

Discrimination, Discretion, and Iowa's Packed Prisons

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ABSTRACT: For decades, the racial disparity in Iowa's prison system has persistently been one of the worst in the nation—despite the fact that the state is home to relatively few people of color. This Note submits that Iowa's County Attorneys may play an outsized role in perpetuating this state of affairs by charging and convicting disproportionate numbers of African-Americans with more serious offenses at extraordinarily high rates. A descriptive analysis of statistical data on charges and convictions in Iowa's largest counties suggests that some prosecutors' practices contribute more heavily to this disparity than others. Although establishing the precise scope of the problem will require more thorough data collection and analysis, the state's legal and political authorities already have the power to eradicate this manifest injustice. They need only to use it.

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I. INTRODUCTION

The State of Texas carried out more than one third of all executions since 1976,¹ when the Supreme Court ruled that capital punishment did not necessarily violate the Eighth Amendment.² It is not so surprising that some critics gave the Lone Star State a new moniker: “Death Penalty Capital of the World.”³ Much more remarkable is the extent to which a single jurisdiction contributed to Texas’s notoriety. Harris County is responsible for 23 percent of all executions in Texas as of December 16, 2017—a far greater share than any other county.⁴ But to stop at this statistic would understate its significance. Having put 126 prisoners to death, this single county in Texas has executed more people than any state in the nation.⁵ Perhaps the most striking aspect of this aberration in justice is the banality of its cause: this county sent dozens to

1. James Jeffrey, *How US Death Penalty Capital Changed Its Mind*, BBC NEWS (Feb. 11, 2018), <https://www.bbc.com/news/world-us-canada-42984170> [https://perma.cc/8ZJZ-JP8G] (“Since 1976 and the US Supreme Court upholding capital punishment, 1,468 people have been executed in the US—548 in Texas.”).

2. See *Gregg v. Georgia*, 428 U.S. 153, 169 (1976) (“We now hold that the punishment of death does not invariably violate the Constitution.”).

3. Phil McCausland, *Why Texas’ Death Penalty Capital of the World’ Stopped Executing People*, NBC NEWS (Dec. 16, 2017, 5:07 AM), <https://www.nbcnews.com/storyline/lethal-injection/why-texas-death-penalty-capital-world-stopped-executing-people-n830276> [https://perma.cc/4TF6-NJ42].

4. *Id.*

5. *Id.* Virginia and Oklahoma trail Texas for the second and third-most executions, respectively, at 113 and 112. *Id.*

the proverbial gallows pole simply because a single District Attorney, exercising his discretion selectively and systematically for decades, made it so.⁶

If nothing else, the case of Harris County, Texas, warrants a broader examination into the exercise of prosecutorial discretion at the local level. Although relatively few states currently struggle with disproportionate executions,⁷ the practice of mass incarceration exacerbates racial disparities in prison populations nationwide.⁸ The Midwest's most extraordinary outlier is the State of Iowa, which in 2016 had the third-highest rate of adult black male incarceration—one in every 17—and the fourth-worst black incarceration rate overall.⁹ Just as Harris County contributed heavily to Texas's reputed propensity for capital punishment, could it be that a single Iowa county is largely responsible for that state's disparity in prison population?

This Note suggests that the deliberate policy of the Black Hawk County Attorney's Office has made that county the largest disproportionate contributor to racial disparities in Iowa prisons. If this is the case, it is an injustice that stems from a consistent pattern of filing more serious charges against a relatively high proportion of African-Americans and convicting on those charges at elevated rates. Iowa's prosecutors, legislators, and judicial authorities have always had the power to address this ongoing issue; the solution lies in building incentives for them to do so.

First, in Part II, this Note surveys the demographic makeup of Iowa's prisons relative to the state's overall population, provides some historical context to the largest source of the racial imbalance, and summarizes competing perspectives on the prosecutors' role in the criminal justice

6. See, e.g., Jeffrey, *supra* note 1 (attributing the decrease in executions, in part, to the assertion that "prosecutors know juries are less willing to tolerate the pursuit of a death sentence and the additional expense and time it involves"); McCausland, *supra* note 3 (profiling Harris County's new top prosecutor, who "ran . . . as a reformist candidate who pledged to use the death penalty in a more judicious manner than her predecessors"); see also Marissa Cummings, *No Executions in Harris County This Year, Why?*, HOUS. PUB. MEDIA (Dec. 18, 2017, 5:08 PM), <https://www.houstonpublicmedia.org/articles/news/2017/12/18/257025/no-executions-in-harris-county-this-year-why> [<https://perma.cc/S2LR-5UCX>] ("[T]he biggest reason for a decrease of sentencing in Harris County comes down to the District Attorney's office, according to Jeff Newberry. . . . [of] the UH Law Center. . . . [T]he DA from 1979 to 2000 . . . sent more than 200 inmates to death row.").

7. See RICHARD C. DIETER, *THE 2% DEATH PENALTY: HOW A MINORITY OF COUNTIES PRODUCE MOST DEATH CASES AT ENORMOUS COSTS TO ALL 1* (2013), *available at* <https://deathpenaltyinfo.org/documents/TwoPercentReport.pdf> [<https://perma.cc/UF9B-A9B2>] ("Only 9 states carried out executions in 2012. Even fewer are likely to do so in 2013. Most states have not had a single execution in over five years. Death sentences in recent years are at their lowest level in four decades.").

8. See generally ASHLEY NELLIS, *THE COLOR OF JUSTICE: RACIAL AND ETHNIC DISPARITY IN STATE PRISONS* (2016), *available at* <https://www.sentencingproject.org/wp-content/uploads/2016/06/The-Color-of-Justice-Racial-and-Ethnic-Disparity-in-State-Prisons.pdf> [<https://perma.cc/FVR7-E7MW>] (linking disparities of race and ethnicity to ongoing trends in mass incarceration).

9. *Id.* at 5.

system.¹⁰ In Part III, this Note evaluates the hard data on convictions in eight of Iowa's largest counties to draw conclusions about how prosecutors in different jurisdictions are exercising their discretion.¹¹ Finally, in Part IV, this Note discusses the possibility for reform through electoral politics, the need for comprehensive data collection, and the role other authorities in Iowa could play in ending the disproportionate incarceration of African-Americans.¹²

II. IOWA'S PRISON PROBLEM

This Part provides an overview of Iowa's criminal justice system, then proceeds to break down the historical, sociological, and philosophical factors that undergird the status quo. Iowa's prison system has operated above its capacity for over a decade¹³—unchanging despite high-profile organizations' condemnation of the incarceration rate¹⁴ for the state's modest proportion of African-American residents.¹⁵ In Black Hawk County, the jurisdiction that contributes most heavily to this discrepancy,¹⁶ a history of racial tension dating back to early twentieth century labor disputes¹⁷ has exacerbated poverty¹⁸ and

10. *Infra* Part II.

11. *Infra* Part III.

12. *Infra* Part IV.

13. See IOWA DEP'T OF CORR., FY2017 ANNUAL REPORT 20–21 (2017), available at https://doc.iowa.gov/sites/default/files/documents/2017/12/idoc_annual_report_fy2017_o.pdf [<https://perma.cc/F2ES-Z67W>] (charting Iowa's prison population over time, with the total numbers exceeding 2017's listed capacity of 7288).

14. See, e.g., SARAH FINERAN, IOWA DEP'T HUMAN RIGHTS, THE CORRECTIONAL POLICY PROJECT: IOWA PRISON POPULATION FORECAST FY 2017–FY 2027, at 18 (2017), available at <https://humanrights.iowa.gov/sites/default/files/media/2017%20Iowa%20Prison%20Population%20Forecast%20FY%202017-FY%202027.pdf> [<https://perma.cc/ZLA6-UUUT>] (“It should be noted that African-Americans are over represented in Iowa’s prison population, but particularly so for [mandatory minimum offenses.]”); NELLIS, *supra* note 8, at 3–4 (identifying Iowa’s black incarceration rate as one of the top five highest of all states); *Iowa Profile*, PRISON POL’Y INITIATIVE, <https://www.prisonpolicy.org/profiles/IA.html> [<https://perma.cc/2YMP-4D3C>] (“People of color are overrepresented in [Iowa’s] prisons and jails.”).

15. See *QuickFacts: Iowa*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/ia/POP010210> [<https://perma.cc/25W8-N6RN>] (estimating Iowa’s proportion of black residents at 4.0 percent). The Census Bureau estimates that Iowa’s population has grown by only around 110,000 between 2018 and 2010. See *id.* For that reason, this Note consistently uses the actual 2010 Census numbers to maintain consistency between the Note and reports on population from other sources.

16. See *infra* Section II.A.2.

17. See Pat Kinney, *Great Migration Railroad Strike 100 Years Ago Brought an Influx of African-Americans to Waterloo*, COURIER (Feb. 1, 2011), https://wfcourier.com/news/local/great-migration-railroad-strike-years-ago-brought-an-influx-of/article_3ac5cdf6-cef7-5d54-943a-742bo4395ac6.html [<https://perma.cc/K8FM-V24R>] (providing a brief overview of the circumstances under which black families first moved to Waterloo in large numbers, and resulting strife).

18. Compare *QuickFacts: Waterloo City, Iowa*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/waterloocityiowa> [<https://perma.cc/38ND-32HH>] (listing a poverty rate

crime.¹⁹ Still, mass incarceration was not widespread in Iowa prior to the nationwide push to crack down on drug abuse and gun violence.²⁰ The implementation of state-level mandatory minimums for these kinds of crimes highlights the prosecutor's role as key decisionmaker at the critical intersection of crime and punishment.²¹ Legal scholars and practitioners disagree about the normative policies prosecutors should adopt in responding to systematic pressures, thereby placing the exercise of discretion at the forefront of the debate over ongoing injustice and the potential for future reform.²²

A. DISPARITIES OF RACE AND PLACE

1. An Outlier in Composition, Capacity, and Cost

Iowa is a largely rural state²³ composed of just over three million people.²⁴ As of the 2010 Census, the vast majority of residents are white, with the largest exceptions being the roughly 6 percent who are Hispanic or Latino and the 4 percent who are African American.²⁵ In Iowa's prisons, however, one in every four inmates is black.²⁶ This figure is "noteworthy," per the Iowa Department of Human Rights, in that it has "remained stable" for at least a decade.²⁷ In fact, this discrepancy has much deeper roots: In a report

of 17 percent), *with QuickFacts: Iowa*, *supra* note 15 (revealing that Waterloo's poverty rate is about seven percent higher than the state's overall rate).

19. See generally *Uniform Crime Reporting 2016*, IOWA DEP'T PUB. SAFETY, http://www.dps.state.ia.us/commis/ucr/2016/iacrime_2016.shtml [<https://perma.cc/Y28N-JJAZ>] (follow "Agency" hyperlink listed under "Table 1" heading to open spreadsheet, then search the document for the names of relevant cities) (reporting high rates of violent crime and aggravated assault in Waterloo).

20. See FINERAN, *supra* note 14, at 24 ("From 1925–1975, the Iowa prison population remained steady at about 2,000 inmates with a peak population around 3,000 inmates in the 1930's. Since 1975, Iowa's prison population has reached more than 9,000 inmates and is forecasted to increase to 10,396 inmates by 2027.").

21. See *Developments in the Law: Race and the Prosecutor's Charging Decision*, 101 HARV. L. REV. 1520, 1524–26 (1998) (suggesting mandatory minimum sentences influence a prosecutor's decision to pursue felony charges in some cases but not others) [hereinafter *Race and the Prosecutor's Charging Decision*].

22. See *infra* Section II.C (evaluating the immense power inherent in prosecutorial discretion).

23. See *2010 Census: Population Density Data (Text Version)*, U.S. CENSUS BUREAU, <https://www.census.gov/data/tables/2010/dec/density-data-text.html> [<https://perma.cc/QP3J-YW6B>] (last updated May 4, 2018) (indicating Iowa is solidly within the bottom-third of states when measured by population density, with a mere 54.5 people per square mile of land area).

24. See *QuickFacts: Iowa*, *supra* note 15.

25. *Id.* Other racial groups make up a relatively small portion of Iowa's population. About 2.7 percent of residents are "Asian alone," 0.5 percent are "American Indian and Alaska Native alone," and 0.1 percent are "Native Hawaiian and Other Pacific Islander alone." *Id.* About two percent of residents identify as being of "Two or More Races." *Id.*

26. See FINERAN, *supra* note 14, at 18–19.

27. *Id.* at 18.

published in 1997, the Iowa Criminal and Juvenile Justice Plan took care to emphasize that “[i]n May of 1990, 22.5% of Iowa’s inmate population were African American.”²⁸ At the time, only 1.6 percent of Iowa’s residents were black.²⁹

When limited to prisoners convicted for offenses with mandatory minimums, the proportion of incarcerated African Americans rises to one in every three.³⁰ Indeed, advocacy groups and public officials laid the blame on mandatory minimum sentences in 2007,³¹ after The Sentencing Project found that Iowa had “the highest black-to-white ratio” of all state prisons, with a rate “of 13.6-to-1.”³² Nearly a decade later, Iowa’s black incarceration rate was still among the worst in the nation at 17-to-1.³³ Professor Russell Lovell, “a retired Drake University Law School professor who works with the Iowa and Nebraska branch of the NAACP,” attributed that figure to “broad-based, systemic issues,” noting that “Iowa is one of 20 states without any racial-profiling laws.”³⁴

In combination with the length of sentences, the disparity in race-based incarceration rates has a powerful impact on Iowa’s prison population. The mean average length of stay for an Iowa prison inmate was about 21 months in the 2016 fiscal year.³⁵ But, there have been about 9,000 felony convictions in the state per year for the last ten fiscal years, and the average sentence for people convicted of a felony offense tends to be much higher.³⁶ The requirement that an offender serve at least 70 percent of his or her sentence attaches to class B felony offenses, offenses listed in the Violent Crime

28. See IOWA DEP’T HUMAN RIGHTS, IOWA CRIMINAL AND JUVENILE JUSTICE PLAN: 1997 UPDATE 5, 7 (1997), available at <https://humanrights.iowa.gov/sites/default/files/media/aainc%5B1%5D.pdf> [<https://perma.cc/Q4FB-MAW4>] (observing that discrepancies in prosecutorial procedures “[are] most strongly noticeable in one county, Black Hawk”).

29. *Id.* at 5.

30. FINERAN, *supra* note 14, at 18.

31. See Charly Haley, *Iowa Still Near Top for Locking Up Blacks, Study Says*, DES MOINES REG., (June 15, 2016, 7:30 PM), <https://www.desmoinesregister.com/story/news/crime-and-courts/2016/06/15/iowa-still-near-top-locking-up-blacks-study-says/85936006> [<https://perma.cc/gG2X-2XFV>]. Iowa–Nebraska NAACP President Betty Andrews called the 2007 report “embarrassing.” *Id.* The Iowa Public Safety Advisory Board claimed in a report from 2013 that it would “be extremely difficult” to change the proportion of incarcerated African-Americans “absent some modifications” to the state’s sentencing guidelines. *Id.*

32. MARC MAUER & RYAN S. KING, SENTENCING PROJECT, UNEVEN JUSTICE: STATE RATES OF INCARCERATION BY RACE AND ETHNICITY 3 (2007), available at <https://www.sentencingproject.org/wp-content/uploads/2016/01/Uneven-Justice-State-Rates-of-Incarceration-by-Race-and-Ethnicity.pdf> [<https://perma.cc/2QFG-KWL8>].

33. NELLIS, *supra* note 8, at 5. “The Sentencing Project is a national non-profit organization engaged in research and advocacy on criminal justice issues.” *Id.* at i.

34. Erin Murphy, *Racial Disparities Among Iowa Inmates Still Among Highest in Nation*, GAZETTE (Sept. 4, 2016), <https://www.thegazette.com/subject/news/public-safety/racial-disparities-among-iowa-inmates-still-among-highest-in-nation-20160904> [<https://perma.cc/VH86-YHWQ>].

35. FINERAN, *supra* note 14, at 35.

36. *Id.* at 16, 35.

Initiative, and (often) drug trafficking offenses.³⁷ Of those required to serve the 70 percent mandatory minimum sentence, “35.8% were African-American” in the 2017 Fiscal Year.³⁸

The sheer number of offenders funneled into Iowa’s prison system also poses administrative and budgetary problems. As of the end of the 2017 Fiscal Year, Iowa’s prison population was 8,314, exceeding the state prisons’ capacity of 7,288.³⁹ Although this number may seem striking, it is nothing new; since at least 2008, Iowa’s prisons have almost always operated at more than 110 percent capacity—the one exception was the 109.3 percent capacity rate in the 2014 Fiscal Year.⁴⁰ As of 2014, Iowa ranked among fewer than ten states “holding a prison population equal to more than 110 percent of capacity.”⁴¹ Furthermore, the Iowa Department of Human Rights expects those numbers to swell “by about 24% over [a] ten-year period,” with “an estimated 10,396 inmates on June 30, 2027.”⁴²

Of course, Iowa has long paid dearly to maintain its current prison system. Lawmakers attempted to manage costs in 1993, requiring that “a correctional impact statement” be issued to detail “the fiscal impact of confining persons pursuant to” any attempt to “create[] . . . [or] significantly change[] an existing public offense . . . or change[] existing sentencing, parole, or probation procedures.”⁴³ At the time, the total budget for corrections facilities was \$92,165,914.⁴⁴ In the 2017 Fiscal Year, spending on corrections facilities was estimated at over \$289 million.⁴⁵ This expenditure swallowed up 56 percent of the state’s \$512 million in expenditures for the justice system as a whole.⁴⁶

37. *Id.* at 16–19. These categories are not mutually exclusive. Many violent crimes and drug crimes are class B felonies. See IOWA CODE §§ 124.413, 902.12 (2019) (labeling the respective offenses as class B felonies and assigning a mandatory minimum sentence).

38. FINERAN, *supra* note 14, at 18.

39. IOWA DEP’T OF CORR., *supra* note 13, at 21.

40. FINERAN, *supra* note 14, at 28.

41. Reid Wilson, *Prisons in These 17 States Are Over Capacity*, WASH. POST (Sept. 20, 2014), https://www.washingtonpost.com/blogs/govbeat/wp/2014/09/20/prisons-in-these-17-states-are-filled-over-capacity/?utm_term=.1ce208feag45 [<https://perma.cc/FQG2-NQY9>]. Iowa was among Nebraska, Ohio, Delaware, Colorado, and Hawaii in attempting to operate in excess of 110 percent of capacity. *Id.* The Illinois and North Dakota prison systems were most overburdened at the time, both working at or above “150 percent of capacity.” *Id.*

42. FINERAN, *supra* note 14, at 9.

43. Act of Apr. 26, 1993, ch. 171, § 14, 1993 Iowa Acts 411.

44. *Id.* at 403–04.

45. IOWA DEP’T OF MGMT., PROGRAM AND BUDGET: FISCAL YEARS 2018–2019, at 98–101 (2017), available at https://dom.iowa.gov/sites/default/files/documents/2017/01/bib_final_fy2018.2019.pdf [<https://perma.cc/3RQ9-2CPM>] (listing actual FY 2016 spending for each correctional facility, adjusted from estimates in earlier reports).

46. *Id.* at 102.

To put these large abstract numbers in human terms, Iowa's prisons cost \$95.85 per inmate per day in the 2017 Fiscal Year.⁴⁷ At that level of spending, the state would save \$71,194,983.75 *each year* if it reduced the prison incarceration rate of African-Americans to the rate of white incarceration.⁴⁸ Those savings would be greater than Iowa's general fund appropriations for Agriculture and Natural Resources (\$37,786,995), Economic Development (\$43,744,465), the Public Defender system (\$58,784,172), and The College Student Aid Commission (\$64,776,888) in the 2016 Fiscal Year.⁴⁹

2. Imbalances Among County Contributions to State Prisons

The variation in countywide contributions to the state prison population hints at possible causes for the persistent overrepresentation of African-Americans in Iowa's prisons. Due to the positive correlation between population density and crime rate,⁵⁰ it would be reasonable to expect that jurisdictions with the biggest cities sentence the most people to prison. Indeed, as of March 27, 2018, nearly one in every four Iowa prisoners have been convicted in Polk County,⁵¹ which is the most populous in the state.⁵² If this pattern were to hold, the next-largest proportions of inmates would have been convicted by: Linn County, Scott County, Black Hawk County, Johnson County, Woodbury County, Dubuque County, and then, finally, Pottawattamie County.⁵³ But, as the chart below illustrates, that is not the case.⁵⁴

47. IOWA DEP'T OF CORR., *supra* note 13, at 29.

48. See NELLIS, *supra* note 8, at 8 (noting a "black/white differential" of 11.1 in Iowa). The number of black people in Iowa's prisons at the time of Nellis's report was about 2,270. *Id.* at 16 (identifying Iowa's black prison population as 25.8 percent of a total of 8,798 inmates). A reduction by the rate of 11.1 would mean a total of 205 black people in Iowa's prisons, 2035 fewer than there are currently. At a rate of \$95.85 per inmate per day, or \$34,985.25 per year, the savings from 2035 fewer inmates would be \$71,194,983.75 per year. See IOWA DEP'T OF CORR., *supra* note 13, at 29 (reporting the daily cost of an inmate in an Iowa prison at \$95.85, for a yearly cost of \$34,985.25).

49. See IOWA DEP'T OF MGMT., *supra* note 45, at 77–80, 82, 85, 90.

50. See Van B. Shaw, *Relationship Between Crime Rates and Certain Population Characteristics in Minnesota Counties*, 40 J. CRIM. L. & CRIMINOLOGY 43, 49 (1949). While this study applies specifically to Iowa's neighbor to the north, the strength of its empirical conclusion suggests the relationship is effectively a generally applicable principle.

51. *Visualization of Year End Iowa Prison Population*, GOV DATA: ST. IOWA, <https://data.iowa.gov/d/hsqm-vzb9/visualization> [<https://perma.cc/NA49-BB26>] (select the pie chart option; then, select "Jurisdiction" from the recommended columns sidebar).

52. See generally U.S. CENSUS BUREAU, 2010 US CENSUS IOWA COUNTIES POPULATION (2010), available at <https://sos.iowa.gov/elections/pdf/2010census/counties.pdf> [<https://perma.cc/U4ZH-3NZ6>] (listing the population of Polk County at 430,640 at the time of the 2010 census). Because Iowa has few sizeable metropolitan centers, the largest counties by raw population are necessarily those with the biggest cities.

53. *Id.* The census figures for these counties are: Linn, 211,226; Scott, 165,224; Black Hawk, 131,090; Johnson, 130,882; Woodbury, 102,172; Dubuque, 93,653; and Pottawattamie, 93,158. *Id.*

54. *Visualization of Year End Iowa Prison Population*, *supra* note 51.

Figure 1. Contributions to Iowa Prison Population by County

	Inmates by County	Percent of Total	Black Inmates by County	Percent of Black Inmates by County	County Contribution to Black Prison Population
Polk	1,866	22%	598	32%	28%
Black Hawk	767	9%	395	51%	19%
Scott	641	8%	316	49%	15%
Linn	337	4%	105	31%	5%
Woodbury	457	5%	90	20%	4%
Johnson	181	2%	74	41%	3%
Dubuque	203	2%	69	34%	3%
Pottawattamie	334	4%	42	13%	2%

The second-largest number of black convictions—about one in every ten inmates⁵⁵—comes from Black Hawk, the fourth-largest county with an estimated population of only 131,090.⁵⁶ Furthermore, although only about nine percent of Black Hawk residents are “[b]lack or African-American,”⁵⁷ they make up 51 percent of the people that the county has sent to Iowa prisons.⁵⁸ This staggering figure is almost totally unparalleled among Iowa’s largest jurisdictions; only Scott County comes close, as 49 percent of current Iowa inmates it has convicted are black.⁵⁹ Still, even though Scott County has about 35,000 more residents,⁶⁰ its total prison system contribution of 641 people pales in comparison to Black Hawk’s 767.⁶¹ Put simply, despite being home to about 10 percent of Iowa’s total black population,⁶² Black Hawk County has effectively convicted one in every five of all African-Americans currently in Iowa’s prisons.⁶³

55. *Id.*

56. U.S. CENSUS BUREAU, *supra* note 52.

57. See THE ST. DATA CTR. OF IOWA & THE IOWA COMMISSION ON THE STATUS OF AFRICAN-AMERICANS, AFRICAN-AMERICANS IN IOWA: 2019, at 2 (Feb. 2019), *available at* <https://www.iowadatacenter.org/Publications/aaprofile2019.pdf> [<https://perma.cc/Y4GS-PT3J>] [hereinafter THE ST. DATA CTR.].

58. See Appendix E (illustrating that 395 of the 767 of the current inmates convicted by Black Hawk County are black).

59. See *Visualization of Year End Iowa Prison Population*, *supra* note 51 (export data as spreadsheet; then, sort by jurisdiction by race) (showing 316 of Scott County’s 641 contributions to Iowa State prisons are black).

60. See U.S. CENSUS BUREAU, *supra* note 52 (detailing the difference in population between Scott and Black Hawk counties).

61. See Appendix E.

62. See THE ST. DATA CTR., *supra* note 57, at 1–2 (listing Iowa’s total black population at 120,218 as of 2017 and Black Hawk’s black population at 12,438, which comes out to 10.35 percent).

63. See Appendix E (listing the number of black “offenders” in Iowa prisons at 2116). 395 of the 767 (or 51 percent) of the current inmates convicted by Black Hawk County are black. *Id.* 395 of 2116 is just under 19 percent, roughly one-fifth.

Much like the gap between the prison and statewide populations generally,⁶⁴ the disproportionate rate of convictions of Black Hawk County also has deep roots. A report by the Iowa Supreme Court's "Equality in the Courts Task Force," published in 1993, found that not only were "there . . . unexplained differences [in charging, pretrial, and sentencing outcomes in Iowa] which are not associated with any known factor but race," but also that the variation was "most strongly noticeable in one county, Black Hawk, which is the Iowa county with the highest concentration of African[-] American defendants."⁶⁵

B. RACIAL TENSION, MARGINALIZATION, AND CRIME IN BLACK HAWK COUNTY

It would be folly to speculate about the cause of the disparity in Black Hawk County's criminal convictions without first stepping back to examine the underlying forces that made the area what it is today. The history of racial tension in Black Hawk County dates back to the early twentieth century, when the nascent beginnings of the Great Migration intersected with ongoing Northern industrial labor disputes.⁶⁶ In 1911, when a strike at the Illinois Central Railroad Corporation threatened "to shutdown [sic] operations . . . in the entire Midwest," the company's management quickly "recruited African-American men in the vicinity of its Watervalley, Mississippi plant for . . . unskilled positions."⁶⁷ Despite assurance that they would be led to "the promised land,"⁶⁸ the arriving black workers encountered hostility. "Local journalists argued that the rising black population brought lawlessness," thereby expounding on the racist trope that black people are predisposed to committing crimes.⁶⁹ As a direct result, "[r]estrictive covenants and the informal practices of realtors" severely limited available housing to a small area surrounding the railyard.⁷⁰ Still, the number of African-Americans in Waterloo—the largest city in the county—"jumped from only 24 in 1910 to 837 in 1920."⁷¹ That small neighborhood adjacent to the tracks, or "Smokey

64. See IOWA DEP'T HUMAN RIGHTS, *supra* note 28, at 7.

65. *Id.*

66. See John D. Baskerville, *Heading North: African-American Migration*, BLACK HAWK COUNTY: PAST AND PRESENT (Spring 2001), <https://historyofblackhawkcounty.uni.edu/peopimmigrants/African-AmericanMig/HeadingNorth.htm> [<https://perma.cc/ZXH2-LEHH>] (describing initial conflict between working-class white residents of the Waterloo and the migrating black families that arrived seeking employment).

67. *Id.*

68. RICK HALPERN & ROGER HOROWITZ, MEATPACKERS: AN ORAL HISTORY OF BLACK PACKINGHOUSE WORKERS AND THEIR STRUGGLE FOR RACIAL AND ECONOMIC EQUALITY 119 (1999).

69. Baskerville, *supra* note 66 (quoting Robert Neymeyer, *May Harmony Prevail: The Early History of Black Waterloo*, 61 THE PALIMPSEST 80, 85 (1980)).

70. HALPERN & HOROWITZ, *supra* note 68, at 119–20.

71. *Id.* at 119.

Row,” as it came to be known, “remains the low-income African-American community to this day.”⁷²

Over the span of several decades, Waterloo’s black working class slowly became ingratiated with some of the area’s influential labor unions; however, the nationwide struggle for civil rights began to pose new challenges for race relations in this corner of eastern Iowa.⁷³ Unions experienced some initial success at breaking down small barriers to equality, for example, by boycotting “local restaurants who refused services to blacks” and convincing “the newspaper to stop publishing the race of alleged criminals.”⁷⁴ Still, racial tensions in Waterloo were so substantial that they had the potential to cause full-fledged riots. In 1967 and 1968, conflicts between police and young black men sparked extended periods of “civil disorder” that escalated into brawls with police and, in the latter instance, multiple arsons.⁷⁵ Even though “[t]he Iowa Supreme Court outlawed school segregation in 1868,”⁷⁶ housing restrictions from the early Smokey Row days “created racial segregation with the city’s schools.”⁷⁷ Subpar education enabled more discrimination from employers at the exact time many of the largest factories in the area began to shut down.⁷⁸ Through the 1970s and ‘80s, African-Americans of means around the county relocated from big cities in pursuit of better schools and more stable employment,⁷⁹ thereby exacerbating poverty and unemployment in places like Waterloo.

These endemic barriers to progress and prosperity continue to plague Waterloo’s black community today. According to the most recent Census Bureau estimates, fewer than one in every four of the city’s residents have a Bachelor’s or graduate degree.⁸⁰ The per capita income in 2017 was only \$25,149.⁸¹ These general statistics appear to have an outsized effect on African-Americans. People of color own only 11.6 percent of businesses in

72. Jordan Bray, *The 10th Worst City for African-Americans in the U.S. Has a Story—This Is How the Dream Derailed*, MEDIUM (Oct. 26, 2015), <https://medium.com/@dmegivern/the-10th-worst-city-for-african-americans-in-the-u-s-has-a-story-this-is-how-the-dream-derailed-9a1e12a8ad41> [https://perma.cc/W3LN-B8B6].

73. *See id.* (describing how radical union organizers allied with black workers and began to join them in demanding civil rights).

74. *Id.*

75. Kathryn A. Schumaker, *The Politics of Youth: Civil Rights Reform in the Waterloo Public Schools*, 72 THE ANNALS OF IOWA 353, 353–54 (2013).

76. Bray, *supra* note 72.

77. Schumaker, *supra* note 75, at 360.

78. Bray, *supra* note 72.

79. *See generally* Morton D. Winsberg, *Flight from the Ghetto: The Migration of Middle Class and Highly Educated Blacks into White Urban Neighborhoods*, 44 AM. J. ECON. & SOC. 411 (1985) (analyzing the “black flight” phenomenon beginning in the 1970s and continuing into the ‘80s).

80. *See QuickFacts: Waterloo City, Iowa*, *supra* note 18.

81. *Id.*

Waterloo—despite the state-high proportion of black residents and their storied role in the community.⁸²

The unfortunate corollary to systemic disenfranchisement is that many types of crime occur at a higher rate in Waterloo than in Iowa's other cities. Although the overall crime index rate of 3,870.31 per 100,000 people is similar to that of Cedar Rapids in neighboring Linn County, the rate of some specific offenses is striking.⁸³ The Waterloo Police Department reported offenses categorized as “violent crime” occurred at a rate of 736.09 per 100,000, higher than any of Iowa's other big cities.⁸⁴ The unparalleled rate of aggravated assaults, at 563.75 per 100,000, surely bolsters that rate for “violent crime” overall.⁸⁵ Oddly, there were fewer murders—seemingly the desired end result of many of aggravated assaults, under the FBI's Uniform Crime Reporting definition⁸⁶—in Waterloo in 2016 than there were in Cedar Rapids, Des Moines, Council Bluffs, or Davenport. This apparent discrepancy invites an important qualification: that “[a] crime index must be based . . . on that fraction of the total criminality which is *recorded* by public authorities who *come into contact with the crime*.”⁸⁷ In Part III, *infra*, this Note will explore the possibility that policies or norms in a prosecutor's office may influence police behavior in a way that exaggerates the incidences of some offenses, especially those with mandatory minimum sentences.

C. POTENTIAL PREJUDICE AND PROFESSIONAL STANDARDS

There is no quick fix for the systematic hardships undergirding heightened crime in cities like Waterloo. To be sure, widespread violent crime and the distribution of dangerous narcotics can only tear away at the shaky foundations of a long-vulnerable community. Yet prioritizing retribution for and deterrence from these crimes above all else has resulted in an injustice that has been obvious for decades:⁸⁸ the disproportionate mass incarceration

82. *Id.* (estimating Waterloo's black population to be about 16 percent).

83. *Uniform Crime Reporting 2016*, *supra* note 19 (follow “Agency” hyperlink listed under “Table 2” heading to open spreadsheet).

84. *Id.*

85. *Id.*

86. *Aggravated Assault*, FBI: UCR, <https://ucr.fbi.gov/crime-in-the-u.s/2014/crime-in-the-u.s.-2014/offenses-known-to-law-enforcement/aggravated-assault> [<https://perma.cc/3W9W-AXLJ>] (“The FBI[] . . . defines aggravated assault as an unlawful attack by one person upon another for the purpose of inflicting severe or aggravated bodily injury. . . . [T]his type of assault is usually accompanied by the use of a weapon or by other means likely to produce death or great bodily harm. Attempted aggravated assault that involves the display of—or threat to use—a gun, knife, or other weapon is included in this crime category because serious personal injury would likely result if the assault were completed. When aggravated assault and larceny-theft occur together, the offense falls under the category of robbery.”).

87. Thorsten Sellin, *The Basis of a Crime Index*, 22 J. AM. INST. CRIM. L. & CRIMINOLOGY 335, 336–37 (1931) (footnote omitted).

88. *See generally* FINERAN, *supra* note 14 and accompanying text (condemning disproportionate incarceration in Iowa in the 1990s).

of the very population that was vulnerable in the first place. Long a topic of academic debate,⁸⁹ reformers are increasingly asking the general public to rethink the role of the prosecutor in the criminal justice system—and in some cases, they are winning.⁹⁰ Their policy platforms and electoral successes create an opportunity to recontextualize well-trodden grounds in legal scholarship to address problems that are not just normative, but also practical. Section II.C.1 discusses the role conscious and unconscious bias plays in prosecutors' decision-making process. Section II.C.2 discusses contemporary reformers' proposals for mitigating and eliminating that bias.

1. Prejudice and Prosecutorial Discretion

It is widely-acknowledged that the prosecutor has an unmatched and seemingly boundless power to exercise discretion over whether and how to pursue a criminal charge.⁹¹ That discretion has its greatest practical importance at two junctures: when deciding to file initial charges, and during the negotiation of a plea deal.⁹² Similarly, it is perhaps unsurprising that “the potential for, and the reality of, abuse” is greatest when the prosecutor’s power is at its maxim.⁹³ There is substantial statistical evidence to suggest that prosecutors’ own prejudice can and does shape this abuse. Perhaps the best-known example comes from an exhaustive study⁹⁴ by former Iowa Law Professor David C. Baldus, which found that Georgia prosecutors were

89. *Infra* Section II.C.2.

90. *See Philadelphia DA Wants to Dismantle Mass Incarceration from the Inside Out*, WBUR BOSTON (Apr. 18, 2018), <http://www.wbur.org/hereandnow/2018/04/18/philadelphia-dalarry-krasner-incarceration> [<https://perma.cc/6RQW-U76D>] (discussing new policy proposals in light of Larry Krasner’s upset election victory); *see also* Farah Stockman, *In Ferguson, a New Prosecutor ‘Gives Us Hope’ 4 Years After Shooting*, N.Y. TIMES (Aug. 8, 2018), <https://www.nytimes.com/2018/08/08/us/ferguson-prosecutor-wesley-bell.html> [<https://perma.cc/HG3H-T625>] (pointing to potential for incoming prosecutor to address St. Louis “[C]ounty’s criminal justice system” as it “is still plagued by fundamental inequality”).

91. *Accord* Amy Grossman Applegate, *Prosecutorial Discretion and Discrimination in the Decision to Charge*, 55 TEMP. L. Q. 35, 35–38 (1982); Angela J. Davis, *The Legal Profession’s Failure to Discipline Unethical Prosecutors*, 36 HOFSTRA L. REV. 275, 276–78 (2007); *Race and the Prosecutor’s Charging Decision*, *supra* note 21, at 1520–26; James Babikian, Note, *Cleaving the Gordian Knot: Implicit Bias, Selective Prosecution, & Charging Guidelines*, 42 AM. J. CRIM. L. 139, 141–45 (2015).

92. *See, e.g.*, Jason Kreag, *Prosecutorial Analytics*, 94 WASH. U. L. REV. 771, 815–16 (recommending analytics be applied to data on “charging and bargaining practices” due to their role as key decision points); *Race and the Prosecutor’s Charging Decision*, *supra* note 21, at 1524–26 (noting that a defendant’s race may have such influence on the charging decision that it would adversely affect any attempt to plead to a lesser charge); Babikian, *supra* note 91, at 168–69 (recommending guidelines for charging and pleading decisions to “provide . . . greater judicial oversight”).

93. Applegate, *supra* note 91, at 40.

94. *See Race and the Prosecutor’s Charging Decision*, *supra* note 21, at 1530–31 (justifying the validity of statistical findings on race and prosecutorial discretion because they are “supported by the Baldus study, which . . . [took] into account virtually every conceivable variable and . . . still concluded that race played an independent role in the prosecutor’s decisionmaking”).

significantly more likely to seek the death penalty when the defendant was black and the victim was white.⁹⁵ Lesser known but similarly rigorous studies “revealed a pattern of discriminatory charging against black and Hispanic defendants” in Los Angeles; found Florida prosecutors more willing to “upgrade” homicide charges in cases with “white victims and black offenders;” and found “that racial composition clearly influenced felony screening as well as determinations of charge seriousness” in an unspecified large midwestern city.⁹⁶

Moreover, prosecutorial misconduct need not even be conscious. Past studies on implicit bias strongly suggest that many charging decisions, particularly those that “require[] an instinctual judgment,” may effectively be made in the absence of affirmative thought.⁹⁷ In addition, the implicit bias of other actors—such as legislators, police, and sentencing judges—may create a sort of construct in which a prosecutor’s charging decision is effectively predetermined regardless of his or her own biases.⁹⁸ For example, when a prosecutor evaluates potential charges prior to an arrest, he or she “is generally seeing things unfold through the lens of the police or investigator”⁹⁹ Conversely, when the prosecutor weighs potential charges after an arrest, “the defendant’s . . . common and expected reaction[] to being in jail . . . may leave an unfavorable impression with the prosecutor.”¹⁰⁰ To the credit of many prosecutors’ associations, there have been many deliberate and organized efforts to guard their members against the undue influence of implicit racial bias.¹⁰¹

95. See David C. Baldus et al., *Comparative Review of Death Sentences: An Empirical Study of the Georgia Experience*, 74 J. CRIM. L. & CRIMINOLOGY 661, 731 (1983) (“[O]ur analyses suggest that Georgia’s death-sentencing system is tainted by the influence of arbitrary and capricious factors, notably the victim’s race and the place where the defendant is prosecuted.”).

96. See *Race and the Prosecutor’s Charging Decision*, *supra* note 21, at 1524–27, 1529–32 (describing past statistical analysis on race in borderline charging decisions, then independently assessing the rigor of those findings).

97. See Robert J. Smith & Justin D. Levinson, *The Impact of Implicit Racial Bias on the Exercise of Prosecutorial Discretion*, 35 SEATTLE U. L. REV. 795, 806–10 (2012) (applying implicit association testing results to scenarios a prosecutor would commonly face).

98. See Justin D. Levinson & Robert J. Smith, *Systemic Implicit Bias*, 126 YALE L.J.F. 406, 415–16 (2017) (assessing implicit associations tests in the broader context of the criminal justice system).

99. Chris Chambers Goodman, *Shadowing the Bar: Attorneys’ Own Implicit Bias*, 28 BERKELEY LA RAZA L.J. 18, 31 (2018).

100. *Id.*

101. See, e.g., *The Conscious Prosecutor: Implicit Bias Toolkit for Prosecutors*, A.B.A. (Mar. 4, 2017), https://www.americanbar.org/content/dam/aba/publications/criminaljustice/2017/Interactive_Implicit_Bias_Toolkit.pdf [<https://perma.cc/J5UN-R4NF>] (recapping prosecutor trainings on implicit bias from 2016 to 2017); Press Release, U.S. Dep’t of Justice, Dep’t of Justice Announces New Dep’t-Wide Implicit Bias Training for Personnel (June 27, 2016), *available at* <https://www.justice.gov/opa/pr/department-justice-announces-new-department-wide-implicit-bias-training-personnel> [<https://perma.cc/P3B7-R549>] (detailing an effort to train employees to recognize and correct for implicit bias); Lauren Keene, *Yolo Prosecutors Receive Implicit Bias*

2. Normative Approaches to the Role of the Prosecutor

A prosecutor's view of his or her own role in the criminal justice system has substantial potential to either heighten or hinder the potential for racial bias to determine the outcome of a given case. The conventional adversarial model, in which the prosecutor "is a partisan lawyer tasked with obtaining and preserving convictions," tends to do the former.¹⁰² In contrast, alternative non-adversarial models of prosecution hinder the influence of racial bias by "call[ing] on prosecutors to step outside narrow partisanship and consider how a just system should operate" in light of "systemic concerns."¹⁰³

For its part, the Iowa County Attorneys Association ("ICAA") maintains a set of prosecutorial standards intended to promote common goals among the 99 state offices, such as "to encourage respect for the law" and keep the "respect and trust of . . . the public."¹⁰⁴ These standards emphasize that "[t]he primary responsibility of the prosecutor is to seek and obtain justice."¹⁰⁵ In so doing, they encourage prosecutors to use their "discretion . . . to eliminate those cases from the criminal justice system in which prosecution is not justified," to "utilize appropriate diversionary programs when . . . the effects of such diversion would be beneficial to the community and to the offender," and "to present only those charges which [are] . . . consistent with the best interests of justice."¹⁰⁶ These standards are substantially similar to those of the National District Attorneys Association and to the role outlined in the ABA's Model Rules.¹⁰⁷

Much like the nationally-accepted standards, the practical reality that prosecutors "are the chief law enforcement officials of" their jurisdictions is inherent in the ICAA guidelines.¹⁰⁸ That inescapable fact creates a "profound tension" between the pursuit of justice and the perceived need to effectively enforce the law by obtaining convictions.¹⁰⁹ The ICAA attempts to reconcile

Training, ENTERPRISE (Apr. 9, 2016, 5:20 PM), <https://www.davisenterprise.com/local-news/yolo-prosecutors-receive-implicit-bias-training> [<https://perma.cc/A3VX-UF2F>] (covering a California County District Attorney's efforts to make its prosecutors aware of implicit bias).

102. See Eric S. Fish, *Against Adversary Prosecution*, 103 IOWA L. REV. 1419, 1420, 1420 n.4 (2018) ("The literature on American prosecutors suggests that this view is commonly held.").

103. *Id.* at 1428.

104. IOWA COUNTY ATT'YS ASS'N, PROSECUTORIAL STANDARDS: RESPONSIBILITIES OF COUNTY ATT'YS AND ASSISTANT COUNTY ATT'YS 1 (June 2010), available at <http://iowa-icaa.com/ICAA%20Standards%202010.pdf> [<https://perma.cc/Eg6S-WRUL>].

105. *Id.*

106. *Id.* at 2–3.

107. See Fish, *supra* note 102, at 1426 (quoting the National District Attorney's Association standard that "[t]he primary responsibility of a prosecutor is to seek justice" and the ABA Model Rules equating the prosecutorial role to that "of a minister of justice and not simply that of an advocate").

108. IOWA COUNTY ATT'YS ASS'N, *supra* note 104, at 1; see also Fish, *supra* note 102, at 1428 (quoting the ABA's characterization of the prosecutor as "a zealous advocate").

109. Fish, *supra* note 102, at 1428 ("One role—'seeking justice'—requires attentiveness to systemic concerns, including the rights of defendants. It calls on prosecutors to step outside

this tension by narrowing the prosecutor’s “independent professional judgment . . . to [the confines of] the Iowa Rules of Professional Conduct” (“IRPC”).¹¹⁰

The IRPC is somewhat more restrictive on some areas, as the rules require prosecutors to “refrain from prosecuting a charge that the prosecutor knows or reasonably should know is not supported by probable cause;” “make reasonable efforts to” promote the defendant’s rights, and “make timely disclosure . . . of all . . . information . . . that tends to negate the guilt of the accused or mitigates the offense.”¹¹¹ The efficacy of this ethical framework in constraining prosecutorial misconduct is the subject of Part IV.¹¹²

III. COUNTY-BY-COUNTY COMPARISON

This Part scrutinizes critical junctures in the adjudicative process to distinguish prosecutors’ decision-making from that of other actors with discretion in the criminal justice system (e.g., police, judges, and juries). Because the clearest exercise of prosecutorial discretion is in deciding which charges to file and how to resolve them,¹¹³ this Part assesses patterns of filing charges and obtaining convictions to compare the exercise of discretion. The use of the word “dispositions” differs from its ordinary meaning in that it refers to the charges a prosecutor originally files against a given defendant.¹¹⁴ The meaning of the word “convictions” includes not only those secured at trial, but also those negotiated in the course of a plea deal.¹¹⁵ Unlike Professor Baldus’s aforementioned full-scale statistical analysis,¹¹⁶ this Part merely engages in a descriptive analysis of the available data from Iowa’s Easy Access to Adult Criminal Data program (“EZAACD”).¹¹⁷ In so doing, this Part limits

narrow partisanship and consider how a just system should operate. The other role—adversarialism—puts a premium on winning cases, thus requiring a certain lawyerly amorality.”).

110. IOWA CTY. ATT’YS ASS’N, *supra* note 104, at 1.

111. IOWA CT. R. OF PROF’L CONDUCT 32:3.8 (2015), *available at* <https://www.legis.iowa.gov/docs/ACO/CourtRulesChapter/08-30-2018.32.pdf> [<https://perma.cc/E79K-TBK2>].

112. *Infra* Part IV.

113. *See supra* Section II.C.1.

114. *See Easy Access to Adult Criminal Data*, IOWA DEP’T HUM. RTS.: DIV. CRIM. & JUV. JUST. PLAN., <https://disposedcharges.iowa.gov> [<https://perma.cc/W6E6-3F9C>] (“Disposed charges provide data for all charged offenses, including charges that resulted in a conviction, as well as charges that were ultimately dismissed, acquitted, not filed or reduced.”).

115. *Id.* “Convictions provide data for all charges resulting in a conviction. Cases involving multiple charges may also involve multiple convictions, and each of those individual convictions will appear in this data.” *Id.*

116. *See supra* note 95 and accompanying text.

117. *Easy Access to Adult Criminal Data*, *supra* note 114. “The data in this report reflects information from the Judicial Branch’s Iowa Court Information System (ICIS). The data . . . [reflects] the official records contained in ICIS at the time the information was extracted to the Iowa Justice Data Warehouse.” *Disclaimer*, IOWA DEP’T HUM. RTS.: DIV. CRIM. & JUV. JUST. PLAN., <https://disposedcharges.iowa.gov/asp/disclaimer.asp> [<https://perma.cc/6VFX-LDJK>];

the scope of the inquiry to the eight most-populous counties in Iowa as of the 2010 census: Polk, Linn, Scott, Black Hawk, Johnson, Woodbury, Dubuque, and Pottawattamie.¹¹⁸ This Section is further limited in that it only compares the criminal justice system's treatment of black and white people in those counties from 2010 to 2017.¹¹⁹

Section III.A is a high-level overview of convictions by EZAACD's four types of offenses: Violent, Property, Drug, and Public Order. Section III.B breaks down the statutory class of offenses—felonies, misdemeanors, and all subdivisions thereof—to reveal apparent discrepancies in the seriousness of an offense and the race of the accused. Finally, Section III.C discusses disproportionate patterns of charging and convicting African-Americans on two of Iowa's mandatory minimum offenses: Drug Trafficking and Robbery.

A. OFFENSE TYPES

Two clear patterns are apparent upon reviewing the charges and convictions sorted by the type of offense. First, African-Americans are significantly overrepresented, relative to their proportion of the overall population, in the numbers of those accused and convicted of nearly every type of crime in nearly every county. Second, more so than any of Iowa's other large counties, Black Hawk County disproportionately brings charges against and secures the conviction of black defendants. A brief assessment of the raw numbers will likely help fit the following percentages into context. In every category of offense, Black Hawk County convicted the second-largest number of African-Americans.¹²⁰ Despite Black Hawk being the fourth-largest county in the 2010 census, only Polk County—a jurisdiction with more than three times as many people¹²¹—convicted more black defendants.¹²²

Beyond the raw numbers, there are striking disparities in the proportion of African-Americans charged and convicted, as well as the rate at which they are convicted. Half of the charges the Black Hawk County Attorney sought for

see also Appendices A–E. These appendices break down the combined numbers of dispositions and convictions during 2010–2017 for offense types, offense classes, and offenses with mandatory minimum sentences.

118. *See supra* text accompanying note 53. These jurisdictions are the most rational choices for comparison on issues of crime and punishment because they tend to contain Iowa's largest metropolitan areas. *See supra* text accompanying note 52.

119. This analysis is confined to white and black defendants because they are the two racial groups most completely represented in the EZAACD system. Hispanic ethnicity is filtered out because EZAACD treats it as a distinct category other than race, thereby creating potential for overlapping data points (e.g., a white defendant who claims Hispanic ethnicity).

120. *See* Appendix A (listing the following figures for convictions of black defendants: 3,059 for violent crimes; 4,112 for property crimes; 2,350 for drug crimes; 24,688 for public order crimes).

121. *See* U.S. CENSUS BUREAU, *supra* note 52.

122. *See* Appendix A (totaling overall convictions as 34,209 in Black Hawk and 62,929 in Polk; without public order crimes totals are 9,521 in Black Hawk and 15,447 in Polk).

violent offenses were against black defendants.¹²³ Similarly, the defendants were black in half of the county's convictions for violent offenses.¹²⁴ The racial disparity between disposed charges and convictions remains consistent in most (but not all) categories; however, the rate of conviction is striking.

Figure 2. Charges and Convictions for Violent-Type Offenses

County	Total Charges	Percent of Total Charged, White	Percent of Total Charged, Black	Percent of Total Convicted, White	Percent of Total Convicted, Black	White Conviction Rate	Black Conviction Rate	Overall Conviction Rate
Black Hawk	12,318	51.74%	48.26%	50.59%	49.41%	62.27%	65.20%	63.68%
Dubuque	7,376	66.59%	33.41%	65.86%	34.14%	49.51%	51.16%	50.06%
Johnson	9,896	58.07%	41.93%	55.29%	44.71%	43.51%	48.73%	45.70%
Linn	18,372	60.84%	39.16%	60.51%	39.49%	55.92%	56.70%	56.23%
Polk	43,964	68.59%	31.41%	68.90%	31.10%	45.93%	45.27%	45.72%
Pottawattamie	8,992	86.76%	13.24%	87.64%	12.36%	27.90%	25.78%	27.62%
Scott	10,633	57.36%	42.64%	57.65%	42.35%	38.44%	37.98%	38.25%
Woodbury	7,494	76.25%	23.75%	74.92%	25.08%	47.39%	50.92%	48.23%
Average	14,881	65.77%	34.23%	65.17%	34.83%	46.36%	47.72%	46.94%

Black Hawk County convicted on 63.68 percent of its violent-type charges overall, and 65.20 percent of violent-type charges against black defendants.¹²⁵ Linn County had the second-highest conviction rate: 56.23 percent overall, 56.70 percent against African-Americans.¹²⁶ All other Iowa counties convicted on violent-type crimes overall at a rate of 50 percent or lower.¹²⁷ Although the Black Hawk County Attorney's Office is pursuing charges against equal amounts of white and black defendants and convicting them at the same rate, the heightened rate of conviction appears to exaggerate racial disparities in incarceration when combined with the low overall proportion of black residents—again, only about nine percent.¹²⁸

Turning to drug offenses, Black Hawk County convicted the second-highest proportion of African-Americans in this category (34.17 percent), but it did so at the highest rate: 69.24 percent.¹²⁹ As the chart below illustrates, the overall rate of conviction for drug offenses in Black Hawk County was 55.84 percent, and only 50.74 percent for white defendants.¹³⁰

123. See Appendix A. Black Hawk County brought 4,692 of 9,722 charges for violent offenses, or 48.26 percent, against black defendants.

124. See Appendix A. Black Hawk County convicted 3,059 black defendants out of a total of 6,191 for violent offenses, or 49.41 percent.

125. See Appendix A.

126. See Appendix A.

127. See Appendix A. This assertion rounds down Dubuque's overall conviction rate of 50.06 percent.

128. See U.S. CENSUS BUREAU, *supra* note 52.

129. See Appendix A.

130. See Appendix A.

Figure 3. Charges and Convictions for Drug-Type Offenses

County	Total Charges	Percent of Total Charged, White	Percent of Total Charged, Black	Percent of Total Convicted, White	Percent of Total Convicted, Black	White Conviction Rate	Black Conviction Rate	Overall Conviction Rate
Black Hawk	12,318	72.45%	27.55%	65.83%	34.17%	50.74%	69.24%	55.84%
Dubuque	7,376	83.88%	16.12%	78.80%	21.20%	45.77%	64.09%	48.73%
Johnson	9,896	77.26%	22.74%	69.01%	30.99%	32.29%	49.29%	36.16%
Linn	18,372	80.74%	19.26%	76.65%	23.35%	47.17%	60.23%	49.68%
Polk	43,964	79.41%	20.59%	76.81%	23.19%	37.15%	43.25%	38.41%
Pottawattamie	8,992	91.15%	8.85%	89.57%	10.43%	42.45%	50.88%	43.19%
Scott	10,633	66.65%	33.35%	60.47%	39.53%	37.24%	48.65%	41.04%
Woodbury	7,494	84.27%	15.73%	82.55%	17.45%	51.40%	58.18%	52.47%
<i>Average</i>	<i>14,881</i>	<i>79.48%</i>	<i>20.52%</i>	<i>74.96%</i>	<i>25.04%</i>	<i>43.03%</i>	<i>55.48%</i>	<i>45.69%</i>

The data reflect similar conviction-rate discrepancies in Dubuque County (48.73 percent overall, 64.09 percent against black defendants); Linn County (49.68 percent overall, 60.23 percent against black defendants); and Woodbury County (52.47 percent overall, 58.18 percent against black defendants).¹³¹ Nonetheless, the disparity in Black Hawk County is more pronounced in the sheer proportion of African-American defendants, as well as the higher rate of conviction.

Black Hawk County's proportion and rate of conviction for property offenses is remarkably similar to the data for drug-type offenses. Here, the Black Hawk County Attorney's Office convicted the third-largest proportion of African-Americans, 38.12 percent, at a rate of 74.85 percent.¹³² The relative percentages of charges and convictions in this category are therefore the mildest relative to other large counties.¹³³

131. See Appendix A.

132. See Appendix A.

133. See Appendix A. For black and white defendants accused of property crimes, the former made up 43.04 percent of dispositions and 45.96 percent of convictions in Johnson County, and 37.83 percent of dispositions and 39.70 percent of convictions in Scott County.

Figure 4. Charges and Convictions for Property-Type Offenses

County	Total Charges	Percent of Total Charged, White	Percent of Total Charged, Black	Percent of Total Convicted, White	Percent of Total Convicted, Black	White Conviction Rate	Black Conviction Rate	Overall Conviction Rate
Black Hawk	14,967	63.29%	36.71%	61.88%	38.12%	70.46%	74.85%	72.07%
Dubuque	7,120	78.88%	21.12%	78.03%	21.97%	61.16%	64.30%	61.83%
Johnson	10,073	56.96%	43.04%	54.04%	45.96%	58.05%	65.35%	61.19%
Linn	15,531	70.05%	29.95%	69.55%	30.45%	76.47%	78.31%	77.02%
Polk	43,116	75.57%	24.43%	75.45%	24.55%	61.91%	62.33%	62.01%
Pottawattamie	11,214	90.85%	9.15%	89.37%	10.63%	42.99%	50.78%	43.70%
Scott	12,272	62.17%	37.83%	60.30%	39.70%	54.63%	59.11%	56.32%
Woodbury	8,955	84.34%	15.66%	83.25%	16.75%	65.29%	70.76%	66.14%
<i>Average</i>	<i>15,406</i>	<i>72.76%</i>	<i>27.24%</i>	<i>71.48%</i>	<i>28.52%</i>	<i>61.37%</i>	<i>65.72%</i>	<i>62.54%</i>

Moreover, as the above chart outlines, the conviction rate for black defendants in Black Hawk County is only about ten percent higher than the mean average¹³⁴—in contrast, the gap in black conviction rates between Black Hawk County and the average of other counties is roughly 20 percent for violent and drug offenses.¹³⁵ That there are larger raw numbers of property convictions¹³⁶ at an elevated rate¹³⁷ across all counties in this comparison suggests that prosecutors statewide prioritize the deterrence of property crime.

For public-order offenses,¹³⁸ white defendants in Black Hawk County were convicted at a substantially higher rate: 81.83 percent of disposed charges against whites resulted in convictions, in contrast to 73.79 percent for black defendants.¹³⁹

134. See Appendix A.

135. See Appendix A.

136. There were 77,787 convictions for property offenses in the time period at issue, compared with 46,879 for violent offenses and 52,243 for drug offenses. See Appendix A.

137. The overall mean average conviction rate for property offenses, including Black Hawk County, was 62.60 percent. The mean average rate was 46.82 percent for violent offenses and 45.49 percent for drug offenses. See Appendix A.

138. Public-order offenses include violations of weapons and driving statutes, as well as miscellaneous offenses like “flight/escape, parole or probation violations, prison contraband, habitual offender, obstruction of justice, rioting, libel, slander, treason, perjury, prostitution, pandering, bribery, and tax law violations.” See *All Terms & Definitions*, BUREAU OF JUSTICE STATISTICS, <https://www.bjs.gov/index.cfm?ty=tda> [<https://perma.cc/7F-HYJP>]. The EZAACD offense sub-types are consistent with this general definition. See *Disposed Charges: Crime Type by Crime Sub Type*, EASY ACCESS TO ADULT CRIMINAL DATA, CRIMINAL & JUVENILE JUSTICE PLANNING, <https://disposedcharges.iowa.gov/asp/selection.asp> [<https://perma.cc/SR2H-R7AD>] (last updated Oct. 3, 2019) (select “Crime type” as the Row Variable and “Crime sub type” as the Column Variable; then, check the box for “2017” under “Calendar Year”; then, check the box for “Public Order” under “Crime Type” and click “Show Table” near the top of the page).

139. See Appendix A. Still, the proportion of charges and convictions in this area (28.26 percent and 26.22 percent, respectively) is nearly triple the overall proportion of African-American residents. See Appendix A.

Figure 5. Charges and Convictions for Public Order Type Offenses

County	Total Charges	Percent of Total Charged, White	Percent of Total Charged, Black	Percent of Total Convicted, White	Percent of Total Convicted, Black	White Conviction Rate	Black Conviction Rate	Overall Conviction Rate
Black Hawk	118,372	71.74%	28.26%	73.78%	26.22%	81.83%	73.79%	79.56%
Dubuque	92,032	85.21%	14.79%	85.35%	14.65%	76.33%	75.50%	76.21%
Johnson	111,681	81.57%	18.43%	82.32%	17.68%	83.57%	79.44%	82.81%
Linn	163,942	80.26%	19.74%	81.36%	18.64%	76.74%	71.51%	75.71%
Polk	328,498	81.92%	18.08%	82.57%	17.43%	83.59%	79.96%	82.93%
Pottawattamie	120,318	92.55%	7.45%	92.20%	7.80%	74.76%	78.50%	75.04%
Scott	123,664	73.60%	26.40%	75.45%	24.55%	73.36%	66.58%	71.57%
Woodbury	85,521	89.12%	10.88%	89.79%	10.21%	83.53%	77.81%	82.91%
<i>Average</i>	<i>143,004</i>	<i>82.00%</i>	<i>18.00%</i>	<i>82.85%</i>	<i>17.15%</i>	<i>79.21%</i>	<i>75.39%</i>	<i>78.34%</i>

Still, Black Hawk County's conspicuously low conviction rate of African-Americans, the third-lowest in this category,¹⁴⁰ could cut one of two ways. On the one hand, the fact that many charges for public-order offenses (which tend to be low-level offenses) do not result in a conviction could show that the County Attorney's Office evaluates cases carefully and drops charges rather than taking them to trial. On the other hand, the lower rate could indicate that the prosecutors are doing the opposite: taking all cases to trial regardless of merit, and therefore securing convictions in relatively fewer cases.

B. OFFENSE CLASSES

Variations in the number and rate of convictions of serious offenses between Iowa's eight largest counties compound the racial disparities already apparent from the offense-type breakdown. Black Hawk County convicted 27 percent of all African-American defendants found guilty of felonies in the state between 2010 and 2017.¹⁴¹ Over the same period, that county's prosecutors were responsible for 18 percent of Iowa's black misdemeanor convictions.¹⁴² These numbers are a close second only to Polk County, which was responsible for 28 percent of African-Americans convicted of felonies and 28 percent of those convicted of misdemeanors.¹⁴³ Again, given that Polk County's total population triples that of Black Hawk County, the nearly-identical number of felony convictions alone is enough to raise eyebrows.¹⁴⁴

140. See Appendix A.

141. See Appendix B (listing 3185 black defendants convicted in Black Hawk County out of a total of 11,809 across all counties).

142. See Appendix B (showing 14,627 misdemeanor convictions in Black Hawk County out of an overall total of 81,656).

143. See Appendix B.

144. See U.S. CENSUS BUREAU, *supra* note 52.

Figure 6. Charges and Convictions for Felony Offenses

County	Total Charges	Percent of Total Charged, White	Percent of Total Charged, Black	Percent of Total Convicted, White	Percent of Total Convicted, Black	White Conviction Rate	Black Conviction Rate	Overall Conviction Rate
Black Hawk	11,648	57.85%	42.15%	56.95%	43.05%	62.54%	64.87%	63.52%
Dubuque	5,209	69.86%	30.14%	69.42%	30.58%	41.74%	42.61%	42.00%
Johnson	7,072	58.84%	41.16%	58.28%	41.72%	27.83%	28.48%	28.10%
Linn	9,485	69.64%	30.36%	71.86%	28.14%	44.81%	40.24%	43.43%
Polk	36,372	70.41%	29.59%	70.61%	29.39%	31.66%	31.37%	31.58%
Pottawattamie	12,408	88.57%	11.43%	89.42%	10.58%	25.00%	22.92%	24.76%
Scott	11,588	58.03%	41.97%	56.62%	43.38%	34.15%	36.16%	34.99%
Woodbury	5,944	80.85%	19.15%	81.83%	18.17%	47.52%	44.55%	46.95%
<i>Average</i>	<i>12,466</i>	<i>69.26%</i>	<i>30.74%</i>	<i>69.38%</i>	<i>30.62%</i>	<i>39.41%</i>	<i>38.90%</i>	<i>39.42%</i>

Figure 7. Charges and Convictions for Misdemeanor Offenses

County	Total Charges	Percent of Total Charged, White	Percent of Total Charged, Black	Percent of Total Convicted, White	Percent of Total Convicted, Black	White Conviction Rate	Black Conviction Rate	Overall Conviction Rate
Black Hawk	54,388	63.12%	36.88%	61.41%	38.59%	67.80%	72.93%	69.69%
Dubuque	35,928	78.77%	21.23%	77.64%	22.36%	64.57%	69.01%	65.51%
Johnson	52,084	72.89%	27.11%	70.49%	29.51%	63.36%	71.32%	65.52%
Linn	66,137	72.86%	27.14%	71.17%	28.83%	70.64%	76.83%	72.32%
Polk	147,789	75.95%	24.05%	75.02%	24.98%	61.88%	65.08%	62.65%
Pottawattamie	32,454	90.53%	9.47%	90.15%	9.85%	51.08%	53.35%	51.30%
Scott	41,326	63.84%	36.16%	62.25%	37.75%	56.34%	60.30%	57.77%
Woodbury	33,575	83.17%	16.83%	82.54%	17.46%	69.82%	72.98%	70.35%
<i>Average</i>	<i>57,960</i>	<i>75.14%</i>	<i>24.86%</i>	<i>73.83%</i>	<i>26.17%</i>	<i>63.19%</i>	<i>67.73%</i>	<i>64.39%</i>

Based on the charts above, which list all felonies and all misdemeanors, it is clear that Black Hawk County again convicted African-Americans at a higher rate. There, the felony conviction rate was 65 percent for black defendants and 63 percent for white defendants.¹⁴⁵ For misdemeanors, the rate was 73 percent for black defendants and 68 percent for white defendants.¹⁴⁶ Black and white defendants combined, the overall conviction rates for felonies as well as misdemeanors were still higher in Black Hawk County than the overall average.¹⁴⁷ Black Hawk County convicted on felonies at a rate of 64 percent and of misdemeanors at a rate of 70 percent;¹⁴⁸ the mean average conviction rate was 39 percent for felonies and 64 percent for misdemeanors.¹⁴⁹ Even when applied evenly to both black and white defendants, the elevated conviction rate has an outsize effect on prison racial

145. See Appendix B.

146. See Appendix B.

147. See Appendix B.

148. See Appendix B.

149. See Appendix B.

disparities because of the inordinate number of black defendants relative to their per capita residency.

A closer analysis of convictions for particular classes of offenses is instructive. Turning to felonies,¹⁵⁰ between 2010 and 2017, Black Hawk County convicted the largest raw number of African-Americans for class B and class D offenses.¹⁵¹ The overall conviction rates, as well as those for black defendants, were the highest among Iowa's largest counties for all but class A felonies.¹⁵² Black Hawk County convicted 44 percent of class B offenses overall, and 41 percent of those with black defendants.¹⁵³ The mean average rates of the other counties were 13 percent overall, and 12 percent for African-Americans. For class C offenses, Black Hawk County convicted at a rate of 73 percent overall, and 76 percent for black defendants.¹⁵⁴ The average rates of the other seven were 43 percent overall, and 47 percent for black defendants. Finally, Black Hawk County convicted on class D felony charges at a rate of 63 percent overall, and 65 percent for African-Americans.¹⁵⁵ The average for Iowa's other large counties was a rate of 37 percent overall, and 36 percent for black defendants.¹⁵⁶ These consistent gaps suggest the Black Hawk County Attorney is disproportionately charging black defendants with felony offenses, then convicting both black and white defendants more aggressively—resulting in a disparity in the prison population.

This anomalous pattern, in which substantial numbers of African-Americans in Black Hawk County are convicted at unusually steep rates, holds with the sub-classes of misdemeanors. Iowa's fourth-largest county convicted the second-greatest raw number of black defendants for aggravated and serious misdemeanors.¹⁵⁷ Again, Black Hawk County's conviction rates for aggravated misdemeanors (79 percent overall, 78 percent for black defendants) were the highest among Iowa's large counties. For serious misdemeanors, the conviction rates were second-highest within the same group (67 percent overall, 73 percent for black defendants).¹⁵⁸ By contrast, the average rates for the other seven counties combined were 63 percent overall and 64 percent for black defendants on aggravated misdemeanor

150. There were so few class A felony convictions in Iowa's largest counties from 2010 to 2017 that a meaningful statistical analysis is not possible. *See* Appendix B. Of a total of 93 convictions, Black Hawk County was responsible for only 10. *See* Appendix B.

151. *See* Appendix B. Black Hawk County convicted 172 black defendants for class B offenses and 2341 for class D offenses. *See* Appendix B. Polk County, by comparison, convicted 162 and 2218 African-Americans in those respective categories. *See* Appendix B.

152. *See* Appendix B.

153. *See* Appendix B.

154. *See* Appendix B.

155. *See* Appendix B.

156. *See* Appendix B.

157. *See* Appendix B.

158. *See* Appendix B.

charges; for serious misdemeanors, 57 percent overall and 61 percent for black defendants.¹⁵⁹ Given that the defendants in these cases are facing similarly-serious offenses, it is difficult to imagine how anything other than the prosecutor's use of discretion could cause persistent racial disparities in conviction rates in one particular county.

Figure 8. Charges and Convictions for Simple Misdemeanor Offenses

County	Total Charges	Percent of Total Charged, White	Percent of Total Charged, Black	Percent of Total Convicted, White	Percent of Total Convicted, Black	White Conviction Rate	Black Conviction Rate	Overall Conviction Rate
Black Hawk	21,879	62.89%	37.11%	61.12%	38.88%	64.04%	69.05%	65.90%
Dubuque	18,292	78.86%	21.14%	77.42%	22.58%	65.65%	71.42%	66.87%
Johnson	24,469	74.09%	25.91%	72.54%	27.46%	76.84%	83.17%	78.48%
Linn	33,743	71.45%	28.55%	69.89%	30.11%	76.40%	82.36%	78.11%
Polk	63,247	77.09%	22.91%	75.52%	24.48%	72.70%	79.32%	74.22%
Pottawattamie	6,811	90.78%	9.22%	90.80%	9.20%	49.46%	49.36%	49.45%
Scott	17,074	65.45%	34.55%	62.84%	37.16%	60.41%	67.67%	62.92%
Woodbury	16,955	82.79%	17.21%	82.21%	17.79%	70.63%	73.51%	71.12%
Average	25,309	75.42%	24.58%	74.04%	25.96%	67.02%	71.98%	68.38%

The chart shows, however, there is a break in the aforementioned pattern in one crucial area: The conviction rates for simple misdemeanors in Black Hawk County were among the lowest in Iowa's large counties. Black Hawk County secured convictions for this class of offenses at an overall rate of only 66 percent, in contrast the 72 percent average at which the county convicted on charges of any class.¹⁶⁰ The other counties convicted African-Americans at a higher average rate of 76 percent; however, Black Hawk County's corresponding black conviction rate, at 69 percent, is noticeably lower.¹⁶¹ Stated plainly: Those accused of the lowest class of offense in Black Hawk County are convicted at a relatively low rate compared to other counties, while those accused of *every* more serious class of offense are convicted at a relatively higher rate.¹⁶²

Although there are possible alternative explanations for the pattern established above—like higher crime, better policing, or more effective prosecutors—they are unlikely to justify this discrepancy. More crime suggests more simple misdemeanor offenses, as they are the most common type of

159. See Appendix B.

160. See Appendix B. When Pottawattamie County's outlying 49 percent figure is removed, the mean average of the other counties combined is 72 percent. See Appendix B.

161. See Appendix B. Again, removing the low-end outlier in this category, which happens also to be 49 percent, the mean average of the other counties is 76 percent. See Appendix B.

162. Class A felonies are the exception here. See *supra* text accompanying notes 150–52.

offense.¹⁶³ Better policing would be better at detecting the most common offenses, which, again, ought to result in many more simple misdemeanors.¹⁶⁴ A County Attorney's office that charges appropriately and secures convictions through superior trial advocacy would not suddenly convict slam-dunk simple misdemeanors at a lower rate than class C felonies.¹⁶⁵ That the exception to the established pattern would occur here therefore suggests a deliberate policy on the part of the Black Hawk County Attorney's office to over-charge, refuse to negotiate charges down on plea deals, or some combination of the two.

C. OFFENSES WITH MANDATORY MINIMUM SENTENCES

A comparison of charges and convictions for mandatory minimum offenses further underscores the Black Hawk County Attorney's role in exacerbating the racial disparity in Iowa prisons.¹⁶⁶ The primary mandatory minimum statutes in effect from 2010 to 2017 are those for robbery and drug-trafficking offenses. The sentencing schedule for robberies requires 70 percent of the maximum sentence of 25 years to be served for first-degree robbery (class B felony).¹⁶⁷ "70% of [the maximum]" of ten years is required for second-degree robbery "[i]f convicted on or before 6/30/2016," or "[i]f convicted on or after 7/1/2016 . . . between 50% and 70% of [the maximum]" of ten years.¹⁶⁸ The statute establishing an offense for third-

163. See Appendix B (listing the total number of simple misdemeanor charges from 2010 to 2017 at 202,470, which accounts for nearly 44 percent of all 463,681 misdemeanor dispositions in the same time period).

164. See Appendix B.

165. Black Hawk County convicted on 73 percent of charges it brought for class C felonies, but only 66 percent of charges it brought for simple misdemeanors. See Appendix B. None of the seven other counties convicted any class of offense at a rate higher than they did for simple misdemeanors. See Appendix B.

166. See FINERAN, *supra* note 14, at 18 ("It should be noted that African-Americans are over represented in Iowa's prison population, but particularly so for [mandatory minimum offenses]."); see also IOWA DEP'T HUMAN RIGHTS, *supra* note 28, at 7 (concluding that in making charging decisions "there are unexplained differences which are not associated with any known factor but race" and further noting "the unexplained difference is most strongly noticeable in one county, Black Hawk, which is the Iowa county with the highest concentration of African[-] American defendants").

167. MICHAEL R. MULLINS, DRAKE U. L. SCH., IOWA CRIMINAL STATUTES SUMMARY CHART 273 (2017), available at https://www.iowacourts.gov/static/media/cms/Sentencing_Chart_2017_Final_424_8019F4D890936.pdf [<https://perma.cc/Z9E5-CAFD>].

168. *Id.* at 274.

degree robbery, an aggravated misdemeanor, only became effective on July 1, 2016.¹⁶⁹ There is no mandatory minimum for third-degree robbery.¹⁷⁰

Between 2010 and 2017, Black Hawk County brought 121 first-degree robbery charges against African-Americans, but only 29 against white defendants.¹⁷¹ Although the Black Hawk County Attorney's office convicted both black and white defendants of this offense at a rate of about 42 percent, the disparate racial impact is clear.¹⁷² Over those same eight years, Polk County's prosecutors convicted 50 black defendants of first-degree robbery, just one fewer than Black Hawk County.¹⁷³ For second-degree robbery charges, the Black Hawk County prosecutors charged essentially the same number of black and white defendants; however, as the chart below illustrates, the conviction rate for black defendants on this charge was 12 percent higher.¹⁷⁴

Figure 9. Charges and Convictions for Robbery in the First Degree (Class B)

County	Total Charges	Percent of Total Charged, White	Percent of Total Charged, Black	Percent of Total Convicted, White	Percent of Total Convicted, Black	White Conviction Rate	Black Conviction Rate	Overall Conviction Rate
Black Hawk	150	19.33%	80.67%	19.05%	80.95%	41.38%	42.15%	42.00%
Dubuque	80	32.50%	67.50%	37.50%	62.50%	11.54%	9.26%	10.00%
Johnson	188	20.21%	79.79%	25.00%	75.00%	5.26%	4.00%	4.26%
Linn	164	27.44%	72.56%	35.29%	64.71%	13.33%	9.24%	10.37%
Polk	612	40.36%	59.64%	33.33%	66.67%	10.12%	13.70%	12.25%
Pottawattamie	258	49.22%	50.78%	42.11%	57.89%	6.30%	8.40%	7.36%
Scott	188	21.28%	78.72%	4.76%	95.24%	2.50%	13.51%	11.17%
Woodbury	69	33.33%	66.67%	8.33%	91.67%	4.35%	23.91%	17.39%
<i>Average</i>	<i>214</i>	<i>30.46%</i>	<i>69.54%</i>	<i>25.67%</i>	<i>74.33%</i>	<i>11.85%</i>	<i>15.52%</i>	<i>14.35%</i>

169. See Alia Conley, *Iowa Law Does Away with One-Size-Fits-All Penalties in Cases of Robbery*, OMAHA WORLD-HERALD (Aug. 15, 2016), https://www.omaha.com/news/crime/iowa-law-does-away-with-one-size-fits-all-penalties/article_c3edocd3-4891-5904-a9aa-60eod62d69d2.html [<https://perma.cc/4VZ3-B4J7>] ("On July 1 the charge of robbery in the third degree, an aggravated misdemeanor, was added to the Iowa Code.").

170. MULLINS, *supra* note 167, at 275.

171. See Appendix C.

172. See Appendix C.

173. See Appendix C.

174. See Appendix C (showing 65 charges and 45 convictions on Second-Degree Robbery for white defendants, but 66 charges and 52 convictions for black defendants on the same charge).

Figure 10. Charges and Convictions for Robbery in the Second Degree (Class C)

County	Total Charges	Percent of Total Charged, White	Percent of Total Charged, Black	Percent of Total Convicted, White	Percent of Total Convicted, Black	White Conviction Rate	Black Conviction Rate	Overall Conviction Rate
Black Hawk	131	49.62%	50.38%	46.39%	53.61%	69.23%	78.79%	74.05%
Dubuque	52	23.08%	76.92%	56.52%	43.48%	108.33%	25.00%	44.23%
Johnson	141	35.46%	64.54%	31.11%	68.89%	28.00%	34.07%	31.91%
Linn	120	40.83%	59.17%	33.33%	66.67%	16.33%	22.54%	20.00%
Polk	405	49.88%	50.12%	39.06%	60.94%	37.13%	57.64%	47.41%
Pottawattamie	128	71.09%	28.91%	58.14%	41.86%	27.47%	48.65%	33.59%
Scott	191	32.46%	67.54%	16.00%	84.00%	6.45%	16.28%	13.09%
Woodbury	45	53.33%	46.67%	53.57%	46.43%	62.50%	61.90%	62.22%
<i>Average</i>	<i>152</i>	<i>44.47%</i>	<i>55.53%</i>	<i>41.77%</i>	<i>58.23%</i>	<i>44.43%</i>	<i>43.11%</i>	<i>40.81%</i>

Reading between the lines, not only do the data on robbery charges and convictions reveal racial discrepancies, but they also shed light on prosecutors' policies towards filing charges and negotiating plea deals. For example, it is unsurprising that every county in this comparison had a higher conviction rate for second-degree robbery than for first-degree robbery.¹⁷⁵ To allow a defendant to plead to the lesser felony charge is to reach a mutually beneficial agreement: The accused faces a drastically reduced sentence, while the prosecutor lightens his or her caseload. Still, pleading down does not explain why Black Hawk County's conviction rate for second-degree robberies was 12 percent greater than the next-highest conviction rate.¹⁷⁶

A review of Polk County's numbers is instructive on this point. Altogether, Polk County filed 1,017 felony robbery charges, but only secured a total of 267 convictions.¹⁷⁷ It is inconceivable that the County Attorney's office was so ineffective at trial that they could only convict on one in every four felony robbery charges. Rather, it is exceedingly likely that the prosecutors used their discretion to allow some defendants to plead to lesser offenses and avoid onerous mandatory minimums. Moreover, six of the other seven largest Iowa counties had an even lower felony robbery conviction rate than Polk County.¹⁷⁸ The most reasonable inference is that, lacking a statutory misdemeanor robbery charge until midway through 2016,¹⁷⁹ it was the strong preference of Iowa prosecutors to permit pleas to a lesser offense in most cases. The one exception to that trend was Black Hawk County, which

175. See Appendix C.

176. See Appendix C.

177. See Appendix C.

178. See Appendix C.

179. Conley, *supra* note 169.

convicted on 57 percent of its total felony robbery charges, a clear outlier in contrast to the other counties' combined mean average of 21 percent.¹⁸⁰

The limited amount of data on third-degree robbery further support this inference. Between the codification of the offense on July 1, 2016, and the end of the available data on December 31, 2017, Iowa's eight largest counties brought 46 third-degree robbery charges and secured 81 third-degree robbery convictions.¹⁸¹ The fact that there were 35 more convictions than there were charges filed indicates that many of those convictions resulted from plea deals. The natural inference, therefore, is that once the third-degree robbery offense became available, many of Iowa's largest County Attorney's offices accepted it as a viable alternative to the mandatory minimum offenses. Linn County appears to have embraced this option most thoroughly, filing only two charges on this offense but securing 15 convictions.¹⁸² In contrast, Black Hawk County allowed two defendants to plead to third-degree robbery, one white and one black.¹⁸³ Woodbury County seems most resistant to the change in the Iowa Code, as it did not have any convictions on this offense during the year and a half it was codified.¹⁸⁴ Notably, Woodbury County also had the second-highest conviction rates for both classes of felony robberies.¹⁸⁵ Its conviction rate for second-degree robbery was roughly 62 percent for defendants of both races.¹⁸⁶ For first-degree robbery, the overall rate was 17 percent—a misleading average of the 24 percent rate for black defendants and the four percent rate for white defendants.¹⁸⁷

The data on charges and convictions for drug offenses further illustrate divergent approaches to the use of prosecutorial discretion over mandatory minimum offenses. The mandatory minimums for drug trafficking under Iowa Code § 124.401 vary significantly depending on the type and amount of the controlled substance.¹⁸⁸ For class B offenses of the "largest quantities," the minimum is one-third of the 50-year maximum sentence; for class B offenses of "smaller quantities" the defendant must serve "between one-half and one-third" of the 25-year maximum.¹⁸⁹ Those convicted of class C felonies under the drug trafficking statute prior to July 1, 2017 faced a mandatory minimum

180. See Appendix C.

181. See Appendix C.

182. See Appendix C.

183. See Appendix C.

184. See Appendix C.

185. See Appendix C.

186. See Appendix C.

187. See Appendix C.

188. See MULLINS, *supra* note 167, at 19–43 (compiling the substantial number of permutations in sentences for possession of controlled substances).

189. There are some exceptions to this statute, which generally pertain to marijuana offenses and juvenile defendants. See *id.* at 20, 22 (outlining those exceptions).

of one-third of a ten-year sentence.¹⁹⁰ There is no mandatory minimum sentence for class D or misdemeanor drug trafficking offenses.¹⁹¹

The raw numbers for drug trafficking offenses indicate a clear racial disparity, though the differences are largely not as striking as those apparent for robberies. Total convictions for mandatory minimum drug trafficking offenses—class B and most of class C¹⁹²—numbered 4,186, while there were 3,489 convictions for class D drug trafficking.¹⁹³ Notably, a pattern emerges here as several counties' largest proportion of felony drug trafficking convictions are for class C offenses, the lowest offense with a mandatory minimum. Black Hawk County's numbers are a useful baseline here: There are more charges filed and convictions secured for class D, fewer for class C, and fewer still for class B.¹⁹⁴ In contrast, Polk County had 1,373 convictions for class C drug trafficking, but only 970 for class D.¹⁹⁵ Dubuque County and Pottawattamie County also had more convictions for the class C offense than the class D offense.¹⁹⁶ The presence of multiple such outliers suggests a policy preference in these three counties towards convicting drug trafficking offenses with a mandatory minimum sentence.

Variations in the raw-number patterns, when combined with the rate of convictions detailed in the charts below, create some nuance in the relative county contributions to the racial disparity in Iowa's prisons. However, no county convicted more black defendants of this charge than white defendants.¹⁹⁷ In Black Hawk County, which had the highest class B conviction rate, the defendant was black in only 31 of 185 total convictions.¹⁹⁸ For class C offenses, Dubuque County convicted more African-American defendants than white defendants—and it did so at a much higher rate.¹⁹⁹ What is notable is that it was the only county to do so for that class of offense.²⁰⁰

190. See S.F. 445 § 10, 87th Gen. Assemb., Reg. Sess., at 4–5 (Iowa 2017) (to be codified at IOWA CODE § 124.413(3) (2017)). This analysis will still include an examination of convictions on this offense because the one-third requirement was in effect for all but the final six months of the relevant time period.

191. MULLINS, *supra* note 167, at 26.

192. See *supra* text accompanying note 190 (noting that class C drug trafficking had a mandatory minimum sentence prior to July 1, 2017).

193. See Appendix D.

194. See Appendix D.

195. See Appendix D.

196. See Appendix D.

197. See Appendix D.

198. See Appendix D.

199. See Appendix D.

200. See Appendix D.

Figure 11. Charges and Convictions for Class B Drug Trafficking Offenses

County	Total Charges	Percent of Total Charged, White	Percent of Total Charged, Black	Percent of Total Convicted, White	Percent of Total Convicted, Black	White Conviction Rate	Black Conviction Rate	Overall Conviction Rate
Black Hawk	358	80.17%	19.83%	83.24%	16.76%	53.66%	43.66%	51.68%
Dubuque	72	70.83%	29.17%	50.00%	50.00%	11.76%	28.57%	16.67%
Johnson	102	79.41%	20.59%	85.71%	14.29%	7.41%	4.76%	6.86%
Linn	158	71.52%	28.48%	64.71%	35.29%	9.73%	13.33%	10.76%
Polk	2,096	85.31%	14.69%	87.07%	12.93%	24.11%	20.78%	23.62%
Pottawattamie	429	94.41%	5.59%	91.67%	8.33%	2.72%	4.17%	2.80%
Scott	201	68.16%	31.84%	60.00%	40.00%	4.38%	6.25%	4.98%
Woodbury	183	90.16%	9.84%	100.00%	0.00%	12.73%	0.00%	11.48%
<i>Average</i>	<i>450</i>	<i>80.00%</i>	<i>20.00%</i>	<i>77.80%</i>	<i>22.20%</i>	<i>15.81%</i>	<i>15.19%</i>	<i>16.10%</i>

Figure 12. Charges and Convictions for Class C Drug Trafficking Offenses

County	Total Charges	Percent of Total Charged, White	Percent of Total Charged, Black	Percent of Total Convicted, White	Percent of Total Convicted, Black	White Conviction Rate	Black Conviction Rate	Overall Conviction Rate
Black Hawk	581	64.37%	35.63%	67.27%	32.73%	79.68%	70.05%	76.25%
Dubuque	432	46.76%	53.24%	43.61%	56.39%	65.84%	74.78%	70.60%
Johnson	288	56.94%	43.06%	60.00%	40.00%	40.24%	35.48%	38.19%
Linn	506	72.73%	27.27%	69.74%	30.26%	36.96%	42.75%	38.54%
Polk	2,532	66.75%	33.25%	71.16%	28.84%	57.81%	47.03%	54.23%
Pottawattamie	397	90.68%	9.32%	93.00%	7.00%	92.22%	67.57%	89.92%
Scott	837	50.18%	49.82%	51.54%	48.46%	55.71%	52.76%	54.24%
Woodbury	234	73.93%	26.07%	83.16%	16.84%	91.33%	52.46%	81.20%
<i>Average</i>	<i>726</i>	<i>65.29%</i>	<i>34.71%</i>	<i>67.43%</i>	<i>32.57%</i>	<i>64.97%</i>	<i>55.36%</i>	<i>62.90%</i>

Ultimately, however, the anomalies among convictions for mandatory minimum drug offenses do little to mitigate the disproportionate black prison population. Most felony-level charges and convictions for drug trafficking were for class D offenses.²⁰¹ Black Hawk County in particular was a clear outlier, as it convicted 33 percent more black defendants than white defendants at rates of 75 percent and 57 percent, respectively.²⁰² The continued pattern of higher conviction rates for black defendants—present in this class of offense in seven of eight counties²⁰³—exacerbates even slight disparities in the raw numbers. And though there is technically no mandatory minimum for this class,²⁰⁴ the extensive sentencing “enhancements” in the Iowa Code produce a similar effect.

201. See Appendix D.

202. See Appendix D.

203. See Appendix D.

204. MULLINS, *supra* note 167, at 63–65.

IV. NEW MECHANISMS FOR OVERSIGHT AND ENFORCEMENT

Given that local prosecutors' discretionary policies appear to be a primary source of the racial disparity in Iowa's prisons, the question remains as to how that disparity could be eliminated. Legislative efforts to reduce mandatory minimums²⁰⁵ and to bear in mind the fiscal consequences of changes to criminal statutes have seen only limited success;²⁰⁶ an unscrupulous prosecutor could still pursue higher-class charges for defendants of a given race, ultimately leading to higher sentences for certain groups of people. Similarly, given the ongoing discrepancies in convictions and conviction rates outlined in Part III, it is unclear to what extent the ICAA standards and the IRCP have a tangible impact on local prosecutors' exercise of discretion.²⁰⁷ It is therefore clear that shaping the use of prosecutorial discretion likely requires making more direct changes to the incentive structures at work during the decision-making process. Section IV.A evaluates the potential for reform through electoral politics. Section IV.B then recommends a set of concrete proposals that would allow state authorities to operate as a check on prosecutorial conduct that runs counter to Iowan values.

A. ELECTORAL POLITICS AS A PARTIAL REMEDY

In a recent *Iowa Law Review* article, Federal Public Defender Eric S. Fish identified three incentive structures that prioritize convictions at the expense of other prosecutorial goals: "electoral politics, offices' focus on conviction rates, and a general culture of competition."²⁰⁸ Among these, Fish finds electoral politics to be the weakest force. He states that there is "reason to doubt the existence of [the] electoral incentive" because "prosecutorial elections are low-information affairs . . . in which conviction rates . . . bear little apparent relationship to . . . success."²⁰⁹ Fish then intimates that the relevant question in this context is "whether prosecutors *perceive* that their conviction statistics matter for reelection."²¹⁰

There is a lot of merit in this subtle distinction, but Fish may give too little weight to the public's changing attitudes on issues of crime and punishment. It is true that the popular conception of electoral politics begins with the presumption that candidates are rational actors who, in the interest of their election, closely monitor public opinion and adjust their behavior

205. See *supra* Section III.C (noting the elimination of mandatory minimums for class C drug trafficking offenses and the creation of a misdemeanor robbery charge, as well as the reluctance of some counties to take advantage of those changes).

206. See *supra* Section II.A.1 (pointing to substantial growth in the budget for Iowa's Department of Corrections even after the adoption of fiscal impact statements).

207. See *supra* Part III.

208. Fish, *supra* note 102, at 1477.

209. *Id.* at 1478.

210. *Id.*

accordingly.²¹¹ As a result, a prosecutor running for reelection may decide that admitting past mistakes could help his or her campaign by bolstering the public's perception of the prosecutor as a genuine seeker of justice. But many prosecutors are reluctant to acknowledge error on their part, even after they have been confronted with overwhelming and incontrovertible evidence, like when DNA testing exonerates someone who he or she has convicted.²¹²

A prosecutor can thus become politically vulnerable if his or her legal judgments run counter to public opinion.²¹³ This is particularly true if the judgment at issue relates not to an objective matter of law but a normative question of policy. Growing public opposition to mass incarceration, for example, has undergirded the electoral success of reformer-prosecutors²¹⁴ and led some jurisdictions to reexamine related legal doctrines.²¹⁵ It is not the

211. See Philip A. Hart, *A Politician's Conscience*, 13 CATH. LAW. 348, 348-49 (1967) (describing a caricature of politicians as those who "scurr[y] through tunnels of intrigue, making decisions with an eye to the opinion polls and ever-mindful[] of the next election").

212. See generally Lara Bazelon, *The Innocence Deniers*, SLATE (Jan. 10, 2018), <https://slate.com/news-and-politics/2018/01/innocence-deniers-prosecutors-who-have-refused-to-admit-wrongful-convictions.html> [<https://perma.cc/WB67-W72B>] (reviewing cases in which prosecutors persistently oppose the exoneration of wrongfully-convicted defendants despite clear evidence of actual innocence).

213. See *Commonwealth v. Warren*, 58 N.E.3d 333, 342 (Mass. 2016) (revising the Massachusetts doctrine on flight and reasonable suspicion in light of new study results that suggest "an individual, when approached by the police, might just as easily be motivated by the desire to avoid the recurring indignity of being racially profiled as by the desire to hide criminal activity").

214. See, e.g., Ron Allen & Brittany Noble Jones, *Game Changer: Wesley Bell Ousts Bob McCulloch for Prosecutor in St. Louis County*, NBC NEWS (Aug. 10, 2018, 12:55 PM), <https://www.nbcnews.com/news/nbcblk/game-changer-wesley-bell-ousts-bob-mcculloch-prosecuting-attorney-stl-n899671> [<https://perma.cc/8SZU-RPHD>] (quoting St. Louis Post-Dispatch columnist Tony Messenger's statement that Wesley Bell's election is "meaningful because people now look at that office and say there might be change. Black people might not be arrested and put in jail on minor offenses as often as they are today"); Joel Currier & Robert Patrick, *Bell Win Credited to Mix of Grassroots Work, Ferguson and McCulloch Missteps*, ST. LOUIS POST-DISPATCH (Aug. 9, 2018), https://www.stltoday.com/news/local/crime-and-courts/bell-win-credited-to-mix-of-grassroots-work-ferguson-and/article_b2e5670f-d89b-5ce5-923f-fboa5c5acc49.html [<https://perma.cc/LPB7-MVRF>] ("Kim Gardner, who surprised many when she won a four-way primary in 2016, said . . . Bell's 'message and the issues' had driven voters to the polls. Gardner said criminal justice reform was 'resonating with voters in the city and county.'"); Astead W. Herndon, *Wesley Bell, Ferguson Councilman, Unseats St. Louis County Prosecutor*, N.Y. TIMES (Aug. 8, 2018), <https://www.nytimes.com/2018/08/08/us/politics/wesley-bell-st-louis-election-result.html> [<https://perma.cc/YX6C-UU5U>] ("[Wesley Bell] promised to change the county's cash bail system, and implement diversionary programs so that low-level, nonviolent offenders are not incarcerated. Mr. Bell said it would serve the double effect of helping crime rates while reducing prison population.").

215. See, e.g., Allen & Jones, *supra* note 214 ("Wesley Bell was not favored to win his race for the top prosecutor's job in St. Louis County, Missouri."); Currier & Patrick, *supra* note 214 ("Although political observers had doubted Bell's chances of toppling the longtime incumbent, the race wasn't close."); Herndon, *supra* note 214 (quoting Color of Change PAC spokesman Rashad Robinson as stating "[w]hile Wesley Bell's victory may come as a shock to many around the country, it's no surprise . . . to many in the black community").

prosecutor's particular decisions that carry weight but the community's perception of their cumulative effect. The end result is that electoral pressure can result in prosecutorial reform—even if only by electing a new prosecutor. Indeed, Fish acknowledges the broader implications of recent victories by “reform-minded district attorneys in . . . high-profile races . . .”²¹⁶

That caveat aside, it is entirely fair for Fish to note the significant limitations in pursuing prosecutorial reform through the ballot box alone. For one, even the successful election of a reform candidate may result in unexpected administrative hurdles. Noted reformer-prosecutor Larry Krasner “ousted 31 members of the [Philadelphia District Attorney’s] office . . . just three days after he was sworn in.”²¹⁷ His spokesman characterized the decision as a “broad reorganization” indicative of Krasner’s “intention to take the office in a different direction.”²¹⁸ It is difficult to gauge whether veterans were, as some claimed, “willing to stay and willing to work for [Krasner]” and his reform agenda.²¹⁹ However, there is surely a loss of institutional memory commensurate with the departure of the “deputy of the pretrial division,” the “chief of the Family Violence and Sexual Assault Unit,” the “chief of the Diversion Courts Unit,” and “[a]s many as a third of the office’s homicide prosecutors . . .”²²⁰

Additionally, electing a new prosecutor does not address structural concerns in the criminal justice system. Even if the new prosecutor has an ambitious reform agenda,²²¹ the unfettered exercise of discretion can still lead to seemingly paradoxical outcomes.²²² Turning again to Philadelphia, activists have grown frustrated with Krasner after only his first year in office. Students at Yale Law School rescinded Krasner’s invitation to speak at the 2019 Rebellious Lawyering Conference after “Krasner’s office appealed [a] ruling” that “[Mumia] Abu-Jamal could reargue” a challenge to his murder

216. See Fish, *supra* note 102, at 1478 (raising the possibility that these victories mean “the politics of prosecution may not be as one-dimensionally punitive as is often assumed”).

217. Chris Palmer et al., *Krasner Dismisses 31 from Philly DA’s Office in Dramatic First-Week Shakeup*, PHILA. INQUIRER (Jan. 5, 2018), <http://www2.philly.com/philly/news/crime/larry-krasner-philly-da-firing-prosecutors-20180105.html> [<https://perma.cc/X9LB-TGPg>].

218. *Id.*

219. *Id.* (alteration in original).

220. *Id.*

221. See generally Internal Memorandum from Philadelphia District Attorney Larry Krasner on New Policies (Mar. 13, 2018), available at <https://www.scribd.com/document/373860422/Finalized-Memo-Mar-13-2018> [<https://perma.cc/2ERH-95S4>] (outlining reform policies Krasner sought to implement at the outset of his term, including to “decline certain charges” such as “possession of marijuana . . . regardless of weight” and “prostitution . . . where a person who has been arrested has [fewer than three] prostitution convictions”).

222. See Diane Mastrull & Tom Avril, *Philly DA Larry Krasner Disinvited to Speak at Yale Law Conference After Mumia Abu-Jamal Appeal*, PHILA. INQUIRER, <https://www.inquirer.com/news/larry-krasner-yale-law-school-mumia-abu-jamal-philadelphia-district-attorney-20190202.html> [<https://perma.cc/X9LB-TGPg>] (last updated Feb. 2, 2019).

conviction.²²³ Krasner’s decision confused activists because the ruling was based on the fact that “then-Chief Justice Ronald D. Castille did not recuse himself due to his prior role as Philadelphia [D]istrict [A]ttorney.”²²⁴ Similarly, Robert Outlaw, who maintained his innocence after being convicted of murder in 2004, faced resistance from the Krasner’s office when he petitioned for a new trial on the basis of newly-released exculpatory evidence.²²⁵ When a judge “vacated Outlaw’s conviction,” Krasner’s spokesman “said the office had not decided whether it will appeal the order or prosecute Outlaw a second time.”²²⁶

Finally, it bears observing that it is always possible to lose an election, at which point there is little alternative but to endure the consequences—absent the investment of time and energy in other means of pushing reform. In Clark County, Nevada, a reform candidate lost the primary election to an incumbent Democrat who sought the death penalty in several cases in his first term.²²⁷ In California, four reform candidates “[i]n Sacramento, Alameda, and San Diego counties . . . lost” their primary races despite significant backing from “wealthy liberal donors and activists.”²²⁸ The litany of high-profile losses in the 2018 primary races underscores the difficulty reformers face in unseating incumbents, even after the Black Lives Matter movement brought criminal justice reform issues to the forefront of our national debate.

B. GREATER REFORM THROUGH LEGISLATIVE AND JUDICIAL OVERSIGHT

In light of the limitations of electoral politics as a means of reform, the most-encouraging prospects for eliminating the racial disparity in Iowa’s prisons lay with the state’s legislature and court system. Section IV.B.1 highlights key data collection and distribution policies that would allow for the public and political authorities alike to identify and target injustice with greater precision. Section IV.B.2 reviews substantive proposals that would mitigate and eliminate Iowa’s disproportionately black prison population.

223. *Id.*

224. Robert Moran, *Judge Grants Mumia Abu-Jamal Partial Appeals Request*, PHILA. INQUIRER, <https://www.inquirer.com/news/mumia-abu-jamal-granted-partial-appeals-request-20181228.html> [https://perma.cc/C2JF-5QJY] (last updated Dec. 27, 2018).

225. Samantha Melamed, *Philly Man Wins New Trial After DA Hands Over Evidence It Withheld for 15 Years*, PHILA. INQUIRER, <https://www.inquirer.com/news/innocent-larry-krasner-da-philly-wrongful-conviction-robert-outlaw-20190131.html> [https://perma.cc/M55J-XCFV] (last updated Jan. 31, 2019). The exculpatory evidence indicated that Philadelphia police ignored other leads in the case and made at least one deal with a confidential informant to secure testimony against Outlaw. *Id.*

226. *Id.*

227. See Matt Ferner, *Progressive District Attorney Falls Short in Primary in Nevada*, HUFFINGTON POST (Aug. 7, 2018), https://www.huffingtonpost.com/entry/nevada-district-attorney-race_us_5b1efce4b09d7a3d75fadd [https://perma.cc/W4SP-C5RF].

228. Abbie Vansickle & Maurice Chammah, *California Voters Reject Prosecutor ‘Reformers,’* MARSHALL PROJECT (June 6, 2018, 3:10 PM), <https://www.themarshallproject.org/2018/06/06/california-voters-reject-prosecutor-reformers> [https://perma.cc/XBY8-92DP].

1. Data for Progress

This Note, as well as similar works by Iowa's own Department of Human Rights and third-party groups like the Sentencing Project, makes the kind of claim that tends to bring about some pushback. Many are likely to doubt that policies or individuals within certain County Attorney's offices contribute so heavily to the racial disparity in Iowa's prisons. But even the most-strident skeptics may choose to find common ground with this Note in asserting the need for more data.

To definitively prove or disprove the cause of the apparent disparities illustrated in Section III it would be necessary to isolate police conduct from prosecutors' decision-making. To that end, the Iowa Department of Human Rights' recommendation from 1997 is useful: that "County [A]ttorney[']s offices should be required to keep records of the charges on initial arrests, the charges ultimately filed, the arrests they chose not to prosecute, the reasons they chose not to prosecute, and the race and gender of the alleged perpetrators."²²⁹ The distinction between charges on arrest and charges ultimately filed is crucial because it bears directly on the level of deliberation occurring in a given office. Prosecutors who tend not to investigate law enforcement officers' stated charge on arrest may, in effect, systematically overcharge the residents of their jurisdiction for minor offenses. This, in turn, may reveal whether implicit bias is creeping in at times when the exercise of discretion "requires an instinctual judgment."²³⁰ The Department of Human Rights' recommended distinctions on decisions not to prosecute, though burdensome, would be determinative in concluding whether and to what degree race is a factor in the exercise of discretion in County Attorneys' offices.

The Department of Human Rights made several other recommendations that would allow for the collection and dissemination of more-granular data. To examine current practices in the use of preemptory challenges, as well as implicit bias within juries themselves, "race information [could] be included" in the Jury Management Subsystem of the Iowa Court Information System.²³¹ Similarly, it would be possible to examine implicit or explicit bias among defense attorneys if there were "a data field on the Iowa Court Information system [that could] be created to . . . indicate the type of attorney retained in each case."²³² Tracking the type of attorney that a defendant retained would also help to distinguish race from other socio-economic factors. For example, if it were the case that fewer black defendants could afford a private attorney, and that private attorneys were more effective at securing favorable plea

229. IOWA DEP'T HUMAN RIGHTS, *supra* note 28, at 10.

230. See Levinson & Smith, *supra* note 98, at 807.

231. IOWA DEP'T HUMAN RIGHTS, *supra* note 28, at 11.

232. *Id.*

bargains, then perhaps wealth (or more precisely, the lack thereof) could explain some variation in conviction rates.

On a practical note, it is worth noting that the Department of Human Rights' 1997 report makes recommendations directly to the Iowa Supreme Court.²³³ This reporting structure suggests it is well within the power of the judiciary to institute, fund, and enforce these policies. Of course, there is no apparent reason why the Iowa Legislature could not also compel the collection of this data.

Another proposal to improve data collection on prosecutorial discretion, as well as shed light on incarceration in Iowa more broadly, is to compel regular reporting on the capacity and makeup of each county jail. For example, coverage of the Black Hawk County Jail in the *WCF Courier* suggests persistent overcrowding problems. A new 272-bed facility began operating in September of 1995.²³⁴ It was nearly full by November of 1997, with more than two-thirds of inmates incarcerated as a pretrial detention measure.²³⁵ In 2015, despite a 15 percent decrease in the county's crime rate—with drops of nearly 66 percent for robberies and burglaries—the average daily population of the jail only decreased “from 276 inmates in 2014 to 262 [in 2015].”²³⁶ The Black Hawk County Sheriff explained that the discrepancy persists because “those who remain in jail awaiting trial facing serious charges and are less likely to post bail.”²³⁷ Taken together, these reports could suggest that this County Attorney's Office takes a heavy-handed approach to pretrial conditions. On the other hand, these reports could suggest that Black Hawk County is simply one of several Iowa counties that has struggled with overcrowding for decades.

Unfortunately, it is not currently practical to make any sort of informed comparison due to the scattershot organization of county jail population records. The lack of any regular, centralized reporting on jail populations is perplexing because of Iowa Code § 356.49, which states:

A county sheriff shall file, on a monthly basis, a written report with the director of the [D]epartment of [C]orrections. The report shall

233. See generally IOWA DEP'T HUMAN RIGHTS, *supra* note 28 (phrasing many suggestions in the form of “[i]t is recommended that the Supreme Court . . .”).

234. Tim Jamison, *Black Hawk County's Jail Is Filling Up as More Prisoners Wait Longer for a Day in Court, Bringing up an Interesting Idea*, COURIER (Nov. 3, 1997), https://wfcourier.com/black-hawk-county-s-jail-is-filling-up-as-more/article_2f9of4c7-f0b5-567f-95cb-dfeca51c32b9.html [<https://perma.cc/ME5W-6KU7>].

235. *Id.* (“The \$14 million, 272-bed jail . . . could hit its capacity. . . . ‘We have 200 and some people that haven’t even been to court,’ [Sheriff] Kubik added. ‘That’s ridiculous.’”).

236. Jeff Reinitz, *Crime Down in Black Hawk County, Jail Still Full*, COURIER (Jan. 14, 2016), https://wfcourier.com/news/local/crime-and-courts/crime-down-in-black-hawk-county-jail-still-full/article_deabe7b2-9927-51dc-9109-94bbf1311556.html [<https://perma.cc/SG7K-697W>] (“‘We are holding more pretrial inmates facing felony and forcible felony charges than ever in the history of the Black Hawk County Jail, which causes their stay to be far lengthier than the misdemeanor offenders of yesteryear,’ [Sheriff] Thompson said.”).

237. *Id.*

include, but not be restricted to, the total number of men, women, and juveniles held in jail for the reporting month. The director shall adopt and provide a uniform reporting form to be utilized by county sheriffs.²³⁸

The apparent oversight in this statute is that it does not require the Iowa Department of Corrections to regularly release compilations of those monthly reports. As a result, the most recent comprehensive document available appears to be a 2003 report on minimum jail standards prepared per Iowa Code § 356.36.²³⁹ The county jails generally release public reports of their daily jail populations in a uniform structure; however, they tend to do so through dynamic web pages that refresh with each day's changes.²⁴⁰ It is therefore burdensome to track the daily population of even a single county jail over a significant period of time. Still, because some record of this data is reported as a matter of law, follows that a legislative act, or perhaps even an executive order, could compel the regular release of current and historical reports on jail populations.

2. Substantive Proposals to Guard Against Bias

Regardless of additional data, authorities in Iowa's legislative and judicial authorities can and should take several steps to guard against the racial bias in the criminal justice system. State-level judges might consider following the lead of Mark W. Bennett, Senior Judge of the United States District Court for the District of Northern Iowa. Upon taking one of Harvard University's implicit bias tests, Judge Bennett "ultimately realized that the problem of implicit bias is a little recognized and even less addressed flaw in our legal system, particularly in our jury system."²⁴¹ He therefore offers this instruction to the jury before the end of all trials in his court:

238. IOWA CODE ANN. § 356.49 (2013).

239. See TERRY L. HUDICK, IOWA DEP'T OF HUMAN RIGHTS, SELECTED INFORMATION ABOUT COUNTY JAILS AND ADULT DETENTION FACILITIES IN IOWA 2 (2003), available at <http://publications.iowa.gov/1479/1/CountyJails.pdf> [<https://perma.cc/K2E8-V3EB>]; see also IOWA CODE ANN. § 356.36 (2013) (compelling state law enforcement agencies to "draw up minimum standards for the regulation of jails" for later adoption as official rules).

240. See, e.g., POLK COUNTY SHERIFF'S OFFICE, INMATE POPULATION AS OF SUNDAY, FEBRUARY 03, 2019, available at <http://cms.polkcountyiowa.gov/generated-reports/InmatePopulation.pdf> [<https://perma.cc/FG3E-NM4M>] (displaying the inmate population for February 3, 2019); POLK COUNTY SHERIFF'S OFFICE, INMATE POPULATION AS OF SUNDAY, FEBRUARY 04, 2019, available at <http://cms.polkcountyiowa.gov/generated-reports/InmatePopulation.pdf> [<https://perma.cc/FX86-4XVX>] (displaying the inmate population for February 4, 2019); POLK COUNTY SHERIFF'S OFFICE, INMATE POPULATION AS OF SUNDAY, FEBRUARY 5, 2019, available at <http://cms.polkcountyiowa.gov/generated-reports/InmatePopulation.pdf> [<https://perma.cc/V8PZ-UBYU>] (displaying the inmate population for February 5, 2019).

241. Mark W. Bennett, *Unraveling the Gordian Knot of Implicit Bias in Jury Selection: The Problems of Judge-Dominated Voir Dire, The Failed Promise of Batson, and Proposed Solutions*, 4 HARV. L. & POL'Y REV. 149, 150 (2010).

As we discussed in jury selection, growing scientific research indicates each one of us has “implicit biases,” or hidden feelings, perceptions, fears and stereotypes in our subconscious. These hidden thoughts often impact how we remember what we see and hear and how we make important decisions. While it is difficult to control one’s subconscious thoughts, being aware of these hidden biases can help counteract them. As a result, I ask you to recognize that all of us may be affected by implicit biases in the decisions that we make. Because you are making very important decisions in this case, I strongly encourage you to critically evaluate the evidence and resist any urge to reach a verdict influenced by stereotypes, generalizations, or implicit biases.²⁴²

When this jury instruction came before the Iowa Supreme Court in 2017, Justices Appel and Waterman disagreed on whether there was empirical support for its efficacy. Justice Appel stressed that “[i]t was not long ago . . . when even express racial discrimination was permitted in courtrooms all across the county,” and the instruction would serve our justice system’s goal “of achieving fundamental fairness.”²⁴³ Justice Waterman, citing concerns that implicit bias instructions could backfire, noted that though the Iowa Supreme Court “[has] required all Iowa judges to undergo implicit-bias training and testing,” that he “would not *require* courts to give an implicit bias jury instruction without further research and study.”²⁴⁴

It is therefore clear that reasonable judges can disagree on whether this particular instruction will achieve its desired effect. It is similarly clear that a judge who believes some sort of implicit bias instruction would improve courtroom outcomes is well within his or her power to provide one. Moreover, if the Iowa Legislature—having made a finding based on available research—were to decide that too few state judges used these instructions, the legislature could consider requiring those instructions by statute.

On the topic of jury instructions, another proposal is for the legislature to inform the public to exercise its own discretion through jury nullification. One example comes by way of the Tennessee State Senate, where Senator Nicely has proposed a change in the state code’s section on jury instructions. In particular, this bill would inform the jury that they “may still find based upon the facts . . . [that] a guilty verdict will yield an unjust result” regardless of whether “the state has proven all of the elements of the offense charged beyond a reasonable doubt.”²⁴⁵ To be sure, this is an extreme suggestion that

242. *State v. Plain*, 898 N.W.2d 801, 840 (Iowa 2017).

243. *Id.* at 836 (Appel, J., concurring).

244. *Id.* at 841 (Waterman, J., concurring).

245. Mike Maharrey, *Tennessee Bills Would Require Courts to Fully Inform Juries*, TENTH AMENDMENT CENTER (Feb. 5, 2019), <https://blog.tenthamentcenter.com/2019/02/tennessee-bills-would-require-courts-to-fully-inform-juries> [<https://perma.cc/JWgT-6LP8>].

is at odds with contemporary legal practice. But in this context, where the major reformers are promising to make change through selective non-enforcement, it may be worth considering whether to empower members of a jury to make greater use of their discretion.

If substantive remedies to racial bias through jury instruction appear insufficient, it is likely because they are—absent larger changes to the legal issues at the root of mass incarceration in Iowa. The legislature can and should take several broader steps to avoid putting reform prosecutors in the position of using their discretion for selective non-enforcement. A far less-radical move would be to follow the lead of the ten states that have legalized possession of personal amounts of cannabis. In fact, Democratic State Senator Joe Bolkcom has announced his intention to propose regulating cannabis “like beer,” turning the “\$12 million to enforce . . . possession violations” into “\$40–\$70 million in new state and local revenue.”²⁴⁶

Another action the legislature could take to cut to the root of Iowa's disproportionate prison population is to repeal the remaining mandatory minimum statutes. The legislature moved in this direction by recently removing mandatory minimum sentences for aggravated misdemeanor robbery charges. There were two problems with this half measure. First, many counties simply have chosen not to file aggravated misdemeanor robbery charges, or to allow defendants to plead down to that level. Second, the bulk of the African-Americans currently serving extraordinarily long sentences are doing so under the mandatory minimums for drug-related offenses. A serious effort at eliminating racial disparities in Iowa prisons should begin with eliminating mandatory minimum sentences.

V. CONCLUSION

Data on county-level patterns of charges and convictions strongly suggest that the disproportionate racial makeup of Iowa's prisons is rooted deeply in the prosecutorial discretion exercised by a few of the state's County Attorneys. The disparity appears to arise from jurisdictions such as Black Hawk County, where the complex intersection of race and class has increased the majority-white community's tolerance for selective prosecution of African-American defendants for more serious offenses. Though the possible election of reform candidates could be a mitigating factor, the ultimate resolution of this problem requires strong legislative and judicial oversight.

246. Joe Bolkcom, *Iowa Should Regulate Marijuana Like Beer, Wine and Liquor*, PRESS-CITIZEN (Feb. 1, 2019, 2:48 PM), <https://www.press-citizen.com/story/opinion/2019/02/01/iowa-senator-bolkcom-comes-out-support-legal-marijuana/2745756002> [<https://perma.cc/Q7UF-YUB8>].

APPENDIX A

Dispositions: Violent-Type Crime				Convictions: Violent-Type Crime			
County	White	Black	Total	County	White	Black	Total
	W % of Total	B % of Total	B % of Total		W % of Total	B % of Total	B % of Total
Black Hawk	5030	4692	9722	Black Hawk	3132	3059	6191
Dubuque	4999	3394	7507	Dubuque	2475	1283	3758
Johnson	4700	3394	8094	Johnson	2045	1654	3699
Linn	6366	4097	10463	Linn	3560	2323	5883
Polk	23952	10970	34922	Polk	11001	4966	15967
Pottawattamie	10659	1633	12332	Pottawattamie	2985	421	3406
Scott	7182	5339	12521	Scott	2761	2028	4789
Woodbury	5037	1569	6606	Woodbury	2387	799	3186
Total	67965	34202	102167	Total	30346	16533	46879

Dispositions: Property-Type Crime				Convictions: Property-Type Crime			
County	White	Black	Total	County	White	Black	Total
	W % of Total	B % of Total	B % of Total		W % of Total	B % of Total	B % of Total
Black Hawk	9473	5194	14667	Black Hawk	6675	4112	10787
Dubuque	5616	1504	7120	Dubuque	3435	967	4402
Johnson	5758	4335	10093	Johnson	3331	2833	6164
Linn	10879	4652	15531	Linn	8319	3643	11962
Polk	32583	10533	43116	Polk	20171	6565	26736
Pottawattamie	10188	1026	11214	Pottawattamie	4380	521	4901
Scott	7630	4642	12272	Scott	4168	2744	6912
Woodbury	7553	1402	8955	Woodbury	4931	992	5923
Total	89660	33588	123248	Total	55410	22377	77787

Dispositions: Drug-Type Crime				Convictions: Drug-Type Crime			
County	White	Black	Total	County	White	Black	Total
	W % of Total	B % of Total	B % of Total		W % of Total	B % of Total	B % of Total
Black Hawk	8924	3394	12318	Black Hawk	4528	2350	6878
Dubuque	6187	1189	7376	Dubuque	2832	762	3594
Johnson	7646	2250	9896	Johnson	2469	1109	3578
Linn	14834	3538	18372	Linn	6997	2131	9128
Polk	34910	9054	43964	Polk	12969	3916	16885
Pottawattamie	8196	796	8992	Pottawattamie	3479	405	3884
Scott	7087	3546	10633	Scott	2639	1725	4364
Woodbury	6315	1179	7494	Woodbury	3246	686	3932
Total	94099	24946	119045	Total	39159	13084	52243

Dispositions: Public Order-Type Crime				Convictions: Public Order-Type Crime			
County	White	Black	Total	County	White	Black	Total
	W % of Total	B % of Total	B % of Total		W % of Total	B % of Total	B % of Total
Black Hawk	84916	33456	118372	Black Hawk	69487	24688	94175
Dubuque	78424	13608	92032	Dubuque	59863	10274	70137
Johnson	91998	20583	111681	Johnson	76127	16352	92479
Linn	131588	32354	163942	Linn	100987	23137	124124
Polk	269113	59385	328498	Polk	224943	47482	272427
Pottawattamie	111349	8969	120318	Pottawattamie	83245	7041	90286
Scott	91021	32643	123664	Scott	66776	21733	88509
Woodbury	76218	9303	85521	Woodbury	63667	7239	70906
Total	933727	210301	1144028	Total	745097	157946	903043

County	W % Convicted	B % Convicted	Total % Convicted
Black Hawk	62.27%	65.20%	63.68%
Dubuque	49.51%	51.16%	50.06%
Johnson	43.51%	48.73%	45.70%
Linn	55.92%	56.70%	56.23%
Polk	45.93%	45.27%	45.72%
Pottawattamie	27.90%	25.78%	27.62%
Scott	38.44%	37.98%	38.25%
Woodbury	47.39%	50.92%	48.23%
Total	44.65%	48.34%	45.88%

County	W % Convicted	B % Convicted	Total % Convicted
Black Hawk	70.46%	74.85%	72.07%
Dubuque	61.16%	64.30%	61.83%
Johnson	58.05%	65.35%	61.19%
Linn	78.31%	77.02%	77.20%
Polk	61.91%	62.33%	62.01%
Pottawattamie	42.99%	50.78%	43.70%
Scott	65.29%	59.11%	56.32%
Woodbury	70.76%	70.76%	66.14%
Total	61.80%	66.62%	63.11%

County	W % Convicted	B % Convicted	Total % Convicted
Black Hawk	50.74%	69.24%	55.84%
Dubuque	45.77%	64.09%	48.73%
Johnson	32.29%	49.29%	36.16%
Linn	47.17%	60.23%	49.68%
Polk	37.15%	43.25%	38.41%
Pottawattamie	42.45%	50.88%	43.19%
Scott	37.24%	48.65%	41.04%
Woodbury	51.40%	58.18%	52.47%
Total	41.61%	52.45%	43.89%

County	W % Convicted	B % Convicted	Total % Convicted
Black Hawk	81.83%	73.79%	79.56%
Dubuque	76.33%	75.50%	76.21%
Johnson	83.57%	79.44%	82.81%
Linn	76.74%	71.51%	75.71%
Polk	83.59%	79.96%	82.93%
Pottawattamie	74.76%	78.50%	75.04%
Scott	73.36%	66.58%	71.57%
Woodbury	83.53%	77.81%	82.91%
Total	79.80%	75.10%	78.94%

APPENDIX B

All Felony Dispositions				All Felony Convictions			
County	White	Black	W % of Total	White	Black	W % of Total	Total
Black Hawk	6738	4910	57.85%	4214	3185	56.93%	7399
Dubuque	3639	1570	69.86%	1519	669	69.42%	2188
Johnson	4161	2911	58.84%	1158	829	58.28%	1987
Linn	6605	2880	69.64%	2960	1159	71.86%	4119
Polk	25610	10762	70.41%	8109	3376	70.61%	11485
Pottawattamie	10990	1418	88.57%	2747	325	89.42%	3072
Scott	6724	4864	58.03%	2296	1759	56.62%	4055
Woodbury	4806	1138	80.85%	2284	507	81.83%	2791
Total	69273	30453	69.46%	25287	11809	68.17%	37096
Class A Felony Dispositions				Class A Felony Convictions			
County	White	Black	W % of Total	White	Black	W % of Total	Total
Black Hawk	10	18	35.71%	6	4	60.00%	10
Dubuque	6	7	46.15%	1	2	33.33%	3
Johnson	6	12	33.33%	1	1	50.00%	2
Linn	17	25	40.48%	3	4	42.86%	7
Polk	69	52	57.02%	29	19	60.42%	48
Pottawattamie	70	13	84.34%	6	2	75.00%	8
Scott	16	22	42.11%	6	1	85.71%	7
Woodbury	6	6	50.00%	5	3	62.50%	8
Total	200	155	56.34%	57	36	61.29%	93
Class B Felony Dispositions				Class B Felony Convictions			
County	White	Black	W % of Total	White	Black	W % of Total	Total
Black Hawk	472	423	52.74%	221	172	56.23%	393
Dubuque	223	181	55.20%	16	19	45.71%	35
Johnson	279	323	46.35%	28	11	71.79%	39
Linn	360	270	57.14%	57	34	62.64%	91
Polk	2669	1014	72.47%	554	162	77.37%	716
Pottawattamie	1531	358	81.05%	127	24	84.11%	151
Scott	390	386	50.26%	36	52	40.91%	88
Woodbury	331	127	72.27%	49	25	66.22%	74
Total	6255	3082	66.99%	1088	499	68.56%	1587
W % Convicted B % Convicted Total % Convicted				W % Convicted B % Convicted Total % Convicted			
			63%			43.05%	64%
			42%			30.58%	42%
			28%			41.72%	28%
			45%			28.14%	43%
			32%			29.39%	32%
			25%			10.58%	23%
			34%			43.38%	38%
			48%			18.17%	47%
			37%			31.83%	39%
			60%			40.00%	36%
			17%			66.67%	23%
			17%			50.00%	11%
			18%			57.14%	17%
			42%			39.58%	40%
			9%			25.00%	10%
			38%			14.29%	18%
			83%			37.50%	67%
			29%			38.71%	26%
			47%			43.77%	44%
			7%			54.29%	9%
			10%			28.21%	6%
			16%			37.64%	14%
			21%			22.63%	19%
			8%			15.89%	8%
			9%			59.09%	11%
			15%			33.78%	16%
			17%			31.44%	17%

Class C Felony Dispositions				Class C Felony Convictions			
County	White	Black	W % of Total	County	White	Black	W % of Total
Total	12297	6274	65.22%	Total	5284	3052	63.09%
Black Hawk	1052	883	54.37%	Black Hawk	748	653	52.82%
Dubuque	648	452	58.91%	Dubuque	291	247	54.09%
Johnson	746	499	59.92%	Johnson	225	209	51.84%
Linn	993	535	64.99%	Linn	420	246	63.06%
Polk	4724	2198	68.29%	Polk	1884	977	65.85%
Pottawattamie	2085	279	88.20%	Pottawattamie	779	113	87.33%
Scott	1281	1240	50.81%	Scott	529	531	49.91%
Woodbury	768	188	80.33%	Woodbury	408	101	80.16%
Total	12297	6274	65.22%	Total	5284	3052	63.09%

Class D Felony Dispositions				Class D Felony Convictions			
County	White	Black	W % of Total	County	White	Black	W % of Total
Total	50521	20942	70.70%	Total	3239	2341	58.05%
Black Hawk	5204	3586	59.20%	Black Hawk	3239	2341	58.05%
Dubuque	2762	930	74.81%	Dubuque	1211	401	75.12%
Johnson	3130	2077	60.11%	Johnson	904	608	59.79%
Linn	5235	2050	71.86%	Linn	2480	875	73.92%
Polk	18148	7498	70.76%	Polk	5642	2218	71.78%
Pottawattamie	7364	768	90.49%	Pottawattamie	1835	186	90.80%
Scott	5037	3216	61.03%	Scott	1725	1175	59.48%
Woodbury	3701	817	81.92%	Woodbury	1822	378	82.82%
Total	50521	20942	70.70%	Total	3239	2341	58.05%

All Misdemeanor Dispositions				All Misdemeanor Convictions			
County	White	Black	W % of Total	County	White	Black	W % of Total
Total	344718	118963	74.34%	Total	218477	81556	72.79%
Black Hawk	34331	20057	63.12%	Black Hawk	23278	14527	61.41%
Dubuque	28302	7626	78.77%	Dubuque	18275	5263	77.64%
Johnson	37966	14118	72.89%	Johnson	24055	10069	70.49%
Linn	48189	17948	72.86%	Linn	34041	13790	71.17%
Polk	112245	35544	75.99%	Polk	69461	23131	75.02%
Pottawattamie	29380	3074	90.53%	Pottawattamie	15008	1640	90.15%
Scott	26381	14943	63.84%	Scott	14862	9012	62.25%
Woodbury	27924	5651	83.17%	Woodbury	19497	4124	82.54%
Total	344718	118963	74.34%	Total	218477	81556	72.79%

Class C Felony Dispositions				Class C Felony Convictions			
County	White	Black	W % of Total	County	White	Black	W % of Total
Total	14116	73%	71%	Total	1416	75%	71%
Black Hawk	1416	44%	43%	Black Hawk	1416	44%	43%
Dubuque	538	29%	29%	Dubuque	538	29%	29%
Johnson	434	43%	43%	Johnson	434	43%	43%
Linn	666	31%	31%	Linn	666	31%	31%
Polk	2861	25%	25%	Polk	2861	25%	25%
Pottawattamie	892	37%	37%	Pottawattamie	892	37%	37%
Scott	1060	42%	42%	Scott	1060	42%	42%
Woodbury	509	54%	54%	Woodbury	509	54%	54%
Total	8376	49%	49%	Total	8376	49%	49%

Class D Felony Dispositions				Class D Felony Convictions			
County	White	Black	W % of Total	County	White	Black	W % of Total
Total	27040	38%	37%	Total	27040	38%	37%
Black Hawk	27040	46%	46%	Black Hawk	27040	46%	46%
Dubuque	1512	23%	23%	Dubuque	1512	23%	23%
Johnson	1512	29%	29%	Johnson	1512	29%	29%
Linn	3355	43%	43%	Linn	3355	43%	43%
Polk	7860	30%	30%	Polk	7860	30%	30%
Pottawattamie	2021	21%	21%	Pottawattamie	2021	21%	21%
Scott	2900	37%	37%	Scott	2900	37%	37%
Woodbury	2200	49%	49%	Woodbury	2200	49%	49%
Total	27040	38%	37%	Total	27040	38%	37%

All Misdemeanor Dispositions				All Misdemeanor Convictions			
County	White	Black	W % of Total	County	White	Black	W % of Total
Total	37905	70%	68%	Total	37905	70%	68%
Black Hawk	37905	69%	69%	Black Hawk	37905	69%	69%
Dubuque	23538	65%	65%	Dubuque	23538	65%	65%
Johnson	34124	71%	71%	Johnson	34124	71%	71%
Linn	47831	77%	77%	Linn	47831	77%	77%
Polk	52592	62%	62%	Polk	52592	62%	62%
Pottawattamie	16648	53%	53%	Pottawattamie	16648	53%	53%
Scott	23874	56%	56%	Scott	23874	56%	56%
Woodbury	23621	70%	70%	Woodbury	23621	70%	70%
Total	300133	69%	63%	Total	300133	69%	63%

Aggravated Misdemeanor Dispositons				Aggravated Misdemeanor Convictions			
County	White	Black	W % of Total	White	Black	W % of Total	Total
Black Hawk	7355	5933	56.01%	6051	4634	56.63%	10585
Dubuque	4487	1510	74.82%	3203	1014	75.93%	4217
Johnson	6063	3373	64.03%	3625	2152	62.77%	5781
Linn	7348	3364	68.60%	5711	2489	69.63%	8200
Polk	25507	10302	71.23%	14709	5774	71.81%	20483
Pottawattamie	9351	1000	90.34%	5013	569	89.81%	5582
Scott	5812	4282	57.38%	3381	2634	57.62%	6015
Woodbury	4831	1089	81.60%	2841	740	79.34%	3581
Total	70894	30853	69.68%	44738	20006	69.10%	64744

Serious Misdemeanor Dispositons				Serious Misdemeanor Convictions			
County	White	Black	W % of Total	White	Black	W % of Total	Total
Black Hawk	13016	6005	68.43%	8415	4387	65.73%	12802
Dubuque	9390	2249	80.68%	5602	1487	79.02%	7089
Johnson	13835	4404	75.85%	6497	2643	71.08%	9140
Linn	16732	4950	77.17%	9910	3366	74.63%	13276
Polk	37980	10753	77.93%	19305	5865	76.70%	25170
Pottawattamie	13846	1446	90.54%	6937	761	90.11%	7698
Scott	9394	4764	66.35%	4530	2386	65.50%	6916
Woodbury	9056	1644	84.64%	6742	1239	84.48%	7981
Total	123249	36215	77.29%	67938	22134	75.43%	90072

Simple Misdemeanor Dispositons				Simple Misdemeanor Convictions			
County	White	Black	W % of Total	White	Black	W % of Total	Total
Black Hawk	13760	8119	62.89%	8812	5606	61.12%	14418
Dubuque	14425	3867	78.86%	9470	2762	77.42%	12232
Johnson	18128	6341	74.09%	13929	5274	72.54%	19203
Linn	24109	9634	71.45%	18420	7935	69.89%	26355
Polk	48758	14489	77.09%	35447	11492	75.52%	46939
Pottawattamie	6183	628	90.78%	3058	310	90.80%	3368
Scott	11175	5899	65.45%	6751	3992	62.84%	10743
Woodbury	14037	2918	82.79%	9914	2145	82.21%	12059
Total	150575	51895	74.37%	103801	39516	72.81%	143317

W % Convicted B % Convicted Total % Convicted

W % Convicted B % Convicted Total % Convicted

W % Convicted B % Convicted Total % Convicted

W % Convicted B % Convicted Total % Convicted

APPENDIX C

Robbery in the First Degree (Class B Felony)														
County	White	Black	W % of Total	B % of Total	Total	County	White	Black	W % of Total	B % of Total	Total	W % Convicted	B % Convicted	Total % Convicted
Black Hawk	29	121	19.33%	80.67%	150	Black Hawk	12	51	19.05%	80.95%	63	41%	42%	42%
Dubuque	26	54	32.50%	67.50%	80	Dubuque	3	5	37.50%	62.50%	8	12%	9%	10%
Johnson	38	150	20.21%	79.79%	188	Johnson	2	6	25.00%	75.00%	8	5%	4%	4%
Linn	45	119	27.44%	72.56%	164	Linn	6	11	35.29%	64.71%	17	13%	9%	10%
Polk	247	365	40.36%	59.64%	612	Polk	25	50	33.33%	66.67%	75	10%	14%	12%
Pottawattamie	127	131	49.22%	50.78%	258	Pottawattamie	8	11	42.11%	57.89%	19	6%	8%	7%
Scott	40	148	21.28%	78.72%	188	Scott	1	20	4.76%	95.24%	21	3%	14%	11%
Woodbury	23	46	33.33%	66.67%	69	Woodbury	1	11	8.33%	91.67%	12	4%	24%	17%
Total	575	1134	33.65%	66.35%	1709	Total	58	165	26.01%	73.99%	223	10%	15%	13%

Robbery in the Second Degree (Class C)														
County	White	Black	W % of Total	B % of Total	Total	County	White	Black	W % of Total	B % of Total	Total	W % Convicted	B % Convicted	Total % Convicted
Black Hawk	65	66	49.62%	50.38%	131	Black Hawk	45	52	46.39%	53.61%	97	59%	79%	74%
Dubuque	12	40	23.08%	76.92%	52	Dubuque	13	10	56.52%	43.48%	23	108%	25%	44%
Johnson	50	91	35.46%	64.54%	141	Johnson	14	31	31.11%	68.89%	45	28%	34%	32%
Linn	49	71	40.83%	59.17%	120	Linn	8	16	33.33%	66.67%	24	16%	23%	20%
Polk	202	203	49.88%	50.12%	405	Polk	75	117	39.06%	60.94%	192	37%	58%	47%
Pottawattamie	91	37	71.09%	28.91%	128	Pottawattamie	25	18	58.14%	41.86%	43	27%	49%	34%
Scott	62	129	32.46%	67.54%	191	Scott	4	21	16.00%	84.00%	25	6%	16%	13%
Woodbury	24	21	53.33%	46.67%	45	Woodbury	15	13	53.57%	46.43%	28	53%	62%	62%
Total	555	658	45.75%	54.25%	1213	Total	199	278	41.72%	58.28%	477	36%	42%	39%

Robbery in the Third Degree (Agg. Misd.)														
County	White	Black	W % of Total	B % of Total	Total	County	White	Black	W % of Total	B % of Total	Total	W % Convicted	B % Convicted	Total % Convicted
Black Hawk	0	0	x	x	0	Black Hawk	1	1	50.00%	50.00%	2	x	x	x
Dubuque	0	0	x	x	0	Dubuque	0	2	0.00%	100.00%	2	x	x	x
Johnson	1	13	7.14%	92.86%	14	Johnson	3	11	21.43%	78.57%	14	30%	85%	100%
Linn	1	1	50.00%	50.00%	2	Linn	6	9	40.00%	60.00%	15	60%	50%	75%
Polk	3	5	37.50%	62.50%	8	Polk	8	5	61.54%	38.46%	13	26%	100%	163%
Pottawattamie	6	6	50.00%	50.00%	12	Pottawattamie	13	5	72.22%	27.78%	18	21%	83%	150%
Scott	6	4	60.00%	40.00%	10	Scott	5	8	52.94%	47.06%	17	15%	20%	170%
Woodbury	0	0	x	x	0	Woodbury	0	0	x	x	0	x	x	x
Total	17	29	36.50%	63.50%	46	Total	40	41	49.38%	50.62%	81	23%	14%	17%

APPENDIX D

Drug Trafficking Dispositions (Class B)				Drug Trafficking Convictions (Class B)			
County	White	Black	W % of Total	County	White	Black	W % of Total
Black Hawk	287	71	80.17%	Black Hawk	154	31	83.24%
Dubuque	51	21	70.85%	Dubuque	6	6	50.00%
Johnson	81	21	79.41%	Johnson	6	1	85.71%
Linn	113	45	71.52%	Linn	11	6	64.71%
Pell	1788	308	85.31%	Pell	431	64	87.07%
Pottawattamie	405	24	94.41%	Pottawattamie	11	1	91.67%
Scott	137	64	68.16%	Scott	6	4	60.00%
Woodbury	165	18	90.16%	Woodbury	21	0	100.00%
Total	3027	572	84.11%	Total	646	113	85.11%
Drug Trafficking Dispositions (Class C)				Drug Trafficking Convictions (Class C)			
County	White	Black	W % of Total	County	White	Black	W % of Total
Black Hawk	374	207	64.37%	Black Hawk	298	145	67.27%
Dubuque	202	230	46.76%	Dubuque	133	172	43.61%
Johnson	164	124	56.94%	Johnson	66	44	60.00%
Linn	368	138	72.73%	Linn	136	59	69.74%
Pell	1690	842	66.75%	Pell	977	395	71.16%
Pottawattamie	360	37	90.68%	Pottawattamie	332	25	93.00%
Scott	420	417	50.18%	Scott	234	220	51.54%
Woodbury	173	61	73.93%	Woodbury	158	32	83.16%
Total	3751	2056	64.59%	Total	2234	1053	68.11%
Drug Trafficking Dispositions (Class D)				Drug Trafficking Convictions (Class D)			
County	White	Black	W % of Total	County	White	Black	W % of Total
Black Hawk	468	519	47.42%	Black Hawk	265	390	40.46%
Dubuque	314	169	74.23%	Dubuque	188	66	74.02%
Johnson	529	236	69.15%	Johnson	51	76	54.49%
Linn	882	217	80.25%	Linn	375	83	81.88%
Pell	1736	1035	62.65%	Pell	538	432	55.46%
Pottawattamie	441	57	88.55%	Pottawattamie	186	30	86.11%
Scott	814	452	64.30%	Scott	295	234	55.77%
Woodbury	302	134	69.27%	Woodbury	161	79	67.68%
Total	5486	2759	66.54%	Total	2099	1350	60.16%

County	White	Black	W % of Total	Total	W % Convicted	B % Convicted	Total % Convicted
Black Hawk	358	72	19.83%	430	54%	12%	52%
Dubuque	72	108	25.17%	180	29%	7%	17%
Johnson	152	158	20.59%	310	3%	13%	7%
Linn	108	158	28.48%	266	10%	21%	11%
Pell	2096	429	14.69%	2525	24%	3%	24%
Pottawattamie	429	201	5.59%	630	3%	4%	3%
Scott	201	183	31.84%	384	4%	6%	5%
Woodbury	183	359	9.84%	542	13%	0%	11%
Total	3599	1133	15.89%	4732	21%	20%	21%

County	White	Black	W % of Total	Total	W % Convicted	B % Convicted	Total % Convicted
Black Hawk	581	432	35.63%	1013	80%	70%	76%
Dubuque	432	288	53.24%	720	56%	40%	71%
Johnson	288	506	43.06%	794	40%	35%	38%
Linn	506	2532	27.27%	3038	37%	43%	39%
Pell	397	307	33.25%	704	58%	47%	54%
Pottawattamie	837	234	9.32%	1071	92%	68%	90%
Scott	234	34	49.82%	268	56%	53%	54%
Woodbury	234	5807	26.07%	6041	91%	52%	81%
Total	5807	3541	35.41%	9348	52%	53%	59%

County	White	Black	W % of Total	Total	W % Convicted	B % Convicted	Total % Convicted
Black Hawk	987	423	52.38%	1410	57%	61%	59%
Dubuque	423	765	25.77%	1188	50%	32%	42%
Johnson	765	1099	30.85%	1864	17%	43%	33%
Linn	1099	2771	19.75%	3870	4%	42%	43%
Pell	2771	498	37.35%	3269	31%	42%	35%
Pottawattamie	498	1266	11.45%	1764	42%	53%	43%
Scott	1266	436	35.70%	1702	36%	52%	42%
Woodbury	436	8245	30.73%	8681	53%	59%	53%
Total	8245	3346%	33.46%	11531	38%	50%	42%

APPENDIX E²⁴⁷

Jurisdiction	County Contribution	Percent of Total	Black Inmates Convicted	Black Inmates as Percent of Total County Contribution	Black Inmates as Percent of Total Population
Statewide	8350	x	2116	x	25%
Black Hawk	767	9%	395	51%	19%
Dubuque	203	2%	69	34%	3%
Johnson	181	2%	74	41%	3%
Linn	337	4%	105	31%	5%
Polk	1866	22%	598	32%	28%
Pottawattamie	334	4%	42	13%	2%
Scott	641	8%	316	49%	15%
Woodbury	457	5%	90	20%	4%

247. For source of data used to compile Appendices A–D, see *Easy Access to Adult Criminal Data*, *supra* note 114. For source of data used to compile Appendix E, see *Iowa Prison Population*, GOV DATA: ST. IOWA, <https://data.iowa.gov/Public-Safety/Iowa-Prison-Population-Year-End/murf-9x69> (last updated Mar. 27, 2018).