



## Judicial Council of California · Administrative Office of the Courts

455 Golden Gate Avenue · San Francisco, California 94102-3688

[www.courts.ca.gov](http://www.courts.ca.gov)

---

# REPORT TO THE JUDICIAL COUNCIL

For business meeting on: December 14, 2012

---

Title	Agenda Item Type
Report to the Legislature: Disposition of Criminal Cases According to the Race and Ethnicity of the Defendant	Action Required
	Effective Date
	N/A
Rules, Forms, Standards, or Statutes Affected	Date of Report
	December 14, 2012
Recommended by	Contact
Administrative Office of the Courts	Dag MacLeod, 415-865-7660
Chad Finke, Director	<a href="mailto:dag.macleod@jud.ca.gov">dag.macleod@jud.ca.gov</a>
Dag MacLeod, Manager, Office of Court Research	
Court Operations Special Services Office	

---

### Executive Summary

The Administrative Office of the Courts (AOC) recommends that the Judicial Council approve the report *Disposition of Criminal Cases According to the Race and Ethnicity of the Defendant* for transmission to the Legislature and the Governor. Doing so fulfills the requirements of Penal Code section 1170.45, which requires the Judicial Council to report annually on the disposition of criminal cases statewide according to the defendants' race and ethnicity. Since 2001 the AOC's Office of Court Research has produced this report by analyzing the disposition of felony cases using data provided by the California State Department of Justice. Consistent with previous years, the 2012 report finds that when controlling for prior record and type of offense, there are no consistent patterns in the severity of sentence related to the defendants' race/ethnicity.

### Recommendation

The Administrative Office of the Courts recommends that the Judicial Council approve the attached report, *Disposition of Criminal Cases According to the Race and Ethnicity of the Defendant*, for transmission to the Legislature and the Governor, as required by the Penal Code.

## **Previous Council Action**

Although the Office of Court Research has submitted annual reports since 2001, these previous reports were not approved by the Judicial Council because protocol at that time did not require council action on reports that did not include recommendations.

## **Rationale for Recommendation**

Approval of this report for transmittal to the Legislature will comply with the mandate of Penal Code section 1170.45, which requires the Judicial Council annually to report on the disposition of criminal cases “according to the race and ethnicity of the defendant.”<sup>1</sup> The full text of Penal Code section 1170.45 is included in the appendix to the attached report.

## **Comments, Alternatives Considered, and Policy Implications**

This report is legislatively mandated, so no alternatives were considered and a comment period was not required.

## **Implementation Requirements, Costs, and Operational Impacts**

Staff shortages at the AOC have made the production of the report more difficult although the Office of Court Research has written code for statistical analysis to parse the data and established a template for reporting that have minimized the work. The submission of this report to the Legislature carries no implementation requirements or costs for the trial courts.

## **Relevant Strategic Plan Goals and Operational Plan Objectives**

The mandate for the Judicial Council to report on the disposition of criminal cases according to the race and ethnicity of defendants was established by the Legislature rather than by the Judicial Council. This mandate is not, however, inconsistent with the very first objective of the *Operational Plan for California’s Judicial Branch*, adopted in 2008. Objective 1, related to Strategic Goal 1, Access, Fairness, and Diversity is to “Ensure that all court users are treated with dignity, respect, and concern for their rights and cultural backgrounds, without bias or appearance of bias, and are given an opportunity to be heard.”

## **Attachments**

- 1. Disposition of Criminal Cases According to the Race and Ethnicity of the Defendant*

---

<sup>1</sup> The report uses categories for race and ethnicity established following a call by the Office of Management and Budget in 1997 to revise standards for federal data on race and ethnicity. The revision currently used by the U.S. Bureau of the Census established a minimum of five categories: American Indian or Alaskan Native, Asian or Pacific Islander, black or African American, Hispanic, and white.

Attachment

# Disposition of Criminal Cases According to the Race and Ethnicity of the Defendant

---

2012 REPORT TO THE CALIFORNIA  
LEGISLATURE AS REQUIRED BY PENAL  
CODE SECTION 1170.45



ADMINISTRATIVE OFFICE  
OF THE COURTS

---

OFFICE OF COURT RESEARCH

**Judicial Council of California**

**Hon. Tani G. Cantil-Sakauye**  
Chief Justice of California and  
Chair of the Judicial Council

**Hon. Noreen Evans**  
Member of the California State Senate

**Hon. Judith Ashmann-Gerst**  
Associate Justice of the Court of Appeal  
Second Appellate District, Division Two

**Mr. James P. Fox**  
Attorney at Law (Retired)  
California State Bar Association

**Hon. Stephen H. Baker**  
Judge of the Superior Court of California,  
County of Shasta

**Hon. James E. Herman**  
Judge of the Superior Court of California,  
County of Santa Barbara

**Hon. Marvin R. Baxter**  
Associate Justice of the Supreme Court

**Hon. Harry E. Hull, Jr.**  
Associate Justice of the Court of Appeal  
Third Appellate District

**Hon. James R. Brandlin**  
Judge of the Superior Court of California,  
County of Los Angeles

**Hon. Teri L. Jackson**  
Judge of the Superior Court of California,  
County of San Francisco

**Ms. Angela J. Davis**  
Assistant United States Attorney  
for the Central District of California

**Hon. Ira R. Kaufman**  
Assistant Presiding Judge of the  
Superior Court of California,  
County of Plumas

**Hon. David De Alba**  
Judge of the Superior Court of California,  
County of Sacramento

**Ms. Edith R. Matthai**  
Attorney at Law  
Robie & Matthai

**Hon. Emilie H. Elias**  
Judge of the Superior Court of California,  
County of Los Angeles

**Hon. Douglas P. Miller**  
Associate Justice of the Court of Appeal  
Fourth Appellate District, Division Two

**Hon. Sherrill A. Ellsworth**  
Presiding Judge of the  
Superior Court of California,  
County of Riverside

**Hon. Mary Ann O'Malley**  
Judge of the Superior Court of California,  
County of Contra Costa

**Judicial Council of California**

**Mr. Mark P. Robinson, Jr.**  
Attorney at Law  
Robinson Calcagnie Robinson  
Shapiro Davis, Inc.

**Hon. Robert James Moss**  
Judge of the Superior Court of California,  
County of Orange

**Hon. David Rosenberg**  
Judge of the Superior Court of California,  
County of Yolo

**Hon. Kenneth K. So**  
Judge of the Superior Court of California,  
County of San Diego

**ADVISORY MEMBERS**

**Ms. Mary Beth Todd**  
Court Executive Officer  
Superior Court of California,  
County of Sutter

**Hon. Sue Alexander**  
Commissioner of the  
Superior Court of California,  
County of Alameda

**Hon. Charles D. Wachob**  
Assistant Presiding Judge of the  
Superior Court of California,  
County of Placer

**Mr. Alan Carlson**  
Chief Executive Officer  
Superior Court of California,  
County of Orange

**Mr. David H. Yamasaki**  
Court Executive Officer  
Superior Court of California,  
County of Santa Clara

**Hon. Laurie M. Earl**  
Presiding Judge of the  
Superior Court of California,  
County of Sacramento

**ADMINISTRATIVE OFFICE OF THE  
COURTS**

**Hon. Allan D. Hardcastle**  
Judge of the Superior Court of California,  
County of Sonoma

**Hon. Steven Jahr**  
Administrative Director of the Courts  
and Secretary of the Judicial Council

**Hon. Morris D. Jacobson**  
Judge of the Superior Court of California,  
County of Alameda

**Hon. Brian L. McCabe**  
Presiding Judge of the  
Superior Court of California,  
County of Merced

Judicial Council of California  
Administrative Office of the Courts  
Office of Court Research  
Court Operations Special Services Office  
455 Golden Gate Avenue  
San Francisco, California 94102-3688

This report has been prepared and submitted to the California Legislature as required by Penal Code section 1170.45.

This report is also available on the California Courts website at [www.courts.ca.gov](http://www.courts.ca.gov).

Printed on recycled paper.

**JUDICIAL COUNCIL OF CALIFORNIA  
ADMINISTRATIVE OFFICE OF THE COURTS**

**Hon. Tani Cantil-Sakauye**  
*Chief Justice of California and  
Chair of the Judicial Council*

**Hon. Steven Jahr**  
*Administrative Director of the Courts*

**JUDICIAL AND COURT OPERATIONS SERVICES DIVISION**

**Curtis L. Child**  
*Chief Operating Officer*

**COURT OPERATIONS AND SPECIAL SERVICES OFFICE**

**Chad Finke**  
*Director*

**Dag MacLeod**  
*Manager, Office of Court Research and Primary Author*

## 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 defendants' race and ethnicity. The appendix of this report includes the complete text of section 1170.45.

The Administrative Office of the Courts (AOC), Office of Court Research analyzed felony cases for this study although the statute does not specify the types of criminal cases to be studied. The data used in the analysis are from 2010, 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* and the phrase *race or ethnicity* are employed to correspond to U.S. Census Bureau categorizations.<sup>1</sup>

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

The primary focus of the study is an analysis of sentencing outcomes by the defendants' race/ethnicity. Because California's sentencing laws dictate very specific sentences based on prior record and type of offense, we introduce controls for prior criminal history and type of offense. In other words, we seek to compare sentencing outcomes for defendants who were convicted of similar offenses and had similar criminal histories.

## Summary of Findings

When controlling for prior record and type of offense, we find no consistent patterns in the severity of sentence related to the defendants' race/ethnicity. In other words, no single racial/ethnic group systematically receives the most severe type of sentence. However, within offense categories (e.g., drug offenses or property offenses) there are some

---

<sup>1</sup> In 1997 the Office of Management and Budget announced a revised standard for federal data on race and ethnicity. The revision established a minimum of five categories: American Indian or Alaskan Native, Asian or Pacific Islander, black or African American, Hispanic, and white. See U.S. See Federal Register, July 8, 1997, Part II, Pages 36873-36946, Office of Management and Budget, Directive 15. Because of the small percentage of American Indian defendants in the data set used for this study, this group is included only in descriptive analyses. In addition, a combined category, Asian/Pacific Islander (Asian PI), is used in the analysis to refer to defendants of Asian or Native Hawaiian/other Pacific Islander ethnicity.



statistically significant differences in the sentencing outcomes among the racial/ethnic groups.

While this report looks at only a single year of data, it is important to note that reports from previous years have also shown a lack of systematic bias against any one group in sentencing. Moreover, although some groups are treated less harshly in some case types and situations in a certain year, these findings vary from year to year. This suggests that identifying differential judicial treatment based on race or ethnicity depends on very specific contexts that require more study and resources.

### 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 related to race or ethnicity. 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, it is important to keep in mind that a sentencing outcome is the consequence of many intermediate and interdependent steps within the criminal justice system. Studies of sentencing outcomes cannot take into account all factors such as local law enforcement policies and district attorney charging and plea practices. Under California's determinate sentencing law, sentencing itself is perhaps the least discretionary stage in the adjudication of a criminal case.

An example that illustrates this important point is the manner in which most felony cases reach disposition in the California trial courts. In California, less than 2 percent of felony cases reach trial, and the majority of those disposed by trial are by jury trial. Thus, the vast majority of felony cases statewide reach disposition before trial, mostly by plea agreements between defense counsel and the district attorney. The trial court judge 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 are rarely, if ever, based on the unilateral discretion of a trial court judge.

Another confounding factor is that within the 58 superior court jurisdictions in California there may be important differences in charging practices, plea offerings, and court culture that are not captured by aggregated, statewide outcomes. Although the courts are unified by statewide statutes governing most aspects of criminal case management and

processing, there will be subtle but meaningful differences between jurisdictions in the operation of the justice system and the counties' population characteristics.

## Data Source and Limitations

### Source of Data

The Criminal Justice Statistics Center (CJSC) of the California Department of Justice is responsible for maintaining the Offender-Based Transaction Statistics (OBTS) report file, which tracks the processing of individual offenders 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, which this report refers to as “dispositions.”

### Limitations

CJSC documentation highlights the following limitations on the use of the OBTS data file:

- OBTS data are based on the year of disposition regardless of when the felony arrest occurred and therefore may be reported a year or more after the actual arrest.
- The OBTS data do not include information about sentence length. Thus it is impossible to assess the relative differences in sentences beyond categorical distinctions (see diagram 1). While certain sentences may be categorically the same—a sentence to prison, for example—they can vary considerably in severity as measured by the length of the sentence.
- Comparisons of county-level data should be made with caution since the level of reporting may vary between jurisdictions and from year to year.
- The data do not represent the total number of adult felony arrests or the total number of dispositions during a given year.
- Dispositions of adult felony arrests in state correctional institutions are excluded from county-level totals.
- Despite the underreporting of dispositions, CJSC is confident that the arrest disposition data received provides an accurate general description of the statewide processing of adult felony arrestees.
- 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.
- 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.

- Caution should be used when comparing conviction and nonconviction dispositions, since DOJ 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.

### Offender Profile

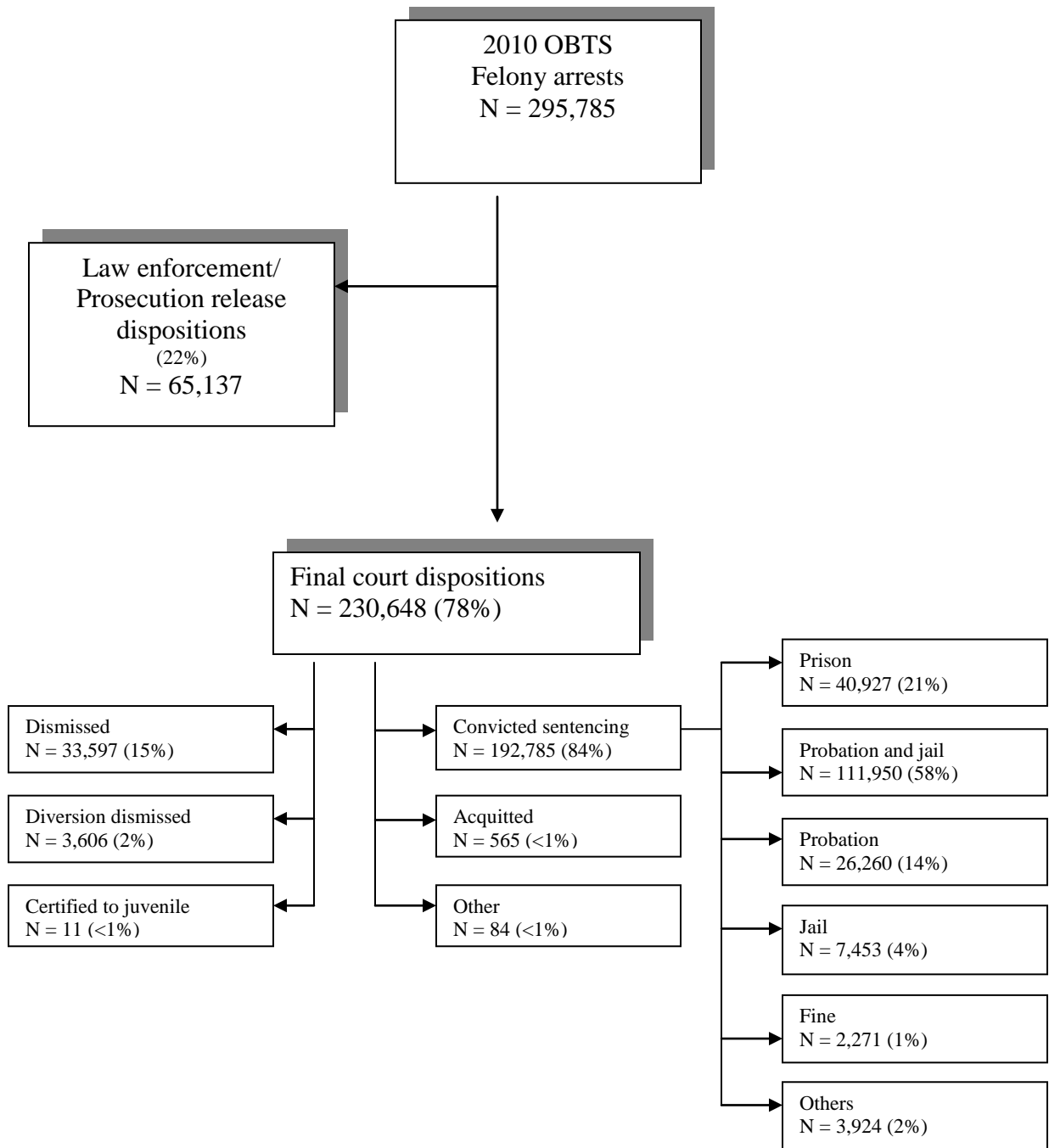
The OBTS file for 2010 contains a total of 295,785 records of arrest for felony-level offenses in calendar year 2010 or earlier that were disposed in calendar year 2010.<sup>2</sup> Diagram 1 on the following page shows the number of dispositions at distinct case processing stages for all OBTS felony dispositions in 2010.

Regardless of race/ethnicity, court dispositions made up 78 percent of all dispositions, while dispositions by law enforcement agencies or the prosecuting attorney accounted for 22 percent. Dispositions by law enforcement agencies include cases dropped for reasons such as insufficient evidence. The breakdown by race/ethnicity for this disposition type is found in table 1.

<b>Table 1: Offenders Released by Law Enforcement Agencies or the Prosecuting Attorney</b>		
Race/Ethnicity	Number Released	Percentage of Releases
Asian/ PI	2,114	3.2
White	20,329	31.2
Black	16,182	24.8
Hispanic	23,968	36.8
American Indian	316	0.5
Other/Unknown	2,228	3.4
<b>Total</b>	<b>65,137</b>	<b>100.0</b>

<sup>2</sup> A small number of duplicate records were deleted from the data set before we conducted the analyses discussed in this report.

**Diagram 1: Numbers of Dispositions at Distinct Case Processing Stages in OBTS**

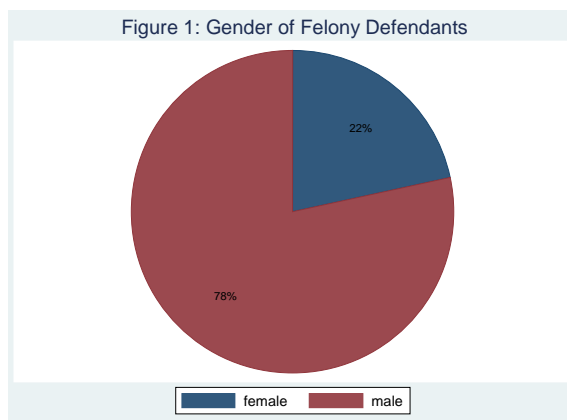


## Demographics of Felony Defendants

Following is a demographic profile of the population of felony defendants who received dispositions in 2010 and are documented in the OBTS file.

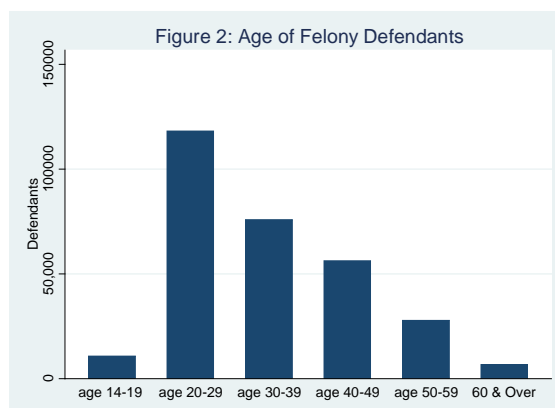
### Gender

Males made up 78 percent of the defendants reported to have received dispositions in 2010; females made up 22 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 in its biannual *Felony Sentences in State Courts* study. At 79 percent, the proportion of felony defendants in the OBTS file who are male is much higher than the proportion of males in the general population of California, which is roughly 50 percent.<sup>3</sup>



### Age

The OBTS file contains the date of birth and date of disposition for each felony defendant. Values for age were calculated as “age at the time of disposition.” These values were classified into the following age categories used by the U.S. Department of Justice: ages 14–19, 20–29, 30–39, 40–49, 50–59, and 60 or older. Persons aged 20–29 (40 percent) and 30–39 (26 percent) were arrested most frequently. Figure 2 shows the complete distribution by age of all felony defendants in the OBTS file.

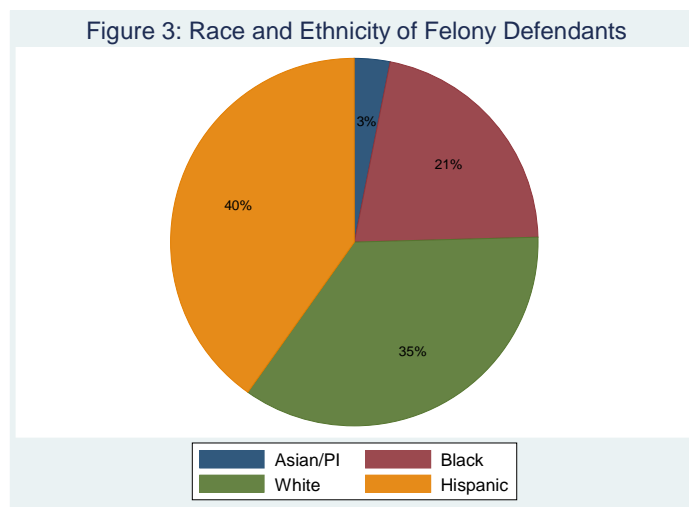


<sup>3</sup> U.S. Census Bureau: State and County QuickFacts, 2010.

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 older were arrested at a disproportionately low rate. Persons aged 14–19 and 40–49 years were arrested at rates only slightly higher than indicated by their proportions in the general population.<sup>4</sup>

### Race/Ethnicity

Racial/ethnic data on criminal defendants were reclassified according to the categories used by the U.S. Census Bureau. These categories are identified as Asian/Pacific Islander (Asian / PI), black, white, and Hispanic (figure 3).<sup>5</sup>



Hispanics made up the largest percentage of reported felony defendants in 2010 (40 percent), followed by whites (35 percent) and blacks (21 percent). Asians (3 percent) represent only a small proportion of the 2010 felony arrest population.

Blacks were arrested for felony-level offenses at rates significantly higher than their proportion in California’s population and Hispanics at rates slightly greater than their share of the population as a whole. Conversely, Asians and whites were arrested at low rates compared to their proportions in California’s population.<sup>6</sup>

<sup>4</sup> U.S. Census Bureau, 2010 Census.

<sup>5</sup> Because of their small numbers in the sample, persons identified as “other/unknown” in the OBTS file, as well as defendants identified as American Indian, were removed from the analysis. For the remainder of the report we use the term “Asian” to refer to the broader category of Asian/Pacific Islanders.

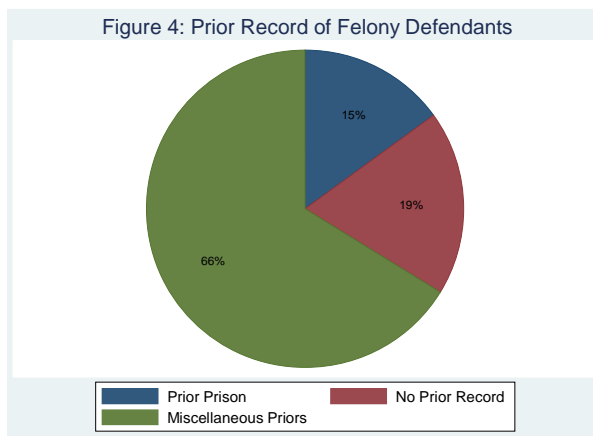
<sup>6</sup> U.S. Census Bureau, 2010 Census.

## 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 three categories: 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.

Information was missing in the prior record field for a significant percentage of records (10 percent). For the records containing valid information, two-thirds (66 percent) of felony arrestees had miscellaneous prior records while 15 percent had one or more prior prison commitments. The remaining 19 percent of felony arrestees in the OBTS file had no identified prior records. In addition to these data limitations, as noted by the DOJ in its documentation of this data set, information on prior records is available only for those defendants who had a first arrest after August 1982.

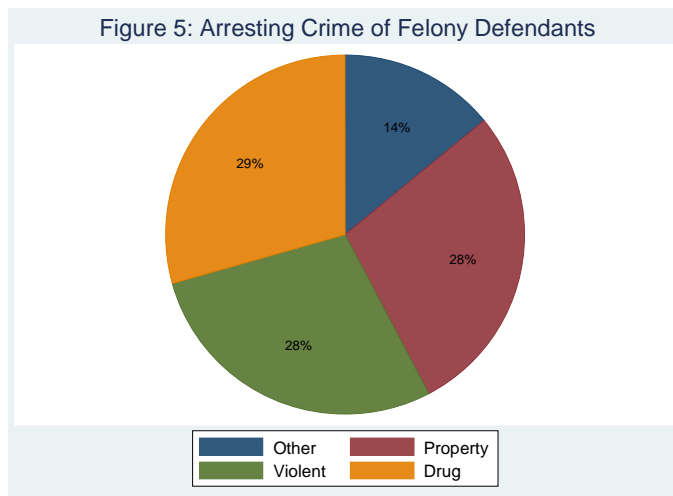


### Offense Category

For this analysis, offense data provided at the time of disposition in the OBTS file were 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 in its biannual *Felony Sentences in State Courts* study. Examples 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 vandalism and driving under the influence of drugs or alcohol (DUI).

Almost equal proportions of defendants were arrested for drug offenses, property, and violent crimes (29, 28, and 28 percent, respectively) while the remaining offenses,

classified as “other felony offenses,” accounted for 14 percent of all offenses in the OBTS file.



### Sentencing Information

The OBTS data on which the following analysis is based organizes sentences into a broad sentence category (e.g., prison, jail, probation), referred to hereafter as “severity of sentence.” Although information on length of sentence would allow for a more fine-grained analysis, it is still possible to rank the existing categories by severity. For example, a prison sentence can be ranked as the most severe type of sentence among those contained in the OBTS file while, on the other end of the spectrum, acquittal/dismissal of charges can be considered the least severe among possible outcomes.

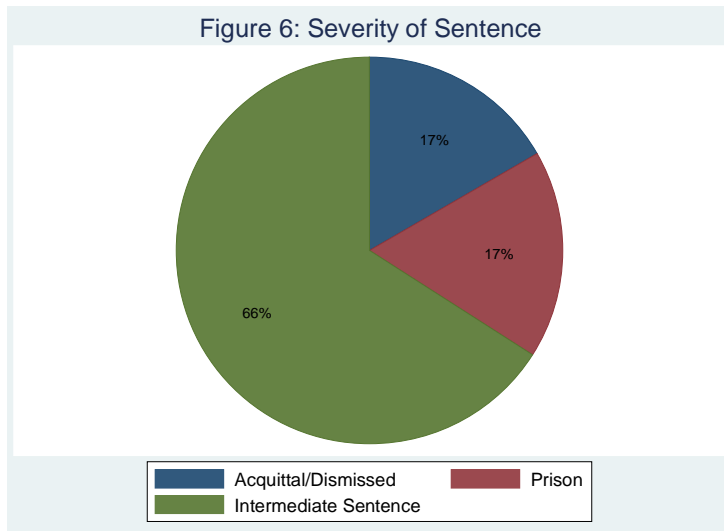
Nonprison sentences (intermediate sanctions) pose the greatest challenge to the empirical study of sentencing. Intermediate sanctions are harder to compare because there is no single continuum along which all nonprison sentences can be arrayed or ranked. Moreover, intermediate sanctions are often packaged (e.g., in the “probation and jail” category) to meet different combinations of offender risk and need, adding to the difficulty of ranking the sentence categories in order of severity.<sup>7</sup> To address these issues, we have grouped all intermediate sanctions shown in figure 6—probation and jail, jail, probation, and fine—in a new sentence category called “intermediate sentence.” The categories of sentence severity used in all the analyses in this section are (in decreasing order of severity) prison, intermediate sentence, and acquittal/dismissal.

The percentages in figure 6 were calculated without controlling for prior record or type of offense. Seventeen percent of the defendants arrested for felony-level offenses received the most severe sentence—prison—and the same percentage received the most favorable

<sup>7</sup> These categorizations will likely become even more problematic in future years as dispositions reflecting criminal justice realignment begin to enter the data set.



outcome—acquittal/dismissal. The remaining 66 percent received an intermediate sentence—including jail, probation, and fine.



## Findings

The analysis that follows is based on sentencing information introduced in the preceding section, the severity of sentence (e.g., prison, intermediate sentence, acquittal/dismissal). First we look at outcomes by the defendants’ race/ethnicity without controlling for prior record or type of offense. This is presented for illustrative purposes only. The second analysis controls for prior record and type of offense, thereby ensuring that a correlation between criminal history and severity of sentence, or between type of offense and severity of sentence, is not mistakenly interpreted as a correlation between severity of sentence and a defendant’s race or ethnicity.

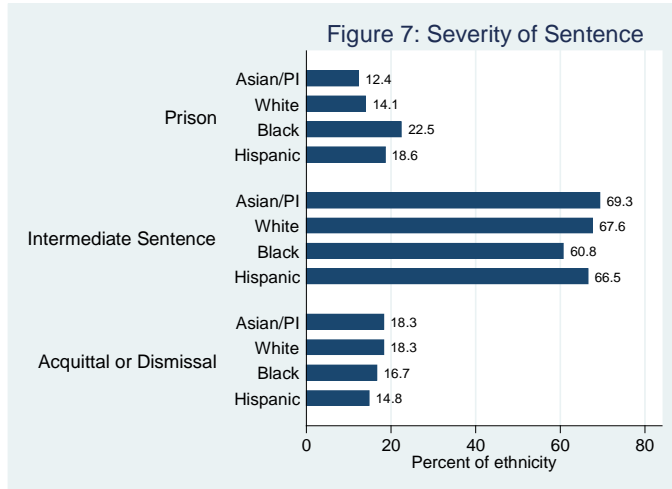
These analyses are the primary focus of this report. Controlling for the factors that dictate specific sentences mandated by California’s sentencing laws, we can begin to address the critical question for this mandated study—the degree to which similarly situated offenders receive dissimilar sentences on the basis of their race/ethnicity. All findings discussed in this report are statistically significant unless otherwise noted.

### **Overall Results When Not Controlling for Prior Record or Type of Offense**

Figure 7 illustrates the proportion of defendants from each racial/ethnic group who received any one of the three severity-of-sentence outcomes. This figure does not control for prior record or type of offense.

Black defendants arrested for felony-level offenses were the most likely among the racial/ethnic groups to receive prison sentences. Asians were the least likely to receive

prison sentences. Blacks were the least likely to receive intermediate sentences (i.e., probation and jail or jail, probation, and fine). Hispanics were the least likely to be acquitted or to have their case dismissed.



These data are presented to illustrate the importance of controlling for factors relevant to sentencing, such as prior record and offense type, as the data presented here are not for arrestees “similarly situated.” Only by controlling for a prior record and the type of offense, which dictate specific sentences mandated by California’s sentencing laws, is it possible to be reasonably sure that sentencing outcomes are not spuriously attributed to defendants’ race or ethnicity. These categorical controls allow for the comparison of sentencing outcomes for defendants convicted of similar offenses and having similar criminal histories.

### Overall Results When Controlling for Prior Record and Type of Offense

The following analysis of sentence severity, which controls for prior record and type of offense, shows that no single racial/ethnic group systematically received the most severe sentence. Within each category (e.g., defendants with no prior record charged with drug offenses) there were statistically significant differences in the severity of sentences received among the racial/ethnic groups.

As a reminder, in the analysis not controlling for prior record and type of offense (see figure 7), black defendants were more likely than defendants from the other racial/ethnic groups to receive prison sentences. In many of the later analyses controlling for prior record and type of offense, however, the effects of race on sentencing outcomes are more complex.

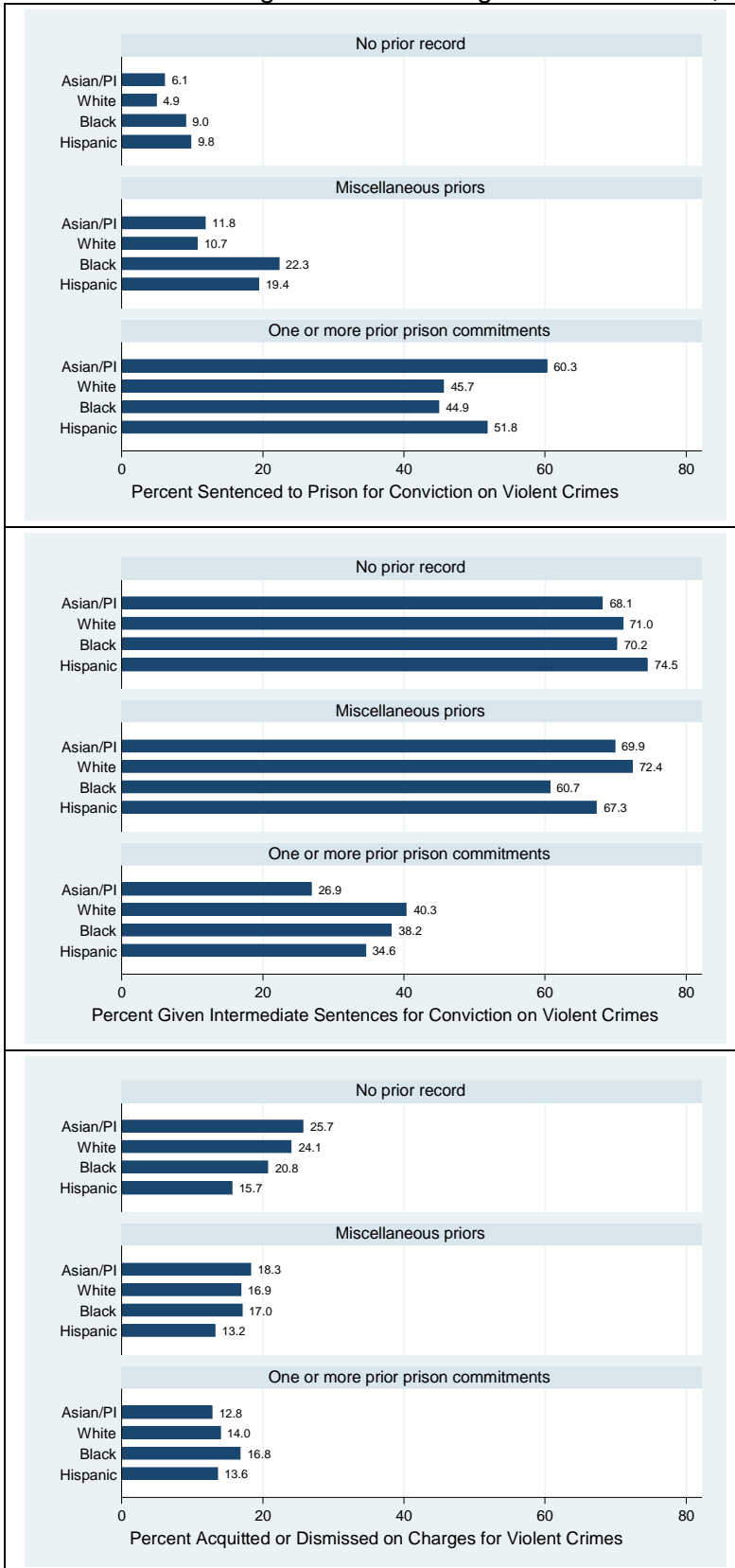
The graphics and supporting text that follow focus on variations within three specific types of felony crimes—violent, property, drug—committed by offenders with similar

prior records—no prior record, miscellaneous prior record, and one or more prison commitments (figures 8 through 10). These figures show that at the statewide level the relationships between racial/ethnic categories and legal indicators are volatile. In other words, no single group is systematically given more or less severe sentences than any other group.

In addition to the volatility of outcomes that results when the analysis controls for similarly situated offenders, it should be noted that the difference in outcomes for any ethnic group is generally quite small—only a few percentage points in range from the highest to the lowest for specific outcomes and situations. These differences are highlighted in the explanation of the charts that follow.

This analysis shows that both the type of crime and the offender’s prior criminal history are the dominant factors in determining sentences. Although each control is slightly different in its distribution and its effect on ethnic groups, we expect to see a strong positive correlation between the severity of sentence and the offender’s prior criminal history. Since this report looks at these relationships proportionally, increases in one type of sentence will correspond to decreases in other types of sentences.

Figure 8: Sentencing of Violent Crimes, Controlling for Prior Record



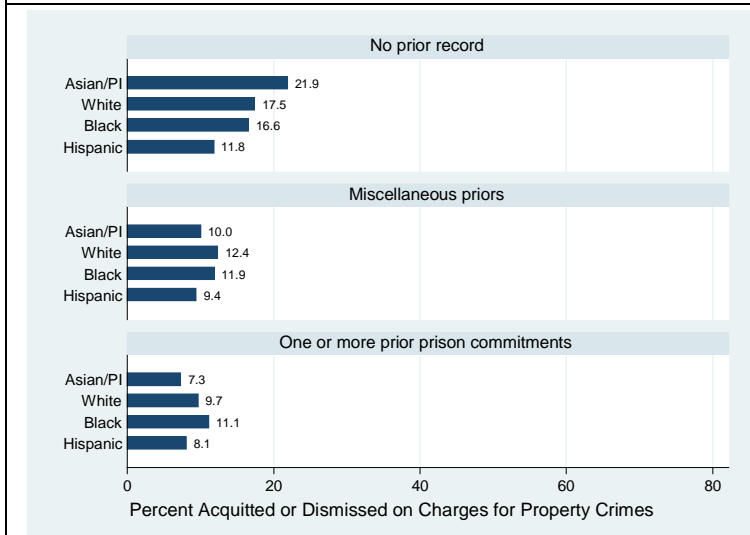
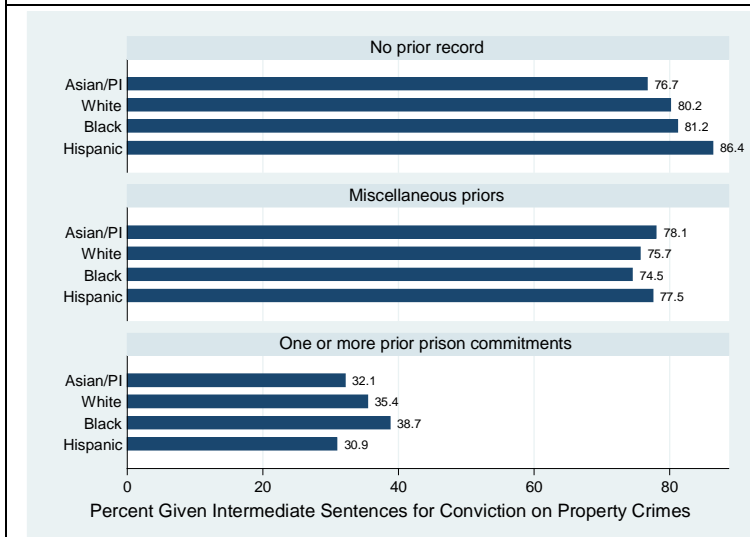
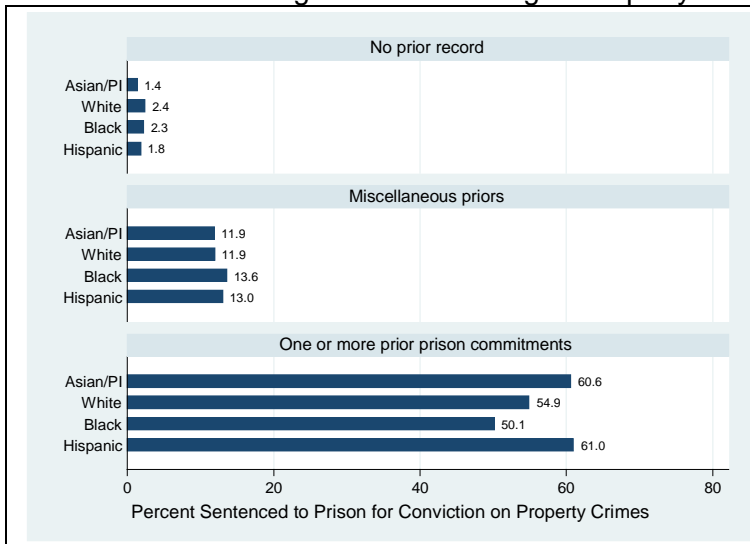
Looking at the sentencing of defendants accused of violent crime, the top panel to the left shows convictions that result in a prison sentence. Although there is variability within each of the categories of prior record by which the data are organized, it is also clear that prior record—even in the aggregated categories used for this analysis—has a huge impact on sentencing outcomes.

In the top panel to the left, the percentage of each group sentenced to prison for a violent crime ranges from between 44.9 percent and 60.3 percent for defendants with a prior prison commitment. In contrast, the percentage of each group sentenced to prison for a violent crime ranges from between 4.9 percent and 9.8 percent for defendants with no prior record.

Further, while Asians with a prior prison commitment are the most likely to receive a prison sentence for a violent crime when compared to other defendants with a prior prison commitment (60.3%), Asians are among the least likely to receive a prison sentence for a violent crime when compared to other defendants with only miscellaneous priors (11.8%).

Still focusing on the top panel to the left, while blacks who have one or more prior prison commitments are the least likely to receive a sentence to prison when compared to other defendants with a prior prison commitment (44.9%), they are the most likely to receive a sentence to prison when compared to other defendants with only miscellaneous priors.

Figure 9: Sentencing of Property Crimes, Controlling for Prior Record



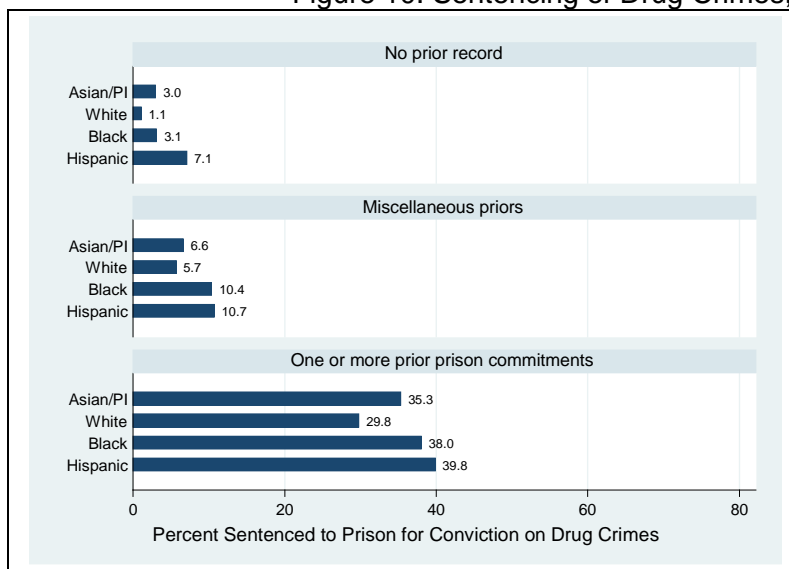
Looking at property crimes, the impact of prior record remains clear, with higher proportions of all groups receiving more severe sentences the more extensive the prior record. While between 50.1 and 61.0 percent of those with a prior prison commitment were sentenced to prison for conviction on a property crime, only between 1.4 and 2.4 percent of those with no prior record were sentenced to prison.

In addition to highlighting the impact of prior record on sentencing outcomes, the set of graphs on this page shows the impact of case type on sentencing. A prison sentence is less likely for those with no prior record who are convicted of a *property crime* than it is for those convicted of a *violent crime* (comparing the top panels of this and the previous page). Interestingly, the type of case does not appear to have as much impact on those convicted of a property crime whose records include a prior prison commitment compared to a similar group convicted of a violent crime.

Focusing on the differences across racial/ethnic groups, in the top panel to the left, we see that defendants with a prior prison commitment are sentenced to prison for property crimes in pattern that is similar to the pattern for violent crimes: higher proportions of Asians and Hispanics in this group were sentenced to prison (60.6 and 61.0 percent, respectively) while lower proportions of blacks and whites (50.1 and 54.9 percent, respectively) were sentenced to prison.

Comparing sentences for property crimes to those for violent crimes, higher proportions of defendants in all racial/ethnic groups received intermediate sentences. In the middle panel to the left, defendants with no prior record and with miscellaneous priors generally received intermediate sentences for property crimes in proportions greater than for violent crimes (middle panel on the previous page).

Figure 10: Sentencing of Drug Crimes, Controlling for Prior Record



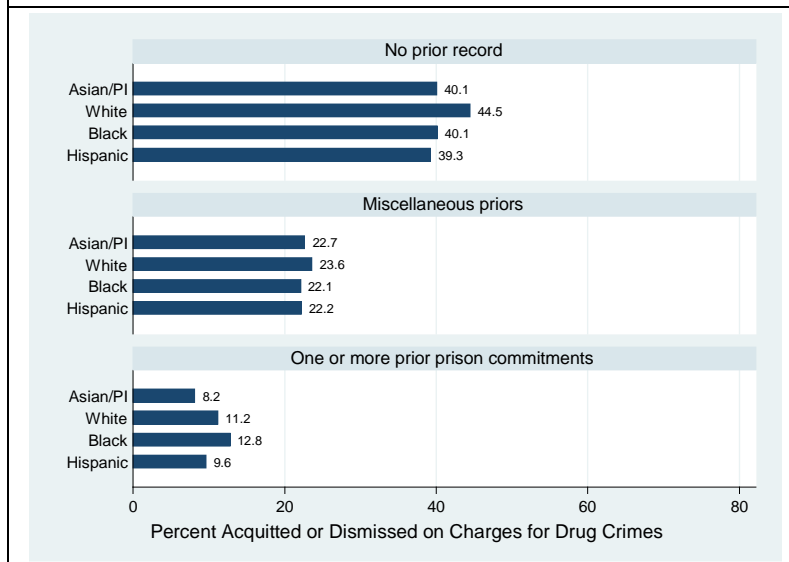
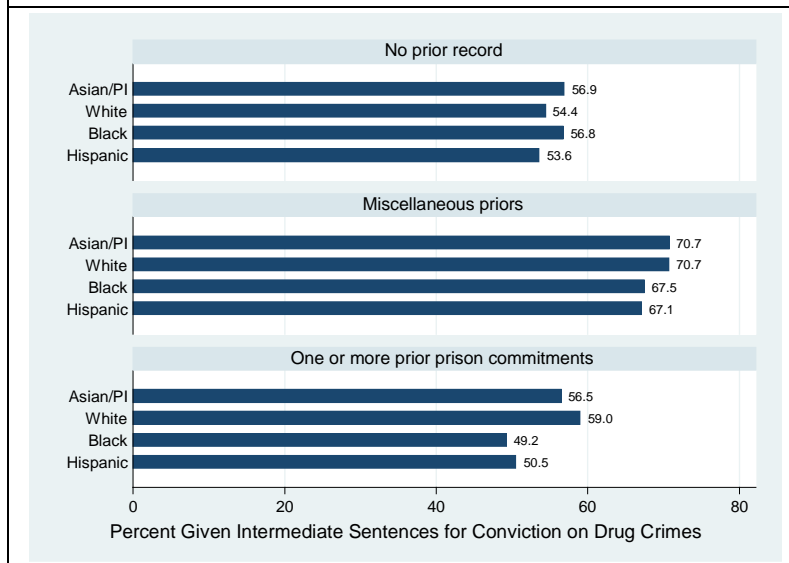
Looking now at convictions for drug crimes, we see once again that prior record has a significant effect on sentencing outcomes. And, we see yet more variability based on the type of case.

In the top panel to the left we can see that the percentage of defendants with a prior prison commitment who are sentenced to prison for drug crimes is much lower across all groups than it is for defendants with similar criminal histories convicted of property or violent crimes (shown in the top panels of the previous two pages).

Intermediate sentences remain the most difficult to interpret, probably because of the variability of outcomes contained within that single category.

However, looking at the percent of defendants who are acquitted or have their charges dropped for cases involving drugs (bottom panel to the left), we can see a number of interesting patterns. First, defendants with no prior record are much more likely to be acquitted for drug related felonies than for violent felonies or property related felonies (bottom panels on the left of the previous two pages).

Moreover, while whites with no prior record who were accused of a drug-related felony were acquitted at the highest rate (44.5 percent) of those with similar criminal records, blacks who had a record that included a prior prison commitment were the most likely to be acquitted (12.8 percent) compared to others with prior prison commitments.



## Conclusions

When controlling for prior record and type of offense, we identified statistically significant differences across racial/ethnic groups in patterns of sentencing but no consistent pattern in the severity of sentence related to the defendants' race/ethnicity. No single racial/ethnic group systematically received the most or least severe type of sentence. However, within each of the offense categories and using the limited controls that are available to take into account the prior records of the defendants, we found statistically significant differences in sentencing outcomes among racial/ethnic groups.

The lack of data on sentence length and on the specific type of prior records limits the conclusions that can confidently be made about any observed differences in sentencing based on race or ethnicity. Data on sentence length and specific type of prior record would allow for analysis controlling for a wider array of factors and a more precise comparison of sentencing outcomes for different racial and ethnic groups. 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 summarize only the broad sentencing information available in the OBTS file maintained by the California Department of Justice. Because of these limitations and those highlighted by CJSC, we encourage the reader to exercise caution in attempting to attribute causes for the observed differences in sentencing among racial/ethnic groups.

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.