Northern County, the approach is to teach prosecutors to fit decisions to office policies and priorities and then allow prosecutors to explore their independence within those constraints.

#### *4.2.3 Balancing Consistency and Flexibility*

District Attorneys also face the challenge of ensuring consistency in approach and outcomes within an environment imbued with significant discretion. Training can help to attenuate differences in philosophy that could translate into differences in approach and outcome. Specific rules for screening cases, charging cases, dismissing cases, and plea offers can ensure uniform outcomes across cases and prosecutors. Yet, the complexity of cases requires flexibility. Moreover, within an environment of constrained resources, such flexibility may not only be desirable but necessary.

In Southern County, the solution has been to rely largely on roundtabling as a mechanism to ensure consistency in both approach and outcomes. In some instances, decisions in cases are made by the entire unit during roundtabling sessions; all members of the unit discuss the specific charges to file, the plea offer to make, or whether a particular case should be dismissed. The office also relies on the most experienced prosecutors within any unit to do all screening; thus, a small number of prosecutors do all screening, and prosecutors perceived a noticeable increase in consistency in screening decisions. Finally, the horizontal prosecution of cases within the drug unit in Southern



County ensures a certain level of consistency since prosecutors see the decisions of their colleagues throughout the processing of all cases. In Northern County, the solution has been to rely largely on training, peer pressure from colleagues through informal discussions, and unit supervisors to communicate a philosophy and goals of prosecution. The district attorney also uses the office's case management system to routinely examine case outcomes with unit managers.

While both solutions work to ensure consistency, it appears that the approach in Southern County produces a greater level of consistency in decisions across prosecutors. The routine discussion of cases and requirement that prosecutors justify their decisions to colleagues tends to create similar outcomes. The lack of formalized discussions about cases in Northern County appears to create greater variation in outcomes across prosecutors.

#### 4.3 Limitations

While these analyses provide a necessary understanding of prosecutorial decision-making, there remain several limitations to the research. First, the analyses rely on two fairly large prosecutors' offices. The majority of prosecutors' offices in the United States are not nearly as large as those in Southern and Northern Counties. Thus, the decision-making processes, the constraints on decision-making, and the attitudes prosecutors express about their roles in the criminal justice system may vary greatly from those of smaller (or larger) prosecutors' offices. Future research should explore such issues in different sized offices.

Second, the analyses of actual case outcomes rely on a very limited set of covariates and outcomes. The analyses in Northern County, for example, lack any measures of evidence strength, victim/defendant relationship, or other factors potentially associated with outcomes (e.g. weapons use, defendant criminal history, etc.); moreover, they are limited to an examination of screening, charging, and dismissals, lacking any ability to examine plea offers or sentence recommendations.

In Southern County, the analyses of administrative data are limited to just three types of felonies and contain no information on prosecutors. As such, the study is limited in its ability to determine what case-level, prosecutor-level, and contextual variables affected case outcomes. Future evaluations of prosecutorial case outcomes should seek to include additional covariates, particularly measures of evidence strength and prosecutor-level factors, that may be associated with variation in outcomes across several stages of the prosecutorial process.

Third, the study relies on a very small subsample of prosecutors in Northern County. Response rates to focus group requests, factorial surveys, and the general survey were very low in Northern County. Consequently, it was not possible to compare results across jurisdictions or to compare responses on the general survey to factorial survey responses. Future research should seek to ensure comparative analyses are possible in order to better explore the influence of structural differences or office policies on prosecutors' attitudes and decision-making processes.

Finally, influential contextual factors were identified in this study through qualitative analysis of a limited number of individual interviews and focus group discussions in two jurisdictions.<sup>39</sup> The insights gained from these analyses provide a rich source of hypotheses for further study, but it is not clear how well these findings might generalize across offices and circumstances. It remains to develop objective measures of these factors, so that future research can begin to quantify and assess the prevalence of their influence.

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<sup>39</sup> A total of seven individual interviews and 10 focus group sessions.

#### 4.4 Conclusion

Prosecutors make a multitude of inter-related decisions throughout the course of a case. How they make these decisions is not straightforward; rather, it is influenced by case-level factors, several internal and external constraints, and a balancing of several practical goals of prosecution. Understanding the black box in which prosecutorial decision-making exists requires further evaluation of this multitude of factors and the contexts in which prosecutors make decisions.

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## Dissemination of Research Findings

### Presentations

“Prosecutorial Decision-Making: A Multi-Site Study of the Factors Affecting Prosecutors’ Decisions,” Don Stemen, American Society of Criminology Annual Meeting. San Francisco, CA, November 2010.

“Balancing Strength of the Evidence and Contextual Constraints: A Multi-Method Study of Factors Affecting Prosecutors’ Decisions,” Bruce Frederick and Don Stemen, American Society of Criminology Annual Meeting. Washington, DC, November 2011.

“Contextual Constraints on Prosecutorial Discretion: The Effects of Policies, Resources, and Relationships on Prosecutors’ Decisions,” Don Stemen and Bruce Frederick, American Society of Criminology Annual Meeting. Washington, DC, November 2011

“Variation in the Screening, Charging, and Plea Bargaining Strategies of Prosecutors,” Don Stemen, American Society of Criminology Annual Meeting. Chicago, IL, November 2012.

### Vera Institute Web Site

This technical report, a summary report, and four podcasts are available via the Vera Institute of Justice web site at [www.vera.org](http://www.vera.org).

#### *Reports*

Bruce Frederick and Don Stemen, *The Anatomy of Discretion: An Analysis of Prosecutorial Decision Making*. New York: Vera Institute of Justice, 2012. Available at <http://www.vera.org>.

Bruce Frederick and Don Stemen, *The Anatomy of Discretion: An Analysis of Prosecutorial Decision Making—Technical Report*. New York: Vera Institute of Justice, 2012. Available at <http://www.vera.org>.

#### *Podcasts*

“The Anatomy of Discretion, Part I of IV, An Interview with Don Stemen, PhD, Assistant Professor, Department of Criminal Justice, Loyola University Chicago.” *Vera Voices* [Video podcast series]. Available at <http://www.vera.org>.

“The Anatomy of Discretion, Part II of IV, An Interview with Anne J. Swern, First Assistant District Attorney, Kings County, NY, District Attorney’s Office.” *Vera Voices* [Video podcast series]. Available at <http://www.vera.org>.

“The Anatomy of Discretion, Part III of IV, An Interview with Judge Theodore A. McKee, U.S. Court of Appeals for the Third Circuit.” *Vera Voices* [Video podcast series]. Available at <http://www.vera.org>.

“The Anatomy of Discretion, Part IV of IV, An Interview with Anthony Thompson, Professor of Clinical Law, NYU School of Law.” *Vera Voices* [Video podcast series]. Available at <http://www.vera.org>.

### **Journal Articles**

Don Stemen and Bruce Frederick. Rule, Resources, and Relationships: Contextual Constraints on Prosecutorial Decision Making. Scheduled for publication in the *Quinnepiac Law Review*, November, 2012.

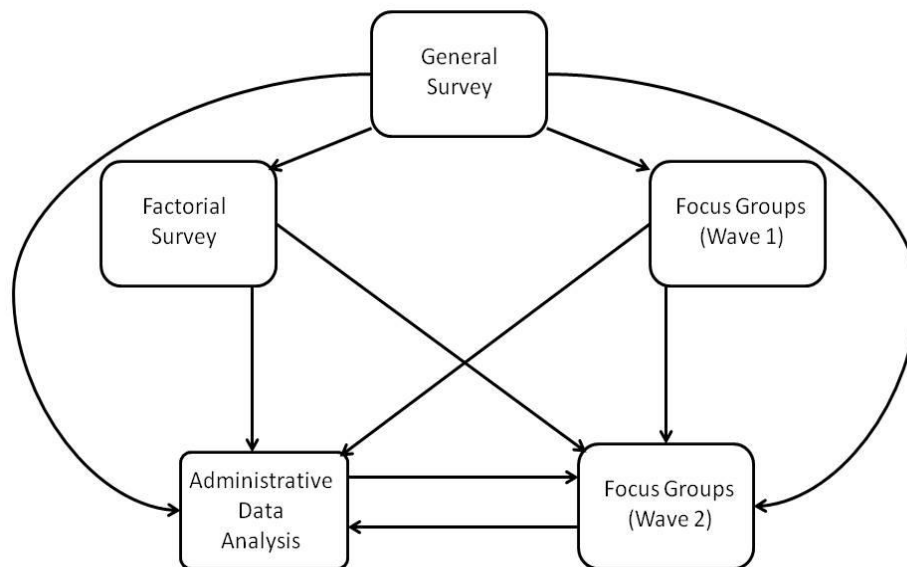
## Appendices

## Appendix A: Methods

Much of the material presented in this appendix also appears in various locations throughout the body of the text as introductory explanations for the associated analyses. It is reproduced here to provide a methods overview in a single location, with certain supplemental material added for additional explanation.

As noted throughout the report, this study used a multi-method approach, relying on both quantitative and qualitative methods to examine prosecutorial decision making in Northern and Southern Counties. These included: two waves of interviews and focus groups, a general survey, a factorial survey, and an analyses of administrative data (Figure 1-1).

**Figure A-1 Overview of Research Methods**



The arrows in the diagram depict the influence of each project component on the design and implementation of subsequent components. Administrative data analysis began before Wave 2 and continued afterward, so it both influenced and was influenced by the Wave 2 focus groups.

## A.1 Interviews and Focus Groups

Two waves of interviews and focus group sessions were conducted in each of the research sites. Individual interviews were conducted with the district attorney and deputy district attorneys (deputies) in each site; focus group interviews were conducted with ADAs and unit managers. The first wave of interviews and focus groups focused primarily on contextual conditions and circumstances that influence decision making: goals of prosecution and guiding philosophies; formal and informal policies and practices; relationships with police, defense attorneys, and judges; relationships with colleagues within the prosecutor's office; resource constraints and the need for efficiency; and processes that promote adherence to policy and consistency in decision making, such as training, supervision, mentoring, and informal communication. The second wave of interviews and focus groups focused primarily on case-specific factors that influence decision making: strength of evidence, seriousness of the instant offense, defendant's criminal history, and special aggravating or mitigating circumstances. The same broad questioning guides were used for individual interviews and focus groups in both counties; however, the order and emphasis of specific topics were allowed to vary from one session to another, according to the dynamics of group discussion and the priorities of individual interviewees.

In Southern County, individual interviews were conducted with the DA and the deputy in both the first and second waves. Focus group participants in Southern County were divided by length of experience in order to reduce the likelihood that junior level prosecutors might be unduly reticent in the presence of their supervisors or other more experienced prosecutors. These groups included those prosecutors with one year or less experience as a prosecutor, those with more than one year but less than 10 years experience as a prosecutor, and unit managers. Efforts were made to include the same prosecutors in both the first and second waves of focus groups. Among prosecutors with

one year or less of experience, the same six individuals participated in both the first and second waves. Among those with more than a year and up to ten years of experience, eight individuals participated in the first wave and five participated in the second wave. Seven unit managers participated in the first wave focus group and five of these seven participated in the second wave focus group.

In Northern County, the first wave included individual interviews with the DA and a deputy in charge of administration, as well as a combined interview with two deputies. There were not enough participants in Northern County to divide focus groups by length of experience. Instead, first wave focus groups were conducted with five unit managers and five ADAs responsible for prosecuting a variety of different types of cases (general crimes, domestic violence, drugs, weapons). The second wave focus groups were conducted with seven unit managers and five ADAs, again responsible for prosecuting a variety of different types of cases. No individual interviews were conducted in the second wave in Northern County.

The feedback received from prosecutors was recorded as field notes. To analyze these data we classified field notes by type of respondent, topic, and site. Notes were analyzed across topics and sites, noting the clustering of responses around specific issues or actors, as well as outliers and other unique data. Through iteration, we developed a number of substantive themes, some of which coincided with those highlighted by our qualitative instruments others which emerged from the interviews themselves.

## A.2 General Survey

Prosecutors in both participating jurisdictions were invited to respond to a forced-choice, paper and pencil survey. Whereas the focus group sessions allowed for clarification and in-depth exploration of beliefs and opinions volunteered by the participants, the general survey permitted

researchers to elicit structured responses to a broader array of questions and statements, and to examine the prevalence of ideas expressed in the focus groups among a broader sampling of prosecutors.

The general survey incorporated a total of 76 items, organized in eight substantive categories: 1) factors that define professional success for individual prosecutors (15 items); 2) factors that define success for the district attorney's office (19 items); 3) the influence of relationships among prosecutors, police, defense attorneys, and judges on decision making (10 items); 4) resource and policy constraints (13 items); 5) principles that guide screening decisions (6 items); 6) principles that guide the development of plea offers (8 items); 7) general goals and functions of the criminal justice system (9 items); and 8) training and oversight (16 items). Responses to all but two of the items were ratings on five-point scales that reflected either perceived frequency of occurrence, degree of agreement, or importance, as appropriate. Responses to the remaining two items involved categorical choices rather than quantitative ratings. The survey instrument was accompanied by a background questionnaire that captured age, race, ethnicity, gender, and length of respondents' experience as defense attorneys and prosecutors. Copies of the complete survey instrument, the instructions to respondents, and the background questionnaire are included in Appendix D (General Survey Instrument).

In Southern County, responses were received from 74 out of a total of 78 prosecutors for an overall response rate of 95 percent. Excluding the district attorney, the deputy district attorneys, and juvenile court prosecutors, the sample analyzed for this report included 65 responses from a pool of 69 prosecutors for a response rate of 93 percent. In Northern County, responses were received from 81 out of a total of 135 prosecutors for an overall response rate of 60 percent. Excluding the district attorney, the deputy district attorneys, and juvenile court prosecutors, the

sample analyzed for this report included 62 responses from a pool of 93 prosecutors, for a response rate of 67 percent.

Preliminary analyses found substantial variation among respondents in the average levels and variability of their ratings. Some respondents tended to select ratings toward the upper end of the scale for most items (“yea-sayers”). Some others tended to select ratings toward the lower end of the scale for most items (“nay-sayers”). As a result, for example, a rating of 3 on a 5-item scale could be considered a low rating for some respondents but a high rating for other respondents. In addition, due to floor and ceiling effects, respondents who consistently selected high ratings or low ratings also produced ratings with restricted variability.

To examine the consequences of these response biases, standardized responses (z-scores) were created for each item, relative to the personal means and standard deviations of each respondent’s ratings for items within each of the item categories listed above. The resulting z-scores were then grouped to create a 5-level standardized scale.<sup>40</sup> A series of analyses examined the relationships of each item with other items and with respondent age, race/ethnicity, gender, and length of prosecutorial experience, comparing results obtained using the original scaling with results obtained using the standardized scaling. For most items, the substantive interpretation of the findings would be the same, regardless of which scaling was adopted. Consequently, for ease of interpretation, this report focuses primarily on the original scaling of responses as structured in the survey instrument, but de-emphasizes items for which the results of analyses differ according to which scaling is adopted.

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<sup>40</sup> While respondent-level biases can distort the univariate distribution of responses and can attenuate relationships with other variables, the standardized scaling also has drawbacks. The adjusted responses are purely relativistic, such that a high rating on the standardized scale simply means that the respondent rated that item higher than that same respondent tended to rate other items in the same group. Thus, the standardized scaling makes it possible to more reliably “rank” items and produce more valid estimates of relationships between item responses and other variables, but it does not yield any information about the *absolute level* of agreement, perceived frequency of occurrence, or rating of importance.



Finally, principal components analyses were conducted to determine the number of underlying dimensions of response for each category of items and then identify the one to three specific items that most strongly represented the underlying dimensions within each category. Table B34 in Appendix B (Supplemental Tables for General Survey Responses) identifies the underlying dimensions in each category and lists the specific items most representative of each dimension. In the presentation of findings, selected items are used to illustrate broader summaries of the findings from analyses of the general survey responses. The items selected for illustrative purposes are ones which (a) yield consistent patterns of results regardless of whether analyses are based on the original scaling or the standardized scaling of responses, and (b) are among the items found to be most representative of a relevant underlying dimension of variation within one of the eight categories of items included in the general survey.

### A.3 Factorial Survey

#### *A.3.1 Survey Design*

The term “factorial survey” refers to an approach in which respondents are asked to make judgments about a structured set of hypothetical cases or “vignettes.” Using hypothetical cases makes it possible to systematically vary the characteristics of cases, among cases for each respondent and across respondents. Thus, structured experimental designs and balanced sampling plans of varying complexity can be introduced, permitting economical survey administration and identification of effects that might be difficult to disentangle relying on real-world observations. This technique has been widely used to research decision making and judgment formation on a variety of issues, including professional judgment, crime seriousness, sexual harassment, pregnancy, fear of victimization, ideal substance use treatment recommendations, child abuse and reporting of child abuse, drinking and driving, social welfare policy, the justice of punishment, and

police perjury (Applebaum, Lennon, & Aber, 2006; Applegate, 1997; Foley, 2000; Hunter & McClelland, 1991; Jasso, 1998; Miller, Rossi, & Simpson, 1991; R. O'Toole, A. O'Toole, Webster, & Lucal, 1997; Rossi & Nock, 1982; Taylor, 2006; Thurman, 1986; Thurman, Jackson, & Zhao, 1993; Wallander & Blomqvist, 2009).

The basic approach involves several steps leading to the construction of a packet or “deck” of vignettes for each respondent (Jasso, 2006; Rossi & Anderson, 1982; Thurman, 1987). Researchers first identify the factors hypothesized to influence respondents’ judgments and decide on the specific values of measures to be used to represent each factor (5 categories of age, for example). Then a “factorial object universe” is defined, which consists of all of the hypothetical cases formed by all possible combinations of the characteristics to be studied. The factorial object universe can be very large, ranging from a few hundred to millions of unique combinations. For example, if a survey of perceived danger posed by offenders returning from prison involved 5 conviction crimes, 6 levels of statutory class, 10 age categories, 2 categories of gender, 3 categories of race, 2 categories of ethnicity, and a 10-point risk assessment scale, then the number of unique cases in the factorial object universe would reach 36,000. Then, random samples are drawn from the vignette population. Vignettes may be sampled so as to obtain a unique sample to present to each respondent, or a smaller, fixed number of vignettes may be selected so multiple responses can be obtained to each vignette. For example, Jasso (2006, p. 343) cites a study in which 10 unique sets of vignettes were developed, each set contained 60 randomly sampled vignettes, and each set was presented to 20 different respondents. As a result of this process, each respondent receives a set of vignettes with different combinations of characteristics, but if the number of respondents is large enough, all of the characteristics of interest can be adequately represented with balanced

frequencies across combinations of conditions. Standard statistical techniques can then be applied, though both the sampling design and the analysis can be quite complicated.

Factorial survey methods produce the best coverage of the dimensions of interest when the number of potential survey respondents is large, typically from several hundred to a few thousand. For this study, though, the maximum number of potential respondents was limited to the number of prosecutors in each of the two participating jurisdictions—roughly 125 in Northern County and roughly 75 in Southern County. In addition, given prosecutor workloads, it was determined that it would not be feasible to obtain judgments for more than a few vignettes from each prosecutor. This combination of small samples of respondents and severe limits on the number of vignettes per respondent resulted in significant adaptation of traditional factorial survey methods, while still retaining some of its key features.

In this study, each participant was asked to read and respond to 10 vignettes, each of which described an arrest and the circumstances surrounding the arrest, listed the offenses charged by the police, provided a list of the evidence presented to the prosecutor by the police, and specified the age, race, gender, and criminal history of the suspect. Each vignette consisted of a base scenario (offense and evidence list) and two elements that varied systematically across vignettes – defendant criminal history and defendant race. All respondents received the same 10 base scenarios (i.e. all respondents received the same arrest offenses and evidence lists). However, each respondent's packet of vignettes was unique with respect to combinations of those base scenarios with the variable elements of defendant criminal history and defendant race.<sup>41</sup>

The base scenarios and evidence lists were selected from a standard case set developed and studied extensively by Joan Jacoby and her colleagues in the 1970s and 1980s (Jacoby et al.,

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<sup>41</sup> In order to conserve degrees of freedom in the face of a relatively small sample, the race dimension was limited to black vs. white, and ethnicity was ignored in the construction of vignettes.

1982b). The standard case set includes 30 scenarios. Reducing the number of vignettes from 30 to 10 placed some restrictions on the way case characteristics could be varied. Highest priority was given to independently varying offense seriousness and strength of evidence. This was accomplished by ranking the 30 original vignettes by offense seriousness and strength of evidence, classifying them as low, medium, or high on each dimension, and then selecting a vignette representing each the 9 combinations of offense and evidence levels. In a few cases, items were deleted from the existing evidence lists to adjust strength of evidence to the desired level. There was only one vignette among the original 30 for which the top charge was a drug offense, and that one was selected as the 10<sup>th</sup> vignette in the final design.

Strength of evidence was rated as low, medium or high using a scoring procedure based on some of the elements considered in the research underlying the development of the standard case set from which the vignettes were drawn (Jacoby et al., 1982b; Mellon, 1980). It was not possible to fully replicate the scoring procedure applied in the standard case set development, and actual strength of evidence scores are not reported in the standard case set documentation (Jacoby et. al., 1982b). An approximation based on a subset of the original items was used in this study.

Neither the initial classification of case seriousness nor the initial classification of strength of evidence could be objectively definitive. The vignettes in the standard case set were deliberately developed to be general enough to be applicable across jurisdictions. Therefore, some of the arrest offenses cited in the vignettes have no specific equivalent in state law in the state in which Southern County or Northern County is located. In those instances, classification was somewhat subjective, based on researchers' judgments as to which statutes were most like the offenses named in the vignettes. For example, an offense labeled "Felony Criminal Mischief" in the vignettes most likely corresponds to an offense classified as a misdemeanor in Southern State statutes. In addition,

because the scoring procedure used in the standard case set development could not be fully replicated, vignettes may be assigned strength of evidence levels for this study that are different from those intended in their original development. However, the purpose of this initial classification was merely to ensure relatively independent variation across offense seriousness and evidence strength, and data presented later in this section show that was accomplished.

**Table A.3-1 Factorial survey vignette descriptions**

Seriousness of Top Arrest Charge	Strength of Evidence (Design Level)		
	Low	Medium	High
<b>High-level felony</b>	<b>Vignette #1</b> -Burglary (Residential) -Assault	<b>Vignette #4</b> -Aggravated Assault with a Deadly Weapon (a pistol) -Carrying Concealed Weapon -Assault in the Third Degree (2 counts)	<b>Vignette #6</b> -Burglary (commercial) -Theft -Possession of a Stolen Vehicle
<b>Low-level felony</b>	<b>Vignette #2</b> -Robbery 2 -Conspiracy	<b>Vignette #5</b> -Robbery 1 -Conspiracy  <b>Vignette #7</b> -Possession of a Controlled Substance (Heroin)	<b>Vignette #9</b> -Forgery (4 counts) -Theft: under \$300 (4 counts)
<b>Misdemeanor</b>	<b>Vignette # 8</b> -Failure to move on	<b>Vignette #3</b> -Criminal Mischief -Criminal Trespass	<b>Vignette #10</b> -Possession of a stolen credit card -Attempted Illegal Use of a Credit Card

Only two elements of the vignettes were systematically varied: 10 criminal history scenarios, and 2 race designations (black vs. white). Suspect and victim genders were not varied, because they were integral features of some of the scenarios, and varying them without rewriting the scenarios would produce nonsensical results. Similarly, age and criminal history were confounded, because a

given list of arrest and conviction dates is only possible for persons of a certain minimum age. All respondents received the same 10 criminal history scenarios, but the pairing of criminal history lists with base scenarios was randomized across packets. Then, half of the defendants in each packet were designated as black and the other half were designated as white, but the assignment of race categories to vignettes within packets was counterbalanced across vignettes. As a result, each respondent received a packet that was unique with respect to combinations of the basic scenarios with age, race, and prior criminal history.

The resulting vignettes were reformatted to resemble a standardized arrest report. Each hypothetical report was accompanied by a questionnaire, asking prosecutors to indicate whether they would accept or reject the case for prosecution, give their reasons for rejection if applicable, specify the charges they would file initially, specify the charges to which the defendant must plead guilty in connection with a plea bargain, and indicate what sentence recommendation they would make, if any. The packet also included a questionnaire asking the respondents about some of their characteristics: age, race, gender, and professional experience in various capacities as attorneys handling criminal cases. The instructions to respondents, the survey questionnaires, and arrest report templates for each vignette are included in Appendix E.

### *A.3.2 Sample*

In Southern County, participation in the factorial survey was solicited from 67 prosecutors who had previously responded to the general survey. Sixty-two prosecutors completed the survey for a response rate of 93 percent. Each respondent answered questions about 10 different case vignettes, yielding up to 620 observations for each question. Unfortunately, the number of responses to the factorial survey received from Northern County was not adequate to reflect the variation of factors built into the survey design and was not sufficient to support valid statistical analyses of the

influences of those factors. Only 18 responses were received initially from Northern County, and a concerted follow-up effort yielded only two additional responses. Consequently, only the factorial survey data from Southern County were analyzed.

### *A.3.3 Dependant Variables*

Six dependent variables were defined for statistical modeling purposes: whether the respondent would reject the case at screening (0=accept, 1=reject), the number of filing charges the respondent listed (continuous), the rank of the statutory class of the top filing charge (ranging from 1=most serious to 11=least serious); the number of charges to which the plea offer would require a guilty plea (continuous); the rank of the statutory class of the top plea offer charge (from 1=most serious to 11=least serious); and whether or not the sentence recommendation would include a period of incarceration (0=no incarceration recommended, 1=incarceration recommended). These were designed to capture respondents' decisions across the prosecutorial process: screening, charging, plea offer, and sentence recommendation.

### *A.3.4 Independent Variables*

The three case-level independent variables emphasized in the statistical modeling were researchers' classification of the seriousness of the top arrest charges (*offense seriousness*), prosecutors' ratings of the strength of evidence (*evidence rating*), and the prosecutors' ratings of the seriousness of defendant criminal histories (*criminal history rating*). The design used in the construction of the factorial survey was intended to elicit variability of responding along each of these three dimensions and relative independence of responding across dimensions. The inter-correlations among the measures exhibit substantial independence across dimensions. The rank order correlations of criminal history rating with offense seriousness and evidence rating were non-significant and negligible (Spearman's rho = .007 and .035, respectively). The rank order

correlation between evidence rating and offense seriousness was statistically significant but small ( $\rho = .193$ ,  $p = .000$ ,  $n = 580$ ), not large enough to threaten the ability to estimate independent effects.

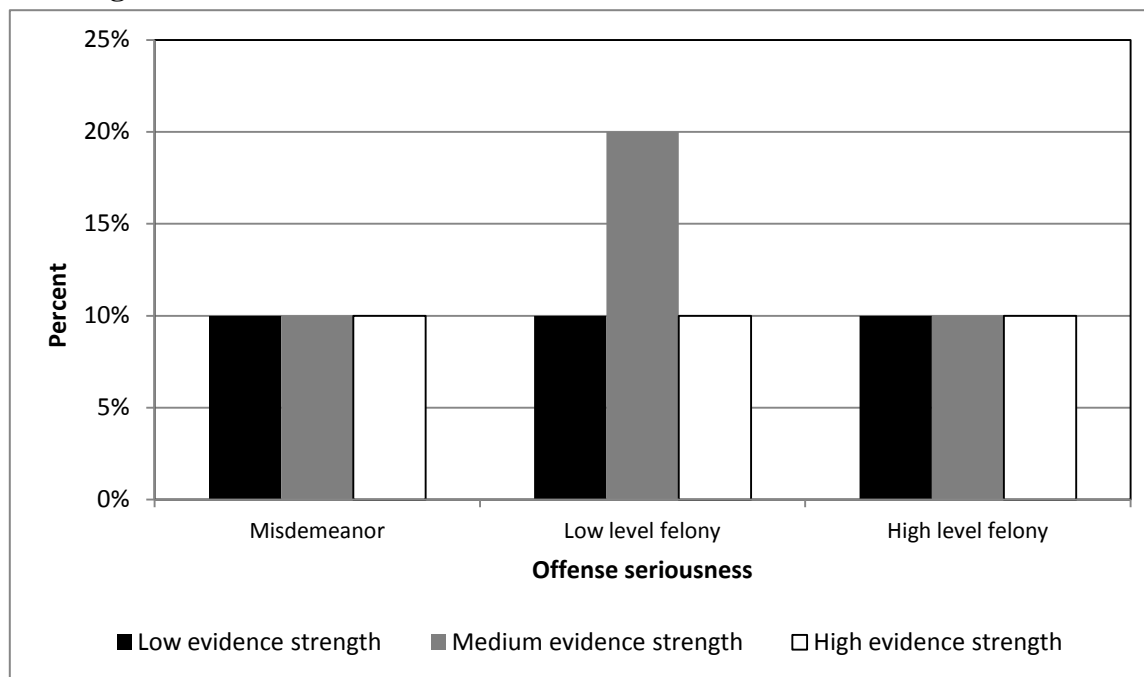
Seriousness of the top arrest charges. As noted above, vignettes were selected to reflect three levels of offense seriousness: low, medium, and high. Specific offense descriptions were translated into specific offenses within the state codes in which Southern and Northern Counties reside. Offense seriousness was then translated into a three-part categorization of offense seriousness corresponding to general offense classifications: misdemeanor, low-level felony, and high-level felony. As indicated in Table A.3-1, three offenses were coded as misdemeanor offenses, four offenses were coded as low-level felony offenses, and three offenses were coded as high-level felony offenses.

Strength of evidence. The strength of the evidence presented in each vignette was measured two different ways. In designing the survey packets, vignettes were chosen to represent levels of strength of evidence based on some of the evidentiary characteristics used in the original development of the standard case set (Mellon, 1980). In addition, respondents were asked to rate the strength of evidence for each of the vignettes they reviewed.

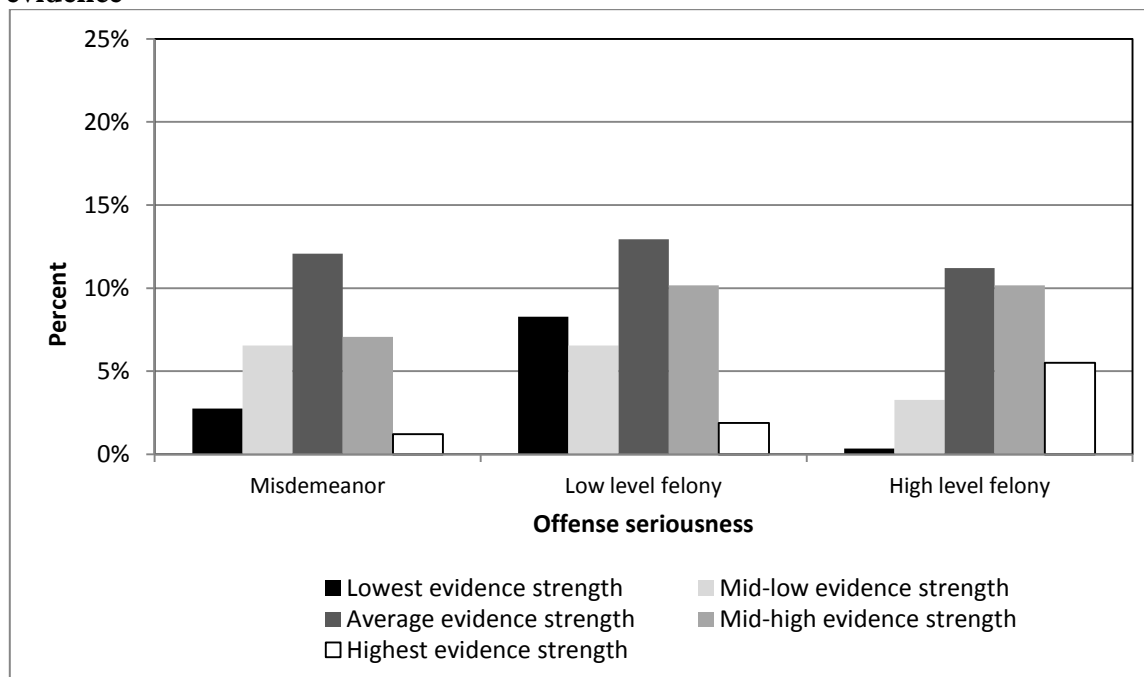
The results of the researchers' initial design classification are displayed in Figure A.3-1. By design, each level of strength of evidence is equally represented across levels of case seriousness, with one exception: relative to the other conditions, twice as many vignette-packet combinations reflected medium strength of evidence in low level felony cases. This was because the inclusion of a drug case as the tenth vignette resulted in two vignettes being assigned to that combination (see Table A.3-2).



**Figure A.3-1 Hypothetical cases, by arrest offense seriousness and researchers' classification of strength of evidence**



**Figure A.3-2 Hypothetical cases, by arrest seriousness and prosecutors' ratings of strength of evidence**

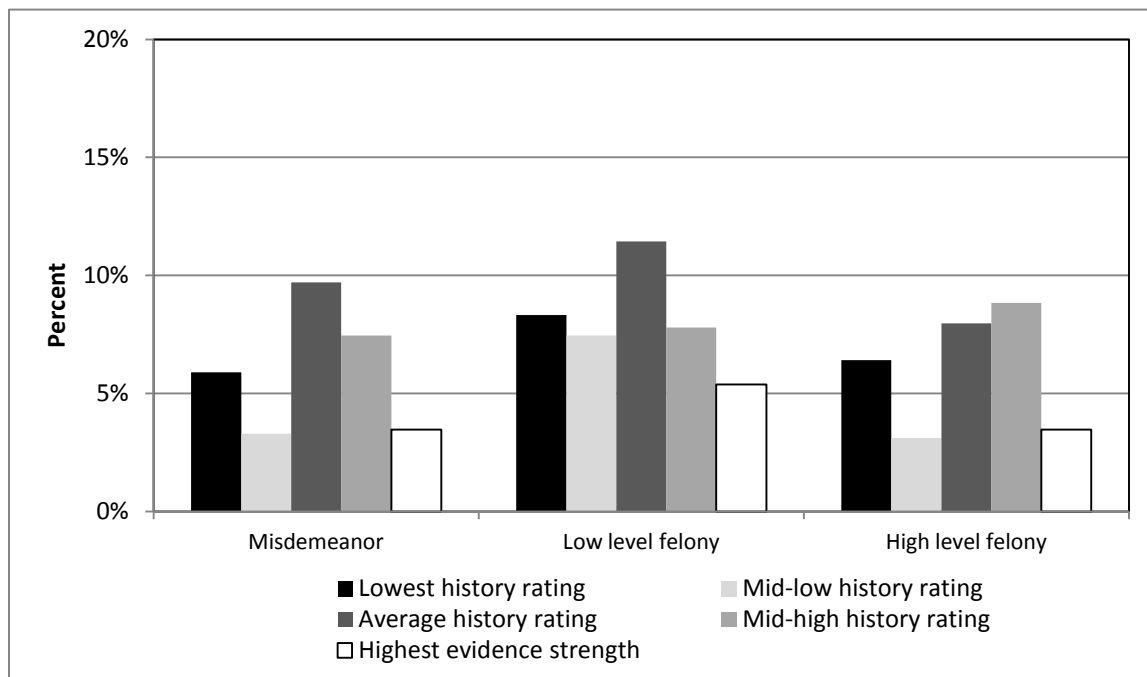


The more relevant measure for explaining prosecutors' decisions is the strength of evidence as rated by the prosecutors themselves. The correlation between the researchers' original design

classification of strength of evidence and the prosecutors' ratings was low (Spearman's  $\rho = .28$ ,  $p = .000$ ). Nevertheless, prosecutors' ratings were also fairly well-balanced across levels of case seriousness. Mean ratings on a 5-point scale were 2.91 for misdemeanors, 2.79 for low-level felonies, and 3.56 for high-level felonies, and the standard deviations within seriousness levels were 1.00, 1.18, and 1.11, respectively—slightly less than a third of their respective means and roughly a fifth of the range. For all three levels, the distributions of responses were very slightly negatively skewed, with skewness values of  $-.15$  for misdemeanors,  $-.14$  for low-level felonies, and  $-.13$  for high-level felonies. Only the prosecutors' ratings of strength of evidence were incorporated in the statistical modeling.

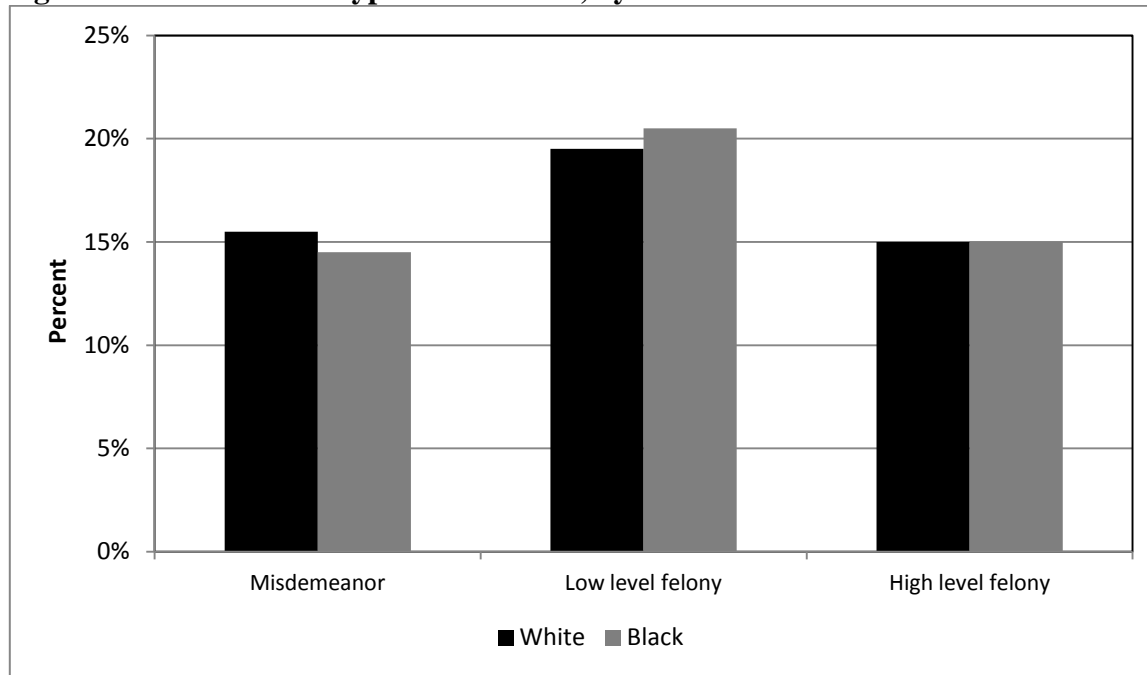
Defendant criminal history. Prosecutors also provided ratings of the seriousness of defendants' criminal histories, as reflected in the randomly assigned lists of prior arrests and convictions attached to each of the vignettes they reviewed. As intended in the design, this resulted in considerable variability in criminal history ratings within each case seriousness level (Figure A.3-3). The means and standard deviations of responses on a 5-point rating scale were quite similar across levels of offense seriousness: mean = 2.98 and standard deviation = 1.28 for misdemeanors; 2.86 and 1.31 for low-level felonies; and 2.94 and 1.30 for high-level felonies. Skewness differed slightly across levels of offense seriousness, with slightly negative skew for misdemeanors ( $-.20$ ) and high-level felonies ( $-.11$ ), and slightly positive skew for low-level felonies ( $.06$ ). At all three levels of seriousness, the standard deviations of criminal history ratings were slightly greater than 40 percent of their respective means and approximately one-fourth of the range of possible ratings.

**Figure A.3-3 Percent of hypothetical cases by offense seriousness and prosecutors' rating of defendant criminal history**



Defendant race. By construction, defendant's race (black vs. white) was counterbalanced across combinations of case scenarios and criminal history scenarios, so that the numbers of white and black defendants were equal within each level of case seriousness. A total of 78 respondent packets were produced, 67 were distributed to the prosecutors in Southeast County who had responded to the general survey, and 62 prosecutors completed their factorial survey packets. Figure A.3-4 shows that the balance of defendant's race across levels of case seriousness was maintained among the completed surveys available for analysis.

**Figure A.3-4 Percent of hypothetical cases, by defendant race and offense seriousness**

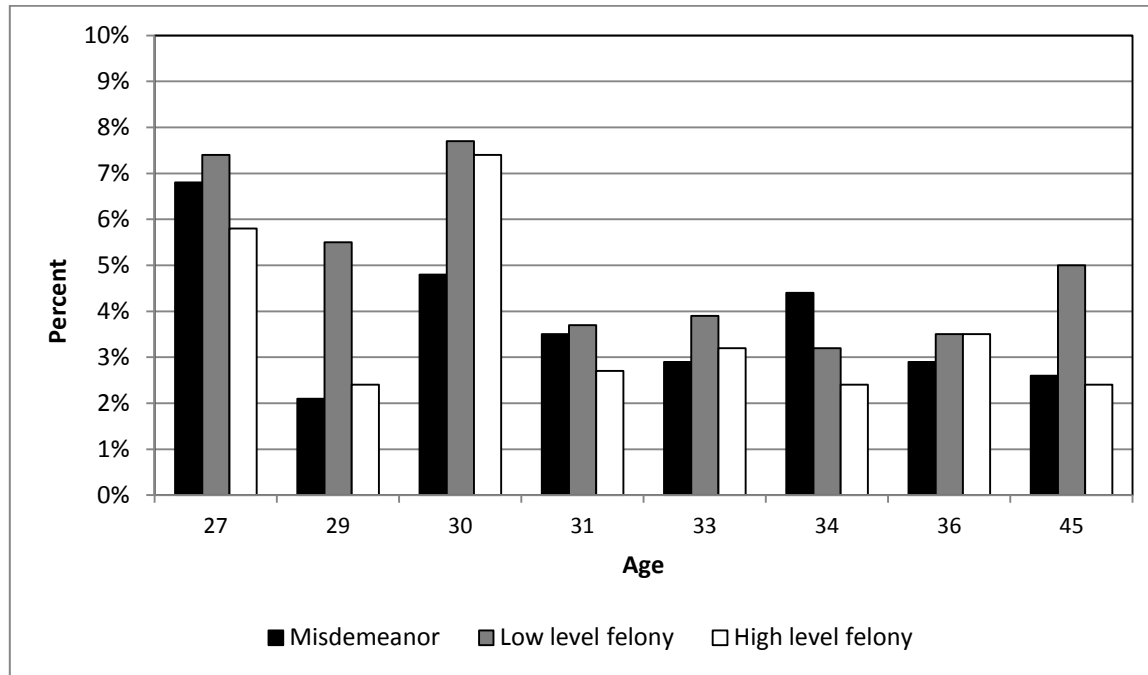


Preliminary analyses found no relationship between defendant race and any of the dependent variables examined in analyses of the factorial survey results. Consequently, in order to conserve degrees of freedom given the relatively small sample of observations available for this study, the race variable was dropped from consideration and is not included in the statistical models presented in this report.

Defendant age. Defendant age was a fixed characteristic of each criminal history scenario. Two defendant ages (27 and 30) occurred in two scenarios each, so only eight different ages (ranging from 27 to 45) were represented across the 10 criminal history scenarios (Figure A.3-5). It is likely that defendant age influenced prosecutors' ratings of the seriousness of defendants' criminal histories, and age/criminal history is necessarily treated as a single dimension in the analyses of factorial survey responses for this study. Along with the associated criminal history scenarios, defendant ages were adequately represented across the three levels of case seriousness in the 62 survey packets completed by Southeast County prosecutors. However, in the statistical analyses,

defendant age is represented only indirectly through prosecutors' ratings of the seriousness of criminal history (discussed below).

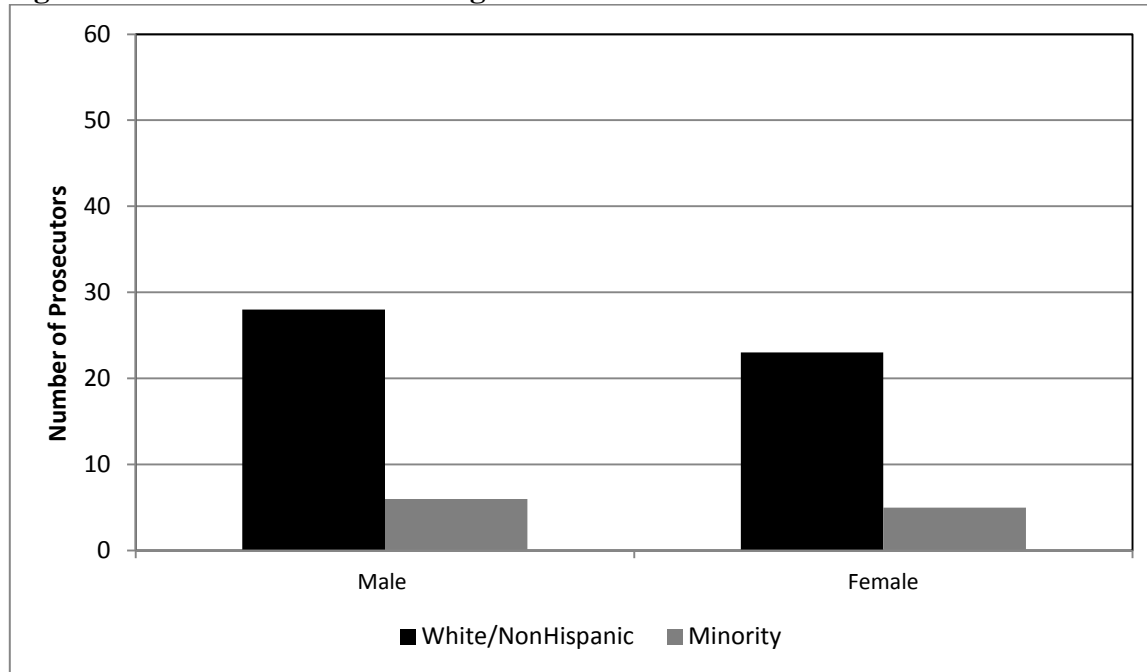
**Figure A.3-5 Hypothetical cases, by offense seriousness and defendant's approximate age at arrest**



Prosecutor race and gender. Multilevel modeling of the factorial survey data is necessary to account for the dependencies among observations due to the hierarchical structure of the data—i.e., the fact that unique cases are nested within respondents. It also makes it possible to examine the potential influence of prosecutor characteristics on case-level decisions. Potentially relevant information about the prosecutors was obtained from two sources: a brief questionnaire accompanying the factorial survey and their responses to the general survey. The brief questionnaire provided data on the prosecutors' age, race, ethnicity, gender, and prosecutorial experience. Their responses to the general survey provided information about their attitudes and beliefs concerning the fundamental purposes of the criminal justice system, the goals of prosecution, and the optimum strategies for achieving prosecutorial objectives. The distribution of race and gender among the 62 prosecutors who responded to the factorial survey is depicted in Figure A.3-6. Respondents were

about equally divided between males (55 percent) and females (45 percent). Overall, 18 percent reported nonwhite race or Hispanic ethnicity, and the percentage minority was nearly identical for males and females considered separately.

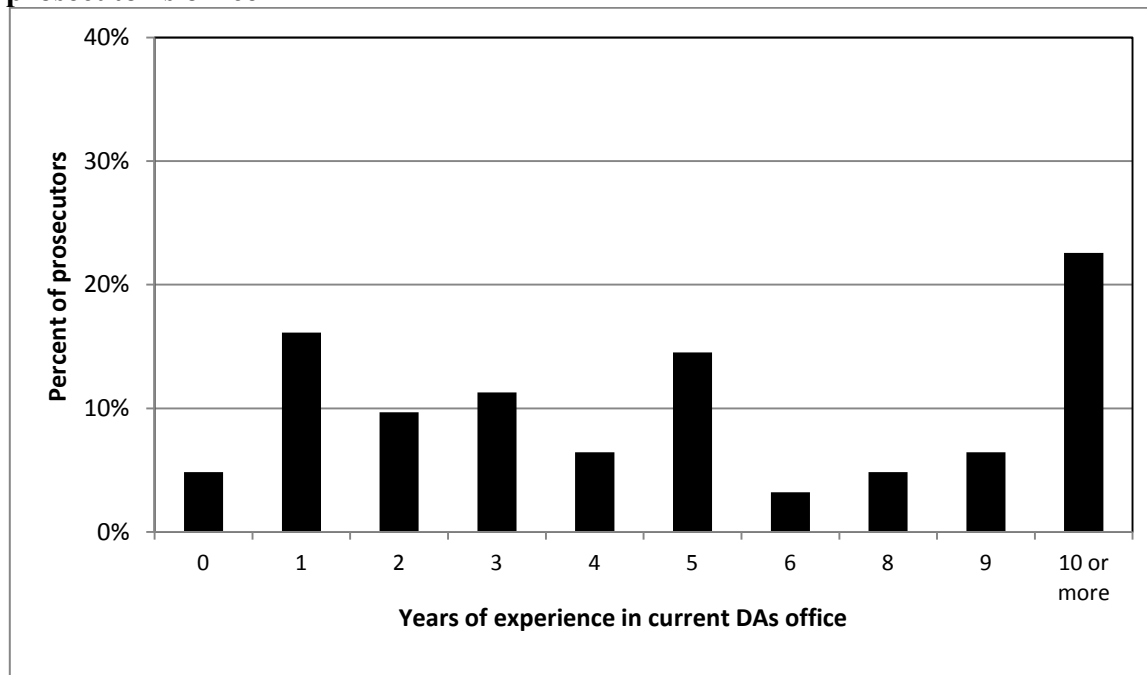
**Figure A.3-6 Prosecutor race and gender**



Prosecutor experience. A questionnaire that accompanied the factorial survey asked prosecutors to indicate how long they had worked in the current prosecutor’s office. The distribution of years of experience in the prosecutor’s office is displayed in Figure A.3-7. Values are rounded to the nearest whole year, so that, for example, a value of zero corresponds to less than 6 months’ experience, a value of 1 corresponds to the range of experience from 6 months up to but not including 18 months, a value of 2 corresponds to the range of experience from 18 months up to but not including 30 months, etc. In Figure 3.4.1-11, experience of 9.5 years or more is displayed as “10 or more,” but the analyses were actually conducted on the full distribution of years of experience. That distribution was highly skewed, with 23 percent of the respondents reporting years of experience approximately evenly distributed across the range from 10 years to 40 years. Because of the

extreme skew, prosecutors' length of experience was modeled as  $\log_{10}(\text{years of experience})$ . The mean of the logarithms was .67, with a standard deviation of .45 and a slight positive skew of .15.

**Figure A.3-7 Distribution of prosecutors' years of experience in the Southern County prosecutor's office**

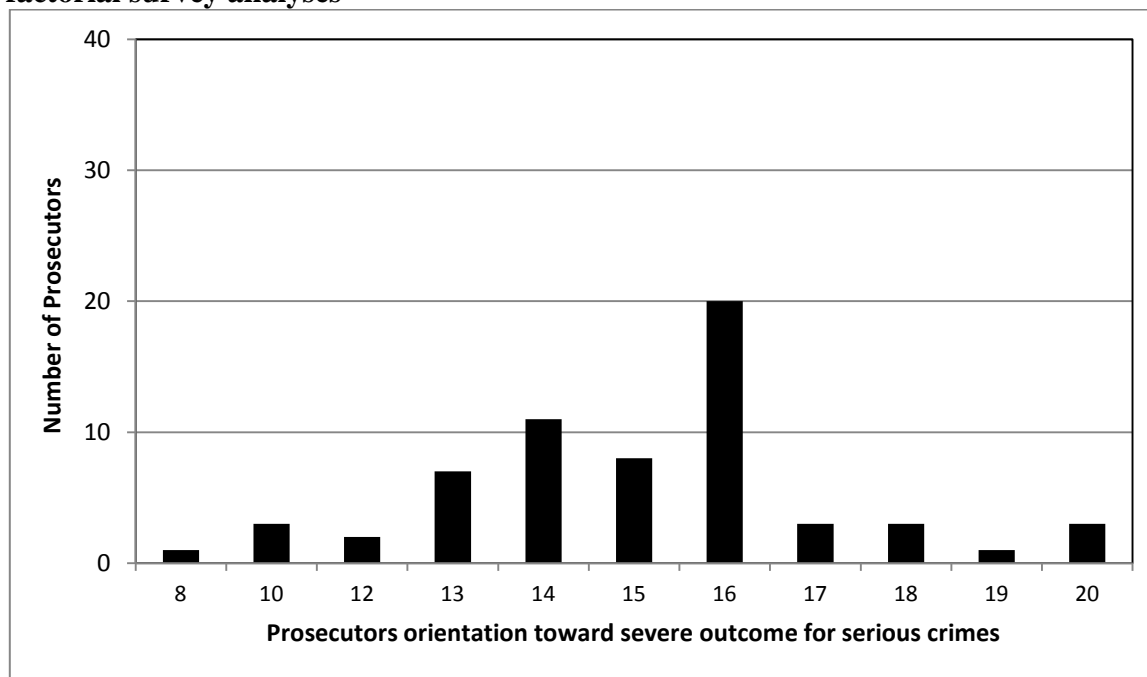


Prosecutor attitudes. We were also able to link participants' responses to the factorial survey with their responses to the general survey. This made it possible to include information about prosecutors' beliefs and attitudes in the analyses of their decisions in the hypothetical cases presented in the factorial survey. Three brief scales were developed from responses to the general survey: SEVERITY (sum of 4 items, Cronbach's alpha = .74); FAIRNESS (sum of 3 items, Cronbach's alpha = .64; and CONSISTENCY (sum of 4 items, Cronbach's alpha = .68). In addition, responses to several individual general survey items were incorporated in the analyses. Details of the scales and items are presented in the table below.

Prosecutors' orientation toward obtaining severe case outcomes was measured using a brief four-item scale (SEVERITY) derived from their responses to the general survey (see Table A.3-2

for descriptions of the component items). The scale scores were simply the unweighted sums of ratings on a 5-level scale of importance across the four component items (Cronbach's coefficient  $\alpha=.74$ ). Thus, possible scores ranged from a low of 4 through a high of 20. The scale reflects the importance prosecutors attached to achieving high rates of guilty pleas to the most serious charges and high imprisonment rates for serious crimes. Observed scores on the severity scale ranged from 8 through 20 (Figure A.3-8). Scores were concentrated between 13 and 16, with 10 percent in the range from 8 through 12, and 16 percent in the range from 17 through 20. The mean score was 15.02 and the standard deviation was 2.33, slightly less than one-fifth of the observed range. However, there was a noticeable negative skew (skewness =  $-.39$ ) and a strong clustering of values at a score of 16.

**Figure A.3-8 Distribution of prosecutors' scores on a 4-item severity scale incorporated in the factorial survey analyses**



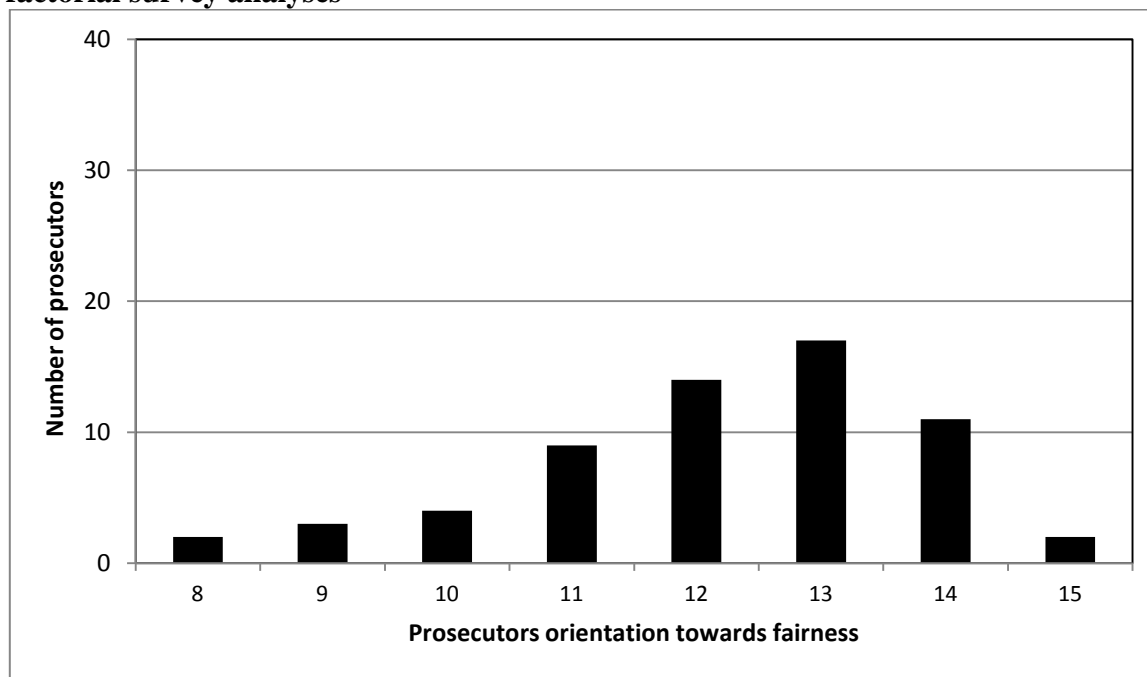


**Table A.3-2 Descriptions of the component items for severity, fairness, and consistency scales**

Scales/Items	Description
<b>SEVERITY</b> (sum of 4 items, alpha = .74)	Q1b: How important for defining your personal success is it to obtain high imprisonment rates for serious crimes?
	Q1g: How important for defining your personal success is it to obtain a high rate of guilty pleas to most serious charges?
	Q2b: How important for defining office success is it to obtain high imprisonment rates for serious crimes?
	Q2g: How important for defining office success is it to obtain a high rate of guilty pleas to most serious charges?
<b>FAIRNESS</b> (sum of 3 items, alpha = .64)	Q1o: How important for defining your personal success is fair treatment of defendants?
	Q2s: How important for defining office success is fair treatment of defendants?
	Q9e: How much do you agree or disagree that the most important function of the criminal justice system is protecting the rights of the accused?
<b>CONSISTENCY</b> (sum of 4 items, alpha = .68)	Q2k: How important for defining office success is it to obtain similar outcomes for similar cases within units?
	Q2j: How important for defining office success is it to obtain similar outcomes for similar cases across units?
	Q10c: How much do you agree or disagree that, for similar cases, there should be a great deal of consistency across prosecutors in the factors that influence the decision in a case?
	Q10g: How much do you agree or disagree that there needs to be more communication among staff to ensure consistency of outcomes?
<b>INDIVIDUAL ITEMS</b>	Q3m: How frequently are you willing to adjust your decisions in order to increase courtroom efficiency?
	Q4c: How frequently do you decline or dismiss cases when the amount of time and effort needed to obtain a conviction exceeds the benefits of the potential sentence?
	Q5a: How important is it for you to examine cases at screening in terms of their plea bargaining potential, their potential for early disposition, and their potential to reduce the number of cases in the system?
	Q8a: How much do you agree or disagree that a plea offer should include all of the charges filed, with an offer to forego additional charges if the offer is accepted?
	Q8d: How much do you agree or disagree that the charging decision should include the highest charges that could be proven at trial, with the realization that these may be reduced later through a plea bargain?
	Q7-1: Is your general approach to charging best described as “I file all possible charges”?
	Q7-2: Is your general approach to charging best described as “I file only the most serious charges possible”?
	Q7-4: Is your general approach to charging best described as “I file only the charges I believe the accused should plead guilty to”?

The fairness scale (FAIRNESS) reflects the importance that prosecutors attached to protecting the rights of the accused in general and fair treatment of defendants in the prosecution of individual cases in particular. It was constructed as the unweighted sum of ratings on a 5-level scale of importance across the three component items (Cronbach's coefficient alpha = .64; see Table A.3-2 for descriptions of the component items). Thus, possible scores ranged from a low of 3 through a high of 15. Figure A.3-9 shows the distribution of the observed scale scores for the 62 prosecutors who completed the factorial survey. The distribution was approximately normal in the range from 10 through 15, but with a noticeable negative skew overall (skewness = -.70). The mean score for fairness orientation was 12.18, with a standard deviation of 1.63—slightly more than one-fifth the observed range.

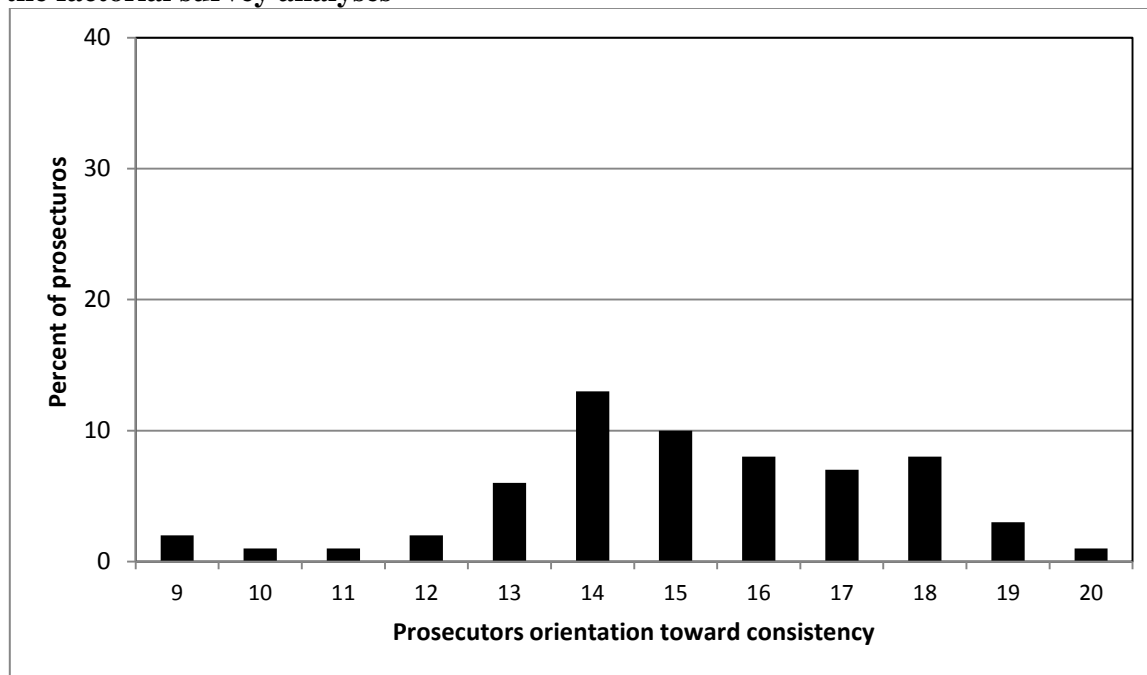
**Figure A.3-9 Distribution of prosecutors' scores on a 3-item fairness scale incorporated in the factorial survey analyses**



The consistency scale (CONSISTENCY) reflects the importance prosecutors attached to consistency across prosecutors in the criteria that influence their decisions, as well as consistency in

decision outcomes, within and across units. It was constructed as the unweighted sum of responses to four of the general survey items (Cronbach's coefficient alpha = .68; see Table A.3-2 for descriptions of the component items). Possible responses ranged from a low of 4 through a high of 20. Figure A.3-10 shows the distribution of the observed consistency scale scores for the 62 prosecutors who completed the factorial survey. Scores were concentrated in the range from 13 through 18, but with 9.7 percent of the prosecutors' scores falling in the range from 9 through 12 and 6.5 percent with scores of 19 or 20. Overall, the distribution was negatively skewed (skewness = -.41) with a mean of 15.18 and a standard deviation of 2.39—approximately one-fifth the range of the observed scores.

**Figure A.3-10 Distribution of prosecutors' scores on a 4 item consistency scale incorporated in the factorial survey analyses**



In addition to the multi-item scales described above, several individual items from the general survey were incorporated in the factorial survey analyses. They reflect respondents' opinions about various prosecutorial strategies. The items chosen were ones for which there was sufficient variability in responses to warrant testing whether these differences in prosecutors' expressed

opinions about appropriate strategies might be associated with differences in their decisions in the set of hypothetical cases. The distributions of responses to five of the items are displayed in Table A.3-3. The items are paraphrased in Table A.3-3; for the precise wording of the questions and response options, see the copy of the complete survey instrument in Appendix D.

All of the items yielded ratings on a 5-point Likert scale, but the meanings of the ratings differed for different items. For Q3m and Q4c, the ratings reflected prosecutors' judgments as to frequency of occurrence of the stated decision outcomes. For Q5a, the responses reflected prosecutors' ratings of the importance of the stated approach to plea bargaining. For Q8a and Q8d, the responses reflect the extent of agreement or disagreement with statements about plea bargaining and charging. Four of the five items in Table A.3-3 yielded mean responses near the center of the range of possible response options (2.52 to 3.11) and standard deviations approximately one-fifth of the possible range (2.89 to 1.13). However, item Q8d yielded a mean rating of 4.16, a standard deviation of .606, and skewness of -.54, representing considerably restricted variability relative to the other items.

One item from the general survey yielded categorical choices rather than quantitative ratings. That item, Q7, asked prosecutors which of four statements best described their approach to charging (see Table A.3-4). Three of the four response choices were dummy coded to create dichotomous variables (0 vs. 1), labeled *all charges* (Q7-1), *top charges* (Q7-2), and *should plead* (Q7-4) in this report. Because the resulting variables are dichotomies, their means are simply the proportions equivalent to the percentages displayed in Table A.3-4, and their standard deviations are fixed functions of the proportions. Thus, the *all charges* dichotomy represents slightly greater variability in responding (s.d. = .50) than the *top charges* dichotomy (s.d. = .40) or the *should plead* dichotomy (s.d. = .40).

**Table A.3-3 Distributions of prosecutors’ responses to general survey items incorporated in the factorial survey analyses**

General Survey Item	% (N)	Prosecutor’s Rating				
		1	2	3	4	5
Q3m: How frequently are you willing to adjust your decisions in order to increase courtroom efficiency?	%	4.8	16.1	45.2	30.6	3.2
	N	3	10	28	19	2
Q4c: How frequently do you decline or dismiss cases when the amount of time and effort needed to obtain a conviction exceeds the benefits of the potential sentence?	%	17.7	32.3	32.3	16.1	1.6
	N	11	20	20	10	1
Q5a: How important is it for you to examine cases at screening in terms of their plea bargaining potential, their potential for early disposition, and their potential to reduce the number of cases in the system?	%	14.5	21.0	38.7	17.7	8.1
	N	9	13	24	11	5
Q8a: How much do you agree or disagree that a plea offer should include all of the charges filed, with an offer to forego additional charges if the offer is accepted?	%	3.2	35.5	33.9	24.2	3.2
	N	2	22	21	15	2
Q8d: How much do you agree or disagree that the charging decision should include the highest charges that could be proven at trial, with the realization that these may be reduced later through a plea bargain?	%	0	1.6	6.5	66.1	25.8
	N	0	1	4	41	16

Note: Items are paraphrased above. For the precise wording of questions and responses, see Appendix D for a copy of the general survey instrument.

**Table A.3-4 Distribution of prosecutors’ responses to general survey question 7 – “Realizing that each case is unique, which of the following best describes your general approach to charging?:”**

Item Response	Frequency	Percentage
Q7-1: I file all possible charges that encompass the offense or offenses alleged to have been committed by the accused.	37	59.7%
Q7-2: I file only the most serious charges possible given the offense or offenses alleged to have been committed by the accused.	12	19.4%
Q7-3: I file only the charges I believe the accused will plead guilty to given the offense or offenses alleged to have been committed by the accused.	1	1.6%
Q7-4: I file only the charges I believe the accused should plead guilty to given the offense or offenses alleged to have been committed by the accused.	12	19.4%

Correlations among prosecutor-level independent variables. With race and gender excluded, 12 of the 14 prosecutor-level measures described above were considered for inclusion in the multi-

level modeling. These 12 measures proved to be relatively independent of one another. Of the 66 unique rank order correlations among the 12 measures, only 13 were statistically significant, and all but two of those had absolute values in the range from .27 to .36. These correlations were not expected to pose multi-collinearity problems in estimating model parameters, because the models tested never included more than two or three of the prosecutor-level measures at a time. One measure did exhibit strong correlations with two others: the *all charges* dichotomy had a correlation of -.60 with both the *top charges* dichotomy and the *should plead* dichotomy. However, that was simply because the three dichotomies together constituted a nearly exhaustive set (see Table A.3-3); no more than one of those was ever included in a single model.

#### *A.3.5 Analytic Approach*

In the factorial survey design adopted for this study, unique vignettes are nested within respondents, and variables are measured at both the case level and the respondent level. The appropriate approach for this design is a multi-level analysis using hierarchical modeling techniques (Raudenbush & Bryk, 2002). To conduct these analyses, we used the Hierarchical Linear and Nonlinear Modeling statistical package (HLM6; Raudenbush, Bryk, Cheong, and Congdon, 2004).

As with the initial design, the limited sample size imposed certain limitations on the analysis. HLM produces its results through iterative estimation of multivariate likelihood functions, and the estimation algorithms often will not converge on stable results for small samples, unless the models being tested are relatively simple and the underlying structure of the data is not too complex. This was exacerbated in the present study by the scaling of the dependent variables. The screening decision and the incarceration recommendation are dichotomies. The number of filing charges and number of plea offer charges ideally should be modeled as count variables. The statutory ranks of top filing charge and top plea offer charge ideally should be modeled as ordered categories.

However, these all involve nonlinear modeling techniques that require even larger samples for stable estimation. By keeping our models relatively simple, we were able to estimate multi-level binary logistic models for the rejection decision and incarceration recommendation, but we were forced to settle for estimating continuous dependent variable models for the other four outcome variables. In order to obtain dependable findings with these methods, we undertook a conservative, step by step approach to the model fitting and interpretation. We are quite confident that the effects we are reporting are reliable, although it is likely that we may have failed to discern some potentially informative interactions among case level factors and between case level and respondent level factors.

Preliminary analyses found no significant relationships between defendant race, prosecutor race, or prosecutor gender and any of the hypothetical case outcomes examined in the factorial survey analyses. Therefore, these variables were ultimately excluded from the multi-level modeling to simplify the models and conserve degrees of freedom in the face of a relatively small sample. The independent variables retained for analysis were researchers' classification of nominal case seriousness (misdemeanor arrest, low level felony arrest, or high level felony arrest), prosecutor's rating of the strength of evidence (low, medium, high), prosecutor's rating of the seriousness of defendant criminal history, the respondents years of experience in the current prosecutor's office, and the measures and items pertaining to respondents' beliefs and attitudes. As noted above, defendant age was confounded with defendant criminal history, and defendant gender was determined by the facts of the case in a given scenario, so neither of those factors was incorporated in analyses.

## A.4 Examining Case Outcomes in Southern County

### A.4.1 Data

The analyses of case outcomes in Southern County relied on individual-level administrative data collected from two sources. Data pertaining to the processing of felony cases assigned to the drug crimes unit were extracted from an automated case management system maintained by the district attorney's office. Data pertaining to felony cases assigned to the person crime unit and property crime unit were coded manually from paper case files using a structured data entry routine with pre-established response lists for the coded data fields.

Data from both sources identified unique individuals, individual complaints, individual charges within complaints, and unique "cases"—where a case was defined as a complaint-defendant combination. The drug unit data tracked the status of individual charges from intake to initial screening, through acceptance or rejection at screening, lower court processing, grand jury preparation, grand jury decision, plea offer, felony court processing, and final disposition. The person unit and property unit data collected from paper case files were less finely articulated, capturing the point at which a charge first appeared in the file and the latest point at which it appeared, for initial screening, at some undefined point after acceptance but prior to entry to upper (felony) court, at the plea offer, and at some undefined point in upper court processing following the plea offer.

Data from both sources included basic defendant characteristics (age, race, ethnicity, gender), charge details (offense type and statutory classification), reasons for dismissal, case-level disposition, statutorily defined prior record level as reported in the plea offer, prosecutors' sentence recommendations, and the (coded) identities of the assigned prosecutors. However, neither source yielded information about the characteristics of the prosecutors.



While the data coded from paper case files were less precise than the drug unit data with respect to processing stages, the paper case files yielded additional information not available for the drug cases, most notably characteristics of the victims, victim-offender relationships, victims' willingness to testify, and physical evidence cited in the police report.

The drug unit data included information on all closed felony drug cases screened by the office from May 1, 2007 through July 31, 2009. The person unit and property unit data included all closed felony cases initially forwarded from the largest urban police agency in Southern County and screened between January 1, 2007 and June 30, 2007. Homicide cases were excluded during data collection and cases in which the top charge was for kidnapping or any sex offense were excluded later during data file preparation.

#### *A.4.2 Sample*

Following several steps of data file preparation, the drug unit sample used in analyses included a total of 4,890 unique complaint-defendant level records (hereafter, cases) and 12,225 unique charge-level records. The final person unit sample included 508 unique cases and 1,118 unique charges; and the property unit sample included 658 unique cases and 1,316 unique charges. In addition, the person unit sample included 963 unique victim records and the property unit sample included 746 unique victim records.

Most analyses were conducted at the case level. In order to represent charge-level information and victim-level information at the case level, several different aggregation strategies were adopted. A charge ranking scheme was adopted, and the top charge overall and the top charge for each of several specific crime types were identified for each case at each identifiable stage in case processing. Also computed were the number of charges per case at each processing stage, and two derived measures: top charge incarceration exposure (the number of months of potential

incarceration if convicted of the top charge) and aggregate incarceration exposure (the number of months of potential incarceration if convicted of all active charges in the case). Similar strategies were adopted to determine the number of victims in each case with each of several victim characteristics.

#### *A.4.3 Measures*

Analyses were conducted for the following outcome measures at the case level: whether a case was accepted or rejected at screening (0=rejected, 1=accepted); the number of charges filed for each case accepted for screening (continuous); the statutory rank of the top filing charge (1=most serious, 11=least serious); the number of charges requiring guilty pleas in the formal plea offer (continuous); the statutory rank of the top plea offer charge (1=most serious, 11=least serious); whether the plea offer recommended a period of incarceration (0=no incarceration recommendation, 1=incarceration recommendation); and whether all charges in a case were disposed in favor of the defendant—i.e., no conviction in the case (0=not disposed of in favor of defendant, 1=disposed of in favor of defendant). Analyses were conducted examining factors associated with the *changes* between initial filing and plea offer in the number of active charges, the statutory rank of the top charge, the top charge incarceration exposure, and the aggregate incarceration exposure. In addition, an analysis of reasons for charge dismissal was conducted at the individual charge level.

Potential explanatory variables incorporated in the analyses of case outcomes typically included: four measures of defendant characteristics (age, race, gender, and a statutorily defined prior record level), five measures of case seriousness (number of intake charges, statutory rank of the top intake charge, whether the top intake charge was robbery, whether the top intake charge was burglary, and whether there were codefendants in the case); over a dozen measures of type and amount of physical evidence (for example, total number of items of evidence, number of item of evidence per

charge, presence of evidence with the potential for forensic identification, and items of evidence relating to weapons, drugs, and several other categories); and over two dozen measures of victim characteristics and victim-offender relationships (for example, victim age, race, and gender; total number of victims, number of victims willing to prosecute, and victims to whom the defendant was a stranger). These variables were culled from a much larger set of candidate variables in a series of preliminary analyses. The full set of variables potentially available for these analyses is documented in the data file codebooks archived with the data files in the National Archive of Criminal Justice Data.

#### *A.4.4 Analytical Strategy*

The influence of the above factors on case outcomes was analyzed using standard multivariate regression techniques. For most of the outcomes, we estimated standard ordinary least squares (OLS) linear regression models. For two outcomes reflected in dichotomous measures—the probability of acceptance at screening and the probability that a plea offer recommended a period of incarceration—we estimated binary logistic models. Regression analyses were conducted separately for person unit case, property unit cases, and drug unit cases.

The case characteristics reported in final regression models a small subset of the variables initially tested. A much larger set of potentially predictive factors and their interactions was tested for possible inclusion in the models. A complete list of variables tested in the both the linear and logistic regression analyses is given below. Relatively small samples were available for these analyses, limiting the number of parameters that could be estimated reliably. In addition, the set of potential predictors included subsets consisting of alternative measures of the same or similar constructs, thus presenting a high risk of multicollinearity problems. Consequently, model development proceeded in a stepwise fashion.

First, only potential main effects were entered and subjected to backward elimination processing. At each step, model parameters were examined for signs of problems in model fitting. If problems were detected, variables likely to be causing the problems were removed and the analysis was repeated. Once reliable results were achieved, variables with significance values greater than  $p = .15$  were discarded.<sup>42</sup> Then, interactions between robbery and other factors (for the Person Unit Sample), burglary and other factors (for the Property Unit Sample), and historical period and other factors (for the combined Drug Unit Sample) were tested in forward stepwise fashion.

It is well known that stepwise selection and elimination procedures are sensitive to small changes in the sample data when candidate variables are substantially intercorrelated; slight differences between samples can lead to differences in the order of selection among correlated variables. In this study that means, for example, that which among the set of measures of victim characteristics or which among the set of evidence measures is included in a final model might have been different as a result of sampling variation. Thus, for example, it is safest to interpret a significant coefficient for a given victim characteristic as an indication that something about victim characteristics or circumstances influenced the probability of non-conviction, but not to place too much emphasis on the particular measure that proved most significant in a given sample.

The values reported for the results of the logistic regression analyses are odds ratios, indicating the increase or decrease in the odds of non-conviction.<sup>43</sup> An odds ratio greater than 1 indicates an

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<sup>42</sup> This liberal inclusion criterion follows a suggestion by Hosmer and Lemeshow (2000, p. 118), who cite evidence that more stringent criteria often exclude important variables from the model.

<sup>43</sup> Odds are not probabilities. Odds are related to probabilities by the function  $\text{odds} = p/(1-p)$ . For example, if the probability of acceptance is .80, the odds of acceptance are 4-to-1 ( $.80/.20 = 4$ ). If the probability is .50, the odds are 1-to-1 ( $.5/.5 = 1$ ). The magnitude of an effect in the probability metric depends on the reference level. For example, if the probability of acceptance for some reference group is .20 (odds of .25-to-1) and the probability for some target group is .50 (odds of 1.0-to-1), then the odds ratio would be 4.0, and the ratio of probabilities would be 2.5. However, if the probability for the reference group is .50 (odds of 1.0-to-1), an odds ratio of 4.0 would imply a probability of .80 for the target group, and the ratio of probabilities would only be 1.6.

increase in the odds associate with an increase in the value of the associated predictor, and an odds ratio less than one indicates a decrease in the odds with an increase in the value of the associated predictor. For example, an odds ratio of 1.5 would reflect a 50 percent increase in the odds (not the probability) of non-conviction. An odds ratio of .50 would reflect a 50 percent decrease in the odds of non-conviction. Unlike linear regression weights, odds ratios combine multiplicatively rather than additively. For example, if the odds ratio for one predictor were 2.0 and the odds ratio for another predictor were 3.0, the combined effect of one unit increases in both predictors would be to increase the odds of non-conviction 6-fold.

## A.5 Examining Case Outcomes in Northern County

### *A.5.1 Data*

The analyses of case outcomes in Northern County relied on individual-level administrative data collected in the case management system of the district attorney's office. These data identified unique individuals, charges, and cases and featured a number of substantive data fields: offender demographics (age, race, gender), victim demographics (age, race, gender), charge characteristics (arresting agency, arrest offense, charged offense, offense disposition, charge enhancers), and prosecutor information (prosecutor ID, prosecutor unit). The data included information on all misdemeanor and felony arrest charges screened by the office between January 1, 2010 and June 20, 2011. These data were employed to generate our study sample and to track charge- and case-level outcomes.

### *A.5.2 Sample*

The initial sample included 111,704 unique arrest charges. Each charge carried a district attorney case identifier which linked all charges corresponding to a single case/defendant; in other

words, all charges with the same district attorney case identifier corresponded to the same unique case/defendant record. The sample included a total of 77,987 unique cases/defendant records (hereafter, cases). This study samples was further reduced once covariates were introduced into analytic models due to missing data for some covariates (listwise deletion was employed). The final sample included 107,374 unique arrest charges and 74,632 unique cases.

All analyses relied on the examination of cases. Since cases often involved multiple charges, a procedure was devised to categorize and track cases according to the “controlling offense” at each stage of the prosecutorial process.

To determine the controlling offense at screening, arrest charges were first ranked by offense severity according to the state’s misdemeanor and felony classes. Arrest charges were then classified into six distinct offense types (person, property, drugs, public order/public administration, weapons, driving under the influence) according to state statutory designations; cases designated by the district attorney’s office as domestic violence cases were used to create a seventh category of domestic violence cases. The arrest charge with the highest offense severity in a case was designated as the controlling offense at screening for analysis purposes. When a case contained two arrest offenses with the same offense severity but different offense types, offenses were ranked according to offense type in the following way: person (most severe), domestic violence, weapons, property, drugs, DUI, public order (least severe); when a case contained two arrest offenses with the same offense severity and the same offense type, offenses were allowed to randomly select as the controlling offense.

To determine the controlling offense after screening, a similar strategy was used. All issued charges (i.e. all charges not rejected at screening) were ranked according to offense severity and offense type as above; the issued charge with the highest offense severity in a case was designated

as the controlling offense for analysis purposes. The controlling offense after screening was then used to examine the dismissal and amendment of cases after filing.

### *A.5.3 Measures*

The analyses of case outcomes focused on measures at three stages of the prosecutorial process: screening, charging, and trial. At screening, a single outcome measure was used: case accepted for prosecution. A case was considered accepted for prosecution if any single arrest charge within the case had a status of “Issued,” “Amended,” “Re-Issued,” or “Revised” in the case management system. In other words, all arrest charges had to be rejected for a case to be considered rejected for prosecution, but any single charge accepted was sufficient for a case to be considered accepted for prosecution. The final screening decision was operationalized as a dichotomous variable (0=rejected, 1=issued).

At charging, two outcome measures were used to measure the severity and scope of charges issued: most serious arrest charge issued and number of charges reduced. These measures were used to measure outcomes only for cases that were issued; in other words, cases rejected for prosecution at screening were not included in the charging analyses (see *Analytical Strategy* below). A case was considered to have the most serious arrest charge issued if the controlling offense at screening (i.e. the most serious arrest charge screened) had a status of “Issued,” “Amended,” “Re-Issued,” or “Revised” in the case management system. This charging decision was operationalized as a dichotomous variable (0=most serious arrest charge rejected, 1=most serious arrest charge issued). The study also measured the number of charges issued. For cases involving multiple arrest charges, a measure of the reduction in the number of charges issued was created; this compared the number of charges issued to the number of arrest charges screened. If a case has fewer issued

charges than arrest charges, it was considered to have a charge reduction. The measure was operationalized as a dichotomous variable (0=number of charges not reduced, 1=number of charges reduced).

Finally, at trial, two outcome measures were used: case dismissed and most serious issued charge dismissed. A case was considered dismissed if all issued charges within the case had a status of “Charge Consolidated Into Another Case,” “Charge Dismissed but Read In,” “Discharged After Being Found Incompetent,” “Dismissed Before Initial Appearance,” “Dismissed on Courts own Motion,” “Dismissed on Defendants Motion,” “Dismissed on Prosecutors Motion,” or “Dismissed Read In” in the case management system. In other words, all issued charges had to be dismissed or otherwise disposed of without a guilty verdict for a case to be considered dismissed. The dismissed decision was operationalized as a dichotomous variable (0=not dismissed, 1=dismissed). For cases not dismissed in their entirety (i.e. not all charges were dismissed), the analyses also examined the processing of the most serious issued charge. A case was considered to have the most serious issued charge dismissed if the controlling offense after screening (i.e. the most serious charge issued) had a status of “Charge Consolidated Into Another Case,” “Charge Dismissed but Read In,” “Discharged After Being Found Incompetent,” “Dismissed Before Initial Appearance,” “Dismissed on Courts own Motion,” “Dismissed on Defendants Motion,” “Dismissed on Prosecutors Motion,” or “Dismissed Read In” in the case management system. This decision was operationalized as a dichotomous variable (0=most serious issued charge not dismissed, 1=most serious issued charge dismissed).

Several variables measuring defendant characteristics, victim characteristics, offense characteristics, and case characteristics were derived from the administrative data and were used a predictor variables in outcome analyses.



Defendant characteristics included information on demographic attributes of defendants, namely, age (in years), race (0= White, 1=Black, 2=Hispanic, 3=Other), gender (0=Female, 1=Male), and custody status (0=Not in custody, 1=In custody). Victim characteristics included similar information on demographic attributes of victims, namely, age (in years), race (0= White, 1=Black, 2=Hispanic, 3=Other), and gender (0=Female, 1=Male).

Offense characteristics included offense severity, which was coded as a categorical variable with thirteen categories (0=Ordinance violation (least serious), 13=Class A Felony (most serious)) and number of arrest offenses (0=single arrest offense, 1= multiple arrest offenses). We also measured the presence of offense enhancers – specific factors that may increase the underlying sentence for the arrest offense, such as habitual offender status, second or subsequent conviction for the same offense, presence of a weapon, or repeat domestic abuser – which were flagged by ADAs at screening; a dichotomous variable was created to operationalize the presence of any one of these enhancers (0=No enhancer present; 1=Enhancer present). Finally, for drug offenses, the type of drug was also captured as a categorical variable (0=Cocaine, 1=Heroin, 2=Marijuana, 3=Other).

Case characteristics included arresting agency. Fifty-four separate arresting agencies referred arrest charges to the district attorney’s office in Northern County; 66 percent of these arrests were made by the primary municipal police department in the county. Thus, we recoded arresting agency into a dichotomous variable based on whether the arrest was made by the primary municipal police department or another arresting agency (0=Other agency; 1=Primary municipal police department). The data also captured the name of the screening ADA. This was used to determine the ADA’s gender (0=Female, 1=Male), level of experience (in months) in the district attorney’s office, and role as a supervisor in the office (0=Not a supervisor; 1=Supervisor); an ADA was coded as a supervisor if they were either a unit leader, a deputy district attorney, or the district attorney.

Finally, the data captured the prosecution unit within the district attorney's office that screened the case; a total of nineteen separate units screened cases – fourteen specialized units that process specific types of offenses (e.g. felony drug offenses, sex crimes, gun crimes, domestic violence offenses, etc.) and five general crimes units that process all cases not handled by specialized units. The fourteen specialized units screened roughly 55 percent of cases during the study period; the five general crimes teams screened the remaining 45 percent of cases. These units were categorized into two groups based on whether the unit was specialized or a general crimes unit (0=General crimes unit; 1=Specialized unit).

Our ability to examine additional covariates of case outcomes was limited by the type and quality of available administrative data.

#### *A.5.4 Analytical Strategy*

The impact of defendant, victim, offense, and case characteristics on case outcomes was analyzed using standard statistical procedures to examine categorical data in multivariate settings. Specifically, our baseline estimations rely on a series of logistic regression models to estimate the effect of these factors on the case outcome measures described. Because specific offense types are evaluated differently (see Part 2 above), seven separate models were run, one for each offense type – person, property, drugs, public order, domestic violence, weapons, and DUI. This allowed us to examine the impact of defendant, victim, offense, and case characteristics on case outcomes varied by offense type. We further disaggregated the data to examine the impact of these factors on the three most specific offenses within each offense type. Several tables of descriptive statistics of cases at each stage of the prosecution process in Northern County are presented in Appendix C.

Because of the nested nature of the data (cases nested within prosecutors) the analyses rely on hierarchical linear modeling (HLM) procedures designed to account for the nested nature of

multilevel prosecution data. Cases screened by the same prosecutor are likely to have certain similarities; as a result, residual errors are likely to be correlated within prosecutors, violating fundamental error assumptions of OLS regression and resulting in misestimated standard errors. HLM resolves this problem by incorporating into the statistical model a unique random effect for each prosecutor (Raudenbush & Bryk, 2002, p. 100). HLM also allows the modeling of the heterogeneity of regression coefficients that can occur when relationships between individual characteristics and outcomes vary across aggregate units. For example, the effect of being a minority defendant may differ across prosecutors. HLM allows for modeling this variation by allowing both slopes and intercepts to vary across prosecutors.

A two-level hierarchy represents the current data, with individual cases nested within prosecutors. All variables were centered on their grand means and results reported are based on unit-specific models using robust standard errors (Raudenbush & Bryk, 2002: pp. 276–280). All models estimate the probability of a case being accepted for prosecution at screening using HLM 6 (Raudenbush et al., 2004) with the Bernoulli sampling model and a logit link function.

The analysis begins by estimating unconditional models for each offense type – person, property, drug, public order, domestic violence, weapons, and DUI offenses. These models produce estimates of the relative amount of screening variation that occurs at the case- and prosecutor-levels of analysis, providing insights into the relative importance of the prosecutor in screening decisions. Case-level predictors are then added to the models to assess the degree to which prosecutor-level variations are accounted for by compositional differences in cases. This provides information on the extent to which case-level factors vary significantly across prosecutors. Two-level hierarchical models are then estimated to investigate the direct effects of specific prosecutor-level influences on screening decisions.

*A.6 Summary of Administrative Data Obtained from Northern and Southern Counties*

**Table A.6-1 Administrative data available for analysis, by participating jurisdiction**

Data available for analysis	Northern County (All felonies and misdemeanors)	Southern County	
		Felony person and property crimes	Felony drug crimes
<b>Decision outcomes</b>			
Screening	X	X	X
Charging	X	X	X
Dismissal (charge- and case-level)	X	X	X
Plea offer		X	X
Sentence recommendation		X	X
Final case disposition	X	X	X
<b>Case characteristics</b>			
Arresting agency	X	X	X
Prosecuting attorney	X	X	X
Number of charges	X	X	X
Types of offenses	X	X	X
Seriousness of offenses <sup>a</sup>	X	X	X
Types and amounts of evidence <sup>b</sup>		X	
Codefendants		X	
Reasons for dismissal		X	X
Defendant criminal history		X	X
Pretrial custody status	X		
Defendant age	X	X	X
Defendant race	X	X	X
Defendant gender	X	X	X
Victim age	X	X	
Victim race	X	X	
Victim gender	X	X	
Victim-offender relationships		X	

<sup>a</sup> Multiple measures of seriousness

<sup>b</sup> Multiple measures of evidence, but no information concerning quality or relevance of evidence

## Appendix B: Supplemental Tables for General Survey Responses

Item	N	Frequency					Percentage					Mean	SD
		1	2	3	4	5	1	2	3	4	5		
High conviction rates	126	8	21	45	43	9	6.3%	16.7%	35.7%	34.1%	7.1%	3.19	1.01
High imprisonment rates for serious crime	126	6	13	35	50	22	4.8%	10.3%	27.8%	39.7%	17.5%	3.55	1.048
Low dismissal rates after charges are filed	127	13	43	37	23	11	10.2%	33.9%	29.1%	18.1%	8.7%	2.81	1.118
Low declination rates	118	32	53	29	2	2	27.1%	44.9%	24.6%	1.7%	1.7%	2.06	.86
High deferral/diversion rates for eligible defendants	126	15	32	50	24	5	11.9%	25.4%	39.7%	19.0%	4.0%	2.78	1.019
High success/completion rates for defendants deferred/diverted	126	21	30	26	32	17	16.7%	23.8%	20.6%	25.4%	13.5%	2.95	1.308
High rate of guilty pleas to most serious charge(s)	126	7	15	38	52	14	5.6%	11.9%	30.2%	41.3%	11.1%	3.4	1.021
Quick resolution of easy or straightforward cases	126	7	16	31	50	22	5.6%	12.7%	24.6%	39.7%	17.5%	3.51	1.094
Low rate of defendant success on appeal	127	11	20	34	39	23	8.7%	15.7%	26.8%	30.7%	18.1%	3.34	1.197
Good relationships with law enforcement officers	127	1	5	50	47	24	.8%	3.9%	39.4%	37%	18.9%	3.69	.85
Victim satisfaction with the outcome of the case	125	0	5	47	47	26	0.0%	4.0%	37.6%	37.6%	20.8%	3.75	.829
Respect of your colleagues	127	1	1	20	50	55	.8%	.8%	15.7%	39.4%	43.3%	4.24	.801
Respect of your supervisors	126	1	2	21	43	59	.8%	1.6%	16.7%	34.1%	46.8%	4.25	.846
Good relationships with defense attorneys	127	2	11	59	42	13	1.6%	8.7%	46.5%	33.1%	10.2%	3.42	.849
Fair treatment of defendants	127	0	0	5	22	100	0.0%	0.0%	3.9%	17.3%	78.7%	4.75	.519

1 = Unimportant; 2 = Of little importance; 3 = Moderately important; 4 = Important; 5 = Very important

**Table B2: Response distributions for General Survey Question 2 – “Please indicate how important you believe the following outcomes are to the District Attorney in evaluating the overall success of the office in which you currently work:”**

Item	N	Frequency					Percentage					Mean	SD
		1	2	3	4	5	1	2	3	4	5		
High conviction rates	127	2	15	37	61	12	1.6%	11.8%	29.1%	48%	9.4%	3.52	.881
High imprisonment rates for serious crime	126	2	6	25	65	28	1.6%	4.8%	19.8%	51.6%	22.2%	3.88	.864
Low dismissal rates after charges are filed	127	7	16	46	39	19	5.5%	12.6%	36.2%	30.7%	15.0%	3.37	1.06
Low declination rates	120	16	43	45	14	2	13.3%	35.8%	37.5%	11.7%	1.7%	2.53	.925
High deferral/diversion rates for eligible defendants	127	4	15	50	44	14	3.1%	11.8%	39.4%	34.6%	11.0%	3.39	.943
High success/completion rates for defendants deferred/diverted	125	4	13	43	43	22	3.2%	10.4%	34.4%	34.4%	17.6%	3.53	1.005
High rate of guilty pleas to most serious charges	125	3	10	36	54	22	2.4%	8.0%	28.8%	43.2%	17.6%	3.66	.943
Convictions in high profile cases	125	4	5	28	42	46	3.2%	4.0%	22.4%	33.6%	36.8%	3.97	1.023
Quick resolution of cases	126	2	10	37	49	28	1.6%	7.9%	29.4%	38.9%	22.2%	3.72	.952
Similar outcomes for similar cases across units	126	3	10	34	47	32	2.4%	7.9%	27.0%	37.3%	25.4%	3.75	1.001
Similar outcomes for similar cases within units	127	1	3	28	55	40	.8%	2.4%	22.0%	43.3%	31.5%	4.02	.84
Lower crime rates	127	3	10	31	43	40	2.4%	7.9%	24.4%	33.9%	31.5%	3.84	1.035
Fewer defendants re-arrested after prosecution	127	7	15	36	42	27	5.5%	11.8%	28.3%	33.1%	21.3%	3.53	1.119
High rate of citizen satisfaction with the DA's office	127	6	2	33	57	29	4.7%	1.6%	26.0%	44.9%	22.8%	3.8	.971
Low rate of defendant success on appeal	125	5	18	30	59	13	4.0%	14.4%	24.0%	47.2%	10.4%	3.46	.996
Good relations with law enforcement agencies	126	1	8	26	64	27	.8%	6.3%	20.6%	50.8%	21.4%	3.86	.855
Good relations with defense bar	126	1	7	54	45	19	.8%	5.6%	42.9%	35.7%	15.1%	3.59	.842
Victim satisfaction with the handling of cases	127	1	2	30	62	32	.8%	1.6%	23.6%	48.8%	25.2%	3.96	.791
Fair treatment of defendants	127	0	1	9	23	94	0.0%	.8%	7.1%	18.1%	74.0%	4.65	.647

1 = Unimportant; 2 = Of little importance; 3 = Moderately important; 4 = Important; 5 = Very important

Item	N	Frequency					Percentage					Mean	SD
		1	2	3	4	5	1	2	3	4	5		
I feel pressure from law enforcement officers to accept cases for prosecution.	125	1	16	63	36	9	.8%	12.8%	50.4%	28.8%	7.2%	3.29	.811
I reluctantly accept cases for prosecution because of pressure from law enforcement officers.	122	36	68	18	0	0	29.5%	55.7%	14.8%	0.0%	0.0%	1.85	.651
I tailor my decisions to fit the expectations of judges.	125	39	38	40	7	1	31.2%	30.4%	32.0%	5.6%	.8%	2.14	.956
I return cases to law enforcement for additional investigation.	120	2	2	34	54	28	1.7%	1.7%	28.3%	45.0%	23.3%	3.87	.849
I would consider altering my decisions for defense attorneys who I respect.	124	44	45	33	2	0	35.5%	36.3%	26.6%	1.6%	0.0%	1.94	.829
The specific charges I file in a case are affected by the judge that will hear the case.	124	87	22	11	2	2	70.2%	17.7%	8.9%	1.6%	1.6%	1.47	.85
I am willing to adjust my decisions in order to avoid injuring relationships with other agencies.	126	40	70	16	0	0	31.7%	55.6%	12.7%	0.0%	0.0%	1.81	.641
I lean toward declining cases from historically “problematic” units of law enforcement agencies.	118	32	46	39	1	0	27.1%	39.0%	33.1%	.8%	0.0%	2.08	.797
I tailor my decisions to gain or to maintain the trust of defense attorneys.	124	74	31	16	2	1	59.7%	25.0%	12.9%	1.6%	.8%	1.59	.836
I am willing to adjust my decisions in order to increase courtroom efficiency.	126	15	28	58	22	3	11.9%	22.2%	46.0%	17.5%	2.4%	2.76	.959

1 = Never; 2 = Very rarely; 3 = Occasionally; 4 = Frequently; 5 = Very frequently

**Table B4: Response distributions for General Survey Question 4 – “Realizing that each case is unique, please indicate how frequently you find yourself encountering the following circumstances:”**

Item	N	Frequency					Percentage					Mean	SD
		1	2	3	4	5	1	2	3	4	5		
High case loads force me to handle cases differently than I would if I had fewer cases.	126	3	12	38	40	33	2.4%	9.5%	30.2%	31.7%	26.2%	3.7	1.037
Office policies compel me to decline cases that I would prefer to prosecute.	123	57	48	12	3	3	46.3%	39.0%	9.8%	2.4%	2.4%	1.76	.908
I decline or dismiss cases when the amount of time and effort needed to obtain a conviction exceeds the benefits of the potential sentence.	125	33	42	35	14	1	26.4%	33.6%	28.0%	11.2%	.8%	2.26	1.001
I make decisions based on how my colleagues perceive my performance.	126	64	43	18	1	0	50.4%	33.9%	14.2%	.8%	0.0%	1.65	.752
A lack of investigators in my office adversely affects the outcomes of my cases.	119	25	19	53	17	5	21.0%	16.0%	44.5%	14.3%	4.2%	2.65	1.094
The decisions I make are affected by how I think they will be perceived by my supervisor.	126	26	39	44	12	5	20.6%	31.0%	34.9%	9.5%	4.0%	2.45	1.048
I intentionally make decisions that are inconsistent with office policies that I disagree with.	124	72	41	9	2	0	58.1%	33.1%	7.3%	1.6%	0.0%	1.52	.704
Caseloads prevent me from devoting enough time to all my cases.	127	3	13	35	39	37	2.4%	10.2%	27.6%	30.7%	29.1%	3.74	1.063
I have access to expert witnesses when needed on a case.	120	7	23	46	35	9	5.8%	19.2%	38.3%	29.2%	7.5%	3.13	1.004
The lack of technology resources in the office makes work difficult.	125	4	14	46	29	32	3.2%	11.2%	36.8%	23.2%	25.6%	3.57	1.088
Jury consultants are available in high profile cases.	102	83	11	7	0	1	81.2%	10.8%	6.9%	0.0%	1.0%	1.28	.68
The lack of support staff to coordinate contacts with victims, witnesses, and defense counsel adversely affects my cases.	123	9	20	38	21	35	7.3%	16.3%	30.9%	17.1%	28.5%	3.43	1.262
There is enough clerical staff to assist me with paperwork on all my cases.	122	44	36	20	19	3	36.1%	29.5%	16.4%	15.6%	2.5%	2.19	1.159

1 = Never; 2 = Very rarely; 3 = Occasionally; 4 = Frequently; 5 = Very frequently



**Table B5: Response distributions for General Survey Question 5 – “In addition to examining cases in terms of the legal elements of the alleged offense, please circle the number that best corresponds to how important the following considerations are in screening a case for prosecution:”**

Item	N	Frequency					Percentage					Mean	SD
		1	2	3	4	5	1	2	3	4	5		
I examine cases at screening in terms of their plea bargaining potential, their potential for early disposition, and their potential to reduce the number of cases in the system.	120	28	36	33	15	8	23.3%	30.0%	27.5%	12.5%	6.7%	2.49	1.174
I examine cases at screening to determine the need for the diversion of the defendant or the need for the vigorous prosecution of the defendant.	118	5	11	21	51	30	4.2%	9.3%	17.8%	43.2%	25.4%	3.76	1.068
I examine cases at screening in terms of convictability and probability of success at trial.	120	1	0	4	33	82	.8%	0.0%	3.3%	27.5%	68.3%	4.63	.636
I examine cases at screening to determine the constitutionality or evidentiary issues that may affect the cases later.	120	0	1	9	34	76	0.0%	.8%	7.5%	28.3%	63.3%	4.54	.672

1 = Unimportant; 2 = Of little importance; 3 = Moderately important; 4 = Important; 5 = Very important

**Table B6: Response distributions for General Survey Question 6 – “Of the considerations listed below, which is the most important when screening a case for prosecution?:”**

<b>Item</b>	<b>N</b>	<b>Frequency</b>	<b>Percentage</b>
Potential for plea bargaining, early disposition, and caseload reduction.	121	1	.8%
Need for diversion or vigorous prosecution.		12	9.9%
Probability of conviction and success at trial.		81	66.9%
Constitutionality and evidentiary issues that may affect case.		27	22.3%

**Table B7: Response distributions for General Survey Question 7 – “Realizing that each case is unique, which of the following best describes your general approach to charging?:”**

Item	N	Frequency	Percentage
I file all possible charges that encompass the offense or offenses alleged to have been committed by the accused.	116	34	29.3%
I file only the most serious charges possible given the offense or offenses alleged to have been committed by the accused.		27	23.3%
I file only the charges I believe the accused will plead guilty to given the offense or offenses alleged to have been committed by the accused.		1	.9%
I file only the charges I believe the accused should plead guilty to given the offense or offenses alleged to have been committed by the accused.		54	46.6%

<b>Table B8: Response distributions for General Survey Question 8– “Please circle the number that best corresponds to your level of agreement with the following statements:”</b>													
Item	N	Frequency					Percentage					Mean	SD
		1	2	3	4	5	1	2	3	4	5		
A plea offer should include all of the charges filed with an officer to forego additional charges if the plea is accepted.	125	6	36	44	31	8	4.8%	28.8%	35.2%	24.8%	6.4%	2.99	.996
A plea offer should include only the charges the defendant should plead guilty to with a threat to add additional charges if the plea is not accepted.	125	18	40	33	28	6	14.4%	32.0%	26.4%	22.4%	4.8%	2.71	1.113
The first plea offer should be the only plea offer available with no negotiations.	127	24	62	25	16	0	18.9%	48.8%	19.7%	12.6%	0.0%	2.26	.91
The charging decision should include the highest charges that could be proven at trial with the realization that these may be reduced later through a plea bargain.	125	5	16	25	63	16	4.0%	12.8%	20.0%	50.4%	12.8%	3.55	1.004
The charges in the plea offer should be higher than I want the defendant to ultimately plead to so I have some room to bargain down.	126	28	56	33	9	0	22.2%	44.4%	26.2%	7.1%	0.0%	2.18	.862
Plea bargaining should focus primarily on the severity of the most serious charge.	125	1	22	33	56	13	.8%	17.6%	26.4%	44.8%	10.4%	3.46	.929
Plea bargaining should focus primarily on the number of charges the defendant is facing.	126	12	56	45	13	0	9.5%	44.4%	35.7%	10.3%	0.0%	2.47	.807
Plea bargaining should focus primarily on the expected sentence the defendant is facing.	125	5	19	38	53	10	4.0%	15.2%	30.4%	42.4%	8.0%	3.35	.969

1=Strongly disagree; 2=Disagree; 3=Neutral; 4=Agree; 5=Strongly agree

Item	N	Frequency					Percentage					Mean	SD
		1	2	3	4	5	1	2	3	4	5		
The quick resolution of cases is a legitimate goal of the criminal justice system.	126	2	6	7	95	16	1.6%	4.8%	5.6%	75.4%	12.7%	3.93	.718
The most important function of the criminal justice system is to prevent and repress crime.	126	5	18	30	53	20	4.0%	14.3%	23.8%	42.1%	15.9%	3.52	1.049
Offenders do not need to be punished in order to be rehabilitated.	125	19	55	26	22	3	15.2%	44.0%	20.8%	17.6%	2.4%	2.48	1.029
Many offenders currently imprisoned could be adequately handled in non-prison sanctions.	126	7	49	37	27	6	5.6%	38.9%	29.4%	21.4%	4.8%	2.81	.994
The most important function of the criminal justice system is protecting the rights of the accused.	127	7	33	46	34	7	5.5%	26.0%	36.2%	26.8%	5.5%	3.01	.988
There should be more constraints on the discretion of officials in the criminal justice system.	126	18	78	22	8	0	14.3%	61.9%	17.5%	6.3%	0.0%	2.16	.742
Sanctioning offenders should involve punishment rather than rehabilitation.	126	7	42	54	21	2	5.6%	33.3%	42.9%	16.7%	1.6%	2.75	.855
The due process rights of defendants are insufficiently protected.	127	32	81	9	4	1	25.2%	63.8%	7.1%	3.1%	.8%	1.91	.718
Many community-based programs do not provide sufficient punishment for offenders.	126	1	23	37	57	8	.8%	18.3%	29.4%	45.2%	6.3%	3.38	.884

1=Strongly disagree; 2=Disagree; 3=Neutral; 4=Agree; 5=Strongly agree

**Table B10: Response distributions for General Survey Question 10– “Please circle the number that best corresponds to your level of agreement with the following statements:”**

Item	N	Frequency					Percentage					Mean	SD
		1	2	3	4	5	1	2	3	4	5		
My supervisors let me know how well I am doing on the job.	127	8	24	29	59	7	6.3%	18.9%	22.8%	46.5%	5.5%	3.26	1.033
My supervisors provide adequate guidance on when to accept or decline a case for prosecution.	125	2	13	28	69	13	1.6%	10.4%	22.4%	55.2%	10.4%	3.62	.868
For similar cases, there should be a great deal of consistency across prosecutors in the factors that influence the decision on a case.	126	0	5	12	84	25	0.0%	4.0%	9.5%	66.7%	19.8%	4.02	.675
I often discuss how to handle cases with my colleagues.	127	0	2	8	51	66	0.0%	1.6%	6.3%	40.2%	52.0%	4.43	.685
Experienced prosecutors are best qualified to screen cases for prosecution.	127	0	9	18	55	45	0.0%	7.1%	14.2%	43.3%	35.4%	4.07	.884
Office policies provide clear guidance on how to handle cases.	126	4	35	43	41	3	3.2%	27.8%	34.1%	32.5%	2.4%	3.03	.912
There needs to be more communication among staff to ensure consistency of outcomes.	125	0	15	35	61	14	0.0%	12.0%	28.0%	48.8%	11.2%	3.59	.843
My supervisors rarely review the plea offers that I make in cases.	126	2	21	17	65	21	1.6%	16.7%	13.5%	51.6%	16.7%	3.65	.999
I feel constrained by office policies and practices about when to accept or decline cases for prosecution.	122	24	74	10	14	1	19.5%	60.2%	8.1%	11.4%	.8%	2.14	.984
New prosecutors in my office receive adequate training before they start independently handling cases.	126	29	38	26	25	8	23.0%	30.2%	20.6%	19.8%	6.3%	2.56	1.223
I often compare my cases to those of my colleagues to ensure that I am getting similar outcomes.	126	5	25	31	56	9	4.0%	19.8%	24.6%	44.4%	7.1%	3.31	1
Office goals and priorities are clearly communicated to staff.	126	8	33	35	42	8	6.3%	26.2%	27.8%	33.3%	6.3%	3.07	1.052
Prosecutors in my office receive adequate training when they are transferred to a new unit.	121	18	40	31	27	5	14.9%	33.1%	25.6%	22.3%	4.1%	2.68	1.105
Office priorities require case outcomes that I often disagree with.	126	25	61	29	10	1	19.8%	48.4%	23.0%	7.9%	.8%	2.21	.882
It is important to routinely review cases as a group.	124	3	20	27	58	16	2.4%	16.1%	21.8%	46.8%	12.9%	3.52	.992
Office policies about how to handle cases are not consistent with my own beliefs.	126	25	65	26	10	0	19.8%	51.6%	20.6%	7.9%	0.0%	2.17	.837

1=Strongly disagree; 2=Disagree; 3=Neutral; 4=Agree; 5=Strongly agree

**Table B11: ANOVA Results for Jurisdiction by Prosecutors' Experience Question 1 – “Realizing that each case is unique, please indicate how important the following outcomes are in how you evaluate your own success as a prosecutor:”**

Item	Site			Level of experience			Interaction between site and experience		
	DF	F	Sig	DF	F	Sig	DF	F	Sig
High conviction rates	1	.282	.596	3	.925	.431	.525	.167	.918
High imprisonment rates for serious crime	1	.075	.785	3	.683	.564	3	.066	.978
Low dismissal rates after charges are filed	1	31.846	.000	3	2.870	.039	3	1.087	.358
Low declination rates	1	1.932	.167	3	8.152	.000	3	1.505	.217
High deferral/diversion rates for eligible defendants	1	7.837	.006	3	3.142	.028	3	.157	.925
High success/completion rates for defendants deferred/diverted	1	10.120	.002	3	1.205	.311	3	.179	.910
High rate of guilty pleas to most serious charges	1	.746	.389	3	1.911	.125	3	.079	.971
Quick resolution of easy or straightforward cases	1	5.601	.020	3	1.689	.173	3	1.025	.384
Low rate of defendant success on appeal	1	2.395	.124	3	1.253	.294	3	.268	.848
Good relationships with law enforcement officers	1	3.258	.074	3	1.933	.128	3	.402	.752
Victim satisfaction with the outcome of the case	1	9.453	.003	3	.388	.762	3	.820	.485
Respect of your colleagues	1	3.830	.053	3	1.913	.131	3	.150	.930
Respect of your supervisors	1	3.841	.052	3	1.681	.175	3	.342	.795
Good relationships with defense attorneys	1	1.164	.283	3	.178	.911	3	.177	.912
Fair treatment of defendants	1	.353	.553	3	.952	.418	3	.744	.528

1 = Unimportant; 2 = Of little importance; 3 = Moderately important; 4 = Important; 5 = Very important

**Table B12: ANOVA Results for Jurisdiction by Prosecutors' Experience Question 2 – “Please indicate how important you believe the following outcomes are to the District Attorney in evaluating the overall success of the office in which you currently work.”**

Item	Site			Level of experience			Interaction between site and experience		
	DF	F	Sig	DF	F	Sig	DF	F	Sig
High conviction rates	1	.078	.780	3	.716	.544	3	1.029	.383
High imprisonment rates for serious crime	1	.091	.763	3	.203	.894	3	.497	.685
Low dismissal rates after charges are filed	1	3.601	.060	3	1.395	.248	3	2.261	.085
Low declination rates	1	.054	.816	3	4.991	.003	3	.622	.602
High deferral/diversion rates for eligible defendants	1	14.350	.000	3	1.635	.185	3	.610	.610
High success/completion rates for defendants deferred/diverted	1	14.235	.000	3	1.463	.228	3	.443	.723
High rate of guilty pleas to most serious charges	1	5.980	.016	3	.881	.453	3	.345	.793
Convictions in high profile cases	1	.450	.504	3	.269	.848	3	.846	.471
Quick resolution of cases	1	10.539	.002	3	1.833	.145	3	1.231	.301
Similar outcomes for similar cases <i>across</i> units	1	.643	.424	3	.403	.751	3	1.024	.384
Similar outcomes for similar cases <i>within</i> units	1	.387	.535	3	.500	.683	3	1.641	.184
Lower crime rates	1	5.034	.027	3	.890	.448	3	2.764	.045
Fewer defendants re-arrested after prosecution	1	2.551	.113	3	.457	.713	3	1.250	.295
High rate of citizen satisfaction with the DA's office	1	21.302	.000	3	.983	.403	3	.071	.976
Low rate of defendant success on appeal	1	.994	.321	3	1.998	.118	3	.792	.501
Good relations with law enforcement agencies	1	.052	.820	3	.911	.438	3	.600	.616
Good relations with defense bar	1	.461	.498	3	.798	.497	3	1.594	.194
Victim satisfaction with the handling of cases	1	5.390	.022	3	.255	.857	3	2.960	.035
Fair treatment of defendants	1	.839	.362	3	2.775	.044	3	1.013	.389

1 = Unimportant; 2 = Of little importance; 3 = Moderately important; 4 = Important; 5 = Very important



**Table B13: ANOVA Results for Jurisdiction by Prosecutors' Experience Question 3– "Please indicate how frequently you experience the following situations/feelings in your work:"**

Item	Site			Level of experience			Interaction between site and experience		
	DF	F	Sig	DF	F	Sig	DF	F	Sig
I feel pressure from law enforcement officers to accept cases for prosecution.	1	.558	.457	3	3.364	.021	3	.210	.890
I reluctantly accept cases for prosecution because of pressure from law enforcement officers.	1	.078	.781	3	.524	.667	3	.221	.882
I tailor my decisions to fit the expectations of judges.	1	.000	.997	3	2.586	.056	3	.114	.952
I return cases to law enforcement for additional investigation.	1	.070	.792	3	4.835	.003	3	.069	.976
I would consider altering my decisions for defense attorneys who I respect.	1	.178	.674	3	1.232	.301	3	.136	.938
The specific charges I file in a case are affected by the judge that will hear the case.	1	3.873	.051	3	.918	.435	3	1.028	.383
I am willing to adjust my decisions in order to avoid injuring relationships with other agencies.	1	1.621	.205	3	.886	.451	3	.817	.487
I lean toward declining cases from historically "problematic" units of law enforcement agencies.	1	.989	.322	3	.448	.719	3	1.580	.198
I tailor my decisions to gain or to maintain the trust of defense attorneys.	1	.193	.661	3	2.040	.112	3	.053	.984
I am willing to adjust my decisions in order to increase courtroom efficiency.	1	13.946	.000	3	1.056	.371	3	.334	.801

1 = Never; 2 = Very rarely; 3 = Occasionally; 4 = Frequently; 5 = Very frequently

**Table B14: ANOVA Results for Jurisdiction by Prosecutors' Experience Question 4– “Realizing that each case is unique, please indicate how frequently you find yourself encountering the following circumstances:”**

Item	Site			Level of experience			Interaction between site and experience		
	DF	F	Sig	DF	F	Sig	DF	F	Sig
High case loads force me to handle cases differently than I would if I had fewer cases.	1	2.766	.099	3	.904	.442	3	.080	.971
Office policies compel me to decline cases that I would prefer to prosecute.	1	3.741	.056	3	1.477	.225	3	1.179	.321
I decline or dismiss cases when the amount of time and effort needed to obtain a conviction exceeds the benefits of the potential sentence.	1	5.907	.017	3	1.026	.384	3	1.303	.277
I make decisions based on how my colleagues perceive my performance.	1	.753	.387	3	5.741	.001	3	.781	.507
A lack of investigators in my office adversely affects the outcomes of my cases.	1	1.607	.208	3	1.182	.320	3	2.220	.090
The decisions I make are affected by how I think they will be perceived by my supervisor.	1	16.946	.000	3	2.745	.046	3	2.125	.101
I intentionally make decisions that are inconsistent with office policies that I disagree with.	1	2.849	.094	3	.335	.800	3	.228	.876
Caseloads prevent me from devoting enough time to all my cases.	1	.282	.597	3	2.077	.107	3	.420	.739
I have access to expert witnesses when needed on a case.	1	.043	.836	3	1.180	.321	3	.207	.892
The lack of technology resources in the office makes work difficult.	1	.546	.461	3	1.951	.125	3	2.754	.046
Jury consultants are available in high profile cases.	1	.001	.971	3	3.848	.012	3	1.945	.128
The lack of support staff to coordinate contacts with victims, witnesses, and defense counsel adversely affects my cases.	1	4.415	.038	3	1.913	.131	3	.397	.755
There is enough clerical staff to assist me with paperwork on all my cases.	1	2.354	.128	3	2.504	.063	3	.299	.826

1 = Never; 2 = Very rarely; 3 = Occasionally; 4 = Frequently; 5 = Very frequently

**Table B15: ANOVA Results for Jurisdiction by Prosecutors' Experience Question 5– “In addition to examining cases in terms of the legal elements of the alleged offense, please circle the number that best corresponds to how important the following considerations are in screening a case for prosecution:”**

Item	Site			Level of experience			Interaction between site and experience		
	DF	F	Sig	DF	F	Sig	DF	F	Sig
I examine cases at screening in terms of their plea bargaining potential, their potential for early disposition, and their potential to reduce the number of cases in the system.	1	3.925	.050	3	1.959	.124	3	2.428	.069
I examine cases at screening to determine the need for the diversion of the defendant or the need for the vigorous prosecution of the defendant.	1	1.696	.196	3	.728	.537	3	.549	.650
I examine cases at screening in terms of convictability and probability of success at trial.	1	.723	.397	3	.575	.633	3	1.217	.307
I examine cases at screening to determine the constitutionality or evidentiary issues that may affect the cases later.	1	1.037	0.311	3	0.024	0.995	3	0.476	0.699

1 = Unimportant; 2 = Of little importance; 3 = Moderately important; 4 = Important; 5 = Very important

**Table B16: ANOVA Results for Jurisdiction by Prosecutors' Experience Question 8– “ Please circle the number that best corresponds to your level of agreement with the following statements:”**

Item	Site			Level of experience			Interaction between site and experience		
	DF	F	Sig	DF	F	Sig	DF	F	Sig
A plea offer should include all of the charges filed with an officer to forego additional charges if the plea is accepted.	1	2.254	.136	3	1.484	.222	3	.061	.980
A plea offer should include only the charges the defendant should plead guilty to with a threat to add additional charges if the plea is not accepted.	1	8.737	.004	3	.687	.562	3	.977	.406
The first plea offer should be the only plea offer available with no negotiations.	1	4.924	.028	3	.477	.699	3	.596	.619
The charging decision should include the highest charges that could be proven at trial with the realization that these may be reduced later through a plea bargain.	1	39.000	.000	3	.247	.863	3	.195	.900
The charges in the plea offer should be higher than I want the defendant to ultimately plead to so I have some room to bargain down.	1	.027	.869	3	.894	.447	3	.723	.540
Plea bargaining should focus primarily on the severity of the most serious charge.	1	1.557	.215	3	1.394	.248	3	1.011	.390
Plea bargaining should focus primarily on the number of charges the defendant is facing.	1	.529	.469	3	2.496	.063	3	.256	.857
Plea bargaining should focus primarily on the expected sentence the defendant is facing.	1	.157	.693	3	.101	.959	3	1.466	.227

1=Strongly disagree; 2=Disagree; 3=Neutral; 4=Agree; 5=Strongly agree

**Table B17: ANOVA Results for Jurisdiction by Prosecutors' Experience Question 9– "Please indicate how much you generally agree or disagree with each statement:"**

Item	Site			Level of experience			Interaction between site and experience		
	DF	F	Sig	DF	F	Sig	DF	F	Sig
The quick resolution of cases is a legitimate goal of the criminal justice system.	1	3.936	.050	3	1.708	.169	3	.110	.954
The most important function of the criminal justice system is to prevent and repress crime.	1	3.760	.055	3	2.823	.042	3	1.144	.335
Offenders do not need to be punished in order to be rehabilitated.	1	.469	.495	3	3.265	.024	3	.436	.727
Many offenders currently imprisoned could be adequately handled in non-prison sanctions.	1	1.139	.288	3	.162	.921	3	.435	.728
The most important function of the criminal justice system is protecting the rights of the accused.	1	4.980	.028	3	.616	.606	3	1.552	.205
There should be more constraints on the discretion of officials in the criminal justice system.	1	.334	.565	3	4.895	.003	3	.819	.486
Sanctioning offenders should involve punishment rather than rehabilitation.	1	6.534	.012	3	.432	.730	3	.671	.571
The due process rights of defendants are insufficiently protected.	1	.704	.403	3	1.356	.260	3	.518	.671
Many community-based programs do not provide sufficient punishment for offenders.	1	6.131	.015	3	1.902	.133	3	1.779	.155

1=Strongly disagree; 2=Disagree; 3=Neutral; 4=Agree; 5=Strongly agree

**Table B18: ANOVA Results for Jurisdiction by Prosecutors' Experience Question 10– “Please indicate how much you generally agree or disagree with each statement:”**

Item	Site			Level of experience			Interaction between site and experience		
	DF	F	Sig	DF	F	Sig	DF	F	Sig
My supervisors let me know how well I am doing on the job.	1	.046	.830	3	.339	.797	3	.997	.397
My supervisors provide adequate guidance on when to accept or decline a case for prosecution.	1	.067	.797	3	.698	.555	3	.928	.430
For similar cases, there should be a great deal of consistency across prosecutors in the factors that influence the decision on a case.	1	1.935	.167	3	.232	.874	3	2.550	.059
I often discuss how to handle cases with my colleagues.	1	.462	.498	3	3.536	.017	3	1.321	.271
Experienced prosecutors are best qualified to screen cases for prosecution.	1	4.057	.046	3	3.358	.021	3	1.115	.346
Office policies provide clear guidance on how to handle cases.	1	6.296	.013	3	1.640	.184	3	1.359	.259
There needs to be more communication among staff to ensure consistency of outcomes.	1	1.539	.217	3	.637	.593	3	1.112	.347
My supervisors rarely review the plea offers that I make in cases.	1	5.930	.016	3	1.891	.135	3	1.707	.169
I feel constrained by office policies and practices about when to accept or decline cases for prosecution.	1	.119	.730	3	.440	.725	3	.409	.747
New prosecutors in my office receive adequate training before they start independently handling cases.	1	29.223	.000	3	2.656	.052	3	1.316	.272
I often compare my cases to those of my colleagues to ensure that I am getting similar outcomes.	1	4.376	.039	3	.652	.583	3	1.423	.240
Office goals and priorities are clearly communicated to staff.	1	2.644	.107	3	1.063	.368	3	.232	.874
Prosecutors in my office receive adequate training when they are transferred to a new unit.	1	15.953	.000	3	1.303	.277	3	1.330	.268
Office priorities require case outcomes that I often disagree with.	1	.053	.818	3	.515	.672	3	.324	.808
It is important to routinely review cases as a group.	1	21.572	.000	3	.200	.896	3	2.476	.065
Office policies about how to handle cases are not consistent with my own beliefs.	1	2.211	.140	3	.866	.461	3	.410	.746

1=Strongly disagree; 2=Disagree; 3=Neutral; 4=Agree; 5=Strongly agree

**Table B19: Mean Responses by Jurisdiction and Prosecutors' Experience Question 1 – “Realizing that each case is unique, please indicate how important the following outcomes are in how you evaluate your own success as a prosecutor.”**

Item	Site	< 1 year			At least 1 year but <5			At least 5 years but <10			10 years or more		
		Mean	SD	N	Mean	SD	N	Mean	SD	N	Mean	SD	N
High conviction rates	Northern	2.86	.690	7	3.32	1.129	22	2.88	1.126	8	3.13	1.290	23
	Southern	3.14	.690	7	3.38	.828	37	3.13	.990	15	3.00	1.095	6
High imprisonment rates for serious crime	Northern	3.50	.926	8	3.73	1.077	22	3.50	.926	8	3.26	1.287	23
	Southern	3.57	.976	7	3.67	.956	36	3.67	.900	15	3.33	1.366	6
Low dismissal rates after charges are filed	Northern	3.75	1.035	8	3.64	1.093	22	2.63	.916	8	3.48	1.163	23
	Southern	2.57	.535	7	2.24	.723	37	2.07	.704	15	2.17	.753	6
Low declination rates	Northern	2.75	.707	8	2.70	1.031	20	1.88	.835	8	1.61	.499	23
	Southern	2.67	.516	6	2.00	.803	32	1.67	.617	15	1.67	.816	6
High deferral/diversion rates for eligible defendants	Northern	3.62	.916	8	3.05	.950	22	2.75	.707	8	2.95	1.133	22
	Southern	3.14	.690	7	2.59	1.013	37	2.13	.834	15	2.17	.983	6
High success/completion rates for defendants deferred/diverted	Northern	3.75	.886	8	3.50	1.406	22	2.87	.991	8	3.27	1.386	22
	Southern	2.57	.976	7	2.76	1.300	37	2.27	1.163	15	2.33	1.211	6
High rate of guilty pleas to most serious charges	Northern	3.38	1.061	8	3.59	1.221	22	3.13	1.246	8	2.96	1.022	23
	Southern	3.43	.787	7	3.72	.741	36	3.47	.915	15	3.17	1.169	6
Quick resolution of easy or straightforward cases	Northern	3.38	1.188	8	3.23	1.232	22	2.88	1.126	8	3.14	1.167	22
	Southern	4.00	.816	7	4.00	.816	37	3.73	.884	15	3.00	1.265	6
Low rate of defendant success on appeal	Northern	3.38	.744	8	2.95	1.253	22	2.75	1.165	8	3.43	1.199	23
	Southern	3.71	.951	7	3.65	1.184	37	3.07	1.163	15	3.67	1.633	6
Good relationships with law enforcement officers	Northern	3.88	0.835	8	3.55	1.101	22	3.38	0.744	8	3.48	0.665	23
	Southern	4.43	0.535	7	3.78	0.750	37	3.87	0.990	15	3.50	0.837	6
Victim satisfaction with the outcome of the case	Northern	4.25	.707	8	4.00	.775	21	3.63	.744	8	4.09	.949	23
	Southern	3.43	.535	7	3.54	.730	37	3.53	.990	15	3.33	.516	6
Respect of your colleagues	Northern	4.25	.886	8	4.18	.795	22	4.13	.835	8	3.78	.951	23
	Southern	4.71	.488	7	4.41	.725	37	4.53	.640	15	4.00	.632	6
Respect of your supervisors	Northern	4.29	.951	7	4.27	.935	22	4.13	.835	8	3.74	.964	23
	Southern	4.86	.378	7	4.41	.725	37	4.40	.737	15	4.17	.753	6
Good relationships with defense attorneys	Northern	3.25	1.389	8	3.36	.848	22	3.38	1.188	8	3.26	.864	23
	Southern	3.71	.756	7	3.54	.730	37	3.47	.743	15	3.33	.816	6
Fair treatment of defendants	Northern	4.75	.707	8	4.64	.581	22	4.88	.354	8	4.83	.388	23
	Southern	4.43	.976	7	4.76	.435	37	4.80	.561	15	4.83	.408	6

1 = Unimportant; 2 = Of little importance; 3 = Moderately important; 4 = Important; 5 = Very important

Table B20: Mean Responses by Jurisdiction and Prosecutors' Experience Question 2 – “Please indicate how important you believe the following outcomes are to the DA in evaluating the overall success of the office in which you currently work:”													
Item	Site	< 1 year			At least 1 year but <5			At least 5 years but <10			10 years or more		
		Mean	SD	N	Mean	SD	N	Mean	SD	N	Mean	SD	N
High conviction rates	Northern	3.38	.744	8	3.77	.869	22	3.13	.835	8	3.48	1.082	23
	Southern	3.29	.756	7	3.51	.837	37	3.67	.976	15	3.50	.548	6
High imprisonment rates for serious crime	Northern	3.88	.835	8	4.09	.811	22	4.00	.756	8	3.78	1.126	23
	Southern	4.14	.378	7	3.81	.845	37	3.73	.884	15	3.83	.753	6
Low dismissal rates after charges are filed	Northern	4.00	.926	8	3.86	.941	22	2.75	.707	8	3.65	1.071	23
	Southern	3.29	.488	7	3.05	1.079	37	3.27	1.223	15	3.00	.894	6
Low declination rates	Northern	3.38	.916	8	2.80	.951	20	2.13	.641	8	2.13	.869	23
	Southern	3.00	.632	6	2.62	.922	34	2.13	.915	15	2.50	.548	6
High deferral/diversion rates for eligible defendants	Northern	3.50	.756	8	3.95	.899	22	3.63	.916	8	3.74	.964	23
	Southern	3.14	.378	7	3.16	.866	37	2.53	.834	15	3.17	.753	6
High success/completion rates for defendants deferred/diverted	Northern	4.00	.756	8	4.05	1.090	22	3.75	1.035	8	3.77	.813	22
	Southern	3.14	.900	7	3.38	.982	37	2.67	.900	15	3.33	.516	6
High rate of guilty pleas to most serious charges	Northern	3.57	1.397	7	3.59	1.098	22	3.00	1.195	8	3.30	.765	23
	Southern	3.86	.690	7	3.95	.848	37	3.80	.775	15	3.83	.753	6
Convictions in high profile cases	Northern	3.75	1.035	8	4.14	1.283	22	4.00	.926	8	4.18	.958	22
	Southern	4.29	.756	7	3.92	1.038	37	3.60	.910	15	3.67	.816	6
Quick resolution of cases	Northern	4.00	1.069	8	3.05	.999	22	3.25	1.035	8	3.48	.846	23
	Southern	4.29	.756	7	4.14	.751	37	3.80	.941	15	4.00	.632	6
Similar outcomes for similar cases <i>across</i> units	Northern	3.75	1.035	8	3.86	1.167	22	3.75	.707	8	3.96	.928	23
	Southern	4.14	.378	7	3.59	1.092	37	3.71	1.069	14	3.17	.753	6
Similar outcomes for similar cases <i>within</i> units	Northern	4.13	.835	8	4.09	.868	22	3.88	.641	8	4.17	.778	23
	Southern	4.14	.378	7	3.84	1.014	37	4.33	.724	15	3.50	.548	6
Lower crime rates	Northern	4.00	.926	8	4.00	.873	22	4.62	.518	8	3.78	1.278	23
	Southern	4.14	.690	7	3.86	1.032	37	3.13	.990	15	3.33	.816	6
Fewer defendants re-arrested after prosecution	Northern	3.75	1.165	8	3.59	1.260	22	4.13	.835	8	3.39	1.234	23
	Southern	3.43	.787	7	3.65	1.184	37	3.07	.961	15	3.17	.408	6
High rate of citizen satisfaction with the DA's office	Northern	4.00	.535	8	4.14	.834	22	4.38	.518	8	4.48	.511	23
	Southern	3.29	.488	7	3.24	1.234	37	3.53	.640	15	3.50	.548	6
Low rate of defendant success on appeal	Northern	3.00	.756	8	3.64	.902	22	2.88	1.246	8	3.65	.714	23
	Southern	3.71	.756	7	3.50	1.108	36	3.13	1.187	15	3.67	1.033	6
Good relations with law enforcement agencies	Northern	3.38	1.061	8	4.00	.926	22	4.00	.756	8	4.04	.706	23
	Southern	3.71	.951	7	3.70	.968	37	4.00	.655	15	3.83	.408	6
Good relations with defense bar	Northern	3.25	1.035	8	3.32	1.041	22	3.75	.707	8	3.48	.846	23
	Southern	3.43	.787	7	3.92	.795	37	3.60	.507	15	3.33	.516	6
Victim satisfaction with the handling of cases	Northern	3.88	.991	8	3.86	.990	22	4.00	.535	8	4.48	.511	23
	Southern	3.57	.787	7	3.92	.795	37	3.87	.640	15	3.33	.516	6
Fair treatment of defendants	Northern	4.00	1.069	8	4.50	.802	22	4.88	.354	8	4.74	.541	23
	Southern	4.43	.787	7	4.78	.479	37	4.73	.594	15	4.67	.516	6

1 = Unimportant; 2 = Of little importance; 3 = Moderately important; 4 = Important; 5 = Very important



**Table B21: Mean Responses by Jurisdiction and Prosecutors' Experience Question 3 – "Please indicate how frequently you experience the following situations/feelings in your work:"**

Item	Site	< 1 year			At least 1 year but <5			At least 5 years but <10			10 years or more		
		Mean	SD	N	Mean	SD	N	Mean	SD	N	Mean	SD	N
I feel pressure from law enforcement officers to accept cases for prosecution.	Northern	2.62	.744	8	3.50	.859	22	3.25	.886	8	3.13	.626	23
	Southern	3.00	.577	7	3.51	.781	35	3.33	.900	15	3.17	.983	6
I reluctantly accept cases for prosecution because of pressure from law enforcement officers.	Northern	1.88	.354	8	2.00	.756	22	1.75	.707	8	1.68	.568	22
	Southern	1.86	.900	7	1.91	.678	33	1.87	.640	15	1.83	.408	6
I tailor my decisions to fit the expectations of judges.	Northern	2.43	.535	7	2.36	1.002	22	2.00	.756	8	1.68	.780	22
	Southern	2.29	.951	7	2.32	1.107	37	2.20	.862	15	1.67	.816	6
I return cases to law enforcement for additional investigation.	Northern	3.14	.378	7	4.00	.756	22	4.13	.641	8	3.91	.684	22
	Southern	3.00	1.265	6	3.91	.996	34	4.07	.730	14	4.00	.632	6
I would consider altering my decisions for defense attorneys who I respect.	Northern	1.88	.641	8	1.77	.752	22	2.25	.886	8	1.91	.868	22
	Southern	1.86	.900	7	1.89	.854	36	2.20	.775	15	2.17	1.169	6
The specific charges I file in a case are affected by the judge that will hear the case.	Northern	1.71	.756	7	1.86	1.320	22	1.38	.518	8	1.65	.775	23
	Southern	1.71	1.254	7	1.20	.473	35	1.27	.704	15	1.00	.000	6
I am willing to adjust my decisions in order to avoid injuring relationships with other agencies.	Northern	2.00	.535	8	1.64	.658	22	2.00	.535	8	1.52	.511	23
	Southern	2.00	.816	7	1.92	.604	36	1.93	.704	15	2.00	.894	6
I lean toward declining cases from historically "problematic" units of law enforcement agencies.	Northern	2.00	.756	8	2.23	.813	22	2.00	.894	6	1.76	.889	21
	Southern	1.86	.378	7	2.03	.770	33	2.47	.743	15	2.33	.816	6
I tailor my decisions to gain or to maintain the trust of defense attorneys.	Northern	1.29	.488	7	1.73	.827	22	1.75	.707	8	1.26	.541	23
	Southern	1.43	.535	7	1.71	.957	35	1.87	1.187	15	1.33	.516	6
I am willing to adjust my decisions in order to increase courtroom efficiency.	Northern	2.25	.707	8	2.45	.800	22	2.50	1.195	8	2.26	.915	23
	Southern	3.14	1.069	7	3.11	.809	37	3.40	.910	15	2.67	1.033	6

1 = Never; 2 = Very rarely; 3 = Occasionally; 4 = Frequently; 5 = Very frequently

**Table B22: Mean Responses by Jurisdiction and Prosecutors' Experience Question 4 – “Realizing that each case is unique, please indicate how frequently you find yourself encountering the following circumstances:”**

Item	Site	< 1 year			At least 1 year but <5			At least 5 years but <10			10 years or more		
		Mean	SD	N	Mean	SD	N	Mean	SD	N	Mean	SD	N
High case loads force me to handle cases differently than I would if I had fewer cases.	Northern	3.50	1.309	8	3.64	1.002	22	3.38	.916	8	3.35	.982	23
	Southern	3.71	1.113	7	4.11	.854	36	3.80	1.146	15	3.67	1.033	6
Office policies compel me to decline cases that I would prefer to prosecute.	Northern	1.50	.535	8	1.73	1.120	22	1.50	.535	8	1.52	.730	23
	Southern	2.57	1.512	7	2.00	.935	33	1.67	.617	15	1.50	.548	6
I decline or dismiss cases when the amount of time and effort needed to obtain a conviction exceeds the benefits of the potential sentence.	Northern	1.43	.535	7	2.18	.907	22	2.25	1.035	8	1.91	.848	23
	Southern	2.71	1.113	7	2.67	.986	36	2.27	1.100	15	2.17	1.169	6
I make decisions based on how my colleagues perceive my performance.	Northern	1.88	.991	8	1.68	.646	22	1.75	.463	8	1.17	.388	23
	Southern	2.43	.976	7	1.81	.776	37	1.60	.828	15	1.17	.408	6
A lack of investigators in my office adversely affects the outcomes of my cases.	Northern	2.57	1.272	7	2.27	.935	22	2.75	.886	8	2.32	1.129	22
	Southern	1.83	.753	6	3.00	1.225	33	2.93	.799	15	3.33	.816	6
The decisions I make are affected by how I think they will be perceived by my supervisor.	Northern	2.00	.756	8	2.36	1.002	22	2.00	.756	8	1.78	.902	23
	Southern	3.71	1.113	7	2.76	1.011	37	2.87	.915	15	2.17	.753	6
I intentionally make decisions that are inconsistent with office policies that I disagree with.	Northern	1.63	0.518	8	1.67	0.730	21	1.63	0.744	8	1.59	0.908	22
	Southern	1.14	0.378	7	1.46	0.650	37	1.53	0.640	15	1.33	0.816	6
Caseloads prevent me from devoting enough time to all my cases.	Northern	3.38	1.302	8	3.86	.889	22	3.88	.641	8	3.30	1.185	23
	Southern	3.14	1.215	7	4.05	.941	37	3.87	1.246	15	3.83	.983	6
I have access to expert witnesses when needed on a case.	Northern	3.00	1.195	8	3.05	.899	22	3.00	.756	8	3.45	.945	20
	Southern	3.00	1.414	6	2.91	1.055	34	3.27	.961	15	3.50	.837	6
The lack of technology resources in the office makes work difficult.	Northern	3.63	.744	8	3.32	1.041	22	3.63	.744	8	3.09	.921	22
	Southern	2.57	1.512	7	3.94	1.040	36	4.13	1.125	15	3.67	1.033	6
Jury consultants are available in high profile cases.	Northern	1.67	.816	6	1.19	.512	21	1.63	1.408	8	1.19	.512	21
	Southern	2.33	1.155	3	1.28	.614	25	1.08	.289	12	1.00	.000	6
The lack of support staff to coordinate contacts with victims, witnesses, and defense counsel adversely affects my cases.	Northern	2.88	1.356	8	3.41	1.054	22	3.38	.518	8	2.68	1.086	22
	Southern	3.00	1.291	7	3.86	1.287	35	4.00	1.512	15	3.67	1.033	6
There is enough clerical staff to assist me with paperwork on all my cases	Northern	2.57	.976	7	1.95	1.046	22	2.25	1.165	8	3.00	1.195	22
	Southern	2.17	1.169	6	1.83	1.056	36	1.93	1.100	15	2.33	1.366	6

1 = Never; 2 = Very rarely; 3 = Occasionally; 4 = Frequently; 5 = Very frequently

**Table B23: Mean Responses by Jurisdiction and Prosecutors' Experience Question 5 – "In addition to examining cases in terms of the legal elements of the alleged offense, please circle the number that best corresponds to how important the following considerations are in screening a case for prosecution:"**

Item	Site	< 1 year			At least 1 year but <5			At least 5 years but <10			10 years or more		
		Mean	SD	N	Mean	SD	N	Mean	SD	N	Mean	SD	N
I examine cases at screening in terms of their plea bargaining potential, their potential for early disposition, and their potential to reduce the number of cases in the system.	Northern	2.00	1.309	8	2.32	1.041	22	2.38	1.061	8	2.17	1.029	23
	Southern	3.50	1.517	6	3.10	1.221	31	2.20	.862	15	2.00	.894	6
I examine cases at screening to determine the need for the diversion of the defendant or the need for the vigorous prosecution of the defendant.	Northern	4.13	.835	8	3.86	1.037	22	3.50	1.069	8	4.14	.640	22
	Southern	4.00	.632	6	3.53	1.252	30	3.53	1.302	15	3.33	1.366	6
I examine cases at screening in terms of convictability and probability of success at trial.	Northern	4.75	.463	8	4.64	.658	22	4.38	.744	8	4.70	.470	23
	Southern	4.33	.516	6	4.71	.461	31	4.60	.632	15	4.33	1.633	6
I examine cases at screening to determine the constitutionality or evidentiary issues that may affect the cases later.	Northern	4.50	.756	8	4.59	.666	22	4.38	.744	8	4.43	.662	23
	Southern	4.67	.516	6	4.52	.769	31	4.67	.617	15	4.67	.516	6

1 = Unimportant; 2 = Of little importance; 3 = Moderately important; 4 = Important; 5 = Very important

**Table B24: Mean Responses by Jurisdiction and Prosecutors' Experience Question 8 – "Please circle the number that best corresponds to your level of agreement with the following statements:"**

Item	Site	< 1 year			At least 1 year but <5			At least 5 years but <10			10 years or more		
		Mean	SD	N	Mean	SD	N	Mean	SD	N	Mean	SD	N
A plea offer should include all of the charges filed with an officer to forego additional charges if the plea is accepted	Northern	3.00	1.069	8	3.32	.945	22	3.00	1.195	8	2.90	1.044	21
	Southern	2.57	.535	7	3.05	1.026	37	2.80	1.082	15	2.50	.548	6
A plea offer should include only the charges the defendant should plead guilty to with a threat to add additional charges if the plea is not accepted	Northern	3.13	1.246	8	3.09	1.192	22	3.63	.744	8	2.86	1.153	21
	Southern	2.71	1.113	7	2.22	.917	37	2.40	.910	15	2.67	1.366	6
The first plea offer should be the only plea offer available with no negotiations	Northern	2.00	.756	8	2.14	.774	22	2.25	.463	8	1.78	.850	23
	Southern	2.43	.787	7	2.65	1.033	37	2.27	.884	15	2.50	.837	6
The charging decision should include the highest charges that could be proven at trial with the realization that these may be reduced later through a plea bargain	Northern	3.13	.641	8	3.05	1.133	22	3.13	.641	8	2.86	.990	22
	Southern	4.14	.378	7	4.03	.654	36	4.27	.458	15	4.17	1.169	6
The charges in the plea offer should be higher than I want the defendant to ultimately plead to so I have some room to bargain down	Northern	2.13	.835	8	2.36	.848	22	2.50	.756	8	1.77	.813	22
	Southern	2.29	1.380	7	2.30	.968	37	2.13	.352	15	2.17	.408	6
Plea bargaining should focus primarily on the severity of the most serious charge	Northern	3.38	.744	8	3.50	.913	22	3.75	1.035	8	3.55	1.057	22
	Southern	3.43	1.134	7	3.41	.927	37	3.67	.617	15	2.67	1.033	6
Plea bargaining should focus primarily on the number of charges the defendant is facing	Northern	2.50	.756	8	2.59	.734	22	2.63	.916	8	2.22	.951	23
	Southern	2.43	.535	7	2.57	.765	37	2.60	.828	15	1.83	.753	6
Plea bargaining should focus primarily on the expected sentence the defendant is facing	Northern	3.88	.835	8	3.41	.959	22	3.13	1.126	8	3.18	1.097	22
	Southern	3.00	.816	7	3.32	1.002	37	3.60	.828	15	3.33	.816	6

1=Strongly disagree; 2=Disagree; 3=Neutral; 4=Agree; 5=Strongly agree

Item	Site	< 1 year			At least 1 year but <5			At least 5 years but <10			10 years or more		
		Mean	SD	N	Mean	SD	N	Mean	SD	N	Mean	SD	N
The quick resolution of cases is a legitimate goal of the criminal justice system	Northern	3.38	1.506	8	3.73	.827	22	3.75	.886	8	4.00	.426	23
	Southern	3.71	.756	7	4.11	.458	37	4.07	.704	15	4.17	.408	6
The most important function of the criminal justice system is to prevent and repress crime	Northern	3.88	.991	8	3.64	.848	22	3.75	.886	8	3.30	1.329	23
	Southern	3.43	1.134	7	3.72	.944	36	3.20	.941	15	2.50	1.049	6
Offenders do not need to be punished in order to be rehabilitated	Northern	2.75	1.035	8	2.23	.869	22	2.25	.886	8	3.09	1.151	22
	Southern	2.29	.756	7	2.38	1.114	37	2.07	.799	15	3.00	.632	6
Many offenders currently imprisoned could be adequately handled in non-prison sanctions	Northern	3.25	.707	8	2.86	1.125	22	2.88	1.126	8	2.82	1.006	22
	Southern	2.57	.976	7	2.62	.924	37	2.87	1.060	15	2.83	.753	6
The most important function of the criminal justice system is protecting the rights of the accused	Northern	3.25	.707	8	3.27	.935	22	3.00	.926	8	3.26	1.010	23
	Southern	2.86	.900	7	2.70	.996	37	3.20	1.082	15	2.17	.753	6
There should be more constraints on the discretion of officials in the criminal justice system	Northern	3.00	.926	8	2.00	.535	22	2.13	.835	8	1.96	.562	23
	Southern	2.57	1.134	7	2.19	.776	37	2.13	.516	15	1.83	.753	6
Sanctioning offenders should involve punishment rather than rehabilitation	Northern	2.25	.707	8	2.50	.740	22	2.75	1.165	8	2.50	.913	22
	Southern	3.14	.690	7	3.03	.763	37	3.00	.845	15	2.67	1.033	6
The due process rights of defendants are insufficiently protected	Northern	2.25	.886	8	2.14	.990	22	1.63	.518	8	1.83	.717	23
	Southern	1.86	.378	7	1.89	.658	37	1.73	.458	15	1.83	.753	6
Many community-based programs do not provide sufficient punishment for offenders	Northern	3.00	.926	8	3.23	1.020	22	3.88	.991	8	2.83	.717	23
	Southern	4.00	.577	7	3.54	.767	37	3.67	.900	15	3.50	.548	6

1=Strongly disagree; 2=Disagree; 3=Neutral; 4=Agree; 5=Strongly agree

**Table B26: Mean Responses by Jurisdiction and Prosecutors' Experience Question 10 – "Please circle the number that best corresponds to your level of agreement with the following statements:"**

Item	Site	< 1 year			At least 1 year but <5			At least 5 years but <10			10 years or more		
		Mean	SD	N	Mean	SD	N	Mean	SD	N	Mean	SD	N
My supervisors let me know how well I am doing on the job.	Northern	3.38	0.916	8	3.32	1.086	22	3.25	1.282	8	3.09	1.041	23
	Southern	3.00	1.633	7	3.32	0.915	37	3.07	1.1	15	3.83	0.408	6
My supervisors provide adequate guidance on when to accept or decline a case for prosecution.	Northern	4.13	.641	8	3.50	1.102	22	3.75	.707	8	3.30	.765	23
	Southern	3.71	1.254	7	3.66	.802	35	3.67	.816	15	3.83	.408	6
For similar cases, there should be a great deal of consistency across prosecutors in the factors that influence the decision on a case.	Northern	4.00	.756	8	3.91	.610	22	3.62	.916	8	4.09	.515	23
	Southern	4.14	.378	7	3.97	.726	37	4.47	.516	15	3.83	.983	6
I often discuss how to handle cases with my colleagues.	Northern	4.38	.744	8	4.73	.550	22	4.25	1.035	8	4.22	.795	23
	Southern	4.29	.488	7	4.46	.605	37	4.60	.507	15	3.83	.753	6
Experienced prosecutors are best qualified to screen cases for prosecution.	Northern	3.25	1.035	8	3.64	1.093	22	4.38	.518	8	4.26	.864	23
	Southern	4.00	.816	7	4.22	.787	37	4.27	.594	15	4.50	.548	6
Office policies provide clear guidance on how to handle cases.	Northern	3.13	.641	8	2.50	.802	22	2.38	.916	8	3.09	1.041	23
	Southern	3.57	.535	7	3.32	.852	37	3.07	.884	15	3.00	.894	6
There needs to be more communication among staff to ensure consistency of outcomes.	Northern	3.50	.756	8	3.45	.912	22	3.63	.744	8	4.00	.756	22
	Southern	3.14	.690	7	3.54	.767	37	3.67	1.113	15	3.33	.816	6
My supervisors rarely review the plea offers that I make in cases.	Northern	4.00	.926	8	3.82	.853	22	3.88	.991	8	3.91	.949	23
	Southern	4.14	.690	7	3.59	1.013	37	2.87	1.125	15	3.00	.632	6
I feel constrained by office policies and practices about when to accept or decline cases for prosecution.	Northern	2.13	.835	8	2.32	1.041	22	2.00	1.069	8	1.91	.684	22
	Southern	2.14	1.464	7	2.15	.784	34	2.33	.976	15	2.00	.632	6
New prosecutors in my office receive adequate training before they start independently handling cases.	Northern	2.38	1.188	8	1.59	.734	22	1.75	1.035	8	2.22	1.085	23
	Southern	4.00	1.414	7	3.08	1.010	37	3.07	1.100	15	2.67	1.366	6
I often compare my cases to those of my colleagues to ensure that I am getting similar outcomes.	Northern	2.63	.916	8	3.23	1.110	22	2.88	1.126	8	3.22	.998	23
	Southern	3.43	.787	7	3.49	.901	37	3.8	0.941	15	3	1.095	6
Office goals and priorities are clearly communicated to staff.	Northern	3.38	.744	8	2.86	1.125	22	2.50	.926	8	2.91	.996	23
	Southern	3.57	1.272	7	3.19	1.050	37	3.20	1.082	15	3.17	1.169	6
Prosecutors in my office receive adequate training when they are transferred to a new unit.	Northern	2.71	.951	7	2.00	.873	22	1.75	1.035	8	2.43	.896	23
	Southern	3.50	1.517	6	3.15	.925	34	3.13	1.125	15	2.67	1.366	6
Office priorities require case outcomes that I often disagree with.	Northern	2.25	.707	8	2.18	.853	22	2.13	.991	8	2.13	.968	23
	Southern	2.43	.976	7	2.27	.962	37	2.33	.724	15	1.83	.753	6
It is important to routinely review cases as a group.	Northern	3.25	.886	8	3.09	1.231	22	2.50	1.069	8	3.10	.889	21
	Southern	3.57	.787	7	3.95	.705	37	4.27	.594	15	3.67	.516	6
Office policies about how to handle cases are not consistent with my own beliefs.	Northern	2.50	.926	8	2.45	1.057	22	2.00	.756	8	2.13	.757	23
	Southern	2.00	1.000	7	2.11	.809	37	2.07	.594	15	1.83	.753	6

1=Strongly disagree; 2=Disagree; 3=Neutral; 4=Agree; 5=Strongly agree

**Table B27: Dimensions of Variation in Survey Responses**

Question Group	Dimension of Variation	Most Representative Item(s) (Values in parentheses are component loadings)
<b>Q1: ADA's own success</b>  (15 items)  (4 components account for 60% of the variance in item responses)	Differentiated response	Q1e: High deferral/diversion rates for eligible defendants (.80) Q1f: High success/completion rates for defendants deferred/diverted (.78) Q1c: Low dismissal rates after charges are filed (.72)
	Respect and relationships	Q1j: Good relationships with law enforcement officers (.75) Q1n: Good relationships with defense attorneys (.80) Q1l: Respect of your colleagues (.82) Q1m: Respect of your supervisors (.82)
	Severity of outcome	Q1a: High conviction rates (.73) Q1b: High imprisonment rates for serious crimes (.78) Q1g: High rate of guilty pleas to most serious charge (.73)
	Fairness	Q1o: Fair treatment of defendants (.77)
<b>Q2: DA office success</b>  (19 items)  (5 components account for 61% of the variance in item responses)	Community orientation	Q2n: High rate of citizen satisfaction with the DA's office (.75) Q2e: High deferral/diversion rates for eligible defendants (.74)
	Relationships	Q2q: Good relations with defense bar (.79) Q2p: Good relations with law enforcement agencies (.64)
	Severity of outcomes	Q2a: High conviction rates (.84) Q2b: High imprisonment rates for serious crimes (.81) Q2c: Low dismissal rates after charges are filed (.60)
	Crime control	Q2m: Fewer defendants re-arrested after prosecution (.74) Q2l: Lower crime rates (.71)
	Consistency and Fairness	Q2k: Similar outcomes for similar cases within units (.86) Q2j: Similar outcomes for similar cases across units (.82) Q2s: Fair treatment of defendants (.53)
<b>Q3: Courtroom workgroup</b>  (10 items)  (4 components account for 63% of the variance in item responses)	General workgroup considerations	Q3m: I am willing to adjust my decisions in order to increase courtroom efficiency (.75) Q3i: I am willing to adjust my decisions in order to avoid injuring relationships with other agencies (.70)
	Relationships with defense attorneys	Q3f: I would consider altering my decisions for defense attorneys who I respect Q3l: I tailor my decisions to gain or to maintain the trust of defense attorneys (.46)
	Relationships with judges	Q3h: The specific charges I file in a case are affected by the judge that will hear the case(.87)
	Relationships with law enforcement	Q3d: I return cases to law enforcement for additional investigation (.76) Q3a: I feel pressure from law enforcement officers to accept cases for prosecution (.70)

Question Group	Dimension of Variation	Most Representative Item(s) (Values in parentheses are component loadings)
<b>Q4: Resource and policy constraints</b>  (13 items)  (4 components account for 61% of the variation in item responses)	Case loads	Q4h: Caseloads prevent me from devoting enough time to all of my cases (.63) Q4c: I decline or dismiss cases when the amount of time and effort needed to obtain a conviction exceeds the benefits of the potential sentence (.64) Q4b: Office policies compel me to decline cases I would prefer to prosecute (.69)
	Colleagues and supervisors	Q4d: I make decisions based on how my colleagues perceive my performance (.83) Q4f: The decisions I make are affected by how I think they will be perceived by my supervisor (.82)
	Support staff	Q4l: The lack of support staff to coordinate contacts with victims, witnesses, and defense counsel adversely affects my cases (.82) Q4j: The lack of technology resources in the office makes work difficult (.71) Q4e: A lack of investigators in my office adversely affects the outcomes of my cases (.69)
	Jury consultants	Q4k: Jury consultants are available in high profile cases (.92)  (weak component: inconsistent relationships with other items)
<b>Q5: Scening</b>  (6 items)  (Not amenable to component analysis)	Q5a: I examine cases at screening in terms of their plea bargaining potential, their potential for early disposition, and their potential to reduce the number of cases in the system	
	Q5b: I examine cases at screening to determine the need for the diversion of the defendant or the need for the vigorous prosecution of the defendant.	
	Q5c: I examine cases at screening in terms of convictability and probability of success at trial.	
	Q5d: I examine cases at screening to determine the constitutionality or evidentiary issues that may affect the cases later .	
	Q6: Of the considerations listed above, which is the most important when screening a case for prosecution? Q7: Realizing that each case is unique, which of the following <i>best describes</i> your general approach to charging? (See copy of survey instrument for response options.)	
<b>Q8: Plea offers</b>  (8 items)  (3 components account for 54% of the variance in item responses)	All charges	Q8a: A plea offer should include all of the charges filed with an offer to forego additional charges if the plea is accepted (.82)
	Provable charges	Q8d: The charging decision should include the highest charges that could be proven at trial with the realization that these may be reduced later through a plea bargain (.71)
	Sentence exposure	Q8h: Plea bargaining should focus primarily on the expected sentence the defendant is facing (.76) Q8g: Plea bargaining should focus primarily on the number of charges the defendant is facing (.66) Q8f: Plea bargaining should focus primarily on the severity of the most serious charge (.57)



Question Group	Dimension of Variation	Most Representative Item(s) (Values in parentheses are component loadings)
<b>Q9: CJ system goals</b>  (9 items)  (3 components account for 51% of the variance in item responses)	Punishment orientation	Q9g: Sanctioning offenders should involve punishment rather than rehabilitation (.80)
	Most important functions	Q9b: The most important function of the criminal justice system is to prevent and repress crime (.65) Q9e: The most important function of the criminal justice system is protecting the rights of the accused (.52)
	Rights and rehabilitation of defendants	Q9h: The due process rights of defendants are insufficiently protected (.76) Q9c: Offenders do not need to be punished in order to be rehabilitated (.64)
<b>Q10: Training and oversight</b>  (16 items)  (5 components account for 63% of the variance in item responses)	Adequate training	Q10j: New prosecutors in my office receive adequate training before they start independently handling cases (.91) Q10m: Prosecutors in my office receive adequate training when they are transferred to a new unit (.90)
	Constrained by policy	Q10p: Office policies about how to handle cases are not consistent with my own beliefs (.86) Q10i: I feel constrained by office policies and practices about when to accept or decline cases for prosecution (.75) Q10n: Office priorities require case outcomes that I often disagree with (.74)
	Consult with colleagues	Q10o: It is important to routinely review cases as a group (.73) Q10k: I often compare my cases to those of my colleagues to ensure that I am getting similar outcomes (.67) Q10d: I often discuss how to handle cases with my colleagues (.64)
	Supervision	Q10b: My supervisors provide adequate guidance on when to accept or decline a case for prosecution (.80) Q10a: My supervisors let me know how well I am doing on the job (.77)
	Consistency	Q10g: There needs to be more communication among staff to ensure consistency of outcomes (.78) Q10c: For similar cases, there should be a great deal of consistency across prosecutors in the factors that influence the decision in a case (.66)

## Appendix C: Supplemental Tables for Case Outcomes in Northern County

**Table C1: Descriptive Statistics for Individual- and Prosecutor-Level Predictors, Person Cases**

Variable		Mean	SD	Min	Max
<i>Dependant variable</i>	N=5,150				
Accepted for prosecution		.43	.49	0.00	1.00
<i>Case-level variables</i>	N=5,150				
Offense severity		5.91	3.22	0	13
Number of arrest charges		1.34	.84	1	12
Enhancement eligible		.03	.17	0	1
Arrested by primary LEA		.73	.44	0	1
Defendant age (years)		30.74	11.37	13	90
White defendant (reference)		.27	.45	0	1
Black defendant		.66	.47	0	1
Hispanic defendant		.05	.22	0	1
Male defendant		.77	.42	0	1
Defendant in custody		.55	.50	0	1
Victim age (years)		23.78	15.08	1	89
White victim (reference)		.34	.47	0	1
Black victim		.59	.49	0	1
Hispanic victim		.05	.21	0	1
Male victim		.45	.50	0	1
<i>Prosecutor-level variables</i>	N=66				
Prosecutor experience (years)		10.07	10.06	.43	36.9
Male prosecutor		.56	.50	0	1
Supervising prosecutor		.17	.38	0	1
Special unit		.55	.50	0	1
Avg. monthly cases screened		33.28	22.42	2.46	145.79
Percent person cases		.21	.24	.02	.90

**Table C2: Descriptive Statistics for Individual- and Prosecutor-Level Predictors, Property Cases without Victim Characteristics**

<b>Variable</b>		<b>Mean</b>	<b>SD</b>	<b>Min</b>	<b>Max</b>
<i>Defendant variable</i>	N=10,457				
Accepted for prosecution		.60	.49	0.00	1.00
<i>Case-level variables</i>	N=10,457				
Offense severity		5.54	2.47	0	11
Number of arrest charges		1.60	1.40	1	37
Enhancement eligible		.02	.13	0	1
Arrested by primary LEA		.73	.45	0	1
Defendant age (years)		28.78	11.47	13	77
White defendant (reference)		.26	.44	0	1
Black defendant		.69	.46	0	1
Hispanic defendant		.04	.20	0	1
Male defendant		.80	.40	0	1
Defendant in custody		.68	.47	0	1
<i>Prosecutor-level variables</i>	N=77				
Prosecutor experience (years)		10.29	10.10	.43	36.9
Male prosecutor		.61	.49	0	1
Supervising prosecutor		.16	.37	0	1
Special unit		.58	.50	0	1
Avg. monthly cases screened		32.88	21.61	3.17	145.79
Percent person cases		.28	.17	.01	.87

**Table C3: Descriptive Statistics for Individual- and Prosecutor-Level Predictors, Property Cases with Victim Characteristics**

<b>Variable</b>		<b>Mean</b>	<b>SD</b>	<b>Min</b>	<b>Max</b>
<i>Defendant variable</i>	N=6,762				
Accepted for prosecution		.55	.50	0.00	1.00
<i>Case-level variables</i>	N=6,762				
Offense severity		6.17	2.44	0	11
Number of arrest charges		1.62	1.49	1	37
Enhancement eligible		.02	.13	0	1
Arrested by primary LEA		.81	.39	0	1
Defendant age (years)		26.65	11.47	13	75
White defendant (reference)		.23	.42	0	1
Black defendant		.72	.45	0	1
Hispanic defendant		.04	.20	0	1
Male defendant		.84	.37	0	1
Defendant in custody		.71	.45	0	1
Victim age (years)		38.78	15.93	13	92
White victim (reference)		.51	.50	0	1
Black victim		.43	.49	0	1
Hispanic victim		.03	.18	0	1
Male victim		.55	.50	0	1
<i>Prosecutor-level variables</i>	N=77				
Prosecutor experience (years)		10.29	10.10	.43	36.9
Male prosecutor		.61	.49	0	1
Supervising prosecutor		.16	.37	0	1
Special unit		.58	.50	0	1
Avg. monthly cases screened		32.88	21.61	3.17	145.79
Percent person cases		.28	.17	.01	.87

**Table C4: Descriptive Statistics for Individual- and Prosecutor-Level Predictors, Drug Cases**

<b>Variable</b>		<b>Mean</b>	<b>SD</b>	<b>Min</b>	<b>Max</b>
<i>Defendant variable</i>	N=9,970				
Accepted for prosecution		.75	.43	0.00	1.00
<i>Case-level variables</i>	N=9,970				
Offense severity		4.46	2.04	0	10
Number of arrest charges		1.58	0.95	1	13
Enhancement eligible		.10	.31	0	1
Arrested by primary LEA		.81	.39	0	1
Defendant age (years)		26.62	9.67	13	74
White defendant (reference)		.26	.42	0	1
Black defendant		.69	.46	0	1
Hispanic defendant		.04	.20	0	1
Male defendant		.88	.32	0	1
Defendant in custody		.84	.37	0	1
<i>Prosecutor-level variables</i>	N=74				
Prosecutor experience (years)		8.75	9.26	.39	33.17
Male prosecutor		.61	.49	0	1
Supervising prosecutor		.16	.37	0	1
Special unit		.58	.50	0	1
Avg. monthly cases screened		39.16	40.02	3.13	313.71
Percent person cases		.30	.29	.01	.91

**Table C5: Descriptive Statistics for Individual- and Prosecutor-Level Predictors, Public Order Cases**

<b>Variable</b>		<b>Mean</b>	<b>SD</b>	<b>Min</b>	<b>Max</b>
<i>Dependant variable</i>	N=14,193				
Accepted for prosecution		.71	.46	0.00	1.00
<i>Case-level variables</i>	N=14,193				
Offense severity		2.29	1.70	0	10
Number of arrest charges		1.38	0.79	1	15
Enhancement eligible		.03	.16	0	1
Arrested by primary LEA		.62	.48	0	1
Defendant age (years)		30.95	10.97	13	89
White defendant (reference)		.34	.42	0	1
Black defendant		.55	.50	0	1
Hispanic defendant		.10	.29	0	1
Male defendant		.80	.40	0	1
Defendant in custody		.41	.49	0	1
<i>Prosecutor-level variables</i>	N=99				
Prosecutor experience (years)		10.00	10.14	.39	36.90
Male prosecutor		.57	.50	0	1
Supervising prosecutor		.17	.38	0	1
Special unit		.64	.48	0	1
Avg. monthly cases screened		34.57	35.92	1.62	313.71
Percent person cases		.23	.12	.01	.99

**Table C6: Descriptive Statistics for Individual- and Prosecutor-Level Predictors, Domestic Violence Cases**

<b>Variable</b>		<b>Mean</b>	<b>SD</b>	<b>Min</b>	<b>Max</b>
<i>Dependant variable</i>	N=18,860				
Accepted for prosecution		.34	.47	0.00	1.00
<i>Case-level variables</i>	N=18,860				
Offense severity		2.87	1.06	0	11
Number of arrest charges		1.21	0.55	1	21
Enhancement eligible		.34	.47	0	1
Arrested by primary LEA		.79	.41	0	1
Defendant age (years)		31.94	10.62	13	89
White defendant (reference)		.26	.42	0	1
Black defendant		.68	.47	0	1
Hispanic defendant		.05	.23	0	1
Male defendant		.84	.36	0	1
Defendant in custody		.50	.50	0	1
Victim age (years)		32.14	11.54	1	91
White victim (reference)		.34	.36	0	1
Black victim		.60	.49	0	1
Hispanic victim		.05	.23	0	1
Male victim		.17	.37	0	1
<i>Prosecutor-level variables</i>	N=62				
Prosecutor experience (years)		9.04	10.16	.19	33.17
Male prosecutor		.55	.50	0	1
Supervising prosecutor		.11	.32	0	1
Special unit		.77	.42	0	1
Avg. monthly cases screened		47.35	47.72	3.17	313.71
Percent DV cases		.35	.28	.01	.99

**Table C7: Descriptive Statistics for Individual- and Prosecutor-Level Predictors, Weapons Cases**

<b>Variable</b>		<b>Mean</b>	<b>SD</b>	<b>Min</b>	<b>Max</b>
<i>Dependant variable</i>	N=2,380				
Accepted for prosecution		.59	.49	0.00	1.00
<i>Case-level variables</i>	N=2,380				
Offense severity		4.76	1.48	0	8
Number of arrest charges		1.82	1.04	1	8
Enhancement eligible		.06	.23	0	1
Arrested by primary LEA		.82	.38	0	1
Defendant age (years)		28.23	10.07	14	74
White defendant (reference)		.16	.23	0	1
Black defendant		.80	.40	0	1
Hispanic defendant		.03	.18	0	1
Male defendant		.91	.28	0	1
Defendant in custody		.80	.40	0	1
<i>Prosecutor-level variables</i>					
Prosecutor experience (years)	N=50	8.71	8.65	.43	27.34
Male prosecutor		.68	.47	0	1
Supervising prosecutor		.20	.40	0	1
Special unit		.44	.50	0	1
Avg. monthly cases screened		43.23	44.61	8.18	313.71
Percent Weapons cases		.08	.12	.01	.52



## Appendix D: General Survey Instrument

# The Anatomy of Discretion: Prosecutors' Survey Perspectives on Decision Making (2010)

### GENERAL INSTRUCTIONS

The Vera Institute of Justice is a private non-profit organization with a 50-year history of commitment to improving the justice system through exploratory research and demonstration programming. Vera is currently conducting a study of prosecutorial decision-making in two county prosecutors' offices in the United States. Funding for this project is provided through the National Institute of Justice.

We are interested in understanding how prosecutors make decisions – the information they use to evaluate a case and the weight they give to different factors in a case. We are also interested in what factors outside of a case, such as office policies, office practices and procedures such as supervisory review or group-decision-making, training, interactions with other justice system actors, and workloads may affect prosecutors' decisions.

To appreciate how prosecutors think about these influences, we would like you to answer the questions in the attached survey. It is important that you rely on your own experiences as a prosecutor and respond openly and honestly.

Your participation is voluntary and is strictly confidential. Your rights as a participant are described in the informed consent form that we ask you to sign before answering the questionnaire (see attached). While the District Attorney has been informed about this survey, **no one in the District Attorney's Office will have access to your answers.** Only summary statistics and aggregate responses will be reported. If you decide to participate, please return both the signed copy of the informed consent form and the completed survey to the proctors after completion.

Please read each question carefully and circle the number that best corresponds with your answer to the question. Please circle only one answer per question.

We would like to thank you in advance for your contribution and cooperation with this important project. Please feel free to contact the Principal Investigators for any additional information on the scope of the project, our methodology or any other area of interest related to our project:

*Don Stemen*, Loyola University Chicago, [dstemen@luc.edu](mailto:dstemen@luc.edu), (312) 915-7570

*Bruce Frederick*, Vera Institute of Justice, [bfrederick@vera.org](mailto:bfrederick@vera.org), (518) 391-5799

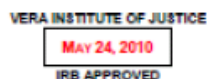


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## Section 1: Measuring Success in Prosecution

1. **Measuring Individual Success.** Below are some general statements about possible measures for evaluating a prosecutor's *individual success*. Realizing that each case is unique, please indicate how important the following outcomes are in *how you evaluate your own success as a prosecutor*.  
(Circle one number for each item)

		<u>Unimportant</u>	<u>Of Little Importance</u>	<u>Moderately Important</u>	<u>Important</u>	<u>Very Important</u>
a	High conviction rates	1	2	3	4	5
b	High imprisonment rates for serious crimes	1	2	3	4	5
c	Low dismissal rates after charges are filed	1	2	3	4	5
d	Low declination rates	1	2	3	4	5
e	High deferral/diversion rates for eligible defendants	1	2	3	4	5
f	High success/completion rates for defendants deferred/diverted	1	2	3	4	5
g	High rate of guilty pleas to most serious charge(s)	1	2	3	4	5
h	Quick resolution of easy or straightforward cases	1	2	3	4	5
i	Low rate of defendant success on appeal	1	2	3	4	5
j	Good relationships with law enforcement officers	1	2	3	4	5
k	Victim satisfaction with the outcome of the case	1	2	3	4	5
l	Respect of your colleagues	1	2	3	4	5
m	Respect of your supervisors	1	2	3	4	5
n	Good relationships with defense attorneys	1	2	3	4	5
o	Fair treatment of defendants	1	2	3	4	5



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**2. Measuring Organizational Success.** Below are some possible measures for evaluating the success of an *entire prosecutor's office*. For these questions, please indicate how important you believe the following outcomes are *to the District Attorney in evaluating the overall success of the office in which you currently work*. (Circle one number for each item)

		<u>Unimportant</u>	<u>Of Little Importance</u>	<u>Moderately Important</u>	<u>Important</u>	<u>Very Important</u>
a	High conviction rates	1	2	3	4	5
b	High imprisonment rates for serious crimes	1	2	3	4	5
c	Low dismissal rates after charges are filed	1	2	3	4	5
d	Low declination rates	1	2	3	4	5
e	High deferral/diversion rates for eligible defendants	1	2	3	4	5
f	High success/completion rates for defendants deferred/diverted	1	2	3	4	5
g	High rate of guilty pleas to most serious charge(s)	1	2	3	4	5
h	Convictions in high profile cases	1	2	3	4	5
i	Quick resolution of cases	1	2	3	4	5
j	Similar outcomes for similar cases <i>across</i> units	1	2	3	4	5
k	Similar outcomes for similar cases <i>within</i> units	1	2	3	4	5
l	Lower crime rates	1	2	3	4	5
m	Fewer defendants re-arrested after prosecution	1	2	3	4	5
n	High rate of citizen satisfaction with the DA's office	1	2	3	4	5
o	Low rate of defendant success on appeal	1	2	3	4	5
p	Good relations with law enforcement agencies	1	2	3	4	5
q	Good relations with defense bar	1	2	3	4	5
r	Victim satisfaction with the handling of cases	1	2	3	4	5
s	Fair treatment of defendants	1	2	3	4	5

VERA INSTITUTE OF JUSTICE  
  
 IRB APPROVED

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## Section 2: Prosecutors and the Courtroom Workgroup

3. Below are some general statements about your experiences working with other actors in the criminal justice system. Please indicate how frequently you experience the following situations/feelings in your work. *(Circle one number for each item)*

	<u>Never</u>	<u>Very Rarely</u>	<u>Occasionally</u>	<u>Frequently</u>	<u>Very Frequently</u>
a I feel pressure from law enforcement officers to accept cases for prosecution.	1	2	3	4	5
b I reluctantly accept cases for prosecution because of pressure from law enforcement officers.	1	2	3	4	5
c I tailor my decisions to fit the expectations of judges.	1	2	3	4	5
d I return cases to law enforcement for additional investigation.	1	2	3	4	5
f I would consider altering my decisions for defense attorneys who I respect.	1	2	3	4	5
h The specific charges I file in a case are affected by the judge that will hear the case.	1	2	3	4	5
i I am willing to adjust my decisions in order to avoid injuring relationships with other agencies.	1	2	3	4	5
j I lean toward declining cases from historically “problematic” units of law enforcement agencies.	1	2	3	4	5
l I tailor my decisions to gain or to maintain the trust of defense attorneys.	1	2	3	4	5
m I am willing to adjust my decisions in order to increase courtroom efficiency.	1	2	3	4	5

NOTE: Items e, g, and k were deleted in the final instrument. However, the earlier item designations were retained for the remaining items, and all data files and documentation use the above designations.

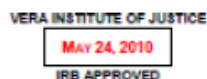


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### Section 3: Prosecutors and Office Resources/Policies

4. Below are some general statements about the availability of resources and the influence of office policies on your work. Realizing that each case is unique, please indicate how frequently you find yourself encountering the following circumstances. *(Circle one number for each item)*

		<u>Never</u>	<u>Very Rarely</u>	<u>Occasionally</u>	<u>Frequently</u>	<u>Very Frequently</u>
a	High case loads force me to handle cases differently than I would if I had fewer cases.	1	2	3	4	5
b	Office policies compel me to decline cases that I would prefer to prosecute.	1	2	3	4	5
c	I decline or dismiss cases when the amount of time and effort needed to obtain a conviction exceeds the benefits of the potential sentence.	1	2	3	4	5
d	I make decisions based on how my colleagues perceive my performance.	1	2	3	4	5
e	A lack of investigators in my office adversely affects the outcomes of my cases.	1	2	3	4	5
f	The decisions I make are affected by how I think they will be perceived by my supervisor.	1	2	3	4	5
g	I intentionally make decisions that are inconsistent with office policies that I disagree with.	1	2	3	4	5
h	Caseloads prevent me from devoting enough time to all my cases.	1	2	3	4	5
i	I have access to expert witnesses when needed on a case.	1	2	3	4	5
j	The lack of technology resources in the office makes work difficult.	1	2	3	4	5
k	Jury consultants are available in high profile cases.	1	2	3	4	5
l	The lack of support staff to coordinate contacts with victims, witnesses, and defense counsel adversely affects my cases.	1	2	3	4	5
m	There is enough clerical staff to assist me with paperwork on all my cases.	1	2	3	4	5



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## Section 4: The Screening, Charging, and Plea Offer Decisions

5. The following questions pertain to how you screen cases. In addition to examining cases in terms of the legal elements of the alleged offense, please circle the number that best corresponds to how important the following considerations are in screening a case for prosecution. (*Circle one number for each item*)

	<u>Unimportant</u>	<u>Of Little Importance</u>	<u>Moderately Important</u>	<u>Important</u>	<u>Very Important</u>
a	1	2	3	4	5
b	1	2	3	4	5
c	1	2	3	4	5
d	1	2	3	4	5

6. Of the considerations listed above, which is the most important when screening a case for prosecution? (*Circle one number*)

1. Potential for plea bargaining, early disposition, and caseload reduction.
2. Need for diversion or vigorous prosecution.
3. Probability of conviction and success at trial.
4. Constitutionality and evidentiary issues that may affect case.

7. Realizing that each case is unique, which of the following *best describes* your general approach to charging? (*Circle one number*)

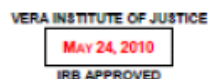
1. I file ***all possible charges*** that encompass the offense or offenses alleged to have been committed by the accused.
2. I file ***only the most serious charges*** possible given the offense or offenses alleged to have been committed by the accused.
3. I file ***only the charges I believe the accused will plead guilty to*** given the offense or offenses alleged to have been committed by the accused.
4. I file ***only the charges I believe the accused should plead guilty to*** given the offense or offenses alleged to have been committed by the accused.



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8. The following questions pertain to the creation of plea offers. Please circle the number that best corresponds to your level of agreement with the following statements. (*Circle one number for each item*)

		<b>Strongly Disagree</b>	<b>Disagree</b>	<b>Neutral</b>	<b>Agree</b>	<b>Strongly Agree</b>
a	A plea offer should include all of the charges filed with an offer to forego additional charges if the plea is accepted.	1	2	3	4	5
b	A plea offer should include only the charges the defendant should plead guilty to with a threat to add additional charges if the plea is not accepted.	1	2	3	4	5
c	The first plea offer should be the only plea offer available with no negotiations.	1	2	3	4	5
d	The charging decision should include the highest charges that could be proven at trial with the realization that these may be reduced later through a plea bargain.	1	2	3	4	5
e	The charges in the plea offer should be higher than I want the defendant to ultimately plead to so I have some room to bargain down.	1	2	3	4	5
f	Plea bargaining should focus primarily on the severity of the most serious charge.	1	2	3	4	5
g	Plea bargaining should focus primarily on the number of charges the defendant is facing.	1	2	3	4	5
h	Plea bargaining should focus primarily on the expected sentence the defendant is facing.	1	2	3	4	5

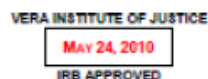


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## Section 5: Goals of the Criminal Justice System

9. Below are some general statements about criminal justice and the types of state and community interventions which might be required in response to crime. Please indicate how much you generally agree or disagree with each statement. *(Circle one number for each item).*

		<b>Strongly Disagree</b>	<b>Disagree</b>	<b>Neutral</b>	<b>Agree</b>	<b>Strongly Agree</b>
a	The quick resolution of cases is a legitimate goal of the criminal justice system.	1	2	3	4	5
b	The most important function of the criminal justice system is to prevent and repress crime.	1	2	3	4	5
c	Offenders do not need to be punished in order to be rehabilitated.	1	2	3	4	5
d	Many offenders currently imprisoned could be adequately handled in non-prison sanctions.	1	2	3	4	5
e	The most important function of the criminal justice system is protecting the rights of the accused.	1	2	3	4	5
f	There should be more constraints on the discretion of officials in the criminal justice system.	1	2	3	4	5
g	Sanctioning offenders should involve punishment rather than rehabilitation.	1	2	3	4	5
h	The due process rights of defendants are insufficiently protected.	1	2	3	4	5
i	Many community-based programs do not provide sufficient punishment for offenders.	1	2	3	4	5



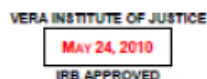
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## Section 6: Training and Oversight

10. The following questions pertain to your job and the District Attorney's Office in which you work. Please circle the number that best corresponds to your level of agreement with the following statements. *(Circle one number for each item)*

		<b>Strongly Disagree</b>	<b>Disagree</b>	<b>Neutral</b>	<b>Agree</b>	<b>Strongly Agree</b>
a	My supervisors let me know how well I am doing on the job.	1	2	3	4	5
b	My supervisors provide adequate guidance on when to accept or decline a case for prosecution.	1	2	3	4	5
c	For similar cases, there should be a great deal of consistency across prosecutors in the factors that influence the decisions on a case.	1	2	3	4	5
d	I often discuss how to handle cases with my colleagues.	1	2	3	4	5
e	Experienced prosecutors are best qualified to screen cases for prosecution.	1	2	3	4	5
f	Office policies provide clear guidance on how to handle cases.	1	2	3	4	5
g	There needs to be more communication among staff to ensure consistency of outcomes.	1	2	3	4	5
h	My supervisors rarely review the plea offers that I make in cases.	1	2	3	4	5
i	I feel constrained by office policies and practices about when to accept or decline cases for prosecution.	1	2	3	4	5
j	New prosecutors in my office receive adequate training before they start independently handling cases.	1	2	3	4	5
k	I often compare my cases to those of my colleagues to ensure that I am getting similar outcomes.	1	2	3	4	5
L	Office goals and priorities are clearly communicated to staff.	1	2	3	4	5
M	Prosecutors in my office receive adequate training when they are transferred to a new unit.	1	2	3	4	5
N	Office priorities require case outcomes that I often disagree with.	1	2	3	4	5
O	It is important to routinely review cases as a group.	1	2	3	4	5
P	Office policies about how to handle cases are not consistent with my own beliefs.	1	2	3	4	5



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Respondent ID: \_\_\_\_\_

## Section 7: Background Information [To be separated]

The following questions are about you and your background. Please circle the number that best corresponds to each item. (*Circle one number for each item*)

11. What is your gender?

1. Male
2. Female

12. What is your racial background?

1. Black or African-American
2. White
3. Asian
4. Other or more than one race (please specify) \_\_\_\_\_

13. What is your ethnic background?

1. Hispanic
2. Non-Hispanic

14. What is your age as of your last birthday? \_\_\_\_\_ Years

15. Do you work in a specialized unit or a general crimes unit?

1. Specialized unit (e.g. drugs, homicide, sex crimes, etc.)
2. General crimes unit (e.g. misdemeanor unit, general felonies unit, etc.)

16. How long have you been in your current unit assignment? \_\_\_\_\_ years  
If less than 2 years, please specify number of months \_\_\_\_\_ months

17. How long have you been with the DA's Office? \_\_\_\_\_ years  
If less than 2 years, please specify number of months \_\_\_\_\_ months

19. Before coming to the DA's Office, were you ever a defense attorney?

1. Yes
2. No

20. Is your job in the prosecutor's office your first professional experience?

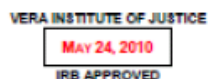
1. Yes
2. No

21. Have you or anyone in your family ever worked in law enforcement?

1. Yes
2. No

That concludes our survey. On the back of this page, or anywhere else on this document, you are welcome to write any comments you have about specific questions in this questionnaire, potential uses for the information obtained, and any additional issues you feel may be beneficial to this research.

**Thank you very much for your participation.**



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## Appendix E: Factorial Survey Instrument

In this study, each participant was asked to read and respond to ten case vignettes, each of which described the circumstances surrounding an arrest, the offenses charged by the police, the evidence presented to the prosecutor by the police, and the age, race, gender, and criminal history of the suspect. Each vignette consisted of a base scenario that was the same for all respondents and two elements that were systematically varied: defendant criminal history and race.

Ten criminal history profiles and two race designations (black vs. white) were created and allowed to vary across vignettes. Suspect and victim genders were not varied because they were integral features of some of the scenarios. Similarly, defendant age and criminal history were confounded in the final vignettes, because a given list of arrest and conviction dates was only possible for persons of a certain minimum age. All respondents received the same ten age/criminal history profiles, but the pairing of criminal history profiles with base scenarios was randomized across respondents. For each respondent, half of the defendants in the ten vignettes were designated as black and the other half were designated as white, but the assignment of race categories to vignettes was counterbalanced across vignettes. As a result, each respondent received a set of ten vignettes that was unique with respect to combinations of the basic scenarios with age/prior criminal history and race.

The resulting vignettes were reformatted to resemble a standardized arrest report. Each hypothetical report was accompanied by a questionnaire, asking prosecutors to indicate whether they would accept or reject the case for prosecution, give their reasons for rejection if applicable, specify the charges they would file initially, specify the charges to which the defendant must plead guilty in connection with a plea bargain, and indicate what sentence recommendation they would make, if any. The packet also included a questionnaire asking the respondents about some of their personal characteristics: age, race, gender, and professional experience in various capacities as attorneys handling criminal cases. This appendix provides the instructions to respondents, the survey questionnaires, the ten arrest report templates for each vignette, and the ten age/prior record profiles.



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## FACTORIAL SURVEY QUESTIONNAIRE

### *The Anatomy of Discretion*

#### GENERAL INSTRUCTIONS

The Vera Institute of Justice is a private non-profit organization with a 50-year history of commitment to social justice through exploratory research and demonstration programming. Vera is currently conducting a study of prosecutorial decision-making in two county prosecutors' offices in the United States. Funding for this project is provided through the National Institute of Justice.

We are interested in understanding how prosecutors make decisions in cases – the information they use to evaluate a case and the weight they give to different factors in a case. We are also interested in what factors outside of a case, such as office policies, interactions with other justice system actors, or workloads, may ultimately affect prosecutors' decisions.

To account for the experiences of prosecutors, you have been given a consent form, a questionnaire sheet and a booklet containing 10 unique vignettes – short multidimensional descriptions of hypothetical cases. The questionnaire will ask you to state your decisions for each hypothetical case, explain your decisions, and rate your perceptions of seriousness of the offense, strength of the evidence, and defendant criminal history. Please fill out a questionnaire for each vignette and respond openly and honestly. Please do not put your name on the surveys.

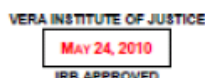
Your participation is voluntary and is strictly confidential. Your rights as a participant are described in the informed consent form that we ask you to sign before answering the questionnaire. While the District Attorney has been informed about this survey, **no one in the District Attorney's Office will have access to your answers.** Only summary statistics and aggregate responses will be reported. If you decide to participate, please fill out and sign the consent form upon receipt of your packet and return it to our designated project staff on site.

Please complete the survey and return the entire set of completed questionnaires in the provided envelope to our project staff on site. We will be collecting your questionnaires on

\_\_\_\_\_.

We would like to thank you in advance for your contribution and cooperation with this important project. Please feel free to contact the Principal Investigators for any additional information on the scope of the project, our methodology or any other area of interest related to our project:

**Don Stemen, Loyola University Chicago, [dstemen@luc.edu](mailto:dstemen@luc.edu), (312) 915-7570**  
**Bruce Frederick, Vera Institute of Justice, [bfrederick@vera.org](mailto:bfrederick@vera.org), (518) 391-5799**



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## FACTORIAL SURVEY QUESTIONNAIRE *The Anatomy of Discretion*

Case Number:   1  

1. Circle the number that best represents the priority you, as a prosecutor, feel that this case should have for prosecution:

Lowest Priority		Average Priority		Highest Priority
1	2	3	4	5

2. Circle the number that best represents how strong you believe the evidence in this case is.

Weakest		Average		Strongest
1	2	3	4	5

3. Circle the number that best represents how serious you believe the defendant's criminal history is.

Not Serious		Average		Very serious
1	2	3	4	5

4. After reviewing the case, would you accept or reject this case for prosecution?

- (1) Accept (proceed to Question 5)  
(2) Reject

a. If you rejected the case, what is the primary reason for rejecting it:

b. Are there any other reasons for rejecting it?

5. If you accepted the case for prosecution, what charges would you recommend? (Include as many as you believe are applicable).

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

6. Given the charges that you recommended in Question 5, when drafting a plea offer, which charges would you require the defendant to plead guilty to? (Include as many as you believe are applicable)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

7. What sentence would you recommend for this defendant? (*Circle one*)

- (1) Fine/restitution                      (3) Probation                      (5) Prison  
(2) Community Service                  (4) Jail                                  (6) Other (explain) \_\_\_\_\_

8. Are there any potential problems you think may arise as the case progresses



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**FACTORIAL SURVEY QUESTIONNAIRE**  
*The Anatomy of Discretion*

Background Information

1. What is your gender?      Male (1)      Female (2)
2. What is your racial background?
  5. Black or African-American (1)
  6. White (2)
  7. Asian (3)
  8. Other or more than one race (4) \_\_\_\_\_
3. What is your ethnic background? \_\_\_\_\_
4. What is your current marital status?
  - Married (1)
  - Unmarried, but living with a partner (2)
  - Married, but living alone (3)
  - Unmarried, and living alone (4)
5. What is your age as of your last birthday? \_\_\_\_\_
6. What unit or unit are you currently assigned to? \_\_\_\_\_
7. How long have you been in this assignment?      \_\_\_\_\_      **Weeks**      \_\_\_\_\_      **Months**      \_\_\_\_\_      **Years**
8. How long have you been with the DA's Office?      \_\_\_\_\_      **Weeks**      \_\_\_\_\_      **Months**      \_\_\_\_\_      **Years**
9. How old were you when you joined the Office? \_\_\_\_\_
10. Before coming to the DA's Office, were you ever a defense attorney?
  - Yes (1)       No (2)
11. Is your job in the prosecutor's office your first professional experience?
  - Yes (1)       No (2)
12. That concludes our survey. On the back of this page, or anywhere else on this document, you are welcome to write any comments you have about specific questions in this questionnaire, potential uses for the information obtained, and any additional issues you feel may be beneficial to this research.

**Thank you very much for your participation.**



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**Mailmerge Template for Vignette #1**

ANYWHERE U.S.A. ARREST PROCESSING CENTER						Arrest Report	
ARRESTEE'S INFORMATION							
Complaint #: «respid»«newcase»«casenum1»- «packnum»			Arrest #: 20101111-«newcase»		PID #:		
Last Name: [REDACTED]		First Name: [REDACTED]		Middle: [REDACTED]		Suf:	
SSN: [REDACTED]	Drivers License: [REDACTED]	State: NC	Race: «race»	Sex: Male			
Date of Birth: «dob»	Place of Birth:	Height: 66 in	Weight: 160 lbs	Hair: BLK	Eyes: BLK		
Home block # [REDACTED]	Dir.	Street: [REDACTED]			Type:	Apt:	
City: [REDACTED]		State: NC	Zip:		Phone: [REDACTED]		
ARRESTEE'S PRIOR CRIMINAL HISTORY							
Arrest Date	Charge			Disposition			
«priordate1»	«priorchg1»			«priordispo1»			
«priordate2»	«priorchg2»			«priordispo2»			
«priordate3»	«priorchg3»			«priordispo3»			
«priordate4»	«priorchg4»			«priordispo4»			
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«priordate18»	«priorchg18»			«priordispo18»			



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 Vera staff to initial when page is completed: \_\_\_\_\_

ARREST CHARGE INFORMATION
Charge: Burglary (Residential)
Charge: Assault
Charge:
Charge:
ARREST REPORT
On November 11, 2010, the defendant was arrested for Burglary (Residential) and Assault.  The arresting officer was dispatched on a burglary in progress call. On his arrival at the victim's dwelling, the victim indicated that the suspect had fled and gave the arresting officer a description which was broadcast. As the arresting officer drove in the immediate area adjacent to the victim's dwelling, he saw a person who fitted the description given by the victim. The officer stopped the subject and thereafter the victim within minutes arrived on the scene and confirmed that it was the subject who had been in the victim's basement.  Further investigation revealed that the subject (the defendant) had entered the dwelling through the basement door and was rummaging through the basement when the victim surprised him. When the victim attempted to detain him, the defendant shoved the victim and fled.
EVIDENCE
Testimony of the victim as to the presence of defendant in basement and as to method of entry; testimony of victim that premises had been secured prior to entry and that defendant was there without permission.  Testimony of arresting officer as to circumstances surrounding description of defendant given him by victim and arresting officer's subsequent finding of defendant in the neighborhood and his arrest thereafter.



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**Mailmerge Template for Vignette #2**

ANYWHERE U.S.A. ARREST PROCESSING CENTER						Arrest Report	
ARRESTEE'S INFORMATION							
Complaint #: «respid»«newcase»«casenum1»- «packnum»			Arrest #: 20101102-«newcase»		PID #:		
Last Name: [REDACTED]		First Name: [REDACTED]		Middle: [REDACTED]		Suf:	
SSN: [REDACTED]	Drivers License: [REDACTED]	State: NC	Race: «race»	Sex: Male			
Date of Birth: «dob»	Place of Birth:	Height: 72 in	Weight: 230 lbs	Hair: BRWN	Eyes: BRWN		
Home block # [REDACTED]	Dir.	Street: [REDACTED]			Type:	Apt:	
City: [REDACTED]		State: NC	Zip:		Phone: [REDACTED]		
ARRESTEE'S PRIOR CRIMINAL HISTORY							
Arrest Date	Charge			Disposition			
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«priordate18»	«priorchg18»			«priordispo18»			



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ARREST CHARGE INFORMATION
Charge: Robbery in the Second Degree
Charge: Conspiracy
Charge:
Charge:
ARREST REPORT
On November 2, 2010, at 8:25 pm, the defendant was arrested for Robbery in the Second Degree and Conspiracy.  On November 2, 2010, the victim was walking on the street in the city when she was approached by two males who were jogging at the same time she first saw them. As they came up to her, one of the males grabbed the small purse she had in her hand and sprinted up the street. The other individual, the defendant, continued jogging at the same speed and upon hearing the victim scream stopped and came back to talk to her. At this time the victim indicated that her purse had been taken and the defendant responded, "I know the man, he's a friend of mine. I'll get you stuff back for you." The victim said that the defendant did not run simultaneously with the other man who was never apprehended. There was no indication or evidence that the defendant and the unknown other suspect had consulted prior to the other subject's taking the victim's purse. The defendant was arrested by Witness #2 who while on routine patrol came on the scene and was told by the victim that her purse had been taken.
EVIDENCE
Victim's testimony as to the taking of the purse  Testimony of arresting officer as to defendant who was fleeing at the time he was apprehended.



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**Mailmerge Template for Vignette #3**

ANYWHERE U.S.A. ARREST PROCESSING CENTER						Arrest Report	
ARRESTEE'S INFORMATION							
Complaint #: «respid»«newcase»«casenum1»- «packnum»			Arrest #: 20101105-«newcase»		PID #:		
Last Name: [REDACTED]		First Name: [REDACTED]		Middle: [REDACTED]		Suf:	
SSN: [REDACTED]	Drivers License: [REDACTED]	State: NC	Race: «race»	Sex: Male			
Date of Birth: «dob»	Place of Birth:	Height: 73 in	Weight: 205 lbs	Hair: BRWN	Eyes: BRWN		
Home block # [REDACTED]	Dir.	Street: [REDACTED]			Type:	Apt:	
City: [REDACTED]		State: NC	Zip:		Phone: [REDACTED]		
ARRESTEE'S PRIOR CRIMINAL HISTORY							
Arrest Date	Charge			Disposition			
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«priordate2»	«priorchg2»			«priordispo2»			
«priordate3»	«priorchg3»			«priordispo3»			
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 Vera staff to initial when page is completed: \_\_\_\_\_

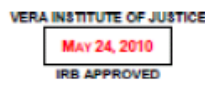
ARREST CHARGE INFORMATION
Charge: Felony Criminal Mischief
Charge: Criminal Trespass
Charge:
Charge:
ARREST REPORT
On November 5, 2010, defendant was arrested for Felony Criminal Mischief and Criminal Trespass.  At approximately 11:10 pm, on November 5, the police were contacted by Witness #1 who reported acts of vandalism being committed at a local high school. A police officer (Witness #2) responded to the scene where he was told by Witness #1 that four males had emerged from a white vehicle, climbed a short fence onto the property and proceeded to push over three light poles along the driveway of the high school. Witness #1 had copied a license plate number which he gave to the police. The license number was reported to central communications and shortly thereafter the vehicle in question was stopped by arresting officer. The defendant, who was the only person in the vehicle, was arrested and taken back to the scene. Witness #1 positively identified him as one of the four persons he had seen pushing over the light poles. It was subsequently determined that the damage done at the crime scene amounted to \$625.
EVIDENCE
Testimony of eyewitness as to acts of criminal mischief and trespass  Testimony of Witness #2 as to having given description of vehicle and license plate number  Testimony of arresting officer as to defendant's presence in vehicle at time of arrest  Testimony of school official as to extent of damage.



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**Mailmerge Template for Vignette #4**

ANYWHERE U.S.A. ARREST PROCESSING CENTER						Arrest Report	
ARRESTEE'S INFORMATION							
Complaint #: «respid»«newcase»«casenum1»- «packnum»			Arrest #: 20101112-«newcase»		PID #:		
Last Name: ██████████		First Name: ██████████		Middle: ██████████		Suf:	
SSN: ██████████	Drivers License: ██████████	State: NC	Race: «race»	Sex: Male			
Date of Birth: «dob»	Place of Birth:	Height: 71 in	Weight: 190 lbs	Hair: BLK	Eyes: BLK		
Home block # ██████████	Dir.	Street: ████████████████████			Type:	Apt:	
City: ██████████		State: NC	Zip:		Phone: ██████████		
ARRESTEE'S PRIOR CRIMINAL HISTORY							
Arrest Date	Charge			Disposition			
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ARREST CHARGE INFORMATION
Charge: Aggravated Assault with a Deadly Weapon (a pistol)
Charge: Assault in the Third Degree – two counts
Charge: Carrying a Concealed Dangerous Weapon
Charge: Possession of a Weapon during Commission of a Felony
ARREST REPORT
<p>On November 12, 2010, the defendant, a male, was arrested for Aggravated Assault with a Deadly Weapon (a pistol), two counts of Assault in the Third Degree, Carrying a Concealed Dangerous Weapon, and Possession of a Weapon during Commission of a Felony.</p> <p>On November 12, 2010, the defendant knocked on the door of Witness #1's apartment. She states that she did not answer immediately and the defendant began pounding on the door. When Witness #1 opened the door, the defendant ran upstairs and confronted Witness #2 who was visiting Witness #1. The defendant accused Witness #2 of "messing around with his girlfriend." (Witness #1). He began punching Witness #2 in the face, eventually shoving him down the stairs of the apartment. The defendant then threatened to use a .38 caliber Smith and Wesson revolver which he was carrying in a holster on his right hip, stating that he would kill Witness #1 and Witness #2. After pushing Witness #2 down the steps, he followed him outside and fired the revolver into the ground a few feet away from Witness #2. He then allowed Witness #2 to leave, went back upstairs and assaulted Witness #1, causing her a black eye as well as many contusions and abrasions.</p> <p>During the incident Witness #3 who was in the apartment viewed the assault by the defendant on Witnesses #1 and #2. Witness #4 also in the apartment observed the defendant fire the revolver. Witness #4 was in the bathroom and did not come out while the commotion was taking place. Witness #5 responded to the telephone call from the apartment made by Witness #3 who stated that the defendant was still in the apartment holding Witness #1 as a hostage. At this point the arresting officer telephoned the apartment and advised the defendant that he should come out of the apartment with his hands up. The defendant then walked out of the apartment as he was instructed and he was taken into custody. The defendant was transported to jail by Witness #6. Witness #5 attempted to recover the spent round from the weapon, however he was not able to find it. The weapon which was taken from the defendant by Witness #5 is in evidence. When the defendant arrived at the jail he was advised by Witness #6 of his rights and thereafter gave a full statement admitting to discharging the weapon, assaulting Witnesses #1 and #2 and ripping the phone out of the wall at the apartment.</p>
EVIDENCE
Weapon used by defendant
Testimony of victims (Witness #1 and #2) as to assault by the defendant and firing of pistol
Corroborative testimony of witnesses #3 and #4
Testimony of Witness #6 as to confession by defendant
Confession



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**Mailmerge Template for Vignette #5**

ANYWHERE U.S.A. ARREST PROCESSING CENTER						Arrest Report	
ARRESTEE'S INFORMATION							
Complaint #: «respid»«newcase»«casenum1»- «packnum»			Arrest #: 20101112-«newcase»		PID #:		
Last Name: [REDACTED]		First Name: [REDACTED]		Middle: [REDACTED]		Suf:	
SSN: [REDACTED]	Drivers License: [REDACTED]	State: NC	Race: «race»	Sex: Male			
Date of Birth: «dob»	Place of Birth:	Height: 67 in	Weight: 170 lbs	Hair: BLK	Eyes: BLK		
Home block # [REDACTED]	Dir.	Street: [REDACTED]			Type:	Apt:	
City: [REDACTED]		State: NC	Zip:		Phone: [REDACTED]		
ARRESTEE'S PRIOR CRIMINAL HISTORY							
Arrest Date	Charge			Disposition			
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«priordate2»	«priorchg2»			«priordispo2»			
«priordate3»	«priorchg3»			«priordispo3»			
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 Vera staff to initial when page is completed: \_\_\_\_\_

ARREST CHARGE INFORMATION
Charge: Robbery 1
Charge: Conspiracy
Charge:
Charge:
ARREST REPORT
<p>On November 12, 2010, at 10:40 PM, the defendant, a male, was arrested for Robbery 1 and Conspiracy.</p> <p>On November 12, 2010, at approximately 7:30 PM, the victim accompanied by her son, 19 years of age, was travelling in her automobile on a city street and noticed that the fire hydrant was spraying across the entire street ahead of her. As she slowed her vehicle a male ran up to the driver's side of the car and threw a bucket of water into her vehicle. Two other suspects ran up to the vehicle, one on each side. The suspect on the passenger's side then reached inside the car window and grabbed the victim's purse which was on the floor of the car. At the same time he also struck the victim's son on the face. The door on the driver's side was opened and the defendant attempted to pull the victim out of the vehicle. The victim slammed the door and rolled up her window. The victim then struggled with the suspect who had taken her purse. As she grabbed the purse and started to pull, the purse ripped and the defendant then took it out of her hand. In the purse was a wallet containing \$125, jewelry worth \$200, and a variety of charge plates and credit cards.</p> <p>The victim gave a detailed description of the subject who had taken the purse.</p> <p>Upon the report of the crime a police unit responded to the vicinity where the crime had occurred and shortly thereafter arrested the defendant. The victim, who was not seriously injured, and her son, at the crime scene positively identified the defendant as the person who had taken the purse.</p>
EVIDENCE
Testimony of the victim
Testimony of the arresting officer
Testimony of victim's son.



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**Mailmerge Template for Vignette #6**

ANYWHERE U.S.A. ARREST PROCESSING CENTER						Arrest Report	
ARRESTEE'S INFORMATION							
Complaint #: «respid»«newcase»«casenum1»- «packnum»			Arrest #: 20101101-«newcase»		PID #:		
Last Name: [REDACTED]		First Name: [REDACTED]		Middle: [REDACTED]		Suf:	
SSN: [REDACTED]	Drivers License: [REDACTED]	State: NC	Race: «race»	Sex: Male			
Date of Birth: «dob»	Place of Birth:	Height: 74 in	Weight: 215 lbs	Hair: BRWN	Eyes: HZL		
Home block # [REDACTED]	Dir.	Street: [REDACTED]			Type:	Apt:	
City: [REDACTED]		State: NC	Zip:		Phone: [REDACTED]		
ARRESTEE'S PRIOR CRIMINAL HISTORY							
Arrest Date	Charge			Disposition			
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«priordate3»	«priorchg3»			«priordispo3»			
«priordate4»	«priorchg4»			«priordispo4»			
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«priordate18»	«priorchg18»			«priordispo18»			



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 Vera staff to initial when page is completed: \_\_\_\_\_

ARREST CHARGE INFORMATION
Charge: Burglary
Charge: Theft
Charge: Possession of a Stolen Vehicle
Charge:

ARREST REPORT
<p>On November 1, 2010, the defendant a male, was arrested for Burglary, Theft, and Possession of a Stolen Vehicle.</p> <p>During the early morning hours of November 1, 2010, Witness #1 was awakened by a loud noise which she described as sounding like “a car losing an engine.” When she arose and looked out of her window she noticed a dark colored utility bed pick-up truck with clearance lights on top of the cab in the parking lot of the bank across the street from her apartment. As she watched, a male got in the passenger side of the vehicle and the vehicle thereafter departed.</p> <p>A short while later she heard the truck pull back into the parking lot. Again she looked out the window and called the police after seeing the passenger get out of the truck and go to the side of the bank. She thought that the person she observed was tampering with either the 24-hour depository or the side door.</p> <p>Witness #1 remained at her window and thereafter observed the truck return a third time. She again called the police and informed the communications officer that the vehicle was back. The officer who received her call held her on the phone until patrol cars arrived and apprehended the defendants. Accordingly Witness #1 was able to observe all that transpired at the scene.</p> <p>She indicated to the investigating officers that as the truck, occupied by the defendant, left the third time, a brief period elapsed until it reappeared for the fourth time. It was at the s time that the vehicle was stopped by a patrol car which had responded to the burglary call. At the time the vehicle was stopped by the investigating officer (Witness #2), the defendant jumped out of the vehicle and came back towards the police car. Defendant identified himself using a fictitious name but later gave his real name at the police station. The investigating officer (Witness #2) placed defendant under two hour detention, gave him his rights and placed him in a patrol car. Investigating officer (Witness #3) arrived in a second car on the scene. Witness #3 directed Witness #2 to search the inside of the truck for fruits or instruments of the crime which was believed to have occurred at the bank. In the cab of the truck Witness #2 found a brown Trust Company deposit bag #26A with the name “Church of the Holy Child.”</p> <p>The officers returned the defendant to the scene where defendant told Witness #2 that he was on the way to work when he saw the night deposit open.</p> <p>Investigating officers (Witnesses #2 and #3) determined that entry into the night deposit vault was made by using a key to open the outside deposit plate to the hopper. Thereafter the defendant inserted a tow chain hook under the banner which was then attached to the trailer hitch on the vehicle in which the defendant was apprehended. Apparently the original noise that woke up Witness #1 occurred when the hopper assembly was pulled out to expose the night vault below. The investigating officer (Witness #2) surmised that the return</p>



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trips that followed by the defendant were attempts to remove money bags which were in the vault. The motor vehicle in which the defendant was found, had been stolen earlier in the evening from Witness #4.

#### EVIDENCE

Brown deposit bag marked “Trust Company – Church of the Holy Child” containing @286 in bills and \$251 in coins along with \$883 in miscellaneous checks.

Testimony of Witness #2 as to defendant 1 giving false identification to the arresting officer.

Testimony of Witness #1 as to the defendant’s presence at the bank.

Testimony of owner of the pick-up truck as to ownership and theft.

Testimony of Pastor of Church of the Holy Child as to having made night deposit earlier in the evening on day crime occurred.



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Vera staff to initial when page is completed: \_\_\_\_\_

**Mailmerge Template for Vignette #7**

ANYWHERE U.S.A. ARREST PROCESSING CENTER						Arrest Report	
ARRESTEE'S INFORMATION							
Complaint #: «respid»«newcase»«casenum1»- «packnum»			Arrest #: 20101031-«newcase»		PID #:		
Last Name: [REDACTED]		First Name: [REDACTED]		Middle: [REDACTED]		Suf:	
SSN: [REDACTED]	Drivers License: [REDACTED]	State: NC	Race: «race»	Sex: Male			
Date of Birth: «dob»	Place of Birth:	Height: 68 in	Weight: 200 lbs	Hair: BLK	Eyes: BLK		
Home block # [REDACTED]	Dir.	Street: [REDACTED]			Type:	Apt:	
City: [REDACTED]		State: NC	Zip:		Phone: [REDACTED]		
ARRESTEE'S PRIOR CRIMINAL HISTORY							
Arrest Date	Charge			Disposition			
«priordate1»	«priorchg1»			«priordispo1»			
«priordate2»	«priorchg2»			«priordispo2»			
«priordate3»	«priorchg3»			«priordispo3»			
«priordate4»	«priorchg4»			«priordispo4»			
«priordate5»	«priorchg5»			«priordispo5»			
«priordate6»	«priorchg6»			«priordispo6»			
«priordate7»	«priorchg7»			«priordispo7»			
«priordate8»	«priorchg8»			«priordispo8»			
«priordate9»	«priorchg9»			«priordispo9»			
«priordate10»	«priorchg10»			«priordispo10»			
«priordate11»	«priorchg11»			«priordispo11»			
«priordate12»	«priorchg12»			«priordispo12»			
«priordate13»	«priorchg13»			«priordispo13»			
«priordate14»	«priorchg14»			«priordispo14»			
«priordate15»	«priorchg15»			«priordispo15»			
«priordate16»	«priorchg16»			«priordispo16»			
«priordate17»	«priorchg17»			«priordispo17»			
«priordate18»	«priorchg18»			«priordispo18»			



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ARREST CHARGE INFORMATION
Charge: Possession of a controlled substance (heroin)
Charge:
Charge:
Charge:

ARREST REPORT
<p>On October 31, 2010 the defendant was arrested for possession of a controlled substance (heroin).</p> <p>The arresting officer on the above date stopped the defendant for driving carelessly. The defendant was asked for his operator's license. As the defendant sat in his car seat and removed the license, the arresting officer observed a number of foil packets in his wallet. Based on his past experience as a police officer familiar with controlled substances, the arresting officer concluded that the packets contained heroin and arrested the defendant at this time. Laboratory analysis of the eighteen packets seized from the defendant proved positive for heroin.</p>

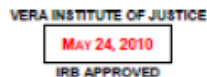
EVIDENCE
<p>Testimony of arresting officer as to circumstances surrounding defendant's arrest.</p> <p>Eighteen foil packets seized from person of defendant.</p> <p>Lab technician's testimony that foil packets contained heroin.</p>



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**Mailmerge Template for Vignette #8**

ANYWHERE U.S.A. ARREST PROCESSING CENTER						Arrest Report	
ARRESTEE'S INFORMATION							
Complaint #: «respid»«newcase»«casenum1»- «packnum»			Arrest #: 20101104-«newcase»		PID #:		
Last Name: [REDACTED]		First Name: [REDACTED]		Middle: [REDACTED]		Suf:	
SSN: [REDACTED]	Drivers License: [REDACTED]	State: NC	Race: «race»	Sex: Male			
Date of Birth: «dob»	Place of Birth:	Height: 75 in	Weight: 175 lbs	Hair: BRWN	Eyes: BRWN		
Home block # [REDACTED]	Dir.	Street: [REDACTED]			Type:	Apt:	
City: [REDACTED]		State: NC	Zip:		Phone: [REDACTED]		
ARRESTEE'S PRIOR CRIMINAL HISTORY							
Arrest Date	Charge			Disposition			
«priordate1»	«priorchg1»			«priordispo1»			
«priordate2»	«priorchg2»			«priordispo2»			
«priordate3»	«priorchg3»			«priordispo3»			
«priordate4»	«priorchg4»			«priordispo4»			
«priordate5»	«priorchg5»			«priordispo5»			
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«priordate8»	«priorchg8»			«priordispo8»			
«priordate9»	«priorchg9»			«priordispo9»			
«priordate10»	«priorchg10»			«priordispo10»			
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«priordate13»	«priorchg13»			«priordispo13»			
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«priordate15»	«priorchg15»			«priordispo15»			
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«priordate17»	«priorchg17»			«priordispo17»			
«priordate18»	«priorchg18»			«priordispo18»			



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ARREST CHARGE INFORMATION
Charge: Failure to move on
Charge:
Charge:
Charge:
ARREST REPORT
<p>On November 4, 2010, the defendant, a male, was arrested for failure to move on.</p> <p>On the above date, the arresting officer was in the process of writing a traffic ticket for a person whom he had stopped for driving at an excessive rate of speed. The defendant, a friend of the person stopped by the officer, came on the scene and began to harangue the officer as to the unfairness of giving his friend a ticket “while all of those criminals are permitted to run free.” The officer repeatedly told the defendant to move on and finally arrested him for his failure to do so.</p>
EVIDENCE
Testimony of arresting officer as to conduct of defendant which led to his arrest.



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**Mailmerge Template for Vignette #9**

ANYWHERE U.S.A. ARREST PROCESSING CENTER						Arrest Report	
ARRESTEE'S INFORMATION							
Complaint #: «respid»«newcase»«casenum1»- «packnum»			Arrest #: 20101109-«newcase»		PID #:		
Last Name: [REDACTED]		First Name: [REDACTED]		Middle: [REDACTED]		Suf:	
SSN: [REDACTED]	Drivers License: [REDACTED]	State: NC	Race: «race»	Sex: Female			
Date of Birth: «dob»	Place of Birth:	Height: 62 in	Weight: 110 lbs	Hair: BLND	Eyes: BLUE		
Home block # [REDACTED]	Dir.	Street: [REDACTED]			Type:	Apt:	
City: [REDACTED]		State: NC	Zip:		Phone: [REDACTED]		
ARRESTEE'S PRIOR CRIMINAL HISTORY							
Arrest Date	Charge			Disposition			
«priordate1»	«priorchg1»			«priordispo1»			
«priordate2»	«priorchg2»			«priordispo2»			
«priordate3»	«priorchg3»			«priordispo3»			
«priordate4»	«priorchg4»			«priordispo4»			
«priordate5»	«priorchg5»			«priordispo5»			
«priordate6»	«priorchg6»			«priordispo6»			
«priordate7»	«priorchg7»			«priordispo7»			
«priordate8»	«priorchg8»			«priordispo8»			
«priordate9»	«priorchg9»			«priordispo9»			
«priordate10»	«priorchg10»			«priordispo10»			
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«priordate15»	«priorchg15»			«priordispo15»			
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«priordate18»	«priorchg18»			«priordispo18»			



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ARREST CHARGE INFORMATION
Charge: Forgery – 4 counts
Charge: Theft (under \$300) – 4 counts
Charge:
Charge:
ARREST REPORT
<p>On November 9, 2010, the defendant, a female, was arrested for four counts of Forgery and four counts of Theft (under \$300).</p> <p>On July 19, 2010 a breaking and entering occurred in a grocery store in the city. Among other things, a number of blank checks drawn from Central Bank were stolen. The serial numbers of the stolen checks were provided to the police by the owner of the grocery store. The Central Bank was immediately notified by the merchant that the theft had occurred.</p> <p>On July 21, 2010, one of the stolen checks in the amount of \$175 was forged and passed to Witness #1. On the same date another one was forged in the amount of \$154.30 and passed to the manager of another liquor store in the city (Witness #2). On July 22, 2010, a third check was forged in the amount of \$145.65 and passed to Witness #3, the clerk in another liquor store. On July 22, 2010, a fourth stolen check in the amount of \$195.43 was forged and passed to the Peoples' Bank in the city.</p> <p>A video camera in the final liquor store in which Witness #3 received the check took a picture of the defendant. The positive identification by Witness #3 resulted in the arrest of the defendant. The remaining witnesses, including the clerk at the People's Bank (Witness #4), made positive identification of the defendant.</p>
EVIDENCE
<p>Witness #1 and forged check in the amount of \$175</p> <p>Witness #2 and forged check in the amount of \$154.30</p> <p>Witness #3 and forged check in the amount of \$145.65</p> <p>Witness #4 and forged check in the amount of \$195.43</p> <p>Witness #5, representative of Central Bank, as to ownership of check and fact that check were reported stolen.</p> <p>Witness #6, owner of grocery store, as to burglary and theft of checks.</p>



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**Mailmerge Template for Vignette #10**

ANYWHERE U.S.A. ARREST PROCESSING CENTER						Arrest Report	
ARRESTEE'S INFORMATION							
Complaint #: «respid»«newcase»«casenum1»- «packnum»			Arrest #: 20101105-«race»		PID #:		
Last Name: [REDACTED]			First Name: [REDACTED]		Middle: [REDACTED]		Suf:
SSN: [REDACTED]	Drivers License: [REDACTED]		State: NC	Race: «race»	Sex: Female		
Date of Birth: «dob»	Place of Birth:	Height: 68 in	Weight: 155 lbs	Hair: BRWN	Eyes: HZL		
Home block # [REDACTED]	Dir.	Street: [REDACTED]			Type:	Apt:	
City: [REDACTED]	State: NC		Zip:		Phone: [REDACTED]		
ARRESTEE'S PRIOR CRIMINAL HISTORY							
Arrest Date	Charge			Disposition			
«priordate1»	«priorchg1»			«priordispo1»			
«priordate2»	«priorchg2»			«priordispo2»			
«priordate3»	«priorchg3»			«priordispo3»			
«priordate4»	«priorchg4»			«priordispo4»			
«priordate5»	«priorchg5»			«priordispo5»			
«priordate6»	«priorchg6»			«priordispo6»			
«priordate7»	«priorchg7»			«priordispo7»			
«priordate8»	«priorchg8»			«priordispo8»			
«priordate9»	«priorchg9»			«priordispo9»			
«priordate10»	«priorchg10»			«priordispo10»			
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«priordate13»	«priorchg13»			«priordispo13»			
«priordate14»	«priorchg14»			«priordispo14»			
«priordate15»	«priorchg15»			«priordispo15»			
«priordate16»	«priorchg16»			«priordispo16»			
«priordate17»	«priorchg17»			«priordispo17»			
«priordate18»	«priorchg18»			«priordispo18»			



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ARREST CHARGE INFORMATION
Charge: Possession of a stolen credit card
Charge: Attempted illegal use of a credit card
Charge:
Charge:

ARREST REPORT
<p>On November 5, 2010, the defendant, a female was arrested for possession of a stolen credit card and attempted illegal use of a credit card.</p> <p>On the above date, the defendant attempted to purchase a number of sundry items at a drug store which she sought to pay for by using a stolen credit card. When the sales clerk made a phone call to verify the card, he was informed that it had been stolen and that the police had been called to come to the drug store. The defendant was arrested by the arresting officer just as the defendant attempted to regain possession of the card and leave the store.</p>

EVIDENCE
<p>Stolen credit card</p> <p>Testimony of card owner that card had been in her purse at time it had been stolen.</p> <p>Clerk's testimony as to attempt by defendant</p> <p>Arresting officer's testimony as to apprehension of defendant</p>



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### Defendant Age/Criminal History Profiles

Profile	DOB	Arrest Date	Charge	Disposition
Profile #1	01/02/65	7/14/87	Rape	Convicted
		12/20/05	Murder	Convicted
Profile #2	9/04/77	6/01/01	Receiving Stolen Property	Convicted
		8/08/03	Misdemeanor Assault	Convicted
		12/03/05	Misdemeanor Assault	Convicted
		5/18/06	Misdemeanor Assault	Dismissed
		11/17/09	Misdemeanor Assault	Dismissed
Profile #3	9/01/83	02/10/04	Arson	Convicted
		05/01/05	Misdemeanor Assault	Convicted
Profile #4	05/01/76	11/16/95	Drunkenness	Convicted
		12/30/95	DWI	Convicted
		03/19/96	Drunkenness	Dismissed
		11/02/98	Misdemeanor Assault	Convicted
		01/16/99	Receiving Stolen Property	Dismissed
		12/15/99	Misdemeanor Assault	Dismissed
		07/30/00	Misdemeanor Assault	Convicted
		04/22/02	Misdemeanor Assault	Convicted
		04/29/02	Misdemeanor Assault	Convicted
		03/09/04	Drunkenness	Convicted
Profile #5	10/23/80	09/27/06	Possession of Heroin	Convicted
		10/18/08	Misdemeanor Larceny	Dismissed
		11/23/00	Felony Larceny	Acquittal
		10/01/01	Burglary, 1st degree	Convicted
		11/10/01	Felony Larceny	Convicted
		11/10/01	Possession of Cocaine	Convicted
		12/01/01	Contributing to Delinquency of a Minor	Dismissed
		12/31/01	Possession of Cocaine	Convicted
		12/31/01	Possession of Mescaline	Convicted
		12/31/01	Sale of Heroin	Convicted
		01/28/02	Possession of Narcotic Equipment	Convicted
		10/10/02	Felony Larceny	Convicted
		04/14/05	Felony Larceny	Convicted
		09/22/07	Misdemeanor Assault	Acquittal
		06/04/08	Intimidation	Acquittal
06/04/08	Disorderly Conduct	Convicted		
11/25/08	Carrying a Prohibited Weapon	Dismissed		
04/21/09	Possession of Explosives	Dismissed		
10/04/09	Intimidation	Acquittal		
10/04/09	Possession of Marijuana	Acquittal		



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Profile	DOB	Arrest Date	Charge	Conviction
Profile #6	03/28/83	No Prior Record	No Prior Record	No Prior Record
Profile #7	1/20/81	08/02/01	Felonv Larceny	Convicted
		06/03/04	Forgery	Dismissed
		06/14/05	Disorderlv Conduct	Convicted
		02/22/06	Carrying Concealed Weapon	Convicted
		05/22/08	Felony Larceny	Convicted
Profile #8	05/15/80	No Prior Record	No Prior Record	No Prior Record
Profile #9	01/16/79	04/05/94	Loitering	Convicted
		11/24/96	Burglarv. 2nd Degree	Acquittal
		05/09/98	Burglarv. 2nd degree	Convicted
		12/15/99	Possession of Marijuana	Convicted
		05/30/01	Traffic Offense	Acquittal
		07/05/02	Burglarv. 2nd degree	Acquittal
		10/05/03	Probation Violation	Acquittal
		04/04/04	Possession of Heroin	Convicted
		08/13/04	Felonv Larceny	Convicted
		03/16/05	Possession of Marijuana	Convicted
		01/01/06	Possession of Cocaine	Acquittal
		06/01/07	Possession of Cocaine	Convicted
		12/24/08	Receiving Stolen Property	Dismissed
12/06/09	Possession of Heroin	Dismissed		
Profile #10	03/17/74	07/15/94	Misdemeanor Assault	Convicted
		11/18/96	Misdemeanor Assault	Dismissed
		09/20/97	Misdemeanor Assault	Convicted
		07/03/99	Misdemeanor Assault	Convicted
		07/24/01	Misdemeanor Assault	Convicted
		09/21/03	Sale of Heroin	Dismissed
		10/11/04	Burglarv. 1st degree	Convicted
		10/01/07	Assault, Serious Bodily Injury	Convicted



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