

# **Bias Crimes 2012-2022 Case Processing: A Pre-Post Evaluation of Senate Bill 577 (2019)**

May 10, 2024

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## **Oregon Criminal Justice Commission**

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Executive Director

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The mission of the Oregon Criminal Justice Commission is to improve the legitimacy, efficiency, and effectiveness of state and local criminal justice systems

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## Executive Summary

During the 2019 legislative session, the legislature passed, and the Governor signed [Senate Bill 577](#). Section 5 of the bill created a collection process for data on the prosecution of bias crimes, and requires the Criminal Justice Commission (CJC) to analyze these data to identify gaps or weaknesses in the investigation, presentation, prosecution and sanctioning of crimes motivated by bias. This study pools the county District Attorney (DA) data submitted per SB 577 and [ORS 137.676](#), with data from the Oregon State Police (OSP) and Oregon Judicial Department (OJD) to conduct a pre-post evaluation of SB 577 on bias crime prosecutions. The pre-SB 577 group covers all defendants with a bias crime court case or arrest between January 1, 2012 and July 14, 2019, while the post-SB 577 group covers all defendants with a bias crime court case or arrest between July 15, 2019 and December 31, 2022.<sup>1</sup>

### **Key Findings**

One thousand and nine bias crime cases were identified for the 11-year study period. This number excludes cases deemed *unfounded* by law enforcement (LE)<sup>2</sup> and thus not referred to the deputy district attorney (DDA) for review for criminal charges, but includes fingerprintable arrests that were *no filed*, i.e., bias crime arrests for which no charges were filed by the prosecutor. A case with at least one conviction charge – guilty plea, jury or bench conviction, or no contest plea – was classified as a *conviction*, which was further divided into *bias* and *non-bias* convictions. Sentences and probation conditions were compared for bias conviction and non-bias conviction in the pre- and post-SB 577 periods to determine if conviction charge influenced sentence lengths and probation conditions, and thereafter compared for the pre-post periods to determine the effect of SB 577 on bias crime prosecution.

- Eighty percent of filed cases in the pre- and 78.5% in the post-SB 577 group were disposed with a conviction on either a bias or non-bias charge; convictions in the post-SB 577 group are expected to increase as open cases (14.8%) are disposed (see [Figure 4](#)).
- Slightly over half of defendants sentenced to probation on any conviction charge pre-SB 577 had at least one complex need – identified via post-conviction court mandated substance abuse, mental health or anger management treatment, or houseless status – which increased to 6 in 10 post-SB 577 (see [Table 14](#)).
- There were no differences in sentencing for bias vs non-bias convictions, aside from the higher use of jail for bias convictions: 67.4% of defendants convicted on a bias vs 44.8% convicted on a non-bias charge in the pre-SB 577 group were sentenced to any jail time, while 54.8% of defendants convicted on a bias vs 41.1% convicted on a non-bias charge in the post-SB 577 group were sentenced to any jail time (see [Table 9](#)).
- In the absence of formal bias crime treatment and restorative justice (RJ) programs, Clackamas, Multnomah, Wasco and Washington counties are assigning online courses and books/essays to improve defendants’ cultural awareness; community service in culturally appropriate community based organizations (CBOs); and RJ dialogue at the community level. Due to the lack of data on deferred sentences in the OJD Odyssey database, it is possible that these strategies are more prevalent than found in this study, and some creative RJ and sensitivity trainings were not identified.
- Insufficient evidence, victim issue,<sup>3</sup> and defendant (in)ability to aid and assist were the most frequently cited reasons bias charges were no filed/no complaint, removed from the charging instrument, or dismissed – in the rare instance when details are provided in Odyssey (see [Table 7](#)). The county DA data is crucial to close this knowledge gap and identify challenges faced by DDAs

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<sup>1</sup> Arrests that did not result in a court case were classified based on the arrest date. Non-fingerprintable arrests in NIBRS were not linkable to the current data.

<sup>2</sup> Unfounded reports are those determined by LE as not meeting the elements of a bias crime, i.e. baseless reports.

<sup>3</sup> Includes victims who are difficult to locate, hesitant to appear for meetings and hearings, unwilling to participate in the investigation and justice process, uncooperative or perceived as not credible.

when prosecuting bias crimes. Supplemental data from the Multnomah County District Attorney's Office (MCDA) indicate that aid and assist concerns were confirmed (22.5%) or suspected (29.8%) in over half of bias crime referrals between 2020 and 2022 (see Table A8 in the [Appendix](#)).

- Some DDAs communicate justifications for no filing, filing/issuing a case as non-bias, plea bargaining, and deferred sentences to the referring officer, but this is not a consistent practice. Community members who share identity with the victim and who research shows are similarly psychologically harmed when a community member is targeted, have no right to be informed of these decisions and occurrences.<sup>4</sup>

## Recommendations

This report focuses on the prosecution and sanctioning of bias crimes, which is a necessary first step to formulate research design(s)<sup>5</sup> to identify gaps in the investigation and presentation of bias crimes. When bias convictions, global plea agreements, and non-bias convictions' probation conditions are considered, it shows that the criminal justice system contains more accountability than is apparent when one queries a single criminal justice system data point. While accountability is a good start, CJC recommends:

- Continuation of the current probation practice of utilizing a 4<sup>th</sup> generation risk assessment instrument with integrated case management (e.g., [LS/CMI](#)), mandating programming recommended by the assessment, and treating housing insecurity to reduce reoffending.
- The DA, victim advocates at the DA office, or victim advocates at LEAs typically attempt to inform victims of case outcomes, but communication may be stymied due to justice system capacity, language barriers, time constraints, and other barriers. To improve future bias crime reporting and procedural justice, victims should be informed of which charges were filed, justifications for no filed decisions, their rights to participate in plea bargaining negotiations, case outcomes including probation conditions, and other efforts to hold the defendant accountable.
- Additional, rigorous research that utilizes administrative criminal justice, victim services, prosecutors, law enforcement, and community perspectives is required to determine the extent of bias crime and non-criminal bias incidents, barriers to reporting, and resources service providers and the justice system require to ensure defendant accountability and meet the needs of victims and affected communities. Academics, policy researchers and graduate students can help fill these knowledge gaps with qualitative and mixed-methods studies. Interested researchers should contact the CJC.<sup>6</sup>

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<sup>4</sup> *Note*, research on procedural justice generally focuses on defendants' perception of the fairness of their case outcome. Media accounts specific to bias crime victims in Oregon indicate inconsistent communication of case have adverse effects on victims. See: Green, A. (2023, October 15). In Oregon, making racist threats, threatening harm aren't always hate crimes under state's loose laws. *The Oregonian*.

<https://www.oregonlive.com/news/2023/10/making-racist-threats-threatening-harm-arent-always-hate-crimes-under-oregons-loose-laws.html>; and Green, A (2023, December 29). The standard sentence for most hate crimes in Oregon? Probation, not jail time. *The Oregonian*. <https://www.oregonlive.com/crime/2023/12/the-standard-sentence-for-most-hate-crimes-in-oregon-probation-not-jail-time.html>.

<sup>5</sup> Because no other state or similar jurisdiction has legislation as data-driven or victim-centered as SB 577, there is no existing body of research to draw from to generate research questions. Evaluation questions and study designs will be modified appropriately after each yearly and/or supplemental report.

<sup>6</sup> <https://www.oregon.gov/cjc/about/Pages/Contact.aspx>.

## Introduction

This report utilizes case level defendant data from the county District Attorney (DA) offices,<sup>7</sup> the Oregon Judicial Department (OJD), and Law Enforcement Data Systems (LEDS) from the Oregon State Police (OSP) to compare changes in the prosecution and sanctioning of bias crimes pre- and post-implementation of [Senate Bill 577](#) (2019).<sup>8</sup> The pre-SB 577 group contains defendants with a bias crime court case or fingerprintable arrest<sup>9</sup> between January 1, 2012 and July 14, 2019, while the post-SB 577 group contains defendants with a bias crime court case or fingerprintable arrest between July 15, 2019 and December 31, 2022. This study is a necessary first step to design further studies to identify gaps in the investigation<sup>10</sup> and presentation of bias crimes,<sup>11</sup> per SB 577 Section 5(2)(a)-(e). Evaluation questions and study designs will be modified appropriately after each yearly and supplemental report.

SB 577 Section 5(2)(a)-(e) requires the Criminal Justice Commission (CJC) analyze the following data collected by Oregon county DA offices, in which the defendant was motivated in whole or in part by bias: (a) charges presented to the district attorney for prosecution; (b) cases issued (i.e., filed) by the district attorney; (c) charges indicted; (d) sentencing enhancements requested; (e) sentences imposed, including conditions of supervision; (f) charges to which a defendant enters a guilty or no contest plea; and (g) trial outcomes. Subsections (2)(b) and (c) were analyzed in concert: cases with at least one felony charge are indicted; we use the broader classification *filed*, whereby the district attorney files at least one misdemeanor or felony charge. County DA offices were unable to reliably track sentencing enhancements pre-SB 577, and therefore no analysis was conducted on section 5(2)(d). Regarding subsections (2)(f) and (g), this report takes a comprehensive approach to *accountability*: cases with at least one conviction – guilty plea or no contest plea, jury or bench conviction – were classified as *convictions*. Convictions were further subdivided into cases with a conviction on at least one bias charge, termed *bias convictions*, and those with a conviction on at least one non-bias charge, termed *non-bias convictions*. Sanctions for deferred/civil compromise/diverted cases were analyzed, when available, as these represent efforts to achieve accountability and reduce future offending via mental health/addictions treatment or restorative practices. (For a discussion on restorative practices, see [Bias/Sensitivity Rehabilitation and Community-level Restoration](#).)

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<sup>7</sup> In addition to submitting data on post-SB 577 bias crime cases, county DAs, deputy district attorneys (DDAs), administrative staff and researchers patiently responded to queries about specific cases and offending trends. Responses were used to design the study and identify the study’s limitations, e.g., cases without a bias charge were not assumed to be linked to a bias charge arrest on the same offense date as one defendant was arrested on a different crime after leaving being sentenced for a bias conviction; file date was used to classified pre- and post-SB 577 cases, rather than the charges listed in Odyssey, as some post-SB 577 cases are filed in error as Intimidation I/II.

<sup>8</sup> Editorial advice, feedback and policy suggestions were provided by the Oregon Department of Justice (ODOJ), the Multnomah County DA’s (MCDA) Office, and the Portland Police Bureau (PPB). Any errors are CJC’s and not the responsibility of advisors or advisory agencies.

<sup>9</sup> The Oregon State Police submits deidentified NIBRS bias crime arrest data yearly to CJC per SB 577, which includes bias crimes reported to law enforcement (LE); insufficient information is currently provided to identify these defendants or link their Odyssey case data. Thus, unfounded and suspended bias crime arrests dropped by LE, and no complaint/no filed cases and bias crime arrests issued as non-bias by prosecutors are undercounted in this study, as only *fingerprintable* LEDS bias crime arrests could be merged with DA and Odyssey data.

<sup>10</sup> Gaps in investigation refer to challenges faced by LE when gathering sufficient evidence of a bias crime – including witness testimony – for a referral to the appropriate bias crime prosecutor or DDA.

<sup>11</sup> Gaps in the presentation of bias crimes refer to the challenges faced by prosecutors in holding defendants accountable for their behavior, e.g., defendant aid and assist ability, language/legal translation for victims/witnesses, victims/witnesses’ ability to obtain time off from work to testify, victims/witnesses’ fear of retaliation by the defendant, community or the legal system, limitations from a charging instrument to grand jury hearing, gaps in bias-motivated behaviors that cannot legally be prosecuted, and resource limitations.

Before July 15, 2019, or *pre-SB 577*, the determining factor in whether criminal behavior motivated by bias was classified as a first or second degree offense – felony or misdemeanor charges, respectively – was whether the act constituting a bias crime was committed jointly by two or more individuals, or by an individual alone. If criminal behavior motivated by bias was committed by a group of individuals, then it qualified as intimidation in the first degree (Intimidation I), a felony. Alternatively, if criminal behavior motivated by bias was committed by a single individual, the case qualified as intimidation in the second degree (Intimidation II), a misdemeanor, irrespective of how violent the conduct. Under the new elements ushered in by SB 577, the nature of the harm to the victim now determines the seriousness of the charge. As such, in the post-SB 577 period, a first degree bias charge (Bias I) is charged when an individual, motivated in part or in whole by bias, engages in physical violence or the threat of physical violence against another person. Property damage, vandalism, harassment, and other similar behaviors, however, are now classified as second degree bias (Bias II) crimes. To control for this multiple defendant change, Intimidation I and II cases were pooled in the pre-SB 577 group, as were Bias I and Bias II cases in the post-SB 577 group. Finally, for both Bias I and Bias II, SB 577 added gender identity as a distinct protected class identity separate from sexual orientation in the definition of the crime, creating seven total protected classes under this statute: race, color, national origin, sexual orientation, gender identity, religion, and disability.

### Research Questions

Given that the post-SB 577 period includes more protected classes, and many cases prosecuted under the previous legislation as Intimidation II misdemeanors could now be prosecuted as felonies – and the Oregon Department of Justice’s (ODOJ) extensive [Bias Response Hotline \(BRH\)](#) media campaign – one would expect *increased* accountability post SB 577 implementation. Conversely, one would expect the national push to reduce the use of incarceration, along with delayed case processing and reduced use of incarceration during the COVID-19 pandemic, and the current public defense attorney shortage to *reduce* carceral sentences. Therefore, instead of proposing hypotheses, the current study was guided by the following research questions:

1. To what extent does accountability exist for bias crimes (also known as hate crimes) in Oregon?<sup>12</sup>
2. Did accountability for bias crimes change post-SB 577 implementation?<sup>13</sup>
3. Does accountability differ when bias cases are disposed with a bias vs non-bias conviction?
4. How can bias crime investigation, prosecution, and sentencing be improved?

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<sup>12</sup> Victim and community *perception* of accountability is not directly assessed in this study.

<sup>13</sup> Some of these differences are admittedly due to the national efforts to reduce the use of jail which began ~2016 (MacArthur Foundation, 2016), reductions in incarceration due to COVID risks (Norcross & Hyams, 2020; Walters, 2020), expedited case processing immediately post-COVID to reduce backlog and the defense attorney shortage (Rush, 2022; Sanchagrin, & Budbill, 2023). A comparison group of non-bias crime cases filed post-SB 577 is required to parse out the effects of SB-577 vs broader societal trends, which is beyond the scope of this study. See: MacArthur Foundation. (2016, April 12). *20 Diverse Communities Receive MacArthur Support to Reduce Jail Populations, Improve Local Systems, and Model Reforms for the Nation*. MacArthur Foundation. <https://www.macfound.org/press/press-releases/20-diverse-communities-receive-macarthur-support-reduce-jail-populations-improve-local-systems-and-model-reforms-nation>; Norcross, G. & Hyams, B. (2020, April 6). *Oregon Chief Justice Says Court Proceedings Will Continue With Health At Forefront*. OPB. <https://www.opb.org/news/article/oregon-chief-justice-coronavirus-covid-19-courts/>; Walters, M.L. (2020, March 16). *Chief Justice Order Restricts Court Hearings and Operations*. Oregon State Courts. [acd3fb79befadf4982b20ceba127ffd0-2020-03-16\\_COVID-19\\_News.pdf \(oregon.gov\)](https://www.oregon.gov/cjc/CJC%20Document%20Library/2023_09_30_CJC_SB337_CrisisPlansReport.pdf); Rush, C. (2022, November 23). Oregon public defender shortage: Nearly 300 cases dismissed. *The Associated Press*. <https://apnews.com/article/health-oregon-covid-portland-a13c2ecf6e4648272dfa12fb9244b7a6>; Sanchagrin, K., & Budbill, B. (2023). *Senate Bill 337 (2023) Report: Review of Oregon’s Public Defense Unrepresented Persons Crisis Team Plans*. Oregon Criminal Justice Commission, Statistical Analysis Center. [https://www.oregon.gov/cjc/CJC%20Document%20Library/2023\\_09\\_30\\_CJC\\_SB337\\_CrisisPlansReport.pdf](https://www.oregon.gov/cjc/CJC%20Document%20Library/2023_09_30_CJC_SB337_CrisisPlansReport.pdf)

*Note*, the comparison of bias vs non-bias conviction sentences in the pre- vs post-SB 577 group was undertaken to determine whether (1) overall bias crime accountability improved post-SB 577 implementation, and (2) the prosecutor’s decision to not issue or dismiss bias charges affected accountability. Convictions carry vastly different [presumptive sentences](#), based on where the offense falls on the [crime seriousness scale](#) and the [defendant’s criminal history](#) – and the presumptive sentence starting point for a bias vs a non-bias conviction may differ greatly. Bias I carries a presumptive *probation* sentence, while other non-bias felonies – e.g., Assault I or Assault II – carry a presumptive *prison* sentence. Bias I carries a 10-12 month presumptive jail sentence if the defendant has at least four non-person felony convictions, and even defendants with prior person felony convictions are likely to serve time in *jail* after credit for time served during case processing is considered.<sup>14</sup> Dismissing either a Bias I or Bias II charge when there are evidentiary challenges to secure a conviction on those counts, and instead pursuing a non-bias felony conviction where there is sufficient evidence to obtain a conviction – on Assault II for example – could result in a longer and harsher sentence.<sup>15, 16, 17</sup>

## **Data**

This study pools the county DA data submitted per SB 577 and [ORS 137.676](#), with LEDS data from the OSP and court data from the OJD, to conduct a pre-post evaluation of SB 577 on bias crime prosecutions. Per SB 577 and ORS 137.676, three DA offices – Multnomah, Benton, and Lane Counties – served as pilot counties. These counties started data collection on July 1, 2020, recording data on the prosecutions and case resolutions for cases with a bias charge referral or filing. Starting on July 1, 2022, all county DA offices are now required to collect data, and submit this information annually to CJC. Gilliam and Umatilla counties were unable to submit data or confirm zero counts for the latter half of 2022, Josephine County submitted data for the entire 2022 calendar year, Wasco County submitted data for 2021 through May 11, 2023, and Marion County submitted data for all bias crimes referred after SB 577 was implemented.

LEDS data from OSP were used to identify arrests with a bias crime charge for individuals who were fingerprinted. Circuit court data from the OJD, i.e., Odyssey data, were used to identify cases with at least one bias crime charge referred by the police for prosecution, whether the charge was subsequently

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<sup>14</sup> Bias I is a class C felony with a crime category of 6 and a presumptive *probation* sentence, and Bias II is a class A Misdemeanor, while Assault II is a class B felony with a crime category of 10 and carries a presumptive *prison* sentence. Bias I will only result in a prison sentence if (1) the defendant has a criminal history score of D or higher or (2) is convicted of a co-occurring charge with a higher crime seriousness score, while a score of F or lower will result in a presumptive probation sentence (email correspondence, Multnomah County DA Office, Monday December 4, 2023).

<sup>15</sup> The longer presumptive sentences for Assault I vs Bias I (and Bias II) may be of concern to victims and communities seeking validation of the “bias” component of the crime. Victims and their communities may not feel justice is served unless the justification to dismiss bias charges or pursue treatment for the defendant is clearly communicated to them, i.e., procedural justice may be adversely affected by insufficient/no communication. See also: Green, A (2023, December 29). The standard sentence for most hate crimes in Oregon? Probation, not jail time. *The Oregonian*. <https://www.oregonlive.com/crime/2023/12/the-standard-sentence-for-most-hate-crimes-in-oregon-probation-not-jail-time.html>.

<sup>16</sup> It is possible that victims and their communities may feel any conviction – or even diversion into a drug or mental health treatment program with all charges being dropped upon successful treatment completion – is sufficient accountability, provided they are informed of the case outcome.

<sup>17</sup> Resource, language, and technology barriers may stymie LE and DA Office victim support staffs’ attempt to convey case outcome information to victims and communities. Communication hiccups may also arise when the prosecutor and referring officer do not have pre-defined policies for communicating case outcomes to bias crime victims. (Information on communication barriers was obtained from multiple conversations with the PPD and MCDA Office in November and December 2023).

removed from the charging instrument, and the case outcome.<sup>18</sup> Sentence and probation conditions – for example, counseling, mental health and drug treatment, community service, etc. – were obtained via OJD’s sentencing data and verified via Oregon eCourt (OECL) case lookups. The pre-SB 577 data covers January 1, 2012 through July 14, 2019, while the post-SB 577 data covers July 15, 2019 through December 31, 2022. This 11-year period was selected to ensure a similar sample size in the pre- (n = 464) and post-SB 577 groups (n = 456), when open cases are excluded from the analysis.<sup>19</sup> The Odyssey case file date was used to classify cases into the pre-SB 577 and post-SB 577 groups, while *no filed* cases, i.e., cases declined by the prosecutor, were classified based on the arrest date.<sup>20</sup> All bias crime arrests within the study period with no court bias crime case were classified as no filed. Specifically, no filed cases were identified from arrests in LEDS without an Odyssey case listing an Intimidation/Bias I or Intimidation/Bias II charge with the same offense date and in the same county. Cases no filed in county DA offices but subsequently referred to and filed in municipal court are not trackable in eCourt,<sup>21</sup> and thus excluded from this study. Demographic data from Odyssey were used when available, while this was obtained from LEDS for no filed cases. For the post-SB 577 group, this information was supplemented with county DA data. However, missing data remain a concern.<sup>22</sup>

**A pre-post design is suitable for analyzing the effect of a policy change, and avoids the ethical pitfalls of a randomized controlled trial. However, pre-post studies do not establish causation, as confounding/real-world variables are not controlled.**

### Study Goals

This study does not establish causation. Rather, it is a pre-post evaluation of a legislative policy, SB 577; bias crime cases and arrests in the 7.5 years pre-SB 577 are compared to those in the 3.5 years post SB 577. This study compares two snapshots in time, suggests where additional research would be beneficial, and notes evidence-based policies as appropriate when challenges to SB 577 are identified.<sup>23</sup>

### Limitations

The following limitations provide context for assessing the scope of the report’s findings. *Note*, to reduce wordiness, the terms “bias crime,” “bias arrests” and “bias case” were used for both the pre- and post-SB 577 period.

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<sup>18</sup> Arrests with at least one bias charge, and court cases with at least one bias charge referred for prosecution were analyzed in this report – unless the county DA office flagged the case for inclusion in the previous four SB 577 yearly reports. A common technique of matching arrest and court cases is to match the offense date in the court records to the arrest date. This was deemed too error prone with bias crimes, due to the frequency of arrests by bias crime defendants. No attempts were made to request county DA offices review their 2012 to 2022 records to identify defendants arrested on a bias/intimidation charge that were subsequently prosecuted in court on non-bias/intimidation charge(s).

<sup>19</sup> Pre/post groups may be selected using PSM or weighting to match groups, or all cases can be selected in the specified period. Eligible cases were too few for the former technique to be feasible.

<sup>20</sup> Some Bias I cases were incorrectly referred to prosecutors as Intimidation II after SB 577 was implemented, due to confusion in the roll-out process of the updated laws. Prosecutors would then be responsible for filing/issuing the valid Bias I/II charge (email correspondence with the Multnomah County DA Office, Tuesday April 4, 2023).

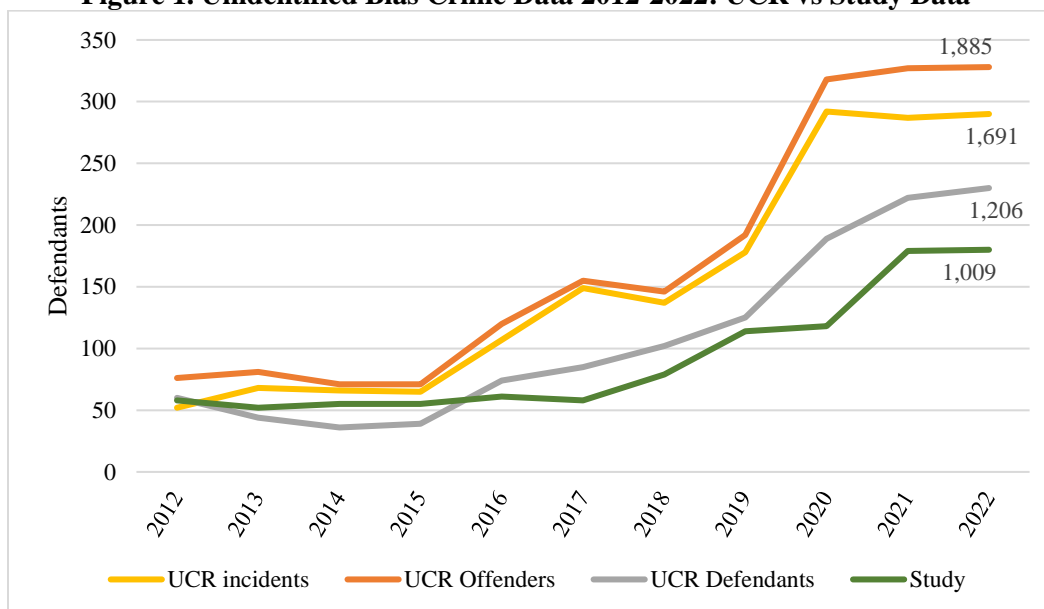
<sup>21</sup> The DDA may refer a bias crime LEA report to municipal court if they believe there is sufficient evidence to proceed with non-bias charges.

<sup>22</sup> Only the pilot county DA offices were required to submit bias crime prosecution data for July 2019 to December 2022 to CJC, while all DA county offices were required to submit data for the July to December 2022 period.

<sup>23</sup> Law enforcement agencies (LEAs) and DAs are encouraged to evaluate evidence-based policies within the framework of their resources and residents’ needs, and if needed, to contact the CJC for additional information on bias crime policies empirically found to be successful.

- For the study period, the FBI data indicates that 1,206 defendants were charged by Oregon LEAs for the 1,012 crimes (termed “incidents” in the UCR, currently NIBRS data) where offenders were identified; no defendants were identified for 679 crimes. This study identified 1,009 defendants, which suggests at least 197 defendants investigated for bias crimes by law enforcement officers (LEOs) were omitted (see Figure 1 and Table A2 in the [Appendix](#))<sup>24</sup> including: (1) bias crime arrestees whose cases were suspended, i.e., the crime report was investigated by LEOs and a decision was made to not refer the case to the DA for prosecution; (2) bias crime referrals to prosecutors that were charged as non-bias in the pre-SB 577 group, and for the non-pilot counties in the post-SB 577 group;<sup>25</sup> (3) bias crime arrests that resulted in no further action by the prosecutor (i.e., *no filed* cases); and (4) bias crime arrests that were diverted prior to the case being filed in both the pre- and post-SB 577 groups.<sup>26</sup>

**Figure 1. Unidentified Bias Crime Data 2012-2022: UCR vs Study Data**



Note: Source: [CDE \(cjis.gov\)](#). “UCR Incidents” refers to unique crimes reported to the police and forwarded to the FBI which may contain multiple offenses/charges and multiple defendants; “UCR Offenders” assumes 1 defendant for each incident in which no arrest(s) were made; and “UCR Defendants” is all bias crime arrestees listed in the UCR. See [Data](#) for details on the Study sample was created.

- Bias-motivated acts not defined as criminal under ORS 166.165 and ORS 166.155 are excluded from this report. Some of these incidents are found in the BRH bias incident data, but the vast majority slip through the cracks, which leads to an underestimation of the scope of the problem.

<sup>24</sup> According to the FBI, data was obtained nationally for about 90% of the population; Oregon specific LE non-reporting rates were not provided. Data source: [CDE \(cjis.gov\)](#) → additional datasets → Hate Crime. These data are de-identified and cannot be used to locate the 197 defendants omitted from the current study.

<sup>25</sup> Non-fingerprintable arrests can be identified for the counties that record arrest charges in Odyssey (e.g., MCDA), while others (e.g., Crook County DA’s Office) do not. Data from the DA’s offices are intended to fill this gap and allow for tracking of bias crime arrests and/or LE referrals prosecuted, diverted and deferred with non-bias charges. As noted in [previously](#), under SB 577, county DA data collection followed a phased approach, with a full year of data becoming due in spring 2024 for the 2023 calendar year. Consequently, undercounting of bias crime referrals prosecuted as non-bias cases should be a smaller concern in future yearly bias crime and supplemental reports.

<sup>26</sup> Some counties enter no complaint cases into Odyssey, but this is not a consistent statewide practice.

- This study excludes bias crimes not reported to the police. Underreporting estimates of bias crimes vary widely.<sup>27</sup> The Bureau of Justice Statistics estimates that around 44%-65% of bias crimes are reported yearly,<sup>28, 29</sup> of which 3%<sup>30</sup> to 7%<sup>31</sup> are deemed *founded* (i.e., contain the elements of the crime and with sufficient evidence to be referred for prosecution) by law enforcement and included in the [UCR hate crime data](#).<sup>32</sup>
- [Conditional discharge \(ORS.475.245\)](#) should have been pooled with [Probation without entering judgement of guilt \(ORS 137.533\)](#) and [Probation without entering a plea \(ORS 137.532\)](#) into the *diverted/differed* dispositions category. However, an unknown number of these dispositions were misclassified as complete dismissals or omitted entirely from the study – especially when the case was diverted with non-bias charges only (e.g., DUII)<sup>33</sup> because county rules for court records are inconsistent across the state.
- Non-bias convictions were undercounted in both the pre- and post-SB 577 groups because of the difficulties in identifying bias crimes prosecuted with non-bias charges only.<sup>34</sup>
- Cases from municipal or justice courts are not included in Odyssey, and subsequently omitted from this study. *Note*, DAs may forward bias crime referrals to municipal courts with non-bias charges.

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<sup>27</sup> Underreporting of bias crimes may be due to the victim not recognizing their experience as a bias crime, distrust of the police, language barriers, cultural barriers, fear of (personal or family members’) deportation, fear of stigmatization, shame, limited physical access to LE by disabled persons, fear of further victimization in the reporting and case processing process, and fear that LE would sympathize with defendants. See: Davis, R.L., & O’Neill, P. (2016, May). The Hate Crimes Reporting Gap: Low Numbers Keep Tensions High. *The Police Chief*, 83 (web-only article). <https://www.policechiefmagazine.org/the-hate-crimes/>; Pezzella, F.S., Fetzer, M.D., & Keller, T. (2019). The Dark Figure of Hate Crime Underreporting. *American Behavioral Scientist*, 0(0). <https://doi.org/10.1177/0002764218823844>; Stening, T. (2021, August 23). Why hate crimes are underreported—and what police departments have to do with it. *Northeastern Global News*. [Why hate crimes are underreported—and what police departments have to do with it - Northeastern Global News](#); and U.S. Department of Justice Hate Crimes Enforcement and Prevention Initiative. (2020). *Improving the Identification, Investigation, and Reporting of Hate Crimes*. Washington, DC: Office of Community Oriented Policing Services. <https://portal.cops.usdoj.gov/resourcecenter/content.ashx/cops-w0895-pub.pdf>.

<sup>28</sup> Figures computed for 2009 through 2017. See: Oudekerk, B. (2019, March 29). *Hate Crime Statistics*. Briefing prepared for the Virginia Advisory Committee, U.S. Commission on Civil Rights, Panel 1: Hate Crime History in VA, Current Legal Framework, Enforcement and Data. [Hate Crime Statistics: PowerPoint Presentation \(ojp.gov\)](#). For context, the reporting rate is higher for violent victimization, i.e., rape, sexual assault, robbery, aggravated assault and simple assault: 42% of violent victimizations in 2022 were reported to the police. See: Thompson, A., & Tapp, S.N. (2023). *Criminal Victimization, 2022*. Bureau of Justice Statistics. <https://bjs.ojp.gov/document/cv22.pdf>.

<sup>29</sup> LEA policies and behaviors also influence bias crime reporting rates. After controlling for LEA size (i.e., assuming similar bias crime rates in jurisdictions of similar size), higher numbers of bias crimes were reported to agencies with (1) a dedicated bias crimes officer or unit, (2) review procedures for bias crime reports, (3) written policy guidelines, and (4) those that engage in community outreach with local CBOs and advocacy groups (including of houses of worship). See: Jones, L.M, Mitchell, K.J., & Turner, H. A. (2022). *U.S. Hate Crime Investigation Rates and Characteristics: Findings from the National Hate Crime Investigations Study NHCIS*, Document Number: 304531. Office of Justice Programs’ National Criminal Justice Reference Service. <https://www.ojp.gov/pdffiles1/nij/grants/304531.pdf>.

<sup>30</sup> Davis, & O’Neill (2016).

<sup>31</sup> Oudekerk (2019).

<sup>32</sup> The state should consider including unfounded cases as a reporting requirement for LEAs to OSP under [ORS 181A.225](#), i.e., including non-criminal bias incidents, along with bias crimes. *Note*, PPB currently supplies this information to the ODOJ and CJC.

<sup>33</sup> There is currently no formal diversion protocol for bias crimes in Oregon; however, non-bias charges – e.g., DUII – may be diverted. *Note*, when identified, cases that were disposed with conditional discharge, probation without a judgment of guilt and probation without a plea were classified as deferred/diverted.

<sup>34</sup> Convictions for unidentified defendants could not be tracked for obvious reasons.

- Oregon does not have a statewide jail data system, and CJC does not have systematic access to local jail data. Thus, non-fingerprintable bias crime arrests that do not result in a court case with a bias charge, or non-fingerprintable bias crime arrests that were diverted/deferred were not identifiable with current data sources and consequently classified as a no filed case.
- Non-binary defendant gender could not be reliably tracked with the study data.
- This study uses a defendant’s *perceived* race entered in Odyssey – or LEDS when there is no court record – as a proxy for race. Demographic data is more reliably in Odyssey compared to LEDS, although neither source contains self-reported race data. LEDS excludes ethnicity entirely from its records, and Hispanic ethnicity is therefore underestimated – especially for no filed cases.
- Attempts were made to track probation and parole violations via the OJD data; no attempts were made to identify these violations in the Department of Corrections (DOC) supervision data due to the high error rate in matching violations/revocations to court cases.<sup>35</sup>
- This study analyzes sentences, probation, and post-prison supervision (PPS) conditions *ordered* by the court. No analysis was conducted on sentence, probation and PPS conditions *served* as there is no reliable accessible data for sentences not supervised by county community corrections departments.
- After SB 577 became effective in July 2019, some Bias I/II charges were filed under the previous Intimidation I/II statute, with the group/multiple defendant requirement for Intimidation I. Due to difficulties in identifying these cases,<sup>36</sup> pre- or post-SB 577 group assignment was based on the case file date.
- Results are accurate as of July 2023, when the LEDS and Odyssey data were extracted and merged with the county DA data. The number of prosecuted cases and convictions, along with sentence lengths were undercounted for the post-SB 577 group because cases that result in longer sentences tend to have longer case processing times, i.e., cases disposed with longer sentences require more discovery, trial preparation, and more complex plea bargaining negotiations.

**Thirty percent (n = 299) of the 1,009 bias crime arrests and/or law enforcement (LE) referrals resulted in no further action in the 11-year study period.**

**Results**

Figure 2 displays total bias crimes referred (arrested or charged) to the county DAs’ offices, and total cases where no further action was taken by the prosecutor<sup>37</sup> for the 11-year period 2012 through 2022 (see columns 1-3 in Table A3 in the [Appendix](#) for details, and Table A1 for this information at the county level). One thousand and nine bias crime cases were identified for the 11-year period (the “Study” line in Figure 1 and “Referred” line in Figure 2).<sup>38</sup> Of those, 299 (30%) were no filed, i.e., resulted in no further

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<sup>35</sup> The DOC data can be matched to defendants and sentence start dates, but matching to specific cases is error prone.

<sup>36</sup> Misfiling cases illustrates a communication and training gap in the roll-out of SB 577. The legislature should build in sufficient time and technical assistance funding for training DDAs on new/amended crime categories.

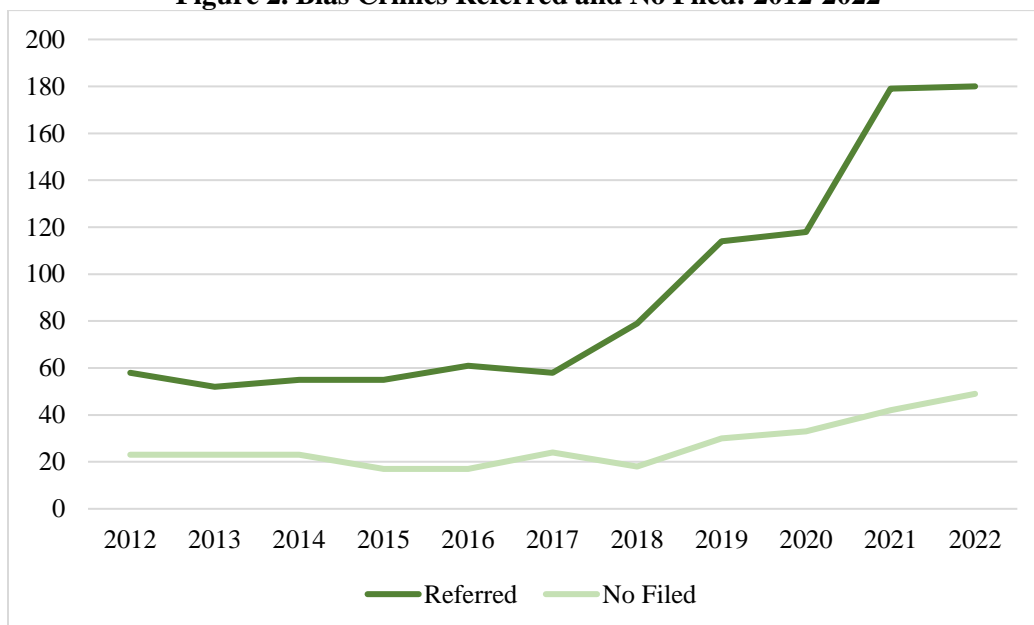
<sup>37</sup> Cases with an Odyssey record in which all charges were dismissed by the judge prior to, or after, a bench or jury trial were classified as *Dismissed/Removed from Charging Instrument*, and included as a filed case; no filed cases included LEDS arrests or defendants referred to DDAs without an Odyssey record. From a practical standpoint, cases in which all charges are removed from charging instrument, or no complaint cases, should be included in the no filed category. However, the intent of analyzing no filed cases is to identify characteristics of cases in which the DDA decided to take no further action. The no Odyssey record decision rule is imperfect, however, as at least one county DA office classifies no further action cases as no compliant in their data management system.

<sup>38</sup> Cases referred to the DDA that resulted in a complete dismissal, no complaint or not guilty finding for all charges are included in the “detected” columns.

action by the prosecutor, or were diverted prior to charges being filed.<sup>39</sup> The majority of defendants whose LEDS bias crime arrest or LE referral to the DA that resulted in no further action had one bias crime arrest. One defendant had three bias crime arrests, while two defendants had two bias crime arrests each, which resulted in no further action or were charged as non-bias crimes and not identifiable from the available data sources.

**At least 16% or 197 bias crime defendants are missing from the study; the missing rate would be significantly higher without the DA data.**

**Figure 2. Bias Crimes Referred and No Filed: 2012-2022**



Both referred and no filed bias crime cases increased post-SB 577 implementation. Bias crimes increased yearly during the study period, with stepwise increases in 2018, 2019, and 2021 (see Figure 2). The notable increase in detected cases in the post-SB 577 group may be due to a combination of national trends;<sup>40</sup> more accurate data collection due to SB 577 and ORS 137.676 requirements; increased training of DDAs and law enforcement officers (LEOs); increased attention on bias cases due to the Bias Response Hotline and [Bias Crime Dashboard](#); and the removal of the group actor requirement for Bias I charges.<sup>41</sup> Nevertheless, data gaps continue. Data on no filed/declined cases is more reliable post-SB 577, and it is highly probable that no filed cases are undercounted – especially for the 2012 to 2019 calendar years – and that the post-SB 577 increase in no filed cases displayed in Figure 2 is over-estimated. Based on the number of defendants listed in the FBI UCR data (see Figure 1), at least 16% or 197 bias crime

<sup>39</sup> Overcounting of non-prosecuted/no filed cases may occur when arrests that resulted in a deferred, diverted, or civil compromise disposition are missing in Odyssey, or when cases are prosecuted entirely as non-bias. To further complicate matters, the unavailability of non-fingerprintable arrests resulted in undercounting of non-prosecuted/no filed cases.

<sup>40</sup> For details on how national bias crimes data are tracked, see the Bureau of Justice Statistics website: <https://bjs.ojp.gov/topics/crime/hate-crime>.

<sup>41</sup> Bias crime rates and characteristics changes as society changes. A delay between changes in a phenomenon and the related legislation to address the phenomenon is expected.

defendants are missing from Figure 2.<sup>42</sup> *Note*, the missing rate would have been significantly higher without the county DA data.<sup>43</sup>

## Average referred and filed charges increased post-SB 577.

### Referred and Filed Charges

Per SB 577 Section 5(2) (a)-(c), this section compares charges presented to the district attorney for prosecution, i.e., *referred charges*, and issued or indicted charges, i.e., *filed charges*, for the pre- and post-SB 577 groups (see Table 1).<sup>44</sup> One or more asterisks in the last column indicate a statistically significant difference in the pre- vs post-SB 577 groups mean<sup>45</sup> or percent.<sup>46</sup> *Note*, the number of asterisks indicate the degree of certainty that this difference is not due to (random) chance, while the effect size provides the magnitude of this difference (see footnotes for effect sizes, along with p-values and coefficients). The number of defendants referred with a bias charge for prosecution in the 7.5 years under the previous Intimidation I/II legislation was lower, compared to the number referred in the 3.5 years after SB 577 was implemented: 474 vs 535 defendants (see Table 1). However, this finding is inconclusive due to the extensive undercounting of no filed cases in the pre-SB 577 period. Referred charges increased significantly after SB 577 was implemented, from an average of 2.77 (n = 1,313 charges) in the pre-SB 577 group to an average of 3.52 (n = 1,883) in the post-SB 577 group.<sup>47</sup> Average filed charges also increased significantly from 2.45 (n = 1,161 charges) in the pre-SB 577 group, to 3.14 (n = 1,680) in the post-SB 577 group.<sup>48</sup> There was no evidence of overcharging by DDAs as referred charges exceeded filed charges in both the pre- and post-SB 577 groups.<sup>49</sup>

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<sup>42</sup> Due to staffing and technology capacity issues, Oregon law enforcement agencies (LEAs) have not maintained a 100% UCR-NIBRS reporting rate to the FBI for 2012 through 2022. The population coverage of reporting LEAs fluctuates yearly, which makes estimates of missing data unreliable.

<sup>43</sup> County DA offices assisted in identifying no filed cases since July 2019 (initially pilot counties only), and all but Gilliam and Umatilla in the latter half of 2022. Twenty-four percent of 2022 bias crime cases were not located in LEDS or Odyssey when all but 2 counties provided at least 6 months of bias crime prosecution data. See: Kerodal, A., Officer, K., Glaser, C., Tallan, K., Dunn, E., & Benton, M. (2023). *Bias Crimes (2022) Report: Per Senate Bill 577 (2019)*. Oregon Criminal Justice Commission, Statistical Analysis Center. <https://www.oregon.gov/cjc/CJC%20Document%20Library/SB577ReportJuly2023.pdf>.

<sup>44</sup> Referred charge counts were not analyzed for no filed cases, as this information is not reliably ascertained from the available data sources.

<sup>45</sup> Mean/averages is denoted *M* in footnotes. A t-test, denoted *t*, is used to test for significant differences in two group means. The second line of the t-test is interpreted when the Levene's Test for Equality of Variances has a p-value < .05, i.e., the equality of variance assumption is violated. The ANOVA *F* is used to test the differences between more than two means. The Welch *F* is interpreted instead of the ANOVA *F* when the Levene's Test for equality of Variances has a p-value < .05, i.e., the equality of variance assumption is violated.

<sup>46</sup> Chi-square, denoted  $\chi^2$ , tests for an association between two categorical variables. A p-value less than .05 indicates that the observed value is significantly different from the expected value, i.e.,  $p < .05$  results in a conclusion that the two categorical variables are associated.

<sup>47</sup> Average referred charges significantly increased after SB 577 was implemented,  $t(996.995) = 3.313, p < .001$ , equal variance not assumed, Levene's  $F = 4.463, p = .035$ . Although the difference in the means is statistically significant, the magnitude of the difference, that is, the effect size is small or negligible,  $d = 0.209$ . For clarification on how to interpret Cohen's *d*, see: [Mcleod, S. \(2023\). What Does Effect Size Tell You? SimplyPsychology.](#)

<sup>48</sup> Average filed charges significantly increased after SB 577 was implemented:  $t(1007) = 3.564, p < .001$ , equal variance assumed, Levene's  $F = 3.596, p = .058$ . The effect size is small or negligible,  $d = 0.211$ .

<sup>49</sup> This does not suggest that overcharging did not occur in isolated cases, only that no evidence of *systemic* overcharging was found in the current data. Interviews or focus groups with current and former DAs and DDAs is required to verify this finding.

**Referred and filed Bias I charges increased, while referred and filed Bias II charges decreased post-SB 577 implementation. This is logical given the removal of 2 or more defendant requirement for a Bias I charge post-SB 577.**

**Table 1. Referred and Filed Charges: Pre SB 577 vs Post SB 577**

Charge	Pre-SB 577		Post-SB 577	
	Count	Mean/ Percent	Count	Mean/ Percent
Total Referred Charges <sup>‡</sup>	1,313	2.77	1,883	3.52***
Intimidation/Bias I <sup>†</sup>	91	19.2%	207	38.7%***
Intimidation/Bias II <sup>†</sup>	393	82.9%	330	61.7%***
Total Filed Charges <sup>‡</sup>	1,161	2.45	1,680	3.14***
Intimidation/Bias I <sup>†</sup>	45	9.5%	160	29.9%***
Intimidation/Bias II <sup>†</sup>	240	50.6%	218	40.7%**
<b>Group Total</b>	<b>474</b>		<b>535</b>	

\*  $p < .05$ ; \*\*  $p < .01$ ; \*\*\*  $p < .001$ .

<sup>‡</sup> Coded as a continuous variable, whereby all charges are counted.

<sup>†</sup> Yes/No binary variable, coded as “1” if charge occurs at least once per case.

Cases were coded to capture when a first and second degree intimidation/bias charges co-occurred; these variables in Table 1 are interpreted as the number or percent of cases with at least one count of the specified charge. *Note*, to reduce wordiness, first degree intimidation/bias charges are referred to as “Bias I” and second degree intimidation/bias charges are referred to as “Bias II” charges. Bias crime referrals were more likely to include a Bias I charge ( $n = 207$ ; 38.7%) in the post-SB 577, compared to the pre-SB 577 period ( $n = 91$ ; 19.2%).<sup>50</sup> Consequently, bias crime cases were more likely to be filed with a Bias I charge in the post-SB 577 ( $n = 160$ ; 29.9%), compared to the pre-SB 577 ( $n = 45$ ; 9.5%) period.<sup>51</sup> The reverse occurred for Bias II charge referrals: fewer bias crime referrals contained a Bias II charge in the post-SB 577 ( $n = 330$ ; 61.7%), compared to the pre-SB 577 period ( $n = 393$ ; 82.9%).<sup>52</sup> Therefore, fewer filed bias crime cases contained a Bias II charge in the post-SB 577 period ( $n = 218$ ; 40.7%), compared to the pre-SB 577 period ( $n = 240$ ; 50.6%).<sup>53</sup> See [Co-Occurring Charges](#) for further discussion on filed and conviction charges (excluding no filed cases).

**More than half of no filed cases referred to DAs for prosecution include a Bias II charge, while almost one-quarter include a Bias I charge in both the pre- and post-SB 577 groups.**

#### No Filed Cases: Pre-Post Comparison of Referral Charges

Table 2 isolates no filed cases. No filed cases were more likely to include a Bias II charge, compared to a Bias I charge in both the pre- and post-SB 577 groups. Less than a quarter of no filed cases were referred to the prosecutor with a Bias I charge in the pre- ( $n = 38$ ; 23.2%) and post-SB 577 groups ( $n = 30$ ; 22.2%), while more than a half of no filed cases in the pre-SB 577 group ( $n = 126$ ; 76.8%) and post-SB

<sup>50</sup> Referred cases with at least one Bias I charge increased significantly after SB 577 was implemented:  $\chi^2(1) = 45.889$ ,  $p < .001$ . This is logical, given the removal of the multiple defendant requirement for a Bias I charge.

<sup>51</sup> Filed cases with a Bias I charge also increased significantly after SB 577 was implemented:  $\chi^2(1) = 64.688$ ,  $p < .001$ . This is also logical, as filed charges are influenced by referred charges.

<sup>52</sup> Significantly fewer Bias II bias crime cases were referred for prosecution after SB 577 was implemented:  $\chi^2(1) = 55.768$ ,  $p < .001$ .

<sup>53</sup> Significantly fewer Bias II cases were filed after SB 577 was implemented:  $\chi^2(1) = 9.908$ ,  $p = .002$ .

577 group (n = 80; 59.3%) contained a Bias II charge.<sup>54</sup> Note, the LEDS arrest charge were used to identify charges referred to the prosecutor when county DA or Odyssey data were unavailable.

**Table 2. No Filed Cases by Referred Charge: Pre SB 577 vs Post SB 577**

Charge	Pre-SB 577		Post-SB 577	
	Count	Percent	Count	Percent
Intimidation/Bias I <sup>†</sup>	38	23.2%	30	22.2%
Intimidation/Bias II <sup>†</sup>	126	76.8%	80	59.3%**
Unknown	0	0.0%	25	18.5%
<b>No Filed Group Total</b>	<b>164</b>		<b>135</b>	

\*  $p < .05$ ; \*\*  $p < .01$ ; \*\*\*  $p < .001$ .

<sup>†</sup> Yes/No binary variable coded as “1” if charge occurs at least once per case.

## Defendants’ Bias Crime Record

### Bias Crime Arrests

Defendants’ bias crime arrest records were tracked for 2000 through 2022. Table 3 displays the distribution of bias crime arrests for the pre- and post-SB 577 groups; non-bias offenses were not tracked in this study. Almost 4 in 5 defendants in the pre-SB 577 group (n = 375; 79.1%) had at least one arrest with a bias charge, while significantly fewer defendants in the post-SB 577 group (n = 353; 66.0%) had an arrest with a bias charge.<sup>55</sup> The lower bias crime arrest rate among the post-SB 577 group may be due to the shorter follow-up period.

**Defendants in the post-SB 577 group are more likely to have multiple bias crime arrests, compared to those in the pre-SB 577 group.**

**Table 3. Bias Crime Arrests: Pre SB 577 vs Post SB 577**

	Pre-SB 577		Post-SB 577	
	Count	Percent	Count	Percent
No LEDS Bias Crime Arrest	99	20.9%	182	34.0%***
Any LEDS Bias Crime Arrest	375	79.1%	353	66.0%
1	360	75.9%	323	60.4%
2	12	2.5%	24	4.5%
3	3	0.6%	5	0.9%
4	0	0.0%	1	0.2%
<i>Mean</i>		<i>0.83</i>		<i>0.73**</i>
<b>Total</b>	<b>474</b>	<b>100.0%</b>	<b>535</b>	<b>100.0%</b>

\*  $p < .05$ ; \*\*  $p < .01$ ; \*\*\*  $p < .001$ .

In contrast, defendants in the post-SBB 577 group were more likely to have multiple bias crime arrests: 15 or 3.2% of defendants in the pre-SB 577 group were arrested on a bias crime charge two or more times, while 30 or 5.6% of defendants in the post-SB 577 group were arrested on a bias crime charge two

<sup>54</sup> The pre-post decrease in no filed Bias I referrals was not statistically significant,  $\chi^2(1) = 0.038, p = .846$ . However, the decrease in no filed Bias II degree referrals from 126 (76.8%) in the pre-SB 577 group, to 80 (59.3%) in the post-SB 577 group is statistically significant,  $\chi^2(1) = 10.667, p = .001$ .

<sup>55</sup> Significantly lower post SB-577,  $\chi^2(1) = 21.572, p < .001$ .

or more times. However, the pre-SB 577 group (mean = 0.83) were arrested more frequently on average, compared to the post-SB 577 group (mean = 0.73), due to the higher zero counts in the latter group.<sup>56, 57</sup>

**~5% of defendants in both the pre- and post-SB 577 groups have multiple bias crime cases due to repeat offenses or prosecutors refiling cases dismissed without prejudice; eight defendants have bias crime cases in both the pre- and post-SB 577 groups.**

#### Bias Crime Cases

All bias crime cases identified in the study groups were included in the data: 19 defendants or 4.0% of the pre-SB 577 group had multiple bias crime cases, while 28 defendants or 5.2% of the post-SB 577 group had multiple bias crime cases. Eight defendants had cases in both the pre- and post-SB 577 periods. Overall, three defendants each had three cases, while all other defendants with multiple bias crime cases had two each. Multiple cases per defendant occurred both from repeat offenses and from DDAs refiling cases dismissed without prejudice. Per [ORS 135.745](#), the grand jury must be held within 30 days after the defendant is charged with an information<sup>58</sup> absent a showing of good cause, or the case will be dismissed. If insufficient evidence is presented at the grand jury hearing, a *No True Bill* finding will prevent the prosecutor from refiling the case absent substantial new evidence. Consequently, prosecutors may seek a dismissal when they are uncertain sufficient evidence and witness and/or victim cooperation can be secured prior to the grand jury hearing. If the case is dismissed without prejudice, the prosecutor has the option to refile the case if sufficient evidence is established within the statute of limitations period (see [No Filed and Dismissal Reasons](#)).

**Most defendants prosecuted for a bias crime in the pre-SB 577 group are white. However, non-white defendants referred on a bias charge are more likely to be prosecuted pre-SB 577: 80.0% of referrals with non-white defendants were prosecuted, compared to 63.5% of bias crime referrals with white defendants. This finding remains when defendants with unknown race is assumed to be white: 75.0% non-white vs 64.4% white defendants prosecuted.**

#### **Defendants' Demographic Data**

##### Pre-SB 577 Group: Referred vs Filed Cases

Table 4 displays the demographic characteristics of bias crime defendants in the pre-SB 577 group whose cases were referred for prosecution, and further separates defendant demographics for filed and no filed/declined cases. When the percent breakdown of demographic categories is similar for filed and no filed cases, this indicates an absence of evidence that the specific demographic variable is related to bias

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<sup>56</sup>  $t(995.241) = -2.925, p = .004$ , equal variance not assumed, Levene's  $F = 48.684, p < .001$ . The effect size is medium,  $d = 0.550$ .

<sup>57</sup> The no filed cases are responsible for the significantly higher mean arrests in the pre-SB 577 vs post SB 577 group (Welch  $F(3, 432.974) = 47.048, p < .001$ ). No filed pre-SB 577 cases average 1.02 arrests, which is significantly higher than the filed pre-SB 577 group ( $M = 0.73$ ), the no filed post-SB 577 group ( $M = 0.78$ ) and by the filed post-SB 577 group ( $M = 0.71$ ). Average bias crime arrests in the post-SB 577 group were higher for the no filed defendants, compared to defendants with a filed case ( $M = 0.78$  vs.  $M = 0.71$ ), but this is not statistically significant according to the Games-Howell post-hoc test.

<sup>58</sup> The timeline from filing an information to obtaining an indictment is shorter for defendants in custody (i.e., bail has not been granted or paid) – DDAs have 5 court days to secure an indictment against an in-custody defendant in Oregon.

crime prosecution;<sup>59</sup> vastly different percent breakdowns<sup>60</sup> and one or more asterisks indicates significant differences in prosecution rates by the specific demographic category. *Note*, caution is needed when interpreting the age distribution in Tables 4 through 6, as juvenile defendants are tracked in the Juvenile Justice Information System (JJIS) and bias crimes that occur in schools are monitored by the [Oregon Statewide School Safety Tip Line](#). Neither data source is included in the current study.<sup>61</sup>

**Table 4. Defendants’ Demographic Characteristics Pre-SB 577 Group: Referred and Filed Cases**

Demographics	Referred		Filed		No Filed/Declined	
	Count	Percent	Count	Percent	Count	Percent
<b>Race<sup>‡</sup></b>						
White	419	88.4%	266	85.8%	153	93.3%*
Black/AA	33	7.0%	24	7.7%	9	5.5%
AI/AN	3	0.6%	3	1.0%	0	0.0%
Asian	5	1.1%	3	1.0%	2	1.2%
Other	3	0.6%	3	1.0%	0	0.0%
Unknown	11	2.3%	11	3.5%	0	0.0%
Hispanic/Latinx	18	3.8%	18	5.8%	0	0.0%**
<b>Gender</b>						
Male	407	85.9%	264	85.2%	143	87.2%
Female	57	12.0%	36	11.6%	21	12.8%
Unknown	10	2.1%	10	3.2%	0	5.5%
<b>Age</b>						
20 and under	51	10.8%	21	6.8%	30	18.3%
21 to 24	57	12.0%	39	12.6%	18	11.0%
25 to 34	114	24.1%	77	24.8%	37	22.6%
35 to 44	96	20.3%	68	21.9%	28	17.1%
45 to 54	92	19.4%	68	21.9%	24	14.6%
55 and older	63	13.3%	36	11.6%	27	16.5%
Unknown	1	0.2%	1	0.3%	0	0.0%**
<i>Mean</i>	37.44		38.05		36.29	
<b>Total</b>	<b>474</b>	<b>100.0%</b>	<b>310</b>	<b>100.0%</b>	<b>164</b>	<b>100.0%</b>

\*  $p < 0.05$ ; \*\*  $p < 0.01$ ; \*\*\*  $p < 0.001$ .

<sup>‡</sup> Due to individuals potentially identifying as multiple races/ethnicities, race total exceeds 100 percent.

“Black/AA” refers to Black/African American and “AI/AN” refer to American Indian and Alaska Native individuals.

- Over 1/3 of defendants referred to county DAs’ offices – 164 out of 474 – in the pre-SB 577 group were not prosecuted in court.
- Hispanic ethnicity was coded in addition to race, which available. All bias crime referrals with Hispanic defendants were filed.<sup>62</sup> However, undercounting of Hispanic ethnicity (and non-white race) is a concern: Hispanic ethnicity is not tracked in LEDS; while there is a high degree of missing race

<sup>59</sup> Significance testing assesses the null hypothesis, which is that there is no relationship between the tested variables. The null hypothesis is rejected when the p-value is less than 0.05. Significant findings in this study indicate a relationship exists. Replication of this study, quasi-experimental studies, and qualitative studies (e.g., interviews with DDAs and front line law enforcement officers) are required before conclusive cause and effect conclusions can be drawn.

<sup>60</sup> Differences in percent breakdown is only suitable when one has the universe or population of valid cases; when a sample is used, one or more asterisks is the standard for determining an effect or association exists. One or more asterisks, with an experimental or quasi-experimental design are required to establish causation.

<sup>61</sup> The CJC does not currently have access to SafeOregon, the school safety tip line data. JJIS data can be requested.

<sup>62</sup> Statistically significant:  $\chi^2(1) = 9.898, p = .002$ .

and ethnicity data in Odyssey, race data from Odyssey was used when the defendant was present in both data sources.

- More than 4 in 5 of the 310 filed cases had white (n = 266; 85.8%) defendants. However, cases with white defendants<sup>63</sup> were more likely to be no filed/declined, compared to those with non-white defendants: 36.5% or 153 out of 419 referrals with white defendants were no filed, while 20% or 11 out of 55 referrals with non-white defendants were no filed.<sup>64</sup> *Note*, “non-white” includes Black/African American (Black/AA), American Indian and Alaska Native (AI/AN), Asian, other and unknown race.
- Although the vast majority of filed cases had male (n = 264; 85.2%) defendants, females had slightly higher no filed rates, compared to male defendants: 36.8% or 21 out of 57 referrals for female defendants were no filed, while 35.1% or 143 out of 407 referrals for male defendants were no filed.<sup>65, 66</sup> *Note*, X or non-binary gender could not be reliably tracked with the study data.

**Adult defendants are more likely than juveniles and older defendants to be prosecuted on a bias crime referral pre-SB 577: no filed rate was higher for defendants younger than 21 (58.8%) and those older than 54 years (42.9%), compared to defendants ages 21 through 54 years (30%).**

- Defendants ages 25 to 34, 35 to 44, and 45 to 54 were more likely to be prosecuted, compared to defendants of other age groups.<sup>67, 68</sup> No filed rates were higher for defendants ages 20 and under (58.8% or 30 out of 51 referrals with defendants ages 20 and under were no filed) and relatively higher for those 55 and older (42.9% or 27 out of 63 referrals), compared to defendants ages 21 through 54 (30% or 107 out of 359). Cases may have been classified as not-prosecuted/no filed when arrests that resulted in a deferred, diverted, conditional discharge, or civil compromise disposition are missing in Odyssey – and younger persons and those over 55 years of age may have been deemed more suitable for diversion. Additional research and discussions with prosecutors are necessary to verify this explanation for the higher no filed rates among younger and older persons, compared to adults ages 21 through 54 years. Alternatively, juvenile defendants’ cases may be in JJIS and/or the Safe Oregon Tipline and excluded from this study.

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<sup>63</sup> Additional research is needed to determine if defendant race affects LE decision making for unfounded cases or suspending investigations. It is possible that a substantial number of unfounded cases with non-white defendants were identified by LE and not referred to the DA’s office. In other words, LE may be more likely to refer questionable cases with white defendants for prosecution and more confident of their ability to spot unfounded cases with non-white defendants, which skewed the results to appear that prosecutors were being more lenient on white defendants.

<sup>64</sup> Statistically significant:  $\chi^2 (1) = 5.860, p = .015$ ; chi-square computed for white vs. non-white defendants. The chi-square test broken down by all race categories is not significant ( $\chi^2 (2) = 10.521, p = .062$ ) because the difference between race and if a bias crime case is filed is based on white race compared to all other races.

<sup>65</sup> Not quite significantly different:  $\chi^2 (2) = 5.469, p = .065$ .

<sup>66</sup> Note, Oregon has an X gender option for non-binary person. This information was not reliably obtained for the data used in the current study. CJC’s revised data processing will allow for this level of analysis going forward.

<sup>67</sup> Statistically significant:  $\chi^2 (6) = 20.313, p = .002$ . Additional research is needed to determine if defendant gender influences LE founded and suspended decision making.

<sup>68</sup> Defendants with filed cases were slightly older than defendants whose cases were declined, 38.05 vs 36.29 years. Not significantly different:  $t (284.610) = -1.183, p = .119$ , equal variance not assumed, Levene’s  $F = 7.028, p = .008$ .

## **Prosecution rates increased post-SB 577: 65.4% of bias crime referrals were prosecuted pre-SB 577, which increased to 74.8% post-SB 577 implementation.**

### Post-SB 577 Group: Referred vs Filed Cases

Table 5 displays the demographic characteristics of bias crime defendants in the post-SB 577 group whose cases were referred for prosecution, and further separates this into filed and no filed cases:

- Referred bias crime cases were more likely to be prosecuted post-SB 577 implementation: 34.6% or 164 of the 474 referred cases in pre-SB 577 group were no filed, which declined to 25.2% or 135 for the post-SB 577 group. This may be due to better identification of bias cases being charged as non-bias in the post-SB 577 group,<sup>69</sup> and undercounting of bias arrests filed as non-bias cases in the pre-SB 577 group, rather than a true increase in prosecution rates. Alternatively, SB 577 may have created the conditions (improved services for victims resulting in a more informed victim population, increased attention from LE and DA offices on these crimes and elements needed to prove these crimes, improved laws reflective of the criminal conduct occurring, etc.) more responsive to prosecuting bias crimes. Additional research is needed to verify if no filed rates actually declined (i.e., as opposed to a data entry error), and the reasons behind this decline.
- Most of the filed cases had white and male defendants, both at 83.5% or 334 out of the 400 filed cases.<sup>70</sup>
- However, more than two-thirds of declined referrals were for white defendants (65.9% or 89 out of the 135 no filed cases). However, more than 4 in 5 defendants prosecuted for bias crimes were white (83.5% or 334 out of 400 prosecutions) and white defendants had a higher prosecution rate compared to non-white defendants: 21.0% or 89 out of the 423 referred cases with white defendants were no filed, while 41.1% or 46 out of the 112 referred cases with non-white defendants were no filed.<sup>71</sup> This difference in prosecution rate disappears when defendants with unknown race are assumed to be white (74.9% vs 73.4% for and non-white defendants).
- Although a greater number of bias crimes cases with male defendants were declined (95 cases with male defendants vs 23 cases with female defendants were no filed), bias crime referrals with female defendants were less likely to be prosecuted: 29.5% or 23 out of the 78 referrals with female defendants were no filed, while 22.1% or 95 out of the 429 of referrals with male defendants were no filed.<sup>72</sup> This finding holds even if the 5.2% of referrals that lacked defendant gender information is included in the analysis.<sup>73</sup>

**Consistent with the pre-SB 577 pattern, adults are more likely than juveniles and older defendants to be prosecuted when referred on a bias crime charge, i.e., no filed rates are higher for defendants younger than 21 (58.3%) and older than 54 (27.2%), compared to defendants ages 21 through 54 years (15%).**

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<sup>69</sup> A greater proportion of no filed cases were identified in the post-SB 577 group due to data provided by the County DA offices. However, missing rates were higher for the non-pilot counties (except for Marion, and a few others that provided data beyond the July-December 2022 required period).

<sup>70</sup> The identical 334 count for white and male filed cases is coincidental: 291 of white defendants with filed cases were male, 41 were female, and 2 were of unknown gender.

<sup>71</sup> Significantly more cases with white defendants are no filed, compared to referred cases with non-white defendants:  $\chi^2(1) = 18.834, p = .001$ .

<sup>72</sup> Statistically significant:  $\chi^2(2) = 21.601, p < .001$ .

<sup>73</sup> Assuming the 28 unknown gender defendants are male, the male no file rate increases to 24.5%, which is still lower than the 29.5% no file rate for female defendants; if the unknowns is assumed to be female, the female no file rate increases to 37.7%, while the male no file rate remains at 22.1%.

**Table 5. Defendants’ Demographic Characteristics Post-SB 577 Group: Referred and Filed Cases**

Demographics	Referred		Filed		No Filed/Declined	
	Count	Percent	Count	Percent	Count	Percent
<b>Race<sup>†</sup></b>						
White	423	79.1%	334	83.5%	89	65.9%***
Black/AA	42	7.9%	30	7.5%	12	8.9%
AI/AN	13	2.4%	8	2.0%	5	3.7%
Asian	2	0.4%	2	0.5%	0	0.0%
Other	7	1.3%	7	1.8%	--	0.0%
Unknown	48	9.0%	19	4.8%	29	21.5%
Hispanic/Latinx	36	6.7%	35	8.8%	1	0.7%**
<b>Gender</b>						
Male	429	80.2%	334	83.5%	95	70.4%
Female	78	14.6%	55	13.8%	23	17.0%
Unknown	28	5.2%	11	2.8%	17	12.6%***
<b>Age</b>						
20 and under	24	4.5%	10	2.5%	14	10.4%
21 to 24	34	6.4%	30	7.5%	4	3.0%
25 to 34	125	23.4%	103	25.8%	22	16.3%
35 to 44	133	24.9%	113	28.3%	20	14.8%
45 to 54	87	16.3%	74	18.5%	13	9.6%
55 and older	81	15.1%	59	14.8%	22	16.3%
Unknown	51	9.5%	11	2.8%	40	29.6%***
<i>Mean</i>	<i>40.02</i>		<i>40.18</i>		<i>39.36</i>	
<b>Total</b>	<b>535</b>	<b>100.0%</b>	<b>400</b>	<b>100.0%</b>	<b>135</b>	<b>100.0%</b>

\*  $p < .05$ ; \*\*  $p < .01$ ; \*\*\*  $p < .001$ .

<sup>†</sup> Due to individuals potentially identifying as multiple races/ethnicities, race total exceeds 100 percent. “Black/AA” refers to Black/African American and “AI/AN” refer to American Indian and Alaska Native individuals.

- Defendants ages 25 to 34 years (82.4% or 103 out of 125) and 35 to 44 years (85% or 113 out of 133) were more likely to be prosecuted, compared to other age groups.<sup>74, 75</sup> No filed rates were higher for defendants ages 20 and under (58.3% or 14 out of 24 referrals) and relatively higher for those 55 and older (27.2% or 22 out of 81 referrals), compared to defendants ages 21 through 54 years (15% or 59 out of 379 referrals). Caution should be used when comparing the post-SB 577 no filed patterns to those under the previous legislation, as 29.6% or 40 of the 135 no filed cases had no defendant age information, and few bias crime cases with juvenile defendants are referred to county DAs’ offices for prosecution as an adult.

#### Defendant Demographics: Pre-Post Comparison

Table 6 below compares demographic information for defendants referred on a bias charge pre- and post-SB 577.

- Although a greater number of white defendants were referred after SB 577 was implemented, referred bias crime defendants were significantly less likely to be white – 88.4% of referred defendants were white in the pre-group, while 79.1% of referred defendants were white in the post-SB 577 group.<sup>76</sup> This finding is inconclusive given the high missing race rate (2.3% pre- and 9.0% post-SB 577).

<sup>74</sup> Statistically significant:  $\chi^2(6) = 109.941, p < .001$ .

<sup>75</sup> This finding should be interpreted with caution. In New Jersey, almost half of cases referred to the bias crime unit between 2021 and 2004 had juvenile defendants. See: Phillips, N. D. (2009). The prosecution of hate crimes: The limitations of the hate crime typology. *Journal of Interpersonal Violence, 24*(5), 883-905.

<sup>76</sup> Statistically significant:  $\chi^2(1) = 15.844, p < .001$ . Chi-square computed for white vs. non-white defendants.

- Hispanic<sup>77</sup> defendants increased from 3.8% (n = 18) in the pre-SB 577 group, to 6.7% (n = 36) in the post-SB 577 group.<sup>78</sup> This may be due to more reliable identification of defendant ethnicity, although errors in Odyssey’s ethnicity data continue to be an issue.

**Bias crime referrals and prosecutions with female defendants increased post-SB 577 implementation; however, females are more likely than males to have their bias crime referrals declined/no filed post-SB 577. There are no differences in gender prosecution rates in the pre-SB 577 period.**

**Table 6. Demographic Characteristics Referred Cases: Pre SB 577 vs Post SB 577**

Demographics	Pre-SB 577		Post-SB 577	
	Count	Percent	Count	Percent
<b>Race<sup>‡</sup></b>				
White	419	88.4%	423	79.1%***
Black/AA	33	7.0%	42	7.9%
AI/AN	3	0.6%	13	2.4%
Asian	5	1.1%	2	0.4%
Other	3	0.6%	7	1.3%
Unknown	11	2.3%	48	9.0%
Hispanic/Latinx	18	3.8%	36	6.7%*
<b>Gender</b>				
Male	407	85.9%	429	80.2%
Female	57	12.0%	78	14.6%
Unknown	10	2.1%	28	5.2%*
<b>Age</b>				
20 and under	51	10.8%	24	4.5%***
21 to 24	57	12.0%	34	6.4%
25 to 34	114	24.1%	125	23.4%
35 to 44	96	20.3%	133	24.9%
45 to 54	92	19.4%	87	16.3%
55 and older	63	13.3%	81	15.1%
Unknown	1	0.2%	51	9.5%
<i>Mean</i>	37.44		40.02*	
<b>Total</b>	<b>474</b>	<b>100.0%</b>	<b>535</b>	<b>100.0%</b>

\*  $p < .05$ ; \*\*  $p < .01$ ; \*\*\*  $p < .001$ .

<sup>‡</sup> Due to individuals potentially identifying as multiple races/ethnicities, race total exceeds 100 percent. “Black/AA” refers to Black/African American and “AI/AN” refer to American Indian and Alaska Native individuals.

- More females were referred and prosecuted for bias crimes post-SB 577. A greater number and proportion of referred defendants in the post-SB 577 group were female: 57 or 12.0% of referred defendants were female in the pre-SB 577 group, which increased to 78 or 14.6% of referred defendants in the post-SB 577 group.<sup>79</sup> Female defendants prosecuted for bias crimes increased from

<sup>77</sup> “Hispanic” includes persons from multiple South and Central American countries, who may self-identify or present as white, Indigenous, Black and/or multi-racial. The complexities of national origin, colorism and race intersect with Hispanic identity – and self-identification may not match one’s presented race and ethnic identities.

<sup>78</sup> Statistically significant:  $\chi^2 (1) = 4.264, p = .039$ . Additional research is necessary to determine if this increase is due to better data collection or a real increase in bias crime offending by Hispanic individuals.

<sup>79</sup> Statistically significant:  $\chi^2 (2) = 8.716, p = .013$ .

36 (11.6% of prosecutions) in the pre-SB 577 group to 55 (13.8%) post-SB 577 implementation. This increase is consistent with the changing gender crime patterns.<sup>80</sup>

### **The age-crime curve does not influence bias crime perpetration – unlike with routine crimes, defendants do not age-out of bias offending.**

- Aging out of criminal offending found for routine crimes – i.e., the age crime curve<sup>81</sup> – was noticeably absent for bias crimes. Defendants’ average age was high in both the pre- and post-SB 577 groups, and actually increased by 2.6 years from 37.44 years in the pre-SB 577 group, to 40.02 years after SB 577 was implemented.<sup>82</sup> Specifically, more defendants ages 35 through 44, and those 55 and older, were referred on a bias crime charge after SB 577 was implemented.<sup>83</sup> It is possible that this change in defendants’ age reflects both changes in bias crime offending patterns, and the responsiveness of SB 577 to these changes.

There were few notable findings when filed cases were compared for the pre- and post SB 577 groups<sup>84</sup> aside from the changing age distribution. Significantly more defendants ages 25 through 44, and those 55 and older, were prosecuted after SB 577 was implemented.<sup>85</sup> Average age among prosecuted bias crime cases was higher after SB 577 was implemented: 38.05 years for the pre-SB 577 group, compared to 40.18 for the post-SB 577 group.<sup>86</sup> However, the effect size, or size of the increase, was small: 2 years.<sup>87</sup> Finally, 9.5% of defendant age information is missing for the post-SB 577 group, which makes this finding inconclusive.

### **Case Outcome**

This section focuses on decisions made by the court on cases presented to them for adjudication, i.e., it excludes no filed cases (see Figure 3) – because judges and juries can only make decisions – and be fairly evaluated – on cases that are presented to them.<sup>88</sup>

### **Between 74%-91% of prosecuted bias cases resulted in a conviction on at least one charge – except for 2012 (63%), 2015 (68%), 2021 (64%) and 2022 (51%). The 2021 and 2022 conviction rate are expected to increase as open cases are disposed.**

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<sup>80</sup> Monazzam, N. & Budd, K.M. (2023, Apr 3). *Fact Sheet: Incarcerated Women and Girls*. Sentencing Project. <https://www.sentencingproject.org/fact-sheet/incarcerated-women-and-girls/>

<sup>81</sup> National Institute of Justice (2014, Mar 10). *From Youth Justice Involvement to Young Adult Offending*. U.S. Department of Justice, Office of Justice Programs. <https://nij.ojp.gov/topics/articles/youth-justice-involvement-young-adult-offending>.

<sup>82</sup> Referred defendants’ average age increased significantly after SB 577 was implemented:  $t(941.979) = 2.868, p = .002$ ; equal variance not assumed, Levene’s  $F = 6.848, p = .009$ . However, the effect size is small,  $d = 0.186$ .

<sup>83</sup> Statistically significant:  $\chi^2(6) = 69.049, p < .001$ .

<sup>84</sup> Defendant race distribution was similar for prosecuted defendants in the pre- and post-SB 577 groups,  $\chi^2(5) = 3.223, p = .666$ . Hispanic ethnicity ( $\chi^2(1) = 2.191, p = .139$ ) and gender ( $\chi^2(2) = 0.813, p = .666$ ) were also not significantly different between the pre- and post SB 577 groups.

<sup>85</sup> Statistically significant:  $\chi^2(6) = 23.139, p < .001$ .

<sup>86</sup> Statistically significant:  $t(638.152) = 2.129, p = .017$ ; equal variance not assumed, Levene’s  $F = 4.178, p = .041$ .

<sup>87</sup> The effect size was small,  $d = 0.164$ .

<sup>88</sup> Cases tend to be *no complaint* or *no complaint* because of insufficient evidence, no crime was committed (i.e., it was a bias incident), or, perhaps more commonly, because a victim is unwilling to participate. In those scenarios, the prosecutor has not ignored any harm that is within their power to address. However, CJC is aware that from victim and affected communities’ perspective, excluding cases declined by the prosecutor from the analysis can be perceived as ignoring the harm they experienced, and continue to experience.

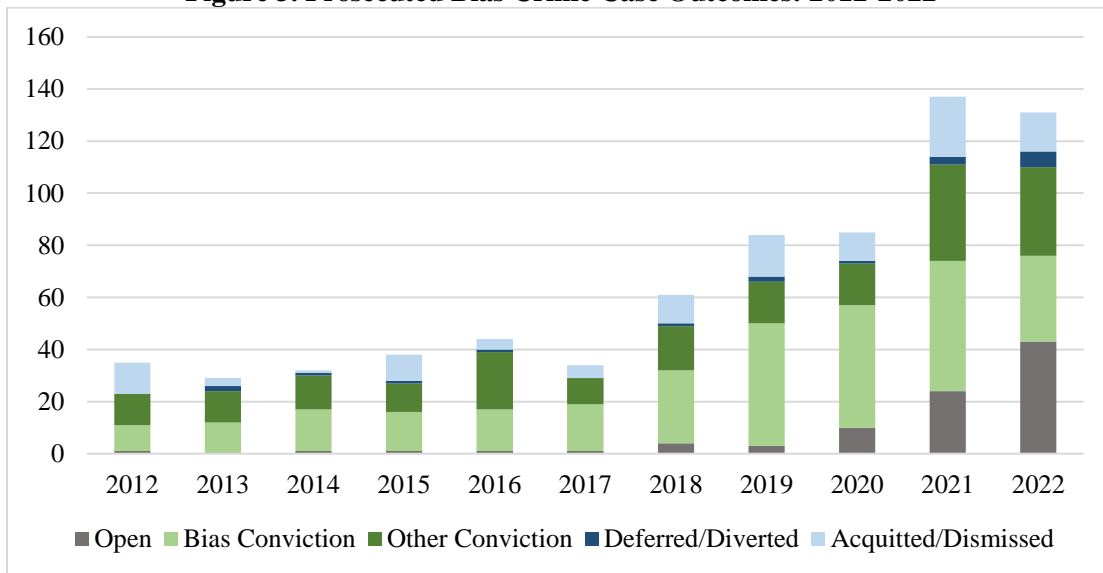
## Case Outcomes by File year

### Any Conviction

Figure 3 displays the yearly case outcome trends, excluding no filed cases (see Table A3 in the [Appendix](#) for counts). Around 3 in 4 prosecuted bias crimes cases resulted in either a bias or non-bias conviction in 2013 and 2014, and 2016 through 2020.<sup>89</sup> The total conviction rate dropped to 64% in 2021, and 51% in 2022, respectively. Conviction rates for 2018 through 2022<sup>90</sup> are expected to increase as open cases (the grey portion of the stacked bars in Figure 3) are disposed. For context, between 80%-85% of felony cases filed yearly in Oregon between 1998 and 2017 resulted in a conviction on at least one charge.<sup>91</sup>

**In all but 3 years (2012, 2016, and 2022), bias convictions outnumber non-bias convictions; the 2022 pattern may revert to the norm as more cases are disposed.**

**Figure 3. Prosecuted Bias Crime Case Outcomes: 2012-2022**



### Bias vs Non-Bias Conviction

In most years, bias convictions exceeded non-bias convictions, as shown in the stacked bars in Figure 3. Excluding no complaint cases, 25%-56% of bias crime cases filed yearly were disposed with a conviction on at least one bias charge for the 2012 through 2022 calendar years, while 19%-50% of cases filed yearly were disposed with a conviction on at least one non-bias charge. Non-bias convictions exceeded bias convictions in 2012, 2016, and 2022; the 2022 results may revert to the former pattern as more open cases are disposed. *Note*, bias and non-bias convictions were coded as mutually exclusive categories: cases in which the defendant was found guilty, or pleaded guilty/no contest on both bias and non-bias charges were classified as bias convictions, while cases where the defendant was found guilty, or pleaded guilty/no contest on only non-bias charges were classified as non-bias convictions.

<sup>89</sup> When no filed cases are included in the calculation, the overall conviction rate ranges from a low of 37% in 2022, to a high of 62% in 2016 (see Table A3 in the [Appendix](#)).

<sup>90</sup> One case each is open in 2012, 2014 through 2017. Disposition of these cases will have a negligible effect on the conviction rate for these years.

<sup>91</sup> Weinerman, M., Officer, K., & Sanchagrin, K. (2019). *2019 SAC Grant Report: Felony Case Processing Trends in Oregon*. Oregon Criminal Justice Commission, Statistical Analysis Center. <https://www.oregon.gov/cjc/CJC%20Document%20Library/FCPReport.pdf>

## Fewer than 1 in 5 filed bias crime cases yearly are disposed with a complete acquittal or dismissal.

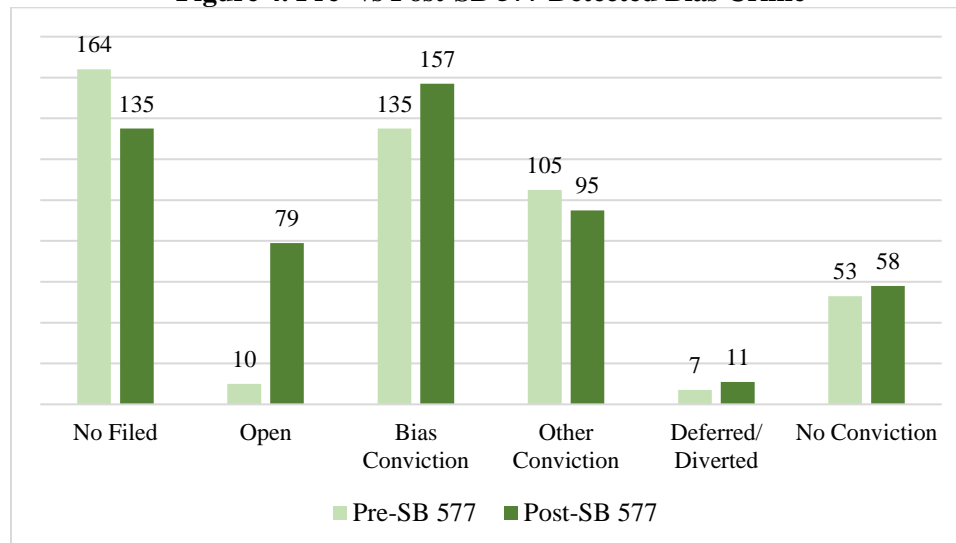
### Acquittals

Generally, less than 1 in 5 bias crime cases filed yearly were disposed with a complete acquittal or dismissal (the light blue portion of the stacked bars in Figure 3). Acquittal/dismissal rates were higher in 2012 (34%) and 2015 (26%), when conviction rates were low (63% and 68%, respectively). *Note 1:* deferred/diverted cases may have been undercounted, as not all deferred/diverted cases were entered in Odyssey. *Note 2:* for consistency, cases were analyzed based on the year they were filed.<sup>92</sup>

### Case Outcomes: Pre-Post Comparison

Figure 4 compares case outcome for the pre- and post-SB 577 groups. More than one-third (34.6%) of bias crime cases referred for prosecution in the pre-SB 577 group were no filed, while 25.2% of identified bias crime cases in the post-SB 577 group were no filed. Ten cases (2.1%) in the pre-SB 577 group were open and 79 (14.8%) in the post-SB 577 group were open as of July 2023. Bias convictions were higher in the post-SB 577 group (n = 157; 29.3%), compared to the pre-SB 577 group (n=135; 28.5%), while the reverse occurred with non-bias convictions. Around 1 in 5 (n = 105; 22.2%) identified cases in the pre-SB 577 group resulted in a conviction on at least one non-bias charge, while fewer identified cases in the post-SB 577 group (n = 95; 17.8%) resulted in a conviction on at least one non-bias charge. The no conviction rate was comparable for both groups: 11.2% (n = 53) in the pre-SB 577 group and 10.8% (n = 58) in the post-SB 577 group.

**Figure 4. Pre- vs Post-SB 577 Detected Bias Crime**



*Note,* “No Conviction” includes acquitted/not guilty, and dismissed by the court or DDA. Some No Filed cases may have been diverted or disposed with civil compromise.

### Some defendants convicted of bias or non-bias crimes are transient.

Nine defendants (1.9%) in the pre-SB 577 group and 20 (3.7%) in the post SB 577 group were listed as transient in Odyssey. In the pre-SB 577 group, three transient defendants each were convicted of bias or

<sup>92</sup> This should be kept in mind when comparing this report’s findings to county DA offices’ reports and dashboards, which commonly report case outcomes based on the disposition year. County and LE dashboards also do not track bias cases with only non-bias convictions; consequently, their figures may be lower than the figures in this report.

non-bias charges, two defendants' cases resulted in a complete dismissal, and one case was open when the study data was compiled. Six transient defendants in the post-SB 577 group were convicted of a bias charge, while five each were convicted of a non-bias charge or their cases were open, and three cases were no filed. One transient defendant was acquitted or found not guilty of all charges. Housing insecurity and other unmet needs are discussed further in [Complex Needs](#).

***No True Bill grand jury findings, or defendant (in)ability to aid and assist are the most frequently cited no filed and dismissal reasons – in the rare instance when details are provided in Odyssey. Data from county DAs' offices is crucial to closing this knowledge gap.***

*No Filed and Dismissal Reasons*

Per SB 577 and ORS 137.676, some county DAs' offices identified barriers that contributed to their decision to decline or take no further action on referred bias crime cases. This information was supplemented with eCourt searches to determine explanations for diversion, dismissal, or no further action taken on bias crime cases. All explanations were coded, shown in Table 7. From a practical standpoint, evidentiary and victim concerns influence the court and prosecutor's decision to dismiss the case, grand jury's *No True Bill* findings, and the prosecutor's decision to take no further action/decline the case. Factual problems, legal impediments, and the defendant's ability to aid and assist<sup>93</sup> may also influence the grand jury, court and prosecutor's decision to take no further action. Frequently these are listed as general dismissals and details are not provided in Odyssey.

**Table 7. No File, Diverted and Dismissal Reasons**

Reasons	Pre-SB 577		Post-SB 577	
	Count	Percent	Count	Percent
LEDS Arrest Only	163	73.4%	41	20.5%
General Dismissal (no details provided)	26	11.7%	97	48.5%
Court or DDA Dismissed Case	21	9.5%	27	13.5%
Evidentiary/Grand Jury Issue <sup>‡</sup>	4	1.8%	27	13.5%
Plea Agreement	8	3.6%	6	3.0%
DDA Declined Case	-	0.0%	10	5.0%
Victim Issue <sup>§</sup>	-	0.0%	7	3.5%
Defendant Aid & Assist/Fitness to Proceed	2	0.9%	9	4.5%
Victim or Defendant Death	1	0.5%	1	0.5%
Prosecuted In Another Jurisdiction	-	0.0%	3	1.5%
>1 reasons	3	1.4%	23	11.5%
<b>Total</b>	<b>222</b>	<b>100.0%</b>	<b>200</b>	<b>100.0%</b>

*Note.* Total does not sum to 100%. Multiple reasons may exist per case; all explanations are presented in the table.

<sup>‡</sup> Includes situations when the victim is unavailable/unwilling to attend hearings within 30 days after the defendant was charged in an information.

<sup>§</sup> Includes victims who are difficult to locate, hesitant to appear for meetings and hearings, unwilling to participate in the investigation and justice process, uncooperative or perceived as not credible.

Multiple dismissal reasons were provided in 1.4% of cases in the pre-SB 577 group and 11.5% in the post-SB 577 group. Few details were available for the pre-SB 577 cases in eCourt: 73.4% of no file, diverted

<sup>93</sup> This information may be available in county DA offices case notes and/or data management systems. However, the county DA offices are not legally required under SB 577 or ORS 137.676 to undertake the resource- and time-consuming exercise of extracting and sending this information to CJC.

and dismissed cases had a LEDS arrest and no Odyssey record; 9.5% listed general dismissals ordered by the court or DA office; 1.8% were dismissed or diverted due to a DDA or grand jury determination of insufficient evidence to establish bias motivation or that a crime occurred, and 3.6% were dismissed or diverted subsequent to a plea agreement, in which the defendant pleaded guilty to 1 or more counts in another case, and the counts on the bias case were dismissed and the conviction/penalties attached to the other case.<sup>94</sup>

About 1 in 5 (20.5%) post-SB 577 defendants had no Odyssey record for the bias crime arrest or DA referral. Details were frequently unavailable when an Odyssey case was located, aside from a general dismissal entry (48.5%). Three percent of cases were dismissed because of a plea agreement, and the DDA declined 5.0% of post SB 577 cases.<sup>95</sup> The defendant's ability to aid and assist<sup>96</sup> accounted for 4.5%<sup>97</sup> of no filed, diverted, and dismissed cases, while 13.5% each were listed as general dismissals ordered by the court/requested by the prosecutor, or dismissed due to insufficient evidence.

County DA data submitted to CJC indicates that DDAs prosecuted bias crime arrests or referrals as non-bias cases when there was a finding of *No True Bill* by the grand jury on the bias crime charge(s); prosecutors can take no further action when the grand jury returns a finding of No True Bill on all charges. It is possible that some of the former cases (i.e., No True Bill on the bias charge, subsequently filed as non-bias) in the pre-SB 577 group were incorrectly classified as no filed in this report. Finally, some of the cases listed in Table 7 may not represent problems to be solved: victims may prefer the matter to be handled via a restorative justice or diversion program, whereby defendants' cultural awareness, anger, mental health, or additional needs can be addressed, thereby reducing recidivism risk – and punishment is a secondary concern.<sup>98</sup> These cases are not consistently recorded in Odyssey, and some may have been misidentified as no filed in the current study.

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<sup>94</sup> Plea agreement, plead guilty on related case noted in a defendant's Odyssey's record "...ordinarily means that there was a global plea agreement – meaning a plea agreement resolving more than one case – in which the defendant pled guilty to a count or counts in one case, and, in exchange, counts in another were dismissed. The defendant's punishment and supervision are served on the case of conviction" (email correspondence with the Multnomah County DA Office, Tuesday September 12, 2023).

<sup>95</sup> Given the limited data requirements by county DA offices per SB 577 or ORS 137.676, it is estimated that at around one-third of bias crime cases is missing from the post-SB 577 group. This was estimated based on the proportion of cases identified in the DA data only. As no supplemental county DA data was provided for the pre-SB 577 group, insufficient information is available to estimate this group's missing rate.

<sup>96</sup> A defendant who is unable to aid and assist may be, though rarely is, civilly committed. "*Civil commitment is a procedure through which a defendant is held at a hospital for mental health treatment because, as a result of mental illness, he is found to be a danger to himself, others or unable to care for his basic needs. See ORS 426 §§ 005 and 130. In such a case, the defendant is committed for up to 180 days and can be reevaluated at that time for further commitment or release to the community. If the dismissal does not specify that it is "with prejudice" prosecution can be re-initiated as long as within the statute of limitations period.*" (email correspondence with the Multnomah County DA Office, Tuesday September 12, 2023).

<sup>97</sup> The issues of aid and assist, and defendant mental health, are undercounted in the Table 7.

<sup>98</sup> Although the affected community may prefer a conviction, the victim's interest is arguably greater in this instance. DDAs should consider – or continue to consider, as this is the current practice for some agencies – the victim's preference, and refer victims to the Bias Response Hotline for services and supports that are unavailable or available in limited quantities via the county DA Office. Direct communication between the victim, victim advocate and DDA may be the most appropriate avenue for ensuring defendant accountability, without further harming the victim. Alternatively, the victim may prefer to have no further dealing with the defendant and to leave the matter of accountability to the courts: the victim should be asked for their preference by both LE and the DDA.

**Resources and legal advocates are available to assist victims in their interaction with LE, but community outreach is in the early stages and victims may be unaware of that these resources exist, or lack the technology to access these services.**

All county DAs' offices have victim assistance programs and services. Bias crime victims may be eligible for these services, even when the case is dismissed or declined for prosecution. [The ODOJ's Bias Response Hotline](#) also has an extensive network of service providers, and can provide additional supports and services as needed. [Criminal justice advocacy assistance](#) is available for victims when interacting with prosecutors, e.g., victim rights explanation and advocacy, interpretation, legal jargon explanation throughout the criminal justice process, and plea agreement or diversion consultations. Free victim rights legal advice is available for crime – including bias crime – victims in Oregon from the [Oregon Crime Victims' Law Center](#). Many bias crime and non-criminal bias incident victims remain unaware of these resources, as the list was curated within the last five years by the ODOJ and community outreach is in the early stages. Regardless, these legal resources may help to reduce no file and dismissal cases due to victim concerns/confusion/fears about the legal process – and improve procedural justice (i.e., perceptions of fairness in the justice process)<sup>99</sup> – thereby improving bias crime reporting rates in the future.

**The majority of filed co-occurring charges in both the pre- and post-SB 577 groups are person crimes. However, significantly more cases are filed with at least one Bias I, Resisting Arrest, Unlawful Use of a Weapon, or Menacing charge post-SB 577.**

**Co-Occurring Charges**

Filed Charges: Pre-Post Comparison

Table 8 displays filed and conviction charges for the pre- and post-SB 577 groups. *Note*, charge category was coded as “1” if the defendant was charged with at least one count of the specified charge and is interpreted as the number of cases with at least one count of the specified charge. As discussed in [Referred and Filed Charges](#), there was an increase in cases with at least one Bias I charge filed post-SB implementation (160 or 40.0%, compared to 45 or 14.5% of filed cases in the pre-SB 577 group),<sup>100</sup> while there was a decrease in cases with at least one Bias II charge filed after SB 577 was implemented (218 or 54.5%, compared to 240 or 77.4% in the pre-SB 577 group).<sup>101</sup> However, cases in both the pre- and post-SB 577 group were more likely to include at least one filed Bias II, compared to a Bias I charge.

Common co-occurring filed charges in both the pre- and post-SB 577 groups were the person crimes of Harassment, Assault IV, Menacing, and Unlawful Use of a Weapon. However, cases with at least one filed Unlawful Use of a Weapon charge (52 or 16.8% of filed pre-SB 577 cases vs 107 or 26.8% of filed post-SB 577 cases)<sup>102</sup> or Menacing charge (73 or 23.5% of filed pre-SB 577 cases vs 138 or 34.5% of

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<sup>99</sup> Procedural justice was not directly assessed in this study. For details on victims and communities' perception of procedural justice, see: Green, A. (2023, October 15). In Oregon, making racist threats, threatening harm aren't always hate crimes under state's loose laws. *The Oregonian*. <https://www.oregonlive.com/news/2023/10/making-racist-threats-threatening-harm-arent-always-hate-crimes-under-oregons-loose-laws.html>; and Green, A (2023, December 29). The standard sentence for most hate crimes in Oregon? Probation, not jail time. *The Oregonian*. <https://www.oregonlive.com/crime/2023/12/the-standard-sentence-for-most-hate-crimes-in-oregon-probation-not-jail-time.html>.

<sup>100</sup> This increase in cases with a filed Bias I charge in the post-SB 577 group, compared to the pre-SB 577 group is statistically significant,  $\chi^2(1) = 55.229, p < .001$ .

<sup>101</sup> The decrease in cases with a filed Bias II charge in the post-SB 577 group, compared to the pre-SB 577 group is statistically significant,  $\chi^2(1) = 40.070, p < .001$ .

<sup>102</sup> The increase in cases with a filed Unlawful Use of a Weapon charge in the post-SB 577 group, compared to the pre-SB 577 group is statistically significant at the  $p > .01$  level,  $\chi^2(1) = 10.001, p = .002$ .

filed post-SB 577 cases)<sup>103</sup> increased significantly after SB 577 was implemented. Cases with at least one filed Resisting Arrest charge increased from 12 or 3.9% of filed cases in the pre-SB 577 group to 33 or 8.3% in the post-SB 577 group.<sup>104</sup> Criminal Mischief II was the only property charge that increased significantly in the study period, from 24 or 7.7% of filed cases in the pre-SB 577 group, to 53 or 13.3% in the post-SB 577 group.<sup>105</sup>

### Fewer cases are filed with at least one Bias II, Assault III, or Assault IV charge post-SB 577 implementation.

**Table 8. Filed and Convicted Charges: Pre SB 577 vs Post SB 577**

Charge	Filed		Convicted	
	Pre-SB 577	Post-SB 577	Pre-SB 577	Post-SB 577
Intimidation/Bias in the First Degree	45	160***	12	55**
Intimidation/Bias in the Second Degree	240	218***	124	104*
Assault in the Second Degree	11	19	8	4
Assault in the Third Degree	30	12***	17	7*
Assault in the Fourth Degree	83	76*	44	32
Attempted Murder	3	2	-	-
Menacing	73	138**	24	36
Harassment	105	127	21	23
Unlawful Use of a Weapon	52	107**	25	37
Disorderly Conduct in the Second Degree	74	88	22	10*
Resisting Arrest	12	33*	5	14*
Recklessly Endangering Another Person	7	14	2	5
Criminal Mischief in the First Degree	18	16	9	7
Criminal Mischief in the Second Degree	24	53*	8	14
Criminal Mischief in the Third Degree	10	17	-	-
Criminal Trespass in the Second Degree	16	24	-	-
Total Charges <sup>¥</sup>	1,161	1,680	437	462
Mean Charges <sup>§</sup>	3.75	4.20*	1.82	1.83
<b>Total Defendants</b>	<b>310</b>	<b>400</b>	<b>240</b>	<b>252</b>

\*  $p < .05$ ; \*\*  $p < .01$ ; \*\*\*  $p < .001$ .

<sup>¥</sup> Unique charges only, charge counts were not tracked. Excludes referred cases that were no filed.

<sup>§</sup> Represents average charges in the list of tracked charges. Excludes referred cases that were no filed.

*Note.* Charges were interpreted per defendant, e.g., in the pre-SB 577 group, 73 defendants were charged with at least count of menacing and 24 defendants were convicted of at least one menacing count charge. Infrequently observed charged were not tracked.

In contrast, there were fewer cases with at least one Assault III (30 or 9.7% of filed cases in the pre-SB 577 group vs 12 or 3.0% in the post-SB 577 group),<sup>106</sup> or Assault IV (83 or 26.8% of filed cases in the pre-SB 577 group vs 76 or 19.0% in the post-SB 577 group) charges filed after SB 577 was implemented.<sup>107</sup> For a breakdown of filed and conviction charges by bias and non-bias conviction, see

<sup>103</sup> The increase in cases with a filed Menacing charge in the post-SB 577 group, compared to the pre-SB 577 group is statistically significant at the  $p > .01$  level,  $\chi^2(1) = 10.029$ ,  $p = .002$ .

<sup>104</sup> The increase in cases with a filed Resisting Arrest charge in the post-SB 577 group, compared to the pre-SB 577 group is statistically significant at the  $p > .05$  level,  $\chi^2(1) = 5.642$ ,  $p = .018$ .

<sup>105</sup> Statistically significant at the  $p > .05$  level,  $\chi^2(1) = 5.480$ ,  $p = .019$ .

<sup>106</sup> Cases with a filed Assault III charge decreased significantly post-SB 577 implementation,  $\chi^2(1) = 13.992$ ,  $p < .001$ .

<sup>107</sup> Cases with a filed Assault IV charge filed decreased significantly post-SB 577 implementation,  $\chi^2(1) = 6.074$ ,  $p = .014$

Table A5 in the [Appendix](#). *Note*, charge category was counted once per case in Tables 8 and A5; charge counts were not assessed in this study.

**Average unique filed charges increased from 3.75 to 4.20 in the pre-post periods; however, average unique conviction charges remained relatively consistent.**

More than one thousand unique charges were filed in the pre- (n = 1,161) and post-SB 577 (n = 1,680) periods. Average unique filed charges increased from 3.75 to 4.20 in the pre-post period.<sup>108</sup> (*Note*, multiple counts of the same charge per case were not tracked.) However, defendants were convicted of less than two unique charges on average in both the pre- and post-SB 577 period: 1.82 unique charges in the pre-SB 577 group and 1.83 in the post-SB 577 group were disposed with a conviction.

**Bias I convictions increased approximately 4-fold from 12 to 55, while Bias II convictions declined slightly from 124 to 104 after SB 577 was implemented. However, Bias II convictions exceeded Bias I convictions in both the pre- and post SB 577 groups.**

Conviction Charges: Pre-Post Comparison

In the pre-SB 577 group, 135 defendants were convicted of a bias charge: 12 were convicted of a Bias I charge, 124 were convicted of a Bias II charge, and one defendant was convicted of both Bias I and Bias II charges. In the post-SB 577 group, 157 defendants were convicted of a bias charge: 55 were convicted of a Bias I charge, 104 were convicted of a Bias II charge, and two defendants were convicted of both Bias I and Bias II charges. Cases with at least one Bias I conviction charge increased from 12 or 5.0% of convictions in the pre-SB 577 group, to 55 or 21.8% of the post-SB 577 group.<sup>109</sup> In contrast, cases with at least one Bias II convictions declined from 124 or 51.7% of convictions in the pre-SB 577 group to 104 or 41.3% of convictions in the post-SB 577 group.<sup>110</sup> Nevertheless, Bias II convictions exceeded Bias I convictions in both the pre- and post SB 577 groups.

**Defendants convicted of a bias charge have more co-occurring convictions on average, in both the pre- and post-SB 577 groups.**

On average, defendants convicted of a bias charge had one additional (different) co-occurring non-bias charge in the pre-SB 577 (mean = 2.13) and post-SB 577 (mean = 2.02; see Table A5) groups.<sup>111</sup> In contrast, defendants convicted of a non-bias charge were rarely convicted of a co-occurring charge in either the pre-SB 577 (mean = 1.43) or post-SB 577 (mean = 1.53) groups.<sup>112</sup> Non-bias conviction charges were most frequently person crimes, such as Assault IV, Menacing, and Unlawful Use of a Weapon. Table A5 in the [Appendix](#) presents more detailed results on conviction charges, separated by bias and non-bias conviction.

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<sup>108</sup> This increase in mean unique filed charges post-SB 577 implementation was statistically significant ( $t(708) = -2.027, p = .022$ ; equal variances assumed, Levene's  $F = 1.551, p = .213$ ) but negligible ( $d = 0.153$ ).

<sup>109</sup> There was a statistically significant increase in cases with a Bias I conviction after SB 577 was implemented,  $\chi^2(1) = 29.583, p < .001$ .

<sup>110</sup> Cases with a Bias II conviction decreased significantly after SB 577 was implemented,  $\chi^2(1) = 5.344, p = .021$ .

<sup>111</sup> Defendants convicted of a bias crime in the pre-SB 577 group had significantly more conviction charges ( $M = 2.13$ ), compared to defendants with non-bias convictions in the pre ( $M = 1.43$ ) and post ( $M = 1.53$ ) sub-samples (Welch  $F(3, 267.958) = 14.041, p < .001$ ). Defendants convicted of a non-bias charge in the post-SB 577 group were convicted of significantly more individual charges ( $M = 1.53$ ), compared to those convicted of a non-bias charge in the pre-SB 577 group ( $M = 1.43$ ).

<sup>112</sup> Possibly because all but one or most charges were dismissed per the plea agreement.

## Probation was the most frequently used sanction, followed by jail.

### Sentences

This section isolates closed cases with a sentence, per SB 577 Section 5(2)(e). Sentence information for bias and non-bias convictions, along with those for deferred, civil compromise, and diverted dispositions, when available, is discussed.<sup>113</sup> Table 9 illustrates sentences for bias and non-bias convictions in the pre- and post-SB 577 groups;<sup>114</sup> one or more asterisk in the non-bias columns indicates significant differences in sentences for defendants convicted of a bias vs non-bias charge in the specified period. More than three-quarters of defendants convicted of a bias charge and over two-thirds of defendants convicted of a non-bias charge in both the pre- and post-SB 577 groups were sentenced to probation. Jail was the next most frequently used sanction, with more than half of defendants convicted of a bias crime charge, and slightly over 40% of defendants convicted of a non-bias charge being sentenced to jail. Prison was infrequently used: around one in four defendants convicted of a non-bias charge in the pre-SB 577 group (n = 27; 26%) were sentenced to prison, while fewer than one in five defendants convicted of a bias charge in the pre-SB 577 group (n = 21; 16%), or convicted of a bias (n = 27; 17%) or non-bias charge (n = 19; 20%) in the post-SB 577 group, were sentenced to prison.<sup>115</sup>

**In both the pre- and post-SB 577 groups, jail sanction was more frequently applied for bias vs non-bias convictions. However, the use of jail for bias convictions declined post-SB 577 implementation.**

### Pre-SB 577 Group: Bias vs Non-Bias Comparison

Shown in Table 9, defendants in the pre-SB 577 group convicted of a bias charge were slightly more likely to be sentenced to probation (n = 103; 76.3%) compared to those convicted of a non-bias charge (n = 71; 67.6%).<sup>116</sup> Jail sanction was significantly more likely to be applied to defendants convicted of a bias charge (n = 91; 67.4%), compared to those convicted of a non-bias charge (n = 47; 44.8%) in the pre-SB 577 group.<sup>117</sup> In contrast, defendants convicted of a non-bias charge were more likely to be sentenced to prison (n = 27; 25.7%), compared to those convicted of a bias charge (n = 21; 15.6%).<sup>118</sup> Similarly, post-prison supervision (PPS) was more frequently ordered for defendants convicted of a non-bias conviction (n = 25; 23.8%), compared to those convicted of a bias charge (n = 23; 17%).<sup>119</sup> However, the differences in prison and PPS for bias compared to non-bias convictions were not statistically significant. *Note*, defendants sentenced to either prison or psychiatric review board confinement may also be sentenced to PPS.

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<sup>113</sup> The yearly July 1 SB 577 reports provide counts of no contest charges, guilty plea charges, and guilty trial outcomes, per SB 577 5(2) (f)-(g). This report takes a more global approach and discusses sentences imposed on bias and non-bias convictions, irrespective of whether the defendant plead guilty/no contest or was found guilty by a bench or jury trial.

<sup>114</sup> Due to sample size constraints and community concerns about undercharging of bias crimes, convictions were not separated by felony and misdemeanor charge. The intent of this section is to determine if non-bias convictions have lower levels of accountability, compared to bias convictions.

<sup>115</sup> *Note*, 12 defendants in the pre- and 55 in the post-SB 577 were convicted of a Bias I charge, which means some defendants convicted of a Bias I charge in the pre-SB 577 group received a prison sentence, and many convicted of a Bias I charge in the post-SB 577 group were not sentenced to prison (likely due to the absence of prior person felony convictions, i.e., criminal history factors). See [Research Questions](#) for a discussion on the declining use of prison.

<sup>116</sup> This difference is not statistically significant:  $\chi^2(1) = 2.231, p = .135$ .

<sup>117</sup> Significantly different:  $\chi^2(1) = 12.394, p < .001$ .

<sup>118</sup> Not quite statistically significant:  $\chi^2(1) = 3.810, p = .051$ .

<sup>119</sup> Not statistically significant:  $\chi^2(1) = 1.693, p = .193$ .

There were no statistically significant differences in sentence duration imposed for bias vs non-bias convictions in the pre-SB 577 group, except for jail (see Table 9). Mean jail (103 days for bias convictions vs 50 days for non-bias convictions)<sup>120</sup> and/or Psychiatric Security Review Board confinement duration (200 months for bias convictions vs 36 months for non-bias convictions)<sup>121</sup> were longer for defendants convicted of a bias compared to those convicted of a non-bias charge.

**Table 9. Bias vs Non-Bias Sentences**

Sentences	Pre-SB 577		Post-SB 577	
	Bias	Non-Bias	Bias	Non-Bias
<b>Prison</b>	<b>21</b>	<b>27</b>	<b>27</b>	<b>19</b>
Mean Months	38.57	38.85	39.33	39.11
Median Months	24	25	21	24
<b>Psychiatric Review Board Confinement</b>	<b>3</b>	<b>1</b>	<b>5</b>	<b>0</b>
Mean Months	200.00	36.00	98.20	0
Median Months	240	36	60	0
<b>Post-Prison Supervision</b>	<b>23</b>	<b>25</b>	<b>22</b>	<b>18</b>
Mean Months	27.04	31.68	26.55	27.33
Median Months	24	24	24	24
<b>Jail</b>	<b>91</b>	<b>47***</b>	<b>86</b>	<b>39*</b>
Mean Days	103.04	49.64*	79.80	72.87
Median Days	45	30	45	30
<b>Probation</b>	<b>103</b>	<b>71</b>	<b>118</b>	<b>70</b>
Mean Months	30.87	27.93	30.61	29.00
Median Months	24	24	36	30
<b>Total</b>	<b>135</b>	<b>105</b>	<b>157</b>	<b>95</b>

\*  $p < .05$ ; \*\*  $p < .01$ ; \*\*\*  $p < .001$ .

Note: Results are accurate based on the data extraction date.

#### Post-SB 577 Group: Bias vs Non-Bias Comparison

There were no statistically significant differences in sentences imposed for bias vs non-bias convictions in the post-SB 577 group, except for jail sanctions (see Table 9). Jail sanction was more frequently applied to defendants convicted of a bias charge ( $n = 86$ ; 54.8%), compared to those convicted of a non-bias charge ( $n = 39$ ; 41.1%) in the post-SB 577 group.<sup>122</sup> Defendants convicted of a bias ( $n = 118$ ; 75.2%) or non-bias charge ( $n = 70$ ; 73.7%) were equally likely to be sentenced to probation, and prison was slightly more likely to be used for non-bias convictions ( $n = 19$ ; 20.0% vs  $n = 27$ ; 17.2%).<sup>123</sup>

### **For all closed cases, jail sentences declined while probation sentences increased after SB 577 was implemented.**

#### Sentences: Pre-Post Comparison

Table 10 compares sentence type and duration for the pre- and post-SB 577 groups for all closed cases; one or more asterisks in the post-SB 577 percent column denotes statistically significant differences in sentences for all closed cases (excluding not guilty/acquitted cases) after SB 577 was implemented. Use

<sup>120</sup> Significantly longer jail sentences for bias vs non-bias convictions,  $t(129.711) = 3.189$ ,  $p < .001$ ; equal variances not assumed; Levene's  $F = 13.562$ ,  $p < .001$ .

<sup>121</sup> Too few cases are available to test for significance.

<sup>122</sup> Statistically significant:  $\chi^2(1) = 4.460$ ,  $p = .035$ .

<sup>123</sup> Note, when one is analyzing all known cases or the universe of cases for a period, statistical significance is less important than observable differences and it is valid to make policy decisions on raw numbers and percentages when one has data on all known cases. Statistical significance is the acceptable standard when making inferences using sample data,<sup>123</sup> or when using all known cases in one jurisdiction to make inferences to another jurisdiction.

of jail declined from 56.3% (n = 139) of convictions in the pre-SB 577 group to 47.5% (n = 125) of convictions in the post-SB 577 group.<sup>124</sup> The use of prison<sup>125</sup> and PPS<sup>126</sup> also declined after SB 577 was implemented, while the use of probation<sup>127</sup> sentences increased, but these changes were negligible. *Note*, cases that result in lengthy sentences tend to have more discovery, and longer plea negotiation, trial preparation, and overall processing times; thus, the count, mean and median figures in the post-SB 577 group are expected to increase as additional cases are disposed.

**The average number of probation conditions (~7) is similar for the pre- and post-SB 577 groups. Average probation conditions for bias vs non-bias convictions in both the pre- and post-SB 577 groups is also not significantly different.**

**Table 10. Sentences: Pre-SB 577 vs Post-SB 577**

	Pre-SB 577	Post-SB 577
<b>Prison</b>	<b>48</b>	<b>46</b>
Mean Months	38.73	39.24
Median Months	24	23
<b>Psychiatric Review Board Confinement</b>	<b>4</b>	<b>5</b>
Mean Months	159.00	98.20
Median Months	180	60
<b>Post-Prison Supervision</b>	<b>48</b>	<b>40</b>
Mean Months	29.46	26.90
Median Months	24	24
<b>Jail</b>	<b>139</b>	<b>125*</b>
Mean Days	84.46	77.64
Median Days	33	45
<b>Probation</b>	<b>177</b>	<b>190</b>
Mean Months	29.34	29.88
Median Months	24.00	36.00
<b>Total</b>	<b>247</b>	<b>263</b>

\*  $p < .05$ ; \*\*  $p < .01$ ; \*\*\*  $p < .001$ .

*Note*. Excludes no filed, open and dismissed/acquitted cases. One defendant sentenced to jail in the pre-SB 577 group received a Deferred/Civil compromise/Diverted disposition, while three in the pre- and two in the post-SB 577 groups received probation sentences. Use of jail is not significantly lower after SB 577 was implemented when the Deferred/Civil compromise/ Diverted disposition cases were excluded, i.e., it looks similar when conviction charges were removed from defendants' records after successfully completing plea conditions.

### Probation Conditions

Per SB 577 Section 5(2) (e), this section takes a deeper look into probation conditions ordered by the court. Twenty-one probation conditions (see Tables 12 and 13) were coded for closed cases. *All general conditions*<sup>128</sup> were scored as 8 points: undergoing a risk and needs assessment; substance use evaluation

<sup>124</sup> Statistically lower post-SB 577 implementation:  $\chi^2(1) = 3.903, p = .048$ .

<sup>125</sup> Not a significant decrease:  $\chi^2(1) = 0.320, p = .572$ .

<sup>126</sup> Not a significant decrease:  $\chi^2(1) = 1.592, p = .207$ .

<sup>127</sup> Not a significant increase:  $\chi^2(1) = 0.021, p = .883$ .

<sup>128</sup> See: [ORS 137.540](#). Only the conditions listed above were analyzed in this report. All general conditions were not scored twice, e.g., drug and alcohol testing listed in addition to all general conditions were scored as one point.

and treatment; avoiding alcohol, intoxicants, medical marijuana; drug and alcohol testing; finding or maintaining employment or full-time education; sex offender evaluation and treatment if recommended by the risk and needs assessment or probation officer; mental health evaluation/treatment if recommended by the risk and needs assessment or probation officer; and not owning or forfeiting weapons. Table 11 compares total convictions, bias convictions and non-bias convictions for the pre- and post-SB 577 groups; one or more asterisks indicate a significant difference post-SB 577 implementation for the specified conviction type (bias, non-bias or any). Mean and median probation conditions, along with community service hours, and fees are displayed in Table 11. Fees include both court fees and restitution. Waivers were difficult to track reliably, and only pre-waiver fees are listed in Table 11. *Note*, the mean was used to test for significant differences; however, the median provides more useful information when data are skewed (i.e., is a better measure of central tendency or the “typical” case when data are skewed).<sup>129</sup>

**There are no significant differences in probation usage, and number of probation conditions for bias vs non-bias convictions in either the pre- or post-SB 577 periods.**

**Table 11. Closed Cases: Pre-Post SB 577 Comparison of Probation Sentence**

Case Outcome	Total Conviction <sup>†</sup>		Bias Conviction		Non-Bias Conviction	
	Pre-SB 577	Post-SB 577	Pre-SB 577	Post-SB 577	Pre-SB 577	Post-SB 577
<b>Probation Sentence (N)</b>	<b>177</b>	<b>190</b>	<b>103</b>	<b>118</b>	<b>71</b>	<b>70</b>
Mean Probation Conditions	6.47	6.99	6.84	7.40	6.17	7.00
Median Probation Conditions	6	9	8	10	6	8
<b>Community Service (N)</b>	<b>49</b>	<b>27**</b>	<b>23</b>	<b>16</b>	<b>22</b>	<b>9*</b>
Mean Community Service Hours	64.34	72.00	73.09	76.25	59.36	67.78
Median Community Service Hours	40	80	80	80	40	80
<b>Fees/Restitution (N)</b>	<b>211</b>	<b>181***</b>	<b>116</b>	<b>110**</b>	<b>90</b>	<b>69*</b>
All/Partial Waiver	81	66	42	41	39	25
Mean Fees (pre-waiver)	\$1,850.71	\$978.75*	\$1,634.53	\$970.12	\$2,209.16	\$1,003.48*
Median Fees (pre-waiver)	\$601.00	\$385.00	\$650.75	\$400.00	\$606.90	\$300.00
<b>Total Cases</b>	<b>247</b>	<b>263</b>	<b>135</b>	<b>157</b>	<b>105</b>	<b>95</b>

\*  $p < .05$ ; \*\*  $p < .01$ ; \*\*\*  $p < .001$ .

<sup>†</sup> Excludes no filed, open, and dismissed/acquitted cases. See Table A6 in the [Appendix](#) for the pre-post diverted/civil compromise/deferred figures.

There were no significant differences in probation sentences, probation conditions, and community service within either the pre- or the post-SB 577 periods, i.e., these conditions were consistently applied to defendants convicted of a bias or non-bias charge within the two study groups. In the pre-SB 577 group, defendants convicted of a bias charge were ordered to complete an average of 6.84 probation conditions, while defendants convicted of a non-bias charge ordered to complete slightly fewer conditions, at 6.17 on average.<sup>130</sup> Defendants convicted of a bias charge in the post-SB 577 group received slightly more probation conditions on average, 7.40 conditions, compared to an average of 7 conditions for defendants convicted of a non-bias charge.<sup>131</sup> In terms of the overall group mean, probation conditions were slightly higher for the 190 defendants sentenced to probation in the post-SB 577 group,

<sup>129</sup> T-tests and F-tests compare differences in group means, and are not very reliable when data are skewed, i.e., there are a few extremely high observations that result in the median being lower than the mean, or there are a few extremely low observations that result in the median being higher than the mean.

<sup>130</sup> Not significantly different:  $t(224.489) = 1.122, p = .131$ ; equal variance not assumed, Levene’s  $F = 0.022, p = .022$ .

<sup>131</sup> Not significantly different:  $t(250) = 0.669, p = .252$ ; equal variance assumed, Levene’s  $F = 0.068, p = .795$ .

6.99 conditions on average, compared to an average of 6.47 for the 177 defendants sentenced to probation pre-SB 577 group.<sup>132</sup>

**Fees/restitution declined after SB 577 was implemented for both bias and non-bias convictions. Community service sentences also declined after SB 577 was implemented, but this was only statistically significant for non-bias convictions.**

However, differences exist in the use of financial penalties after SB 577 was implemented (see Table 11). The use of fees and restitution declined significantly for defendants convicted of a bias charge from 116 (85.9%) defendants in the pre-SB 577 group, to 110 (70.1%) in the post-SB 577 group.<sup>133</sup> For non-bias convictions, both community service and fees/restitution declined: the number of defendants sentenced to community service declined from 22 (21.0%) in the pre-SB 577 group to 9 (9.5%)<sup>134</sup> in the post-SB 577 group, while defendants ordered to pay fees/restitution declined from 90 (85.7%) to 69 (72.6%) after SB 577 was implemented.<sup>135</sup> Average fees/restitution decreased for both bias (from \$1,634.53 pre-SB 577 to \$970.12 post-SB 577)<sup>136</sup> and non-bias (from \$2,209.16 pre-SB 577 to \$1,003.48 post-SB 577)<sup>137</sup> convictions, but was only statistically significant for non-bias convictions.

**Defendants convicted of either a bias or non-bias charge received similar probation conditions within both the pre and post periods, with few notable exceptions.**

Probation Conditions: Bias vs Non-Bias Convictions

Table 12 lists the probation conditions for bias vs non-bias convictions for the pre- and post-SB 577 groups; one or more asterisk in the non-bias columns indicate significant differences in probation conditions for defendants convicted of a bias vs non-bias charge in the specified period (see Table A7 in the [Appendix](#) for changes in bias and non-bias convictions over time). Probation conditions were generally consistent within each period, with a few exceptions. In the pre-SB 577 group, apology letters, mental health evaluation and treatment, and full-time employment/education were more frequently ordered for defendants convicted of a bias charge, compared to those convicted of a non-bias charge. Apology letters were required for 16 (11.9%) defendants convicted of a bias charge, compared to 3 (2.9%) defendants convicted of a non-bias charge;<sup>138</sup> mental health evaluation and treatment were required for almost a third of defendants convicted of a bias charge (n = 43; 31.9%), compared to less than a fifth of defendants convicted of a non-bias charge (n = 19; 18.1%);<sup>139</sup> and 30 (22.2%) defendants convicted of a bias charge, compared to 13 (12.4%) defendants convicted of a non-bias charge were

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<sup>132</sup> Not significantly different:  $t(508) = 1.281, p = .100$ ; equal variance assumed, Levene's  $F = 0.710, p = .400$ .

<sup>133</sup> Significantly lower for defendants convicted of a bias charge in the post-SB 577 group, compared to those convicted of a bias charge in the pre-SB 577 group:  $\chi^2(1) = 10.440, p = .001$ .

<sup>134</sup> Significantly lower for defendants convicted of a non-bias charge in the post-SB 577 group, compared to those convicted of a non-bias charge in the pre-SB 577 group at the  $p < .05$  level:  $\chi^2(1) = 5.017, p = .025$ .

<sup>135</sup> Significantly lower for defendants convicted of a non-bias charge in the post-SB 577 group, compared to those convicted of a non-bias charge in the pre-SB 577 group at the  $p < .05$  level:  $\chi^2(1) = 5.238, p = .022$ .

<sup>136</sup> Not significantly different:  $t(230) = 1.608, p = .055$ ; equal variance assumed, Levene's  $F = 3.718, p = .055$ .

<sup>137</sup> Average fees and/or restitution decreased significantly after SB 577 was implemented:  $t(129.992) = 1.697, p < .046$ , equal variance not assumed, Levene's  $F = 4.663, p = .032$ . The effect size is small,  $d = 0.250$ .

<sup>138</sup> Apology letters were more frequently ordered for defendants convicted of a bias vs non-bias charge in the pre-SB 577 group at the  $p < .05$  level,  $\chi^2(1) = 6.555, p = .010$ .

<sup>139</sup> Mental health evaluation and treatment was more frequently mandated for defendants convicted of a bias vs non-bias charge in the pre-SB 577 group at the  $p < .05$  level,  $\chi^2(1) = 5.834, p = .016$ .

required to find/maintain full-time employment/education.<sup>140</sup> After SB 577 was implemented, other treatment was less frequently ordered for defendants convicted of a bias charge (n = 24; 15.3%), compared to those convicted of a non-bias charge (n = 25; 26.3%).<sup>141</sup>

**Defendants convicted of a bias charge are more likely to violate probation conditions, compared to those convicted on a non-bias charge; however, this is only statistically significant in the post-SB 577 group.**

**Table 12. Closed Cases: Bias vs Non-Bias Probation Conditions**

	Pre-SB 577		Post-SB 577	
	Bias	Non-Bias	Bias	Non-Bias
<b>Probation Sentence</b>	<b>103</b>	<b>71</b>	<b>118</b>	<b>70</b>
All General Conditions <sup>¥</sup>	50	37	76	40
Restitution/Fees	116	90	110	69
No Contact with Victim(s)	93	68	106	68
Reconciliation/Apology Letter	16	3*	9	3
Racial Sensitivity Program/Treatment <sup>§</sup>	4	2	7	1
Substance Use Evaluation/Treatment	43	36	72	35
No Alcohol, Intoxicants, Med Marijuana	44	33	55	31
No Contact with Drug Users/Sellers/Businesses	29	21	39	23
Drug/Alcohol testing	23	14	33	18
No Drug Paraphernalia	4	2	12	9
Mental Health Evaluation/Treatment	43	19*	61	36
Anger Management Evaluation/Treatment	32	23	35	24
Find/Maintain Employment/Education	30	13*	20	9
Sex Offender Evaluation/Treatment	14	6	17	10
Risk and Needs Assessment	16	9	28	15
No/Forfeit Weapon	34	17	48	25
Community/Compensatory Service	23	22	16	9
Domestic Violence Evaluation/Treatment	3	4	6	3
Parenting Program/Training	1	0	1	2
Skills Program/Training	2	1	2	0
Other Treatment	11	10	24	25*
No Association with Criminals	11	12	3	8*
<i>Any Probation Violation</i>	<i>29</i>	<i>18</i>	<i>40</i>	<i>10**</i>
<b>Total Defendants</b>	<b>135</b>	<b>105</b>	<b>157</b>	<b>95</b>

\*  $p < .05$ ; \*\*  $p < .01$ ; \*\*\*  $p < .001$ .

<sup>¥</sup> All General Conditions includes Risk and Needs Assessment; Sex Offender Evaluation/Treatment; Mental Health Evaluation/Treatment; Substance Use Evaluation/Treatment; No Alcohol, Intoxicants, Med Marijuana; Drug/Alcohol Testing; Find/Maintain Employment/Education; and No/Forfeit Weapon.

<sup>§</sup> Includes taking a course, assigned reading of books challenging bigotry or concerning historical events such as genocide along with an essay and community service at a non-profit serving the victim's community.

Defendants convicted of a bias charge were more likely than those convicted on a non-bias charge to violate probation conditions: 21.5% of defendants (n = 29) convicted of a bias charge, compared to 17.0% (n = 18) defendants convicted of a non-bias charge<sup>142</sup> in the pre-SB 577 group violated probation

<sup>140</sup> In the pre-SB 577 group, defendants convicted of a bias charge were more frequently required to find/maintain employment/full-time education, compared to those convicted of a non-bias charge,  $\chi^2(1) = 3.890, p = .049$ .

<sup>141</sup> Statistically significant:  $\chi^2(1) = 4.596, p = .032$ .

<sup>142</sup> Not significantly different,  $\chi^2(1) = 0.706, p = .401$ .

conditions, while 25.5% of defendants (n = 40) convicted of a bias charge, compared to 10.5% (n = 10) defendants convicted of a non-bias charge<sup>143</sup> in the post-SB 577 group violated probation conditions.

**Post-adjudication restorative practices – e.g., reconciliation/apology letters, racial sensitivity treatment program or community service – are rarely used in both the pre- and post-SB 577 periods.**

**Table 13. Closed Cases: Probation Conditions Pre SB 577 vs Post SB 577**

	Pre-SB 577		Post-SB 577	
	Count	Percent	Count	Percent
<b>Probation Sentence</b>	<b>177</b>	<b>71.7%</b>	<b>190</b>	<b>72.2%</b>
All General Conditions <sup>¥</sup>	88	35.6%	117	44.5%*
Restitution/Fees	211	85.4%	181	68.8%***
No Contact with Victim(s)	164	66.4%	174	66.2%
Reconciliation/Apology Letter	19	7.7%	12	4.6%
Racial Sensitivity Program/Treatment	6	2.4%	8	3.0%
Substance Use Evaluation/Treatment	79	32.0%	107	40.7%*
No Alcohol, Intoxicants, Med Marijuana	77	31.2%	86	32.7%
No Contact with Drug Users/Sellers/Businesses	50	20.2%	62	23.6%
Drug/Alcohol testing	37	15.0%	51	19.4%
No Drug Paraphernalia	6	2.4%	21	8.0%**
Mental Health Evaluation/Treatment	63	25.5%	97	36.9%**
Anger Management Evaluation/Treatment	56	22.7%	59	22.4%
Find/Maintain Employment/Education	43	17.4%	29	11.0%*
Sex Offender Evaluation/Treatment	20	8.1%	27	10.3%
Risk and Needs Assessment	25	10.1%	43	16.3%*
No/Forfeit Weapon	51	20.6%	73	27.8%
Community/Compensatory Service	49	19.8%	27	10.3%**
Domestic Violence Evaluation/Treatment	8	3.2%	8	3.0%
Parenting Program/Training	1	0.4%	3	1.1%
Skills Program/Training	4	1.6%	2	0.8%
Other Treatment	23	9.3%	49	18.6%**
No Association with Criminals	23	9.3%	11	4.2%*
<i>Any Probation Violation</i>	47	19.0%	50	19.0%
<b>Total Defendants</b>	<b>247</b>	<b>100.0%</b>	<b>263</b>	<b>100.0%</b>

\*  $p < .05$ ; \*\*  $p < .01$ ; \*\*\*  $p < .001$ .

<sup>¥</sup> All General Conditions includes Risk and Needs Assessment; Sex Offender Evaluation/Treatment; Mental Health Evaluation/Treatment; Substance Use Evaluation/Treatment; No Alcohol, Intoxicants, Med Marijuana; Drug/Alcohol Testing; Find/Maintain Employment/Education; and No/Forfeit Weapon.

*Note.* Excludes no filed, open and dismissed/acquitted cases. Restitution and Fees were the most frequently probation conditions for acquitted/not guilty and deferred/civil compromise/diverted defendants in the pre- (n = 24) and post-SB 577 (n = 12) groups.

Probation Conditions: Pre-Post Comparison

Table 13 above displays probation conditions for the pre- and post-SB 577 groups for all closed cases (excluding not guilty/acquitted cases); one or more asterisks in the post-SB 577 percent column denote statistically significant differences in probation conditions for all closed cases after SB 577 was implemented. Based on the number of significant pre-post findings, compared to the few significant differences in bias vs non-bias convictions, it is possible the significant findings in Table 13 were due to

<sup>143</sup> In the post-SB 577 group, defendants convicted of a bias charge were significantly more likely than those convicted on a non-bias charge to violate probation conditions,  $\chi^2(1) = 8.319, p = .004$ .

statewide policies (or national trends), and are unrelated to bias charges per se. Reconciliation/apology letters were rarely utilized (7.7% pre-SB 577 and 4.6% post-SB 577), as were racial sensitivity treatment programs (2.4% pre-SB 577 and 4.0% post-SB 577).

**More than two-thirds of convicted defendants in the pre- and post-SB 577 groups are ordered to pay restitution/fees and not to contact victims, while close to one-quarter are required to completed anger management evaluation/treatment.**

In contrast, restitution/fees and no victim contact (~66%) were the most frequently mandated probation conditions in both periods. However, restitution/fees declined from 211 (85.4%) convicted defendants in the pre-SB 577 group to only 118 (68.8%) convicted defendants in the post-SB 577 group.<sup>144</sup> Employment/education requirements and community service requirements also declined significantly from 43 (17.4%) convicted defendants in the pre-SB 577 group, to 29 (11.0%) convicted defendants in the post-SB 577 group.<sup>145</sup> The reduction in the use of employment/education stipulations may be due to defendants being older in the post-SB group (see [Defendant Demographics: Pre-Post Comparison](#)). The use of community/compensatory service also declined significantly from 49 (19.8%) convicted defendants in the pre-SB 577 group, to 27 (10.3%) convicted defendants in the post-SB 577 group.<sup>146</sup> This is logical given the increase in substance abuse and mental health evaluation/treatment after SB 577 was implemented, discussed below.

Risk-needs-assessment (RNA) increased from 25 (10.1%) convicted defendants in the pre-SB 577 group, to 43 (16.3%) in the post-SB 577 group.<sup>147</sup> All general conditions, which includes a risk-needs-assessment, also increased significantly from 88 (35.6%) pre- to 177 (44.5%) post-SB 577.<sup>148</sup> For a deeper dive into changes in probation conditions for bias vs non-bias convictions over time, see Table A7 in the [Appendix](#).

**Probation conditions designed to address complex needs – mental health, substance abuse and anger management – increased significantly after SB 577 was implemented. The complex needs of persons not sentenced to probation is unknown.**

*Complex Needs*

Both substance use and mental health evaluation and treatment requirements increased significantly after SB 577 was implemented. Substance abuse evaluation and treatment were required for 79 (32.0%) convicted defendants in the pre-SB 577 group, which increased to 107 (40.7%) defendants in the post-SB 577 group.<sup>149</sup> One quarter of defendants (n = 63; 25.5%) were ordered by the court to complete mental health evaluation and treatment in the pre-SB 577 group, which increased to over one-third (n = 97;

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<sup>144</sup> Significantly fewer convicted defendants were ordered to pay restitution and fees after SB 577 was implemented,  $\chi^2(1) = 19.746, p < .001$ . This may be due to national efforts to reduce criminalization of poverty, i.e., jail sanctions due to inability to pay fees.

<sup>145</sup> Significantly fewer convicted defendants were required to find/maintain employment/full-time employment after SB 577 was implemented,  $\chi^2(1) = 4.279, p = .039$ .

<sup>146</sup> Significantly fewer convicted defendants were required to undertake community service after SB 577 was implemented,  $\chi^2(1) = 9.203, p = .002$ .

<sup>147</sup> Significantly higher,  $\chi^2(1) = 9.203, p = .002$ .

<sup>148</sup> Significantly more convicted defendants received all general probation conditions after SB 577 was implemented,  $\chi^2(1) = 4.159, p = .041$ .

<sup>149</sup> Significantly more convicted defendants were required to undergo substance abuse evaluation/treatment after SB 577 was implemented,  $\chi^2(1) = 4.162, p = .041$ .

36.9%) of convicted defendants in the post-SB 577 group.<sup>150, 151</sup> This is consistent with the MCDA figures: 52% of defendants referred on a bias charge between 2020 and 2022 had a confirmed or likely unmet mental health need, while 34% had a confirmed substance use treatment need (see Table A8 in the [Appendix](#) for the MCDA figures).

**Table 14. Closed Cases: Complex Needs Pre SB 577 vs Post SB 577**

	Pre-SB 577		Post-SB 577	
	Count	Percent	Count	Percent
Defendants with Any Complex Need	132	53.4%	161	61.2%
Defendants with 2 or more Complex Needs	59	23.9%	92	35.0%
<i>Mean</i>	<i>0.83</i>		<i>1.04**</i>	
<b>Total Defendants</b>	<b>247</b>		<b>263</b>	

\*  $p < .05$ ; \*\*  $p < .01$ ; \*\*\*  $p < .001$ .

*Note.* Excludes no filed, open and dismissed/acquitted cases. Score ranges from 0-4 and includes Substance Use Evaluation/Treatment, Mental Health Evaluation/Treatment, Anger Management Evaluation/Treatment, and transient status in Odyssey court record.

This finding was unexpected<sup>152</sup> as unmet mental health needs are more frequently associated with crime victimization – including bias crime victimization.<sup>153</sup> Therefore, a complex needs measure was computed, which included mental health evaluation/treatment, substance use evaluation/treatment and anger management evaluation/treatment probation requirements, along with transient status listed in OJD’s court data. As shown in Table 14, while median complex needs remained consistent in the pre- and post-

<sup>150</sup> Significantly more convicted defendants were required to undergo mental health evaluation/treatment after SB 577 was implemented,  $\chi^2(1) = 7.656, p = .006$ .

<sup>151</sup> Of the 29 transient defendants included in this study, 2 were ordered to complete anger management evaluation/treatment, 8 to complete substance use evaluation/treatment and 7 to complete mental health evaluation/treatment.

<sup>152</sup> One explanation for the mental health-bias crime connection noted in Table 14 is LE and DDAs may be more likely to charge defendants that fit their perceptions of bias crimes. Per follow-up interviews and communications with the Portland Police Department, all cases with a possible bias motivation are investigated; both bias crime and bias incident victims are referred to the Bias Response Hotline; and all bias crimes are referred to the bias crime prosecutor at the Multnomah County DA Office. It is unknown if this practice is standard across the state. From the prosecution side, the defendant’s mental health needs may complicate conviction likelihood and increases chances that the case will be no filed: “*If there is a mental health issue there is a higher likelihood that the defendant will be deemed unable to aid and assist in his own defense and the case will never make it to trial, or, alternatively, that the defendant will offer a mental state defense based on his inability to form the requisite intent, or offer a guilty except for insanity defense. A case with no mental health component is more straightforward.*” (email correspondence with the Multnomah County DA Office, Monday December 4, 2023).

<sup>153</sup> Few individuals with mental health needs commit bias – or non-bias – crimes, and individuals with mental health and other unmet needs are more likely to be victims than perpetrators of (any type of) crime. For a discussion of extremist groups and extremist beliefs, and their changing impacts on bias crime and non-criminal bias incidents, see: DeAngelis, T. (2022, July 11). Mental illness and violence: Debunking myths, addressing realities. *Monitor on Psychology*, 52(3). <https://www.apa.org/monitor/2021/04/ce-mental-illness>; Farrell, A. & Lockwood, S. (2023). Addressing Hate Crime in the 21st Century: Trends, Threats, and Opportunities for Intervention. *Annual Review of Criminology*, 6(1), 107-130. <https://www.annualreviews.org/doi/full/10.1146/annurev-criminol-030920-091908>.

SB 577 groups at a score of 1, a greater number of defendants sentenced to probation were found to have at least one complex need post-SB 577 (n = 132; 53.4% vs n = 161; 61.2%).<sup>154, 155</sup>

### **The connection between bias crime offending and untreated mental health, substance abuse, anger management needs, and housing security is complicated.**

Prior research on bias motivation identified four categories of bias crime defendants: thrill motivated defendants seek out suitable targets in the victims' home turf (66%); defensive bias crimes are motivated by the defendant's desire to protect their neighborhoods from outsiders to convince them to move and communicate to the victim's group that they too are unwanted in the neighborhood (25%); retaliatory motivated defendants are motivated by vengeance against a real or perceived initial slight (8%); and mission defendants, who may be lone wolves or extremist group members motivated by a desire to rid the world of the evil posed by the outgroup (<1%).<sup>156</sup> Results from the current study identified a possible fifth category of bias-motivated defendants: those with complex mental health needs, untreated addiction, and housing insecurity.<sup>157</sup> Most people with untreated mental health needs do not engage in criminal behaviors or commit bias crimes.<sup>158</sup> However, a subset of the population diagnosed with very specific mental health conditions (PTSD; schizophrenia with persecutory delusions and command hallucinations; grandiosity, grandiose delusions, and mania; and antisocial personality traits), along with other co-occurring risk factors (e.g., treatment non-compliance, financial insecurity, co-occurring unmet substance use treatment needs) may constitute a lesser studied at-risk category.<sup>159</sup> Additional research with LE,

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<sup>154</sup> Statistically significant:  $t(508) = 2.550, p = .006$  (one-sided  $p$  used to test if complex needs increased post-SB 577); equal variance assumed, Levene's  $F = 1.760, p = .185$ . The effect size or size of the increase was large, Cohen's  $d = .956$ .

<sup>155</sup> The increase in mental health needs post-SB 577 may be linked to post-COVID effects. See: Vadivel, R., Shoib, S., El Halabi, S., El Hayek, S., Essam, L., Gashi Bytyçi, D., Karaliuniene, R., Schuh Teixeira, A. L., Nagendrappa, S., Ramalho, R., Ransing, R., Pereira-Sanchez, V., Jatchavala, C., Adiukwu, F. N., & Kudva Kundadak, G. (2021). Mental health in the post-COVID-19 era: challenges and the way forward. *General psychiatry*, 34(1), e100424. <https://doi.org/10.1136/gpsych-2020-100424>.

<sup>156</sup> McDevitt, J., Levin, J., & Bennet, S. (2002). Hate Crime Perpetrators: An Expanded Typology. *Journal of Social Issues*, 58(2), 303-317. <https://doi.org/10.1111/1540-4560.00262>

<sup>157</sup> About half of bias crime arrestees in New York City have a similar high-needs profile. See: Feldman, A.E. (2022, May 3). Half of people arrested in connection with a hate crime are mentally ill, NYPD officials say. *NY1, Spectrum News*. <https://ny1.com/nyc/all-boroughs/news/2022/05/03/half-of-people-arrested-in-connection-with-a-hate-crime-are-mentally-ill--nypd-officials-say>. See also: Smith, A.G. (2018, June). *Risk Factors and Indicators Associated With Radicalization to Terrorism in the United States: What Research Sponsored by the National Institute of Justice Tells Us*. National Institute of Justice. <https://www.ojp.gov/pdffiles1/nij/251789.pdf>.

<sup>158</sup> There is various combination of factors, i.e., pathways, that may push or pull someone into extremism and subsequent criminal offending, including bias crimes. Mental health issues such as schizophrenia or delusional disorder is one possible factor, but is not a sufficient condition, i.e., other vulnerabilities must cooccur. See: [DeAngelis, 2022](#); Qureshi, A. J. (2020, December). Understanding Domestic Radicalization and Terrorism. *National Institute of Justice Journal*, 282, 13-19. U.S. Department of Justice, Office of Justice Programs. [National Institute of Justice Journal, Issue No. 282 \(ojp.gov\)](#); [Smith, 2018](#); and Trip, S., Bora, C. H., Marian, M., Halmajan, A., & Drugas, M. I. (2019). Psychological Mechanisms Involved in Radicalization and Extremism. A Rational Emotive Behavioral Conceptualization. *Frontiers in psychology*, 10, 437. <https://doi.org/10.3389/fpsyg.2019.00437> <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6414414/>.

<sup>159</sup> About one-third of prosecuted bias crime cases in New Jersey between 2001 and 2004 could not be classified according to Levin and McDevitt's (1993) typology. Phillips, N. D. (2009). The prosecution of hate crimes: The limitations of the hate crime typology. *Journal of Interpersonal Violence*, 24(5), 883-905. <https://doi.org/10.1177/0886260508317190>. See also: Clemmow, C., Bouhana, N., Marchment, Z., & Gill, P. (2023) Vulnerability to radicalisation in a general population: a psychometric network approach. *Psychology, Crime & Law*, 29(4), 408-436, DOI: 10.1080/1068316X.2022.2027944; and [Qureshi \(2020, December\)](#).

DDAs, bias victimization service providers, and educators is crucial to teasing out the complex needs-bias crime perpetration connection.<sup>160</sup>

**Although Oregon has no formal bias crime treatment package,<sup>161</sup> DDAs and the courts find innovative ways to engage in individual and community level reconciliation and cultural education.**

*Bias/Sensitivity Rehabilitation and Community-level Restoration*

Restorative justice is a process whereby the defendants and “those primarily affected by an incidence of wrongdoing come together to share their feelings, describe how they were affected and develop a plan to repair the harm done or prevent recurrence.”<sup>162, 163</sup> In the absence of formal rehabilitation and restorative justice programs specific to bias-motivated behaviors, DDAs and the court are attempting to locate online and create restorative practices,<sup>164</sup> such as sensitivity/cultural awareness treatment options.

- As early as 2017, Clackamas County required two defendants to write a 2-page essay regarding diversity and the importance of respecting different cultures and races, and required another defendant to complete diversity awareness training in 2023.
- Multnomah County began community-level restorative dialogues, assigning reading and essays of books to increase cultural awareness and mandating cultural sensitivity/critical thinking courses in 2018.
- Wasco County utilized an online unconscious bias course.
- Washington County assigned defendants to victim offender reconciliation and assigned an essay on race relations in America.
- Marion County considered the suitability of community restoration in one case and determined the conditions were unlikely to lead to a positive outcome.

CJC has limited access to Odyssey probation records. It is highly likely that probation conditions related to essays, community-level restoration requiring community service at culturally appropriate CBOs, and online bias/cultural sensitivity training were ordered elsewhere and not identified in this study – especially for deferred and conditional discharge sentences that were not located in Odyssey. It is also possible that pre-adjudication restorative practices used by DDAs and the courts to repair the harm to

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<sup>160</sup> Researchers distinguish between radicalization of thought (i.e., holding extremist beliefs) and taking action to make one’s extremist beliefs a reality. These actions range from violating persons perceived as belonging to the outgroup’s civil rights (e.g., discrimination/bias incidents), to criminal behaviors (e.g., bias crimes, destruction of crucial infrastructure to trigger a breakdown of society and terrorist acts that injure/kill individuals). The mainstreaming of extremist ideologies suggests that mental health and addiction needs may not influence one’s propensity to subscribe to extremist beliefs. However, the results of this study suggest exploring the links between unmet mental health, addiction and financial needs and extremist *behavior* is warranted. For a discussion on extremist beliefs vs extremist behavior, mainstreaming of extremist beliefs and desistence from violent extremism, see: Abrams, Z. (2021, July 1). Deradicalizing domestic extremists. *Monitor on Psychology*, 52(5). <https://www.apa.org/monitor/2021/07/cover-domestic-extremists>; and Farrell & Lockwood (2023).

<sup>161</sup> A program Lutheran Community Services Northwest is in the early phases and evaluation data is not yet available. See: <https://lcsnw.org/program/crime-victim-service-center/>

<sup>162</sup> McCold, P., & Wachtel, T. (2002). *Restorative justice theory validation*. In E Weitekamp and H-J Kerner (Eds), Restorative Justice Theoretical Foundations (p. 113). Willan. <https://doi.org/10.4324/9781843924838>.

<sup>163</sup> In person dialogue is not necessary, and shuttle mediation, in which a go between communicates dialogue between the defendant and victim(s), may be used. See: Cunneen, C., & Hoyle, C. (2010). *Debating Restorative Justice* (Vol. 1. Debating Law) Oxford.

<sup>164</sup> Restorative practices – which is broader than restorative justice – includes a variety of non-traditional CJS practices, such as victim impact statements, victim support services, restitution, and community service. *Ibid.*

victims and educate defendants about the consequences of their actions are not captured in Odyssey, and thus omitted from this study.

### Summary of Findings

- Referred bias crimes increased yearly in the study period (2012-2022), with stepwise increases in 2018, 2019 and 2021, after SB 577 was implemented (see [Figure 2](#)). The notable increase in detected cases in the post-SB 577 group may be due to a combination of national increases in bias crimes; more accurate data collection as a result of SB 577 and ORS 137.676 requirements; and the removal of the multiple defendant requirement for first degree bias crime charges. The national increase in bias crimes between 2016 and 2018 was not reflected in Oregon's data, likely due to a mismatch between offending patterns and the previous Intimidation I/II legislation.
- Three hundred and ten cases referred on a bias charge were filed in the pre- (34.6% were declined; see [Table 4](#)) and 400 were filed in the post-SB 577 period (25.2% were declined; see [Table 5](#)). Insufficient evidence, victim issue, and defendant (in)ability to aid and assist were the most frequently cited reasons bias charges were not filed/no complaint, removed from the charging instrument, or dismissed – in the rare instance when details are provided in Odyssey (see [Table 7](#)). The county DA data is crucial to close this knowledge gap and identify challenges faced by DAs and DDAs when prosecuting bias crimes. Supplemental data from the MCDA indicate that aid and assist concerns were confirmed (22.5%) or suspected (29.8%) in over half of bias crime referrals between 2020 and 2022 (see [Table A8](#) in the [Appendix](#)).
- Most prosecuted defendants were white and male in the pre- and post-SB 577 periods.
  - However, non-white defendants were more likely to be prosecuted in the pre-SB 577 group, 80.0%, compared to 63.5% white defendants prosecuted (see [Table 4](#)). In contrast, white defendants had a higher prosecution rate in the post-SB 577 group, 79.0%, compared to 58.9% non-white defendants; see [Table 5](#)). The race difference in prosecution likelihood disappears in the post-SB 577 group when defendants of unknown race are assumed to be white.
  - There was no gender difference in the likelihood of prosecution in the pre-SB 577 group: 35.1% of referrals with male defendants declined, while 36.8% of referrals with female defendants declined (see [Table 4](#)). This pattern changed post-SB 577, when female defendants were less likely to be prosecuted: 29.5% of referrals with female defendants were declined, while 22.1% of referrals with male defendants were declined (see [Table 5](#)). This holds true even when unknown gender defendants are included in the analysis.
- More bias crime referrals are prosecuted post-SB 577 implementation (see [Figure 3](#)): the prosecution rate increased from 65.4% of bias crime referrals in the pre-SB 577 group to 74.8% after SB 577 was implemented, i.e., a fewer proportion of bias crime referrals are declined post-SB 577. This finding may be due to better identification of bias cases being charged as non-bias in the post-SB 577 period with the aid of the county DA data, rather than a true increase in prosecution rates. Alternatively, SB 577 may be more responsive than the previous Intimidation I/II legislation to prosecuting bias crimes. Additional research with LE and DDAs is needed to clarify if no filed rates actually declined, and the reasons behind this decline, e.g., recognition of bias indicators, formalized cooperation with LEAs, additional resources, technical assistance from the Oregon DOJ, networks with CBOs, formation of multi-disciplinary teams (MDTs), etc.
- Cases in both periods were more likely to include at least one filed second degree bias charge, compared to a first degree bias charge (see [Table 1](#)). However, the number of cases with a filed first degree bias charge increased post-SB 577 implementation, while the number of cases with a filed second degree bias charge decreased.
  - 45 or 14.5% of filed cases in the pre-SB 577 group contained a Bias I charge, which increased to 160 or 40.0% of filed cases post-SB 577 implementation.
  - 240 or 77.4% of filed cases in the pre-SB 577 group contained a Bias II charge, which decreased to 218 or 54.5% of filed cases post-SB 577 implementation.

- Common co-occurring filed charges in both the pre- and post-SB 577 groups are person crimes of Harassment, Assault IV, Menacing and Unlawful Use of a Weapon (see [Table 8](#)).
  - Cases with at least one filed Unlawful Use of a Weapon charge (52 or 16.8% of filed pre-SB 577 cases vs 107 or 26.8% of post-SB 577 cases) or Menacing charge (73 or 23.5% of filed pre-SB 577 cases vs 138 or 34.5% of post-SB 577 cases) increased significantly after SB 577 was implemented.
  - Cases with at least one filed Resisting Arrest charge increased from 12 or 3.9% of filed cases in the pre-SB 577 group to 33 or 8.3% of filed cases in the post-SB 577 group.
  - Criminal Mischief II was the only property charge that increased significantly in the study period, from 24 or 7.7% of filed cases in the pre-SB 577 group, to 53 or 13.3% in the post-SB 577 group.
- Eighty percent of filed cases in the pre- and 78.5% in the post-SB 577 group were disposed with a conviction on either a bias or non-bias charge; convictions in the post-SB 577 group are expected to increase as open cases (14.8%) are disposed (see Figure 4).
- Although total convictions (bias or non-bias) increased post-SB 577, the conviction rate declined from 51% (n = 240) in the pre-SB 577 group to 47% (n = 252) after SB 577 was implemented (see [Figure 3](#)). If open and no filed cases are excluded, the conviction rate becomes 80.0% (240 out of 310 closed cases pre-SB 577) and 78.5% (252 out of 400 closed cases post-SB 577), respectively. Bias convictions increased slightly from 135 in the pre-SB 577 period to 157 in the post-SB 577 period, while non-bias convictions declined from 105 to 95 in the same period. The post-SB 577 conviction rate is expected to increase as open cases (n = 79; 14.8%) are disposed.
- Defendants in both the pre- and post-SB 577 groups were more likely to be convicted of a Bias II charge, compared to a first degree charge (see [Table 8](#)). However, the number of defendants convicted of a first degree bias charge increased post-SB implementation from 12 to 55, while the number defendants convicted of a second degree bias charge decreased from 124 to 104 post-SB implementation.
- The use of jail, prison, and PPS declined after SB 577 was implemented while the use of probation sentences increased, but these changes were negligible, i.e., not statistically significant – except for the use of jail.<sup>165</sup> More than three-quarters of defendants convicted of a bias charge and over two-thirds of defendants convicted of a non-bias charge in both the pre- and post-SB 577 groups were sentenced to probation. Jail was the next most frequently used sanction, with more than half of defendants convicted of a bias crime charge, and slightly over 40% of defendants convicted of a non-bias charge being sentenced to jail. Prison was infrequently used: 26% of defendants convicted of a non-bias charge in the pre-SB 577 group, 16% of defendants convicted of a bias charge in the pre-SB 577 group, 17% of defendants convicted of a bias charge in the post-SB 577 group, and 20% of defendants convicted of a non-bias charge in the post-SB 577 group were sentenced to prison (see [Tables 9 and 10](#)).
- Probation duration (~29 months; see [Table 10](#)), and probation conditions (~7; see [Table 11](#)) were consistently applied to defendants convicted of a bias or non-bias charge in the pre- and post-SB 577 periods, with a few notable exceptions. In the pre-SB 577 group, apology letters (11.9% bias vs 2.9% non-bias convictions), mental health evaluation and treatment (31.9% bias vs 18.1% non-bias convictions), and full-time employment/education (22.2% bias vs 12.4% non-bias convictions) were more frequently ordered for defendants convicted of a bias, compared to those convicted of a non-bias charge (see [Table 12](#)). After SB 577 was implemented, fees/restitution declined (\$1,850.71 pre- vs \$978.75 post-SB 577; see [Table 11](#)); however, this was only statistically significant for non-bias conviction (\$2,209.16 pre- vs \$1,003.48 post-SB 577).

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<sup>165</sup> See footnotes in [Research Questions](#) for an explanation on the downward national incarceration trends and [CJC's Prison Usage Dashboard](#) for Oregon specific figures, broken down by crime category. Note, no Oregon statewide jail data system currently exists.

- Restitution/fees, employment/education requirements, and community service requirements decreased significantly after SB 577 was implemented (closed cases only; see [Table 13](#)).
  - Restitution/fees were ordered for 211 (85.4%) defendants in the pre-SB 577 group, which decreased to 118 (68.8%) in the post-SB 577 group.
  - Employment/education mandates declined from 43 (17.4%) defendants in the pre-SB 577 group, to 29 (11.0%) in the post-SB 577 group.
  - Community service mandates declined from 49 (19.8%) defendants in the pre-SB 577 group, to 27 (10.3%) in the post-SB 577 group.
- Complex needs (mental health evaluation/treatment, substance use evaluation/treatment, and anger management evaluation/treatment probation requirements, and transient status) increased from 132 (53.4%) in the pre-SB 577 group to 161 (61.2% of defendants with a closed case) in the post-SB 577 group (see [Table 14](#)).
- Some DDAs communicate justifications for no filing, filing/issuing a case as non-bias, plea bargaining, and deferred sentences to the referring officer, but this is not a consistent practice. Community members who share identity with the victim and who research shows are similarly psychologically harmed when a community member is targeted, have no right to be informed of these decisions and occurrences. Media accounts indicate that procedural justice is being adversely affected by this communication breakdown.<sup>166</sup>

## **Conclusion**

The Oregon criminal justice system identified and disposed of 321 bias crime cases in the 3.5 years after SB 577 was implemented (79 cases are open), compared to 300 cases in the 7.5 years prior. This may be due to a combination of an increase in the responsiveness of SB 577 to prosecuting bias crime in its current iteration, advocacy and education provided by the ODOJ Bias Response Hotline on the state's bias crime recommendations to LEAs and DA offices along with widespread messaging creating a better informed public, and the national increase in bias crimes since 2015. However, a substantial number of bias crimes reported to the [ODOJ Bias Response Hotline](#) are never reported to law enforcement at the victim's choice – 903 bias crime reports were made to the Hotline in 2022 alone with very little overlap of cases in the Oregon criminal justice system – because the Hotline is a victim-driven model, and thus victims determine what next step to take after a Hotline advocate reviews options post-disclosure; most victims never report to LE and never have their case adjudicated in the criminal courts.<sup>167</sup> In addition, a substantial number of bias crime and non-criminal bias incident victims never report to the confidential

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<sup>166</sup> See: [Green \(2023, October 15\)](#); [Green \(2023, December 29\)](#).

<sup>167</sup> According to Oudekerk (2019), 204,600 bias crime victimizations occurred yearly between 2013 and 2017 and between 44%-65% were not reported to the police (see Figure 1 and Appendix tables 1 and 4). Respondents to the National Crime Victimization Survey (NCVS) reported that law enforcement confirmed ~15,200 per year were deemed founded, while the UCR listed a yearly average of 7,500 for this period as many LE departments did not submit data or reported zero hate crimes. With the new NIBRS reporting rules, and the related capacity challenges, fewer law enforcement agencies submitted reported crime data to the Bureau of Justice Statistics in 2022 – Oregon LEAs reported 286 bias crimes in 2020, 295 in 2021 and 339 in 2022, while ~4,300 Oregonians were victims of bias crimes (i.e., 1 per 1,000 persons 12 years or older [\(Kena & Thompson, 2021\)](#)). Thus, the data gap is likely more extensive in the post-SB 577 period. It should be noted that the NCVS has strict criteria when classifying hate crimes (e.g., hate language and/or hate symbols used by the perpetrator, or the police confirmed the incident was a hate crime); however, like the [Oregon Bias Response Hotline](#), the NCVS do not verify whether there is sufficient evidence to obtain a conviction. It is difficult to say how much of the ~86,700 per year reported bias crimes that the police did not believe were bias crimes were due to evidentiary matters vs inadequate capacity to identify and investigate bias crimes. For additional discussion on causes of and the extent of bias crime nonreporting, see: [Oudekerk \(2019\)](#). See also: [Pezzella et al. \(2019\)](#); [U.S. Department of Justice Hate Crimes Enforcement and Prevention Initiative](#); [Davis et al. \(2016\)](#); and [Stening \(2021\)](#).

Hotline for services and supports that they require.<sup>168</sup> This creates a two-fold problem: (1) victims do not receive what they need to heal, and (2) it is difficult to determine the scope of Oregon’s problem<sup>169, 170</sup> and formulate suitable remedies. Regarding the former concern, the ODOJ’s current standard operating procedure of widely publicizing services – including language and culturally specific supports – is improving bias crime reporting and should be maintained and expanded when the ODOJ sees gaps. In terms of the latter, academics, policy researchers and graduate students can help to identify the scope of the issue, identify type and dosage of services needed by bias crimes and bias incidents victims, and not stymie the criminal justice system’s ability to respond to bias crime. Academics, external researchers, and students can draw on institutional research board guidance and regulations to safeguard bias crime victims, service providers, community groups, and criminal justice professionals – which is crucial when conducting research with vulnerable populations. The CJC welcomes research proposals, or outlines for studies on bias crime – or any other criminal justice topic – that utilizes criminal justice data the agency is permitted to share.<sup>171</sup>

**Except for the higher use of jail for bias convictions in the pre- and post-SB 577 periods, sentences and number of probation conditions did not significantly differ for bias vs non-bias convictions in the 11-year study period. This is not being consistently communicated to victims and affected communities.**

As noted in the [Research Questions](#) section, the presumptive sentence for a bias charge, compared to a non-bias conviction in the post-SB 577 period, may differ greatly: Bias I is a class C felony with a crime category of 6 and a presumptive probation sentence, Bias II is a class A misdemeanor with a presumptive probation sentence and local jail time available at the court’s discretion – typically in the most egregious of cases – while Assault II is a class B felony with a crime category of 10 and a presumptive 70 month prison sentence. Furthermore, Bias I can only result in a prison sentence if the defendant has a criminal history score of D or higher or is convicted of a co-occurring charge with a higher crime seriousness score, while a criminal history score of F or lower will result in a presumptive probation sentence.<sup>172</sup> However, bias crime victims are less likely to be moved by such abstract matters and instead be concerned about whether accountability is adversely affected when (1) the prosecutor drops the bias charge (thereby not labelling the defendant’s conduct as bias-motivated) to obtain a conviction on at least one charge and in-custody time for the defendant, or (2) the court dismisses the bias charge(s) and convicts the defendant on any non-bias charge(s). This pre-post evaluation found sentences did not

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<sup>168</sup> The estimated yearly bias crime victimization rate for 2005-2015 was 1 per 1,000 persons 12 years or older ([Kena & Thompson, 2021](#)), and yearly bias crime victimizations rates have been trending upwards since then ([Farrell & Lockwood, 2023](#)). In contrast, 304 bias crimes were reported to the Hotline in 2020, 463 in 2021 and 890 in 2022 ([Kerodal et al., 2023](#)).

<sup>169</sup> Further research and discussion with LE are required to identify whether unfounded bias crime determination is influenced by defendant demographics and whether differences exist by rural vs urban jurisdictions, victim-defendant relationship, and bias motivation. Further research with LE is also required to tease out the connections between mental health, substance abuse and bias crime referrals to County DAs’ offices. Some bias crime victims are more likely to be recognized as legitimate, while others may be misclassified as non-bias or deemed unfounded. Specifically, police legitimacy is adversely affected when victims are part of a community group with strained police relations. See: [Pezzella et al. \(2019\)](#).

<sup>170</sup> At the DA level, unanswered questions include: What limitations, barriers and challenges do they face when bringing bias charges, with and without a clear mental health/substance abuse/anger narrative? What training and other resources do LE, DDAs and judges require to successfully address bias crimes?

<sup>171</sup> <https://www.oregon.gov/cjc/about/Pages/Contact.aspx>

<sup>172</sup> <https://www.oregon.gov/cjc/resources/documents/guidelinesgrid.pdf>

significantly differ for bias vs non-bias convictions in the 11-year study period.<sup>173</sup> This is not consistently being communicated to victims.

### **Inform victims and their communities of case outcomes, plea bargains, and justification for LE or DDA dismissing the case.**

The inconsistent county-level data entry in Odyssey for no complaint cases and charges suggest that some bias crime cases disposed with a non-bias conviction, civil compromise, diverted to specialty/treatment court (e.g. MH, drug, or DUII court), or disposed with a conditional discharge are not captured in the SB 577 reports – and instead are reported as complete dismissal (see [Limitations](#) and Figure 1). These dispositions represent some degree of accountability, and need to be communicated to victims.<sup>174</sup> Plea agreements and case outcomes are theoretically accessible via [Oregon eCourt Case Information \(OECI\)](#). However, language and technology barriers may pose a challenge for victims.<sup>175</sup> Typically the DA or victim advocate at the county DA office or LEA attempts to notify victims of case outcomes. However, communication breakdowns may occur, e.g., the DA or victim advocates may have capacity/staffing issues, victims’ work responsibilities may influence their ability to respond to calls in a timely manner or victims may encounter technology, financial, or language barriers to communications. Failure to inform victims of case outcomes may have adverse repercussions for victims’ healing, mental and physical health, quality of life,<sup>176</sup> and future reporting behavior. Statewide communication protocols, with multiple avenues (e.g., calls, texts, emails, and mail), may be the most efficient means of ensuring victims are informed of case outcomes, plea bargains, and justification for LE or DDA dismissing the case. The victim’s community should also be informed of case outcomes. Dashboards and press releases may be beyond the capacity of some smaller county DAs’ offices (and of limited use to non-English speakers and those with limited internet access); however, the ODOJ and/or community based organizations (CBOs) may be able to assist in informing communities on the steps taken to address bias crime to reduce community fear and improve trust in the justice system (e.g., brief reports on sentence and probation conditions), while respecting confidentiality limitations and victims’ preference (e.g., case outcomes may be communicated to communities in aggregate to respect the victim’s privacy preferences).

### **Continuation of the current practice of administering a risk-needs assessment (RNA) tool and court mandated treatment as indicated by the assessment.**

The current study had a few promising findings: the [ODOJ's Resources for Victims](#) webpage with links to victim assistance providers should increase bias crime reporting and prosecution; similar sentences for bias cases disposed with a bias or non-bias conviction post SB-577 should improve perceptions of procedural justice; and the increased use of RNA tools and all general probation conditions (which

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<sup>173</sup> It is unknown if this is being considered by prosecutors in their contemplation of whether to drop the bias crime charge in favor of the non-bias charge.

<sup>174</sup> The prosecutor may inform the referring officer of case outcomes and justification for not pursuing a case (all charges are “no complaint”); this information frequently does not reach the victim or victim’s community. Communication on case outcomes may be done by crime advocates or support staff at the county DAs’ Offices, or LEA that recorded the initial report. However, there are no statewide rules/policies (Source: multiple conversations with the PPD and MCDA Office in November and December 2023). Multiple new reports suggest victims and their communities are both frequently unaware of bias crime case outcomes and open to alternative and restorative sentencing.

<sup>175</sup> Routinely scanning court records to determine whether the defendant(s) faced any accountability may also negatively affect victim’s recovery from a bias crime.

<sup>176</sup> Failure to communicate case outcomes may be a violation of a victim’s Constitutional and statutory victim rights, if they had requested such notice.

typically includes a 4<sup>th</sup> generation risk assessment) post-SB 577 should reduce recidivism. From a recidivism reduction standpoint, administering a risk-needs assessment (e.g., the LS/CMI or another suitable 4<sup>th</sup> generation risk tool),<sup>177</sup> and mandating programs to meet defendants' unmet treatment needs as indicated by the assessment (e.g., housing,<sup>178</sup> substance use, addiction, anger management, interpersonal problem-solving skills, job skills, and parental skills) are best practices.<sup>179</sup>

### Consider creating a formal bias crime treatment package.

Several county DAs are supportive of creating a diversion program, with treatment and restorative justice components. However, planning is in the early stages. LEAs may also be open to the creation of a statewide bias treatment package, provided they are included in the planning phases. The following policies and practices have been found to increase bias crime reporting and best-practices community corrections and diversion to minimize recidivism.<sup>180, 181</sup>

- For LEAs, (1) a dedicated bias crimes officer or unit in LEAs, (2) review procedures for bias crime reports, (3) written policy guidelines and (4) community outreach with local CBOs and advocacy groups; (5) LE referrals to the ODOJ Bias Response Hotline (BRH) for bias crime (currently LE is only required to refer bias incidents to the BRH); (6) LE record keeping from the time of initial contact with bias crime victims; and (7) LE policies outlining communication of next steps and case outcomes to victims.<sup>182</sup>
- At the sentencing level, (8) a validated 4<sup>th</sup> generation risk-needs-assessment such as the [LS/CMI](#); (9) court mandated (MH, addictions, anger management, problem solving skills, etc.)<sup>183</sup> programming

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<sup>177</sup> See: Thompson, C. (2017). *Myths & Facts: Using Risk and Needs Assessment to Enhance Outcomes and Reduce Disparities in the Criminal Justice System*. Community Corrections Collaborative Network. [032859a.pdf](#).

<sup>178</sup> Care should be taken to include risk of housing insecurity in any risk assessment, as risk tools to reduce reoffending behavior were initially created in Canada about 30 years ago, where housing insecurity is addressed differently from the USA.

<sup>179</sup> The selected tool should be revalidated periodically with Oregonian samples to optimize the tool. See: Russo, J., Vermeer, M.J.D., Woods, D., & Jackson, B.A. (2020). *Risk and Needs Assessments in Prisons: Identifying High-Priority Needs for Using Evidence-Based Practices*. Santa Monica, CA: RAND Corporation. [https://www.rand.org/content/dam/rand/pubs/research\\_reports/RRA100/RRA108-5/RAND\\_RRA108-5.pdf](https://www.rand.org/content/dam/rand/pubs/research_reports/RRA100/RRA108-5/RAND_RRA108-5.pdf). For additional strategies to select and maximize the benefits of a risk tool, also see: Bucklen, K.B., Duwe, G., & Taxman F.S. (2021). *Guidelines for Post-Sentencing Risk Assessment*. Washington, DC: U.S. Department of Justice, National Institute of Justice, NCJ 300654. <https://www.ojp.gov/pdffiles1/nij/300654.pdf>. <https://www.ojp.gov/pdffiles1/nij/300654.pdf>.

<sup>180</sup> Extreme beliefs or beliefs in “isms” (e.g., racism, sexism, agism) do not always result in bias-motivated – or at the extreme end, terrorist behaviors. The focus of the justice system should be on *offending behavior*, rather than *extremist beliefs*.

<sup>181</sup> LEAs and DAs are encouraged to evaluate these evidence-based policies within the framework of their resource and staff capacity, and to contact the CJC as needed for additional information on best-practices to address bias crimes in their jurisdiction.

<sup>182</sup> Source: Video call, PPB, November 14, 2023. For policies found to streamline the investigation of bias crimes and build trust with vulnerable communities and victims, see: [Jones, Mitchell, & Turner \(2022\)](#).

<sup>183</sup> Cognitive behavioral therapy in a non-institutional setting, with anger management and interpersonal problem-solving program elements, conducted multiple sessions per week has a strong effect in reducing crime and increasing victim empathy (see: <https://www.college.police.uk/research/crime-reduction-toolkit>; [Cognitive behavioural therapy \(CBT\) | College of Policing](#)). Fourth generation risk-needs tools include assessment of static risk factors, dynamic needs factors that reduces reoffending risks when adequately addressed and case management. Bias crime reoffending risk is built into current risk-needs tools, as risk tools are validated using re-arrest or re-

and stable housing per the risk assessment; and (10) regular program evaluations with program modifications as indicated by the evaluations are best practices to minimize reoffending risk.

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conviction reoffending risk. Mandating treatment recommended by the risk needs assessment is crucial for reducing recidivism risk generally, which includes bias crime recidivism. See: Pilon, A., Jewell, L.M. & Wormith, J.S. (2015). *Impaired Drivers and their Risk of Reoffending*. Centre for Forensic Behavioural Science and Justice Studies - University of Saskatchewan, Saskatoon, SK.  
[https://cfbsjs.usask.ca/documents/research/research\\_papers/ImpairedDriversandTheirRiskofReoffending.pdf](https://cfbsjs.usask.ca/documents/research/research_papers/ImpairedDriversandTheirRiskofReoffending.pdf).

## Appendix

**Table A1. Referred and Filed Bias Crime Cases by County: Pre-SB 577 vs Post-SB 577**

County	Pre-SB 577		Post-SB 577	
	Referred	Filed	Referred	Filed
Baker	1	--	--	--
Benton	12	9	16	12
Clackamas	22	14	41	31
Clatsop	1	1	4	3
Columbia	5	4	4	4
Coos	6	5	2	2
Crook	3	3	1	--
Curry	4	4	4	2
Deschutes	18	11	15	11
Douglas	9	4	5	4
Gilliam	--	--	1	--
Grant	1	1	--	--
Harney	--	--	--	--
Hood River	7	--	3	2
Jackson	8	5	16	15
Jefferson	2	2	4	3
Josephine	13	5	8	5
Klamath	12	10	6	4
Lake	2	2	1	1
Lane	59	23	34	13
Lincoln	19	12	11	9
Linn	10	3	22	14
Malheur	4	3	8	8
Marion	40	28	44	33
Morrow	--	--	--	--
Multnomah	143	121	175	145
Polk	7	7	7	6
Sherman	--	--	1	1
Tillamook	2	--	1	1
Umatilla	10	5	2	1
Union	2	2	1	--
Wallowa	--	--	--	--
Wasco	1	1	13	5
Washington	46	21	80	61
Wheeler	--	--	1	1
Yamhill	5	4	4	3
<b>Total</b>	<b>474</b>	<b>310</b>	<b>535</b>	<b>400</b>

*Note.* The difference between the detected and prosecuted cases were bias crime arrests or referrals to DDAs where no further action was taken, or the case was entirely prosecuted as non-bias and not identifiable in Odyssey as having a referred bias charge. Cases brought by the DDA that resulted in a complete dismissal or no complaint or not guilty finding for all charges were included in the “detected” columns.

**Table A2. UCR vs Study Data Reported Bias Crimes 2012-2022 by Year**

Year	Study Data Defendants	UCR Incidents	UCR Offenders	UCR Defendants
2012	58	52	76	60
2013	52	68	81	44
2014	55	66	71	36
2015	55	65	71	39
2016	61	107	120	74
2017	58	149	155	85
2018	79	137	146	102
2019	114	178	192	125
2020	118	292	318	189
2021	179	287	327	222
2022	180	290	328	230
<b>Total</b>	<b>1,009</b>	<b>1,691</b>	<b>1,885</b>	<b>1,206</b>

**Table A3. Detected Bias Crime Case Outcomes by Year**

Year	Total Detected	No filed	Open	Bias Conviction	Other Conviction	Acquitted/Dismissed	Deferred/Diverted
2012	58	23	1	10	12	12	0
2013	52	23	0	12	12	3	2
2014	55	23	1	16	13	1	1
2015	55	17	1	15	11	10	1
2016	61	17	1	16	22	4	1
2017	58	24	1	18	10	5	0
2018	79	18	4	28	17	11	1
2019	114	30	3	47	16	16	2
2020	118	33	10	47	16	11	1
2021	179	42	24	50	37	23	3
2022	180	49	43	33	34	15	6
<b>Total</b>	<b>1,009</b>	<b>299</b>	<b>89</b>	<b>292</b>	<b>200</b>	<b>111</b>	<b>18</b>

**Table A4. Mean Filed Charges: Pre-SB 577 vs Post-SB 577**

	Pre-SB 577		Post-SB 577	
	Count	Mean	Count	Mean
Open	10	4.10	79	4.18
Bias Conviction	135	4.24	157	4.39
Other Conviction	105	3.69	95	4.22
Deferred/Civil compromise/Diverted	7	2.57	11	2.36
Acquitted/Not guilty	2	4.00	4	6.25
Dismissed/Removed from Charging Instrument	51	2.65	54	3.87
<b>Total</b>	<b>310</b>	<b>3.75</b>	<b>400</b>	<b>4.20</b>

*Note.* Excludes no filed cases.

**Table A5. Bias and Non-Bias Convicted Charges: Pre-SB 577 vs Post-SB 577**

	Pre-SB 577		Post-SB 577	
	Bias	Non-Bias	Bias	Non-Bias
Intimidation/Bias in the First Degree	12	--	55	--
Intimidation/Bias in the Second Degree	124	--	104	--
Assault in the Second Degree	3	5	4	0
Assault in the Third Degree	6	11	2	5
Assault in the Fourth Degree	18	26*	16	16
Menacing	12	12	16	20*
Harassment	6	15**	10	13
Unlawful Use of a Weapon	17	8	20	17
Disorderly Conduct in the Second Degree	7	15*	3	7*
Resisting Arrest	2	3	9	5
Recklessly Endangering Another Person	1	1	0	5**
Criminal Mischief in the First Degree	4	5	5	2
Criminal Mischief in the Second Degree	5	3	6	8
<i>Total Charges</i> <sup>‡</sup>	287	150	317	145
<i>Mean Charges</i> <sup>§ †</sup>	2.13	1.43***	2.02	1.53 ***
<b>Total Defendants</b>	<b>135</b>	<b>105</b>	<b>157</b>	<b>95</b>

*Note.* charge categories were coded as 1/yes if the case had at least one count of the listed charge.

Charges were interpreted per defendant, e.g., in the pre-SB 577 group, 73 defendants were charged with at least count of menacing and 24 defendants were convicted of at least one menacing count charge.

\*  $p < .05$ ; \*\*  $p < .01$ ; \*\*\*  $p < .001$ .

<sup>‡</sup> Unique charges only, charge counts were not tracked.

<sup>§</sup> Represents average charges in the list of tracked charges. Mean unique conviction charges was lower for non-bias cases in both the pre- ( $t(211.046) = 4.653, p < .001$ ; equal assumptions not assumed, Levene's  $F = 7.710, p = .006$ ) and post-SB 577 ( $t(249.168) = 4.286, p < .001$ ; equal assumptions not assumed, Levene's  $F = 5.873, p = .016$ ) groups.

<sup>†</sup> Comparison for all four sub-group means: defendants convicted of a bias crime in the pre-SB 577 group had significantly more co-occurring conviction charges ( $M = 2.13$ ), compared to defendants with non-bias convictions in the pre- ( $M = 1.43$ ) and post- ( $M = 1.53$ ) sub-samples (Welch  $F(3, 267.958) = 14.041, p < 0.001$ ). Defendants convicted of a non-bias charge in the post-SB 577 group were convicted of significantly more charges ( $M = 1.53$ ), compared to those convicted of a non-bias charge in the pre-SB 577 group ( $M = 1.43$ ).

**Table A6. Deferred, Civil Compromised and Diverted Cases:  
Pre-Post SB 577 Comparison of Probation Sentence**

	Pre-SB 577	Post-SB 577
<b>Probation Sentence (N)</b>	<b>3</b>	<b>2</b>
Mean Probation Conditions	3.71	1.09
Median Probation Conditions	2	0
<b>Community Service (N)</b>	<b>4</b>	<b>2</b>
Mean Community Service Hours	36.67	57.00
Median Community Service Hours	40	57
<b>Fees/Restitution (N)</b>	<b>5</b>	<b>2*</b>
All/Partial Waiver	0	0
Mean Fees (pre-waiver)	\$413.90	\$565.00
Median Fees (pre-waiver)	\$412.50	\$ 565.00
<b>Total Cases</b>	<b>7</b>	<b>11</b>

\*  $p < .05$ ; \*\*  $p < .01$ ; \*\*\*  $p < .001$ .

**Table A7. Bias vs Non-Bias Convictions: Pre-Post Probation Conditions Comparison**

	Bias		Non-Bias	
	Pre-SB 577	Post-SB 577	Pre-SB 577	Post-SB 577
<b>Probation Sentence</b>	<b>103</b>	<b>118</b>	<b>71</b>	<b>70</b>
All General Conditions <sup>¥</sup>	50	76	37	40
Restitution/Fees	116	110**	90	69*
No Contact with Victim(s)	93	106	68	68
Reconciliation/Apology Letter	16	9	3	3
Racial Sensitivity Program/Treatment	4	7	2	1
Substance Use Evaluation/Treatment	43	72*	36	35
No Alcohol, Intoxicants, Med Marijuana	44	55	33	31
No Contact with Drug Users/Sellers/Businesses	29	39	21	23
Drug/Alcohol testing	23	33	14	18
No Drug Paraphernalia	4	12	2	9*
Mental Health Evaluation/Treatment	43	61	19	36**
Anger Management Evaluation/Treatment	32	35	23	24
Find/Maintain Employment/Education	30	20*	13	9
Sex Offender Evaluation/Treatment	14	17	6	10
Risk and Needs Assessment	16	28	9	15
No/Forfeit Weapon	34	48	17	25
Community/Compensatory Service	23	16	22	9*
Domestic Violence Evaluation/Treatment	3	6	4	3
Parenting Program/Training	1	1	0	2
Skills Program/Training	2	2	1	0
Other Treatment	11	24	10	25**
No Association with Criminals	11	3*	12	8
<b>Total Defendants</b>	<b>135</b>	<b>157</b>	<b>105</b>	<b>95</b>

\*  $p < .05$ ; \*\*  $p < .01$ ; \*\*\*  $p < .001$ .

<sup>¥</sup> All General Conditions includes Risk and Needs Assessment; Sex Offender Evaluation/Treatment; Mental Health Evaluation/Treatment; Substance Use Evaluation/Treatment; No Alcohol, Intoxicants, Med Marijuana; Drug/Alcohol Testing; Find/Maintain Employment/Education; and No/Forfeit Weapon.

*Note.* Excludes no filed and open cases.

**Table A8. Mental Health and Substance Abuse History:  
Defendants Referred with a Bias Charge to the Multnomah  
County DA Office 2020-2022**

	Count	Percent
<b>Mental Health Needs</b>		
Yes <sup>‡</sup>	32	22.53%
No <sup>‡</sup>	68	47.88%
Maybe (likely but unconfirmed) <sup>¥</sup>	42	29.57%
<b>Any Substance Abuse Indicator</b>		
Yes <sup>§</sup>	34	23.94%
No <sup>†</sup>	94	66.19%
Maybe (likely but unconfirmed) <sup>*</sup>	14	9.85%
Total Bias Crime Cases Referred	142	100.00%

Source: Email correspondence, Multnomah County DA Office, Friday December 22, 2023.

<sup>‡</sup> Defendant found unable to aid and assist, had a specific mental illness diagnosis, guilty except for insanity, or exhibited clear, documented signs of mental illness.

<sup>‡</sup> Defendants with no documentation identifying a mental illness.

<sup>¥</sup> Cases in which there are notes in the police report or other case documents indicating that the defendant was suffering with mental

<sup>§</sup> Defendants for whom there is YA specific note in the police report or other case documents regarding intoxication or impairment, for example "meth use making him crazy," "visible intoxication," "extensive history of drug use (source: psychiatric evaluation)," "open alcohol and needles in bag" or an elevated blood alcohol content reading procured from a breathalyzer at the time of the incident.

<sup>†</sup> Defendants with no documentation identifying substance use.

<sup>\*</sup> Cases in which there are notes in the police report or other case documents indicating that the defendant may have been using drugs or had a history of drug or alcohol abuse, for example "appeared high," "incoherent, violent, difficult to restrain," or "unclear if MH or drugs are the root cause" (Crimes Sheet) multiple incidents, obvious "threat to the community."