

Observing Prosecutorial Outcomes in the City of Madison

Prepared for

The Office of the City Attorney
City of Madison, Wisconsin

By

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Foreword

This report was written for the Office of the City Attorney in Madison, Wisconsin, by students at the La Follette School of Public Affairs at the University of Wisconsin–Madison. The learning objective of the La Follette School is to provide graduate students the opportunity to improve their policy analysis skills while providing the client an analysis of a policy problem on which a decision or set of decisions needs to be made.

The La Follette School offers a two-year graduate program leading to a Master of Public Affairs degree or a Master of International Public Affairs degree. Students study policy analysis and public management, and they spend the first year and a half of the program taking courses in which they develop the expertise needed to analyze public policies, including skills in statistics, economics, and policy analysis. The authors of this report all are in the final semester of their degree program and are enrolled in the Workshop in Public Affairs. Although acquiring a set of policy analysis skills is important, there is no substitute for doing policy analysis as a means of experiential learning. The Workshop in Public Affairs gives graduate students that capstone opportunity as they produce a report for a real-world client about a question of importance to the organization.

I am grateful to the Office of the City Attorney for partnering with the La Follette School on this project. The office's staff have been generous with their time to support the students' work. The students have collectively contributed hundreds of hours to the project, and in the process developed critical insights about our community. The La Follette School is grateful for this collaborative effort and hopes the report proves valuable.

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April 2022

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Our team would like to thank all the stakeholders who assisted us in crafting this report. First and foremost, we would like to thank our client, Michael Haas, and the members of his staff who extended this opportunity to work on an important social issue. We hope this report supports the office in its pursuit of equity and fairness.

Special thanks to our primary contact, Assistant City Attorney Jason Donker, for his boundless enthusiasm and assistance with data collection and organizing interviews with the office staff. We would also like to thank the assistant city attorneys who took the time to sit for interviews. We learned a great deal from each of you.

Finally, we would like to thank the La Follette School of Public Affairs for this opportunity to practice our craft. A special thanks to Professor J. Michael Collins, whose extensive feedback and participation in countless meetings and discussions made this report possible.

The views, opinions, and recommendations in this report represent those of the authors alone and do not reflect findings, recommendations, or policies of the University of Wisconsin–Madison, the La Follette School, or the Office of the City Attorney in Madison, Wisconsin.

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Executive Summary

Municipal citations, which can range from traffic offenses and property code violations to disorderly conduct, present the most common interaction between individuals and the legal system. Even though millions of people receive these kinds of citations each year, few reports have investigated who receives them, the impact those citations have, or even how municipal prosecutors make decisions.

Research increasingly links financial penalties issued by the criminal justice system to compounding economic challenges for defendants and their families. These findings, as well as the widespread evidence of systemic inequities within the wider criminal justice system, show that it is critically important to develop a better understanding of the municipal justice system as well as the efficacy and equity of the associated penalties.

This report studies municipal court data from the City of Madison, Wisconsin, to evaluate the equity and fairness of the prosecutorial process by race, age, and sex. Interviews with assistant city attorneys (ACAs) from the Office of the City Attorney (OCA) provide context about prosecutorial decision-making and efforts to promote equitable outcomes. Through this mixed-methods analysis, the report provides a unique perspective on the dynamics and concerns related to municipal prosecution. These data inform a set of recommendations for the OCA and local prosecutorial offices to ensure that equity and fairness are interwoven into this important corner of the legal system.

Findings

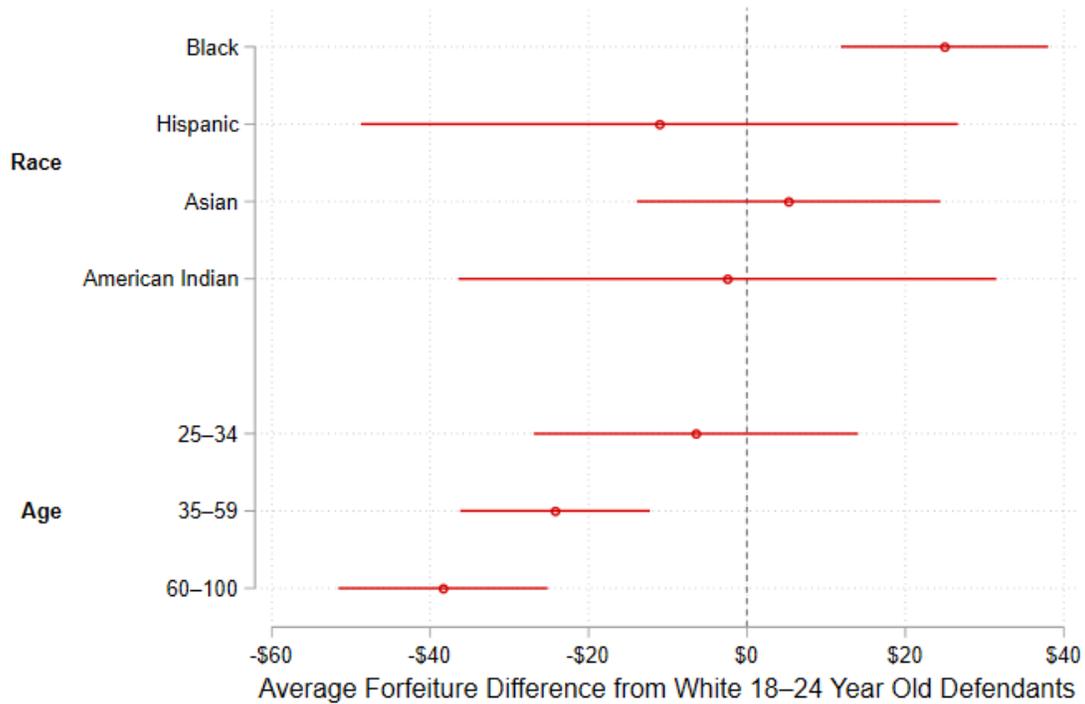
Figure 1 depicts the average forfeiture difference between defendants of the different race and age groups available within the municipal court dataset, controlling for citation type, sex, and attorney representation, using estimates based on ordinary least squares regression of forfeiture amounts in US dollars. Each point on the graph represents the average difference between that race or age group with white defendants aged 18 to 24. The lines represent 95 percent confidence intervals that account for variation within the data. If the line crosses zero, the results are not statistically significant. As the figure indicates, Black defendants receive forfeitures that are, on average, \$25 higher than their white peers. Additionally, defendants over the age of 34 receive forfeitures that are substantially lower than defendants between the ages of 18 and 24.

In addition to administrative data, this report finds three primary themes from interviews:

1. Staff dynamics and prosecution experience affect prosecutorial choices. Newer prosecutors reported being less comfortable exercising prosecutorial discretion to amend citations.
2. ACAs reported a focus on avoiding overcharging defendants and an interest in diversion programs and other policies that limit the burden of forfeitures.
3. The municipal court system offers a unique setting to test innovative policies around forfeitures, including alternative processes and penalties like community service.

While the analysis of municipal court administrative data found evidence of disparate outcomes by race and age, there are some limitations, as 20 percent of the sample was missing identity information. In addition, it is important to note that the process of reporting, ticketing, and policing directly determines who receives citations and is therefore reflected in the data.

Figure 1: Average Forfeiture Difference by Race and Age, Controlling for Other Factors



Note: Circles are point estimates of forfeiture amounts with the 95% confidence interval. A line that does not intersect \$0 is statistically significant. Other factors controlled for include citation, sex of the defendant, and attorney representation. Estimates based on ordinary least squares regression of forfeiture amounts in US dollars. These estimates are relative to white defendants under age 25.

Source: Municipal Court Administrative Data, Jan. 1, 2018–Jan. 13, 2022.

Recommendations

1. The city municipal justice system, from policing to the courts, should improve data collection and conduct further analysis to determine why forfeiture disparities exist.
2. The OCA should update the OCA website with a formal prosecution philosophy, expanded disclosures of forfeitures, and resources such as information about the process and available programs to equip all defendants to effectively navigate the municipal justice system.
3. The OCA should expand training on prosecutorial discretion for new ACAs so that they can more effectively achieve equitable outcomes.
4. The OCA should restore and expand the ticket forgiveness program to decrease the number of outstanding citations and reduce the financial burden on economically disadvantaged defendants.
5. The OCA should pilot a pre-trial appearance forfeiture reduction program to ensure that forfeiture amounts are more equitable and more likely to be paid.

Introduction

Municipal citations, which can range from traffic offenses and property code violations to disorderly conduct, present the most common—and often first—interaction between citizens and law enforcement. Over 20 percent of the U.S. population, or 66 million people, come into contact with the police each year (Davis, Whyde, and Langton 2018). These interactions result in more than 55 million cases processed by limited jurisdiction courts, many of which exclusively handle low-level offenses and are funded by individual cities (Schauffler et al. 2016).

Despite this stunning number of cases, few studies have been published on the population that receives municipal citations, what impact those citations have, or even how the prosecutors responsible for these cases make decisions. Most analysis of prosecutorial outcomes by race, sex, and age narrowly focuses on policing or incarceration and neglects the accumulation of fines and fees from lower-level misdemeanor cases (Turney and Wakefield 2019; Kohler-Hausmann 2013). Similarly, prosecutors' offices often lack the time, technical skills, and resources to collect or analyze data on how different groups of people fare in the legal process.

In addition, the sheer diversity of systems adopted by cities and other local governments is a key challenge to understanding the outcomes of municipal justice processes. In many areas the city attorney is tasked with prosecuting these offenses. However, city attorneys have historically been tasked with a wide range of duties and not all have the capacity to handle prosecutions (Palla 1962). In those instances, municipal cases are often processed by county or state-level prosecutors along with criminal charges. The diversity of cases, ranging from ordinance violations such as traffic tickets to hundreds of other civil and criminal violations, makes it difficult for researchers to isolate lower-level offenses.

Nonetheless, the research that does exist points toward the importance of investigating municipal prosecutions. Criminal fines or civil forfeitures are typically the tools used by prosecutors to resolve low-level crimes. These penalties play an increasingly prominent role in criminal sanctions and are associated with compounding economic challenges for defendants and their families (Lofstrom and Raphael 2016). However, prior work typically investigates this phenomenon in the context of the broader criminal justice system. For the millions of people whose only interaction with the legal system is resolving a municipal citation with a municipal prosecutor, the impact of forfeitures is the preeminent concern.

Between the lack of analysis on municipal citations and the increasing evidence of long-lasting consequences associated with financial penalties, cities and other small jurisdictions are an important, but often overlooked, part of the legal system. This is especially troubling in light of the widespread evidence that the broader criminal justice system contributes to societal inequities (Craigie et al. 2020; Lofstrom and Raphael 2016; Haney López 2000) and that sometimes bias on the part of police and prosecutors plays a role (Greenberg 2021; Price and Payton 2017; Rehavi and Starr 2014; Barkow 2013). Under these circumstances it is critically important to develop a better understanding of municipal citations as well as the efficacy and equity of the associated penalties.

This study analyzed data from the City of Madison, Wisconsin, to evaluate the equity and fairness of the prosecutorial process by race, age, and sex. This report provides a unique perspective on the dynamics and concerns related to municipal prosecution. These data inform a set of recommendations for local prosecutorial offices to ensure that equity and fairness are interwoven into this important corner of the legal system.

Structure of the report

This report begins with an overview of context for the structure and process used by the Office of the City Attorney (OCA) in Madison, Wisconsin. Next, the report describes the types of ordinance violations and other low-level citations the OCA prosecutes. These characteristics are important to distinguish due to the sweeping array of methods employed by different states and cities to adjudicate these offenses. This report also describes the anatomy of a “typical” municipal case for a mid- to large-sized city that employs a prosecuting city attorney, as well as the specific process employed by the City of Madison. The report then draws from interviews with staff before concluding with a discussion of limitations and recommendations.

Office of the City Attorney

The Office of the City Attorney in Madison, Wisconsin, is comprised of a city attorney appointed by the mayor and confirmed by the Madison Common Council (city legislature), a deputy city attorney, and up to 15 assistant city attorneys (ACAs). Together, they work to support the city through engagement in three major duties. The first duty is to prosecute violations of local ordinances as enacted by the Common Council. The second is to provide legislative counsel to the city government. This includes drafting and revising proposed local ordinances as well as advising municipal organizations on how to interpret enacted policies. The office’s third duty is to provide general legal counsel to the city. This responsibility includes a wide range of activities including representing the city in court, advising city leaders on compliance with regulations, and drafting documents and negotiating cases on the city’s behalf.

Across these duties, the office maintains a common mission and vision statement. According to the vision and mission statement posted on the OCA’s website, some of the values used in decision-making are professionalism, fairness and equity, integrity, and decisiveness. This study focuses on the office’s effort to embody those values when prosecuting violations of local ordinances and statutes. Each year, the OCA adjudicates more than 2,500 citations. Some of the more common citations include underage drinking, unlawful trespass, disorderly conduct, and traffic violations. Other citations relate to more niche ordinances such as dog permit violations or throwing stones. The office is not responsible for county and state criminal offenses or for other violations that occur within the surrounding county—those are handled by the Dane County District Attorney’s Office.

Among the cases that fall under the jurisdiction of the OCA, prosecutorial discretion varies greatly depending on the source of the law. For example, most traffic laws, which are among the most frequent categories of citation, are state laws. In Wisconsin, the state legislature has narrowed the discretion of prosecutors in assigning forfeiture amounts. For example, the speeding statute limits the forfeiture for most speeding offenses to \$300 and lists a minimum forfeiture of \$30 (Wis. Stat. § 346.57). In contrast, some city ordinances authored by the Madison Common Council grant wider discretion for ACAs to administer forfeitures. For example, Chapter 23 of Madison’s city code outlines violations against public policy, encompassing theft, battery, littering, and the use of dangerous insecticides, among more than 70 other regulations (Madison, Wis., Code of Ordinances § 23). These ordinances may grant wide prosecutorial discretion by only assigning a maximum forfeiture of \$500, as in the case of DDT insecticide spray, which is an insecticide known to cause environmental damage (Madison, Wis., Code of Ordinances § 23.70).

The OCA uses a relatively standard model to adjudicate these ordinance and statute violations. Some deviation from the process is necessary to resolve high volume offenses like traffic tickets efficiently while accounting for the differing levels of discretion afforded to the office. Below is a description of the general municipal court process with notes for where the OCA adopts a distinct practice.

Anatomy of a municipal case

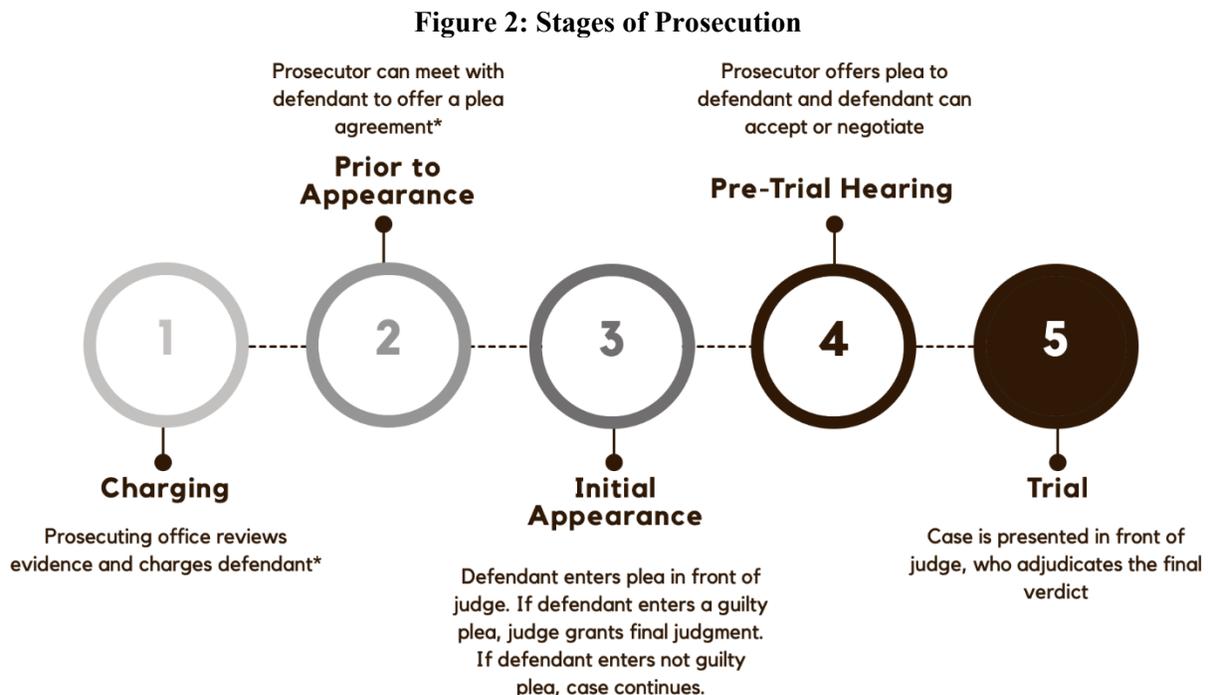
Before prosecution: The role of police and traffic stops

The very first interaction the defendant faces in an ordinance prosecution is with police or other law enforcement. In fact, the traffic stop is the most common interaction individuals have with police and, for most traffic law violators, this is the only prosecutorial stage they will encounter (Woods 2021). While this stage of the process is outside the scope of this report’s analysis, it is important to note the significance of this stage and how police discretion affects the violations brought before assistant city attorneys to prosecute. A police officer has the sole discretion to pull a car over or stop an individual if they determine that there is reasonable suspicion that a violation or crime occurred.

Statistically, police are more likely to stop people of color, leading to racial disparities in initial citations issued (Woods 2021). Traffic stops have also been the site of highly publicized police shootings. Cities like Berkley, California, have passed ordinances in response to such incidents by removing police from traffic enforcement (Thorn 2021). Philadelphia, Pennsylvania, stopped prosecuting low-level traffic violations altogether (Brown and Tucker 2021). Fayetteville, North Carolina, refocused traffic enforcement on major road hazards and offenses (Jallow 2021). These examples present three wildly diverse ways cities have addressed police discretion and, by extension, shaped the population of people interacting with local prosecutors.

Stages of prosecution in a typical case

Figure 2 contains a flow chart depicting the stages of a case and the different outcomes that can result at each level. The chart highlights areas where prosecutors can exercise their discretion to modify or dismiss a case, as well as local practices within the Office of the City Attorney that limit prosecutorial discretion.



*Differs in Madison: defendant automatically cited with traffic offenses; ACAs receive case after initial appearance.

Source: Adapted from City of Madison Municipal Court n.d.

As can be seen in Figure 2, the first stage of a case that involves an ACA is the charging stage. In traffic violations, a prosecuting office often issues citations without prosecutorial intervention, based on the police officer's findings at the traffic stop. In non-traffic cases, ACAs decide whether to file or dismiss a charge depending on the police report and the amount of evidence collected. In a criminal case, the legal threshold to charge a defendant is probable cause to believe a crime has been committed, and many prosecutors choose to only charge someone if the evidence suggests beyond a reasonable doubt that they committed the offense. However, in civil violations like the cases prosecuted by the OCA, the defendant is automatically cited with what the police officer writes on the citation.

The second stage occurs after charges are filed and citations are issued to defendants. Once charges are filed, the prosecutor has a vast amount of discretion in terms of how the case proceeds. The prosecutor can dismiss a case or they can also offer a diversion program, depending on the charges and what services the city offers. A diversion program is a way for prosecutors to hold defendants accountable without going to trial and causing the ancillary damage that results from criminal conviction. In Madison, most of the known diversion programs are for county-level offenses, although there is a drug diversion program run through the Madison Police Department. However, Madison ACAs do not get involved in cases or contact defendants until they enter a plea in the initial court appearance, which does not allow them to utilize most pre-plea diversion programs.

While this time prior to the initial court appearance can include prosecutorial involvement, prosecutors in the OCA do not interact with individuals cited for minor traffic or civil ordinance violations. Instead, the defendant has zero interaction with a prosecutor until after the initial appearance. Other jurisdictions assign prosecutors prior to the initial appearance so that prosecutors negotiate with defendants.

The third stage is the initial court appearance, where the defendant appears in front of a judge. The main purpose of this stage is for the defendant to enter a plea. Additionally, for traffic violations, the initial court appearance allows the defendant to negotiate their forfeiture. In the City of Madison, if a defendant enters a not guilty plea, the case is set for a pre-trial hearing and the office assigns an ACA.

The fourth stage of prosecution occurs at the pre-trial hearing. At this point, the ACA and the defendant, or their attorney, meet to discuss the violation. The defendant, in most cases, explains their side of the story and provides exculpatory information to the ACA. It is during this stage that an ACA in the City of Madison can exercise their discretion to dismiss the case, offer a settlement, or set a date for trial. The ACA can also set an additional meeting to receive and review case discovery, investigate factors, or give the defendant time to consider a settlement offer. If a settlement is not reached after additional review, the case goes to trial. Other jurisdictions have a similar process with discretion afforded to the prosecutor.

Finally, the last stage of prosecution is trial. If a case goes to trial, each side is able to present its case, and the judge determines whether the ACA met the necessary burden of proof (clear and convincing) to prove the defendant guilty of the alleged violations. Potential trial outcomes are dismissal, a finding of guilt, or acquittal. The judge is the final arbiter of how much the defendant must pay. If a case reaches this point, ACAs tend to see the trial through rather than offer any last-minute plea deals in order to disincentivize defendants from holding out for a better deal.

As this winding process demonstrates, there are many potential points where a defendant's outcome could be affected by the type of citation, prosecutorial discretion, or bias on the part of any of the actors. Analysis of actual court outcomes from the City of Madison can serve to identify facets of this process that are worth re-examining or changing to promote fair and equitable outcomes.

Analysis of Prosecutorial Outcomes

The methods and primary variables of interest adopted for this analysis follow many of the approaches used by other jurisdictions in similar reports. While little research has exclusively studied municipal offenses, recent work has examined disparate outcomes across misdemeanor cases (Butcher and Rempel 2022; Agan, Doleac, and Harvey 2021). In addition, a study of misdemeanor enforcement across seven U.S. jurisdictions found evidence of disparate arrest rates by race, age, and sex (Cadoff, Chauhan, and Bond 2020). As municipal citations are adjacent to criminal offenses, inequities in cases both entering and processed by the criminal justice system are also likely to extend to the municipal justice system.

For all types of cases, including misdemeanors, disparities based on race present the most ubiquitous subject of study. Extensive evidence indicates the existence of racial disparities at all phases of the criminal justice system. Racial disparities have been found at traffic stops, arrests, and parts of the prosecutorial process such as case dismissal and plea bargaining (Bosick 2021; Woods 2021; Rosen 2018). Other work has established that race affects prosecutorial outcomes even when the race categories under examination differ and when other legal and extra-legal factors are considered (Kutateladze, Lynn, and Liang 2012).

Sex and age appear to play a smaller, yet important, intersectional role in shaping the population of those interacting with the criminal justice system and their outcomes. Different age groups have been historically documented to commit low-level crimes at different rates, even if those rates are not consistent over time (Steffensmeier et al. 1989; Farrell, Laycock, and Tilley 2015). Once involved in the criminal justice system, outcomes are affected by sex and age. Female defendants are more likely to have initial charges dropped or reduced (Berdejo 2019). Sentencing decisions vary based on the age and sex of the defendant, in addition to race (Butcher, Park, and Piehl 2017; Steffensmeier, Painter-Davis, and Ulmer 2017). Prosecutors are also more likely to offer diversion programs to younger female defendants than older male defendants (Albonetti and Hepburn 1996). Taken together, these characteristics merit study at the municipal level.

This report employs a combination of quantitative and qualitative methods to evaluate prosecutorial outcomes based on race, sex, and age within the City of Madison. These variables were selected based on the evidence of disparities along those traits as well as their preeminence in criminology and sociology (Steffensmeier, Painter-Davis, and Ulmer 2017, 830). The methodology was inspired by recent work in Denver, Colorado, and New York County—jurisdictions that have successfully combined mixed-methods analysis to guide the development of recommendations (Bosick 2021; Kutateladze and Andiloro 2014). In this case, administrative data from the municipal court are used to generate descriptive and summary statistics highlighting trends among outcomes. Interviews with prosecutors from the OCA contextualize the quantitative findings with a better understanding of the decision-making process practiced by the city's prosecution team. Although there was interest in assessing outcomes based on defendants' legal representation, this was ultimately excluded due to insufficient data.

Analysis of administrative data

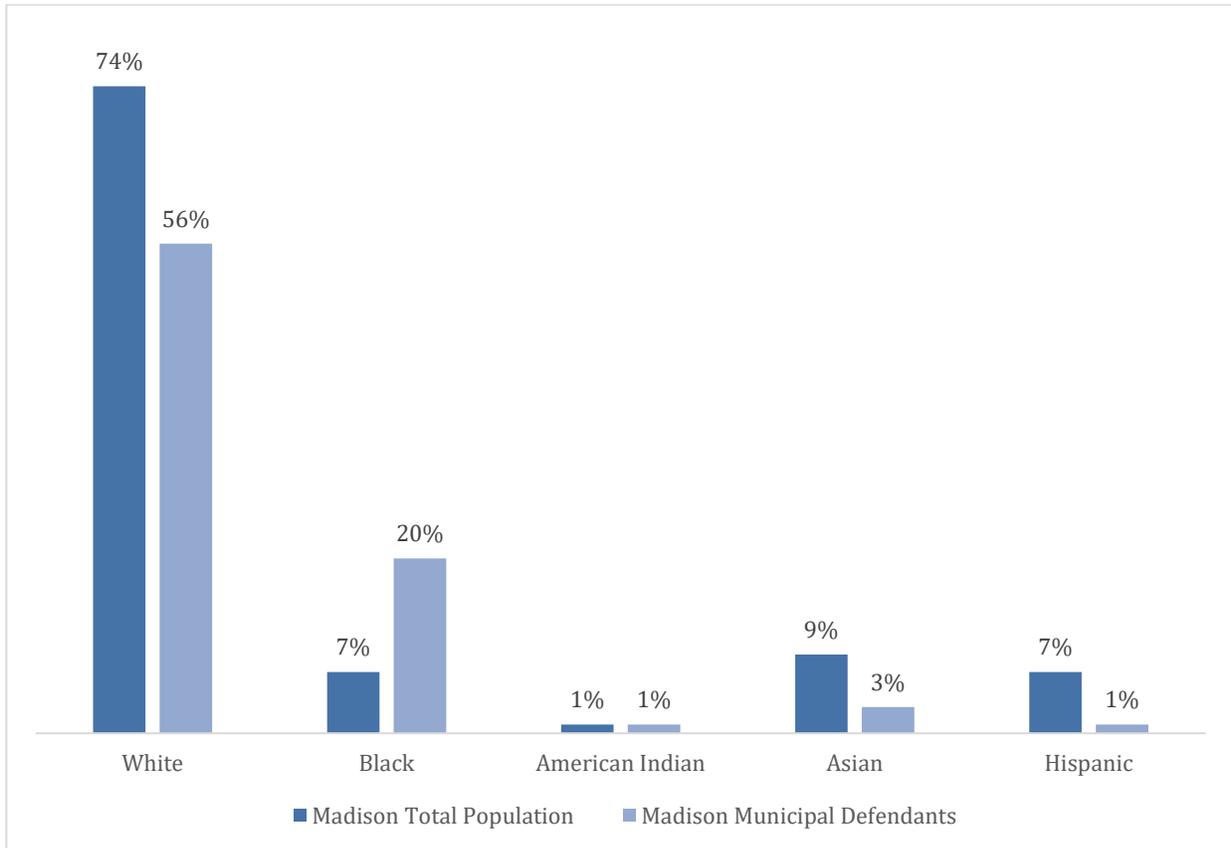
This analysis of any discrepancies in forfeitures by demographic groups is based on administrative data provided by the City of Madison Municipal Court, which is the local court that processes the cases under review. The dataset included 11,298 citations issued from January 1, 2018, through January 13, 2022. After

removing citations issued to businesses and organizations, the sample used to create descriptive statistics consisted of 10,647 citations drawn from 127 different types of violations.

The dataset contains information about each citation, including the dates of the violation and citation, the ordinance or statute violated, the defendant’s original plea, the final finding of the case, and how much of a forfeiture was ultimately issued. In addition to citation information, the dataset includes defendants’ race, sex, date of birth, and whether they had attorney representation. The dataset excludes juvenile cases. The demographic data were originally collected when the citation was issued and draw mainly from information listed on defendants’ driver’s licenses. Municipal court staff input the demographic information directly from the citation issued by the police.

Figure 3 compares the racial makeup of residents in the City of Madison to the administrative data received from the municipal court. City of Madison population data are drawn from the Census Bureau’s 2019 American Community Survey (ACS). The categories provided on the ACS are more expansive than the options included within the data collected by the municipal court. As a result, the categories do not perfectly align, and some data are not captured in Figure 3.

Figure 3: Population Comparison between City of Madison and Municipal Defendants



Note: This graph excludes the racial groups included in the ACS data that did not have a corresponding group within the municipal court dataset.

Source: U.S. Census Bureau 2020; Municipal Court Administrative Data Jan. 1, 2018–Jan. 13, 2022.

As shown in Figure 3, Black residents in the City of Madison were disproportionately issued citations relative to their share of the population. The literature suggests that this could be due to racial

disparities in the citations issued by police (Woods 2021). While this disparity is important and merits further study, the scope of this report is limited to the stages of prosecution.

Within the administrative dataset, a significant number of the citations were missing key demographic data including the defendant’s race, sex, or date of birth. Approximately 18 percent (1,868 citations) did not include the sex of the defendant, and 20 percent (2,098 citations) did not include the race of the defendant. As a result, nearly 20 percent of citations in our descriptive statistics dataset are not reflected in Figure 3. Additionally, the system used to identify race is limited to recording what is on defendants’ driver’s licenses. This means there are only five options, multiracial identities are not reflected in the data, and Hispanic identity is categorized as a race rather than as an ethnicity, which is how it is categorized by the U.S. Census and the American Community Survey. These inconsistencies can affect the results of the analysis, such as making it impossible to determine whether one demographic group is more likely to not have their race, sex, or age recorded.

Separately, the OCA provided groups of charges that are treated similarly to one another, and standard forfeiture amounts associated with different citations. Using this information, we grouped together the similar citations and removed the citations that are primarily issued to businesses and organizations. Table 1 lists the top 10 most frequent types of citations issued to individuals and the number of citations within each grouping. These 10 groupings account for 81 percent of all citations issued within this timeframe. These 10 citations appear at similar rates across all racial groups within the available data.

Table 1: Most Frequent Citation Categories for Individuals, Jan. 2018–Jan. 2022

Citation Type	Number of Citations	Percentage of Total
Parking Violations	3,004	28
General Traffic Violations*	2,045	19
Speeding	937	9
Operating while Intoxicated	809	8
Disorderly Conduct	627	6
Failure to Remove Snow and Ice	259	2
Operating without a Valid License	238	2
Underage Drinking**	235	2
Unlawful Trespassing	216	2
Failure to Yield Offenses	210	2
All Other Offenses	1,630	19
Total	10,647	100

*Includes unsafe backing, improper turns, and inattentive driving.

**There are different categories of underage drinking citations. This category specifically refers to underage persons in possession of or consuming alcohol.

Note: This table contains the 10,647 citations that were not violations primarily issued to organizations and that are used to create the descriptive statistics.

Source: Municipal Court Administrative Data Jan. 1, 2018–Jan. 13, 2022.

Throughout this analysis, the forfeiture amount issued is the primary outcome for each citation. Although this amount is not solely determined by the prosecuting attorney, they do have some discretion when it comes to setting the starting amount asked for by the city on each citation. By comparing the mean forfeiture amount across different demographic groups, we can determine if there appear to be any significant discrepancies by race, sex, age, or other factors. Forfeitures that are consistently different for

one group compared to another group should be statistically significant at the 95 percent confidence level. The statistical significance and magnitude of these estimates describe the extent of any discrepancies and identify potential areas of improvement for the Office of the City Attorney.

Descriptive statistics

Table 2 shows the overall average forfeiture amounts issued based on the sex and age of the defendant. For example, among 18- to 24-year-olds, the average forfeiture issued to men was \$180 and the average forfeiture issued to women was \$181. This is not a meaningful difference. Among men, 18- to 24-year-olds were issued forfeitures much greater than the average \$141 charged to defendants over age 60. The table also shows slightly lower forfeitures for women compared to men as age increases. In general, younger people receive larger forfeiture amounts, on average. That said, these estimates do not account for factors such as the type of citation issued, which could account for some of the differences observed. For example, older people may be less likely to receive speeding violations, which may carry a higher forfeiture amount.

Table 2: Average Forfeiture by Age and Sex

Age	Male	Female	No Sex Listed	Total
18–24	\$180	\$181	\$156	\$177
25–34	\$167	\$167	\$138	\$163
35–59	\$167	\$152	\$71	\$147
60–100	\$141	\$131	\$61	\$123
Age Missing	\$257	\$0*	\$250	\$249
Total	\$168	\$161	\$132	\$160
Number of Citations	5,698	3,081	1,868	10,647

Note: This table displays the average forfeiture amount across all citations by sex and age of the defendant. A total of 10,647 citations are included in this sample. The cell with a zero indicates that all observations. All individuals in this group received a \$0 forfeiture or had their citation dropped.

Source: Municipal Court Administrative Data, Jan. 1, 2018–Jan. 13, 2022.

Forfeiture amounts calculated across the different racial groups by sex are shown in Table 3. For example, Black men were cited an average of \$179, while white men were issued an average forfeiture amount of \$166, a difference of \$13. Once again, other factors such as citation type could explain this discrepancy; however, these data suggest that there may be differences in forfeiture amounts issued based on the race and sex of the defendant.

Table 3: Average Forfeiture by Race and Sex

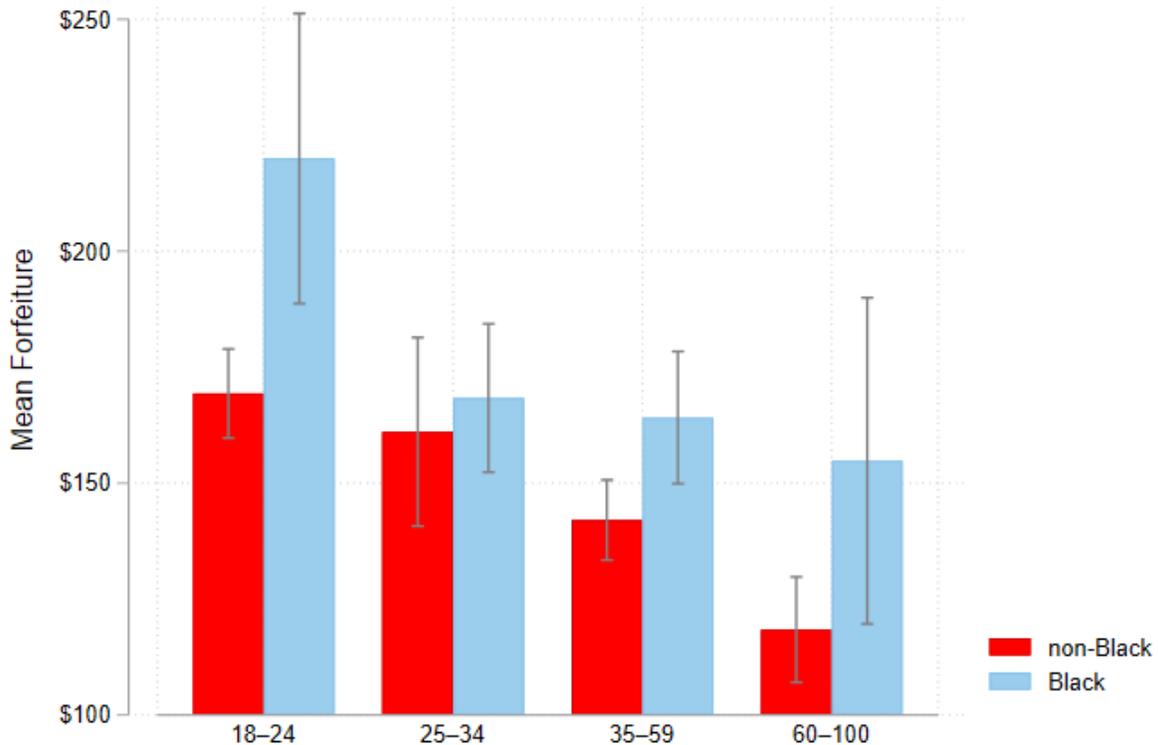
Race	Male	Female	No Sex Listed	Total
Black	\$179	\$172	-	\$176
Hispanic	\$187	\$122	\$350	\$174
White	\$166	\$161	\$316	\$165
American Indian	\$126	\$158	-	\$140
Asian	\$137	\$113	-	\$130
No Race Listed	\$163	\$133	\$131	\$134
Total	\$168	\$161	\$132	\$160
Number of Citations	5,698	3,081	1,868	10,647

Note: This table displays the average forfeiture amount across all citations by sex and race of the defendant. A total of 10,647 citations are included in this sample. The blank cells indicate that there were no observations for American Indian, Asian, or Black defendants with no sex listed and thus there is no average forfeiture.

Source: Municipal Court Administrative Data, Jan. 1, 2018–Jan. 13, 2022.

Figure 4 compares the average forfeiture amounts received by Black and non-Black defendants in each age category with a measure of the error of these estimates in confidence intervals. The lines representing confidence intervals show the range of estimates that we can be 95 percent confident represent the true forfeiture amount. Because forfeiture amounts are so varied, the estimates of the mean (or average) value have a large error term, or wide confidence intervals. Despite this uncertainty, forfeitures for Black defendants seem to be quite a bit larger than for non-Black defendants across age groups. This figure highlights the disparity in forfeiture amount given to Black defendants compared to all other defendants.

Figure 4: Average Forfeiture by Age for Black and Non-Black Defendants



Note: The red bars depict the mean forfeiture for non-Black defendants within each age group. The blue bars represent the mean forfeiture for Black defendants in each age group. The vertical gray lines indicate the 95 percent confidence interval. Estimates are based on simple means.

Source: Municipal Court Administrative Data, Jan. 1, 2018–Jan. 13, 2022.

While these tables and figures do not control for other observable factors, such as citation type, they still point to discrepancies in outcomes between racial and age groups. The next analysis will provide estimates of the average forfeiture amounts by race that do control for a larger number of observable factors, such as citation type, attorney representation, and the year of the violation. These estimates utilize regression analysis to provide more precise tests of discrepancies.

Regression analysis

Ordinary least squares (OLS) regression is a widely used statistical technique to estimate a conditional mean. OLS regression simultaneously holds multiple observed factors constant. For example, rather than just race and age, an OLS estimate can control for multiple demographic characteristics of a defendant to estimate a mean forfeiture amount while also controlling for the type of citation issued. The analysis includes four regression models controlling for more variables in each model to see the varying effects additional indicators may have on the results.

1. Model 1: forfeiture amount → race, sex, year forfeiture issued
2. Model 2: forfeiture amount → race, sex, year forfeiture issued, attorney representation, age
3. Model 3: forfeiture amount → race, sex, year forfeiture issued, attorney representation, age, citation type
4. Model 4: forfeiture amount → race, sex, year forfeiture issued, attorney representation, age, citation type, and race over time

All four models control for race, sex, and the year in which the forfeiture was decided. Model 2 adds attorney representation and age group categories. This helps to account for the effects that age and representation might have on the forfeiture amount issued. Model 3 controls for the citation the defendant was originally issued, because the forfeiture amount is set based on the citation issued and the amount varies greatly across all violations. The final model, Model 4, includes an interaction of race and the year of the violation to determine whether changes over time, particularly within office staffing, caused defendants of the same racial group to receive different forfeiture amounts for the same citation on a year-over-year basis.

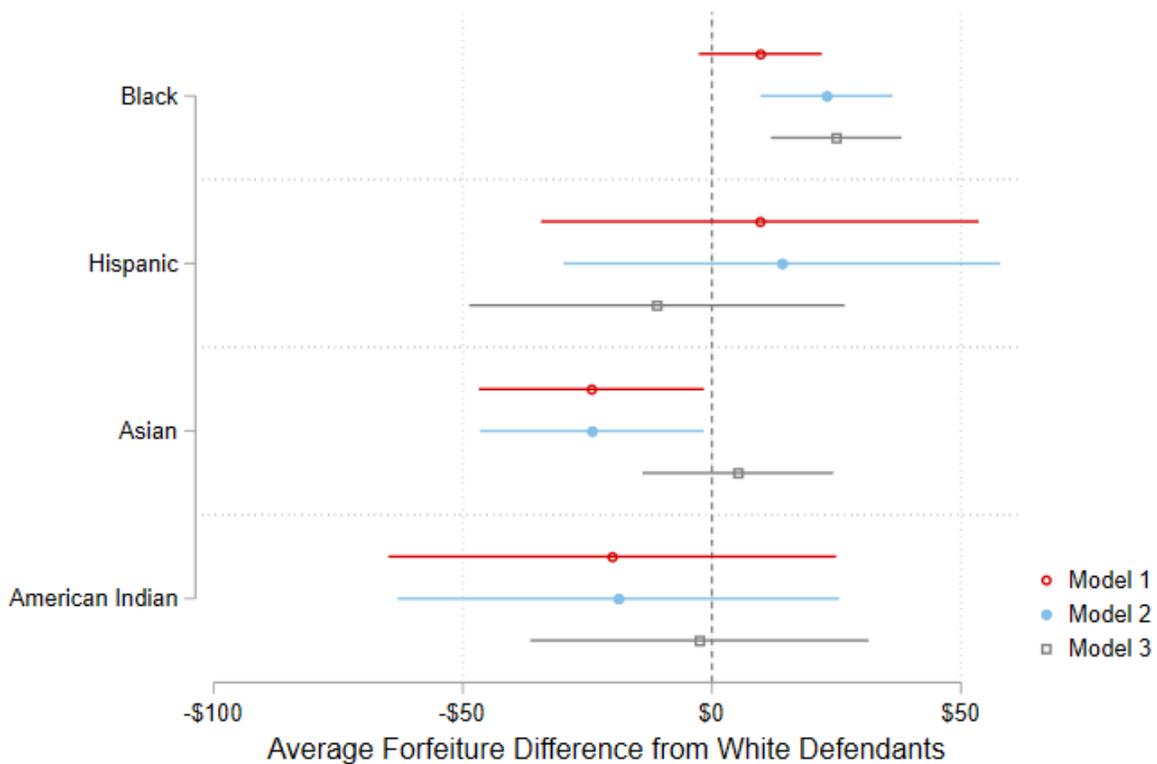
These specifications provide increasingly precise estimates of mean forfeiture amount. Across all models, the comparison group is white female defendants in 2018 who were 24 years old or younger. We chose this comparison group because the descriptive statistics suggest that forfeiture amounts might differ considerably for non-white, male defendants. Each estimate was measured relative to this group and was tested to be statistically different from the comparison group at the 95 percent confidence level. Of the 10,647 citations used for the descriptive statistics, 1,227 did not have a finalized forfeiture issue date and were excluded from the regression analysis. As a result, a total of 9,420 citations were included in the regression.

The results of the regression models indicate that there are several statistically significant predictors of forfeiture amount. In particular, Black defendants receive forfeitures \$25 (or 18 percent) higher, on average, than their white counterparts, even controlling for citation type. Additionally, compared to the 18- to 24-year-old age group, those in the 35- to 59-year-old and 60-year-old or older age groups are issued final forfeiture amounts that are, on average, \$24 and \$38 lower, respectively.

Finally, those who hire an attorney to represent them receive forfeitures that are, on average, \$41 to \$62 lower than those without representation (see Appendix A). However, this last result should be interpreted with caution. Unlike the other variables we observed, defendants self-select into attorney representation. In the available dataset, white defendants are overrepresented within the sample of those with attorneys and thus this result could be more representative of the demographic groups who hire attorneys, rather than the isolated effect of hiring an attorney.

Figure 5 displays the difference in forfeitures issued to Black, Hispanic, Asian, and American Indian defendants compared to the forfeitures that white defendants received. Each point represents an estimate of the difference in forfeiture calculated in the first three regression models listed above. The horizontal lines around each point represent a 95 percent confidence interval for the estimate. If the line does not cross zero, the estimate is statistically different from zero and thus a discrepancy exists in the outcomes. When controlling for all variables, Black defendants are the only racial group that received significantly different forfeitures than white defendants, controlling for other factors. The regression results represented in this chart can be found in Appendix A.

Figure 5: Estimates of Average Forfeiture Amount by Race

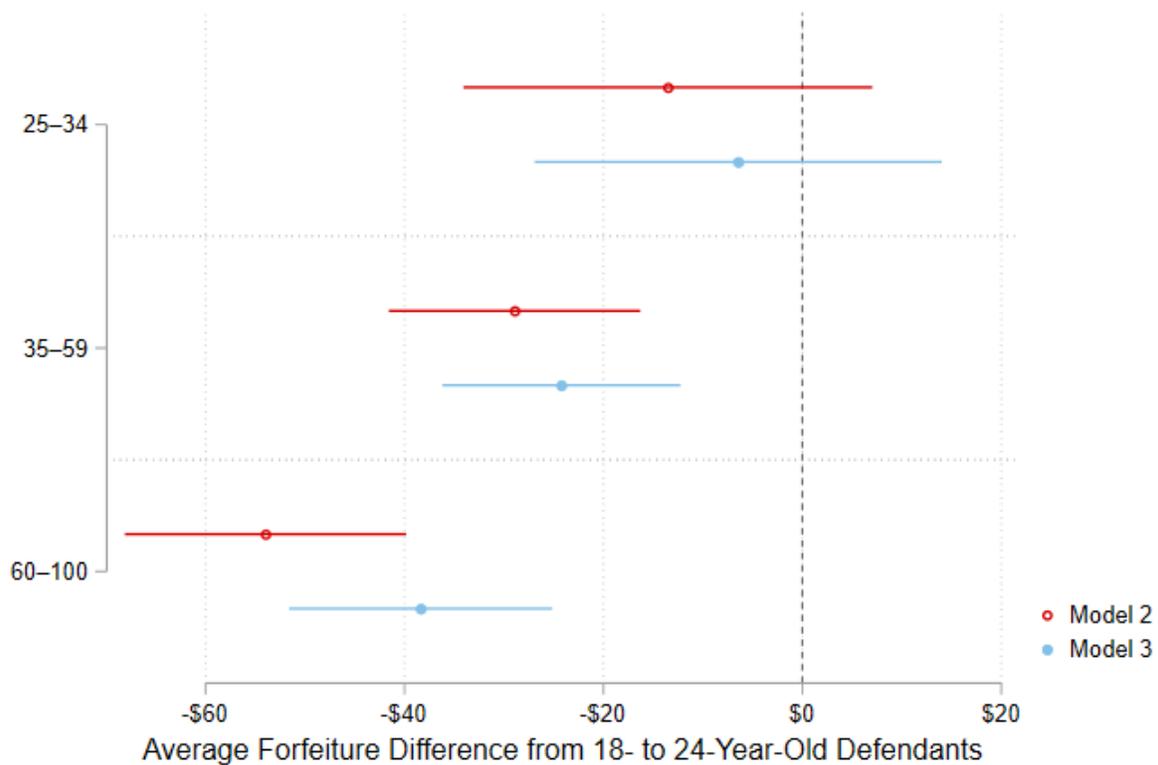


Note: Circles are point estimates of forfeiture amounts with the horizontal lines depicting 95 percent confidence intervals. A line that does not intersect \$0 is statistically significant. The red lines representing Model 1 controlled for sex and race of the defendant; Model 2 controlled for sex, race, attorney representation, and age; and Model 3 controlled for sex, race, attorney representation, age, and citation type. Estimates are based on ordinary least squares regression of forfeiture amounts in US dollars.

Source: Municipal Court Administrative Data, Jan. 1, 2018–Jan. 13, 2022.

The descriptive statistics previously indicated that younger defendants received higher forfeitures than their older counterparts. However, those results did not account for the citation type issued. Similar to Figure 5, Figure 6 shows the difference in the average amount of forfeitures received by each age group in comparison to the forfeitures issued to 18- to 25-year-olds. The first plotted point within each category represents the results from Model 2 and the second point represents the results from Model 3, which controls for the charge received. With 95 percent confidence intervals, both the 35- to 59-year-old and 60- to 100-year-old age groups received forfeitures more than \$20 lower than those of the youngest defendant group, and those 60 years old or older received forfeitures almost \$40 less for the same charges.

Figure 6: Estimates of Average Forfeiture Amount by Age



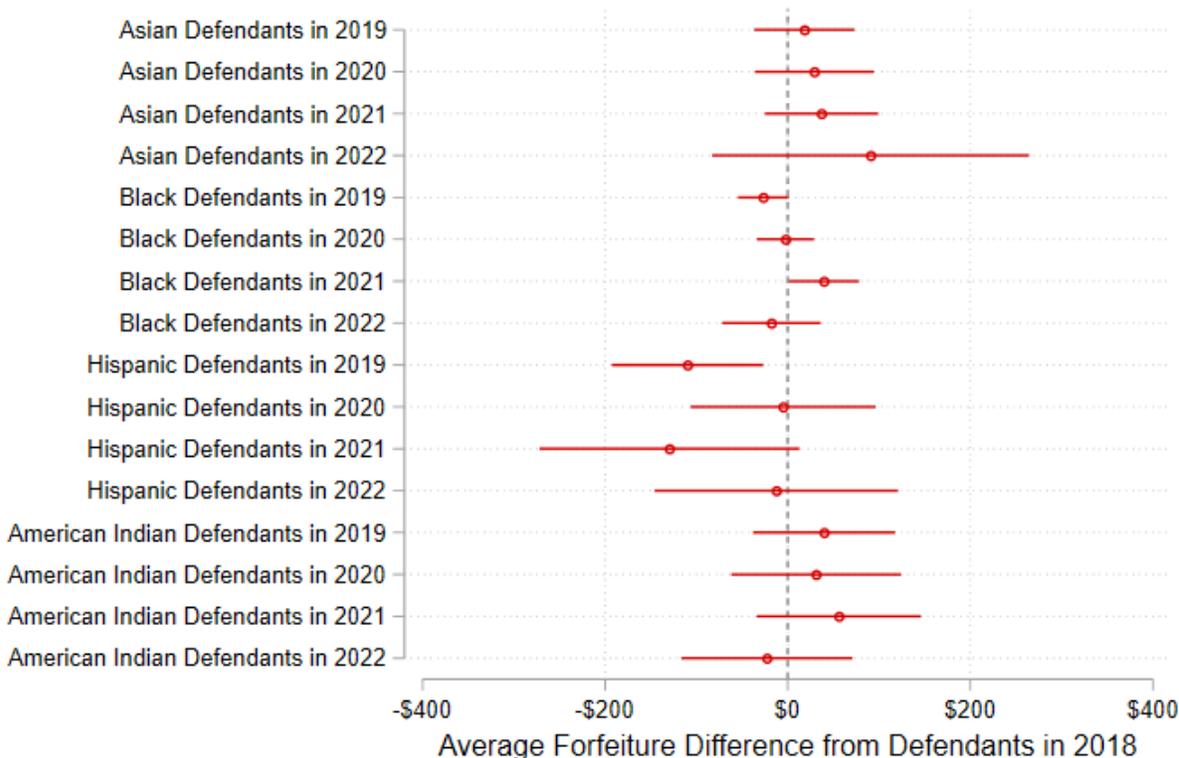
Note: Circles are point estimates of forfeiture amounts with the horizontal lines depicting 95 percent confidence intervals. A line that does not intersect \$0 is statistically significant. The red lines representing Model 2 controlled for defendants’ sex, race, attorney representation, and age, and Model 3 controlled for sex, race, attorney representation, age, and citation type. Estimates are based on ordinary least squares regression of forfeiture amounts in US dollars.

Source: Municipal Court Administrative Data, Jan. 1, 2018–Jan. 13, 2022.

Given the recent turnover within the OCA, we speculated that it was also possible that the staffing changes influenced forfeiture amounts over time. Descriptive analysis of the average forfeitures showed an apparent trend of increasingly higher forfeitures for Black defendants than for non-Black defendants. However, the descriptive analysis did not account for the type of citation issued. To do so, regression Model 4 tested if differences are observed in the forfeitures issued for the same citation within demographic groups across different years. Figure 7 plots the differences in forfeitures issued between a person of the same race in 2018 compared to each of the subsequent years, while controlling for the issued citation. The horizontal

tails on each of the plot points represent the 95 percent confidence interval for the estimate. Because these results do not show consistent statistical significance, the available data do not support the conclusion that staff changes affected forfeiture amounts within racial groups over time. Detailed results of this regression analysis can be found in Appendix A.

Figure 7: Estimates of Average Forfeiture Amount by Race over Time



Note: Circles are point estimates of forfeiture amounts with a 95 percent confidence interval. A line that does not intersect \$0 is statistically significant. Other factors controlled for include citation type, sex and age of the defendant, and attorney representation. Estimates are based on ordinary least squares regression of forfeiture amounts in US dollars.

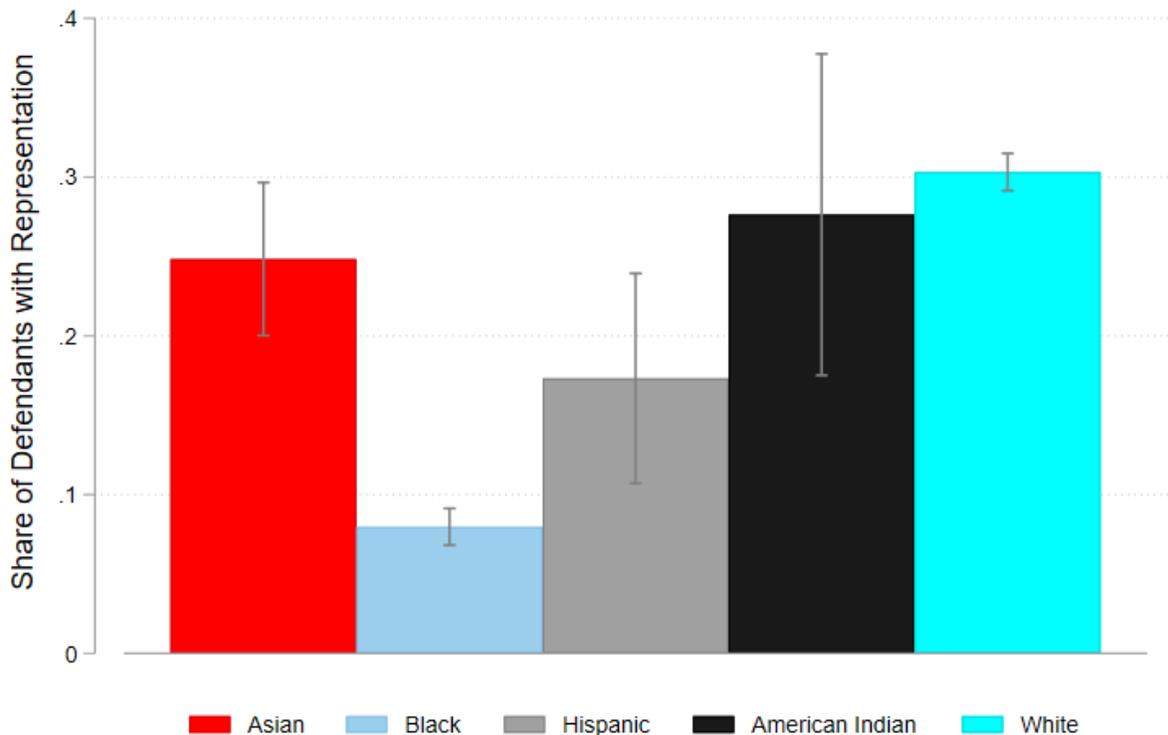
Source: Municipal Court Administrative Data, Jan. 1, 2018–Jan. 13, 2022.

Notably, none of the four regression models yielded any statistically significant relationships between forfeiture amounts and the other racial groups or between forfeiture amounts and the sex of the defendant. The regression table in Appendix A contains these point estimates and the standard error associated with each estimate. For many of the variables that were tested, there were only small differences in forfeiture amounts and these are not considered significant due to the wide amount of variance observed in the dataset.

The results from Models 2, 3, and 4 showed statistically significant differences between defendants with and without attorney representation. However, unlike the other demographic characteristics studied within this report, defendants decide whether to have attorney representation during proceedings. Most defendants go through municipal court proceedings without representation. Defendants with greater financial resources or those facing complex cases may choose to hire an attorney at greater rates. As shown

in Figure 8, defendants do not self-select into representation at the same rates across racial groups. Over 30 percent of white defendants had attorney representation while less than 10 percent of Black defendants hired attorneys. This additional disparity presents an important nuance to the overall differences in outcomes.

Figure 8: Proportion of Defendants with Attorney Representation by Race



Note: The bars represent the percentage of defendants within each racial group that had attorney representation. Vertical gray lines represent 95 percent confidence intervals. Estimates are based on simple means.

Source: Municipal Court Administrative Data, Jan. 1, 2018–Jan. 13, 2022.

In sum, the descriptive analysis indicated forfeiture disparities for younger defendants and Black defendants. Regression analysis that controlled for other factors, including attorney representation and citation type, showed statistically significant forfeiture disparities. Black defendants receive forfeiture amounts that are, on average, \$25 higher than those that their white counterparts receive for the same offenses. Defendants aged 35 to 59 and defendants over the age of 60 receive forfeitures that are, on average, \$25 and nearly \$40 lower, respectively, than those their peers under the age of 25 receive for the same offenses. Attorney representation is a statistically significant factor associated with forfeiture amount; however, because attorney use varies by racial group, it is important to consider and address the impacts of disparate attorney use.

One of the factors not captured in the quantitative analysis is the impact of prosecutorial discretion. Office practices and procedures shape the use of discretion as well as the effect of prosecutors on outcomes. Interviews were conducted with assistant city attorneys from the OCA in order to provide this necessary context and inform the recommendations.

Interviews with assistant city attorneys

The results of six interviews with ACAs conducted between March 8, 2022, and March 11, 2022, provide a deeper context for the data analysis. The interview sample included the current prosecution team and two former lead prosecutors who now work in different roles within the OCA. The current prosecution team consists of one experienced lead prosecutor and three prosecutors who started in the office less than a year ago. The two former lead prosecutors interviewed each had 10 or more years of prosecution experience in the office prior to starting new roles within the last 18 months.

The interview questions helped us to understand office procedures as well as prosecutors' views on equity, their prosecution style, and how they use discretion in issuing forfeitures. In addition, ACAs responded to questions on judicial values and prosecution goals. Finally, interviewees responded to a hypothetical fact pattern detailing an underage drinking violation, which illustrated the various methods they use to resolve a case. Interviews took place on 30- to 60-minute video conference calls. The full interview protocol can be found in Appendix B. Three key themes emerged from interviews. These include the positive relationship between experience and use of prosecutorial discretion, ACAs' commitment to pursuing equitable outcomes, and how municipal court offers a unique setting to test innovative policies.

Experience shapes the use of prosecutorial discretion

Most of the current prosecution team was relatively new to prosecuting cases, as several prosecutors have been with the office for less than one year. Some are recent law school graduates while others made career pivots. The current lead prosecutor and former prosecuting ACAs, however, all had more than eight years of experience. While prosecutors reported that this staff dynamic did not negatively impact outcomes, there were observable differences in the way the two groups approach a case.

The main difference appeared in interviewees' answers to questions that addressed prosecution philosophy and their responses to the fact pattern. All prosecutors understood their obligations in the role, but more senior prosecutors more frequently acknowledged the discretion they had at their disposal. Newer prosecutors understood that they did have discretion, but their answers referenced their commitment to following the OCA's prosecutorial guidelines. Senior prosecutors seemed to be more comfortable in finding discretion within the guidelines.

This distinction also emerged when the ACAs responded to the fact pattern. The fact pattern was a mock underage drinking scenario that involved a 19-year-old young man being arrested at a large college party (see Appendix B). The defendant in the fact pattern felt that his underage drinking citation would prevent him from attending college. Senior prosecutors gave the defendant an opportunity to present evidence to that fact to potentially adjust the charge. Newer prosecutors did not name that as an option.

ACAs actively seek to avoid overcharging defendants and strive for equitable outcomes

Each of the ACAs emphasized fairness in prosecuting citations when they had enough evidence, and each attempted to avoid overcharging defendants. In the presented fact pattern, the officer cited the young man for disorderly conduct, but no facts in the fact pattern supported that citation. All ACAs recognized the lack of evidence and exercised their discretion to not prosecute the charge. They also stated that they would attempt to limit the impact of the case on the defendant, noting that they had an interest in making a settlement offer and only taking the case to trial if there was clear and convincing evidence. A clear and

convincing evidence standard means the evidence being presented must be highly and substantially more probable to be true rather than untrue.

When asked about their prosecutorial philosophy, ACAs sought to utilize available diversion programs and relief methods to reduce the impact of forfeitures on defendants. Some of the more experienced current and former prosecutors identified multiple ways defendants could reduce forfeiture impacts, such as by participating in community service, setting up payment plans, or working with the OCA to reduce forfeitures when statutorily allowed. Former prosecutors mentioned a program that existed prior to the COVID-19 pandemic called “ticket forgiveness days.” The OCA held pop-up clinics on the south side of Madison where ACAs would allow defendants to settle past due citations. One ACA shared that these events allowed hundreds of defendants to settle and close their cases for far less than they would otherwise have had to pay. These kinds of accessible legal events, however, have not occurred since the COVID-19 pandemic began.

Additionally, ACAs stated across all interviews that they aim for equitable outcomes in all cases. This was demonstrated in their responses to questions regarding prosecution philosophy and potential policy changes within the office. ACAs were asked to define equity in their own terms and each of their definitions included core values of fairness and impartiality. They also seemed to demonstrate a commitment to equity in the way they approach their work. All prosecutors discussed ways to incorporate defendants’ circumstances in their plea negotiations.

When asked how the prosecution guidelines shaped their ability to incorporate defendants’ circumstances, prosecutors cited an equity statement included within the prosecution guidelines. The statement does not explicitly outline methods and steps to achieve equitable results, but it does encourage prosecutors to pursue equity throughout the process. Some prosecutors stated that while the guidelines do not explicitly define how to incorporate equity, they felt that the guidelines are broadly structured to allow for equitable case outcomes.

Prosecutors also acknowledged systemic areas in which disparate outcomes could occur and ways to address them. For example, the fact pattern presented in the interview revolved around a young man receiving an underage drinking citation. Senior ACAs recognized the disparity that exists in underage drinking enforcement outcomes, where the resolution process depends on which law enforcement agency cites a Madison resident for underage drinking. For example, when an individual is cited by the Dane County sheriff’s office, the citation is handled by the Dane County District Attorney’s Office, which is known to utilize diversion programs or dismiss these kinds of cases. College students who are cited in university housing may have their underage drinking citation handled within the university, not involving the legal system. The OCA is only responsible for the underage drinking cases that reach the office, so solving inequitable outcomes would require systemic change across all offices in charge of handling these kinds of cases.

Municipal courts offer a unique setting for innovative approaches to forfeitures

Overall, ACAs understood their role and the discretion that they could bring to cases at the municipal court level. All prosecutors knew that they could modify citations and forfeitures, depending on what statutes and their office guidelines allowed. They also understood the impact these cases can have on defendants. While prosecutors handle multiple cases each day and are accustomed to the court setting, defendants may be severely affected and/or intimidated by the process for a variety of reasons. While it is important to note that ACAs cannot provide legal assistance to defendants, all prosecutors shared that part of their responsibility is to help guide defendants through the process if they are not represented by legal counsel.

Prosecutors also recognized the uniqueness of the municipal civil court system in comparison to the criminal justice system. Some prosecutors view this court as the “people’s court,” because people from all walks of life are issued citations. Additionally, the municipal court predominantly deals with violations viewed by many as low social impact crimes. Because of that, some of the prosecutors noted municipal court as the appropriate place to test equitable justice reform measures, such as assigning community service to defendants in lieu of forfeitures and utilizing a ticket forgiveness program to settle outstanding citations. These kinds of creative programs are reforms that promote equity and, in their view, would be difficult to test in the criminal system.

Limitations

As with any form of analysis, the quantitative and qualitative findings included within this report must be viewed with several key limitations in mind. First, the quality and availability of the data intrinsically limit the strength and generalizability of the statistical analysis. Forfeiture amounts are not a perfect indicator of prosecutorial outcomes. Interaction with the justice system carries a bevy of latent effects such as social stigma and financial burdens. While these concerns are less salient in municipal justice issues, they serve to illustrate how prosecutorial outcomes extend beyond just the dollar amount of the forfeiture.

Also, this report does not claim to find any causal relationships related to forfeiture amounts by demographic characteristics. A prosecutor does not have unlimited discretion, as some forfeitures are mandated by statute or ordinance. This matters a great deal if certain demographic groups are more likely to be reported and issued certain citations, while other populations are less often or never cited or are more likely to be issued a lesser citation for the same offenses. Additionally, defendants who are better equipped to navigate the justice system, particularly those with the financial resources to hire an attorney, might be more likely to successfully negotiate out of the most punitive forfeiture amounts. This analysis does not have any measures of socioeconomic status, such as income or wealth.

Another important quantitative limitation is the dataset itself. More than 2,000, or around 20 percent, of the citations in the dataset did not include the race, sex, or date of birth of the defendant. Some of the resulting population subsamples were too small to yield statistically meaningful results. For sub-populations with few citations, the confidence intervals tend to be larger, making the estimates less precise. It should be noted that a large subset of citations missing demographic data were for parking violations. In these cases, the defendants are not likely to be present when police, who normally collect information from licenses, issue the citation. In addition, parking tickets may be issued more often in areas where much of the population is people of color and/or younger people (Brazil 2018), further biasing the sample. Unfortunately, this report is unable to study any potential disparities in these citations. The dataset also did not describe the extent to which prosecutors interact with defendants. This could be important context for gauging the role of the prosecutors on outcomes.

The second key limitation is the interview methodology. Due to the nature of working with the office, ACAs knew about the report and the main purpose of the interviews ahead of completing them. This could have influenced the focus of responses received during the interviews, resulting in an overemphasis on weighing prosecution fairness and impartiality than is normally the case within the OCA.

Also, the inclusion of former prosecutors in the ACA interviews may have skewed the responses collected on current office practices and discretion. Former prosecutors may not be up to date on current prosecution issues; for example, they may be unaware of resources and practices that changed during the COVID-19 pandemic. Moreover, interviews conducted for this report only included attorneys who work

with the OCA. They did not include former prosecutors no longer employed with the OCA, local municipal defense attorneys, social advocates, or academics who study the field. These groups would have provided an alternative view on prosecution practices within the City of Madison able to better contextualize the quantitative analysis.

Across the statistical and interview analysis, a host of extraneous variables, such as the influence of other actors including judges and the police, obscure potential causal relationships between the prosecution and case outcomes. As previously detailed, policing plays a significant role in the population of people facing prosecution. Because an individual's point of entry is their interaction with law enforcement, any bias or disparities in police enforcement will later surface as bias in the administrative data used for quantitative analysis. Similarly, judges have the final say in the outcome of a case. While they do take the prosecutor's recommendations into consideration, judges can raise or lower forfeitures, drop charges, and add other stipulations to the ruling, based on the results of the trial. Therefore, the final outcomes of cases that proceed to trial are affected by this additional variable.

Lastly, an important limitation to consider is that the COVID-19 pandemic affected crime rates, as well as the daily operation of the criminal justice system. Minor crime rates all over the country were affected by states' stay-at-home orders and other pandemic mitigation policies (Boman and Gallupe 2020). While the regression models accounted for each year including 2018 and 2019 (pre-pandemic), the COVID-19 pandemic is likely to have altered trends in citations issued after March 2020.

Recommendations

Throughout the interview process, ACAs emphasized their efforts to achieve fair and equitable outcomes for defendants, regardless of demographic characteristics. However, our analysis of municipal court administrative data found disparate outcomes by race and age, even after controlling for other factors like the types of citations issued. While there are limitations to the analysis presented in this report, we recommend the Office of the City Attorney take the following actions in order to better achieve its equity and fairness goals.

Recommendation: Improve data collection and conduct further analysis to determine why discrepancies exist.

Rationale: The demographic information missing for almost 20 percent of the dataset limited the conclusions that could be drawn from the quantitative analysis. The OCA should work with the police department and municipal court to improve information collection efforts for future analysis, particularly for parking violations. Separately, the available data do not include the extent to which defendants interact with prosecutors. By improving the scope of data collection and intentionally tracking prosecutor interaction with defendants, a deeper analysis can and should be conducted to determine if disparities remain, and if so, to examine why they exist.

Recommendation: Update the OCA website with a prosecution philosophy and expanded resources.

Rationale: It is crucial that the OCA develops and publishes a prosecution philosophy that defines equity in the context of the municipal justice system. Such a philosophy would translate the OCA's values to action and could establish a framework to guide the development of office policies for routine review of

case outcomes. In addition to the general guidance offered by a comprehensive document, OCA would have the ability to establish metrics and goals that are reasonable within the resource and time constraints of the office. Publicly publishing and updating the document would promote accountability and provide a mechanism for communicating the office's goals and accomplishments. Separately, adding resources about the municipal court process, resolving outstanding citations, and sharing information about community social service organizations would aid residents in efficiently navigating the process and advocating for fair outcomes. The Philadelphia District Attorney's Office serves as a good example of an attorney's office with a transparent prosecution philosophy (through their juvenile justice policy) and useful resources to aid defendants in navigating the justice system (Philadelphia District Attorney's Office 2019, n.d.).

Recommendation: Expand training on prosecutorial discretion for new assistant city attorneys.

Rationale: A recurring theme in the interviews was that newer prosecutors are less likely than more seasoned prosecutors to exercise prosecutorial discretion to promote equitable case outcomes. This presents an opportunity to support the ACAs' professional development and address some of the disparities present in the case outcomes. Through expanded training on discretion, especially if added alongside a comprehensive prosecution philosophy, less experienced prosecutors would be equipped with the judgment and tools to autonomously promote equity in the cases they manage. Not only would this training address inequities but also it would ideally increase the number of cases resolved in the pre-trial step of the process and save the time and resources spent on extended prosecution.

Recommendation: Restore and expand the ticket forgiveness program.

Rationale: ACAs mentioned in the interviews that the OCA used to conduct a legal clinic on the south side of Madison as part of a ticket forgiveness program. This clinic allowed defendants to negotiate outstanding citations directly with prosecutors and settle cases for a significant forfeiture reduction. According to interviews, this program successfully created an accessible way for individuals to handle outstanding citations without having to go to court. However, the program was suspended in 2020 due to the COVID-19 pandemic. The OCA should reinstate this program and add additional elements to promote equitable outcomes. In addition to meeting with defendants who previously entered a plea, defendants who have not yet entered a plea should be able to negotiate their citation prior to their initial appearance in municipal court. Furthermore, the OCA could partner with community organizations to connect defendants to various resources related to healthcare, housing, and food security.

The renewal of the ticket forgiveness program would allow defendants to better advocate and negotiate fairer forfeitures with prosecutors. In return, ACAs would be able to settle outstanding citations that would otherwise not have settled, reducing the negative impacts such as license suspension and garnished wages that individuals can face due to outstanding citations. By expanding the program to defendants who have not attended their initial appearance, prosecutors could utilize their available discretion prior to the hearing to reduce forfeitures and ensure equitable outcomes. Additionally, this program would create a more accessible way for individuals to contest citations, without the intimidation of a court appearance, and could potentially reduce the court's caseload by settling cases outside of court. Furthermore, connecting defendants facing hardships to community resources would carry many positive externalities. Program advertising would need to target marginalized communities and younger residents to ensure that the program closes rather than worsens disparities. Other jurisdictions like Madison County,

New York, and Indianapolis, Indiana, have successfully implemented similar programs (Madison County District Attorney’s Office n.d.; City of Indianapolis and Marion County n.d.). Indianapolis’s traffic amnesty program, in particular, is a great example of an analogous model.

Recommendation: Create a pre-trial appearance forfeiture reduction program to address disparities.

Rationale: Currently, defendants do not have any interaction with the OCA prior to the initial appearance. A forfeiture reduction program implemented at this stage could give defendants an opportunity to work with ACAs to plea “no contest” and settle the case for a forfeiture that is reduced based on socioeconomic factors (e.g., means-tested reductions by income). Essentially, on the follow-up document from municipal court, a defendant would select a plea of “no contest—consider for forfeiture reduction program,” and submit evidence to demonstrate their economic need, such as qualifying for a means-tested benefit program (e.g., the federal SNAP program or Badgercare health insurance), a high level of student loan debt, or receiving student financial aid. The OCA would then receive the plea entry, along with the defendant’s proof of economic need, and potentially reduce the defendant’s forfeiture. Prosecutors or other legal staff could reduce forfeitures to the statutory minimum, or a significantly reduced price proportionate to demonstrated need. The plea would then be entered, and a bill for the new citation amount would be sent to the defendant.

This proposed forfeiture reduction program would serve to lighten the caseload for prosecutors and increase the likelihood that individuals could afford to pay forfeitures in a timely manner. Over time this program could reduce collection costs for outstanding forfeitures. This is also an example of utilizing prosecutorial discretion to promote equitable outcomes for all defendants, regardless of whether they have the time or resources to contest a citation. This program could particularly address the disparities seen with Black and younger defendants, by allowing the prosecution team to consider a defendant’s socioeconomic circumstance in calculating forfeitures. Given the wealth gap between young people and older individuals, as well as the racial wealth gap between Black and white Americans, using socioeconomic factors as the indicator to adjust forfeitures would target the disparities seen in the dataset. The feasibility of the program would rely on some restructuring in processes between the police department, the City of Madison Municipal Court, and the OCA. However, given that defendants’ forfeitures would be adjusted based on income, legal interns and other staff under an ACA’s supervision could handle recalculating forfeitures and sending out final plea offers. While some may view this program as leading to unfair outcomes, it would actually serve to promote equity and fairness by adjusting forfeitures to have a comparable impact based on ability to pay.

Conclusion

In examining disparities in prosecution outcomes, this timely report contributes to a broader national conversation regarding prosecutorial discretion and its impact on defendants and enforcement. The racial reckoning experienced after the murder of George Floyd in May 2020 sparked a movement to acknowledge and begin to address disparities in the criminal justice system. However, little attention has been paid to reforming municipal court processes, which remain the most common form of interaction between individuals, law enforcement, and the broader legal system.

Given the available data, this report provides a window into municipal prosecution and identifies disparate outcomes for forfeitures issued to Black community members and individuals between ages 18

and 25. Black residents are paying 18% higher forfeitures than their white counterparts, and young residents are paying similarly higher rates compared to older residents for the same citation type. This report recognizes an area of discretion prior to a defendant's court appearance where prosecutors in the OCA could implement measures to achieve more equitable outcomes. Through incorporating the analysis and recommendations included within this report, the Office of the City Attorney has the potential to address outcome disparities and become a model for the country on how to produce equitable outcomes in municipal prosecution.

Appendices

Appendix A: OLS regression estimates for forfeiture amounts charged

Variable	Model 1 (SE)	Model 2 (SE)	Model 3 (SE)	Model 4 (SE)
Black	9.7 (6.29)	23.0*** (6.76)	24.9*** (6.68)	26.4* (12.25)
Hispanic	9.7 (22.41)	14.1 (22.36)	-11.1 (19.22)	37.0 (27.29)
Asian	-24.2* (11.53)	-24.1* (11.44)	5.2 (9.78)	-16.1 (25.13)
American Indian	-20.0 (22.92)	-18.7 (22.61)	-2.5 (17.32)	-31.0 (16.37)
Missing Race	-21.7 (15.38)	-12.6 (15.58)	7.1 (15.47)	1.4 (23.11)
Male	6.5 (5.22)	3.5 (5.29)	1.2 (4.71)	1.8 (4.64)
Missing Sex	-11.4 (19.87)	-17.8 (21.34)	-15.5 (19.07)	-13.4 (21.43)
Year=2019	-13.1* (6.21)	-16.6** (6.09)	-29.4*** (5.40)	-20.2** (7.01)
Year=2020	0.9 (6.59)	-6.0 (6.49)	-29.0*** (5.99)	-30.2** (9.53)
Year=2021	10.2 (12.39)	2.8 (12.17)	-17.4 (12.22)	-33.5*** (7.75)
Year=2022	-25.5* (12.41)	-32.0* (12.56)	-36.3*** (10.99)	-34.1* (16.13)
Attorney Representation		61.7*** (15.18)	-40.3*** (11.64)	-40.6*** (11.47)
25–34		-13.5 (10.48)	-6.5 (10.44)	-6.4 (10.47)
35–59		-28.9*** (6.44)	-24.2*** (6.11)	-24.1*** (6.09)
60–100		-54.0*** (7.21)	-38.4*** (6.75)	-38.8*** (6.74)
Missing Age		46.2 (28.52)	-180.0 (117.53)	-185.3 (124.69)
Asian # Year=2019				18.2 (28.04)
Asian # Year=2020				29.1 (33.29)
Asian # Year=2021				36.9 (31.73)
Asian # Year=2022				90.8 (88.56)
Black # Year=2019				-26.9 (14.17)

Variable	Model 1 (SE)	Model 2 (SE)	Model 3 (SE)	Model 4 (SE)
Black # Year=2020				-2.4 (15.97)
Black # Year=2021				39.6* (19.59)
Black # Year=2022				-18.0 (27.51)
Hispanic # Year=2019				-109.7** (42.34)
Hispanic # Year=2020				-5.1 (51.71)
Hispanic # Year=2021				-129.6 (72.64)
Hispanic # Year=2022				-12.5 (68.02)
Am. Indian # Year=2019				39.8 (39.79)
Am. Indian # Year=2020				31.1 (47.47)
Am. Indian # Year=2021				56.0 (45.84)
Am. Indian # Year=2022				-22.8 (47.81)
Missing Race # Year=2019				-18.4 (16.18)
Missing Race # Year=2020				4.9 (21.86)
Missing Race # Year=2021				44.6 (65.06)
Missing Race # Year=2022				0.8 (28.37)
Constant	148.8*** (5.93)	157.0*** (10.52)	137.0*** (15.27)	137.5*** (12.89)
Citation Fixed Effects	No	No	Yes	Yes
Citations	9,420	9,420	9,420	9,420

Note: This table displays the results of the four models used in the OLS regression analysis conducted in STATA. This analysis uses municipal court administrative data from citations issued in January 2018 through mid-January 2022 in the City of Madison. Each column corresponds with the numbered models listed below.

Model 1: Forfeiture Amount → Race, Sex, Year Forfeiture Issued

Model 2: Forfeiture Amount → Race, Sex, Year Forfeiture Issued, Attorney Representation, Age

Model 3: Forfeiture Amount → Race, Sex, Year Forfeiture Issued, Attorney Representation, Age, Citation Type

Model 4: Forfeiture Amount → Race, Sex, Year of Violation, Attorney Representation, Age, Citation Type, and Race Over Time

The comparison group is white, 18– to 24–year-old, female defendants. All estimates are in US dollars. The cells without any data did not include that variable in the regression model. This table excludes the results for each individual citation type as they varied greatly based on the citation.

* $p < .10$. ** $p < .05$. *** $p < .01$.

Source: Municipal Court Administrative Data, Jan. 1, 2018–Jan. 13, 2022.

Appendix B: Interview protocol

Introduction

Thank you for agreeing to participate in this interview. My name is [Name] and I'm one of the La Follette students working on the City Attorney Office project. This interview will provide more context on office culture and procedures and provide more context regarding the office's prosecution philosophy as well as your own. Before we get started, is it okay if we record today's interview? This interview is confidential, but I would like to record responses for later review and analysis. [Start Recording]

Questions

1. How long have you worked for the Madison City Attorney's Office?
 - a. If ACA worked in OCA for less than 2 years:
 - i. From your experience, describe what you've noticed about the office's culture.
 - b. If ACA worked in OCA for more than 2 years:
 - i. Describe to me the office culture over the years. Has there been any change in culture since the time you started?
2. What does equity mean to you?
3. Could you briefly describe your prosecution style or philosophy?
4. What does your caseload look like? In your opinion, is it too much? Too little?
5. What steps in the prosecution process allow for prosecutorial discretion?
 - a. What information do you receive from the police report when you receive a citation?
 - b. To what extent do you think attorneys within the office differ in their approach to these steps?
6. What changes, if any, would you like to see in the way this office prosecutes cases?

Fact pattern question

Now I will share my screen with you and show a fact pattern from a hypothetical case. I'll give you a few minutes to read over the fact pattern and then I will ask you a few questions regarding your prosecutorial approach to this case.

Fact pattern: Part 1

It's the end of the school year at Edgewood College, and students are ready to party and celebrate. One of those parties occurs on Cherokee Dr., at the house of 19-year-old Zach Taylor. His parents are okay with having his friends at the house to drink and allow their son to host a party. Zach invites many of his friends over, and soon over 40 students, all under the age of 21, are at his house. One of these seniors is Devon Harris, a 19-year-old at Edgewood, who was invited to this party by Zach's mutual friends. Devon has not consumed alcohol before, other than for a beer or two at small group hangouts. However, Devon and his partner Rachel got into a fight, which made Devon upset. That, coupled with peer pressure at the party, caused Devon to drink a little too much. As the party grew in numbers, neighbors called the police to complain about the noise. The police arrive outside the house, after which one of the attendees yells, "It's the cops!" All the attendees panic, including Devon, and begin to scatter and try to escape the property. Overwhelmed, the officers decide to let some of the people go while citing those they are able to stop before leaving the scene. Unfortunately, Devon was one of the teenagers that could not escape, and he is cited for underage drinking and disorderly conduct.

Questions on Part 1:

1. What would happen if Devon does not challenge the citation?
2. Assuming that Devon is challenging the citation, how would you approach this case? What factors would go into a plea deal?

Fact pattern: Part 2

Devon is extremely worried about this citation. His family cannot afford to hire him an attorney and due to a language barrier with his parents, Devon is forced to navigate the proceedings on his own. He plans to transfer to the University of Chicago in the fall and will be the first in his family to attend college. He is worried that this situation will threaten his admission to the university and his scholarship.

Questions on Part 2:

1. Knowing these facts, would your prosecutorial approach change in this case? Are there any diversion/expungement options available for Devon? Explain.
2. Is this consistent with how you approach other cases in the office? Would you consider similar factors when adjudicating different cases, like traffic violations, disorderly conduct, etc.?

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