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RECEIVED
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Mr. Gregory P. Schmidt
Secretary of the Senate
State Capitol, Room 400
Sacramento, California 95814

ADMINISTRATIVE OFFICE
OF THE COURTS (SAC)

Mr. E. Dotson Wilson
Chief Clerk of the Assembly
State Capitol, Room 3196
Sacramento, California 95814

Re: Criminal Dispositions by Race of Defendant—Report of Penal Code
Section 1170.45

Dear Mr. Schmidt and Mr. Wilson:

The Judicial Council submits the enclosed report mandated by Penal Code section 1170.45, which directs the Judicial Council to report annually on the disposition of criminal cases statewide according to the race and ethnicity of the defendant. (The complete text of Penal Code section 1170.45 can be found in the report's appendix). The statute does not specify the types of criminal cases to use for the study that is the basis for

this report. The Research and Planning Unit of the Administrative Office of the Courts analyzed felony cases for this study.

The data used in the analysis are from 1999, the last year for which complete annual data are available from the California Department of Justice (DOJ). The Criminal Justice Statistics Center (CJSC) of the DOJ is responsible for maintaining the Offender-Based Transaction Statistics (OBTS) report file, which tracks the processing of an individual offender from the point of entry into the criminal justice system to the point of exit. OBTS data are based upon the year of disposition regardless of when the felony arrest occurred, and may be reported a year or more after the actual arrest. The data used for this study were obtained from the OBTS file.

The OBTS file for 1999 contains a total of 278,715 records; in other words, 278,715 adults arrested for felony-level offenses in calendar year 1999 or earlier received dispositions in calendar year 1999. Our analysis is based on two types of sentencing information: a broad sentence classification (e.g., prison, jail, probation) and the type of sentence (e.g., felony sentence, misdemeanor sentence) handed down for each conviction. The major findings of the research are discussed below.

Limitations of the findings

The lack of data on sentence length and specific type of prior record limits the conclusions one can confidently make about any observed differences in sentencing by race or ethnicity of the defendant. More detailed information in these categories would enable control for a wider array of factors and thus a more precise comparison of sentencing outcomes for different racial and ethnic groups than is possible here. As a result, the findings contained in this report cannot be used on their own as an indication of bias or to identify the cause of differences in sentences within the California criminal justice system.

In addition, a sentencing outcome is the consequence of many intermediate and interdependent steps within the criminal justice system, from arrest to sentencing. Therefore, studies of sentencing outcomes involve extremely complex issues that are dependent on a variety of factors external to the courts, such as federal policies (e.g., border interdictions), local law enforcement policies, and district attorney charging and plea practices. Under California's determinate sentencing law, sentencing itself is among the least discretionary stages in the adjudication of a criminal case.

An example that illustrates this important issue is the manner in which most felony cases are disposed of in the California trial courts. In California, only 5 percent of felony cases reach trial with the majority of these criminal trials being resolved by jury trial. This trial rate for felony cases varies by the type of offense (e.g., violent offense vs. drug offense) and from county to county because of a variety of local factors that influence decisions to try cases. However, still about 95 percent of felony cases statewide are disposed of before trial, mostly by plea agreements between defense counsel and the District Attorney. The trial court judge still must review and approve many plea agreements made between defense counsel and the District Attorney; however, the sentences for these cases are not determined exclusively by the judge. The findings in this report, therefore, reflect sentencing outcomes for felony cases that may not be based on the unilateral discretion of a trial court judge.

Findings

The primary focus of this report is the analysis of sentencing outcomes by race/ethnicity of the defendant controlling for prior record and the type of offense. Controlling for prior record and type of offense, which dictate very specific sentences mandated by California's sentencing laws, ensures that no spurious effects will be attributed (or not) to the race or ethnicity of the defendant by comparing sentencing outcomes for defendants convicted of similar offenses and with similar criminal histories.

Severity of Sentence, controlling for prior record and type of offense

The analysis of sentence severity by race/ethnicity, when controlling for prior record and type of offense, showed no overall trends. For example, no single racial/ethnic group consistently received the most severe sentence (i.e., prison). Within each offense category there were some statistically significant differences in the severity of sentences among the racial/ethnic groups. However, many of these differences in the severity of sentences among the racial/ethnic groups diminished as the prior record of a defendant increased in severity.

- ❖ Among defendants with no prior record, Asians/Pacific Islanders and Caucasians arrested for a violent offense received a prison sentence less frequently than did Blacks or Hispanics.

- ❖ Blacks and Caucasians with no prior record had their cases dismissed or were acquitted for a violent felony more frequently than were Asians/Pacific Islanders and Hispanics.
- ❖ As the prior record of a defendant increased in severity, Caucasians were consistently the least likely to receive a prison sentence; Blacks were the most likely to have their cases dismissed or be acquitted when arrested for a violent offense.
- ❖ Asians/Pacific Islanders were generally the least likely to receive a prison sentence when arrested for a property offense.
- ❖ Hispanics were the most likely to receive a prison sentence and the least likely to have their cases dismissed or be acquitted for a drug offense charge, regardless of prior record.
- ❖ As with drug offenses, Hispanics arrested for “other” felony offenses were the most likely to receive a prison sentence and the least likely to have their cases dismissed or be acquitted, regardless of prior record.
- ❖ Blacks with no prior record were slightly more likely than the other racial/ethnic groups to have their cases dismissed or be acquitted when arrested for “other” felony offenses. However, as in previous analyses, these differences diminished as the defendant’s prior record increased in severity.

Type of Sentence, controlling for prior record and type of offense

Similar to the preceding analysis of severity of sentence, no overall patterns emerged in the analysis of type of sentence by race/ethnicity of the defendant when we controlled for prior record and type of offense. However, within each offense category there were statistically significant differences among racial/ethnic groups when controlling for the prior record and the type of offense committed by the defendant.

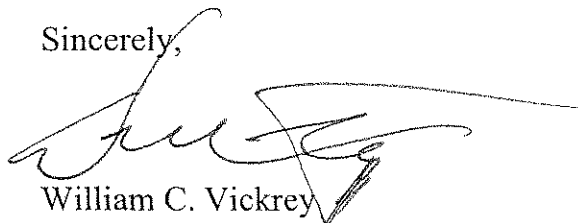
- ❖ In the violent offense category, Blacks were the most likely to receive a “felony conviction, felony sentence,” regardless of prior record.

- ❖ In the property offense category, the likelihood of receiving a “felony conviction, felony sentence” increased as a defendant’s prior record increased in severity, regardless of race/ethnicity.
- ❖ In the drug offense category, the overwhelming majority of individuals received a felony-level sentence when convicted of a felony, regardless of race/ethnicity or prior record.
- ❖ In the “other” felony offense category, the majority of individuals with no prior record received a misdemeanor-level sentence regardless of race/ethnicity. Caucasians or Blacks with one or more prior prison commitments received a “felony conviction, felony sentence” more often than did Hispanics or Asians/Pacific Islanders.

The findings in this report only summarize the broad sentencing information that is available in the OBTS file maintained by the California Department of Justice. With the limitations of the data currently available, it is not possible to identify whether sentencing differences are attributable to one portion or another of the criminal justice system. This report is intended only to be descriptive. Additional research is needed to help explain some of the findings.

If you have any questions related to this report, please contact Chris Belloli, Senior Research Analyst, Research and Planning Unit, at 415-865-7651.

Sincerely,



William C. Vickrey
Administrative Director of the Courts

BV/CB/sh

Enclosure

cc: Members of the Judicial Council
Ray LeBov, Office of Governmental Affairs
Judicial Administration Library

**REPORT TO THE LEGISLATURE PURSUANT TO
PENAL CODE SECTION 1170.45**

*The Disposition of Criminal Cases According to the
Race and Ethnicity of the Defendant*

May 2002

Prepared by

Administrative Office of the Courts

Research and Planning Unit



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BACKGROUND

In 1997 the California Legislature enacted Penal Code section 1170.45, which directs the Judicial Council to report annually on the disposition of criminal cases statewide according to the race and ethnicity of the defendant. The complete text of Penal Code section 1170.45 can be found in the appendix. The statute does not specify which types of criminal cases to use for the study on which the report is based.

The Research and Planning Unit of the Administrative Office of the Courts analyzed felony cases for this study. The data used in the analysis are from 1999, the last year for which complete annual data are available from the California Department of Justice (DOJ). Throughout this report, the combined term *race/ethnicity* is employed to correlate with U.S. Census Bureau's categorizations.

SUMMARY OF THE FINDINGS

The critical question for any assessment of sentencing outcomes by race/ethnicity is the degree to which "similarly situated" offenders receive dissimilar sentences on the basis of their race or ethnicity. In other words, to properly assess the impact of race and ethnicity in sentencing studies, it is imperative that one control for any factors relevant to sentencing decision making (e.g., type of offense, prior record) to ensure that "like" defendants are being compared to one another. For example, one would expect that a defendant convicted of a more serious felony would receive a more severe sentence than would a defendant convicted of a less serious felony. Similarly, one would expect that a defendant with a serious prior record would receive a more severe sentence than would a defendant with no prior record who was convicted of the same crime.

The primary focus of this report is the analysis of sentencing outcomes by race/ethnicity of the defendant controlling for prior record and the type of offense. Controlling for prior record and type of offense, which dictate very specific sentences mandated by California's sentencing laws, ensures that no spurious effects will be attributed (or not) to the race or ethnicity of the defendant by comparing sentencing outcomes for defendants convicted of similar offenses and with similar criminal histories.

When controlling for prior record and type of offense, the authors found no overall trends in either of the two types of sentencing outcomes (severity of sentence, type of sentence) by race/ethnicity of the defendant. For example, no single racial/ethnic group systematically received the most severe type of sentence after controlling for prior record and type of offense. However, within each offense

category (e.g., drug offenses) there were some statistically significant differences in the sentencing outcomes among defendants from the racial/ethnic groups. Hispanics, for example, were the most likely to receive a prison sentence when arrested for a felony-level drug offense, regardless of prior record. These differences are presented in further detail in the body of the report.

LIMITATIONS OF THE FINDINGS

The lack of data on sentence length and specific type of prior record limits the conclusions one can confidently make about any observed differences in sentencing by race or ethnicity of the defendant. More detailed information in these categories would enable control for a wider array of factors and thus a more precise comparison of sentencing outcomes for different racial and ethnic groups than is possible here. As a result, the findings contained in this report cannot be used on their own as an indication of bias or to identify the cause of differences in sentences within the California criminal justice system.

In addition, a sentencing outcome is the consequence of many intermediate and interdependent steps within the criminal justice system, from arrest to sentencing. Therefore, studies of sentencing outcomes involve extremely complex issues that are dependent on a variety of factors external to the courts, such as federal policies (e.g., border interdictions), local law enforcement policies, and district attorney charging and plea practices. Under California's determinate sentencing law, sentencing itself is among the least discretionary stages in the adjudication of a criminal case.

An example that illustrates this important issue is the manner in which most felony cases are disposed of in the California trial courts. In California, only 5 percent of felony cases reach trial with the majority of these criminal trials being resolved by jury trial. This trial rate for felony cases varies by the type of offense (e.g., violent offense vs. drug offense) and from county to county because of a variety of local factors that influence decisions to try cases. However, still about 95 percent of felony cases statewide are disposed of before trial, mostly by plea agreements between defense counsel and the District Attorney. The trial court judge still must review and approve many plea agreements made between defense counsel and the District Attorney; however, the sentences for these cases are not determined exclusively by the judge. The findings in this report, therefore, reflect sentencing outcomes for felony cases that may not be based on the unilateral discretion of a trial court judge.

DATA INFORMATION AND LIMITATIONS

Source of Data

The Criminal Justice Statistics Center (CJSC) of the DOJ is responsible for maintaining the Offender-Based Transaction Statistics (OBTS) report file, which tracks the processing of an individual offender from the point of entry into the criminal justice system to the point of exit. The data used for this study were obtained from the OBTS file.

Two major source documents are combined to make up the OBTS file: (1) fingerprint cards (FD249), which represent official arrests, and (2) *Disposition of Arrest and Court Action* (JUS 8715) forms, referred to hereinafter as dispositions. Approximately 1,200 agencies reported dispositions of adult felony arrests in 1999. Those agencies included law enforcement, prosecutor, and other court agencies in all 58 counties.

Limitations

CJSC highlighted the following limitations for consideration in using its OBTS data file:

- OBTS data are based upon the year of disposition regardless of when the felony arrest occurred, and may be reported a year or more after the actual arrest.
- The data do not represent the total number of adult felony arrests or the total number of dispositions made during a given year. The DOJ estimates that approximately 65 to 75 percent of total dispositions of adult felony arrests are reported annually statewide.
- Dispositions of adult felony arrests in state correctional institutions are excluded from county-level totals.
- In December 1998, the Santa Barbara County district attorney requested that the DOJ include a letter with the released Santa Barbara County data, reflecting the district attorney's "long-standing and deep concerns about the accuracy of this [arrest and disposition] information" contained in the OBTS file.
- Despite the underreporting of dispositions, CJSC is confident that the arrest disposition data received generally describe statewide processing of adult felony arrestees.
- Comparisons of county and local data should be made with caution, since the level of reporting may vary between jurisdictions and from year to year.

- Only the final disposition of an arrest event is included in the OBTS file; intermediate dispositions, such as diversion programs, suspended proceedings, reopenings, retrials, and subsequent actions, are not included.
- OBTS data on state institutional commitments may vary from data compiled and reported by other state agencies because of differences in the data collection systems and criteria. For example, the California Department of Corrections (CDC) counts the defendants actually admitted to CDC institutions, even though a defendant may have been convicted and sentenced in two or more counties. CJSC counts each commitment as a separate disposition.
- If a person is arrested for multiple offenses, the OBTS file contains only the most serious offense based on the severity of possible punishment. If there are multiple court dispositions, the OBTS file contains only the most serious court disposition and the associated offense.
- The OBTS file contains only information on the type of sentence (e.g., felony sentence, misdemeanor sentence, infraction) and a broad sentence classification (e.g., probation, jail, prison) for each conviction. There is no measure of sentence severity (e.g., length of prison sentence).
- Caution should be used when comparing conviction and nonconviction dispositions, since budget constraints necessitated the processing of conviction dispositions on the basis of priority.
- Information on prior records is incomplete since it is computed only for “new offenders”—those who had a first arrest after August 1982.
- Low counts for Los Angeles, Sacramento, San Bernardino, and Ventura counties are a result of technical difficulties.

OFFENDER PROFILE

The OBTS file for 1999 contains a total of 278,715 records; in other words, 278,715 adults arrested for felony-level offenses in calendar year 1999 or earlier received dispositions in calendar year 1999. Again, we emphasize that this number represents only about *65 percent* of the adult felony arrests that received dispositions in 1999. The appendix contains a brief description of the methodology used in this report.

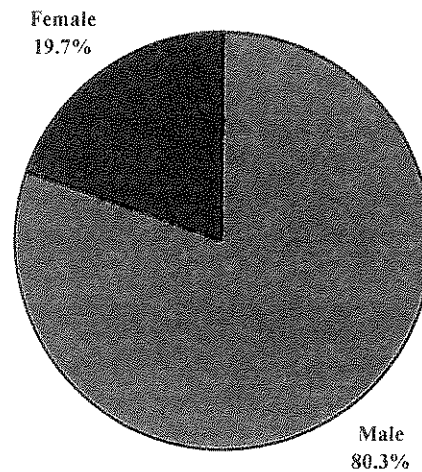
Demographics of Felony Defendants

Following is a demographic profile of the population of felony defendants who received dispositions in 1999 and are documented in the OBTS file.

Gender

Males made up 80.3 percent of the defendants reported to have received dispositions in 1999; females made up 19.7 percent (Figure 1). These proportions are consistent with those reported by other agencies, such as the Bureau of Justice Statistics of the U.S. Department of Justice for its biannual *Felony Sentences in State Courts* study. The proportion of felony defendants in the OTBS file who are male is high compared to the proportion of males in the general population of California¹.

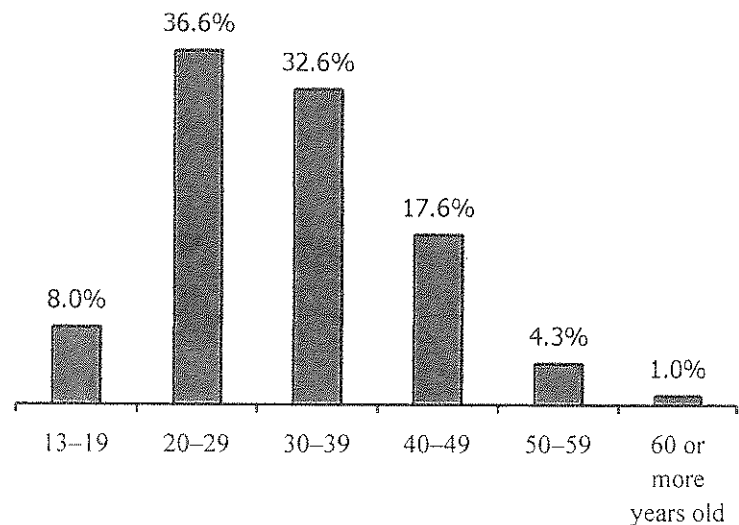
Figure 1: Gender



Age

The OBTS file contains the date of birth and date of disposition for each felony defendant. Values for “age” therefore represent age at the time of disposition. These values were classified into the following age categories used by the U.S. Department of Justice: ages 13–19, 20–29, 30–39, 40–49, 50–59, and 60 or greater. The average age of a felony defendant at the time of sentencing was 32 years, with persons aged 20–29 (38 percent) and 30–39 (33 percent) being arrested most frequently. Figure 2 shows the complete distribution by age of all felony defendants in the OBTS file.

Figure 2: Age



Compared to the California population as a whole, persons aged 20–29 and 30–39 were arrested for felony-level offenses at a disproportionately high rate, whereas persons aged 50–59 and 60 or greater were arrested at a disproportionately low rate. Persons aged 13–19 and 40–49 years were arrested at rates only slightly higher than indicated by their proportions in the general population.²

¹ U. S. Census Bureau, *Census 2000*, Summary File 1, Table p5.

² U.S. Census Bureau, *Census 2000*, Summary File 1, Table p13.

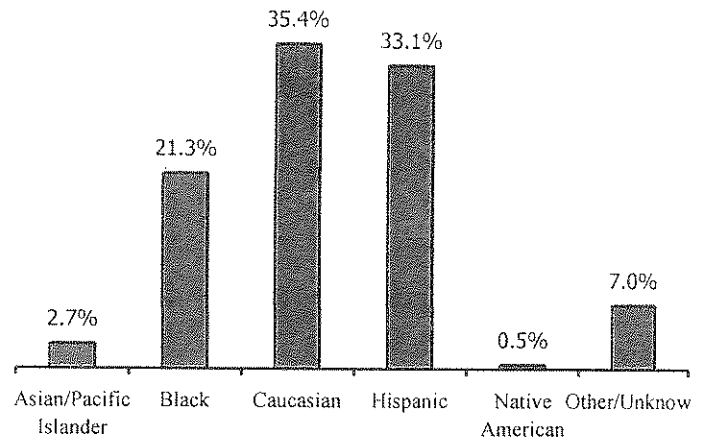
Race/Ethnicity

Racial/ethnic data on criminal defendants were reclassified according to the categories used by the Census Bureau of the U.S. Department of Commerce. These categories are “Asian/Pacific Islander,” “Black,” “Caucasian,” “Hispanic,” and “Native American” (Figure 3). Persons identified as “other” or “unknown” in the OBTS file were grouped into a single “Other/unknown” category.

Caucasians made up the greatest percentage of reported felony defendants in 1999 (35.4 percent), followed by Hispanics (33.1 percent) and Blacks (21.3 percent). Asians/Pacific Islanders (2.7 percent) and Native Americans (.5 percent) represent only a small proportion of the 1999 felony arrest population.

Blacks were arrested for felony-level offenses at rates significantly greater than indicated by their proportions in California’s population. Conversely, Asians/Pacific Islanders and Caucasians were arrested at low rates compared to their proportions in California’s population. Native Americans and Hispanics were arrested at rates comparable to their proportions in the state’s population.³

Figure 3: Race/ethnicity

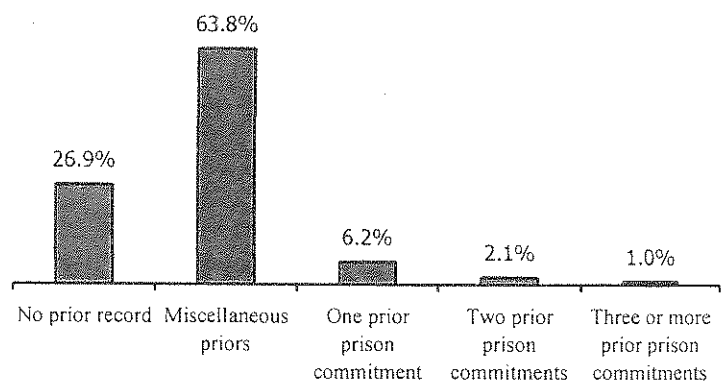


Prior Criminal Record and Type of Offense

Prior Criminal Record

The OBTS file contains a field that identifies the type of prior record, if any, for each felony arrestee. Information is limited to whether the arrestee has prior prison commitments, a miscellaneous prior record, or no prior record (Figure 4). A “miscellaneous” prior record pertains to a defendant with a criminal record that does not include a prior prison commitment.

Figure 4: Prior criminal record



³ U.S. Census Bureau, *Census 2000*, Summary File 1, Matrices P1, P3, P4, P8, P9, P12, P13, P17, P18, P19, P20, P23, P27, P28, P33, PCT5, PCT8, PCT11, PCT15, H1, H3, H4, H5, H11, and H12.

A significant percentage of records (24 percent) were missing information for the prior record field. Of those that contained valid information, almost two-thirds (63.8 percent) had miscellaneous prior records while almost 10 percent had one or more prior prison commitments. The remaining 26.9 percent of felony arrestees in the OBTS file had no identified prior records. In addition to these limitations, the reader is reminded that information on prior records is available only for those who had a first arrest after August 1982.

Type of Offense

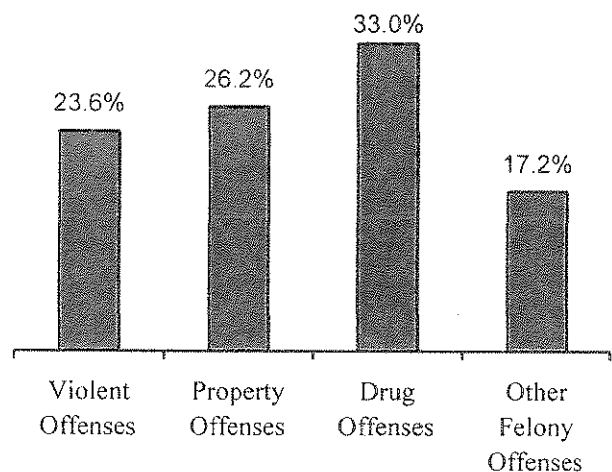
Offense data provided at the time of disposition in the OBTS file was reclassified into four major offense groupings: violent, property, drug, and other felony (Figure 5). These groupings were based in large part on the categories used by the Bureau of Justice Statistics of the U.S.

Department of Justice for its biannual *Felony Sentences in State Courts* study.

Some of the offenses included in the violent offense group are homicide, rape, robbery, and assault; offenses in the property offense group include burglary, theft, forgery, and arson; the drug offense group includes all felony-level drug offenses; and offenses in the “other” felony offense group include all weapons offenses and a range of other offenses such as DUI and vandalism.

One-third of the offenses at disposition were drug offenses, followed by property offenses (26.2 percent) and violent offenses (26.2 percent). The remaining offenses classified in the “other” felony offense group accounted for just over 17 percent of all offenses.

Figure 5: Type of offense



Sentencing Information

The OBTS file provides two types of sentence information about the disposition of felony cases: a broad sentence categorization (e.g., prison, jail, probation) referred to hereafter in this report as severity of sentence, and the type of sentence (e.g., felony, misdemeanor) for each conviction. As the file does not provide data on sentence length, we ranked the two types of available sentencing information by severity in a general manner.

Severity of sentence

For the severity-of-sentence variable, prison was ranked as the most severe and fine as the least severe (Figure 6).

Defendants in the OBTS file whose sentence information was missing because their cases were dismissed or they were acquitted were classified in a new sentence category, “Dismissed/acquitted.” In order to achieve sufficient sample sizes to make statistically sound comparisons, only the most frequently occurring sentence categories were used for this study. The

following sentence categories together represent less than 1 percent of the total and were excluded from analysis: “CRC [California Rehabilitation Center],” “CYA [California Youth Authority],” “Death,” “Prison term suspended,” and “Other.”

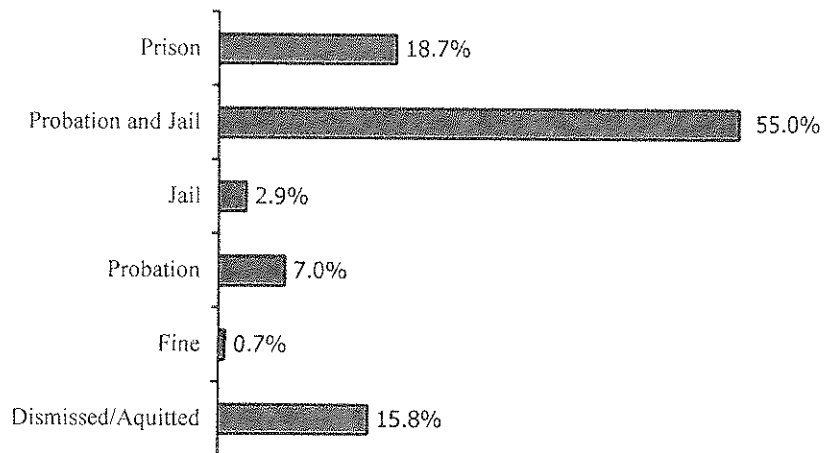
The percentages in Figure 6 were calculated without controlling for prior record or type of offense. Almost 19 percent of the defendants arrested for a felony-level offense received a prison sentence, and 55 percent received probation and jail. The lesser sentences—jail, probation, and fine—were received in approximately 10 percent of the cases, while close to 16 percent of the defendants either had their cases dismissed or were acquitted.

Type of sentence

The OBTS file also contains a field, called type of sentence in this report, which provides a comparison between the level of conviction (felony, misdemeanor, or infraction) and the level of sentence (felony or misdemeanor). Unlike with the severity of sentence variable, which includes both defendants convicted of a crime and those that had their cases dismissed or were acquitted, the type of sentence variable is limited to convictions only.

An individual convicted as a felon can receive either a felony-level sentence or a misdemeanor-level sentence. Defendants convicted of a misdemeanor receive a misdemeanor-level sentence, while an infraction conviction results in an infraction-level sentence. We ranked the available information from “felony conviction, felony sentence” to “infraction conviction, infraction sentence.” In the 1999 file,

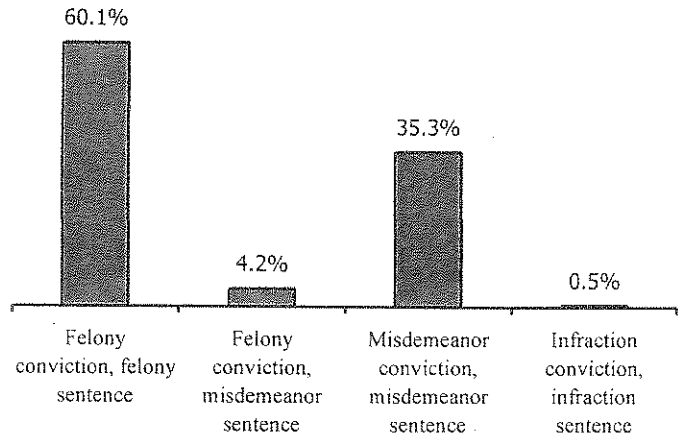
Figure 6: Severity of sentence



approximately 16 percent of the cases had information missing from this field. Figure 7 shows the types of sentences for the remaining cases.

The majority of defendants arrested for a felony-level offense (60.1 percent) received a felony conviction with a felony-level sentence; less than 5 percent received a felony conviction with a misdemeanor-level sentence. Thirty-five percent of the defendants arrested for a felony-level offense received a misdemeanor conviction with a misdemeanor-level sentence. Thirty-five percent of the defendants arrested for a felony-level offense received a misdemeanor conviction with a misdemeanor-level sentence. Thirty-five percent of the defendants arrested for a felony-level offense received a misdemeanor conviction with a misdemeanor-level sentence.

Figure 7: Type of sentence



FINDINGS

Penal Code section 1170.45 mandates a report on the disposition of felony cases according to the race/ethnicity of the defendant. Our analysis is based on the two kinds of sentencing information introduced in the preceding section: *severity* of sentence (e.g., prison, jail, probation) and *type* of sentence (e.g., felony sentence, misdemeanor sentence) handed down for each conviction. Due to the small number of Native Americans in the OBTS file, they were excluded from the analyses in this section for statistical purposes.

For each of the two kinds of sentencing information, there is a pair of analyses. The first, an analysis of sentencing outcomes by the race/ethnicity of the defendant without controlling for prior record or type of offense, is presented for illustrative purposes only.

The second analyses do control for prior record and type of offense. They are the primary focus of this report. By controlling for these important factors that dictate very specific sentences mandated by California's sentencing laws, we position ourselves to address the critical question for this mandated study—the degree to which “similarly situated” offenders receive dissimilar sentences on the basis of their race/ethnicity.

Severity of Sentence

The OBTS file contains a field that provides a broad measure of sentence severity for defendants arrested for a felony. It is illustrated in Figure 6 on page 8 as “prison,” “probation and jail,” “jail,” “probation,” “fine,” and “dismissed/acquitted.” Non-prison sentences (intermediate sanctions) are the greatest challenge to the empirical study of sentencing. Prison sentences are measured in a uniform metric (i.e., months), and it is logical to assume that longer sentences are more severe than shorter sentences. Even without information on length of sentence, for purposes of this study a prison sentence can easily be ranked as the most severe type of sentence among those contained in the OBTS file.

Not so for intermediate sanctions. The difficulty in comparison emerges because there is no single continuum along which all non-prison sentences can be arrayed or ranked. Moreover, intermediate sanctions are often packaged (e.g., in the “probation and jail” category) to meet different combinations of offender risk and need, adding to the difficulty in ranking the sentence categories in order of severity. To address these issues, the authors grouped all intermediate sanctions—probation and jail, jail, probation, and fine—into a new sentence category called “intermediate sentence.” The categories for sentence severity used for all the analyses in this section are, in decreasing order of severity, prison, intermediate sentence, and dismissed/acquitted.

Not Controlling for Prior Record or Type of Offense

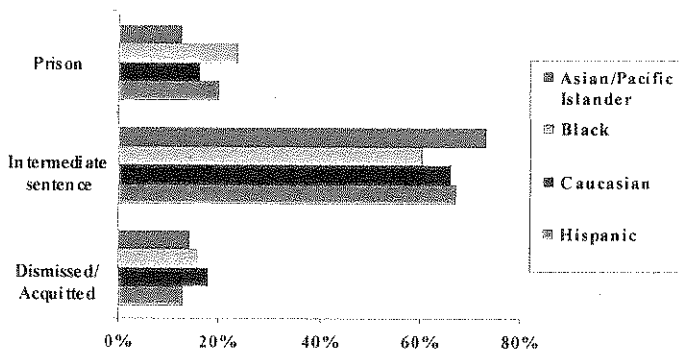
Figure 8 illustrates the proportion of defendants from each racial/ethnic group who received any one of the three severity of sentence outcomes, without controlling for prior record and type of offense. Black defendants arrested for a felony-level offense were the most likely to receive a prison sentence among the racial/ethnic groups, while Asian/Pacific Islanders were the least likely to receive a prison sentence. Hispanics were slightly more likely than were Caucasians to receive a prison sentence when arrested for a felony-level offense.

Conversely, Asians/Pacific Islanders were the most likely and Blacks the least likely to receive an intermediate sentence (i.e., probation and jail, jail, probation, and fine). Caucasian and Hispanic defendants received some type of intermediate sentence at similar rates.

Finally, Caucasians were the most likely to have their cases dismissed or be acquitted, followed by Blacks and Asians/Pacific Islanders.

Hispanic defendants arrested for a felony-level offense were the least likely among the racial/ethnic groups to have their cases dismissed or be acquitted. In addition, Caucasians and Asians/Pacific Islanders were more likely to have their cases dismissed or be acquitted than to receive a prison sentence, while Blacks and Hispanics were more likely to receive a prison sentence than to have their cases dismissed or be acquitted.

Figure 8: Severity of sentence



The preceding analysis is presented for illustrative purposes and is not the primary focus of this report. Controlling for prior record and type of offense, which dictate very specific sentences mandated by California's sentencing laws, ensures that no spurious effects will be attributed (or not) to the race or ethnicity of the defendant by comparing sentencing outcomes for defendants convicted of similar offenses and with similar criminal histories.

Controlling for Prior Record and Type of Offense

The primary focus of this report is the analysis of severity of sentence by race/ethnicity of the defendant controlling for prior record and the type of offense; two very important factors in sentencing. As already stated, to properly assess the impact of race and ethnicity in sentencing studies, it is imperative that one control for factors such as prior record and type of offense, which dictate very specific sentences mandated by California's sentencing laws.

Unlike the preceding analysis, made without controlling for prior record or type of offense, the analysis of sentence severity by race/ethnicity when controlling for prior record and type of offense showed no overall trends. For example, no single racial/ethnic group systematically received the most severe sentence (i.e., prison) regardless of a defendant's prior record or the type of offense. However, within each offense category (e.g., drug offenses) there were some statistically significant differences in the severity of sentence received among defendants from the racial/ethnic groups. Figures 9A through 9C show the results of this analysis for violent offenses, Figures 10A through 10C for property crimes, Figures 11A through 11C for drug offenses, and Figures 12A through 12C for other felony offenses.

As a reminder, in the analysis without controlling for prior record and type of offense (see Figure 8 on page 11), Black defendants were significantly more likely than defendants from the other racial/ethnic groups to receive a prison sentence. This apparently inconsistent result can be attributed to Blacks being significantly less likely than defendants from the other racial/ethnic groups to have no prior record and significantly more likely to have a serious prior record, based on the data in the OBTS file. This example illustrates the importance of controlling for all factors relevant to sentencing decision making in order to properly assess the impact of race/ethnicity on sentencing outcomes.

Violent Offenses

Among defendants with no prior record who were arrested for a violent offense, Asians/Pacific Islanders and Caucasians received a prison sentence less frequently than did Blacks or Hispanics. Blacks and Caucasians with no prior record had their cases dismissed or were acquitted more frequently than Asians/Pacific Islanders and Hispanics.

As the prior record of a defendant increased in severity, Caucasians were consistently the least likely to receive a prison sentence for a violent offense, and Blacks were the most likely to have their cases dismissed or be acquitted.

Figures 9A–9C: Violent Offenses

Figure 9A: No prior record

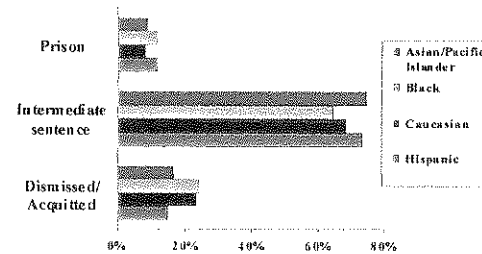


Figure 9B: Miscellaneous prior record

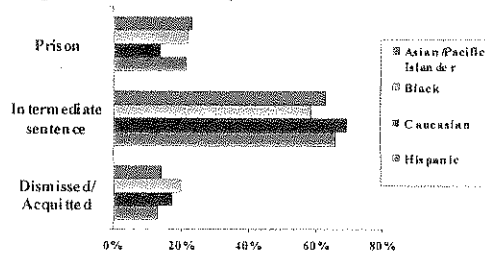
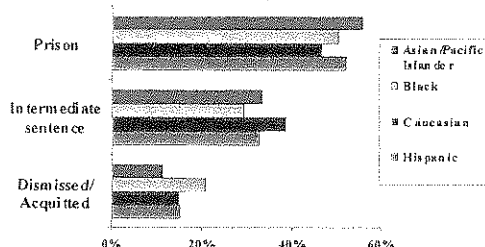


Figure 9C: One or more prior prison commitments



Property Offenses

Defendants with no prior record rarely received a prison sentence when arrested for a property offense. Nevertheless, Caucasians with no prior record were the most likely to receive a prison sentence among the racial/ethnic groups. However, Caucasians with no prior record were also the most likely to have their cases dismissed or be acquitted.

Asians/Pacific Islanders were generally the least likely to receive a prison sentence when arrested for a property offense. As the prior record of a defendant increased in severity, there were relatively small differences among Blacks, Caucasians, and Hispanics in the proportions that either received a prison sentence, or had their cases dismissed or were acquitted.

Drug Offenses

Hispanics were the most likely to receive a prison sentence and the least likely to have their cases dismissed or be acquitted for a drug offense charge, regardless of prior record. These differences in sentencing for Hispanics were particularly significant when the defendant had no prior record; however, they became less so as the defendant's prior record increased in severity.

This trend was also evident for Asians/Pacific Islanders and Caucasians. These defendants received more favorable outcomes (i.e., were less likely to receive a prison sentence and more likely to have their cases dismissed or be acquitted) when they had no prior record, but received outcomes similar to those of the other racial/ethnic groups when they had some kind of prior record.

Figures 10A–10C: Property Offenses

Figure 10A: No prior record

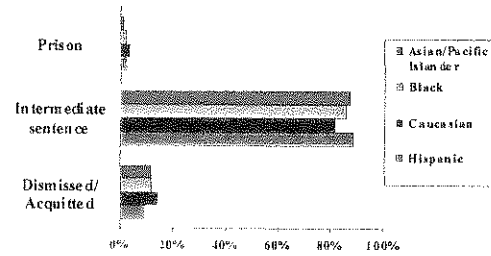


Figure 10B: Miscellaneous prior record

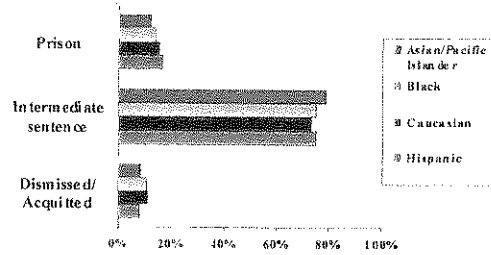
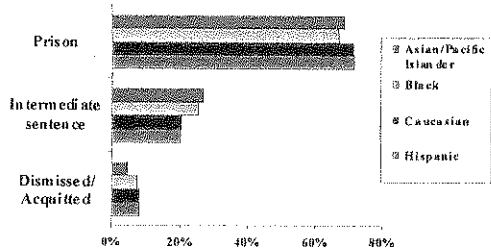


Figure 10C: One or more prior prison commitments



Figures 11A–11C: Drug Offenses

Figure 11A: No prior record

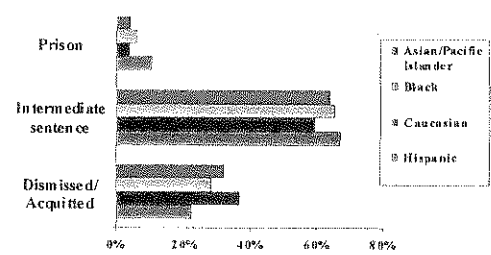


Figure 11B: Miscellaneous prior record

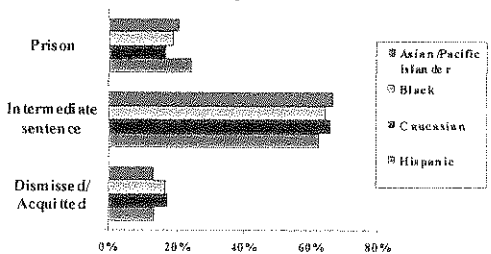
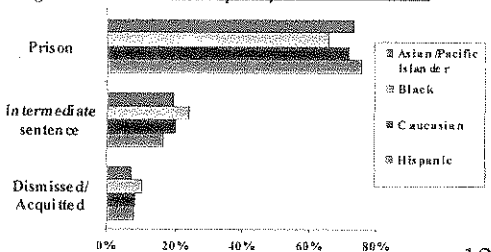


Figure 11C: One or more prior prison commitments



Other Felony Offenses

As with drug offenses, Hispanics arrested for “other” felony offenses were the most likely to receive a prison sentence and the least likely to have their cases dismissed or be acquitted, regardless of prior record. Blacks with no prior record were slightly more likely than were defendants from the other racial/ethnic groups to have their cases dismissed or be acquitted. However, as in previous analyses, these differences diminished as the defendant’s prior record increased in severity.

Figures 12A–12C: Other Felony Offenses

Figure 12A: No prior record

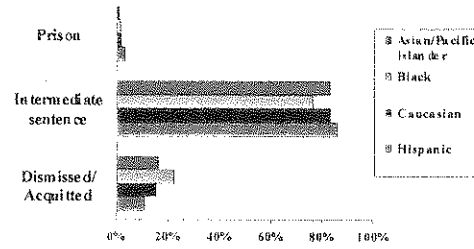


Figure 12B: Miscellaneous prior record

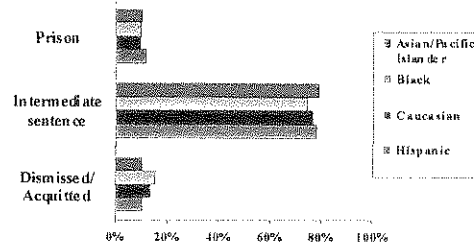
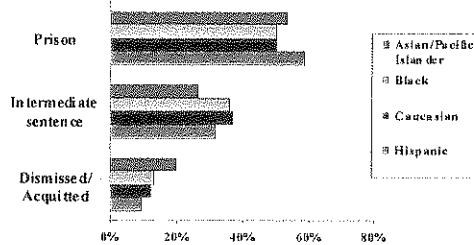


Figure 12C: One or more prior prison commitments



Type of Sentence

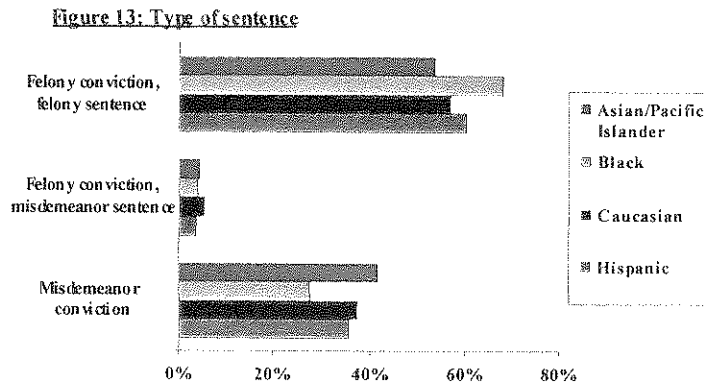
The OBTS file provides a broad measure of sentence type, as shown in Figure 7 on page 8: “felony conviction, felony sentence”; “felony conviction, misdemeanor sentence”; “misdemeanor conviction, misdemeanor sentence”; and “infraction conviction, infraction sentence.” Due to the infrequency of the sentence type “infraction conviction, infraction sentence” (0.5 percent), defendants convicted of an infraction are omitted from all analyses of type of sentence.

The difficulty with analyzing the OTBS file by type of sentence is that, without information about sentence length, we are forced to assume that a “felony conviction, felony sentence” is the most severe type of sentence and that a “misdemeanor conviction, misdemeanor sentence” is the least severe.

Not Controlling for Prior Record or Type of Offense

Figure 13 illustrates the distribution by racial/ethnic group for the three most frequent types of sentences in the OBTS file: “felony conviction, felony sentence”; “felony conviction, misdemeanor sentence”; and “misdemeanor conviction, misdemeanor sentence.”

Analyzing type of sentence by racial/ethnic group, Blacks received the more severe types of outcomes (a felony conviction with either a felony-level sentence or a misdemeanor-level sentence) more often than did the other racial/ethnic groups. Hispanics convicted of felonies received felony-level sentences at a slightly higher rate than did Caucasians or Asians/Pacific Islanders convicted of felonies. Hispanics were also significantly less likely than other racial/ethnic groups to receive a misdemeanor-level sentence when convicted of a felony. In addition, Caucasians were the most likely to receive a misdemeanor-level sentence with a felony conviction.



Asians/Pacific Islanders convicted of felonies were the least likely to receive a felony-level sentence. Asians/Pacific Islanders received the least severe type of sentence, “misdemeanor conviction, misdemeanor sentence,” more often than defendants from the other racial/ethnic groups.

Controlling for Prior Record and Type of Offense

California’s sentencing laws mandate very specific sentences based on prior record and the type of offense. Controlling for prior record and type of offense enables us to compare “similarly situated” defendants. It also ensures that these two factors will not have extraneous effects on the analysis. Figures 14A through 14C illustrate the analysis for violent offenses, Figures 15A through 15C illustrate the analysis for property offenses, Figures 16A through 16C illustrate the analysis for drug offenses, and Figures 17A through 17C illustrate the analysis for other felony offenses.

No overall trends emerged within the analysis. Each offense group showed a different racial/ethnic group receiving the most severe sentence, controlling for prior record and type of offense. This is not what would be expected based on the two-way analysis of type of sentence by ethnic group, in which Blacks received “felony conviction, felony sentence” more often than other racial/ethnic groups. This finding is consistent with the one described earlier in this report for the other type of sentencing information—severity of sentence (i.e., prison, intermediate sentence, dismissed/acquitted).

Violent Offenses

Among those with no prior record who were convicted of a violent offense, Blacks were the most likely to receive a “felony conviction, felony sentence” and the least likely to receive a “misdemeanor conviction, misdemeanor sentence.”

Caucasians convicted of a violent offense with no prior record were the least likely to receive a felony-level sentence when convicted of a felony.

This trend continued with defendants who had either a miscellaneous prior record or one or more prior prison commitments. Blacks with a miscellaneous prior record received a “felony conviction, felony sentence” more often than Caucasians and equally as often as Asians/Pacific Islanders or Hispanics. Finally, Blacks with one or more prior prison commitments received a “felony conviction, felony sentence” more often than did defendants from the other racial/ethnic groups.

Property Offenses

Regardless of race/ethnicity, individuals convicted of a property offense with no prior record were as likely to receive a “felony conviction, felony sentence” as they were a “misdemeanor conviction, misdemeanor sentence.”

Among defendants with a miscellaneous prior record, Caucasians were the least likely to receive a misdemeanor conviction, while Blacks were the most likely to receive a misdemeanor conviction. However, among individuals with one or more prior prison commitments, the rates for “felony conviction, felony sentence” were very similar among the racial/ethnic groups.

Figures 14A–14C: Violent Offenses

Figure 14A: No prior record

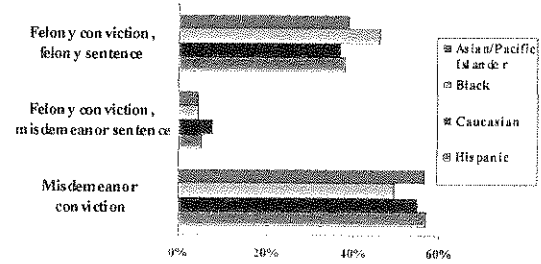


Figure 14B: Miscellaneous prior record

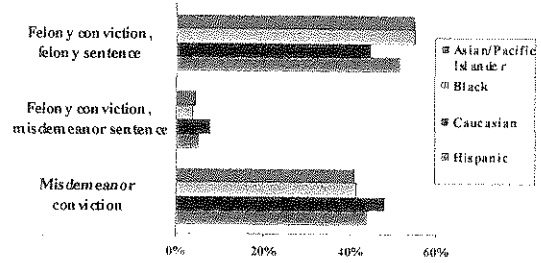
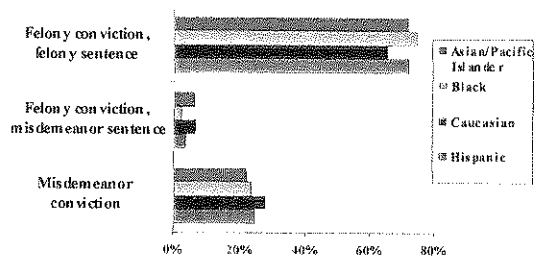


Figure 14C: One or more prior prison commitments



Figures 15A–15C: Property Offenses

Figure 15A: No prior record

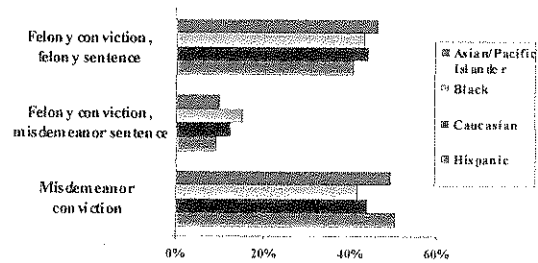


Figure 15B: Miscellaneous prior record

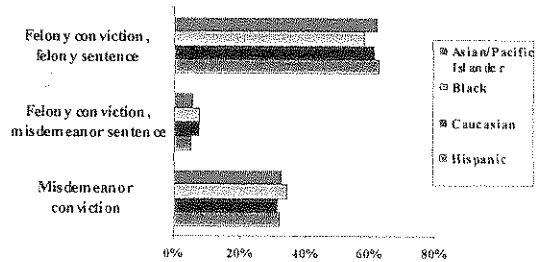
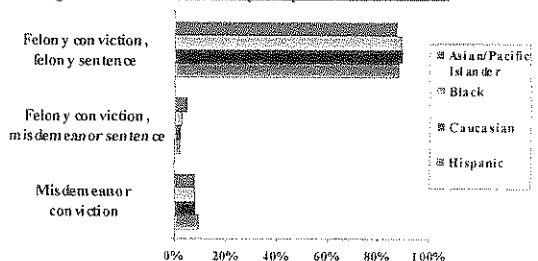


Figure 15C: One or more prior prison commitments



Drug Offenses

The overwhelming majority of individuals convicted of a drug offense received a “felony conviction, felony sentence” regardless of prior record or race/ethnicity. However, Caucasians with no prior record were the least likely to receive a “felony conviction, felony sentence” (the most severe type of sentence), and the most likely to receive a “misdemeanor conviction, misdemeanor sentence, (the least severe type of sentence). Conversely, Hispanics were the most likely to receive a “felony conviction, felony sentence” and the least likely to receive a “misdemeanor conviction, misdemeanor sentence.”

Among those with a miscellaneous prior record, Caucasians and Asians/Pacific Islanders were more likely to receive a “misdemeanor conviction, misdemeanor sentence” than were Blacks or Hispanics.

Over 95 percent of the individuals with one or more prior prison commitments received a “felony conviction, felony sentence,” across all racial/ethnic groups.

Other Felony Offenses

As a reminder, the “other” felony offense group include all weapons offenses and a range of other offenses such as DUI and vandalism. The majority of individuals convicted of “other” felony offenses with no prior record received a “misdemeanor conviction, misdemeanor sentence” regardless of racial or ethnic group. Blacks with miscellaneous prior records received a “felony conviction, felony sentence” more often than did defendants from the other racial groups. Finally, Blacks and Caucasians with one or more prior prison commitments received a “felony conviction, felony sentence” less often than did Asians/Pacific Islanders or Hispanics.

Figures 16A–16C: Drug Offenses

Figure 16A: No prior record

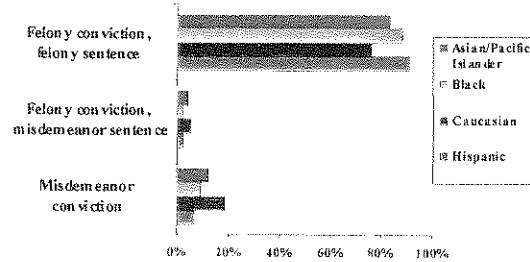


Figure 16B: Miscellaneous prior record

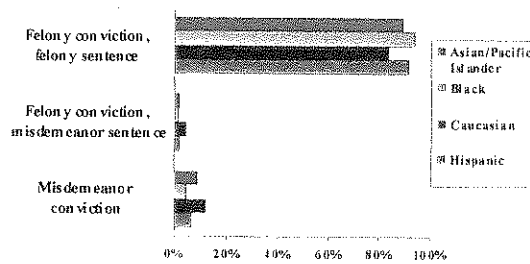
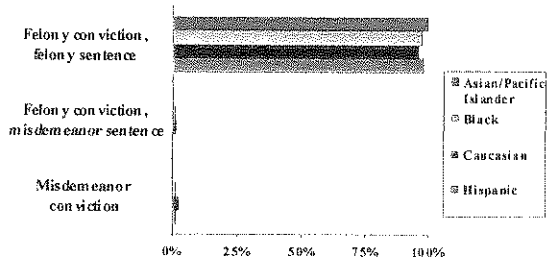


Figure 16C: One or more prior prison commitments



Figures 17A–17C: Other Felony Offenses

Figure 17A: No prior record

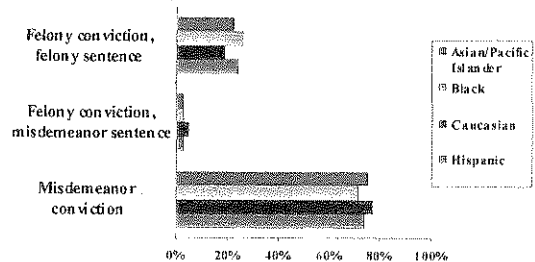


Figure 17B: Miscellaneous prior record

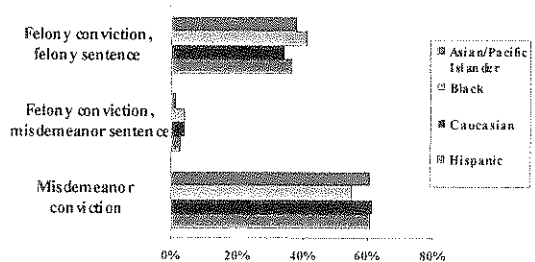
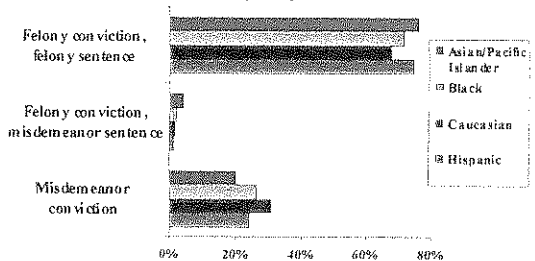


Figure 17C: One or more prior prison commitments



CONCLUSIONS

The lack of data on sentence length and on specific type of prior record limits the conclusions one can confidently make about any observed differences in sentencing by race or ethnicity of the defendant. More detailed information of these types would enable a more precise comparison of sentencing outcomes for different racial and ethnic groups, controlling for a wider array of factors. As a result, the findings contained in this report cannot be used on their own as an indication of bias, or the lack thereof, in the California criminal justice system. The findings only summarize the broad sentencing information that is available in the OBTS file maintained by the California Department of Justice. Because of these limitations and those highlighted by CJSC, the reader should exercise caution in attempting to identify causes for the observed differences in sentencing among racial/ethnic groups.

In addition, a sentencing outcome is the consequence of many intermediate and interdependent steps within the criminal justice system from arrest to sentencing. Therefore, studies of sentencing outcomes involve extremely complex issues that are dependent on a variety of factors external to the courts, such as federal policies (e.g., border interdictions), local policing activities, and district attorney practices.

With the limitations of the data currently available, it is not possible to identify whether sentencing differences are attributable to one portion or another of the criminal justice system. This report is intended only to be descriptive. Additional research is needed to help explain some of the findings.

The primary focus of this report is the analysis of sentencing outcomes by race/ethnicity of the defendant controlling for prior record and the type of offense. When controlling for prior record and type of offense, the authors found no overall trends in either of the two types of sentencing outcomes (severity of sentence, type of sentence) by race/ethnicity of the defendant. For example, no single racial/ethnic group systematically received the most severe type of sentence after controlling for prior record and type of offense. However, within each offense category there were some statistically significant differences in the sentencing outcomes among defendants from the racial/ethnic groups.

The following sections summarize the major findings of this study.

Severity of Sentence

Controlling for prior record and type of offense

Unlike the analysis made without controlling for prior record or type of offense, the analysis of sentence severity by race/ethnicity when controlling for prior record and type of offense showed no overall trends. For example, no single racial/ethnic group consistently received the most severe sentence (i.e., prison). Within each offense category there were some statistically significant differences in the severity of sentences among the racial/ethnic groups. However, many of these differences in the severity of sentences among the racial/ethnic groups diminished as the prior record of a defendant increased in severity.

- ❖ Among defendants with no prior record, Asians/Pacific Islanders and Caucasians arrested for a violent offense received a prison sentence less frequently than did Blacks or Hispanics—see Figure 9A on page 12.
- ❖ Blacks and Caucasians with no prior record had their cases dismissed or were acquitted for a violent felony more frequently than were Asians/Pacific Islanders and Hispanics—see Figure 9A on page 12.
- ❖ As the prior record of a defendant increased in severity, Caucasians were consistently the least likely to receive a prison sentence; Blacks were the most likely to have their cases dismissed or be acquitted when arrested for a violent offense—see Figures 9A through 9C on page 12.
- ❖ Asians/Pacific Islanders were generally the least likely to receive a prison sentence when arrested for a property offense—see Figures 10A through 10C on page 13.
- ❖ Hispanics were the most likely to receive a prison sentence and the least likely to have their cases dismissed or be acquitted for a drug offense charge, regardless of prior record—see Figures 11A through 11C on page 13.
- ❖ As with drug offenses, Hispanics arrested for “other” felony offenses were the most likely to receive a prison sentence and the least likely to have their cases dismissed or be acquitted, regardless of prior record—see Figures 12A through 12C on page 14.
- ❖ Blacks with no prior record were slightly more likely than the other racial/ethnic groups to have their cases dismissed or be acquitted when arrested for “other” felony offenses. However, as in previous analyses, these differences diminished as the defendant’s prior record increased in severity—see Figures 12A through 12C on page 14.

Type of Sentence

There were statistically significant differences among racial/ethnic groups in the types of sentences received.

Controlling for Prior Record and Type of Offense

In contrast to the analysis of type of sentence by race/ethnicity, no overall patterns emerged when we controlled for prior record and type of offense. However, within each offense category there were statistically significant differences among racial/ethnic groups when controlling for the prior record and the type of offense committed by the defendant.

- ❖ In the violent offense category, Blacks were the most likely to receive a “felony conviction, felony sentence,” regardless of prior record—see Figures 14A through 14C on page 16.
- ❖ In the property offense category, the likelihood of receiving a “felony conviction, felony sentence” increased as a defendant’s prior record increased in severity, regardless of race/ethnicity—see Figures 15A through 15C on page 16.
- ❖ In the drug offense category, the overwhelming majority of individuals received a felony-level sentence when convicted of a felony, regardless of race/ethnicity or prior record—see Figures 16A through 16C on page 17.
- ❖ In the “other” felony offense category, the majority of individuals with no prior record received a misdemeanor-level sentence regardless of race/ethnicity. Caucasians or Blacks with one or more prior prison commitments received a “felony conviction, felony sentence” more often than did Hispanics or Asians/Pacific Islanders—see Figures 17A through 17C on page 17.

Appendix

TEXT OF PENAL CODE SECTION 1170.45

Collection of Data and Report to the Legislature Relating to Disposition According to Race and Ethnicity of Defendant.

The Judicial Council shall collect data on criminal cases statewide relating to the disposition of those cases according to the race and ethnicity of the defendant, and report annually thereon to the Legislature beginning no later than January 1, 1999. It is the intent of the Legislature to appropriate funds to the Judicial Council for this purpose.

METHODOLOGY

The chi-square test was the statistical method used in this report to analyze the sentencing outcomes of felony cases by race/ethnicity of the defendant. The chi-square test measures whether any relationship exists between a pair of categorical variables. It is the most appropriate test to use when both variables are measured on a nominal scale—that is, when there is no inherent order or ranking to the variables. Even though the two sentencing variables (sentence classification, type of sentence) are described in a ranked order by severity, this order was essentially a construct of the authors of this report and not inherent in the variables to a degree that would warrant a different statistical test.

Differences in sentencing among racial/ethnic groups identified as statistically significant in this report were based on a chi-square test at $p \leq .05$ level of significance. In other words, the reader can be at least 95 percent (0.95 , or $1.0 - p$) confident that the differences observed in this report are real and cannot be attributed to chance alone.