The Trial Penalty in Connecticut:

Are People Being Punished for Exercising Their Constitutional Rights?

Connecticut Public Defenders

NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS | NACDL FOUNDATION FOR CRIMINAL JUSTICE

CONNECTICUT CRIMINAL DEFENSE LAWYERS ASSOCIATION

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The National Association of Criminal Defense Lawyers and the NACDL Foundation for Criminal Justice

The National Association of Criminal Defense Lawyers (NACDL) is the preeminent organization in the United States advancing the goal of the criminal defense bar to ensure justice and due process for persons charged with a crime or wrongdoing. NACDL envisions a society where all individuals receive fair, rational, and humane treatment within the criminal legal system.

NACDL's mission is to serve as a leader, alongside diverse coalitions, in identifying and reforming flaws and inequities in the criminal legal system, and redressing systemic racism, and ensuring that its members and others in the criminal defense bar are fully equipped to serve all accused persons at the highest level.

The members of NACDL — and its 90 state, local and international affiliates — include private criminal defense lawyers, public defenders, active U.S. military defense counsel, and law professors committed to promoting fairness in America's criminal legal system. Representing thousands of criminal defense attorneys who know firsthand the inadequacies of the current system, NACDL is recognized domestically and internationally for its expertise on criminal justice policies and practices.

The NACDL Foundation for Criminal Justice (NFCJ) is a 501(c)(3) charitable non-profit organized to preserve and promote the core values of the American criminal legal system guaranteed by the Constitution — among them access to effective counsel, due process, freedom from unreasonable search and seizure, the right to a jury trial, and fair sentencing. The NFCJ supports NACDL's efforts to promote its mission through resources, education, training and advocacy tools for the public, the nation's criminal defense bar, and the clients they serve.

Office of Chief Public Defender

Connecticut was the first state in the nation to establish a statewide Public Defender system funded by its legislature. With over 400 employees comprised of social workers, investigators, clerical staff and attorneys, the Connecticut Public Defenders zealously promote and protect the rights, liberty and dignity of all clients and provide legal representation to indigent persons before the Connecticut courts in adult criminal cases; juvenile delinquency matters; post-conviction matters including appeals, habeas corpus, and parole revocation proceedings; child protection matters; and respondents in contempt and paternity cases in family support magistrate proceedings. Committed to holistic representation that recognizes clients as individuals, Connecticut Public Defenders work to free the innocent, prevent injustice, and protect against wrongful conviction.

Connecticut Criminal Defense Lawyers Association

The Connecticut Criminal Defense Lawyers Association (CCDLA) is an organization of approximately three hundred lawyers who are dedicated to defending persons accused of criminal and motor vehicle offenses. Founded in 1988, CCDLA is the only statewide criminal defense lawyers organization in Connecticut. CCDLA's membership is from both the public and private sectors of the criminal defense bar. The association's active listserv encourages free communication between lawyers and the sharing of resources, pleadings, and research amongst legal professionals, all within the confines of our strict adherence to client confidentiality issues. The CCDLA is a well-respected voice in the Connecticut state legislature, submitting testimony annually on bills important to the criminal defense community and offering input on the confirmation process for judges. The CCDLA is a not-for-profit organization that retains complete independence from outside funding sources by being supported solely by our members.

Acknowledgements

This report is the final product of a multi-year collaboration of defense organizations, defender offices, and academics who contributed their intellect, time, and energy.

Deborah Del Prete Sullivan, Legal Counsel, Director; Benedict R. Daigle, former Assistant Public Defender; and Leslie OBrien, Executive Assistant, of the Office of Chief Public Defender developed and led this project along with Nathan Pysno, Director of Economic Crime & Procedural Justice at the National Association of Criminal Defense Lawyers.

The project team thanks the Connecticut Public Defender Services Commission and the leadership of the Office of Chief Public Defender for their continued support.

Frank J. Riccio II, Audrey Felsen, and W. Theodore Koch III served as Presidents of the Connecticut Criminal Defense Lawyers Association during the project and, along with CCDLA's members, were important contributors to its success.

We want to thank the staff of the Institute for Municipal and Regional Policy at the University of Connecticut for their partnership in designing and conducting the quantitative analysis of this report. In particular, we wish to thank: Andrew Clark, Director; Ken Barone, Associate Director; Dr. Vaughn Crichlow, then-Director of Research & Associate Research Professor, IMRP, now Dean & Professor, School of Justice Studies, Roger Williams University; Grace McCann, Research Assistant; and Victoria Jaskaran, Research Assistant.

This report would not have been possible without the generous participation of the many lawyers and their clients who responded to OCPD's initial survey and provided valuable information about their experiences with the trial penalty in Connecticut. We are grateful to everyone who responded to the survey.

NACDL would like to thank the Howard S. and Deborah Jonas Foundation and the Stand Together Trust for their support of this report and NACDL's policy work to address the trial penalty.

Finally, we wish to thank NACDL's Executive Director Lisa Monet Wayne and Deputy Director Kyle O'Dowd for their support and assistance with this report, along with NACDL's art department, led by Cathy Zlomek, for the report's art design and production.

Introduction

The trial penalty—generally referring to the significant difference in sentence length for criminal defendants who exercise their right to go to trial versus those who waive that right and plead guilty—has been widely documented by scholars, practitioners, and judges. Indeed, it pervades the criminal justice system, at both the federal and state levels. The National Association of Criminal Defense Lawyers (NACDL) has carefully studied and issued reports on the trial penalty in the federal system and, with the New York State Association of Criminal Defense Lawyers, in the New York State system.

The Connecticut Office of Chief Public Defender (OCPD) embarked on an effort to study the trial penalty in its own state. It devised and distributed an innovative survey, seeking objective data from criminal defense practitioners within the state. The goal was to examine criminal cases that were tried to verdicts of guilty and determine whether the ultimate post-trial sentence in those cases was less or greater than the best plea offer in that case. In other words: did defendants receive a trial penalty?

OCPD partnered with NACDL and the Connecticut Criminal Defense Lawyers Association (CCDLA) to continue this study and produce this report. It also engaged the Institute for Municipal and Regional Policy (IMRP) at the University of Connecticut to provide statistical analysis of the survey results and to draw conclusions driven by that data. IMRP's report is included in full in the following pages.

Additionally, this report includes specific, individual case studies of people in Connecticut who exercised their constitutional right to trial, were ultimately convicted, and received a trial penalty sentence—that is, a sentence much greater than what they were offered in a pretrial plea offer. Finally, the report contains specific policy recommendations and suggestions for future study, in addition to those provided by the IMRP.

We hope that this report will increase public understanding of this important issue in our criminal justice system and pave the way for reform.

Summary of Findings

- The project team, which included OCPD, NACDL, and CCDLA, collected usable data from public defenders and private attorneys regarding cases tried to verdict from July 1, 2015, to June 30, 2020, to ascertain whether persons who were convicted at trial received sentences that were more severe than the best pretrial offer.
- IMRP was able to analyze roughly 25% of the total criminal cases that went to trial in Connecticut state courts from July 2015 to June 2020.
- IMRP determined that:
  - The defendant experienced a trial penalty (that is, a post-trial sentence worse than the plea offer) in 62% of convictions.
  - Among all cases with a trial penalty, the average trial penalty was 14.6 years.
  - Even counting acquittals, the defendant experienced a trial penalty in 52% of all criminal cases that were tried.
  - Among all cases, even acquittals and those with no trial penalty, the average trial penalty was 6.5 years.
  - The average plea offer was 14.5 years, and the average trial sentence was 21.6 years. Post-trial sentences were 1.5 times longer than guilty plea sentences.
  - The trial penalty length was larger in more serious cases.
  - Black and Hispanic individuals made up 62% of cases resulting in a trial penalty.
  - Nearly one fifth of eligible trial cases in which a plea deal was offered resulted in a final disposition of not guilty, albeit in a small sample size.

Recommendations of OCPD, NACDL, and CCDLA

1. Eliminate mandatory minimum sentences totally, including those for all motor vehicle offenses including any offenses charged while under the influence. In the alternative, reduce the number of offenses for which mandatory minimum sentences apply and codify greater judicial discretion for departure from any remaining mandatory minimums.

2. Eliminate sentence enhancements for any first-time or repeat convicted offenders, including persistent offender statutes or statutes equivalent to "3 Strikes."

3. Expand and support greater use and implementation of Second Look/Clean Slate legislation or "look backs" on certain offenses.

4. Discuss and consider whether another prosecutor, including those who may be prosecuting co-defendants, and any other defense counsel in a co-defendant's or in unrelated cases should be barred from being present in pretrial proceedings between the court, prosecutor and the defense that take place in chambers and off the record. In Connecticut, it is not uncommon for other defense counsel in other proceedings to sit in during the discussion. This is an issue because the defense may be discussing sensitive and medical information of the client, including, but not limited to, mental or physical health or substance abuse history. In some courthouses, an entire prosecutor's office may be permitted to be in chambers while cases are discussed. We recommend a rule change that would allow only the judge, the prosecutor of record, and the specific defense counsel in the matter being discussed to be allowed in the room at the same time. Any other prosecutor, including those who may be prosecuting co-defendants, and any other defense counsel in a co-defendant's or in unrelated cases should be barred from being present.

5. Implement bail reform so that any person charged with a misdemeanor or nonviolent felony can be released on nonfinancial conditions only.

6. **Public Defenders should be permitted to represent their clients in protective and restraining order hearings. Current law does not allow for this, potentially leaving people without counsel during critical ancillary legal proceedings.**

7. **Expand compassionate release or parole statutes.**

8. **Change the felony murder rule for persons who conspire to commit a felony other than murder, so that persons who did not commit the murder are not subject to the same penalty as the person who did.**

Trial Penalty Case Studies

Each of these case studies was a real criminal case in Connecticut State Court. Names of the accused have been changed.

"JEFF"
Litchfield Judicial District

Jeff was a white man addicted to narcotics. At nearly sixty years old, he had a lengthy criminal record. In this case, he was accused of selling drugs—for personal use—to an acquaintance on the street, which he denied. Because Jeff was found to be indigent, he qualified for court-appointed defense counsel. He was represented by a private attorney under contract with the Office of Chief Public Defender to handle conflict-of-interest cases.

During the pretrial proceedings, the prosecutor offered Jeff a plea deal to serve 3 years flat in prison, which he rejected.

After being found guilty at trial, the court sentenced Jeff to 10 years suspended after serving 6 years, with 5 years' probation, a sentence that *doubled* the incarceration portion of the prosecutor's pretrial offer (3 years flat) and more than *tripled* the total effective sentence.

"ROBERT"
New Haven Judicial District

Robert was a Black man who had never been convicted of any felonies or served time in prison. In this case, he was accused of operating a motor vehicle under the influence of alcohol or drugs and, in another matter, burglary. He had a conviction for operating under the influence from more than a decade earlier. Because Robert was found to be indigent, he qualified for court-appointed defense counsel and was represented by a Public Defender.

The court in a judicial pretrial conference offered a sentence of 2 years suspended after 120 days (4 months to serve) and 2 years' probation for a plea to the operating under the influence as a 2nd offender and burglary in the 3rd degree.

When the case reached the firm jury state, the state offered a sentence of 6 months suspended after 5 months incarceration with 18 months' probation for a plea of guilty to operating under the influence as a *1st time* offender. The state also offered to substitute the charge of Larceny in the 6th degree in lieu of the burglary in the 3rd degree with a sentence of no incarceration or probation, but just an unconditional discharge.

But as a college graduate approaching forty years old and looking for work, "Robert" was worried about the impact of a new conviction on his job prospects. So, he chose to challenge the charges at trial.

Robert was found guilty at trial and sentenced to serve 2 years suspended after nine months to serve, with a mandatory minimum sentence of 120 days followed by 2 years' probation. The incarceration period of 9 months in prison was *more than double* the most favorable pretrial incarceration offer (4 months), and the total effective sentence was *quadruple* the 6 months offered by the state.

"ANDRE"
Tolland Judicial District

Andre, a white man in his fifties with medical issues, had a lengthy criminal record, and was already serving a prison sentence. His medical issues were severe enough to have led the Department of Correction (DOC) to make certain accommodations for him. A correctional officer conducted a search of his cell, and Andre believed that some of his personal items had been destroyed. He struck the officer with a plastic chair, which resulted in abrasions to the officer's forearm. Andre was found to be indigent and was represented by a Public Defender. The pressure to accept a plea offer was compounded by knowing that trial jurors would hear evidence indicating he was already incarcerated at the time of the incident.

At the firm jury stage, the prosecutor offered 1 year incarceration to serve *consecutive* to the existing sentence he was serving. Andre rejected this offer. There was no judicial pretrial offer, and the case proceeded to a jury trial.

At the jury trial, Andre was found guilty. He was sentenced to serve 7 years suspended after serving 4 years' incarceration and 3 years' probation, all *consecutive* to his current sentence. The 4-year sentence *more than quadrupled* the earlier offer of 1 year incarceration consecutive to his current sentence.

"CHRISTOPHER"
New Haven Judicial District

Christopher was a forty-year-old Black man who was engaged to be married and had three children. Working with an employment agency, he had found temporary employment as a handyman. Christopher was charged with first-degree assault with the discharge of a firearm, carrying a pistol without a permit, and criminal possession of a firearm following an incident outside of a housing complex. Because Christopher was found to be indigent, he qualified for court-appointed defense counsel and was represented by a Public Defender.

In addition to this incident, Christopher owed an additional 12 years on two periods of probation that he had violated. During the pretrial process, the prosecutor offered 15 years incarceration suspended after serving 8 years, followed by 3 years' conditional discharge. This pretrial offer would have resolved both the current charges and the two probation violations. But, when Christopher was found guilty of all three charges at trial, the court sentenced him to serve 25 years in prison, plus 7 consecutive years on the probation violations, for a total effective sentence of 32 years followed by 5 years special parole.

The incarceration period of 32 years in prison was *quadruple* the more favorable pretrial offer.

REPORT OF THE INSTITUTE FOR
MUNICIPAL AND REGIONAL POLICY

UCONN
INSTITUTE FOR MUNICIPAL
AND REGIONAL POLICY

THE TRIAL PENALTY IN CONNECTICUT

AN ASSESSMENT OF TRIAL CASE DATA (2015-2020)

Institute for Municipal and Regional Policy

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Background

The term "trial penalty" generally reflects the punitive nature of the legal process from pretrial to outcome. In this context, whether formal or otherwise, the process itself might be viewed as the punishment.[1] Alternatively, the trial penalty, also known as the "trial disparity" or the "trial tax," often refers specifically to the disparity between the sentence offered in a plea bargain and the sentence a defendant might receive if they go to trial.[2] Critics have argued that the trial penalty creates an uneven playing field in the criminal justice system such that those who choose to exercise their right to a trial may be penalized with a harsher sentence, thus creating a greater likelihood of accepting a plea bargain versus exercising one's constitutional right to a trial by a jury of peers.[3] Advocacy groups have suggested that the trial penalty presents a critical flaw within the system that has significant societal consequences. It weakens public trust in the justice system, especially among justice-involved people who already believe that the system is skewed against them,[4] and it is a concern that prosecutors might use the trial penalty to convince defendants to accept plea deals.[5] Indeed, nearly 97% of all criminal cases in Connecticut result from plea deals versus going to trial, which reflects a national trend at the State and Federal levels,[6] and further highlights the potential use of a trial penalty as a disincentive to go to trial.

While some experts have highlighted the benefits of plea deals in conserving resources and avoiding lengthy trials that may be traumatizing to victims,[7] others have suggested that core legal principles such as fairness, due process, and equal protection can be undermined by the existence of a trial penalty. For instance, fairness is compromised when individuals plead guilty to avoid the disproportionately harsh sentences they might face at trial. Similarly, due process weakens when the trial penalty disincentivizes defendants from exercising their right to a fair trial. While there is no prior evidence that this applies to defendants in Connecticut, it is still worthy of note that concerns have arisen in jurisdictions across the United States regarding equal protection, as there is some evidence that the penalty disproportionately impacts low-income defendants[8] who are more likely to plead guilty to avoid the risk of a harsher sentence.[9] According to Stauffer (2021), prosecutors and defendants are not on a level playing field due to the unregulated structure of the plea-bargaining process, and it was highlighted in a Connecticut study in 2017 that some defendants might be more likely to await trial in prison due to the inability to post bond.[10] This incentivizes individuals to accept "time served" guilty pleas versus taking a case to trial. Furthermore, prosecutors have tremendous leverage in plea bargaining because they control the charges and plea bargain offers and because, often, not all evidence has been gathered or disclosed to the accused as required by law.[11]

Given recent discussions about trial disparities and the need to ascertain the existence of a trial penalty in Connecticut's criminal court system, the Office of the Chief Public Defender (OCPD) collected data through its Connecticut Trial Penalty Project 2021 Case Survey on pretrial plea offers and the subsequent sentences imposed over the period July 1, 2015, to June 30, 2020. Survey data were collected from defense attorneys[12] throughout the state, and deidentified data were shared with the research team at the Institute for Municipal and Regional Policy (IMRP) at the University of Connecticut (UConn). This report on the trial penalty in Connecticut is in fulfillment of a Memorandum of Understanding (MOU) among OCPD, the National Association of Criminal Defense Lawyers (NACDL), the Connecticut Criminal Defense Lawyers Association (CCDLA), and the IMRP. The following sections comprise a description of the survey, findings from the survey, and recommendations for further inquiry.

I. The Survey

The survey was developed by OCPD and distributed to public defenders, assigned counsel, and private counsel to gather data on all criminal, motor vehicle, and youthful offender cases that were tried for verdict between 2015 and 2020. Respondents were advised to complete the survey regardless of the verdict and any sentence, as this was crucial for ensuring the validity of the findings. They were also advised that cases should be submitted by the last attorney representing the defendant during the superior court trial proceedings. OCPD provided case lists derived from various internal and judicial branch databases to public defenders and private defense attorneys who were identified as the trial attorneys of record. Each respondent was asked to verify whether they were the trial attorney on each case entered into the survey and whether each case resulted in a final verdict. Respondents were also asked to include relevant cases that may have been omitted from the original list. The surveys were completed in Excel and submitted by respondents via email to the OCPD Legal Counsel Unit. The next section comprises a discussion of survey findings.

II. Survey Findings

II. A: Eligible Trial Cases

While the original dataset from the survey contained 704 cases, a case could only be included in the analysis if it comprised sufficient data to determine whether a trial penalty occurred. After a systematic review, 164 cases were included in the final analysis (see Figure 1). The steps for determining eligibility were as follows: During OCPD's initial review, 97 cases were deemed ineligible for reasons such as "cases falling outside the designated timeframe," cases "involving a plea bargain," cases involving "probation violations," cases designated as "nolle prosequi" (This means charges were dropped by the prosecutor), cases being "unspecified," or other "miscellaneous" reasons (see Table 1).

Figure 1: Total Eligible Trial Cases

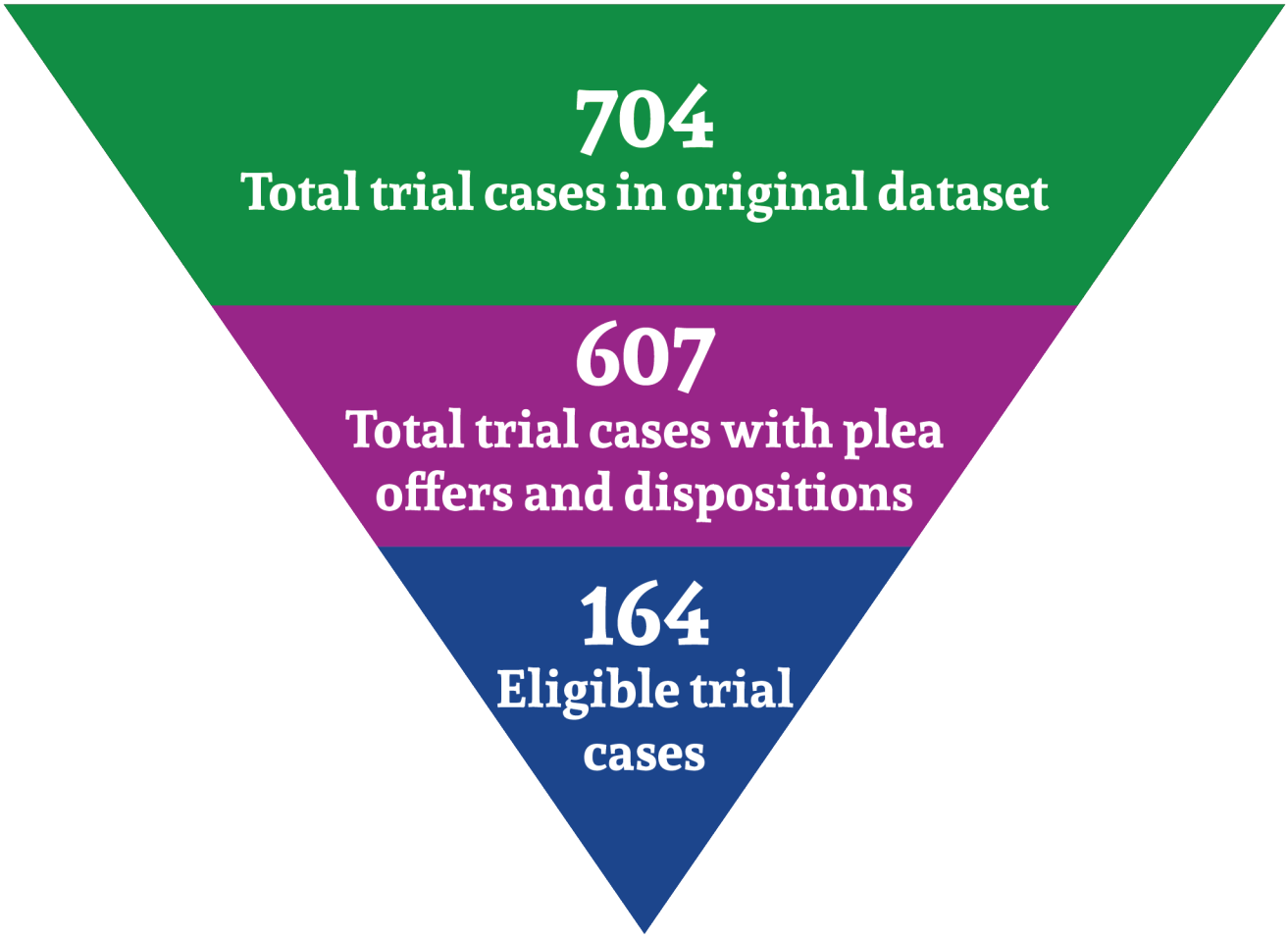


Table 1: Total Eligible Cases after Initial Review

Total Eligible Cases	**607**
Total Ineligible Cases	**97**
Not Specified	*38*
Pleaded Out	*32*
Violation of Probation	*11*
Other	*7*
Nolle	*5*
Outside Timeframe	*4*
Total Eligible and Ineligible Cases	**704**

In reviewing the remaining 607 cases, the IMRP team determined that 540 additional cases could not be included in the analysis (Table 2 presents a breakdown with reasons for ineligibility). It was found that 436 cases lacked sufficient information in the plea offer or case outcome data fields. Further reasons to exclude cases from the analysis were that the defendant was not of the requisite state of mind," was "placed in a rehabilitation program," or chose "to go to trial before a plea offer was made." In total, 443 cases were removed during the second round of review, and at the end of the case review, it was determined that 164 cases were eligible for analysis.

Table 2: Reasons for Cases Determined as Ineligible

Reasons Cases Determined as Ineligible	
Determined to be ineligible due to missing data.	*436*
Noted as ineligible by survey respondents.	*97*
Defendant requested to go to trial before an offer being made.	*4*
Defendant was placed in a rehabilitation program.	*2*
The defendant was found not guilty by reason of insanity.	*1*
Total Ineligible Cases	**540**

II. B: Examining the Trial Penalty

To determine the scope of any trial penalty in the sample of eligible cases, the research team compared the best plea deal offered with the outcome of each case. The plea offers typically comprised sentences in years that were subtracted from case dispositions or outcomes in years. Sentences less than one year in length were coded as "0." If a case outcome resulted in a higher score (i.e., a longer sentence) than the best plea offer, the final score was coded as a "trial tax" or penalty. Conversely, if the outcome resulted in a lower score (i.e., a shorter sentence) or was equal to the best plea offer, this was noted as "no trial tax." The prevalence and magnitude of trial penalties were determined by assessing these scores in aggregate across the sample of cases. For instance, a difference of + 15 years would be considered a trial tax, whereas a difference of — 15 years would be noted as no trial tax.

Of the 164 trial cases that were assessed by the research team, 84% (138 cases) resulted in a conviction, 52% (85 cases) resulted in a trial penalty, and 48% (79 cases) did not result in a trial penalty. Therefore, of the 138 cases resulting in a conviction, 62% resulted a trial penalty (see Figure 2). Within the subset of cases without a trial penalty, 53 cases (32%) resulted in a guilty verdict and a sentence, whereas 26 cases (16%) resulted in a not guilty verdict (see Figure 3). While the sample is too small to conduct empirical tests for statistical significance, it is noteworthy that almost a fifth of eligible trial cases in which a plea deal was offered resulted in a final disposition of not guilty.

Figure 2: Cases Resulting in Conviction with Trial Penalty (n = 138)

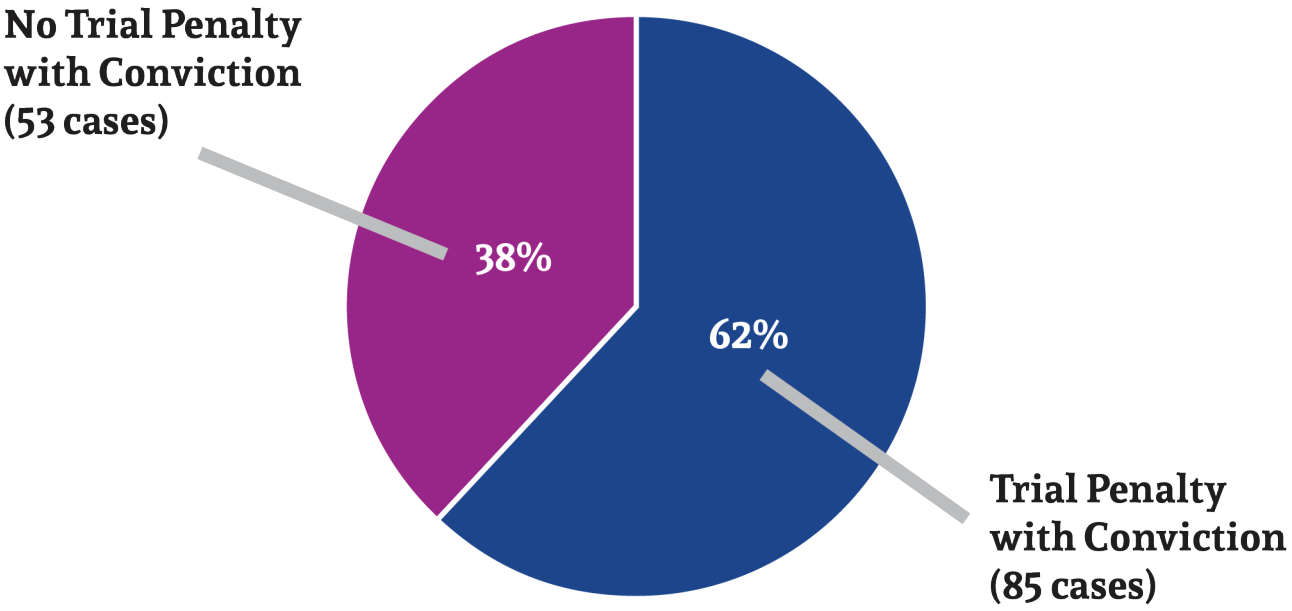


Figure 3: Trial Case Outcomes (n = 164)

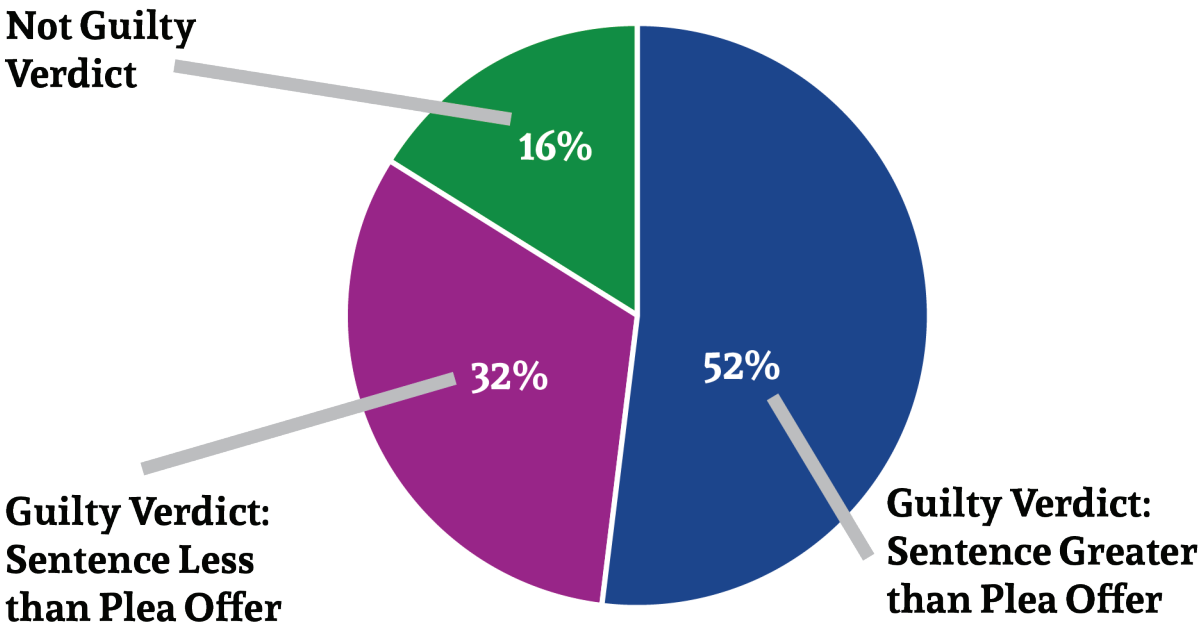


Table 3 presents the average sentence as a percentage of the best plea offer. For the 85 cases with a trial penalty that also resulted in a conviction, the average sentence as a percentage of the best offer made to the defendant was 159%. This indicates that the average sentence for a convicted defendant who received a trial penalty was 159% higher than the best plea offer. Moreover, for all 138 cases that resulted in a conviction, the average defendant received a sentence 87% greater than the best offer for these trial

cases. These findings highlight the degree of penalty experienced by defendants who received guilty verdicts at trial.

Regarding trial penalty scores for the 138 cases that resulted in a conviction, the average trial penalty for the 85 "penalty" cases was 14.6 years, with the maximum trial penalty score at 80 years and the minimum at less than one year (4 months). In the 53 cases with no trial penalty, the average sentence difference was calculated as — 3.2 years. The maximum negative sentence difference observed was — 25 years, while the minimum negative sentence score observed was 0 years (see Table 4). Subsequent sections will provide a further breakdown of these results.

Table 3: Average Sentence as a Percentage of Best Plea Offer for Cases with Convictions by Trial Penalty vs Combined[13]

	Trial Penalty Only	Trial Penalty & No Trial Penalty Combined
N=	85	138
Average Sentence as a Percentage of Plea Offer	159% higher than best plea offer	87% higher than best plea offer

Table 4: Descriptive Measures for Trial Cases Resulting in a Conviction With and Without a Trial Penalty (n=138)*

Trial Penalty Observed (n=85; 62%)		No Trial Penalty (n=53; 38%)	
Average Trial Penalty Score	14.6 Years	**Average Negative Sentence Score**	-3.2 Years
Maximum Trial Penalty Score	80 Years	**Maximum Negative Sentence Score**	-25 Years
Minimum Trial Penalty Score	4 Months	**Minimum Negative Sentence Score**	0 Years
Median Trial Penalty Score	9 Years	**Median Negative Sentence Score**	-1.75 Years

* Note: The 26 cases resulting in not-guilty verdicts were excluded. For the "80 years" case, the defendant was charged with two murder counts, and no charges were added after arraignment. The initial offer was 40 years, and the sentence was 120 years.

II. C: The Trial Penalty Across Demographics

Demographic information was reported by survey respondents. Regarding characteristics such as race/ethnicity, sex, and age, approximately 63% of defendants in all eligible trial cases (103 out of 163)[14] were non-White, and approximately 37% of defendants were White. Regarding a breakdown, as noted in Figure 4, 53% of all eligible trial cases involved Black defendants, 37% involved White defendants, nine percent were Hispanic/Latino, and one percent were Asian or Pacific Islander (See Figure 4). Moreover, the subset of cases where a trial penalty was evident reflected a similar trend. Fifty-four percent involved Black defendants, 38% were White, and eight percent were Hispanic or Latino (See Figure 5). Notably, 62% of all cases that resulted in a trial penalty involved non-White defendants, which was almost the same as the proportions for White versus non-White defendants in the overall sample of eligible trial cases.

Figure 4: Eligible Trial Cases by Race/Ethnicity (n=163)

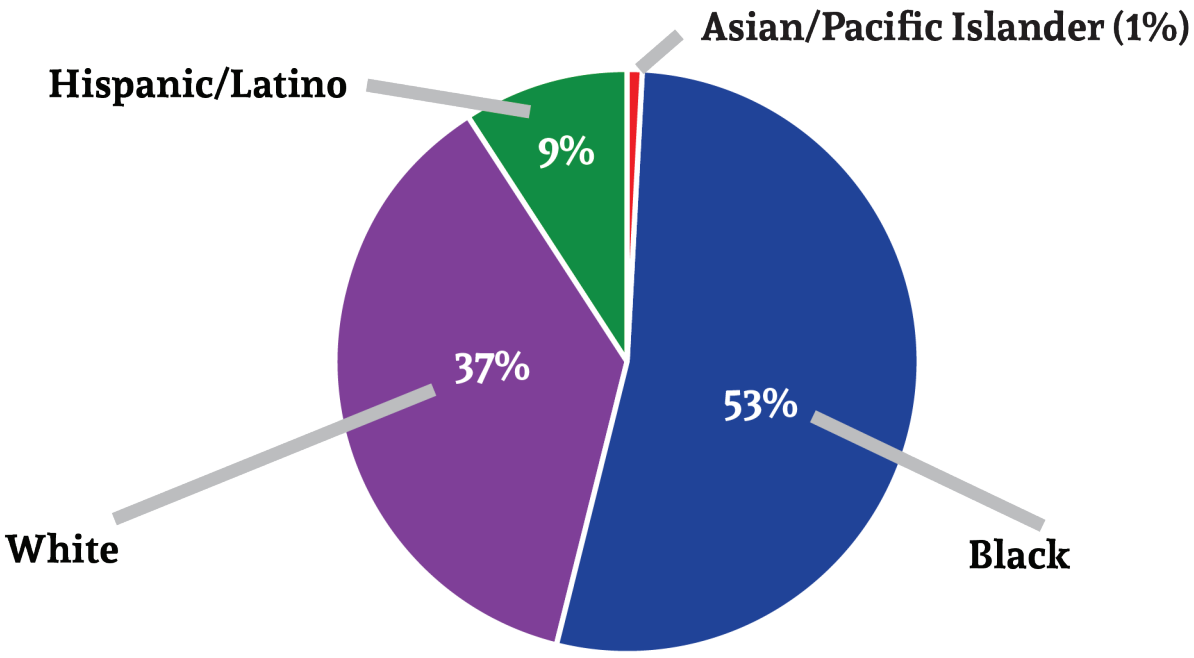
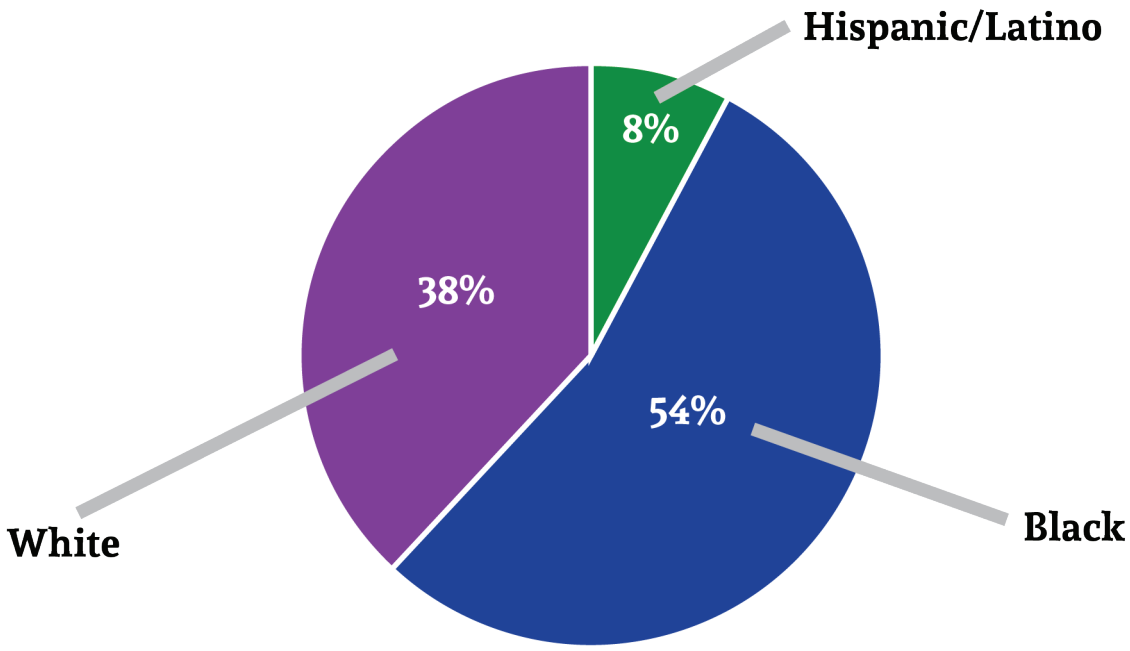


Figure 5: Trial Penalty Conviction Cases Only by Race/Ethnicity (n=85)



When comparing non-White defendants to White defendants, across the overall sample and the subset of "conviction cases" resulting in a trial penalty, there did not appear to be a disparate racial difference in the likelihood of cases resulting in a trial penalty. Table 5 compares cases with White defendants to cases with non-White defendants across trial-penalty and no-trial-penalty cases. Of the 60 White defendants within the sample of 163 eligible trial cases, 55% were involved in cases that resulted in a trial penalty while 45% were involved in cases with no trial penalty. Of the 103 non-White defendants in the sample of eligible cases, approximately half of them resulted in a trial penalty, and half of them did not. It should, therefore, be noted that while it is an ongoing concern that non-White defendants are overrepresented in trial cases (and prosecutions in general) relative to the overall population of the State, being non-White (Whether Black or Hispanic/Latino) did not result in an increased likelihood of a trial penalty in the sample of eligible cases. Furthermore, Table 6 presents the average sentence as a percentage of best plea offer by race of cases that resulted in convictions only. For White defendants, the percentage was 118%, and for non-White defendants, the result was 66%. This means that White defendants who were convicted, on average, received sentences that were 118% greater than the best plea offer, while non-White defendants received sentences that were 66% greater than the best plea offer.

Table 5: Trial Penalty by Race (n= 163)

	White		Non-White	
	N	%	N	%
Trial Penalty	33	55	52	50.5
No Trial Penalty	27	45	51	49.5
Total	**60**	**36.5**	**103**	**63.1**

Table 6: Average Sentence as a Percentage of Best Plea Offer by Race for Conviction Cases Only (n=138)

	White	Non-White
Average Sentence as a % of Plea Offer	118%	66%

Regarding sex/gender, out of the 164 eligible trial cases, 152 involved male defendants, and 12 involved female defendants. Of the 152 eligible cases involving male defendants, 80 (52.6%) resulted in a trial penalty, whereas 72 (47.4%) did not have a trial penalty. Regarding the 12 cases involving female defendants, five of them (41.6%) resulted in a trial penalty, and seven cases (58.4%) had no trial penalty (see Table 7).

Table 7: Trial Penalty by Sex/Gender (n = 164)

	Male		Female	
	N	%	N	%
Trial Penalty	80	52.6	5	41.6
No Trial Penalty	72	47.4	7	58.4
Total	**152**	**92.6**	**12**	**7.3**

The average age of defendants in cases resulting in a trial penalty was 45 years, 44 years for cases without a trial penalty, and 39 years for cases resulting in not-guilty verdicts. These findings were derived from a subset of 150 out of the 164 eligible cases, given that 14 cases lacked any data on the defendants' age. Still, more male

defendants received a trial penalty than their female counterparts — approximately 53% to 42%, respectively. It should be noted that the original dataset did not allow for a more sophisticated analysis of intersectionality across race, gender, and age and an assessment of whether these factors might have a compounding effect on case outcomes.

II. D: Trial Penalty by Jurisdiction

The cases were assessed by jurisdiction based on court codes matched with their corresponding geographical locations. Figure 6 presents cases with a trial penalty by jurisdiction, and Figure 7 shows cases without a trial penalty by jurisdiction. Bridgeport, Hartford, and New Haven were the jurisdictions reporting the highest cases with a trial penalty. Bridgeport, Hartford, and New Haven were also the three jurisdictions with the most cases without a trial penalty. These comparatively higher numbers likely reflect the volume of cases assigned/tried in these jurisdictions. Furthermore, there is not enough data on these cases, and the sample size was too small to determine whether there is a significant connection between the frequency of a trial penalty and the jurisdiction in which a case is tried.

Figure 6: Number of Cases with a Trial Penalty by Jurisdiction (n = 86)

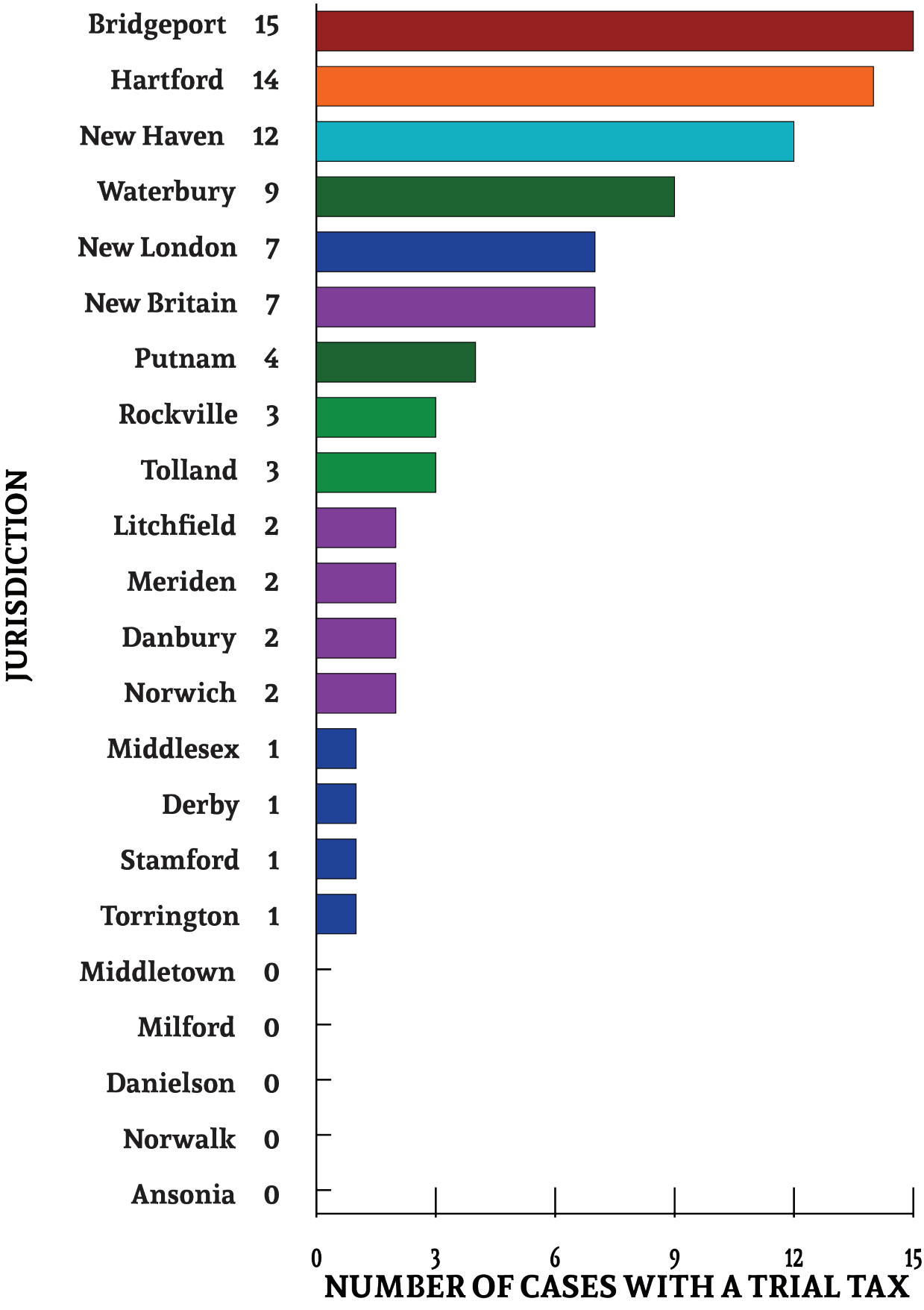
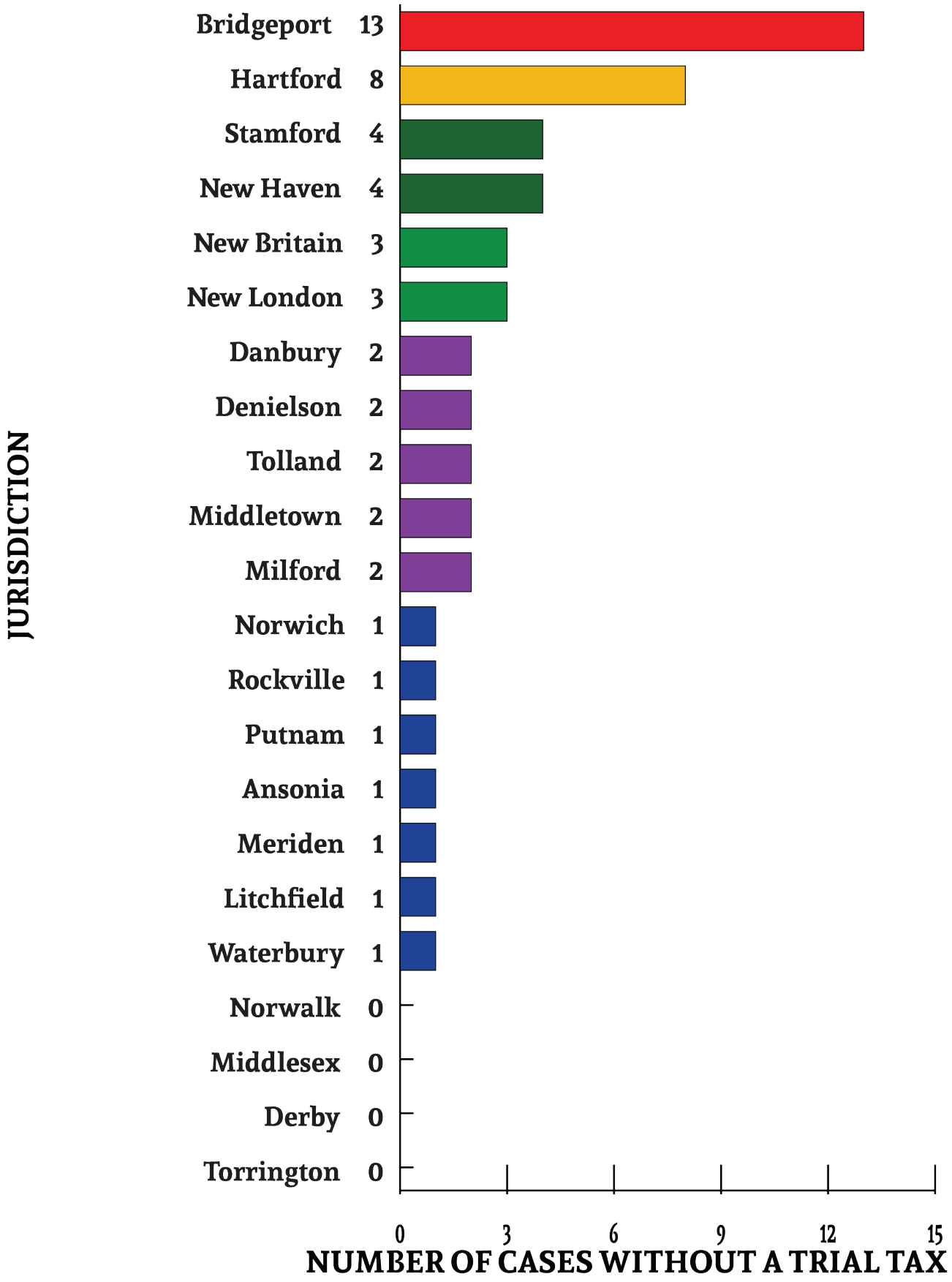


Figure 7: Number of Cases with No Trial Penalty by Jurisdiction (n=52)



II. E: The Likelihood of a Case Resulting in a Trial Penalty

All Eligible Trial Cases

As noted previously, the average trial penalty score for cases resulting in a penalty was 14.6 years (n=85). When including all cases in which no trial penalty was found, as well as cases that resulted in a not guilty verdict (which were recorded as "0 years"), the average difference between the best plea offer and final disposition was 6.5 years (see Table 8). The average plea offer for all eligible cases was 14 years, and the average sentence length for all eligible cases that went to trial was 18.1 years. The ratio of the average plea offer to the average sentence length was 1.3. Therefore, the average defendant was likely to receive a sentence at trial that was 1.3 times greater than the best plea offer received before the trial.

Trial Cases with Convictions

When only including cases that resulted in a conviction (n=138), the average trial penalty was 7.7 years. The average plea offer was 14.5 years, and the average sentence was 21.6 years. The ratio of the average plea offer to the average sentence length for cases resulting in a conviction was 1.5. Therefore, for trial cases that resulted in a conviction, the average sentence length was greater than the average plea offer by a factor of 1.5 (See Table 8).

Table 8: Average Scores by Plea Offer, Trial Penalty and Sentence Length

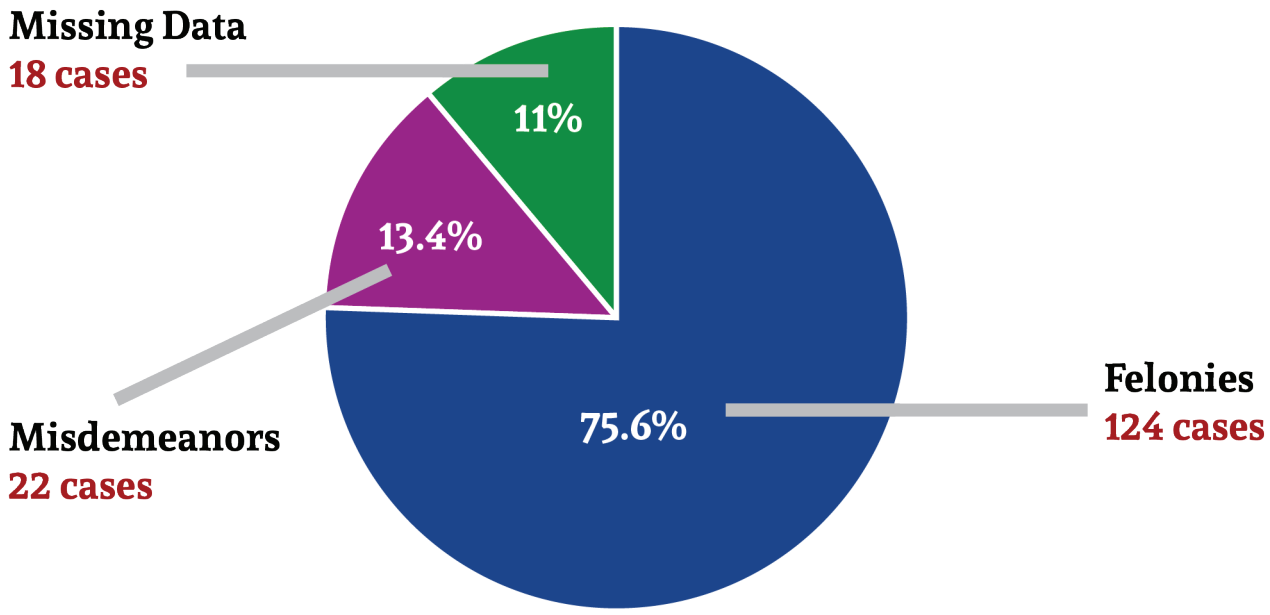
	Eligible Trial Cases (n = 164)	Cases Resulting in a Conviction (n = 138)
Average Difference Between Best Plea Offer and Sentence	6.5 years[15]	7.7 years
Average Plea Offer	14 years	14.5 years
Average Sentence Length on cases that went to trial	18.1 years	21.6 years
Ratio of Average Plea Offer to Average Sentence Length	1.3	1.5

II. F: The Trial Penalty and Crime Classifications

All Eligible Trial Cases

Eligible trial cases were assessed based on the classification of criminal offenses.[16] Figure 8 shows the breakdown of crime class by felony and misdemeanor classifications. The findings show that most of the eligible trial cases were felonies (approximately 76%, or 124 out of 164 cases), and misdemeanors represent a smaller share of cases (13%, or 22 cases). It is important to note that 11% of cases (18 out of 164) lacked sufficient data for classification.

Figure 8: Breakdown of Eligible Trial Cases by Felony and Misdemeanor (n=164)



Delving further into crime classifications, the research team assigned each eligible case to one of three levels closely related to the Connecticut Penal Code.[17]

Level 1: Misdemeanors with a determined sentence of one year or less

Level 2: Class C, D, and E Felonies

Level 3: Class A and B Felonies

Figure 9 shows the breakdown of cases by classification level. Level 3 offenses (Class A and B Felonies) accounted for roughly half of the cases (51%, or 84 out of 164), and Level 2 offenses (Class C, D, or E Felonies) comprised approximately 24% (24 cases). Level 1 offenses, misdemeanors, represented 13% (22 cases).

Figure 9: Breakdown of Eligible Cases by Crime Classifications (n=164)

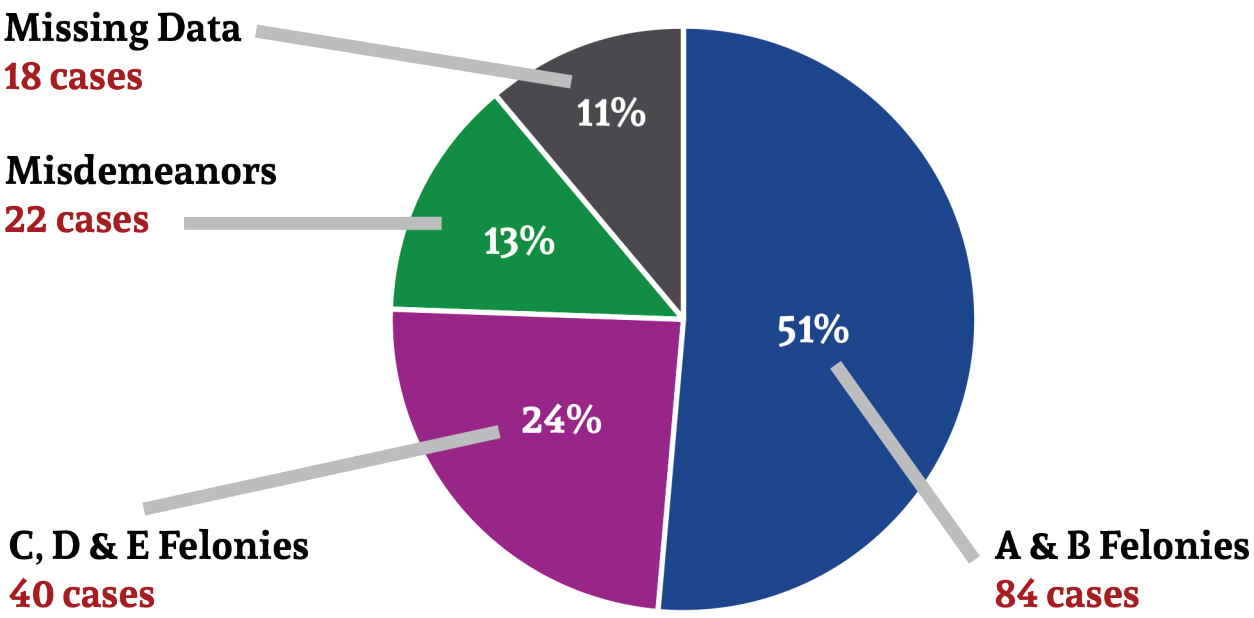


Figure 10 presents a breakdown of trial-penalty cases by felonies and misdemeanors, with felonies comprising the majority of cases with a trial penalty — 76% (65 out of 86). This was consistent with expectations based on the overall findings for eligible cases. The proportion of misdemeanor cases where a trial penalty was observed was 13% (11 cases), and missing data prevented classification for 12% of cases (10 out of 86). When assessing the trial penalty by crime classification, the findings were that class A and B felonies comprised a substantial portion of trial-penalty cases, with 59%, or 50 out of 86 cases. This was followed by class C, D, and E felonies with 17% (15 cases), whereas less serious offenses, primarily misdemeanors, represented nearly 13% (11 cases) of those experiencing a trial penalty. As observed previously, missing data hindered the ability to draw a complete picture of crime classifications and the trial penalty, with 12% of cases (10 out of 86) being unclassifiable (see Figure 11).

Figure 10: Conviction Cases with A Trial Penalty by Felony and Misdemeanor (n=85)

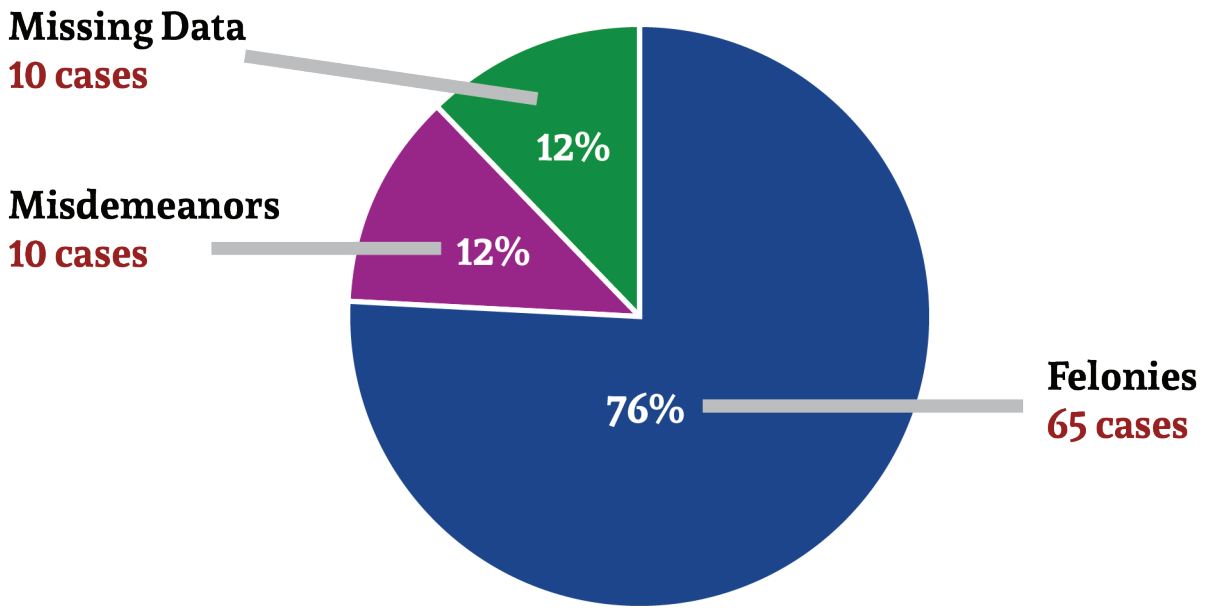


Figure 11: Conviction Cases with a Trial Penalty by Crime Classifications (n=85)

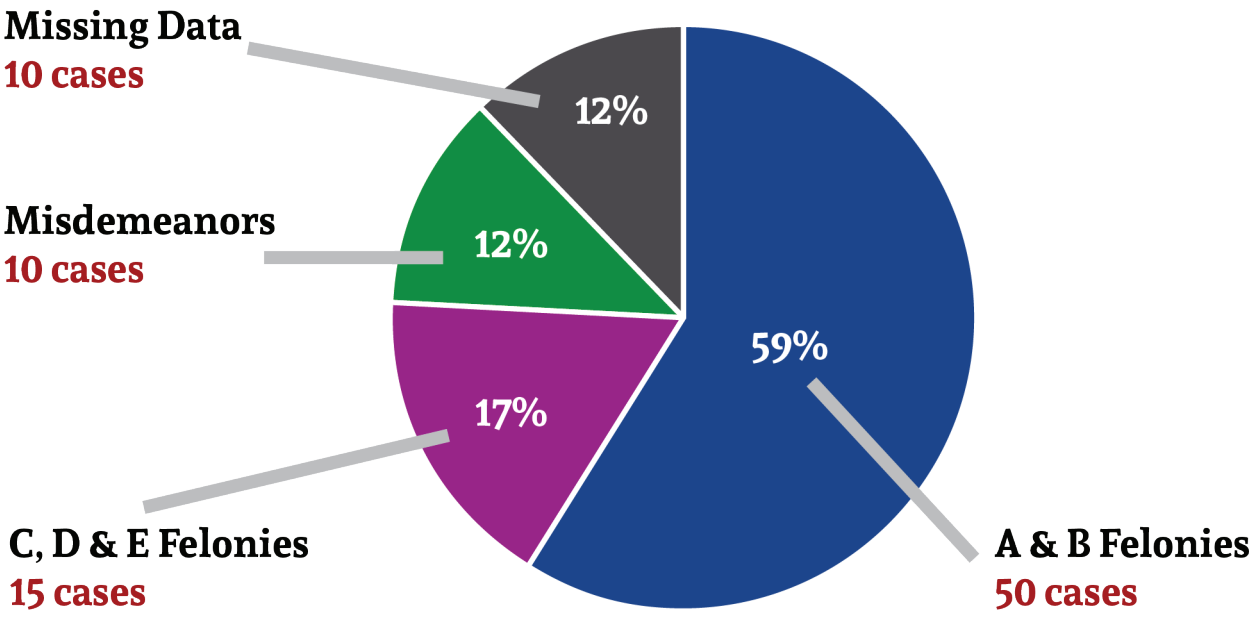


Table 9 highlights the potential link between crime classification and trial penalty outcomes. Among cases that resulted in convictions that also incurred trial penalties, those classified as Level 3 (A and B Felonies) received the harshest trial penalties with an average of 17.5 years and an average sentence as a percentage of best plea offer of 91%. Therefore, Level 3 defendants, on average, received a sentence that was

91% greater than the best plea offer. Cases classified as Level 2 received an average sentence of 5.9 years and an average sentence of 70% greater than the best plea offer, and misdemeanors resulted in an average trial penalty of 3.4 years and an average sentence of 74% greater than the best plea offer. These findings suggest that the more severe felony charges, which accounted for most cases with a trial penalty, resulted in the highest average penalty.[18]

Table 9: Crime Classifications, Average Trial Penalty, and Average Sentence as a Percentage of the Best Plea Offer (n=75)

Crime Classification Level	Number of Cases	%	Average Trial Penalty	Average Sentence as a % of Best Plea Offer
3	50	59	17.5 years	91
2	15	17	5.9 years	70
1	10	12	3.4 years	74

Data on offense type is missing for 10 cases. Therefore, we can only report on crime seriousness by trial penalty for 76 cases.

In addition, regarding race, it was noted earlier that of the 103 non-White defendants in the sample of eligible cases, approximately half of them resulted in a trial tax, and half of them did not, and being non-White (Whether Black or Hispanic/Latino) did not appear to result in an increased likelihood of a trial penalty in the sample of eligible cases. A breakdown of race for Level 3 cases revealed that 27 involved Black defendants, 19 involved White defendants, and 4 involved Hispanic/Latino defendants (see Table 10). While Black defendants comprised a majority of Level 3 trial-penalty cases, the average trial penalty for Black defendants was similar to the average trial penalty for cases involving White defendants (approximately 18 years). Furthermore, while the average trial penalty for Hispanic/Latino defendants charged with serious crimes was comparatively low, this subset of defendants is so small (4 individuals) that it would not be appropriate to draw general conclusions from these results.

Table 10: Breakdown of Level 3 Cases by Race (n=50)

	Number of Cases	%	Average Trial Penalty
Black	27	54	18.2 years
White	19	38	18.7 years
Hispanic/Latino	4	8	7.5 years

Trial Cases with Convictions

Figure 12 presents a breakdown of trial cases by crime classification level for cases with convictions only. Of the 138 cases resulting in convictions, 51% (70 cases) were Class A or B felonies, 22% (30 cases) were Class C, D, and E felonies, 14% (20 cases) were misdemeanors, and 13% (18 cases) were of unknown classification.

Figure 12: Trial Cases Resulting in Conviction by Crime Classification (n=138)

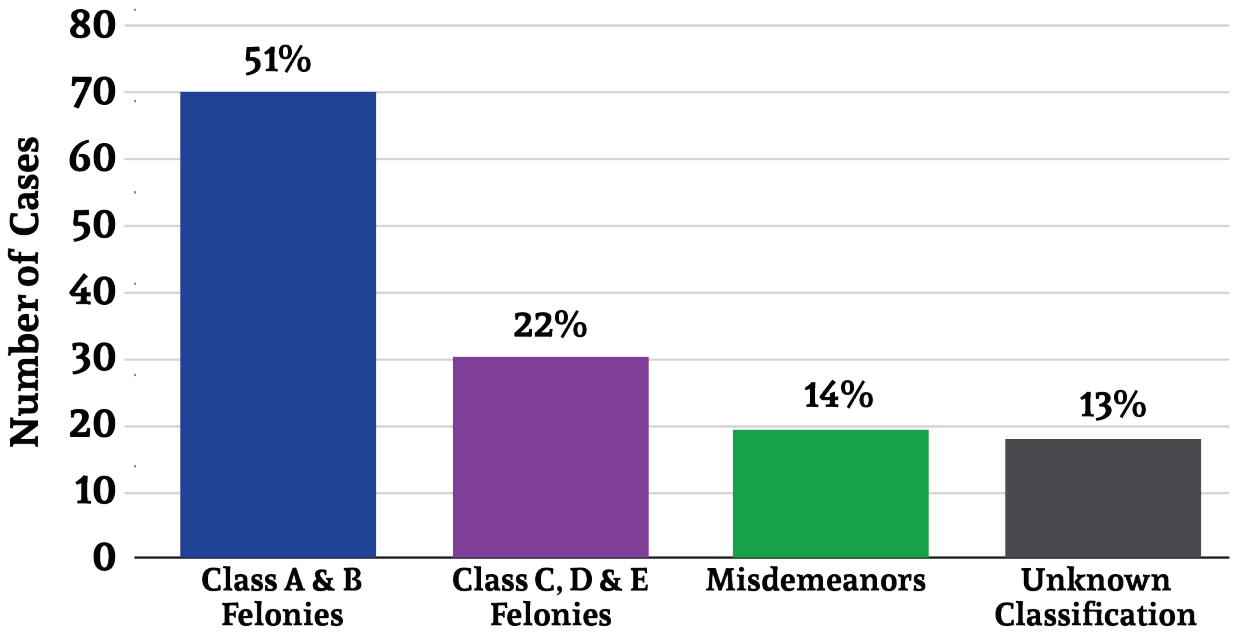
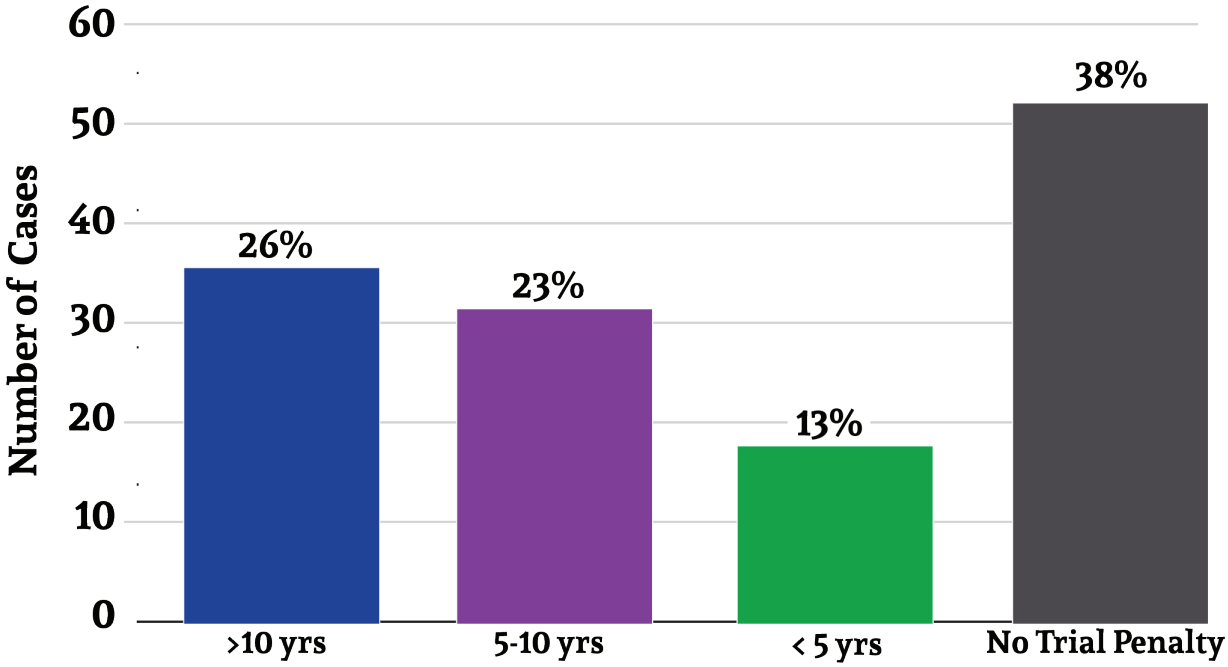


Figure 13 presents a breakdown of cases with convictions only by the severity of the trial penalty. As shown, 26% (36 cases) resulted in trial penalties that were greater than 10 years, 23% (32 cases) resulted in penalties ranging from 5 to 10 years, 13% (17 cases) resulted in penalties of less than 5 years, and 38% (53 cases) resulted in no trial penalties. Therefore, as stated earlier, 62% of trial cases resulting in conviction also resulted in trial penalties.

Figure 13: Trial Cases Resulting in Conviction by Trial Penalty Severity (n=138)



III. Summary of Findings

Based on these findings, the average defendant convicted at trial received a longer sentence than they would have received if they had accepted the best plea offer. While the findings suggest a trial disparity in these data, the findings should be interpreted cautiously, given the limitation of a small sample. Many trial cases submitted through the survey did not include sufficient information to be included in the analysis. This resulted in a sample that reflected 23% of all trial cases during the five-year study period. Due to the limited number of trial cases in the study, more robust analysis was not possible, and therefore, generalizations from the findings were made with caution.

Another limitation pertains to the demographic data collected. While a review of the literature suggests that trial penalties disproportionately impact low-income defendants, the survey does not collect information on defendants' income levels or other indicators of financial status. Additional characteristics such as education level or previous incarceration are also not reported.[19] Despite these limitations, this study's findings are worthy of consideration and should lead to constructive conversations on due process and criminal procedure.

The following are the main survey findings:

Trial Penalty Prevalence: A key finding was that 62% of cases resulting in a conviction also resulted in a trial penalty. Furthermore, 51% of the cases resulting in convictions were Class A or B felonies, 22% were Class C, D, and E felonies, and 14% were misdemeanors. Approximately half of eligible trial cases (52%) resulted in a trial penalty, 48% of eligible trial cases did not result in a trial penalty, and 16% resulted in a not guilty verdict. A high prevalence of trial-penalty cases suggests that defendants bear a noticeable risk of receiving a penalty for going to trial.

Trial Penalty Severity: Defendants who were convicted and received a disparately harsher sentence received an average sentence 159% greater than the best plea offer. Furthermore, trial-penalty cases reported an average trial tax of approximately 15 years. When considering all eligible trial cases (including those without a penalty and those resulting in not-guilty verdicts), the average disparity between the sentence offered in a plea bargain and the sentence a defendant received upon going to trial was approximately seven years. Therefore, even when including cases where no trial tax occurred, there were greater sentence lengths for the average defendant going to trial.

A further breakdown of cases resulting in a conviction revealed that defendants received sentences that were, on average, 1.5 times longer than the best plea offer received. In addition, 26% of cases with convictions also resulted in trial penalties greater than 10 years, 23% in penalties ranging from 5 to 10 years, and 13% in penalties less than 5 years.

Racial and Sex/Gender Differences: Non-White defendants, comprising mostly Black and Hispanic individuals, accounted for 62% of cases resulting in a trial penalty. In addition, more male defendants experienced a trial penalty (53%) compared to their female counterparts (42%).

Crime-Type and the Trial Penalty: Felony charges comprised a majority of conviction cases with trial penalties (76%) and Class "A" and "B" felonies comprised roughly half of all eligible trial cases (51%).

Trial Penalty and Crime Classifications: The sentences received by defendants convicted and "taxed" were greater than 10 years for 26% of trial cases. Among cases resulting in a trial penalty, those classified as class A and B felonies resulted in the largest penalties, averaging a trial tax of approximately 18 years. The results regarding crime type and classification suggest that individuals charged with more severe crimes accounted for most cases receiving trial penalties (59%). It is, therefore, a concern that defendants facing felony charges might have a greater incentive to accept plea offers given the higher stakes involved.[20]

IV. Recommendations

The following recommendations for future study are based on the findings and limitations of this project.

Increase the pool of eligible trial cases: It was noted that 474 of the 704 trial cases collected were not eligible for analysis due to a lack of case specification, insufficient information on the plea offers or case outcomes, or simply being too vague. Future research should aim to identify the causes of missing data and increase the sample size of eligible cases to improve the sample's representativeness. This would allow for more confident generalization to statewide trends.

Enhance demographic data collected: Enhancing data collection efforts to include demographic factors such as income levels, education, and prior incarceration history can provide a more nuanced understanding of how trial penalties impact different population segments. However, this might be difficult to obtain given the limitation of the survey approach used, which is based on the survey responses of public defenders, assigned counsel, and retained counsel. Despite the practical constraints in collecting such data, including data on income levels may allow researchers to assess the economic disparities that influence defendants' decisions to accept plea deals or proceed to trial. Low-income individuals, for example, may face financial constraints that limit their ability to afford legal representation or withstand the financial burden of a trial, potentially affecting their bargaining power in plea negotiations. In addition, understanding defendants' prior involvement with the criminal justice system is essential for contextualizing their experiences and assessing the impact of prior convictions on trial outcomes. Therefore, further research is needed to determine whether a person with a more extensive criminal history is more or less likely to go to trial and, if they do, to receive a trial penalty.[21]

Accurately capture charges after initial arrest/arraignment: Several defendants who were initially charged with misdemeanors or lower-level offenses appeared to be charged with other offenses after initial arrest or arraignment, which might have led to harsher dispositions. This was also an issue with cases involving felonies. In addition, the prevalence of up-charging and stacking of charges might also be an issue to consider. While there is no conclusive evidence of this in the current data, the possibility of prosecutors charging or threatening to charge defendants with more crimes to increase leverage or gain an advantage in the plea-bargaining process is worthy of further study.[22]

Enhance data collection methods: Administrative data on the length of time served in custody before the trial can be considered as part of the continuum of punishment experienced by some defendants. Access to such data, along with trial disparities, could lead to a broader understanding of the punitiveness of the overall process. Qualitative methods, such as interviews, focus groups, and case studies, can also provide a deeper understanding of the underlying mechanisms driving observed trial disparities and their impact on defendants within the criminal justice system. While this might be outside the scope of the trial penalty project, capturing the perspectives and experiences of defendants who decline plea offers can uncover the contextual factors shaping trial penalty outcomes and inform policy recommendations to promote fairness and due process. Additionally, including the perspectives of defense attorneys and other stakeholders in proximity to the process can help identify potential barriers to accessing justice and highlight opportunities to mitigate the adverse effects of trial penalties.

References

Bar-Gill, O., & Gazal-Ayal, O. (2006). Plea bargains only for the guilty. *Journal of Law and Economics 49*(1):353–364.

Biba, J. (2023). Stacked Against, Part Two: Charge stacking and plea bargains in North Carolina — what you need to know. *Carolina Public Press.*

Bowers, J. (2008) Punishing the innocent. *University of Pennsylvania Law Review 156*:1117–1179.

Connecticut Sentencing Commission (2017). Pretrial release and detention in Connecticut. Report to the Governor and the General Assembly. **https://ctsentencingcommission.org/wp-content/uploads/2018/04/Pretrial_Release_and_Detention_in_CT_2.14.2017.pdf**.

Dobbie, W., Goldin, J., & Yang, C. S. (2018). The effects of pretrial detention on conviction, future crime, and employment: Evidence from randomly assigned judges. *American Economic Review, 108*(2), 201-240. **https://www.aeaweb.org/articles?id=10.1257/aer.20161503**.

Earl, J. (2008). The process is the punishment: Thirty years later. *Law and Social Inquiry 33*(3), 735-778. **https://doi.org/10.1111/j.1747-4469.2008.00120.x**.

Feely, M. M. (1992). *The Process is the punishment: Handling cases in a lower criminal court*. Russell Sage Foundation.

Grunwald, B. (2021). Distinguishing plea discounts and trial penalties. *Georgia State University Law Review, 37*(2), Article 4. **https://readingroom.law.gsu.edu/gsulr/vol37/iss2/4**.

Human Rights Watch (2017). Not in it for justice. How California's pretrial detention and bail system unfairly punishes poor people. **https://www.hrw.org/report/2017/04/11/not-it-justice/how-californias-pretrial-detention-and-bail-system-unfairly**.

Johnson, B. D. (2019). Trials and tribulations: The trial tax and the process of punishment. *Crime and Justice, 48*(1), 313-363.

Kim, A. C. (2015). The trial penalty in federal criminal cases. *Law & Society Review, 49*(3), 647-680.

McCoy, C. (2005). Plea bargaining as coercion: The trial penalty and plea-bargaining reform. *The Criminal Law Quarterly 50*, 67-107. **https://heinonline.org/HOL/Page?handle=hein.journals/clwqrty50&div=9&g_sent=1&casa_token=&collection=journals**.

National Association of Criminal Defense Lawyers (2018) The Trial Penalty: The Sixth Amendment right to trial on the verge of extinction and how to save it. **https://www.nacdl.org/Document/TrialPenaltySixthAmendmentRighttoTrialNearExtinct**.

New York State Association of Criminal Defense Lawyers (NYSACDL) & National Association of Criminal Defense Lawyers (NACDL) (2021). The New York State Trial Penalty: The constitutional right to trial under attack. **https://nysacdl.org/page/NYTrialPenalty21**.

Orlando, J. (2022). Connecticut penal code — Updated and Revised. Office of Legislative Research: Objective research for Connecticut's legislature. **https://www.cga.ct.gov/2022/rpt/pdf/2022-R-0068.pdf**.

Rakoff, J. S. (2014). Why Innocent People Plead Guilty. *The New York Review*. **https://www.nybooks.com/articles/2014/11/20/why-innocent-people-plead-guilty/**.

Revello, K. (2023). A right deferred: Is plea bargaining caising a 6th amendment crisis? *Connecticut Insider*. **https://insideinvestigator.org/a-right-deferred-is-plea-bargaining-causing-a-6th-amendment-crisis/**.

Roberts, J. V. (1997). The role of criminal record in the sentencing process. *Crime and Justice, 22*, 303–362. **http://www.jstor.org/stable/1147576**.

Robreno, A. (2021). The trial penalty: A punishment for exercising your 6th Amendment rights? *Wake Forest Law Review*. **https://www.wakeforestlawreview.com/2023/07/the-trial-penalty-a-punishment-for-exercising-your-6th-amendment-rights/**.

State of Connecticut, Judicial Branch Statistics (2023). Judicial District Criminal. Criminal/motor vehicle cases. **https://jud.ct.gov/statistics/criminal/Crim_JD_2023.pdf**.

Stauffer, E. (2021). Plea bargains: Justice for the wealthy and fear for the innocent. *Brigham Young University Prelaw Review 4*(35), 167-192.

Stinneford, J. F. (2015). Dividing crime, multiplying punishments. *UC Davis Law Review, 48*, 1955. Retrieved from **https://scholarship.law.ufl.edu/facultypub/734/**.

Yun, S., & Bushway, S. D. (2018). Plea discounts or trial penalties? Making sense of the trial-plea sentence disparities. *Justice Quarterly, 35*(7), 1226-1249.

Viano, E. C. (2012). Plea bargaining in the United States: A perversion of justice. *Revue Internationale de Droit Pénal 1*(83). **https://www.cairn.info/revue-internationale-de-droit-penal-2012-1-page-109.htm**.

Appendix A: Case Survey

Connecticut Trial Penalty Project 2021 Case Survey

Purpose: The "trial penalty," or "trial tax," describes the imposition of higher criminal penalties attributable to an accused person's exercise of the Sixth Amendment right to trial. In 2020, OCPD and its Trial Tax Working Group initiated the Connecticut Trial Penalty Project to illuminate (and ultimately address) any trial penalty in Connecticut. Within the broader scope of the Project, this survey is designed to enable analysis through the collection of case-level data on criminal court matters.

Instructions: For the period of July 2015 through June 2020, please report on matters in which disposition occurred after the judicial pretrial stage (i.e., at or after firm jury). Please submit a separate Excel document for each case. Submissions are requested by September 10, 2021. Direct questions and submissions to **Benedict.Daigle@pds.ct.gov**. Thank you for contributing to this effort.

Date submitted (*##/##/####*): _____

Submitted by *(attorney last to represent the accused individual in the Superior Court)*:

Name: _____

Office / Firm: _____

Email: _____

Phone (*#s only*): _____

Case & Charges

Jurisdiction (*Note GA # or JD name*): _____

Docket No. (X##X-CR##-#######-S): _____

Juvenile transfer to adult: _____

Charges, by stage (*statute number and common name; leave blank after "Arraignment" except to note changes*)

Arraignment: _____

Regular docket: _____

Judicial pretrial: _____

Firm jury: _____

Voir dire: _____

Trial: _____

At disposition (*final*):_____

Defendant

Please complete demographic fields to the best of your ability. OCPD appreciates that some categories may be obsolete and/or inaccurate; fields herein are aligned with other systems to enable analysis.

Name: _____

Date of birth (*xx/xx/xxxx*):_____

Race:_____

Ethnicity:_____

Gender:_____

Incarceration status:_____

Other pending docket(s):_____

Docket:

Actors / Stakeholders

Note: OCPD will gather and analyze other data, including race and ethnicity, based on full names in this section.

Arraignment

Name of counsel_____

Type of counsel:_____

Name of judge:_____

Name of prosecutor: _____

Regular docket *(Here and below, report only if information changes from the previous stage.)*

Name of counsel:_____

Type of counsel:_____

Name of judge:_____

Name of prosecutor: _____

Judicial pretrial

Name of counsel:_____

Type of counsel:_____

Name of judge:_____

Name of prosecutor: _____

Firm jury

Name of counsel: _____

Type of counsel: _____

Name of judge: _____

Name of prosecutor: _____

Trial (*incl. voir dire*)

Name of counsel: _____

Type of counsel: _____

Name of judge: _____

Name of prosecutor: _____

Victim (*Report on the victim/family/entity that had the greatest involvement or impact, in your view.*)

Deceased: _____

Age (*at time of incident*): _____ years old

Race: _____

Ethnicity: _____

Gender: _____

Vic./family involvement: _____

Docket:

Offers & Sentences

Best State offer (*charges, penalties*): _____

Name of prosecutor: _____

Stage of offer: _____

Best judicial pretrial offer (*if any*): _____

Name of judge: _____

Disposition/Sentence:

Stage of disposition: _____

Name of prosecutor: _____

Name of judge: _____

Notes & Context

Include any further details (*e.g., nature of victim involvement*) that help to explain the process and disposition.

End of the Report of the Institute for Municipal and Regional Policy

Endnotes

1. See Earl, J. (2008). The process is the punishment: Thirty years later. *Law and Social Inquiry 33*(3), 735-778. **https://doi.org/10.1111/j.1747-4469.2008.00120.x**; Feely, M. M. (1992). The Process is the punishment: Handling cases in a lower criminal court. Russell Sage Foundation.

2. The NACDL (2018) report adopts this definition of the trial penalty (See: The Trial Penalty: The Sixth Amendment Right to Trial on the Verge of Extinction and How to Save It. **https://www.nacdl.org/Document/TrialPenaltySixthAmendmentRighttoTrialNearExtinct**). While Yun & Bushway (2018) prefers the term "trial disparity," to highlight trial-plea disparities, the study also acknowledges that "trial penalty" is often used to describe the difference between the plea deal and the sentence outcome. See the article: Yun, S., & Bushway, S. D. (2018). Plea discounts or trial penalties? Making sense of the trial-plea sentence disparities. *Justice Quarterly, 35*(7), 1226-1249. **https://www.tandfonline.com/doi/abs/10.1080/07418825.2018.1552715**).

3. Grunwald, B. (2021). Distinguishing plea discounts and trial penalties. *Georgia State University Law Review, 37*(2), Article 4. **https://readingroom.law.gsu.edu/gsulr/vol37/iss2/4**; Johnson, B. D. (2019). Trials and tribulations: The trial tax and the process of punishment. *Crime and Justice, 48*(1), 313-363.

4. Kim, A. C. (2015). The trial penalty in federal criminal cases. *Law & Society Review, 49*(3), 647-680; New York State Association of Criminal Defense Lawyers (NYSACDL) & National Association of Criminal Defense Lawyers (NACDL), (2021). The New York State Trial Penalty: The constitutional right to trial under attack. **https://nysacdl.org/page/NYTrialPenalty21**, 2021; Robreno, A. (2021, July 21). The Trial Penalty: A Punishment for Exercising Your 6th Amendment Rights? *Wake Forest Law Review*. **https://www.wakeforestlawreview.com/2023/07/the-trial-penalty-a-punishment-for-exercising-your-6th-amendment-rights/**.

5. Stauffer, E. (2021). Plea bargains: Justice for the wealthy and fear for the innocent. *Brigham Young University Prelaw Review 4*(35), 167-192.

6. Revello, K. (2023). A right deferred: Is plea bargaining causing a 6th amendment crisis? *Connecticut Insider.* **https://insideinvestigator.org/a-right-deferred-is-plea-bargaining-causing-a-6th-amendment-crisis/**; State of Connecticut, Judicial Branch Statistics (2023). Judicial District Criminal. Criminal/motor vehicle cases. **https://jud.ct.gov/statistics/criminal/Crim_JD_2023.pdf**.

7. Bar-Gill, O., and Gazal-Ayal, O. (2006). Plea bargains only for the guilty. *Journal of Law and Economics 49*:353–364; Bowers, J. (2008). Punishing the innocent. *University of Pennsylvania Law Review 156*:1117–1179.

8. Viano, E. C. (2012). Plea bargaining in the United States: A perversion of justice. *Revue Internationale de Droit Pénal 1*(83). **https://www.cairn.info/revue-internationale-de-droit-penal-2012-1-page-109.htm**.

9. Human Rights Watch (2017). Not in it for Justice. How California's Pretrial Detention and Bail System Unfairly Punishes Poor People. **https://www.hrw.org/report/2017/04/11/not-it-justice/how-californias-pretrial-detention-and-bail-system-unfairly**; McCoy, C. (2005). Plea bargaining as coercion: The trial penalty and plea-bargaining reform. *The Criminal Law Quarterly 50*, 67-107. **https://heinonline.org/HOL/Page?handle=hein.journals/clwqrty50&div=9&g_sent=1&casa_token=&collection=journals**; Rakoff, J. S. (2014). Why Innocent People Plead Guilty. *The New York Review*. **https://www.nybooks.com/articles/2014/11/20/why-innocent-people-plead-guilty/**.

10. The following report discusses the negative impacts of the pretrial process on defendants highlighting its potential impact on those who struggle to post their bonds: Connecticut Sentencing Commission (2017). Pretrial release and detention in Connecticut. Report to the Governor and the General Assembly. **https://ctsentencingcommission.org/wp-content/uploads/2018/04/Pretrial_Release_and_Detention_in_CT_2.14.2017.pdf**. Prior research on the impact of pretrial detention on future outcomes in other jurisdictions (Philadelphia County and Miami-Dade County) also supports similar conclusions: Dobbie, W., Goldin, J., & Yang, C. S. (2018). The effects of pretrial detention on conviction, future crime, and employment: Evidence from randomly assigned judges. *American Economic Review, 108*(2), 201-240. **https://www.aeaweb.org/articles?id=10.1257/aer.20161503**.

11. See Stauffer (2021).

12. The survey was conducted with public defenders, assigned counsel, and private counsel in order to collect data reflecting a wide range of trials involving defendants of diverse background and socioeconomic status.

13. The percentages in Table 3 reflect the following: (i) Defendants with a trial penalty on average received a sentence that was 159% higher than the best plea offer; and (ii) defendants in general received an average sentence 87% higher than the best plea offer.

14. Data on race was missing for one of the defendants in the 164 eligible cases.

15. There were 4 trial cases in which there appeared to be either an acquittal or dismissal of the top charge, which is the charge that the documented plea offer was based on. In this context, if the defendant was only convicted of the lesser offense(s) this could explain why the trial sentences appeared to be lower than the offers. When these 4 cases were excluded from the analysis (n=160) the average difference between plea offer and sentence increased from 6.5 years to 6.9 years. The average plea offer decreased from 14 to 13.8 years. The average sentence length increased from 18.1 to 18.3 years, and the ratio of average plea offer to average sentence length remained the same at 1.3.

16. Note: The crime classifications used in this analysis were the charges carrying the greatest sentence. Multiple charges were not incorporated into the analysis.

17. Orlando, J. (2022). Connecticticut penal code — Updated and Revised. Office of Legislative Research: Objective research for Connecticut's legislature. **https://www.cga.ct.gov/2022/rpt/pdf/2022-R-0068.pdf**.

18. Misdemeanor cases were classified as Level 1, and it was noted in the revised Connecticut Penal Code that misdemeanors comprised sentences of one year or less. However, several of the defendants in Level 1 cases who were initially charged with misdemeanors appeared to be charged with other offenses after initial arrest based on the descriptions of the outcomes. Some of the descriptions did not specify offenses by class. This explains why some Level 1 cases comprised dispositions that exceeded one year.

19. It should be noted that these demographic data were submitted by public defenders, assigned counsel and private counsel. Therefore, there may not have been consistency in reporting across participants, and an internal validity check could not be conducted to determine consistency in reporting.

20. In addition, defendants facing lower-level charges could be more likely to accept plea offers because the process itself might be viewed as the penalty (See Earl, 2008). Due to an assessment of risks and rewards, it might seem prudent for some defendants who face lower-level charges to "plead out" and move on with their lives. It is noteworthy that due to how the trial penalty is defined in this analysis, and the limitations of these data, the researchers were unable to confirm this conclusively. Furthermore, as noted previously, the trial penalty in this study is limited to the disparity between the plea bargain and the final sentence. Defendants' concerns regarding the likelihood of a conviction and the perceived challenges of the legal process are not incorporated into the definition.

21. See Roberts, J. V. (1997). The role of criminal record in the sentencing process. *Crime and Justice, 22*, 303–362. **http://www.jstor.org/stable/1147576**.

22. Biba, J. (2023). Stacked Against, Part Two: Charge stacking and plea bargains in North Carolina — what you need to know. *Carolina Public Press.* **https://carolinapublicpress.org/60265/stacked-against-part-two-charge-stacking-and-plea-bargains-in-north-carolina-what-you-need-to-know/**; Also see: Stinneford, J. F. (2015). Dividing crime, multiplying punishments. *UC Davis Law Review, 48*, 1955. Retrieved from **https://scholarship.law.ufl.edu/facultypub/734/**.

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