

Plea bargaining and racial injustice

Racial disparities are entrenched in many stages of the criminal legal system; from arrests and charges, to convictions and sentencing. Plea bargaining is no exception. Racial discrimination taints the process from discriminatory policing, to the disparate impact of aggravating factors and mandatory minimums.

- White defendants facing misdemeanor charges were 74% more likely than Black defendants to have their charges dropped, dismissed or reduced.
- White defendants facing initial felony charges were 15% more likely than Black defendants to have their charges dropped to a misdemeanor.

How does plea bargaining fuel racial injustice?

Compared to white people, Black people in the United States receive:

- more stringent policing;
- harsher charges;
- worse plea offers by prosecutors;
- worse representation by defense counsel in plea negotiations.

Other factors, like the disparate impact of certain laws on Black communities also contribute to worse outcomes. Defense lawyers have reported that their Black clients may also be pleading guilty more often, or on worse terms because they do not trust that judges and juries will judge them fairly.

Plea bargaining occurs behind doors without much public scrutiny, so the racial injustice inherent in the process goes unchecked. Racial bias from prosecutors is not confronted by a public jury. Racial bias by police is also hidden: defendants can't question a police officer's biased conduct via a 4th or 5th amendment challenge which is available to them during trial. They can't conduct investigations into personnel files which could uncover a history of bias towards other defendants of color.

How would plea bargaining reform contribute to reforming racial injustice?

Conducting fewer guilty pleas and more trials is not a solution for ending racism in the criminal legal system. But plea bargaining makes it easier to hide racial bias. We need more scrutiny of public actors in the system, not less. Demographically informed data collection, full disclosure of evidence including that which might demonstrate bias on the part of police, jury reform, and reforms to criminal and sentencing laws that disproportionately impact Black defendants are all essential elements of a comprehensive and anti-racist approach to plea bargaining.

Learn more: www.fairtrials.org/plea-bargaining

Watch: [Plea bargaining and racial injustice](#), [Plea bargaining and mass incarceration](#), and [Plea bargaining and police oversight](#)