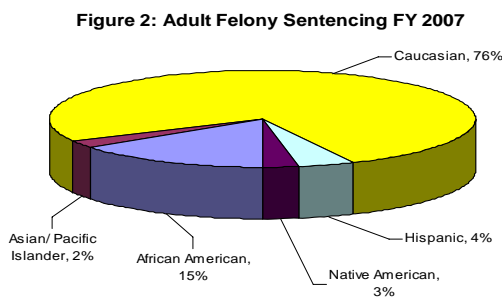
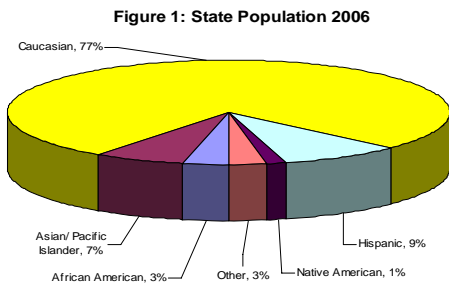




Disproportionality and Disparity in Adult Felony Sentencing Fiscal Year 2007

Disproportionality

“Disproportionality” in adult felony sentencing is defined as the degree to which the demographic composition of adult felony offenders differs from that of the general state population (Figure 1, 2).



Over-representation may arise in many stages of the criminal justice system. As such, this report summarizes but does not investigate the causes of disproportionality in sentencing. For the purposes of this report, disproportionality is measured by a ratio, the percentage of a group in an event such as sentencing, relative to the percentage of that group in the population.

Sentencing Ratio Calculation

$$\text{Ratio} = \frac{\% \text{ racial group in sentencing}}{\% \text{ racial group in the population}}$$

If the ratio is below 1 a group is under-represented, over-represented if above 1, and in proportion to the population if the ratio equals 1.

During fiscal year 2007, Washington courts entered 29,196 adult felony sentences. Approximately 80% of the offenders were male and 33% of the sentences were for minorities (Table 1)¹.

Table 1: Demographics²

Gender	Adult Sentences	% of Adult Sentences	State Population	% of State Population	Ratio
Female	5,505	20.32%	3,198,249	50.16%	0.40
Male	21,592	79.68%	3,177,351	49.84%	1.60
Race/Ethnicity	Adult Sentences	% of Adult Sentences	State Population	% of State Population	Ratio
African American	4,041	14.91%	214,119	3.36%	4.44
Asian/Pacific Islander	672	2.48%	431,760	6.77%	0.37
Caucasian	20,474	75.56%	4,894,260	76.77%	0.98
Hispanic	1,177	4.34%	565,377	8.87%	0.49
Native American	732	2.70%	92,298	1.45%	1.87

Excludes 2,098 sentences in which gender and/or race/ethnicity were not provided.

Women accounted for approximately 50.2% of the state population but only 20.3% of sentences, a ratio of 0.40. This compares to a ratio of 1.60 for men. African Americans comprise 3.36% of the state population in Washington but received 14.91% of all felony convictions and were the most over-represented racial group with a 4.44 ratio. Native Americans were 1.87 times over-represented in adult sentencing. Asian/Pacific Islanders had the lowest ratio, 0.37. Caucasians, the largest segment of the population, 76.77%, accounted for 75.56% of all convictions and had a 0.98 ratio.

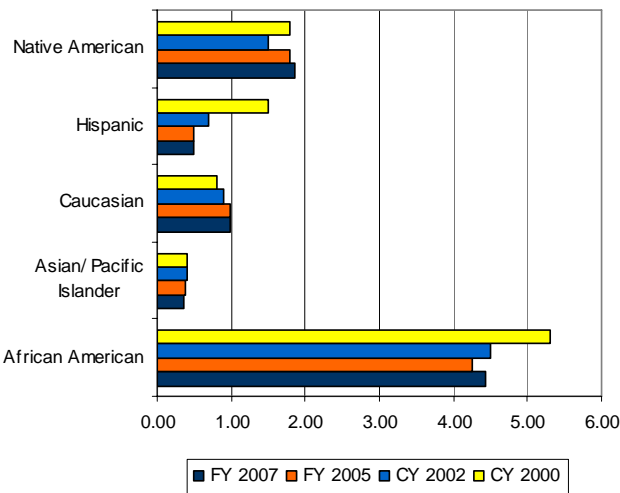
¹ Gender and/or Race/Ethnicity were not provided on 2,098 adult felony sentences.

² Although the United States Census Bureau does not include Hispanic in its list of “races,” due to the relatively large segment of Washington’s population identified as “Hispanic” and in the interest of clarifying disproportional issues, persons of Hispanic ethnicity have been placed in this group regardless of race.

Trends in Disproportionality

In Calendar Year 2000, 2002, Fiscal Year 2005 African and Native Americans were the most over-represented groups in adult felony sentencing. This trend continued in fiscal year 2007 (Figure 3). Asian/ Pacific Islanders were under-represented during this same period. The most significant changes over the past 5 years include a steady increase in over-representation for Native Americans and a steady decrease in representation of Hispanic. The representation of Asian/Pacific Islands continued at the lowest rate and decreased in the last 7 years.

Figure 3: Adult Felony Sentencing Ratios

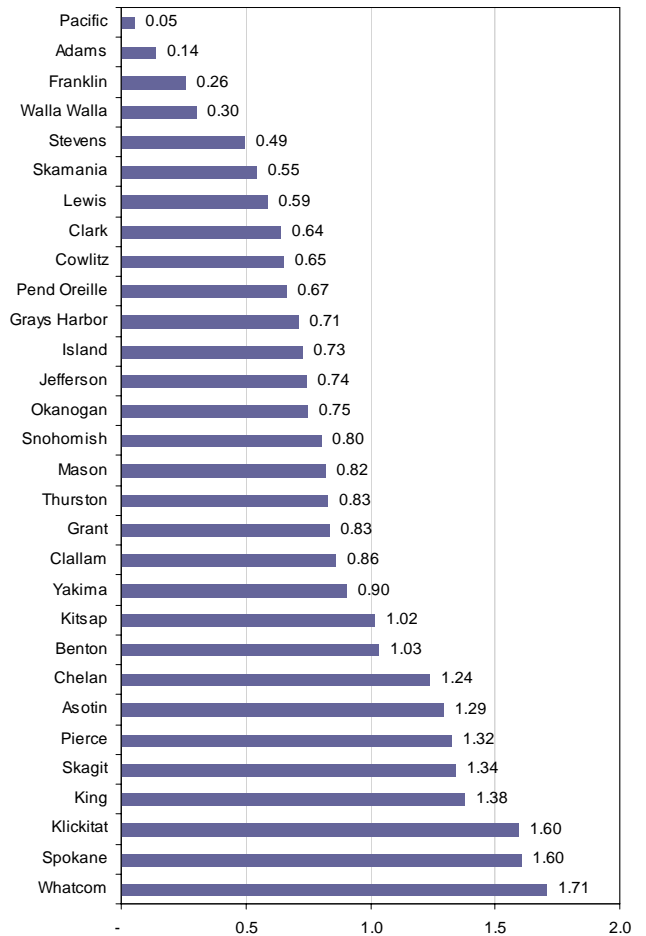


Geographic Disproportionality

Statewide data is useful to reveal aggregate trends in adult felony sentencing. Due to variations in the racial and ethnic composition of a population from one geographic area to another, localized observations may better represent sentencing practices in a particular region. Of 30 counties reviewed, 10 were found to have a sentencing ratio for all minorities greater than 1 and 20 counties had a ratio less than or equal to 1 (Figure 4)³. Whatcom, Spokane, Klickitat, King and Skagit counties reported the highest ratios of over-representation of minorities in sentencing compared to population. Pacific, Adams, Franklin, Walla Walla, and Stevens counties reported the lowest ratios of under-representation of minorities.

³ Small numbers tend to produce unstable ratios. Counties with less than 30 adult felony sentences, including Columbia, Douglas, Ferry, Garfield, Kittitas, Lincoln, San Juan, Wahkiakum, Whitman and are excluded.

Figure 4: County Sentencing Ratios for Minorities



Disparity⁴

“Disparity” in sentencing is defined as differing treatment of offenders with the same current offense and criminal history. Since the enactment of the Sentencing Reform Act (SRA), Washington State adopted a system of presumptive sentencing guidelines. Adults who commit criminal offenses are subject to standard terms according to a sentencing grid or to a variety of sentencing alternatives. Standard ranges limit but do not eliminate the possibility of disparate treatment. Disparity in sentencing can arise in the placement within the standard ranges, the incarceration decision, and the alternative sentencing rates among different gender and racial/ethnic groups.

⁴ This report summarizes sentencing data and the descriptive nature only serves a limited purpose as an indicator that disparity may exist. As such, it should be noted that other contributing factors should be examined. The SGC database does not contain information covering all eligibility criteria for alternatives.

Placement in the Standard Range

The majority of felony sentences in Washington in fiscal year 2007 fell within the standard ranges. Offenders subject to standard range sentences face terms of incarceration which are limited by the range defined on the sentencing grid. The range is defined by the intersection of the current offense seriousness level and criminal history score on the grid. The placement in the range was calculated for each offender. The average confinement in FY 2007 for adult offenders was approximately 14.8 months, an average of 33% of the standard range or a placement of 0.33.

Placement with Sentencing Ranges

Percent of total range =	$\frac{\text{Sentence Received} - \text{Low Range}}{\text{High Range} - \text{Low Range}}$
--------------------------	--

Example: A 3 month sentence for an offender with a standard range of 2 to 6 months has a placement in the range of .25 or 25% of the 4 month range.
$$\frac{3 - 2}{6 - 2} = .25$$

It is helpful in analyzing disparity to examine the sentences of racial groups and gender given the same current offense and criminal history⁵. Comparison is possible in 21 standard range grid cells where there were sufficient sample sizes to compare gender. Men received longer average sentences in 18 of the 22 cells and on average were sentenced at 4.94% higher than women within the standard range.

There were sufficient sample sizes in 28 cells to compare Caucasians to one or more other race/ethnicities. Caucasians had the highest placement in 14 of the 28 cells compared. African Americans had the highest placement in 11 of 28 grid cells compared and placement differed by as much as 0.3% lower in standard ranges than Caucasians. Hispanics had the highest placement in 1 of the 4 grid cells where a comparison was possible. Placement differed by as much as 3.4% higher. Native Americans received the highest placement in 1 of the 4 possible cell comparisons. Asian/Pacific Islanders had the highest placement in the 1 of the 3 grid cells where comparison was possible. Placement was 2.9% higher in standard ranges than Caucasians.

Incarceration Decision

In FY 2007 there were 9,640 sentences where offenders fell within low ranges on the grid of 1 month or less and were therefore eligible for non-confinement sentences

⁵ Small numbers produce unstable statistics. Calculations are made only with 30 or more adult felony sentences.

(Table 3)⁶. Of those, 801 or 8.3% received non-confinement sentences. Women received non-confinement sentences at higher rates than men. Asian/Pacific Islanders received non-confinement sentences at the highest rate among racial/ethnic groups, 16.0%. Native Americans and Hispanics received the lowest rates of non-confinement sentences.

Table 3: Non-Confinement Sentence

Gender	Eligible	Received	Percent
Female	2,346	223	9.5%
Male	6,566	455	6.9%
Race/ Ethnicity	Eligible	Received	Percent
African American	951	77	8.1%
Asian/ Pacific Islander	219	35	16.0%
Caucasian	6,904	530	7.7%
Hispanic	464	16	3.4%
Native American	238	12	5.0%
Total	9,640	801	8.3%

Excludes 134 sentences in which gender and/or race/ethnicity were not provided.

First Time Offender Waiver

There were 8,852 adult felony sentences eligible for the First Time Offender Waiver (FTOW). Of those, 1,360 or about 15.4% received the alternative (Table 4).

Table 4: FTOW

Gender	Eligible	Received	Percent
Female	2,354	369	15.7%
Male	5,810	918	15.8%
Race/ Ethnicity	Eligible	Received	Percent
African American	822	116	14.1%
Asian/ Pacific Islander	232	28	12.1%
Caucasian	6,345	1,031	16.2%
Hispanic	416	56	13.5%
Native American	198	34	17.2%
Total	8,852	1,360	15.4%

Excludes 97 sentences for which gender and/or race/ethnicity were not provided.

Women received FTOW sentences at rates slightly lower than men. Native American and Caucasians received these sentences at slightly higher rates than other race/ethnicities. Asian/Pacific Islander and Hispanics received FTOW sentences at the lowest rates, 12.1% and 13.5%.

Drug Offender Sentencing Alternative

There were 5,862 offenders eligible for the Drug Offender Sentencing Alternative (DOSA) (Table 5). Of those eligible, 1,032 or about 17.6% received DOSA

⁶ Sentences in the 1 to 3 month range are considered eligible for a non-confinement sentence because a 1 month sentence can be converted to 240 hours of community service.

sentences. Women were more likely to receive DOSA, and Native Americans received the alternative sentence at the highest rate, 25.9%. Only 5% of eligible Hispanics were sentenced under this rule.

Table 5: DOSA

Gender	Eligible	Received	Percent
Female	1,149	250	21.8%
Male	4,424	738	16.7%
Race/ Ethnicity	Eligible	Received	Percent
African American	872	172	19.7%
Asian/ Pacific Islander	113	20	17.7%
Caucasian	4218	753	17.9%
Hispanic	220	11	5.0%
Native American	108	28	25.9%
Total	5,862	1,032	17.6%

Excludes 49 sentences in which gender and/or race/ethnicity were not provided.

Special Sex Offender Sentencing Alternative

There were 1,634 sex offender sentences entered in FY 2007 with 702 adult felony sentences that were eligible for the Special Sex Offender Sentencing Alternative (SSOSA) (Table 6). Of those eligible, 125 or about 17.8% received a SSOSA. Women received the alternative at lower rates than men and Asians received this alternative at one of the highest rates, 21.4%. Native Americans and Hispanics were sentenced under SSOSA at the lowest rates.

Table 6: SSOSA

Gender	Eligible	Received	Percent
Female	17	1	5.9%
Male	630	111	17.6%
Race/ Ethnicity	Eligible	Received	Percent
African American	49	6	12.2%
Asian/ Pacific Islander	14	3	21.4%
Caucasian	506	98	19.4%
Hispanic	61	4	6.6%
Native American	11	0	0.0%
Total	702	125	17.8%

Excludes 15 sentences in which gender and/or race/ethnicity were not provided.

Exceptional Sentences

An exceptional sentence outside the standard range is allowed if the court finds substantial and compelling reasons. Women received mitigated sentences, sentences below the standard range, at higher rates and aggravated sentences, sentences above the standard range, at lower rates than men (Table 7). Hispanics received aggravated sentences at the highest rate, 1.19%, and received the highest rate of mitigated sentences, 4.33%.

Table 7: Exceptional Sentences

Gender	Eligible	Mitigated		Aggravated	
		Received	Percent	Received	Percent
Female	5,602	108	1.93%	40	0.71%
Male	21,860	415	1.90%	292	1.31%
Race/ Ethnicity	Eligible	Mitigated		Aggravated	
		Received	Percent	Received	Percent
African American	4,053	65	1.60%	49	1.21%
Asian/ Pacific Islander	674	7	1.04%	5	0.74%
Caucasian	20,510	363	1.77%	244	1.19%
Hispanic	1,178	58	4.92%	15	1.27%
Native American	734	23	3.13%	11	1.50%

Excludes 61 sentences in which gender and/or race/ethnicity were not provided.

Life Sentences

There were 29 life sentences and no death sentences in Washington in FY 2007 (Table 8). Most offenders receiving this sentence were male, 27. And there were 28 offenders sentenced as persistent offenders. African Americans received this sentence at the highest rate, 9 times higher than their proportion of the state population.

Table 8: Life Sentences

Race/ Ethnicity	Persistent		Other life sentence	Total	Ratio
	Three strikes	Two strikes			
African American	9			9	9.24
Asian/ Pacific Islander	1			1	0.51
Caucasian	12	4	1	17	0.76
Hispanic	1			1	0.39
Total	24	4	1	29	

Excludes 1 sentence in which gender and/or race/ethnicity were not provided.

Data

Offense and offense history data are derived from the Washington Judgment and Sentencing (J & S) forms transmitted to the Sentencing Guidelines Commission by the courts. In reporting on sentences that involved convictions for multiple charges, only the most serious offense was used. Some individual offenders were sentenced for more than one offense in FY 2007. In such cases each sentence is counted as a separate case record. As such, it should be understood that this report reflects sentencing data, not offender data.

Comments or questions may be directed to:

*Sentencing Guidelines Commission
P.O. Box 40927
Olympia, WA 98504-0927
JeanS@sgc.wa.gov*