

**Disproportionality and Disparity
in Adult Felony Sentencing**

– 2003 –

STATE OF WASHINGTON



SENTENCING GUIDELINES COMMISSION



STATE OF WASHINGTON

SENTENCING GUIDELINES COMMISSION

925 Plum Street SE, Bldg 4, 2nd Floor, PO Box 40927 • Olympia, Washington 98504-0927
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December 18, 2003

The Honorable Gary Locke
Governor
State of Washington
Olympia, WA 98504-0002

Dear Governor Locke:

On behalf of the Sentencing Guidelines Commission, I am electronically transmitting the enclosed report entitled *Disproportionality and Disparity in Adult Felony Sentencing – 2003*, pursuant to the legislative mandate in RCW 9.94A.850(2)(h)(i) which requires the Commission to report regularly on racial disproportionality in juvenile and adult sentencing. The enclosed report explores both racial/ethnic representation at sentencing for adult felony offenders, as well as equity in sentencing for those offenders.

This report should help to promote policy discussions with the goal of gaining a greater understanding of the racial/ethnic issues related to adult felony sentencing in Washington State. I hope that you find this report useful as we continue to work together on important issues related to public safety and criminal justice.

Sincerely,

A handwritten signature in black ink, appearing to read "David Boerner".

David Boerner, Chair
Sentencing Guidelines Commission



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The Honorable Bill Finkbeiner
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Washington State Senate
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The Honorable Frank Chopp
Speaker of the House
Washington State House of Representatives
Olympia, WA 98504-0600

The Honorable Richard DeBolt
Minority Leader
Washington State House of Representatives
Olympia, WA 98504-0600

Legislative Leaders:

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Sincerely,

David Boerner, Chair
Sentencing Guidelines Commission

Disproportionality and Disparity in Adult Felony Sentencing

– 2003 –

Paula Ditton Henzel
Program Manager
Washington State Sentencing Guidelines Commission

A Publication of the



STATE OF WASHINGTON

SENTENCING GUIDELINES COMMISSION

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Ida Rudolph Leggett, Executive Director

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Executive Summary

The Washington State Sentencing Guidelines Commission reports biennially on disproportional sentencing, or the unequal number of sentences for racial and ethnic groups relative to their numbers in the general population. This report also covers disparity, the unequal sentencing of similarly situated offenders. An analysis of 2002 adult felony sentencing data produced several key findings:

Disproportionality in Felony Sentencing

- African Americans continue to be the most over-represented group among persons sentenced for a felony conviction, represented at 4.5 times their proportion in the population.
- Disproportionality in sentencing has decreased for persons of color during the past two years. In 2002 persons of color¹ were represented at 1.4 times their proportion in the population, down from 1.8 in 2000.

Standard Range Sentences

- Most offenders are sentenced to a standard range term of incarceration that falls in the lower half of the range specified by the sentencing grid. Overall, all racial ethnic and gender groups generally are sentenced to the lower half of the sentencing range specified by the grid. Some differences among racial and gender groups were found for various crimes.
 - Asians and Pacific Islanders are sentenced to a higher point in the standard range than others for murder/manslaughter, sex, assault and property crimes.
- Racial and gender disparity appears to exist in the decision to sentence to the community rather than incarcerate. Hispanic and African American males along with Native American males, to a lesser extent, receive sentences to the community at lower rates than white males.

Sentencing Alternatives

- Caucasians continue to receive sentences to the First Time Offender Waiver at higher rates than people of color (212 per 1,000 eligible sentences). Hispanics and African Americans receive the Waiver at the lowest rates (109 and 128 per 1,000 eligible sentences, respectively).
- African Americans receive the Drug Offender Sentencing Alternative at a higher rate than other racial and ethnic groups (519 per 1,000 eligible sentences, compared to 336 per 1,000 eligible for Caucasians and 213 per 1,000 for Hispanics).

¹ Includes African Americans, Asian/Pacific Islanders, Hispanics and Native Americans.

Introduction

The Washington State Sentencing Guidelines Commission is required to report biennially on racial disproportionality and disparity in adult felony sentencing (RCW 9.94A.850). This is the third report to examine disproportionality, or the unequal representation of racial, ethnic and gender groups sentenced for felony convictions relative to their numbers in the general population. This report also covers sentencing disparity, the unequal sentencing of similarly situated offenders.

The Washington State Sentencing Reform Act of 1981 created sentencing guidelines to ensure judges prescribe equivalent sentences for offenders with similar crimes and criminal histories. A sentencing grid² dictates a standard range sentence, based on the seriousness of the offense and criminal history. With some exceptions, judges are required by statute to sentence offenders to a determinate sentence within the standard range. This limits the potential influence of extra-legal factors such as race, ethnicity, class and gender on sentencing decisions.

The guidelines provide several avenues for sentencing outside the grid. Although rarely used, judges are authorized to impose exceptional sentences above or below the standard range, provided they document substantial and compelling reasons. Several alternative sentencing options exist for non-violent offenders, including first-time offenders, some sex offenders and those in need of drug treatment.

This report examines 2002 adult felony sentences in Washington for differences among racial, ethnic and gender groups in sentence length, the decision to incarcerate versus sentence to the community, and alternative sentencing rates³. Due to the alarming rates at which people of color are incarcerated relative to their numbers in the general population, questions about disparate treatment in sentencing and at other points in the criminal justice system have been raised across the country. Nationally, it is estimated that one in three African American males and one in six Hispanic males will serve time in prison at some point during their lifetime, while one in 17 white males will serve a prison sentence (Bonczar, 2003).

² See Appendix A.

³ This report is based upon an analysis of sentences, which are not necessarily equivalent to the numbers of offenders. An individual offender can receive multiple sentences during a given time period.

Disproportionality

People of color are over-represented at every stage of Washington’s criminal justice system, from arrest through sentencing and incarceration. In 2002, African Americans made up 21.3% of the state prison population, but just 3% of the state’s adult population. Hispanics accounted for 11% of the prison population, but just 7% of the state population.

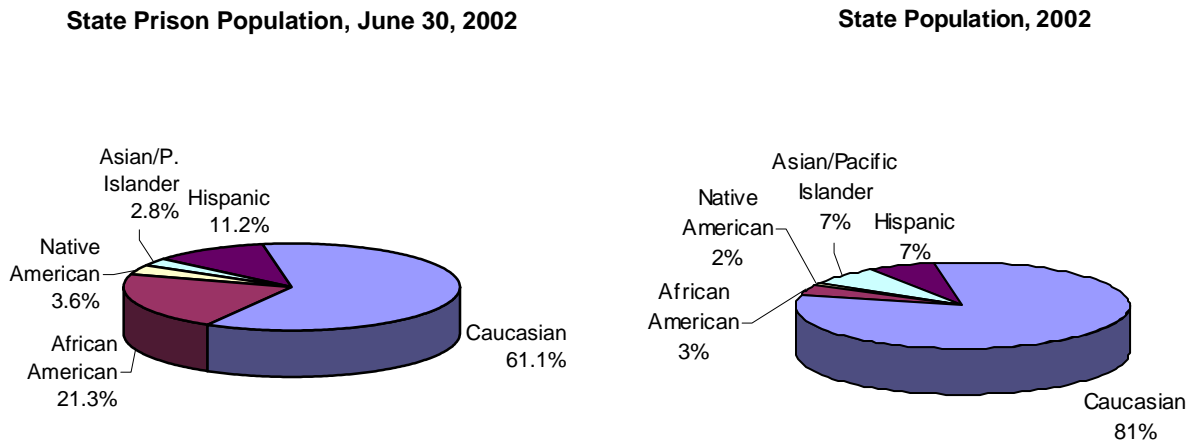


Figure 1 includes ratios for people of color among three components of the justice system: felony sentences, county jail bookings and prison admissions.⁴ Ratios provide a simple method for comparing the proportion of a given racial/ethnic group for an event, such as sentencing, relative to their proportion in the population. A ratio of one means the same proportion of individuals are sentenced for a felony conviction, for example, as their proportion in the population. Over-representation is depicted on the chart below by bars greater than one. People of color are over-represented in all three components of the justice system. In 2000, persons of color were represented in felony sentencing at nearly twice (1.8) their proportion in the population. By 2002, over-representation had decreased to 1.4. The overrepresentation of people of color is slightly greater in county jail bookings (1.6). Disproportionality is most severe in prison admissions. In 2002, people of color were represented in prison admission at twice their proportion in the population.

Ratio Calculations

$$\frac{\% \text{ racial group for a certain event}}{\% \text{ racial group in the population}}$$

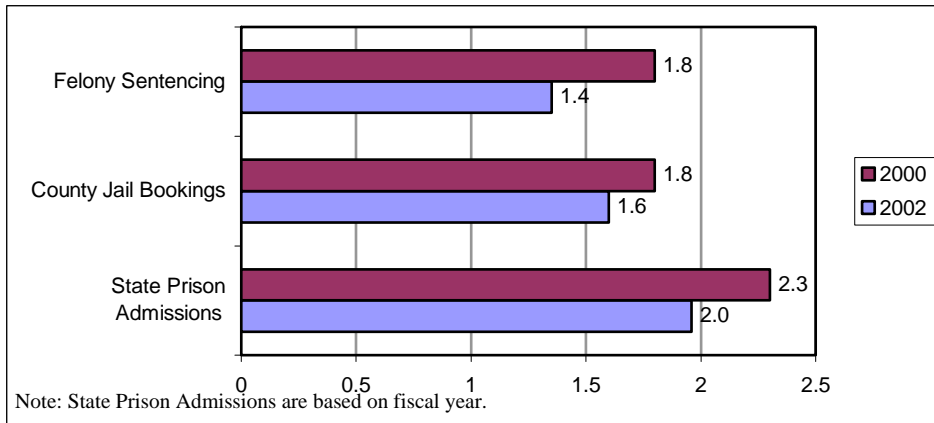
Example: African Americans make up 3.3% of the Washington State population, but 14.8% of those sentenced for a felony. The sentence ratio for African Americans equals:

$$\frac{14.8\%}{3.3\%} = 4.5$$

This means African Americans are sentenced at four and one-half times their proportion in the population.

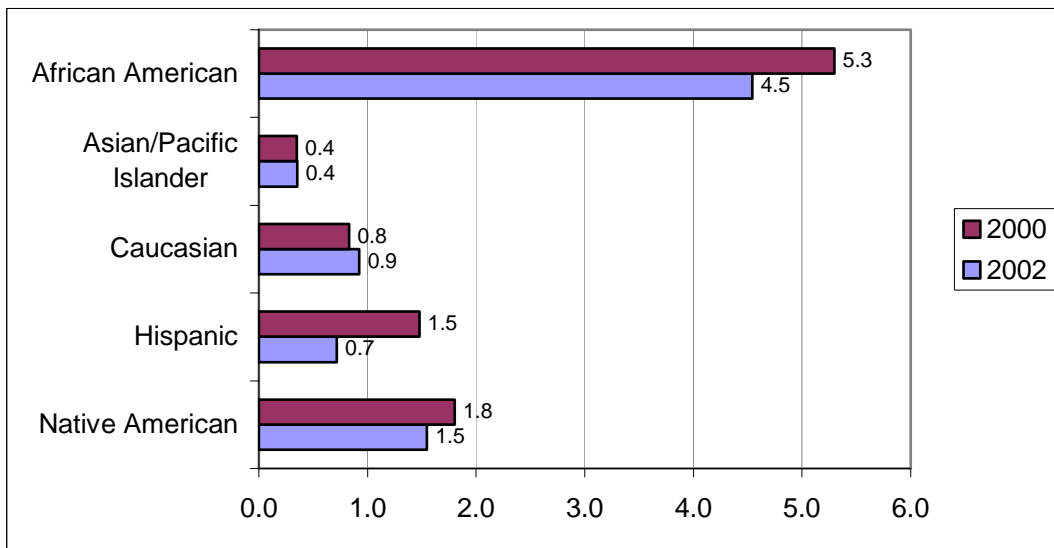
⁴ Arrest data is not presented due to incomplete data for persons of Hispanic origin.

Figure 1. Representation of Persons of Color in County Jail Bookings, Felony Sentencing and Prison Admissions, 2000 and 2002.



Among those sentenced for a felony conviction, African Americans are the most over-represented group, sentenced at 4 ½ times their proportion in the population (Figure 2). Native Americans are also over-represented, sentenced at 1 ½ times their proportion in the population. Over the past two years disproportionality in sentencing has decreased for all people of color. This is indicated in Figure 2 by the bars decreasing in size and moving back towards a value of one. In 2000 African Americans were sentenced at over five times their proportion in the population, which dropped to 4 ½ in 2002. Notably, Hispanics are no longer over-represented in adult felony sentencing. In 2000 Hispanics were sentenced at 1 ½ times their proportion in the population, by 2002 their sentencing ratio had dropped to less than one (.7) indicating under-representation⁵.

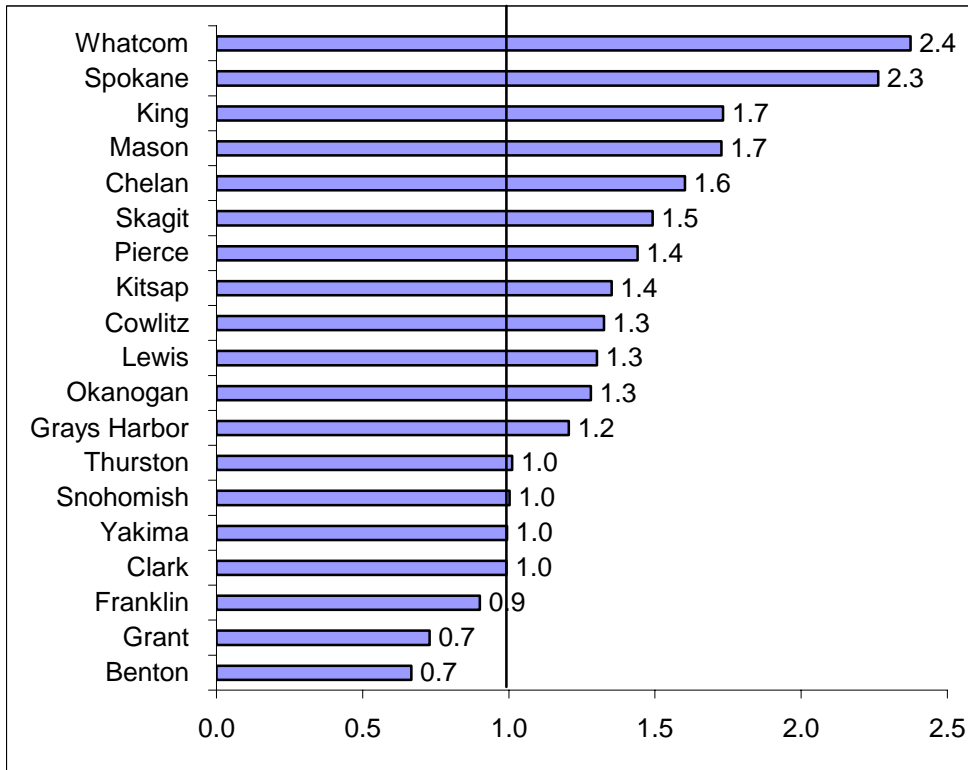
Figure 2. Adult Felony Sentencing Ratios by Race/Ethnicity, 2000 and 2002.



⁵ 2002 Sentencing rates, or the number of sentences per 10,000 in the population are provided in Appendix B

Figure 3 provides minority sentencing ratios in counties with 50 or more sentences involving people of color. Disproportional sentencing is most pronounced in Whatcom and Spokane counties, where people of color are sentenced at over twice their representation in the population. Seven counties have sentencing ratios of one or less which reflects the proportional or under-representation of persons of color, including Thurston, Snohmish, Yakima, Clark, Franklin, Grant and Benton.

Figure 3. County Sentencing Ratios for Persons of Color, 2002.



Note: Excludes counties with less than 50 sentences for people of color, including Lincoln, Garfield, Wahkiakum, San Juan, Ferry, Columbia, Pacific, Skamania, Stevens, Pend Oreille, Jefferson, Asotin, Whitman, Klickitat, Island, Kittitas, Douglas, Adams, Clallam and Walla Walla counties. The small volume of sentences in these counties produced unstable ratios.

The sentencing ratios presented above result from a complex set of influences outside the purview of the courts. State courts do not control which offenders are subject to sentencing, they do, however, control the term of the sentence and are tasked with ensuring proportional punishment for similar crimes.

Literature Review

Sentencing Disparity in Guideline States

In most states, sentencing guidelines have achieved the goal of reducing unwarranted disparity in sentencing. Despite this gain, the influence of extra-legal factors such as race, ethnicity, gender and class continue to influence sentencing outcomes even under guidelines (Tonry, 1993). Voluntary guidelines, which do not require adherence, are less successful in reducing disparity than their presumptive, legally mandated counterpart. Disparity under presumptive guidelines appears not so much in sentences that follow the grid, but rather in various sentencing alternatives. Washington, a presumptive guideline state, along with Pennsylvania and Maryland, both with voluntary guidelines, have recently examined sentencing practices and uncovered disparity in varying degrees along racial, ethnic and gender lines.

Washington

The Washington State guidelines are mandated by the Legislature and contain relatively narrow sentencing ranges when compared to guidelines in other states. Judges strictly adhere to the guidelines and make very few departures. Sentencing research has uncovered little disparity with respect to the Washington sentencing grid. Overall, sentence length is not significantly influenced by race, ethnicity or gender for standard range sentences (Lee and Vukich, 2001). Drug offenses may be the exception. Some evidence suggests that race and ethnicity significantly influence sentence length for Violations of the Uniform Controlled Substance Act (Lee and Vukich, 2001). A small degree of disparity in sentence length (one month) appears to exist for Hispanic drug offenders (Engen, Gainey and Steen, 1999). Sentences are also slightly longer for people of color convicted of drug delivery and offenses involving hard drugs, such as heroine, cocaine, narcotics and methamphetamine (Engen, Gainey and Steen, 1999).

Research in various states shows race effects are most prevalent in the decision to incarcerate rather than sentence to the community (Spohn, 2000). This appears to be the case in Washington as well, at least for drug offenders. Compared to Caucasians, African-American drug offenders are two times more likely to receive a jail sentence and Hispanics are four times more likely to receive a jail sentence versus community supervision (Engen, Gainey and Steen, 1999).

Drug offenders may also experience disparate treatment with respect to several alternative sentencing options in Washington. Hispanic drug offenders are less likely than Caucasians to receive a Drug Offender Sentencing Alternative, First Time Offender Waiver or Work Ethic Camp sentence and more likely to receive an aggravated exceptional sentence. African American drug offenders are less likely than Caucasians to receive a First Time Offender Waiver, but more likely to receive a sentence to the Work Ethic Camp (Engen, Gainey and Steen, 1999).

Research on violent, drug and sex offender sentences in Washington from 1989 to 1992 suggests that people of color are less likely to receive sentences below the standard range. Controlling for legally relevant variables, African-Americans are 32% less likely than Caucasians to receive downward departures. Hispanic offenders are 55% less likely than Caucasians to receive a downward departure sentence.⁶ (Engen, Gainey, Crutchfield and Weis, 2003).

Although guidelines limit judicial discretion, they increase the importance of prosecutorial charging decisions. The offense for which a person is charged and convicted determines the sentencing range specified by the grid. Charging decisions that result from disparate treatment in plea-bargaining or other discretionary prosecutorial practices could undermine the objectives of the guidelines. This was not the case, at least for drug offenders in three counties of Washington. According to a 1999 study, there were some small differences in charging decisions, but race and ethnicity did not appear to influence charging decisions for drug offenders (Engen, Gainey and Steen 1999).

Pennsylvania

Sentencing guidelines in Pennsylvania are mandated by the legislature, but voluntary, requiring only that judges consider the guidelines in determining appropriate sentences. A recent study revealed that race, ethnicity, gender and age affect sentencing outcomes in Pennsylvania. When controlling for legally relevant variables and mode of conviction, race had a minor effect on sentencing. Overall, African Americans are slightly more likely to be incarcerated (1.2% greater probability) and receive slightly longer sentences (1.3 months) than Caucasians (Kramer and Ulmer, 2003).

Gender and age were by far the most important demographic variables in predicting sentencing outcomes. The interactive effect of race, ethnicity, gender and age, produced disparaging results. Young African American males, ages 18 to 29, had a 4.8% higher probability of incarceration and received sentences on average, 4.3 months longer than Caucasians. Sentencing disparity for Latino males was even more pronounced. Young Latino males, ages 18 to 29, had a 7.6% higher probability of incarceration and received sentences on average 6.7 months longer than Caucasians. Latino males age 30 and over were the most severely punished group, with a 9.7% greater probability of incarceration than Caucasians. Young Latina and African American women were sentenced more leniently than their Caucasian reference groups (Kramer and Ulmer, 2003).

Maryland

Maryland's guidelines are judicially approved, but voluntary and contain relatively wide ranges. Under Maryland's guidelines, African Americans receive 20% longer sentences than Caucasians, even after controlling for legally relevant factors (Bushway and Piehl, 2001).

⁶ The study examined exceptional sentences, conversion sentences and sentences to the First Time Offender Waiver and Special Sex Offender Sentencing Alternative.

Race also appears to be a significant predictor in the incarceration decision. Compared to Caucasians, people of color in Maryland are more likely to be sentenced to incarceration ($p=.65$, compared to $p=.56$ for Caucasians). Sentence length appears unaffected by race and ethnicity for crimes against persons and property offenses, but not for drug offenses. Black and Hispanic drug offenders receive significantly longer sentences than Caucasians (Souryal and Wellford, 1997).

Disparity in Sentencing

Under Washington’s presumptive guidelines, judges are empowered to sentence offenders to a term within the standard range based on the sentencing grid, or to a number of various sentencing alternatives. The following analysis examines sentence length, the decision to incarcerate and alternative sentencing rates for differences among racial, ethnic and gender groups.

Standard Range Sentences

The majority of felony sentences in Washington fall within standard ranges. Standard range sentences totaled 22,950 in 2002, which accounted for 81% of all sentences that year. Although the grid severely limits the possibility for disparate treatment, the potential for disparity still exists in determining an offender’s placement within the standard range. As previously noted, race, gender or other extra-legal factors are more likely to influence sentencing in the decision to incarcerate or sentence to the community. This option is available for offenders whose current offense and criminal history score place them in a cell in the southwest corner of the grid, where the low end of the range is zero. Because of the absence of detailed offense and victim information presented, this report serves only as an indicator that disparity may exist for certain groups. Further study is needed.

Sentence Length

In 2002, the average confinement sentence for adult felons was 13.2 months. Figure 4 displays the average sentence, low and high range for all standard range sentences across racial and ethnic groups. People of color receive longer sentences than Caucasians and males longer sentences than females. Overall, African Americans and Asian/Pacific Islanders receive confinement terms approximately six months longer than Caucasians (Table 1). Hispanics and Native Americans receive terms that are roughly one month longer than Caucasians, and males receive confinement terms over twice that of females. However, all racial, ethnic and gender groups receive sentences, on average, within the lower half of the range specified by the sentencing grid. Sentences for all groups are at or near 35% of the range. For purposes of this analysis the phrase “placement in the range” refers to the point within the sentencing range where the court chooses to sentence offenders. A sentence at the

Placement in the Range

Placement in the range represents the average sentence for offenders as a number from zero to one, where zero corresponds to a sentence at the bottom of the range and one a sentence at the top of the range.

$$\frac{\text{Sentence Received} - \text{Low Range}}{\text{High Range} - \text{Low Range}}$$

Example: An offender with a sentencing range of 2 months to 6 months, who receives a 3-month sentence, has a placement in the range score of .25.

$$\frac{3 - 2}{6 - 2} = .25$$

Converted to a percent, this means the offender was sentenced to 25% of the 4-month range, or one month above the low-end of the range.

midpoint of the range corresponds to a placement in the range value of 50%. A placement in the range value of 75% means sentences are imposed close to the high-end of the range, whereas a placement in the range of 25% indicates sentences fall closer to the low-end of the range⁷.

Figure 4. Average Sentence, Low and High Range by Race/Ethnicity.

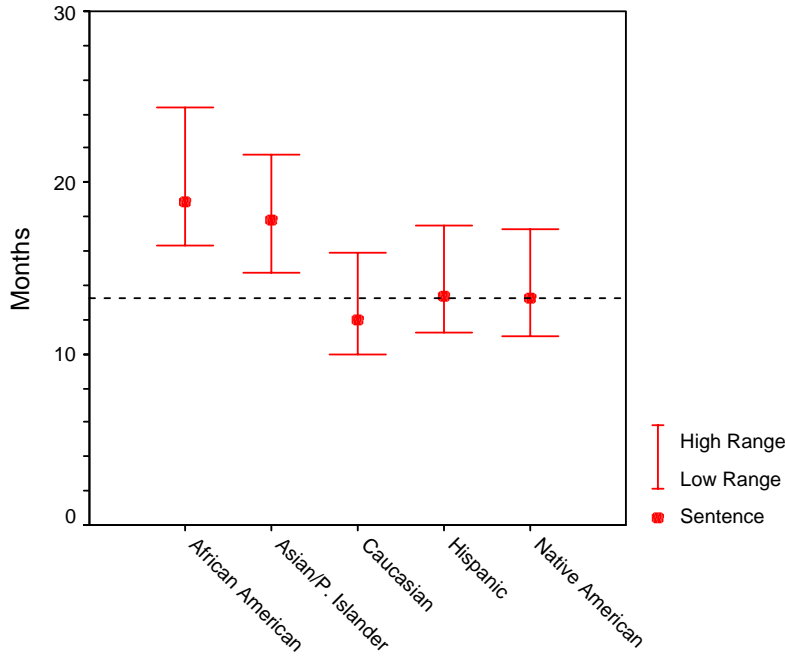


Table 1. Average Sentence, Low Range, High Range, Placement in Range, By Race/Ethnicity and Gender.

Race/Ethnicity	Average (months)			Placement in Range
	Sentence	Low Range	High Range	
African American	18.9	16.3	24.3	31.8%
Asian/Pacific Islander	17.8	14.7	21.6	37.8%
Caucasian	11.9	9.9	15.9	35.1%
Hispanic	13.3	11.2	17.5	34.5%
Native American	13.2	11.1	17.2	34.7%
Gender				
Male	14.8	12.5	19.2	34.9%
Female	6.5	5.2	10.0	33.4%
Total	13.2	11.1	17.4	34.6%

Placement in the range was calculated for each sentence and averaged. Calculating the average placement in the range using the average sentence, low and high range, will produce slightly different numbers.

Previous research indicates that racial and ethnic differences are prevalent for drug offenses, but not for others. Crimes were collapsed into six groups, murder/manslaughter, sex, robbery, property, drugs and other felonies to assess whether crime specific disparities exist among groups⁸.

⁷ See Appendix C for racial, ethnic and gender distributions of placement in the range values.

⁸ A list of offenses included in each crime-type is available in Appendix D.

Murder/Manslaughter

The average sentence for murder and manslaughter offenders, those not sentenced to life, is 175 months or about 14½ years (Figure 5, Table 2). Among racial and ethnic groups, Asians and Pacific Islanders receive the longest sentences for murder and manslaughter (256.5 months). This longer term results from weapon enhancements⁹ and a mix of offenses ranked slightly higher on the sentencing grid (Appendix E). Over half of murder/manslaughter sentences for Asian/Pacific Islanders include a weapon enhancement, compared to just 18% for Caucasians (Appendix F). Most notably, Asians and Pacific Islanders are sentenced higher in the standard range corresponding to the crime committed than others. This group is sentenced to 69% of the range, whereas other groups are sentenced closer to the middle of the range¹⁰.

Figure 5. Murder/Manslaughter. Average Sentence, Low and High Range.

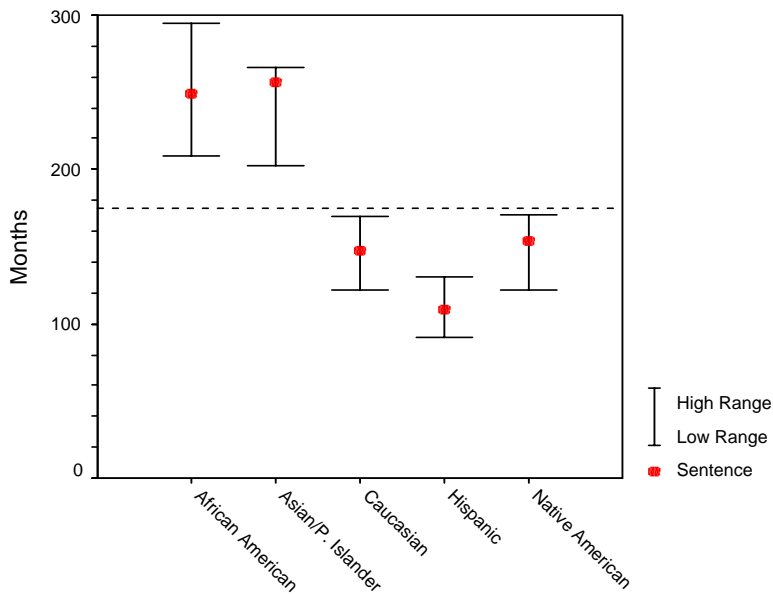


Table 2. Murder/Manslaughter. Average Sentence, Low Range, High Range, Placement in Range, By Race/Ethnicity and Gender.

Race/Ethnicity	Average (months)			Placement in Range
	Sentence	Low Range	High Range	
African American	249.3	208.8	294.8	51.6%
Asian/Pacific Islander	256.5	202.2	266.0	69.4%
Caucasian	147.0	121.7	169.3	49.2%
Hispanic	109.4	91.2	130.0	34.2%
Native American	154.0	122.3	170.4	53.7%
Gender				
Male	178.9	147.4	205.2	51.1%
Female	144.1	119.9	168.8	45.1%
Total	175.2	144.5	201.3	50.5%

Excludes life sentences. See Appendix E for the number of sentences in each group.

⁹ When a court finds that the offender was armed with a deadly weapon, additional time is added to the sentence. For the purpose of this analysis, the enhancement was also added to the low and high range.

¹⁰ Given the small number in this group (n=12) these statistics should be interpreted with caution.

Sex Crimes

Generally, offenders are sentenced to 31.4 months of incarceration for sex crimes, or 33.7% of the range specified by the grid (Figure 6, Table 3). Failure to Register as a Sex Offender, Child Molestation, and Rape of a Child are the most common sex crimes.

While Asian and Pacific Islanders receive sentences over twice as long as other groups (76.8 months) due to a higher average seriousness level and offender score, this group is also sentenced to terms in the middle of the range (51%), whereas other groups receive sentences closer to one-third of the range. Asian/Pacific Islander account for very few (n=17) of the sentences for sex crimes. Females are sentenced slightly lower in the range (29%) than males (34%).

Figure 6. Sex Crimes. Average Sentence, Low and High Range, By Race/Ethnicity

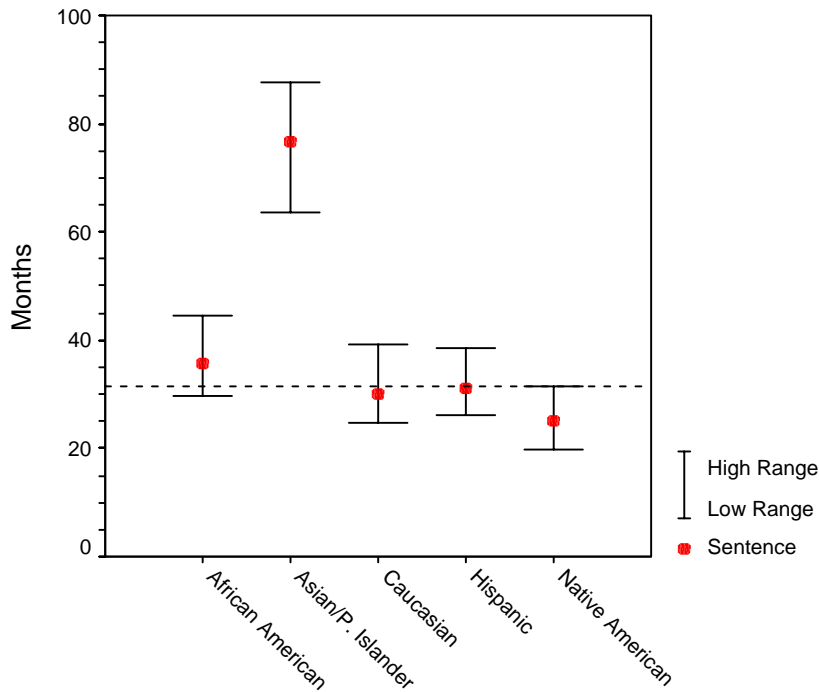


Table 3. Sex Crimes. Average Sentence, Low Range, High Range, Placement in Range, By Race/Ethnicity and Gender

Race/Ethnicity	Average (months)			Placement in Range
	Sentence	Low Range	High Range	
African American	35.6	29.7	44.5	34.9%
Asian/Pacific Islander	76.8	63.6	87.5	50.9%
Caucasian	30.2	24.8	39.3	32.4%
Hispanic	31.2	26.3	38.5	41.3%
Native American	25.1	19.8	31.5	39.7%
Gender				
Male	31.6	26.1	40.6	33.8%
Female	19.7	16.9	26.5	28.6%
Total	31.4	25.9	40.3	33.7%

Robbery

The average sentence for First and Second Degree Robbery is 41.7 months, or 34.2% of the range (Figure 7, Table 4). Asians and Pacific Islanders receive the longest sentences (58 months), on average 18 months longer than Caucasians. Native Americans are sentenced closer to the middle of the range (49.1%), compared to Caucasians (35.4%) and African Americans (31.2%). Females receive markedly lower terms of confinement for robbery compared to males (26 months versus 44 months), due in part to sentences that are relatively low in the range (17.5%) compared to males (36.6%).

Figure 7. Robbery Crimes. Average Sentence, Low and High Range, By Race/Ethnicity

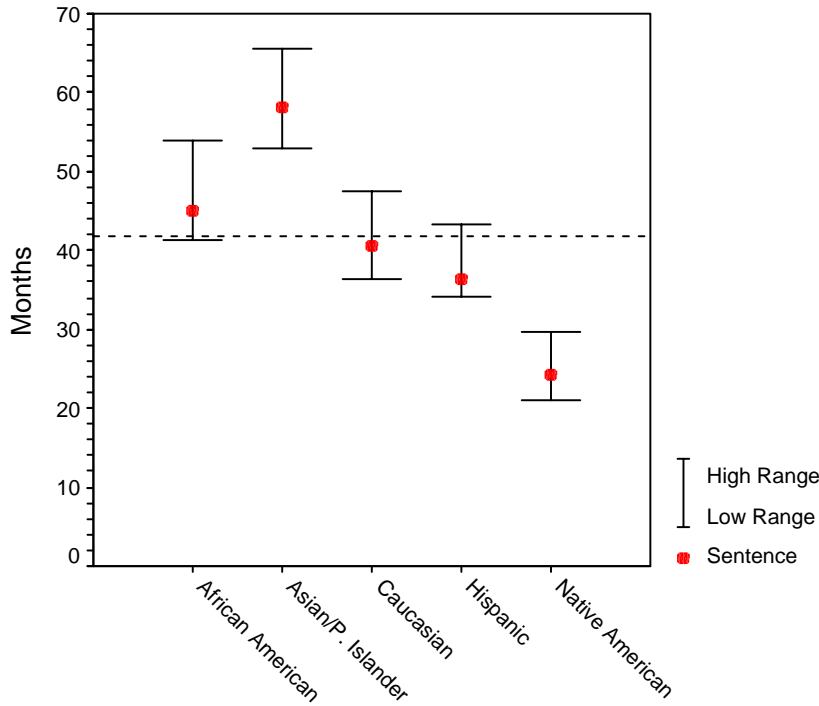


Table 4. Robbery Crimes. Average Sentence, Low Range, High Range, Placement in Range, By Race/Ethnicity and Gender

Race/Ethnicity	Average (months)			Placement in Range
	Sentence	Low Range	High Range	
African American	44.9	41.4	53.9	31.2%
Asian/Pacific Islander	58.0	53.0	65.5	41.9%
Caucasian	40.5	36.2	47.4	35.4%
Hispanic	36.3	34.0	43.4	23.0%
Native American	24.3	21.1	29.7	49.1%
Gender				
Male	44.0	39.7	51.6	36.6%
Female	25.8	24.5	32.7	17.5%
Total	41.7	37.8	49.2	34.2%

Assault

Assault produced the most consistent results with respect to placement in the range. For crimes such as Second Degree Assault, Unlawful Possession of a Firearm and Domestic Violence Court Order Violations, offenders are sentenced on average to a 16.3 month confinement term, or 33.6% of the standard range (Figure 8, Table 5). All racial groups receive sentences to roughly one-third of the range. Females receive nearly half the confinement term of males (nine months compared to 17 months), due in part to sentences lower in the range, 27.5% compared to 34.2% for males.

Figure 8. Assault Crimes. Average Sentence, Low and High Range, By Race/Ethnicity

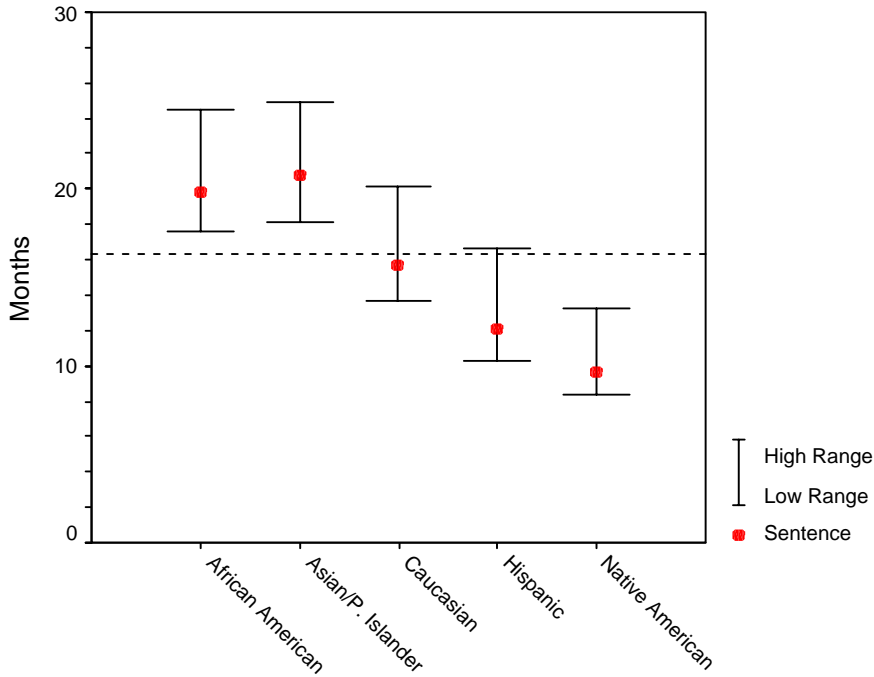


Table 5. Assault Crimes. Average Sentence, Low Range, High Range, Placement in Range, By Race/Ethnicity and Gender

Race/Ethnicity	Average (months)			Placement in Range
	Sentence	Low Range	High Range	
African American	19.9	17.6	24.5	33.7%
Asian/Pacific Islander	20.8	18.2	24.9	38.8%
Caucasian	15.7	13.7	20.1	33.3%
Hispanic	12.1	10.2	16.6	35.6%
Native American	9.7	8.4	13.2	31.0%
Gender				
Male	17.0	14.8	21.4	34.2%
Female	9.2	8.0	13.1	27.5%
Total	16.3	14.2	20.7	33.6%

Property

The average sentence for a property offense, crimes such as Forgery, First and Second Degree Theft and Possession of Stolen Property, is 7.8 months, or 36.2% of the standard range (Figure 9, Table 6). On average, Native Americans receive the longest property sentences (10.6 months), due to a slightly higher seriousness level. All racial groups are sentenced fairly close to one-third of the range, with Asians and Pacific Islanders slightly higher (40.4% of the range). Although males receive longer terms than females, they are both sentenced to the same relative point, just over one-third of the range.

Figure 9. Property Crimes. Average Sentence, Low and High Range, By Race/Ethnicity

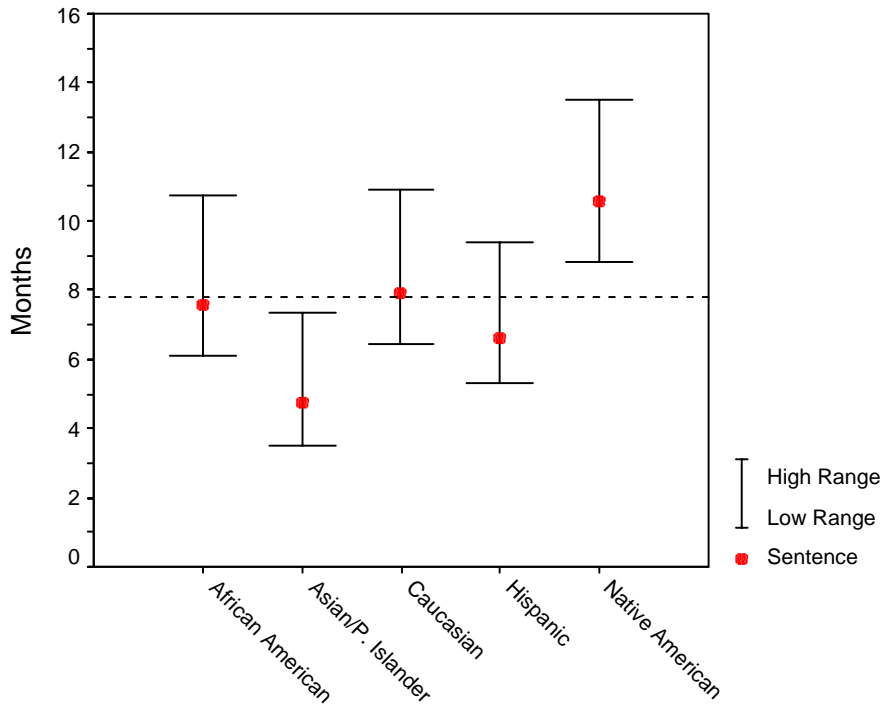


Table 6. Property Crimes. Average Sentence, Low Range, High Range, Placement in Range, By Race/Ethnicity and Gender

Race/Ethnicity	Average (months)			Placement in Range
	Sentence	Low Range	High Range	
African American	7.6	6.1	10.7	34.2%
Asian/Pacific Islander	4.7	3.5	7.4	40.4%
Caucasian	7.9	6.4	10.9	36.4%
Hispanic	6.6	5.3	9.4	33.5%
Native American	10.6	8.8	13.5	37.9%
Gender				
Male	8.9	7.3	12.0	36.4%
Female	4.5	3.4	7.2	35.6%
Total	7.8	6.3	10.8	36.2%

Drug Crimes

Overall, drug offenders were sentenced to an average incarceration term of 10.3 months (Figure 10, Table 7). Possession of a Controlled Substance, Manufacture, Delivery or Possession with Intent to Deliver Marijuana, Heroin or Cocaine are the most common drug sentences. Males are sentenced on average, to an 11.5-month term of confinement, compared to six months for females. Like property offenders, males and females are both sentenced to roughly one-third of the range.

On average, African Americans receive drug sentences that are 7½ months longer than Caucasians, however they were sentenced relatively low in the range (27.9%), compared to Caucasians (34.9%) and Hispanics (34%). The longer sentences result from offenses with higher seriousness levels and offender scores. One offense in particular appears to be driving the higher seriousness level and offender scores both for African Americans and Hispanics, Manufacture, Deliver, Possession with Intent to Deliver Heroin or Cocaine. Scoring and level changes that took effect July 1, 2002, reducing this offense from Seriousness Level VIII to Level VII and eliminating triple scoring provisions for most drug offenders, should decrease the average sentence for drug offenders overall, but particularly for African Americans and Hispanics.

Figure 10. Drug Crimes. Average Sentence, Low and High Range, By Race/Ethnicity

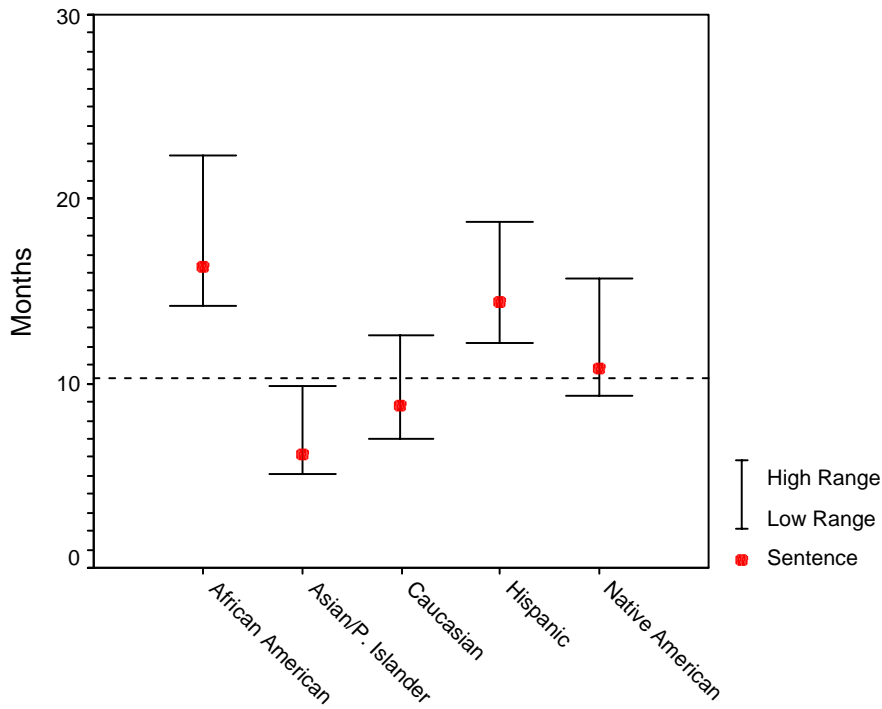


Table 7. Drug Crimes. Average Sentence, Low Range, High Range, Placement in Range, By Race/Ethnicity and Gender

Race/Ethnicity	Average (months)			Placement in Range
	Sentence	Low Range	High Range	
African American	16.3	14.2	22.3	27.9%
Asian/Pacific Islander	6.1	5.1	9.8	29.4%
Caucasian	8.8	7.0	12.6	34.9%
Hispanic	14.4	12.2	18.8	34.0%
Native American	10.8	9.3	15.7	28.8%
Gender				
Male	11.5	9.6	15.8	33.5%
Female	6.0	4.6	9.8	33.7%
Total	10.3	8.5	14.5	33.5%

Preliminary data from the first six months of 2003 indicate the gap in sentence length between racial groups has closed slightly, as a result of the level and scoring changes in 2SHB 2338. The average sentence for drug crimes committed on or after July 1, 2002 decreased for all racial and ethnic groups, dropping on average three months, from 10.3 to 7.1 months (Table 8). African Americans saw the largest decrease (five months) followed by Hispanics (three months).

Table 8. Drug Crimes Sentenced in the First Six Months of 2003. Average Sentence, Low Range, High Range, Placement in Range, By Race/Ethnicity and Gender

Race/Ethnicity	Average (months)			Placement in Range
	Sentence	Low Range	High Range	
African American	11.0	9.8	15.5	29.6%
Asian/Pacific Islander	4.9	3.6	7.4	33.9%
Caucasian	6.3	5.3	9.5	32.3%
Hispanic	11.2	9.2	13.9	39.1%
Native American	6.4	5.2	9.5	26.5%
Total	7.1	6.0	10.4	32.0%

Includes only offenses committed on or after 7/1/2002.

Other Felony Crimes

The other felony sentences category includes crimes such as Attempting to Elude a Police Officer, Harassment, Bail Jumping, and Escape. Offenders are sentenced on average to 8 months for these crimes, or 32.7% of the range (Figure 11, Table 9). Native Americans receive sentences slightly higher in the range (38.2%) and Asian/Pacific Islanders slightly lower (24.4%). Males and females have comparable low and high ranges, on average, however males are sentenced slightly higher in the range (34%) than females (23%), yielding a slightly longer confinement term.

Figure 11. Other Felony Crimes. Average Sentence, Low and High Range, By Race/Ethnicity

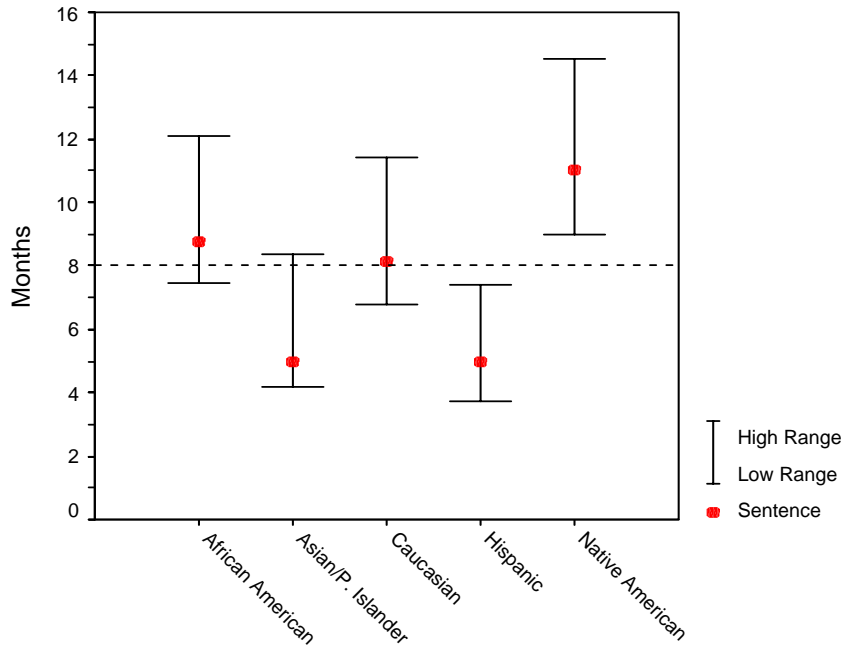


Table 9. Other Felony Crimes. Average Sentence, Low Range, High Range, Placement in Range, By Race/Ethnicity and Gender

Race/Ethnicity	Average (months)			Placement in Range
	Sentence	Low Range	High Range	
African American	8.8	7.5	12.1	30.2%
Asian/Pacific Islander	5.0	4.2	8.4	24.4%
Caucasian	8.1	6.8	11.4	33.1%
Hispanic	5.0	3.7	7.4	34.3%
Native American	11.0	9.0	14.5	38.2%
Gender				
Male	8.1	6.7	11.3	34.2%
Female	7.7	6.8	11.5	23.2%
Total	8.0	6.7	11.3	32.7%

Notably, factors other than race, ethnicity and gender could be driving the differences with respect to placement in the range. For example, if the cases sentenced higher in the range involve a legally relevant factor that caused judges to apply a longer term, the discrepancies would be warranted. Detailed offense information that potentially could explain some of these discrepancies is not included in Judgment and Sentence forms submitted to the Commission and is therefore unavailable.

Incarceration Decision

Four cells on the sentencing grid correspond to sentences to the community instead of incarceration for non-violent low ranking crimes and offenders with little or no criminal history. Unranked crimes, which carry a term of 0 to 12 months, are also eligible for a sentence outside incarceration. In 2002, eligible sentences include 2,851 sentences in the 0 to 2 month sentencing range, 2,942 sentences in the 0 to 3 month range, 1,621 unranked sentences and 1,163 sentences in the 1 to 3 month range. Sentences in the 1 to 3 month range are considered eligible for a non-confinement sentence because a one-month sentence can be converted to 240 hours of community service.

Just 828 of the 8,712 sentences eligible received a sentence to the community in place of incarceration¹¹. Comparisons among racial and gender groups can be made by examining the rate different groups receive a non-incarceration sentence, relative to the number eligible. The sentencing rate is expressed as the number of non-incarceration sentences per 1,000 eligible.

Asians and Pacific Islanders receive non-incarceration sentences at a rate nearly double that for Caucasians and African Americans (193.1 per 1,000 eligible sentences, compared to 97.6 for Caucasians and 87.2 for African Americans). Hispanic offenders have the lowest rate, followed by Native Americans (36.2 and 65.9 respectively). Relative to the number of eligible sentences, females receive sentences to the community much more frequently than males. Females receive non-incarceration sentences at a rate of 140.2 per 1,000 eligible sentences, compared to 78.4 for males.

Sentencing Rates

$$\frac{\text{Number of sentences received}}{\text{Number of sentences eligible}} * 1,000$$

Example: Among African Americans, 952 sentences were eligible for a non-incarceration term of which 83 received a sentence outside of incarceration.

$$\frac{83}{952} * 1,000 = 87.2$$

This means African Americans receive non-incarceration sentences at a rate of 87.2 per 1,000 eligible sentences. Rates permit fair comparisons of racial, ethnic and gender groups with differing eligibility numbers.

Table 10. Non-Confinement Sentence Rates By Race/Ethnicity and Gender.

Race/Ethnicity	Male			Female			Total		
	Eligible	Received	Rate	Eligible	Received	Rate	Eligible	Received	Rate
African American	702	44	62.7	250	39	156.0	952	83	87.2
Asian/Pacific Islander	176	33	187.5	57	12	210.5	233	45	193.1
Caucasian	4,975	405	81.4	1,901	266	139.9	6,876	671	97.6
Hispanic	398	9	22.6	71	8	112.7	469	17	36.2
Native American	114	8	70.2	68	4	58.8	182	12	65.9
Total	6,365	499	78.4	2,347	329	140.2	8,712	828	95.0

¹¹ This does not include sentences that are the same length as time spent in jail prior to trial.

Sentencing Alternatives

The guidelines include several alternatives for sentencing outside the grid. While judicial discretion in applying these alternatives is limited by eligibility criteria set by statute, research in Washington and other states suggests extra-legal factors such as gender and race influence the decision to impose an alternative sentence.

First Time Offender Waiver

The First Time Offender Waiver (FTOW) permits judges to waive the standard range sentence and impose up to 90 days jail time and two years of community custody¹². To be eligible offenders must have no previous conviction or deferred prosecution for a felony offense. Offenders convicted of a violent or sex offense and certain drug delivery offenses are also excluded (see RCW 9.94A.650).

Use of the FTOW has decreased dramatically over the past five years, from a high of 3,051 sentences in 1998¹³ to 1,776 in 2002. This decreased use is due to a drop in the number of first time offenders, along with a decrease in the proportion of eligible offenders who actually receive the alternative. Just 5% of eligible offenders received the waiver in 2002, compared to 36% in 1998.¹⁴

The rate at which waivers are imposed for people of color has historically been lower than that for Caucasians (Lee and Vukich, 2000). That trend continues with current sentencing practices. Table 11 shows Caucasian offenders continue to receive sentences under the waiver at a higher rate than other groups. Hispanic offenders receive the waiver at the lowest rate (109 per 1,000 eligible). Overall, females receive the waiver at a slightly higher rate than males (208.8 compared to 189.9).

Table 11. First Time Offender Waiver Rates per 1,000 Eligible, By Race/Ethnicity and Gender.

Race/Ethnicity	Male			Female			Total		
	Eligible	Received	Rate	Eligible	Received	Rate	Eligible	Received	Rate
African American	666	90	135.1	228	24	105.3	894	114	127.5
Asian/Pacific Islander	221	26	117.6	70	13	185.7	291	39	134.0
Caucasian	5,016	1,035	206.3	2,182	494	226.4	7,198	1,529	212.4
Hispanic	450	53	117.8	72	4	55.6	522	57	109.2
Native American	113	24	212.4	73	13	178.1	186	37	198.9
Total	6,466	1,228	189.9	2,625	548	208.8	9,091	1,776	195.4

Excludes 45 sentences for which gender and/or race/ethnicity is unknown and 10 sentences where "Other" is given as race/ethnicity.

¹² Community custody is a term of supervision served in the community and subject to conditions placed on the offender's movement and activities by the Department of Corrections. Community custody imposed under the FTOW is subject to conditions and sanctions under RCW [9.94A.715](#) (2) and (3).

¹³ Fiscal Year

¹⁴ Data on deferred prosecutions are not provided to the Commission and therefore were not included in the FTOW eligibility calculations.

On average, First Time Offender Waiver sentences consist of a 34-day jail term for males and 27-day term for females, with 21 months community supervision for both groups (Table 12). Among males, Native Americans receive slightly longer sentences (nine days more) than Caucasians, along with Asian/Pacific Islanders and Hispanics. Among females, Hispanics and Asian/Pacific Islanders receive the longest sentences (45.7 and 42.6 days respectively). Due to the very small number of females in these groups, the results should be interpreted with caution. Both male and female minorities tend to receive shorter community supervision terms than Caucasians, with the exception of Hispanic females.

Table 12. First Time Offender Waiver Average Sentence, By Race/Ethnicity and Gender.

Race/Ethnicity	Avg. Jail Sentence (days)		Avg. Supervision (months)	
	Male	Female	Male	Female
African American	30.4	28.6	19.3	19.9
Asian/Pacific Islander	39.6	42.6	19.8	18.5
Caucasian	33.5	26.8	21.2	21.2
Hispanic	36.5	45.7	20.6	24.0
Native American	42.6	30.4	20.0	16.6
Total	33.5	27.4	20.9	21.0

Drug Offender Sentencing Alternative

The Drug Offender Sentencing Alternative (DOSA) permits the court to reduce the standard range sentence by half and requires offenders to complete drug treatment during incarceration (RCW 9.94A.660). The remaining half of the standard range sentence is imposed as a community custody term, violation of which can result in confinement for the balance of the sentence. Eligibility for the alternative is limited to non-violent offenders, who have no current or prior sex offenses, no weapon enhancements, and in the case of drug offenses, involve a small quantity of drugs. Limiting the alternative to offenders with standard range sentences over one year ensures adequate time for treatment.

The number of DOSA sentences increased for all racial, ethnic and gender groups over the past few years, from 895 in 2000¹⁵ to 1,947 in 2002. African Americans continue to receive the alternative at higher rates than other racial groups, 519 per 1,000 eligible compared to 336 per 1,000 for Caucasians (Table 13). The majority (81%) of DOSA sentences for African Americans were entered in King County¹⁶.

¹⁵ Fiscal Year.

¹⁶ Since all offenders sentenced to the alternative receive the same sentence relative to their position on the grid, one-half the midpoint of the standard range, the sentence length imposed for DOSA offenders was not analyzed.

Table 13. Drug Offender Sentencing Alternative Rates Per 1,000 Eligible, By Race/Ethnicity and Gender.

Race/Ethnicity	Male			Female			Total		
	Eligible	Received	Rate	Eligible	Received	Rate	Eligible	Received	Rate
African American	753	378	502.0	165	98	593.9	918	476	518.5
Asian/Pacific Islander	82	25	304.9	14	4	285.7	96	29	302.1
Caucasian	3,246	1,044	321.6	758	300	395.8	4,004	1,344	335.7
Hispanic	251	49	195.2	17	8	470.6	268	57	212.7
Native American	72	21	291.7	39	20	512.8	111	41	369.4
Total	4,404	1,517	344.5	993	430	433.0	5,397	1,947	360.8

Excludes 26 sentences where gender and/or race/ethnicity is unknown and four sentences where "Other" is given as race/ethnicity.

Special Sex Offender Sentencing Alternative

Certain sex offenders are eligible for the Special Sex Offender Sentencing Alternative (SSOSA), which authorizes suspension of the standard range sentence in place of treatment under community custody¹⁷ and up to six months confinement. The offender is placed on community custody for the length of the sentence or three years, whichever is greater, and is required to complete treatment. The alternative is available to first-time sex offenders who have not been convicted of a serious violent offense or Second Degree Rape (RCW 9.94A.670).

Caucasian males continue to receive the SSOSA at the highest rate, 293 per 1,000 eligible (Table 14). Just three African American males received the alternative, with a rate of 47 per 1,000 eligible.

Table 14. Special Sex Offender Sentencing Alternative Rates Per 1,000 Eligible, By Race/Ethnicity and Gender.

Race/Ethnicity	Male			Female			Total		
	Eligible	Received	Rate	Eligible	Received	Rate	Eligible	Received	Rate
African American	64	3	46.9	1	0	NA	65	3	46.2
Asian/Pacific Islander	19	4	210.5	1	1	NA	20	5	250.0
Caucasian	634	186	293.4	23	5	217.4	657	191	290.7
Hispanic	76	9	118.4	0	0	NA	76	9	118.4
Native American	23	5	217.4	0	0	NA	23	5	217.4
Total	816	207	253.7	25	6	240.0	841	213	253.3

Excludes six sentences for which gender and/or race/ethnicity is unknown and two sentences in which "Other" is given as race/ethnicity.

¹⁷ Offenders are required to comply with any community custody conditions imposed by the Department of Corrections under RCW [9.94A.720](#).

The average jail term imposed for the Sex Offender Sentencing Alternative is 5.5 months, with an average community supervision term of 83 months or approximately seven years (Table 15). African Americans receive the shortest jail term (4.3 months) and Native Americans the longest (6 months). Hispanic sex offenders receive community supervision terms, on average, two years longer than Caucasians (106 months, compared to 82 months). Due to the small number of alternatives for all but Caucasians, these numbers should be interpreted with caution.

Table 15. Special Sex Offender Sentencing Alternative Average Sentence, By Race/Ethnicity for Males.

Race/Ethnicity	Avg. Jail Sentence	Average Supervision
African American	4.3	68.7
Asian/Pacific Islander	5.0	86.5
Caucasian*	5.6	81.9
Hispanic	5.7	106.3
Native American	6.0	84.0
Total	5.5	82.6

The average jail and supervision sentence is displayed in months. Females are excluded due to the small number of sex offender alternative sentences (6). Excludes one life sentence to community supervision.

Exceptional Sentences

An offender may be sentenced to an exceptional sentence when the court finds substantial and compelling reasons justifying a sentence outside the standard range. Both aggravated (above) and mitigated (below) exceptional sentences are fairly rare, with just 1,215 such sentences entered in 2002¹⁸.

Over the past two years the number of mitigated exceptional sentences relative to the number of total sentences increased slightly, from 14.2 per 1,000 sentences in 2000 to 18.4 per 1,000 sentences in 2002. African American males and females receive mitigating exceptional sentences at higher rates than other groups (37.6 and 34.4 per 1,000 sentences, respectively). Caucasians were the least likely among racial and ethnic groups to receive a mitigated sentence (Table 16).

¹⁸ An additional 60 exceptional sentences fell within the standard range. These are generally applied when the court chooses to impose conditions on sentences that are not normally available.

Table 16. Mitigated Exceptional Sentence Rates per 1,000 Eligible, By Race/Ethnicity and Gender.

Race/Ethnicity	Male			Female			Total		
	Eligible	Received	Rate	Eligible	Received	Rate	Eligible	Received	Rate
African American	3,430	129	37.6	727	25	34.4	4,157	154	37.0
Asian/Pacific Islander	547	10	18.3	110	2	18.2	657	12	18.3
Caucasian	16,784	246	14.7	4,443	55	12.4	21,227	301	14.2
Hispanic	1,214	35	28.8	133	3	22.6	1,347	38	28.2
Native American	472	11	23.3	190	1	5.3	662	12	18.1
Total	22,447	431	19.2	5,603	86	15.3	28,050	517	18.4

Excludes 123 sentences for which gender and/or race/ethnicity is unknown and 20 sentences where race/ethnicity was reported as "other."

Aggravated sentencing rates, or more punitive terms, remained relatively unchanged between 2000 and 2002, from 25.8 per 1,000 sentences in 2000¹⁹ to 24.9 in 2002 (Table 17). Hispanic males and females receive aggravated exceptional sentences at the highest rate, 33.8 and 37.6 per 1,000 sentences. African American males receive aggravated sentences at a slightly higher rate than Caucasian males (28.0 compared to 26.2). Asians, Pacific Islanders and Native Americans are the least likely to receive a more punitive punishment through an exceptional sentence.

Table 17. Aggravated Exceptional Sentence Rates per 1,000 Eligible, By Race/Ethnicity and Gender.

Race/Ethnicity	Male			Female			Total		
	Eligible	Received	Rate	Eligible	Received	Rate	Eligible	Received	Rate
African American	3,430	96	28.0	727	8	11.0	4,157	104	25.0
Asian/Pacific Islander	547	11	20.1	110	0	0.0	657	11	16.7
Caucasian	16,784	439	26.2	4,443	87	19.6	21,227	526	24.8
Hispanic	1,214	41	33.8	133	5	37.6	1,347	46	34.1
Native American	472	8	16.9	190	3	15.8	662	11	16.6
Total	22,447	595	26.5	5,603	103	18.4	28,050	698	24.9

Excludes 123 sentences for which gender and/or race/ethnicity is unknown and 20 sentences where race/ethnicity was reported as "other."

¹⁹ Fiscal Year.

Life Sentences

A sentence to life imprisonment can result from a conviction for Aggravated First Degree Murder, an exceptional sentence to the statutory maximum for Class A felony offenses, or a persistent offender conviction, either as a three-strike or two-strike sentence. Under the three-strikes law, a life sentence must be imposed upon the third conviction for a most serious offense, which includes crimes such as murder, kidnapping, assault, burglary, robbery and a number of other violent crimes (RCW 9.94A.030(28)). The two-strike law requires the imposition of a life sentence for sex offenders with two separate convictions of specified sex offenses, such as rape, indecent liberties by forcible compulsion, rape of a child and other sexually motivated crimes (RCW9.94A.030(32)(b)).

The Commission's 2000 Disproportionality and Disparity report revealed high rates of life sentences for people of color over the prior ten years. In 2002, 25% of life sentences were imposed against African Americans, 8% Asians/Pacific Islanders and 8% Native Americans (Table 18). These numbers are disturbing given that African Americans make up 3% of the Washington State population and Native Americans 1.5%. The number of African Americans sentenced to life under the three-strike law remains particularly high, with 6 of 16 sentences African American males. Overall, the number of three-strike life sentences decreased over the past two years from 23 in 2000 to 18 in 2001 and 16 in 2002. There were no death sentences in 2002.

Table 18. Life Sentences.

Race/Ethnicity	Persistent Offender		Other Life Sentences	Total	Percent
	Three-Strikes	Two-Strikes			
African American	6	2	1	9	25.0
Asian/Pacific Islander	0	0	3	3	8.3
Caucasian	7	4	10	21	58.3
Hispanic	0	0	0	0	0.0
Native American	3	0	0	3	8.3
Total	16	6	14	36	100.0

All life sentences in 2002 involved males.

Conclusions

Sentencing disparity is not necessarily the product of overt discrimination. Bias often permeates criminal justice decision-making in subtle ways (Kramer and Ulmer 2003). In Washington, the sentencing guidelines severely limit the degree to which extra-legal factors such as race, ethnicity and gender can impact sentencing decisions. Nonetheless, different outcomes among racial, ethnic and gender groups appear to exist for certain types of offenses. In the absence of detailed offense and victim information, the findings contained in this report serve only as an indicator that disparity may exist for some groups.

The majority of felons in Washington are sentenced to the standard range specified by the sentencing grid. On average, sentences fall within the bottom half of the range regardless of race, ethnicity or gender, with all groups sentenced at or near one-third of their respective range. There are several crime specific exceptions to this finding, particularly for Asians and Pacific Islanders who generally are sentenced to a higher point in the standard range than others for murder/manslaughter, sex and robbery crimes. Gender differences appear to exist among offenders who commit violent crimes, but not for property or drug crimes. Males tend to be sentenced higher in the range than females for murder/manslaughter, sex, robbery and assault. When the guidelines allow a choice between incarceration and a sentence to the community, few eligible African American and Hispanic males, and Native American males and females receive a community sentence.

Two of Washington's sentencing alternatives, the First Time Offender Waiver and Special Sex Offender Sentencing Alternative, appear to benefit Caucasians over people of color. The Drug Offender Sentencing Alternative is used at much higher rates for African Americans over other groups. In addition, people of color are more likely to receive a less punitive punishment than called for by the guidelines, through a mitigated exceptional sentence. Hispanics, however, receive more punitive punishments at slightly higher rates than Caucasians and other minorities through aggravated exceptional sentences.

Recommendations

Given the findings reported above, the following recommendations are suggested for reducing racial, ethnic and gender disparities in sentencing.

1. Increase awareness through ongoing training of criminal justice professionals on the use of offender characteristics in sentencing decisions. For instance, researchers report that unintended race and gender disparities often materialize when judges introduce employment, family responsibility, education and other social factors into the sentencing decision. Often it is presumed these characteristics are related to recidivism without research-based evidence (Kramer and Ulmer, 2003).

2. Review and amend sentencing laws that may be disproportionately impacting people of color. The 2002 level and scoring changes for drug offenses provide a good example of how a law change may serve to reduce racial and ethnic discrepancies in sentence length. Although this law was intended in part to produce fiscal savings by a reduction in length of stay for all drug offenders, thus far this change has had a greater impact for minorities than Caucasians, thereby eliminating some of the difference in sentence length between the two groups.²⁰

Removing Second Degree Robbery from the list of most serious offenses under the persistent offender act could also reduce racial disproportionality in sentencing. Narrowing the scope of the persistent offender law would likely decrease the number of three-strike life sentences disproportionately impacting people of color. Nearly half of persistent offenders incarcerated for life with a Second Degree Robbery conviction as one of their three-strikes are African American. This law change was recommended on substantive grounds in the Commission's 2001 Comprehensive Review and Evaluation of Sentencing Policy. The Commission also recommends a review of Second Degree Assault to determine what circumstances are sufficiently harmful to merit a life sentence under the persistent offender statute.²¹

3. Require racial/ethnic impact statements, similar to fiscal impact statements to project the impact sentencing legislation will have on race and ethnic groups prior to adoption. These statements should provide a tool for forecasting disproportional impact and assist legislators in seeking alternative crime control methods (Mauer, 1998).

4. Review sentencing alternatives for class-based disparities. Defendants with a lack of resources, prohibiting them from paying for electronic monitoring or private drug treatment, may be treated differently than those with access to resources in pre-trial release and alternative sentencing decisions (Kramer and Ulmer, 2003).

5. Increase use of the First Time Offender Waiver for people of color that meet eligibility requirements. Given the continued pattern of low waiver rates for these offenders, judges, prosecutors and defense attorneys are encouraged to examine eligibility among first time minority felons and where appropriate encourage its application.

6. Implement full compliance of RCW 9.94A.680 with existing alternatives to incarceration laws. This statute requires that the court consider and give priority to alternatives to confinement for nonviolent offenders with a term of one year or less. Full compliance with this statute could result in an increase of sentences to the community for eligible people of color, particularly Hispanic and African American males, along with Native American males and females.

²⁰ The same legislation (2SHB 2338) created a new drug grid, which took effect July 1, 2003. Sufficient data is not yet available to assess the racial/ethnic and gender impact of the new grid.

²¹ See "A Comprehensive Review and Evaluation of Sentencing Policy in Washington State, 2000-2001." State of Washington Sentencing Guidelines Commission.

The over-representation of people of color is a system-wide problem within the criminal justice system. Juvenile justice systems in various jurisdictions across the country are examining disproportionality at each stage of the system through commissions and county task forces that include representatives from the judiciary, corrections, law enforcement, minority community leaders, prosecutors and elected officials. Similar efforts in the adult system should advance the goals of developing and recommending policies and legislation for reducing the number of minorities at arrest through incarceration. The Sentencing Project,²² through funding from the U.S. Department of Justice, has developed a manual for practitioners and policymakers on reducing racial disparity in the criminal justice system (Schrantz and McElroy, 2000).

²² The Sentencing Project is a non-profit organization based in Washington, DC that promotes sentencing reform and alternatives to incarceration.

Data

The adult felony sentencing data contained in this report come from Washington Judgment and Sentence forms sent to the Sentencing Guidelines Commission (SGC) by the courts. Data include all adult felony sentences known to the Commission that were imposed during Calendar Year 2002. Data elements entered into the SGC database and used in the analysis include race, ethnicity, gender, type of sentence, current offense, criminal history, offender score, the imposed sentence length and community supervision term. Missing data on race, ethnicity and gender were replaced with demographic information obtained from the Washington Department of Corrections.

The Washington Association of Sheriffs and Police Chiefs provided County Jail booking data. The Washington Department of Corrections, Planning and Research Section provided prison admission and standing population data. Ethnicity was unknown for approximately 3% of the June 30, 2002 prison population. These offenders were counted as non-Hispanic. The Washington State population data is bridged-race postcensal population estimates from the National Center for Health Statistics, provided by the Washington Office of Financial Management.

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Appendix A. Washington State Sentencing Grid

SERIOUSNESS LEVEL	SENTENCING GRID FOR CRIMES COMMITTED AFTER JULY 24, 1999									
	OFFENDER SCORE									
	0	1	2	3	4	5	6	7	8	9 or more
XVI	Life Sentence without Parole/Death Penalty									
XV	23y 4m 240 - 320	24y 4m 250 - 333	25y 4m 261 - 347	26y 4m 271 - 361	27y 4m 281 - 374	28y 4m 291 - 388	30y 4m 312 - 416	32y 10m 338 - 450	36y 370 - 493	40y 411 - 548
XIV	14y 4m 123 - 220	15y 4m 134 - 234	16y 2m 144 - 244	17y 154 - 254	17y 11m 165 - 265	18y 9m 175 - 275	20y 5m 195 - 295	22y 2m 216 - 316	25y 7m 257 - 357	29y 298 - 397
XIII	12y 123 - 164	13y 134 - 178	14y 144 - 192	15y 154 - 205	16y 165 - 219	17y 175 - 233	19y 195 - 260	21y 216 - 288	25y 257 - 342	29y 298 - 397
XII	9y 93 - 123	9y 11m 102 - 136	10y 9m 111 - 147	11y 8m 120 - 160	12y 6m 129 - 171	13y 5m 138 - 184	15y 9m 162 - 216	17y 3m 178 - 236	20y 3m 209 - 277	23y 3m 240 - 318
XI	7y 6m 78 - 102	8y 4m 86 - 114	9y 2m 95 - 125	9y 11m 102 - 136	10y 9m 111 - 147	11y 7m 120 - 158	14y 2m 146 - 194	15y 5m 159 - 211	17y 11m 185 - 245	20y 5m 210 - 280
X	5y 51 - 68	5y 6m 57 - 75	6y 62 - 82	6y 6m 67 - 89	7y 72 - 96	7y 6m 77 - 102	9y 6m 98 - 130	10y 6m 108 - 144	12y 6m 129 - 171	14y 6m 149 - 198
IX	3y 31 - 41	3y 6m 36 - 48	4y 41 - 54	4y 6m 46 - 61	5y 51 - 68	5y 6m 57 - 75	7y 6m 77 - 102	8y 6m 87 - 116	10y 6m 108 - 144	12y 6m 129 - 171
VIII	2y 21 - 27	2y 6m 26 - 34	3y 31 - 41	3y 6m 36 - 48	4y 41 - 54	4y 6m 46 - 61	6y 6m 67 - 89	7y 6m 77 - 102	8y 6m 87 - 116	10y 6m 108 - 144
VII	18m 15 - 20	2y 21 - 27	2y 6m 26 - 34	3y 31 - 41	3y 6m 36 - 48	4y 41 - 54	5y 6m 57 - 75	6y 6m 67 - 89	7y 6m 77 - 102	8y 6m 87 - 116
VI	13m 12+ - 14	18m 15 - 20	2y 21 - 27	2y 6m 26 - 34	3y 31 - 41	3y 6m 36 - 48	4y 6m 46 - 61	5y 6m 57 - 75	6y 6m 67 - 89	7y 6m 77 - 102
V	9m 6 - 12	13m 12+ - 14	15m 13 - 17	18m 15 - 20	2y 2m 22 - 29	3y 2m 33 - 43	4y 41 - 54	5y 51 - 68	6y 62 - 82	7y 72 - 96
IV	6m 3 - 9	9m 6 - 12	13m 12+ - 14	15m 13 - 17	18m 15 - 20	2y 2m 22 - 29	3y 2m 33 - 43	4y 2m 43 - 57	5y 2m 53 - 70	6y 2m 63 - 84
III	2m 1 - 3	5m 3 - 8	8m 4 - 12	11m 9 - 12	14m 12+ - 16	20m 17 - 22	2y 2m 22 - 29	3y 2m 33 - 43	4y 2m 43 - 57	5y 51 - 68
II	0 - 90 Days	4m 2 - 6	6m 3 - 9	8m 4 - 12	13m 12+ - 14	16m 14 - 18	20m 17 - 22	2y 2m 22 - 29	3y 2m 33 - 43	4y 2m 43 - 57
I	0 - 60 Days	0 - 90 Days	3m 2 - 5	4m 2 - 6	5m 3 - 8	8m 4 - 12	13m 12+ - 14	16m 14 - 18	20m 17 - 22	2y 2m 22 - 29

Appendix B. Sentencing Rates

Adult Felony Sentencing Rates Per 10,000 Population, By Race/Ethnicity and Gender, 2002.

Race/Ethnicity	Male			Female			Total		
	Population	Sentences	Rate	Population	Sentences	Rate	Population	Sentences	Rate
African American	80,114	3,430	428.1	68,526	727	106.1	148,640	4,157	279.7
Asian/Pacific Islander	137,155	547	39.9	164,353	110	6.7	301,508	657	21.8
Caucasian	1,829,158	16,784	91.8	1,902,704	4,443	23.4	3,731,862	21,227	56.9
Hispanic	166,906	1,214	72.7	137,264	133	9.7	304,170	1,347	44.3
Native American	33,860	472	139.4	35,596	190	53.4	69,456	662	95.3
Total	2,247,193	22,447	99.9	2,308,443	5,603	24.3	4,555,636	28,050	61.6

Excludes 123 sentences for which gender and/or race/ethnicity is unknown and 20 sentences where "Other" is given as race/ethnicity.

- In 2002, African American males were sentenced for a felony conviction at the highest rate, 428.1 per 10,000 in the adult population, followed by Native American males, 139.4 per 10,000 in the population.

Appendix C. Distribution of Placement in the Range Values

The following table displays the distribution of placement in the range values by race, ethnicity and gender. Placement in the range refers to a value of zero to one, where zero indicates a sentence at the bottom of the range, and one indicates a sentence at the top of the range. These values were collapsed into three groups, low, middle and high. “Low” includes placement in the range values of 0 to .39, “Middle” includes values of .40 to .60 and “High” includes values of .61 to 1.

For over half (61%) of sentences in 2002, the court imposed a term considered low in the range. This was fairly consistent across racial, ethnic and gender groups. Sixty-five percent of sentences imposed for African Americans fell into the lower portion of the range. A slightly smaller percentage of sentences for Hispanics (61%) and Caucasian (60%) were imposed in the lower portion of the range. Twenty-three percent of sentences for Asian/Pacific Islanders were considered high in the range, compared to 20% for Caucasians and African Americans.

Percent of Sentences Imposed at the Low, Middle and High-End Of the Standard Range, By Race/Ethnicity

Race/Ethnicity	Placement in Range					
	Percent					
	Low		Middle		High	
African American	64.5	%	15.2	%	20.3	%
Asian/Pacific Islander	57.1		19.9		23.1	
Caucasian	60.3		19.3		20.4	
Hispanic	61.4		17.2		21.5	
Native American	58.3		21.1		20.7	
Gender						
Male	60.3	%	18.2	%	21.5	%
Female	63.3		20.3		16.4	
Total	60.9	%	18.6	%	20.5	%

Appendix D. Offenses Included in Each Crime-Type

Murder

Aggravated Murder 1
Controlled Substance Homicide
Hit and Run - Death
Manslaughter 1
Manslaughter 2
Murder 1
Murder 2
Vehicular Homicide by Being Under the Influence of Intoxicating Liquor or any Drug
Vehicular Homicide by Disregard for the Safety of Others
Vehicular Homicide by the Operation of any Vehicle in a Reckless Manner

Sex
Child Molestation 1
Child Molestation 2
Child Molestation 3
Communication with Minor for Immoral Purposes (Subsequent Sex Offense)
Custodial Sexual Misconduct 1
Dealing in Depictions of Minor Engaged in Sexually Explicit Conduct
Failure of Class A Sex Offender to Register
Failure of Felony Sex Offender or Kidnapper to Register
Failure to Register as a Sex Offender
Incest 1
Incest 2
Indecent Exposure to Person Under 14 (Subsequent Offense)
Indecent Liberties (with Forcible Compulsion)
Indecent Liberties (without Forcible Compulsion)
Patronizing a Juvenile Prostitute
Possession of Depictions of a Minor Engaged in Sexually Explicit Conduct
Promoting Prostitution 1
Promoting Prostitution 2
Rape 1
Rape 2
Rape 3
Rape of a Child 1
Rape of a Child 2
Rape of a Child 3
Sexual Exploitation
Sexual Misconduct with a Minor 1
Statutory Rape 1
Voyeurism

Robbery
Extortion 1
Extortion 2
Robbery 1
Robbery 2
Assault
Alien Possession of a Firearm Without an Alien Firearm License
Assault 1
Assault 2
Assault 3
Assault by Watercraft
Assault of a Child 1
Assault of a Child 2
Assault of a Child 3
Custodial Assault
Custodial Interference 1
Disarming a Law Enforcement or Corrections Officer
Domestic Violence Court Order Violation
Drive-by Shooting
Failure to Register as a Kidnapping Offender
Hit and Run - Injury
Hit and Run (Injury Accident)
Intimidating a Judge
Intimidating a Public Servant
Intimidating a Witness
Kidnapping 1
Kidnapping 2
Luring of a Child or Developmentally Disabled Person
Machine Gun or Short-barreled Shotgun/Rifle Possession Prohibited
Malicious Harassment
Malicious Prosecution
No Contact Order Violation - Domestic Violence Pretrial
No Contact Order Violation - Domestic Violence Sentence Condition
Possession of Weapons by Prisoners
Prison Riot
Protection Order Violation - Domestic Violence Civil Action
Riot
Stalking
Stalking (effective 07/01/2000)
Tampering with a Witness
Threats to Bomb
Unlawful Discharge of a Laser 1
Unlawful Imprisonment
Unlawful Possession of a Firearm 1
Unlawful Possession of a Firearm 2

Assault Continued
Vehicular Assault
Vehicular Assault, by being under the Influence of Intoxicating Liquor or by the Operation or driving of a Vehicle in a Reckless Manner
Vehicular Assault, by the Operation of a Vehicle with Disregard for the Safety of Others

Property
Arson 1
Arson 2
Burglary 1
Burglary 2
Cigarette Transportation Unlawfully
Commercial Fishing Without a License in the First Degree
Explosive Device Activities Without License
Explosive Devices Prohibited (Possession of Explosive Device for Unlawful Purpose)
False Insurance Claims in Excess of \$1,500
False Statement for Medical Assistance
False Statement or Illegal Transfer of Motor Vehicle Ownership
False Verification for Welfare
Forgery
Health Care False Claims (Subsequent Violation)
Identity Theft
Identity Theft 1
Identity Theft 2
Injury to a Public Record
Malicious Mischief 1
Malicious Mischief 2
Malicious Placement of Explosives 2
Obtaining Accommodations by Fraud
Obtaining Signature by Deception or Duress
Offering False Instrument for Filing or Record
Possession of a Stolen Firearm
Possession of Incendiary Device
Possession of Stolen Property 1
Possession of Stolen Property 2
Reckless Burning 1
Residential Burglary
Taking Motor Vehicle Without Permission
Taking Motor Vehicle Without Permission 2
Theft 1
Theft 1-Welfare Fraud
Theft 2
Theft 2-Welfare Fraud
Theft of a Firearm
Theft of Rental, Leased, or Lease-purchased Property (valued at \$1,500 dollars or more)
Theft of Rental, Leased, or Lease-purchased Property (valued at \$250 dollars or more but less than \$1,500)
Theft of Telecommunication Service

Property Continued
Trafficking in Stolen Property 1
Trafficking in Stolen Property 2
Unlawful Issuance of Checks or Drafts
Unlawful Sale of a Telecommunication Device
Willful Destruction, Injury, Secretion, etc., of Insured Property
Drug
Create, Deliver, or Possess a Counterfeit Controlled Substance - Methamphetamine
Create, Deliver, or Possess a Counterfeit Controlled Substance - Schedule I or II Narcotic
Create, Deliver, or Possess a Counterfeit Controlled Substance - Schedule III-V Narcotic or Schedule I-V Nonnarcotic
Delivery of Imitation Controlled Substance by Person 18 or Over to Person Under 18
Delivery of Material in Lieu of a Controlled Substance
Delivery or Possession with Intent to Deliver Methamphetamine
Drug Unknown, level VIII
Endangerment With a Controlled Substance
Forged Prescription (Legend Drug)
Forged Prescription for a Controlled Substance
Involving a Minor in Drug Dealing
Maintaining a Dwelling for Controlled Substances
Manufacture Methamphetamine
Manufacture, Deliver, or Possess with Intent to Deliver Amphetamine
Manufacture, Deliver, or Possess with Intent to Deliver Heroin or Cocaine
Manufacture, Deliver, or Possess with Intent to Deliver Heroin or Cocaine (Except When the Offender has a Criminal History in This State or any Other State that Includes a Sex Offense or Serious Violent Offense or the Washington Equivalent)
Manufacture, Deliver, or Possess with Intent to Deliver Heroin or Cocaine (When the Offender has a Criminal History in This State or any Other State that Includes a Sex Offense or Serious Violent Offense or the Washington Equivalent)
Manufacture, Deliver, or Possess with Intent to Deliver Marijuana
Manufacture, Deliver, or Possess with Intent to Deliver Marijuana (Subsequent Drug Conviction or in a Protected Zone)
Manufacture, Deliver, or Possess with Intent to Deliver Methamphetamine
Manufacture, Deliver, or Possess with Intent to Deliver Narcotics from Schedule I and II (Except Heroin or Cocaine) or Flunitrazepam from Schedule IV
Manufacture, Deliver, or Possess with Intent to Deliver Narcotics from Schedule I or II (Except Heroin or Cocaine) or Flunitrazepam from Schedule IV
Manufacture, Deliver, or Possess with Intent to Deliver Narcotics from Schedule III, IV, or V or nonnarcotics from Schedule I-V (except Marijuana, Amphetamine, Methamphetamine, or Flunitrazepam)
Manufacture, Deliver, or Possess with Intent to Deliver Narcotics from Schedule III-V or Nonnarcotics from Schedule I-V (Except Marijuana or Methamphetamine)
Manufacture, Deliver, or Possess with Intent to Deliver Narcotics from Schedule I-V (except Marijuana, Amphetamine, Methamphetamine, or Flunitrazepam)
Manufacture, Distribute, or Possess with Intent to Distribute Imitation Controlled Substance
Obtain a Controlled Substance by Fraud or Forged Prescription

Drugs Continued
Over 18 and Deliver Heroin, Methamphetamine, a Narcotic from Schedule I or II, or Flunitrazepam from Schedule IV to Someone Under 18
Over 18 and Deliver Narcotic from Schedule III-V, or a Nonnarcotic, except Flunitrazepam, from Schedule I-V to Someone Under 18 and 3 Years Junior
Possession of Controlled Substance by Prisoners
Possession of Controlled Substance in Prison by Non-prisoner
Possession of Controlled Substance that is a Narcotic from Schedule III-V or Nonnarcotic from Schedule I-V (Except Phencyclidine or Flunitrazepam)
Possession of Controlled Substance that is a Narcotic from Schedule III-V or Nonnarcotic from Schedule I-V (Except Phencyclidine) - Correctional Facility
Possession of Controlled Substance that is either Heroin or Narcotics from Schedule I or II - Correctional Facility
Possession of Controlled Substance that is either Heroin or Narcotics from Schedule I or II or Flunitrazepam from Schedule IV
Possession of Ephedrine or Pseudoephedrine with Intent to Manufacture Methamphetamine
Possession of Ephedrine, Pseudoephedrine, or Anhydrous Ammonia with Intent to Manufacture Methamphetamine
Possession of Phencyclidine (PCP)
Sale, Delivery, or Possession of Legend Drug Without Prescription or Order
Theft of Anhydrous Ammonia
Unlawful Storage of Anhydrous Ammonia
Unlawful Use of Building for Drug Purposes - Owner or Manager Knowingly Leases or Rents
Other Felony
Abandonment of Dependent Persons 1
Abandonment of Dependent Persons 2
Animal Cruelty 1
Attempting to Elude Pursuing Police Vehicle
Bail Jump with Class A Offense
Bail Jump with Class B or C Offense
Bribing a Witness
Civil Disorder Training
Criminal Mistreatment 1
Criminal Mistreatment 2
Delivery of Firearms to Ineligible Person
Escape 1
Escape 2
Escape from Community Custody
False Information in Industrial Insurance Claim
False Statement to Department of Revenue
Game Violation (Subsequent Conviction)
Harassment (Subsequent Violation or Deadly Threat Made)
Harming a Police Dog or an Accelerate Detection Dog
Introducing Contraband 2
Leading Organized Crime
Money Laundering

Other Felony Continued
Perjury 1
Perjury 2
Persistent Prison Misbehavior
Rendering Criminal Assistance 1
Telephone Harassment (Subsequent Conviction or Threat of Death)
Threats Against Governor or Family
Vehicle Prowl 1
Willful Failure to Return from Furlough
Willful Failure to Return from Work Release

Appendix E. Offense Seriousness Level and Offender Score

**Average Seriousness Level and Offender Score Data Across Crime-Types
for Standard Range Sentences, By Race/Ethnicity and Gender.**

Murder/Manslaughter

Race/Ethnicity	Number	Average	
		Seriousness Level	Offender Score
African American	39	13.2	2.8
Asian/Pacific Islander	12	12.8	1.5
Caucasian	109	11.2	1.5
Hispanic	9	10.6	0.8
Native American	7	11.1	2.0
Gender			
Male	159	11.8	1.9
Female	19	11.4	1.0
Total	178	11.7	1.8

Sex

Race/Ethnicity	Number	Average	
		Seriousness Level	Offender Score
African American	114	3.7	1.6
Asian/Pacific Islander	17	6.9	2.8
Caucasian	835	3.5	1.2
Hispanic	80	5.0	1.2
Native American	19	4.6	0.5
Gender			
Male	1,050	3.7	1.2
Female	21	3.8	1.3
Total	1,071	3.7	1.2

Robbery

Race/Ethnicity	Number	Average	
		Seriousness Level	Offender Score
African American	175	6.2	3.3
Asian/Pacific Islander	21	7.8	2.7
Caucasian	353	6.1	2.8
Hispanic	22	6.3	1.7
Native American	16	5.3	2.3
Gender			
Male	516	6.2	3.0
Female	73	5.6	2.1
Total	589	6.2	2.9

Assault

Race/Ethnicity	Number	Average	
		Seriousness Level	Offender Score
African American	704	3.9	2.4
Asian/Pacific Islander	111	4.5	1.5
Caucasian	2,505	3.8	1.8
Hispanic	204	3.4	1.3
Native American	107	3.5	1.8
Gender			
Male	3,323	3.8	2.0
Female	313	3.5	1.2
Total	3,642	3.8	1.9

Property

Race/Ethnicity	Number	Average	
		Seriousness Level	Offender Score
African American	975	1.7	2.5
Asian/Pacific Islander	247	1.5	1.9
Caucasian	6,903	1.7	2.6
Hispanic	330	2.0	1.7
Native American	202	2.0	2.5
Gender			
Male	6,474	1.8	2.7
Female	2,192	1.4	1.9
Total	8,686	1.7	2.5

Drugs

Race/Ethnicity	Number	Average	
		Seriousness Level	Offender Score
African American	1,115	2.6	2.6
Asian/Pacific Islander	112	2.1	1.3
Caucasian	5,293	1.8	1.8
Hispanic	402	3.4	1.4
Native American	148	2.3	1.9
Gender			
Male	5,492	2.2	2.0
Female	1,608	1.6	1.4
Total	7,130	2.1	1.9

Other Felony

Race/Ethnicity	Number	Average	
		Seriousness Level	Offender Score
African American	213	2.3	2.6
Asian/Pacific Islander	39	2.0	1.8
Caucasian	1,239	2.1	2.5
Hispanic	90	2.0	1.7
Native American	52	2.2	2.9
Gender			
Male	1,416	2.1	2.6
Female	217	2.5	2.2
Total	1,641	2.1	2.5

Detail does not add to total due to missing data on race/ethnicity or gender. Race/Ethnicity data exclude 118 sentences where race was reported as other or missing. Gender data exclude 64 cases where gender was missing.

Appendix F. Weapon and School Zone Enhancements

Percent of Standard Range Sentences with Enhancements By Crime-Type, Race/Ethnicity and Gender, 2002.

	Percent of Sentences with Enhancements						
	Murder	Sex	Robbery	Assault	Property	Drugs	Total
Race/Ethnicity							
African American	15.4	1.8	12.0	6.0	0.4	0.4	2.4
Asian/Pacific Islander	58.3	0.0	23.8	7.2	0.0	0.9	3.8
Caucasian	18.3	0.0	11.6	3.8	0.4	0.9	1.3
Hispanic	33.3	1.3	22.7	5.4	0.9	1.0	2.4
Native American	28.6	0.0	0.0	0.0	2.5	0.7	1.6
Gender							
Male	20.8	0.3	13.0	4.4	0.5	1.0	1.9
Female	26.3	0.0	6.8	3.2	0.1	0.1	0.5