A STUDY OF SENTENCING PRACTICES

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INTRODUCTION

North Carolina enacted Structured Sentencing in 1993. The principles behind the sentencing laws in the State include:

- **Sentencing Policies Should be Truthful**
  Sentence length imposed by the judge should bear a close and consistent relationship to the sentence length actually served.
- **Sentencing Policies Should be Consistent**
  Offenders convicted of similar offenses, who have similar prior records, should generally receive similar sentences.
- **Sentencing Policies Should be Certain**
  Sentences should be clearly mandated based on the severity of the crime as measured by the harm to the victim and the offender's prior record.
- **Sentencing Policies Should Set Priorities for the Use of Correctional Resources**
  Prisons and jails should be reserved for violent and repeat offenders, and community-based programs should be used for nonviolent offenders with little or no prior record.
- **Sentencing Policies Should be Balanced with Correctional Resources**
  Sentencing policies should be supported by adequate prison, jail, and community resources.

With a structured sentencing system in place, it is important to consider the administration of sentencing practices across the State and their impact on the criminal justice system. In effect, is the sentencing system operating as intended; are the goals being realized?

The Sentencing and Policy Advisory Commission (SPAC, Sentencing Commission, or Commission) first examined those questions in a study of sentencing practices under Structured Sentencing published in 2002, seven years following the implementation of the new law. The study sought to determine whether factors other than those legally relevant affected the processing and disposition of cases. More specifically, the Commission studied whether extralegal factors (i.e., factors that are not considerations under the law, such as sex and race) affect cases during conviction and sentencing, with the clear understanding that extralegal factors may impact earlier decision points (i.e., arrest and charging). Among other findings, the study concluded that the most salient factors contributing to sentencing outcomes were legal factors (e.g., offense type and seriousness, and prior record level). While there was evidence that certain extralegal variables contributed to outcomes, the study found no statistically significant difference in the way Nonwhite individuals (while overrepresented in the population of convicted offenders compared to their proportion in the general population) were processed in the courts at any of the key decision points examined compared to White offenders.

In 2020, nearly thirty years after the implementation of Structured Sentencing, the Sentencing Commission decided to revisit those questions. Events occurring around the nation prompted renewed interest in the effects of criminal justice system practices, particularly on racial and ethnic minorities. In response to those events, Governor Roy Cooper issued an executive order establishing the North Carolina Task Force for Racial Equity in Criminal Justice (Task Force) in 2020. The Governor ordered the Task Force to collaborate with and promote the research and solutions developed by the SPAC, among

other groups, and strongly encouraged these other groups to consider and report on racial and ethnic disparities in their work. The Commission directed staff to move forward with a new sentencing practices study. The 2002 study serves as a baseline for the current study, with comparisons offered where possible between the findings and conclusions.

RESEARCH QUESTIONS

This study seeks to build upon the findings of the 2002 study by revisiting some of the research questions posed, by utilizing a similar methodological framework (described below), and by using similar definitions (where relevant). This study also enhances the previous work by examining additional factors (e.g., credit for time served) and their relationship with discretionary decision making, and by employing a statistical technique that allows for greater control over jurisdictional variation.

The primary issue examined involves the exercise of discretion and the criteria used in reaching case-based decisions, with emphasis on the effect of legal and extralegal factors in the process. The basic question of whether factors other than those legally relevant affect the disposition of cases is limited to two steps in the criminal justice process: *conviction* and *sentencing*. Notably, extralegal factors may impact earlier decisions (e.g., arrest, charging) but are outside the scope of this study.[1]

North Carolina's Structured Sentencing limits sentencing choices to a degree by using a grid based on offense class and prior record level. However, at least two major discretionary decisions remain:

- The process of charging, reducing, or dropping charges, most often as part of the plea negotiation process – the reduction in the number and type of charges will have an obvious impact on the sentencing options in a system based on convicted charges, especially as it affects the final (most serious) offense class, any applicable mandatory penalties, incarceration-only options, or habitual felon status.

- The three-phase sentence disposition process – a determination whether to sentence in the presumptive, aggravated, or mitigated range of the cell; a decision whether to impose an active (prison) sentence or to suspend it (when authorized) in favor of an intermediate or community alternative; and, given an active sentence, its duration within the range of minimum sentences authorized in that cell.

Discretion is a feature of all criminal justice systems, although its degree and use will vary with the specifics of each system. To provide a foundation for the Sentencing Commission's study, academic studies that examined possible disparity at certain discretionary points in the criminal justice system process (primarily at the conviction and sentencing stages) are briefly reviewed in the next section. See Appendix A for a full list of references.

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[1] Law enforcement, criminal filings, and initial charging decisions, for which the Sentencing Commission had no available data, were outside the scope of this study, but an understanding of these earlier steps would be critical for a more complete picture of discretionary decision-making throughout the criminal justice system process.

A REVIEW OF RELEVANT SENTENCING RESEARCH

Importantly, there is no agreed upon definition of disparity in the academic literature. In some instances, disparity is defined as the disproportionality between the composition of the prison population and the composition of the general United States adult population (OJJDP; Sentencing Project 2008). In other instances, disparity is defined as instances where "like cases" are sentenced differently, with differences in dispositional outcomes being attributable to demographic features (Blumstein et al., 1983). For this study, disparity was defined using the latter definition – when differences in outcomes can be attributed to extralegal factors.

The criminal justice system consists of a series of discretionary decision points, beginning at arrest and through conviction and sentencing. Policing practices, charging practices, bail, and pretrial detention practices (among others) all may discretely or collectively contribute to disparity in the criminal justice system. Most studies examining sentencing decisions recognize the potential effect earlier decisions may have on disparity in the system; however, those earlier discretionary decision points have been studied far less than decisions occurring at the final stages (Baumer, 2013). While limited, emerging research on earlier stages (e.g., charging decisions) is discussed below.

Studies examining sentencing decisions typically assess three outcomes: the decision to incarcerate (often referred to as the "in/out decision"), sentence length, and discretionary sentencing outcomes (departures from sentencing guidelines, sentencing enhancements, etc.). These studies typically examine the relationship between both legal and extralegal factors on sentencing decisions. Legal factors or case attributes (i.e., offense seriousness and criminal history) should, and do, influence sentencing decisions (Blumstein, 1982; Crutchfield et al., 2010). Offense seriousness and criminal history have been consistently found to be the main drivers of sentencing outcomes. However, much attention has been given in the literature to the relationship between extralegal factors and sentencing decisions.

Of studies that have examined the effects of extralegal factors on sentencing decisions, race has been analyzed most frequently, with mixed results. Many recent studies have consistently found that Black offenders are more likely to receive a prison sentence and also found, albeit less consistently, that Black offenders often receive longer sentences than their counterparts (Steffensmeier and Demuth, 2006; Brennan and Spohn 2008; Feldmeyer et al., 2015). Conversely, some studies found that race has a negligible or not significant impact on sentencing outcomes (Brennan and Spohn, 2008; Spohn and Holleran, 2000; Steffensmeier and Demuth, 2006). Some of the most recent studies suggest that a disparity "correction" may occur in the sentencing stage such that Black and Hispanic offenders may receive more lenient treatment than White offenders to ameliorate biases experienced at earlier stages in the criminal justice system (Clair and Winter, 2016; Franklin and Henry, 2020; Jordan and Bowman, 2022).

The effect of race on sentencing outcomes may also be dependent on criminal history. Studies have found that the impact of race was moderated by prior record, with Black offenders with little to no prior record level more likely to be incarcerated; however, differences diminished as prior record levels increased in severity (Franklin and Henry, 2020; Hester and Hartman, 2017). Another study found that at higher prior record scores, Black and Hispanic offenders received more lenient sentences relative to White offenders; however, at lower levels Black and Hispanic offenders were treated similarly or harsher relative to White offenders (Jordan and Bowman, 2022).

While not as well studied as race and sentencing, research examining gender and sentencing outcomes overwhelmingly concludes that males are sentenced more harshly than females (Blackwell et al., 2008; Griffin and Wooldredge, 2006; Kruttschnitt, 1996; Steffensmeier et al., 1993). Though some studies find this harsher treatment is conditional on race (Doerner and Demuth, 2010; Steffensmeier and Demuth, 2006), males are often more likely to receive a prison sentence and to receive a longer sentence compared to females (Steffensmeier et al., 1993). Also studied less frequently is the relationship between age and sentencing outcomes, but overall, research finds that older offenders are less likely to be sentenced to prison, and if incarcerated, typically receive a shorter sentence (Doerner and Demuth, 2010; Ulmer and Bradley, 2006).

With the increased availability of ethnicity data, research has expanded to assess the effects of ethnicity on sentencing outcomes. While less consistent than findings on Black and White disparities, this research often finds that, compared to their White counterparts, Hispanic offenders are sentenced more harshly, controlling for legally relevant factors (Steffensmeier and Demuth, 2006).

A growing body of research has attempted to assess the *joint* effects of ethnicity, gender, and age on sentencing outcomes, again, with mixed findings. Some research has indicated that young Hispanic males in particular are sentenced more harshly than White offenders (Doerner and Demuth, 2010; Kramer and Ulmer, 2009; Steffensmeier and Demuth, 2000); other studies found that young Black males receive the harshest sentences (Nowacki, 2017; Spohn and Holleran, 2000; Steffensmeier and Demuth, 2006; Steffensmeier et al., 1998). Race may have a larger impact for females than males (Crawford, 2000; Crow and Kunselman, 2009; Spohn, 2013). Some studies found Black females were more likely to receive lenient sentences compared to other race and gender groups (Doerner and Demuth, 2012; Kramer and Ulmer, 2009); however, other studies found no difference between White and Black females in sentencing outcomes (Albonetti, 2002; Spohn and Brennan, 2011).

In addition to individual characteristics, a small body of research has assessed sentencing disparities across court, geographic, and jurisdictional contexts. These studies suggest that sentencing decisions may be influenced by:
- where an offender is sentenced, including the racial and ethnic composition of a geographic area, social-political influences, and size of jurisdiction;
- varying court resources, size of the court, and the caseload of the court; and
- method of disposition (e.g., guilty plea or jury trial).

The results of the relationship between the racial composition of a geographic region and sentencing disparities is mixed, with some studies finding a relationship between the number of Black offenders in a geographic area and racial disparities in the criminal justice system (Kramer and Ulmer, 2009; Ulmer and Johnson, 2004), and others finding no relationship (Kautt, 2002; Weidner and Frase, 2003). Overwhelmingly, studies find that offenders who opt for a trial are sentenced more harshly than those who accept a plea bargain (Engen et al., 2003; Ulmer and Johnson, 2004; Johnson, 2005; Steffensmeier and Demuth, 2006; Ulmer and Bradley, 2006; Doerner and Demuth, 2010).

Prosecutor Decision-Making

As noted above, decisions at earlier criminal justice stages have been studied far less than sentencing decisions. However, there is some limited emerging research on prosecutorial decisions. In sentencing systems that include guidelines, disparities may be explained in part by displacement theory, which

suggests that guidelines shift discretion from judges to prosecutors (Engen and Steen, 2000). Because prosecutors are not bound by formal guidelines (Sutton, 2013), a growing body of research suggests that disparities more often occur at the prosecutorial stage with plea bargains and charge reductions (Hartley and Tillyer, 2018; Metcalfe and Chiricos, 2018; Shermer and Johnson, 2010; Starr and Rehavi, 2013). This limited research shows that females are more likely to receive a charge reduction (Kutateladze et al., 2012; Shermer and Johnson, 2010; Spohn and Fornango, 2009), but with mixed results as to race and ethnicity and prosecutors' decisions to reduce charges.

Takeaways from Academic Literature

Sentencing guidelines, including the sentencing system that exists in North Carolina, provide a framework "to structure but not eliminate disparity based on extralegal factors and communicate … proper sanctions for typical cases and offenders" (Engen et al., 2003). These guidelines aim to limit judges' discretion with the goal of sentencing offenders more uniformly. Studies that have attempted to determine if greater sentencing uniformity is achieved under guidelines systems have found that disparities are reduced, but not completely eliminated (Mitchell, 2018; Ulmer, 2012; Wooldredge, 2009).

The large body of academic literature focused on the examination of sentencing decisions highlights the most salient factors contributing to sentencing outcomes: legal factors or case attributes. Offense severity and criminal history have been found to be the largest drivers of sentencing outcomes. However, extralegal factors, both demographic (e.g., race, gender) and systemic (e.g., location), have also been shown to play a role, with mixed and sometimes complex findings. For additional context beyond the academic research, studies conducted by government agencies, with a particular focus on the work of sentencing commissions, were also reviewed (*see* Chapter 2).

METHODOLOGICAL APPROACH

This study was designed to provide a detailed description of sentencing practices in North Carolina's courts under Structured Sentencing through statistical analysis of aggregate court data, both bivariate and multivariate.[2]

Aggregate statistical analysis was conducted on all 28,526 cases charged as felonies and convicted in North Carolina's courts during FY 2019 in order to analyze stepwise decisions made in processing felony cases from charging to conviction, to describe systematic variations in these discretionary decisions, and to test the impact of legal and extralegal factors on sentencing outcomes. The factors considered were based on available empirical data.[3]

Discretionary decisions in processing a felony case included: reduction from a felony charge to a less serious felony conviction or to a misdemeanor conviction and imposition of a non-active sentence

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[2] Bivariate analysis shows the relationship between two variables, while multivariate analysis shows the relationship between multiple variables (*see* Chapter 4 for a detailed description of multivariate analysis).

[3] Information entered into the Administrative Office of the Courts' management information system by the court clerk following the imposition of the sentence was used for this study, supplemented by information on the population of NC from the Office of State Budget and Management. Other factors outside of the criminal justice system (e.g., socio-economic data) could certainly affect discretionary decision-making but, without data available for inclusion, are outside the scope of this study.

(where active sentences are non-mandatory). The factors considered in affecting these decision points included: characteristics of the offense; offender's criminal history; method of disposition; offender sex, race, and age; and systemic characteristics such as type of counsel, judicial district, and district profile.

REPORT OUTLINE

The current study represents the second effort to examine sentencing practices and the existence of any disparities under Structured Sentencing in North Carolina. This study attempts to account for some of the limitations of previous research on this topic by examining the impact of prosecutorial discretion on sentencing decisions and by reviewing jurisdictional variations in sentencing across the State.

Following the introduction and methodological approach presented in this chapter, Chapter 2 profiles similar studies conducted by governmental entities across the nation. Chapter 3 provides descriptive statistics on convictions and sentences for all cases charged as a felony in FY 2019 and shows some of the more common plea patterns. Chapter 4 utilizes multivariate analysis to test the relative impact of legal and extralegal factors on sentence outcomes. Finally, Chapter 5 summarizes the findings and conclusions of the study and explores possible policy implications for the State's court system.

CHAPTER TWO
STUDIES BY GOVERNMENT ENTITIES

This chapter expands upon the context provided in the academic literature review and looks at research produced by government entities at the state or federal level on criminal justice system disparities.[4] Published or commissioned reports from all 50 states and the federal government were collected through July 31, 2023. Ultimately, 287 reports were found from 43 states and the federal government.[5]

Additionally, this chapter analyzes the characteristics of the reports, specifically highlighting the reports focused on sentencing. Given that this study seeks to determine if North Carolina's sentencing system is achieving its stated goals of consistent punishment among like offenders, special attention is paid to whether the report originated from a state with sentencing guidelines (or sentencing guideline state). Across the country, approximately 40% of states (including North Carolina) and the federal system have some form of sentencing guidelines.[6] The forms vary greatly but "[s]entencing guidelines are a set of standards that are generally put in place to establish rational and consistent sentencing practices within a particular jurisdiction."[7]

As a starting point, studies of disparity covering the entire criminal justice system and process were reviewed. Notably, these studies cover a number of topics. Table 2.1 lists the topics found in the 287 reports, arranged into six topic categories.

Table 2.1
Government Report Topic Categories

Topic Category	Description
Policing Practices	Stops, searches, and arrests conducted by law enforcement
Pre-Sentencing	Pretrial decisions (e.g., granting bail, plea negotiations), prosecutorial decisions, or pre-sentence decisions
Sentencing	In-out decision and sentence length
Capital Punishment	Whether to impose the death penalty
Multiple Points	More than one stage of the criminal justice process (e.g., arrest, prosecution, sentencing, post-incarceration)
Other	Various topics (e.g., disparity in new conviction rates, felony drug offense dismissals, prison admissions; court personnel perceptions of bias)

SOURCE: NC Sentencing and Policy Advisory Commission, 2023

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[4] This report focuses on potential disparity in the adult criminal justice system. Reports on potential disparities within the juvenile justice system were not included, although a number of such reports are available, especially ones produced pursuant to the federally-mandated reporting required of states receiving funds under the Juvenile Justice and Delinquency Prevention Act.

[5] No publicly available/accessible reports were found from Alabama, Georgia, Nevada, New Hampshire, South Carolina, South Dakota, and Wyoming.

[6] *See* University of Minnesota's Robina Institute of Criminal Law and Criminal Justice for more information on sentencing guidelines; https://robinainstitute.umn.edu/sentencing-guidelines-resource-center. *See also* the National Association for Sentencing Commissions; https://www.thenasc.org/.

[7] Richard S. Frase and Kelly Lyn Mitchell, What Are Sentencing Guidelines? Sentencing Guidelines Resource Center at the Robina Institute of Criminal Law and Criminal Justice, March 21, 2018, https://sentencing.umn.edu/content/what-are-sentencing-guidelines.

Among the six categories, reports on policing practices in the criminal justice process represented the most common topic published with a total of 122 reports, or 42% of the reports reviewed. This high number of reports is likely due to the annual reporting requirements for certain policing practices reports (e.g., traffic stop studies). Of the 133 reports that were annually mandated, 99 were policing practices. The next largest category was sentencing reports with 77 reports. The third largest category was multiple points, in which studies address more than one criminal justice process, with 56 publications. The smallest categories were pre-sentence (9 reports) and capital punishment (6 reports).

Figure 2.1
Government Reports by Topic
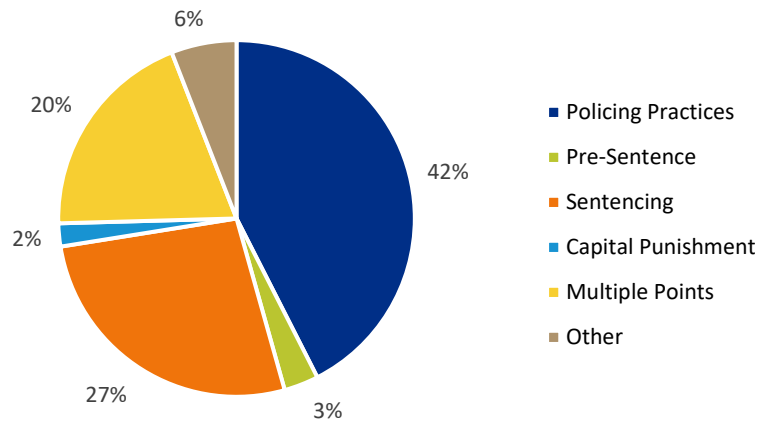
SOURCE: NC Sentencing and Policy Advisory Commission, 2023

REPORTS THAT INCLUDE SENTENCING

Reports focused only on sentencing made up 77 of the 287 publications. In addition, 48 of the 56 reports on multiple points in the criminal justice process included sentencing. As a result, sentencing is discussed in just under half (44%, or 125 reports) of the 287 reports collected (*see* Figure 2.2).

Figure 2.2
Government Reports Including Sentencing
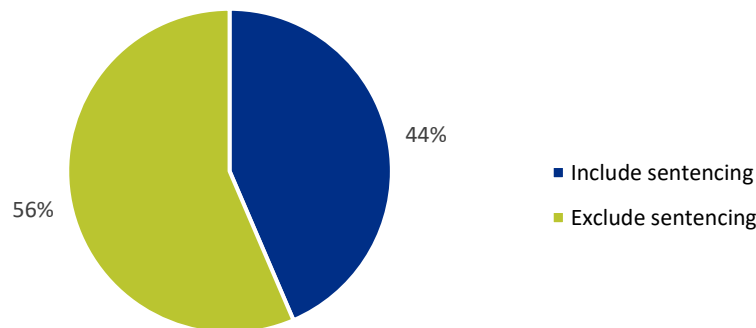
SOURCE: NC Sentencing and Policy Advisory Commission, 2023

Thirty-one states, as well as the federal government, published either sentencing reports, multiple point reports that included sentencing, or both (*see* Figure 2.3). Of these, 15 were guideline states: Arkansas, Delaware, Florida, Kansas, Maryland, Massachusetts, Michigan, Minnesota, North Carolina, Ohio, Oregon, Pennsylvania, Virginia, Washington, and the federal government.

Figure 2.3
U.S. Map of States Publishing Reports that Include Sentencing

Powered by Bing
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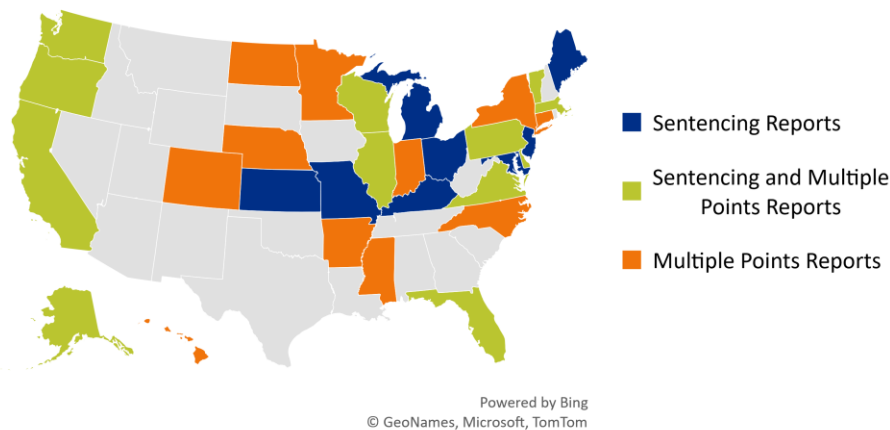
SOURCE: NC Sentencing and Policy Advisory Commission, 2023

Sentencing Report Characteristics

The characteristics of the 77 sentencing reports are summarized below, including which states publish reports, how long states have been publishing reports, whether the reports were mandated by the government, what government entities published the reports, the research design, and the topic of the reports.[8]

All areas of the country have published reports, but some areas have studied disparity more than others. Using the U.S. Census Bureau defined geographic regions,[9] states in the West (44 reports) and Midwest (12 reports) published the most reports on sentencing. California was the most prolific publisher of sentencing reports with 20 reports, followed by Alaska with 11 reports and the state of Washington with 10 reports.

The publication dates of the 77 sentencing reports give some indication of the interest over time in studying disparity. The oldest reports found were from Alaska in 1975; in the following 30 years, only 1 or 2 reports were published per year (*see* Figure 2.4). In 2004, there was an increase in the overall number of publications, with a total of 6 published. The largest number of reports were published in 2019. Notably, despite conditions due to the COVID-19 pandemic, there were still 5 reports published in

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[8] For all 287 reports, a total of 12 variables were coded for the geographic region, structured sentencing guideline jurisdictions, government entity mandating the report, government entity completing the report, types of methodologies, publication date, and topic of the report. (*See* Appendix B).

[9] https://www2.census.gov/geo/pdfs/maps-data/maps/reference/us_regdiv.pdf.

2020. Over the total time period these reports were published (1975-2023), a majority of them (55%) were published since 2010 or later.

Figure 2.4
Sentencing Reports Publication Timeline
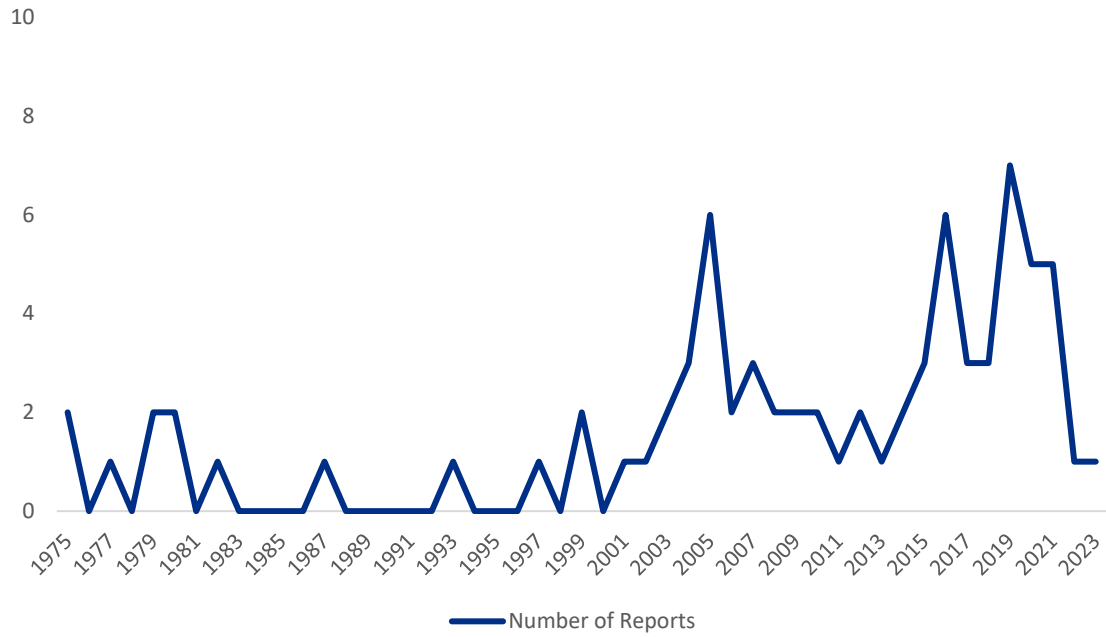
SOURCE: NC Sentencing and Policy Advisory Commission, 2023

These reports are often mandated by a government entity, either the federal government, branches of state government, or local units of government. Nearly all the sentencing reports were mandated by the government (81%, or 62 reports), most often by a state legislature (50 reports) or the federal government (8 reports).

In addition to the mandating body, there was a wide range of entities that completed the research and reported the findings. Overall, state judicial branches published the most sentencing reports with 37 reports; state-level independent commissions followed with 21 reports.

To assess whether there was disparity, the reports utilized many different types of methodologies in their research design. Table 2.2 describes the most common methodologies used, with some reports employing multiple methodologies within the same study. The 77 sentencing reports had a total of 125 methodologies. Most included descriptive statistics (61 instances) and regression analyses (43 instances).

Table 2.2
Government Report Common Methodology Types

Methodology Name	Description
Survey	Written or oral inquiries to a group(s) involved in the criminal justice process.
Focus Group	Written or oral inquiries to a select number of individuals chosen by researchers to participate in the study.
Public Comment	Written or oral feedback received from members of the community.
Descriptive Statistics	Statistics used to quantitatively describe the information within a data set (e.g., minimum – maximum, mean, median, mode, standard deviation).
Disparity Index	A ratio comparing the likelihood of criminal justice involvement of racial or ethnic minorities relative to non-minorities.
Regression Analysis	Any form of regression analysis or combination of regression analyses (e.g., linear/nonlinear, logistic, ordinary least squares).
Other	Any methodology not falling into the other enumerated categories.

SOURCE: NC Sentencing and Policy Advisory Commission, 2023

Sentencing Report Takeaways

A comparison of the sentencing reports reveals differences regarding definitions of disparity, methodologies, factors considered, main findings, and recommendations. These differences highlight the potential challenges when studying disparity and comparing findings across studies and/or jurisdictions.

Defining Disparity

As noted in the review of academic literature on the same topic, there was a lack of consensus as to the definition of disparity found in governmental reports as well.[10] Some reports defined disparity as a minority group's overrepresentation in the convicted/sentenced population as compared to that group's representation in the overall population, also known as a disparity index. One Washington report[11] defined disparity as differential treatment that is not based on differences in offending. A Wisconsin publication distinguished the terms discrimination and disparity, referring to the former as "a possibly illegal act" and the later as "a statistical pattern."[12] Other reports used a comparison of different groups' likelihoods of receiving a sentence of incarceration or some other specific outcome (e.g., the application of a mandatory minimum). For example, in assessing disparity, 2 reports from Alaska[13] looked at the relationship between defendants' race/ethnicity and their sentences or treatment in the criminal justice

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[10] Most of the reports used the words "disparity" or "disproportionality," although other terms such as "demographic differences," "differential treatment," and "minority overrepresentation" were also used.

[11] Washington State Sentencing Guidelines Commission, Disproportionality and Disparity in Adult Felony Sentencing: Fiscal Year 2007 (April 2008), https://cfc.wa.gov/sites/default/files/Publications/Adult_DisparityDisproportionality_FY2007.pdf.

[12] Wisconsin Office of Justice Assistance, Commission on Reducing Racial Disparities in the Wisconsin Justice System 1 (February 2008), https://www.wistatedocuments.org/digital/collection/p267601coll4/id/977.

[13] Rubinstein et al., Alaska Judicial Council, Interim Report of the Alaska Judicial Council on Findings of Apparent Racial Disparity in Sentencing: August 15, 1974-August 14, 1976 (October 1979), http://www.ajc.state.ak.us/publications/docs/research/Sentencing08-1974-08-1976(10-1979).pdf; Rubinstein et al., Alaska Judicial Council, Alaska Misdemeanor Sentences: 1974-76 Racial Disparity (November 1979), http://www.ajc.state.ak.us/publications/docs/research/AKMisdSenRacial11-79.pdf.

system. Several reports utilized a comparison of different groups' incarceration rates and/or average sentences.

While some reports used "disproportionality" as a synonym for "disparity," others differentiated between those two terms. A Washington report[14] defined disproportionality as the degree to which the demographic composition of felony offenders differs from that of the general state population, and disparity as differing treatment of offenders with the same offense and criminal history. For the purposes of this chapter and for the sake of brevity, the term "disparity" refers to all variations in definitions used and types of research conducted, regardless of whether definitions match the one used in this study.

Methodological Differences

In addition to the different definitions of disparity across reports, the way the reports assessed disparity varied. A small number of reports assessed the perceptions of various stakeholders, including court personnel (e.g., judges and lawyers) and members of the public, using surveys, interviews, and focus groups.[15] These reports sought to capture qualitative impressions of fairness and the treatment of minorities in the criminal justice system.

The other reports conducted more quantitative assessments, using some form of statistical methodology to evaluate sentencing disparity. Some used descriptive statistics and basic ratio analyses, while others engaged in more complex analyses (e.g., multivariate analysis) in an effort to not only detect disparity, but to explain the reasons for it. A limited number of reports employed a mixed methodology that used quantitative strategies supported by qualitative strategies. For example, a report from Washington included both in-depth interviews with court officials and multivariate analyses of offender case files to assess the impact of race and ethnicity on the sentencing of drug offenders.[16] Similarly, a Pennsylvania report included testimonies from public hearings to supplement multivariate analyses using official record data in their report on sentencing disparities in the criminal justice system.[17] Both reports emphasize the importance of including qualitative data to provide further insights regarding the organizational context and processes that influence criminal justice decision-makers.

The majority of the reports looked at certain sentencing decision points to determine whether disparity was present and, if so, where in the process it was occurring. The primary sentencing decision points examined were the in-out decision (i.e., the decision of whether to impose a sentence of incarceration), the sentence length, discretionary sentencing decisions (e.g., presumptive/aggravated/mitigated sentences, enhancements, guideline departures), and the application of mandatory minimums.

Most of the sentencing reports used statewide level data and assessed all felony level offenses. However, some state reports limited their examination or dedicated a larger piece of their research to a

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[14] Washington State, *supra* note 7.

[15] E.g., reports came from judicial branch commissions on fairness in Alaska, Indiana, and Ohio.

[16] Engen et al., Washington State Minority and Justice Commission, The Impact of Race and Ethnicity on Charging and Sentencing Processes for Drug Offenders in Three Counties of Washington State (December 1999), https://www.courts.wa.gov/committee/pdf/FinalReport.pdf.

[17] Final Report of the Pennsylvania Supreme Court Committee on Racial and Gender Bias in the Justice System (2003), https://pa-interbranchcommission.com/wp-content/uploads/2022/01/FinalReport.pdf.

particular county or municipality and/or focused on specific offenses. For instance, Illinois[18] and Washington[19] published reports using statewide data but assessed only drug offenses. Similarly, Kentucky[20] published a report that assessed drug offenses, but further narrowed the unit of analysis to only county level data. Finally, while most of the sentencing reports looked at felony level offenses, two states, Alaska[21] and Kentucky,[22] published reports assessing disparity in misdemeanor sentencing.

Legal Versus Extralegal Factors

In assessing disparity, the reports considered various factors that may have bearing on the outcome of a given case. As in this study, those factors can be classified into two groups: legal factors and extralegal factors. Legal factors are those that relate to the case itself such as offense type, offense severity, and the defendant's criminal history. Extralegal factors are those that may influence the outcome of a case but are outside the scope of the case itself, such as an offender's demographic traits.

Most of the sentencing reports considered race as a primary extralegal factor and focus of study. Although some went further and analyzed ethnicity, age, and/or gender, nearly all the sentencing reports evaluated racial disparity. Some analyses used broad racial categories, such as White versus Nonwhite, or Black/African American, White, and Hispanic. Other reports included other and more specific racial groupings, such as Native American and Asian/Pacific Islander. A couple of reports focused on specific racial issues unique to individual states or geographic areas. A limitation of these analyses is that race and ethnicity were not always distinguished from one another. Some did not differentiate between race and ethnicity at all. Others found that their datasets lacked ethnic information and indicated the need to differentiate between race and ethnicity and include ethnic information in future data collection.

Other extralegal factors included education level, employment status, income, geographic location, type of attorney (i.e., private versus public defender), mode of conviction (i.e., plea versus guilty verdict after trial), pretrial detention, and mental health and substance use issues. Several reports even used certain extralegal factors, such as income, zip code, and patterns of policing and arrest, as proxies for race. Still others indicated they were unable to account for socioeconomic factors in their analysis. While most of the sentencing reports used legal factors as control variables, some reports also controlled for extralegal factors, such as urban versus rural geographic settings.

Study Results

Of the 77 sentencing reports, 64 found some differences based on race, ethnicity, and/or gender in sentencing. Four reports did not find differences based on demographics in sentencing, and 6 reports

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[18] Lurigio et al., The Disproportionate Incarceration of African Americans for Drug Crimes: The Illinois Perspective (November 2005), http://icjia.state.il.us/assets/pdf/ResearchReports/Disproportionate%20Incarceration%20of%20African%20Americans%20for%20Drug%20Crimes.pdf.

[19] Engen et al., *supra* note 13.

[20] Bourassa and Andreescu, Univ. of Louisville Urban Studies Inst. for the Racial Fairness Commission of the Commonwealth of Kentucky Court of Justice, Racial Fairness in Sentencing: A Case Study of Selected Crimes in Jefferson County (September 2004), https://www.academia.edu/49670529/Racial_Fairness_in_Sentencing_A_Case_Study_of_Selected_Crimes_in_Jefferson_County.

[21] Rubinstein et al., *supra* note 10.

[22] Bourassa and Andreescu, *supra* note 16.

had inconclusive findings. Three reports from Alaska focused on reporting sentencing statistics but made no conclusions.

As for the reports that found some type of sentencing disparity, very few attributed disparities to any specific cause. Of the reports that identified a cause, most attributed disparity to legal factors that would typically be expected to affect sentencing, such as offense severity and prior record. A few reports indicated that of the sentencing decision points, discretionary sentencing decisions such as enhancements and departures had the most potential effect on disparity. Some reports identified correlation between race and sentencing but stopped short of attributing causation to race. Other reports found a relationship between race and sentencing but, when controlling for legal factors, that relationship became less significant. Instances of identifying concrete extralegal causes for disparity tended to come from reports which conducted very narrow analyses. For example, a report from New Jersey attributed disparity to the "urban effect" of drug free zones; however, the report focused narrowly on the sentencing of one particular drug offense and limited its data to five municipalities and counties.[23]

More than half of the reports that found disparity examined one or more extralegal factors for possible causation, but ultimately did not find a concrete cause of disparity. For some reports, this was because there were too many factors potentially contributing to disparity to identify a specific cause. Others referred to systemic racial bias, a few studies denied that disparity resulted from systemic bias, and a number of reports provided explicit caveats and cautions against inferring systemic bias as the cause of disparity.

Comparing the reports by guideline and nonguideline states, 27 of the 32 guideline state reports found some level of disparity based on race with 1 report finding no disparity, and 4 reports being inconclusive. For the nonguideline states, 37 of the 42 reports found some level of racial disparity with 2 inconclusive reports and 3 reports finding no statistically significant difference between races. Beyond these broad findings on racial disparity, it was difficult to identify other discernible themes when categorizing the reports by guideline versus nonguideline status. This was likely due to the limited number of reports and the variation in the research approaches (data, methods, terms, etc.) across the reports.

Many of the reports identified limitations in their analyses. Some cited a lack of data regarding earlier decision points in the criminal justice system prior to sentencing, such as arrests and prosecutorial decision-making. Among reports that analyzed multiple points in the process, the overall findings suggest that charging decisions, pretrial detention, and prosecutorial practices are factors at play in disparate treatment and should be considered in addition to the sentencing decision points for a complete picture of disparity.

Report Recommendations

In addition to findings, some reports offered suggestions for further research or made recommendations to correct disparity. As noted above, some reports identified limitations stemming from lack of data. Some of the reports that suggested further research using data from other points in the criminal justice process (e.g., arrest data, jail data, prosecutorial decision data) and additional offender information necessary for a more comprehensive evaluation of disparity. For example, a Delaware study indicated

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[23] The New Jersey Commission to Review Criminal Sentencing, Report on New Jersey's Drug Free Zone Crimes and Proposal for Reform (December 2005), https://dspace.njstatelib.org/xmlui/handle/10929/22287.

that the areas of pretrial detention and bail warranted further study,[24] and a Pennsylvania study suggested that additional offender socioeconomic information would be helpful.[25] Many reports pointed out the need for improved and more consistent data collection and analysis generally to bolster the quality of future research.

The recommendations to correct disparity covered a wide range of potential reforms, including improved stakeholder and agency collaboration, the use of diversion programs and therapeutic courts, and stakeholder diversity and cultural awareness training. Some reports also suggested the reevaluation of sentencing laws, guidelines, and practices.

Comparing the 77 reports published by guideline and nonguideline states, 24 reports from guideline states and 24 from nonguideline states made no recommendations, they only provided information. Of the reports that included recommendations, a majority of the reports from guideline states and nonguideline states said additional and better data was needed.

Overall, the reports demonstrate consistent interest over time in understanding discretion in the criminal justice system, particularly at the conviction and sentencing stage. Potential disparities based on extralegal factors, such as race, have been of particular focus, with a recent resurgence in conducted and published studies on the topic. This study seeks to add to this body of practical research, with an eye toward policy implications where relevant.

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[24] Delaware Statistical Analysis Center, Race and Incarceration in Delaware: A Report to the Delaware General Assembly (June 2011), https://cjc.delaware.gov/wp-content/uploads/sites/61/2017/06/Race_Incarceration-min.pdf.
[25] Pennsylvania, *supra* note 14.

CHAPTER THREE
BIVARIATE ANALYSIS

There has been much discussion in North Carolina and nationwide about the overrepresentation of racial and ethnic minorities in the criminal justice system. The concept itself is often ill-defined. The most common usage of the term "overrepresentation" compares the ratio of a specific minority in the general population with the ratio of that minority in the prison system. There are notable differences in the composition of the North Carolina population relative to the distribution of felony convictions by race, ethnicity, age, and sex.

Figure 3.1 provides a comparison of the 2019 North Carolina population and felony convictions in FY 2019 (July 1, 2018 through June 30, 2019). Although race and ethnicity are measured differently between the two sources of data, the overrepresentation[26] of Black and male offenders in the criminal justice system compared to North Carolina's population warrants attention.[27] While Black individuals comprised 21% of North Carolina's population, they represented 44% of the State's convicted felony offenders. Males represented 82% of convicted felony offenders; however, only 48% of the North Carolina population is male.

Figure 3.1
Comparison of NC Population and Felony Convictions
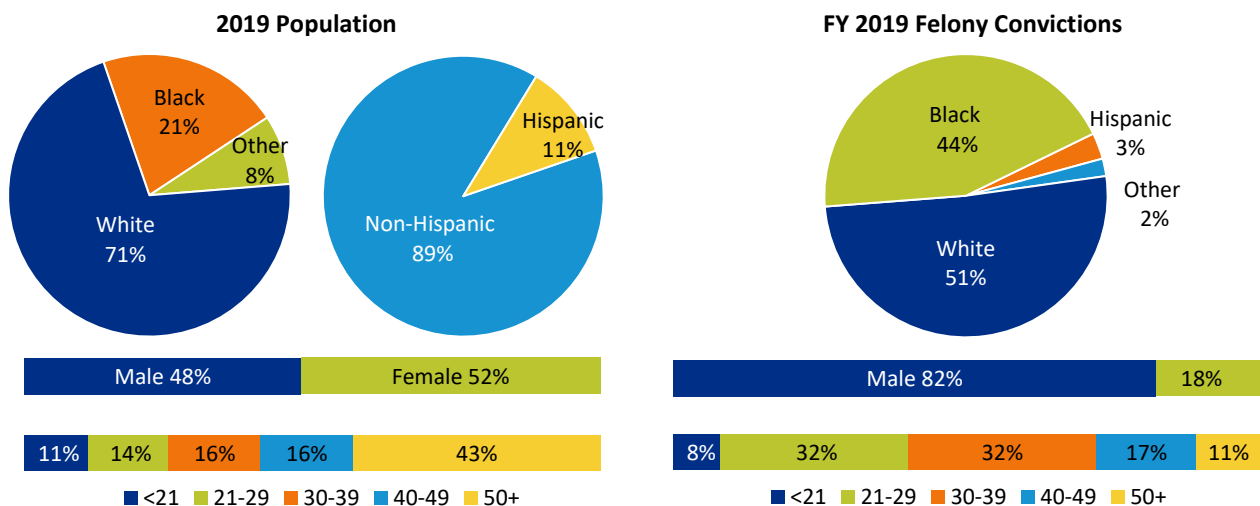
Note: Some convictions may be excluded due to missing or discrepant data.
SOURCE: Office of State Budget and Management, NC Population Data, 2019; NC Sentencing and Policy Advisory Commission, FY 2019 Felony Statistical Report Data

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[26] Alternative definitions for overrepresentation use the ratio of all crimes committed by a minority group compared to the relative representation of that group within all those arrested, prosecuted, convicted, or sentenced to incarceration. However, baseline data on all crimes committed are usually not available, and in any case were outside the scope of the current study.
[27] The NC population information is based on 2019 data from the NC Office of State Budget and Management. The population is limited to age 14 years old or greater to match the distribution of felony convictions. For the Hispanic population breakdown, age was not provided; therefore, the reported percentages include all Hispanic individuals in the state. For the FY 2019 felony convictions, ethnicity is not captured separately and is included in race measure; therefore, the percentage of Hispanic offenders may be underrepresented.

The terms "overrepresentation" and "disparity" should not be used interchangeably. Disparity, in the criminal justice context, refers to a series of unfavorable decisions in a case where the minority status of the offender (or any other specified extralegal factor) is used to arrive at the decision. The first step in understanding the overrepresentation of specific demographic groups is to provide a statistical profile of convictions based on most serious charge and most serious conviction in FY 2019, with specific attention given to race and sex.

STATISTICAL PROFILE OF FY 2019 FELONY CONVICTIONS

Key highlights from the statistical profile are detailed in this section, using aggregate statewide data on convictions and sentences imposed in North Carolina in FY 2019. As noted throughout, some convictions were excluded from figures and tables in this section due to missing and/or discrepant data.

Under Structured Sentencing, the two main components in determining the disposition and duration of an offender's sentence are the seriousness of the offense (Offense Class) and the criminal history of the offender (Prior Record Level). Figure 3.2 shows the distribution of convictions (N=28,526) by offense class and prior record level. The majority of offenders had a Class H conviction (41%) and were in Prior Record Level II (28%).

Figure 3.2
Convictions by Offense Class and Prior Record Level
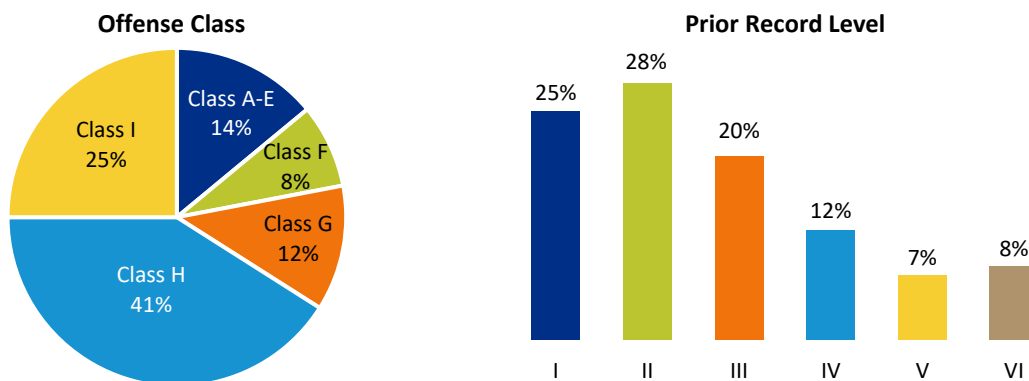
Note: Some convictions may be excluded due to missing or discrepant data.
SOURCE: NC Sentencing and Policy Advisory Commission, FY 2019 Felony Statistical Report Data

Figure 3.3 provides the distribution of convictions by race and sex individually and combined.[28] White offenders comprised the majority (51% of offenders) and males comprised the large majority (82%). Among males, the largest proportion of offenders were Black (48%). Conversely, the majority of female offenders were White (71%). Given the small proportion of other and Hispanic offenders, these two categories were combined with Black to create an overall Nonwhite category; these two categories form the basis of all analyses examining race from this point forward in the study.

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[28] The other race category is comprised of Asian, Native American, Other, and Unknown.

Figure 3.3
Convictions by Race and Sex

Overall
n=28,526

- White 51%
- Black 44%
- Hispanic 3%
- Other 2%

Male
n=23,318

- White 46%
- Black 48%
- Hispanic 3%
- Other 3%

Female
n=5,208

- White 71%
- Black 25%
- Hispanic 1%
- Other 3%

Male 82%	Female 18%

Note: Some convictions may be excluded due to missing or discrepant data.
SOURCE: NC Sentencing and Policy Advisory Commission, FY 2019 Felony Statistical Report Data

The court data utilized in this study contain information on the offense classes for both the most serious charged offense in a case and the most serious convicted offense. Keeping in mind that 98% of felony convictions were obtained as a result of a plea, this information allows for insights into the plea process by comparing the offense class of the most serious charged versus most serious convicted offense.

Figure 3.4 compares the most serious charged offense to the most serious convicted offense by offense class and race. For Class A-D convictions, a higher percentage of White offenders were convicted as charged (with the exception of Class C), while, for Nonwhite offenders, a higher percentage were convicted in a lesser offense class. A similar pattern was found for Class E-I convictions, with convictions for Nonwhite offenders more likely to be reduced to a lower offense.

Figure 3.4
Most Serious Charged and Convicted Offense Class by Race

Note: Some convictions may be excluded due to missing or discrepant data.
SOURCE: NC Sentencing and Policy Advisory Commission, FY 2019 Felony Statistical Report Data

Figure 3.5 shows the distribution of convictions by race for each offense class. Nonwhite offenders comprised the majority of convictions in the most serious offense classes (Classes A–E), as well as in Class G. Conversely, White offenders comprised the majority of convictions in the least serious offense classes (Classes H and I).

Figure 3.5
Convictions by Offense Class and Race
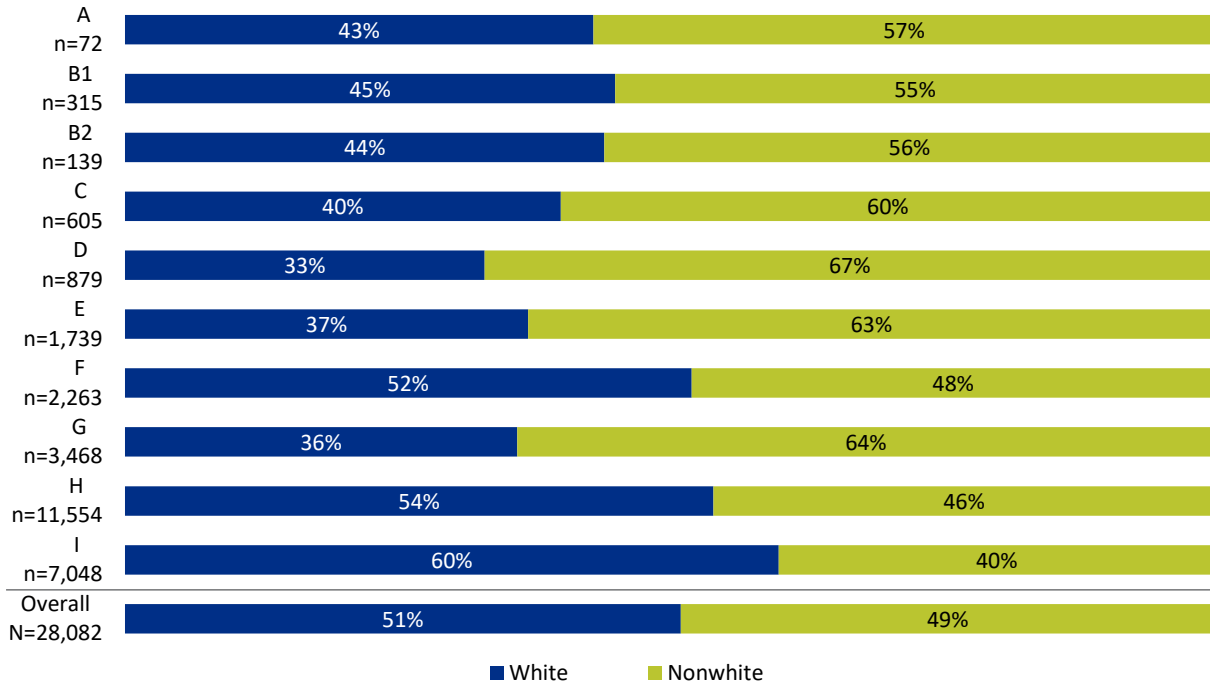
Class	White	Nonwhite
A n=72	43%	57%
B1 n=315	45%	55%
B2 n=139	44%	56%
C n=605	40%	60%
D n=879	33%	67%
E n=1,739	37%	63%
F n=2,263	52%	48%
G n=3,468	36%	64%
H n=11,554	54%	46%
I n=7,048	60%	40%
Overall N=28,082	51%	49%

■ White ■ Nonwhite

Note: Some convictions may be excluded due to missing or discrepant data.
SOURCE: NC Sentencing and Policy Advisory Commission, FY 2019 Felony Statistical Report Data

The distribution of convictions by prior record level and race is shown in Figure 3.6. Generally, as prior record level increased, so did the percentage of Nonwhite offenders.

Figure 3.6
Convictions by Prior Record Level and Race
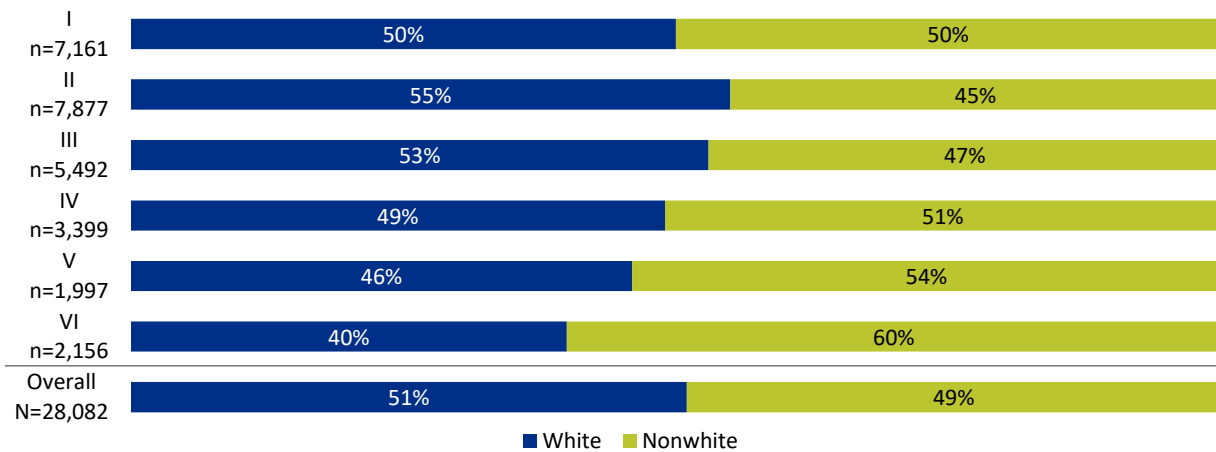
Level	White	Nonwhite
I n=7,161	50%	50%
II n=7,877	55%	45%
III n=5,492	53%	47%
IV n=3,399	49%	51%
V n=1,997	46%	54%
VI n=2,156	40%	60%
Overall N=28,082	51%	49%

■ White ■ Nonwhite

Note: Some convictions may be excluded due to missing or discrepant data.
SOURCE: NC Sentencing and Policy Advisory Commission, FY 2019 Felony Statistical Report Data

Structured Sentencing provides mandatory sentencing guidelines for a judge to follow, but the judge has discretion within those guidelines to craft an individual sentence. Under Structured Sentencing, Active punishment is mandatory for convictions imposed in Classes A-D; the most serious prior record levels (Levels V and VI) also require Active punishment for most offense classes (with the exception of Classes H and I).

The type of punishment imposed by race is shown in Figure 3.7. The difference between the rate at which White and Nonwhite offenders received Active punishment was 9 percentage points, with Nonwhite offenders sentenced to Active punishment at a higher rate (42% compared to 33%). Given the higher percentage of Nonwhite offenders convicted in the more serious offense classes, and with more serious criminal histories, this particular finding is not unexpected.

Figure 3.7
Convictions by Type of Punishment and Race

	Active	Non-Active
White	33%	67%
Nonwhite	42%	58%
Total	37%	63%

■ Active ■ Non-Active

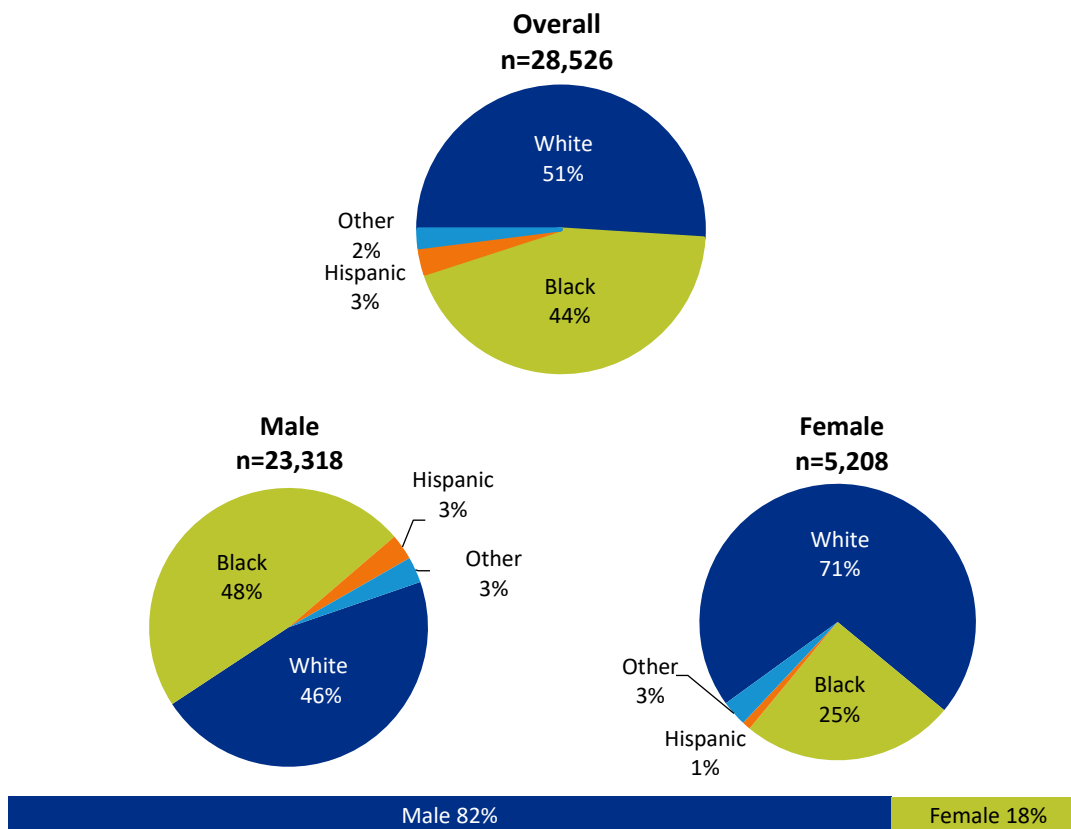Note: Some convictions may be excluded due to missing or discrepant data.
SOURCE: NC Sentencing and Policy and Advisory Commission, FY 2019 Felony Statistical Report Data

Figure 3.8 shows the distribution of convictions by type of punishment (i.e., active, non-active) and sex. A much larger proportion of male offenders received an active sentence than female offenders (41% and 19% respectively). Males were more heavily represented in the more serious offense classes and prior record levels, offering some explanation for the differences in punishment type between males and females.

Figure 3.8
Convictions by Type of Punishment and Sex

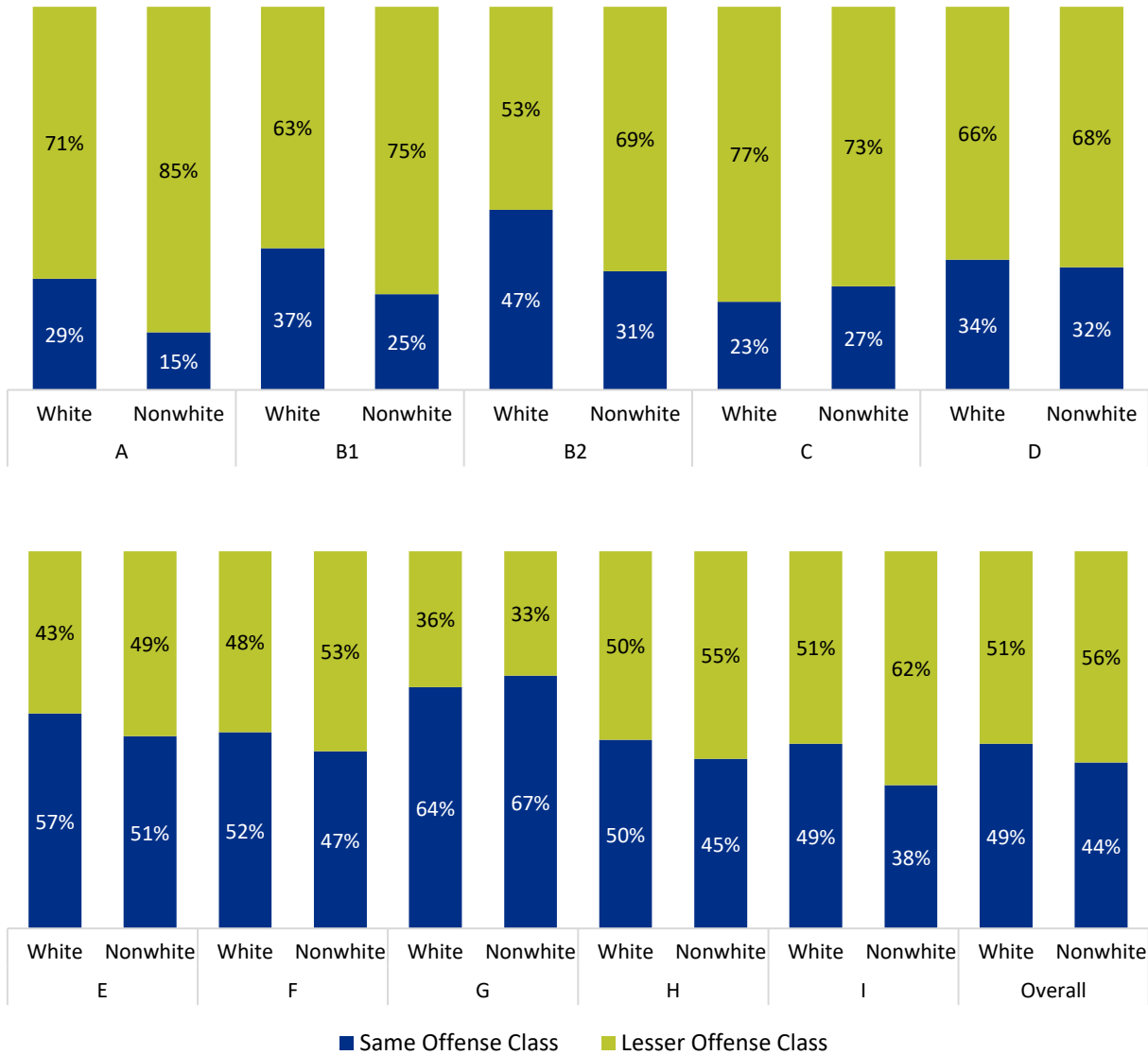|	Active	Non-Active
Male	41%	59%
Female	19%	81%
Total	37%	63%

■ Active ■ Non-Active

Note: Some convictions may be excluded due to missing or discrepant data.
SOURCE: NC Sentencing and Policy and Advisory Commission, FY 2019 Felony Statistical Report Data

In one-third of the cells on the felony punishment chart (referred to as "discretionary cells") the judge chooses the type of punishment to impose (an active sentence versus a suspended sentence with a community-based sanction). Figure 3.9 presents the punishment imposed in discretionary cells by

offense class and race. There was little variation in the imposition of active and non-active sentences among White and Nonwhite offenders.

Figure 3.9
Punishment Imposed in Discretionary Cells by Offense Class and Race

	White	Nonwhite	White	Nonwhite	White	Nonwhite	White	Nonwhite	White	Nonwhite
Non-Active	65%	66%	62%	59%	69%	66%	72%	70%	50%	52%
Active	35%	34%	38%	41%	31%	34%	28%	30%	50%	48%
	E n=1,094		F n=1,741		G n=3,099		H n=10,670		I n=1,818	

■ Active ■ Non-Active

Note: Some convictions may be excluded due to missing or discrepant data.
SOURCE: NC Sentencing and Policy Advisory Commission, FY 2019 Felony Statistical Report Data

As shown in Figure 3.10, a higher percentage of males received an active sentence in discretionary cells across Classes E-I.

Figure 3.10
Punishment Imposed in Discretionary Cells by Offense Class and Sex
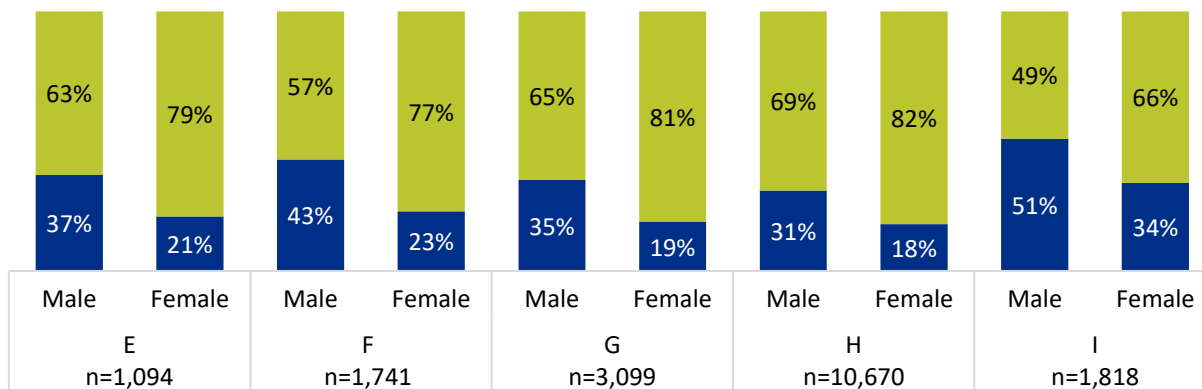
	Male	Female	Male	Female	Male	Female	Male	Female	Male	Female
Non-Active	63%	79%	57%	77%	65%	81%	69%	82%	49%	66%
Active	37%	21%	43%	23%	35%	19%	31%	18%	51%	34%
	E n=1,094		F n=1,741		G n=3,099		H n=10,670		I n=1,818	

■ Active ■ Non-Active

Note: Some convictions may be excluded due to missing or discrepant data.
SOURCE: NC Sentencing and Policy Advisory Commission, FY 2019 Felony Statistical Report Data

The average minimum active sentence imposed is examined by race in Figure 3.11. On average, White offenders received a minimum active sentence 4 months lower than Nonwhite offenders (29 months and 33 months, respectively). While the differences are most noticeable in the more serious offense classes, the largest proportion of offenders are in the lower offense classes.

Figure 3.11
Average Minimum Active Sentence (in Months) by Race
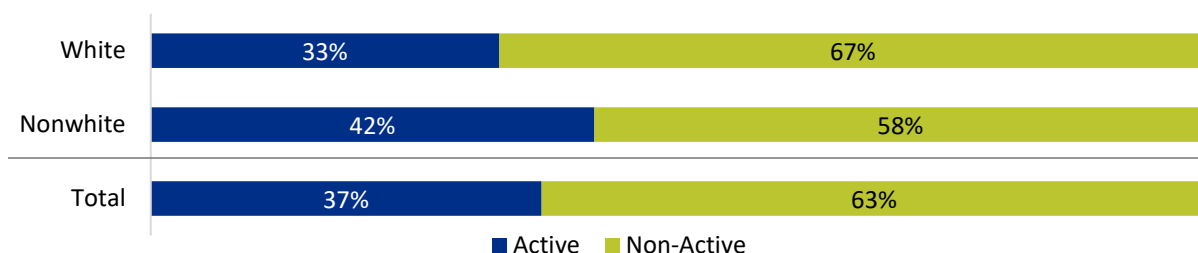**Active Sentences Only**
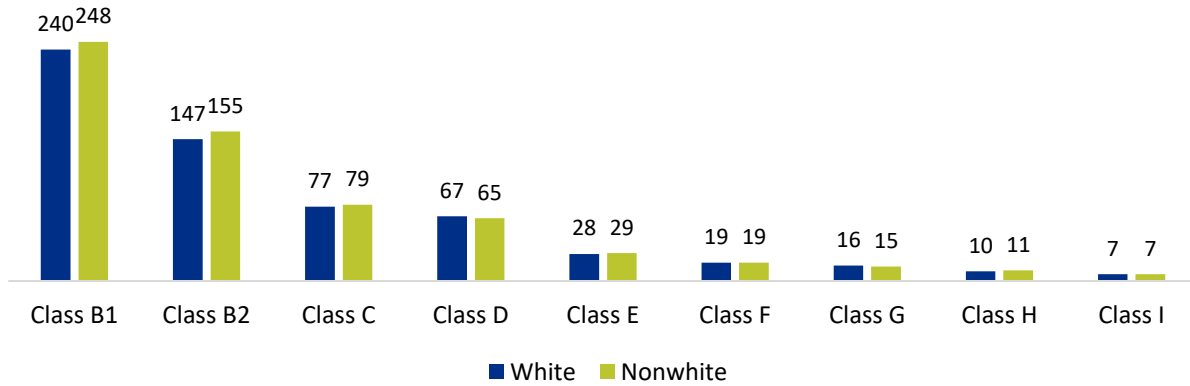
Note: Some convictions may be excluded due to missing or discrepant data.
SOURCE: NC Sentencing and Policy and Advisory Commission, FY 2019 Felony Statistical Report Data

Figure 3.12 shows the average minimum active sentence by sex, for those who received an active sentence. On average, male offenders received a minimum active sentence 10 months longer than female offenders (32 months and 22 months, respectively). Male offenders received longer average minimum active sentences in every offense class except Class I (where sentence lengths were the same for males and females).

Figure 3.12
Average Minimum Active Sentence (in Months) by Sex
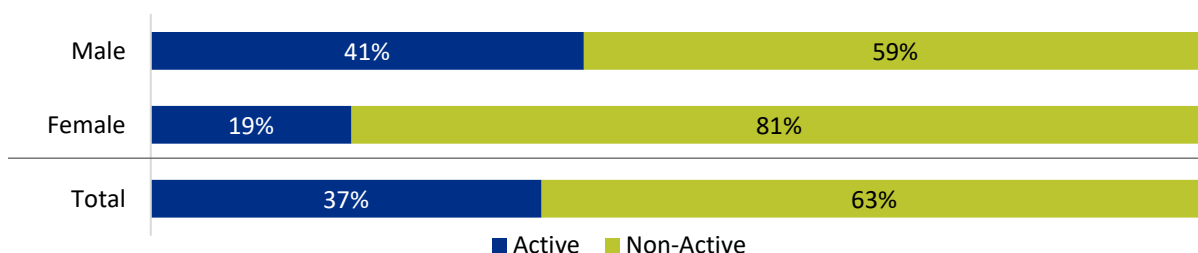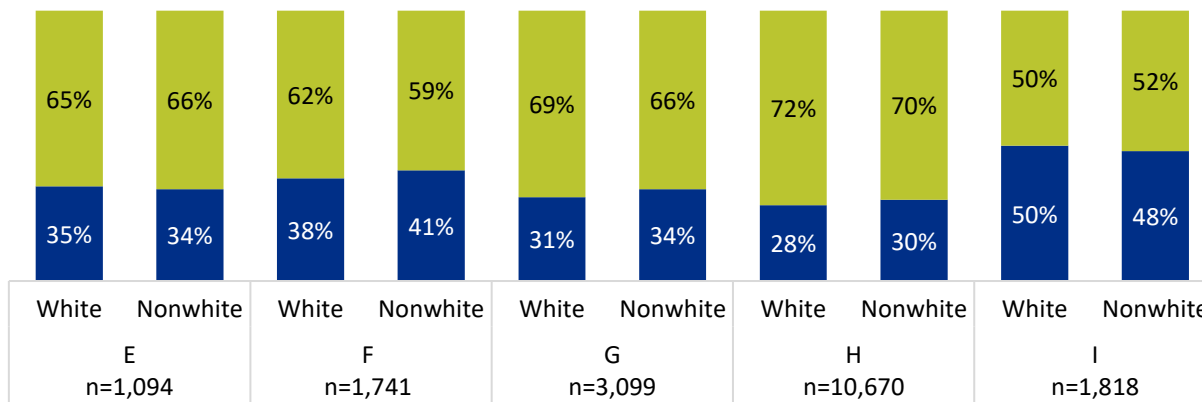**Active Sentences Only**
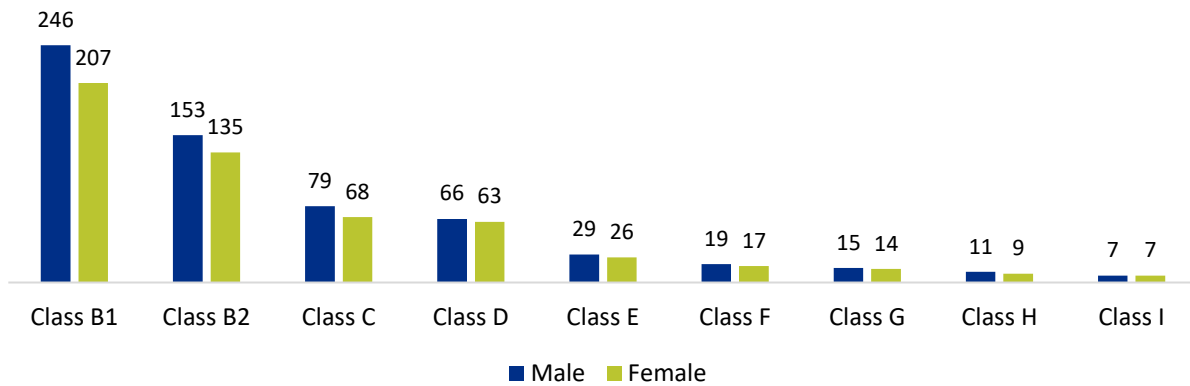
Note: Some convictions may be excluded due to missing or discrepant data.
SOURCE: NC Sentencing and Policy and Advisory Commission, FY 2019 Felony Statistical Report Data

SUMMARY

Overall, the review of FY 2019 convictions revealed differences when examined by race and sex, as summarized in Figure 3.13. However, and different from the examination by sex, very little variation was found by race when examining punishment type in discretionary cells and average sentence length imposed for each offense class.

Figure 3.13
Summary of Bivariate Analyses

Distribution of Convictions Overall	Male and Nonwhite offenders were more heavily represented in felony convictions compared to the State population.
Charged Class vs. Convicted Class	Females and Nonwhite offenders were more likely to be convicted in a less serious offense class than originally charged.
Offense Class of Conviction	Nonwhite offenders comprised a higher proportion of the more serious offense classes, with the converse being true for White offenders.
Prior Record Level	Nonwhite offenders comprised a higher proportion of the more serious prior record levels (V and VI).
Active Punishment	Males and Nonwhite offenders were more likely to receive an active sentence compared to their counterparts.
Sentence Length	Males received much longer sentence lengths than females.

It is important to note that differences in sentencing outcomes noted in this section by race or sex do not indicate whether sentencing disparity occurred. Some outcomes may be explained by the differences in distributions by offense class and prior record level. Importantly, the above analyses only examine bivariate relationships (i.e., two variables) and do not control for other factors that may explain these differences (e.g., offense type, age, dismissals). Given this, it is necessary to utilize a more rigorous statistical technique (i.e., multivariate analysis) that controls for other variables that may influence outcomes in sentencing. Multivariate analysis (detailed in Chapter Four) will allow for additional insights into what factors (i.e., legal and/or extralegal) contribute to sentencing decisions and how differences in these factors manifest across important sentencing outcomes while also accounting for judicial district context.

CHAPTER FOUR
MULTIVARIATE ANALYSIS

Descriptive statistics in Chapter Three profiled offenders convicted under Structured Sentencing in FY 2019. These aggregate data provided an overall picture of key offender characteristics including offense seriousness (charged and convicted offense class), criminal history, type of punishment, and demographics. This chapter further explores these findings by examining the impact of a variety of factors on sentencing outcomes. Through multivariate analysis, specifically using multi-level modeling, this chapter considers how multiple factors, taken together, affect the probability of outcomes, and what type of factors are more predictive.

MULTIVARIATE ANALYSIS AND MULTI-LEVEL MODELING

A regression model is a statistical tool used to estimate the association of a number of independent variables (e.g., age, sex, or offense seriousness) with a dependent variable (e.g., receiving a charge reduction), while holding constant the contribution of other variables in the model. This type of analysis can test, for example, whether the sex of an offender is related to the offender's probability of receiving a charge reduction, controlling for other factors such as age, race, or criminal history. It also indicates the strength of the relationship between each factor in the model and the dependent variable. The models show the relationship, if any, between the independent variables and the dependent variable analyzed in each model. *Although the analyses may reveal a relationship exists, it does not necessarily mean that an independent variable (e.g., sex) is the cause of the particular outcome (e.g., the offender received a charge reduction). Rather, it indicates that a statistical association exists that is not accounted for by the other variables included in the analysis.*

Dependent Variables: Discretionary Decision Points

Three dependent variables were modeled, representing the three discretionary decision points of interest (i.e., outcome measures):[29]

1. Misdemeanor conviction – whether an offender charged with a felony was convicted of a misdemeanor;
2. Less serious felony conviction – whether an offender charged with a felony received a reduction to a less serious felony conviction by one or more offense classes; and
3. Active sentence – whether an offender convicted of a felony received an active sentence (i.e., incarceration).

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[29] This study focused on sentencing practices under the Structured Sentencing Act (SSA), offenses not covered under the SSA were excluded (e.g., drug trafficking, violent habitual felon). For all analyses, Class A convictions subject to mandatory life or death sentences were excluded. For the analysis examining a reduction from a felony charge to a less serious felony conviction, offenders with a Class I felony as their most serious charged offense were excluded since there is no less serious felony conviction available. The imposition of an active sentence was limited to offenders in discretionary cells of the felony punishment chart.

Independent Variables

The independent variables used in the models were grouped into sets of legal and extralegal factors. District characteristics were tied to the Superior Court district to account for any regional variation.

Legal Factors

Legal factors relate to the offender's case and are legally relevant to sentencing outcomes. These factors included:
- Offense seriousness – the offense class of the offender's most serious charge and the offense class of the offender's most serious conviction
- Type of offense – person, property, non-trafficking drug, or other[30] type of offense
- Criminal history – whether the offender had one or more prior felony or misdemeanor convictions or, where applicable for felony convictions, the offender's prior record level
- Charge reduction – whether a felony charge was reduced to either a less serious felony conviction or to a misdemeanor conviction
- Habitual felon charge – whether an offender was charged as a habitual felon
- Active charge – whether the most serious charge in a case was in a felony punishment chart cell in Classes E-H that would require a mandatory Active punishment (if convicted)

Extralegal Factors

Extralegal factors are *not* considerations under the law; however, they may unduly impact sentencing outcomes. These factors included both demographic and systemic factors for the offender's case:

Demographic
- Age – offender's age at conviction
- Sex – female or male
- Race – more specific categories collapsed into two groups: White and Nonwhite

Systemic
- Defense attorney type – privately retained or court-appointed (public defender or private assigned counsel)
- Method of disposition – whether a case was resolved by guilty plea or by jury trial
- Credit for time served – whether there was pretrial credit recorded for a case

District-Level Characteristics

Factors tied to the Superior Court district, to capture regional variation, included:
- Population density – average district population density[31]

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[30] The majority of offenses in the other category were weapons offenses, the category also includes motor vehicle offenses and habitual felons.

[31] Population density for each Superior Court district was determined by using 2019 county population estimates from the NC Office of State Budget and Management. The average population density was calculated by dividing the total population for all counties within a district by the total land area measured in square miles for the district. The resulting densities for each district were measured as a continuous variable. *See* Population Projections from https://www.osbm.nc.gov/demog/county-projections.

- Single county district – whether a district represents a single county (i.e., does not include multiple counties)
- Conviction rate – convictions per population[32]
- Dismissal dispositions by race – percentage of all charges dismissed by race (Nonwhite relative to White)[33]

Figure 4.1 lists the independent variables in common across all models along with variables that were unique to each model.

Figure 4.1
Independent Variables

All Models		
Legal Factors	**District-Level Characteristics[34]**	
Offense Type	Population Density	
Extralegal Demographic Factors	Single County District	
Age	Conviction Rate	
Male	Dismissal Dispositions by Race	
Nonwhite		
Extralegal Systemic Factors		
Retained Attorney		
Jury Trial		
Credit for Time Served		

Misdemeanor Conviction Model	Less Serious Felony Conviction Model	Active Punishment Model
Legal Factors	**Legal Factors**	**Legal Factors**
Charged Offense Class	Convicted Offense Class	Convicted Offense Class
One or More Prior Convictions	Prior Record Level	Prior Record Level
	Habitual Felon Charge	Habitual Felon Charge
	Active Charge (Classes E-H)	Charge Reduction

Multi-Level Modeling Defined

Building upon traditional multivariate analysis, this study sought to further control for variations in sentencing practices across the State, by accounting for the location where a sentence was imposed, as measured by Superior Court district. Initial testing revealed variation across Superior Court districts in sentencing outcomes. To that end, multi-level modeling (MLM) was used to examine the effect of *both* individual-level (Level 1) and district-level (Level 2) characteristics on the three discretionary points of

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[32] Based on the 2019 county population estimates from the NC Office of State Budget and Management; calculated by dividing the total number of convictions per district by the total population per 1,000 individuals aged 16 years or older. *See* Population Projections from https://www.osbm.nc.gov/demog/county-projections.

[33] Based on data from the NC Administrative Office of the Courts, which included all dispositions entered in FY 2019; value represents the percentage of dismissed charges that were for Nonwhite offenders (relative to White).

[34] The district characteristics are at the Superior Court district level and have the same values across all models unlike the individual-level variables which differ depending on the discretionary decision point examined (see Appendix C for detailed profiles for the individual-level measures). Forty-four percent (44%) of districts were single county districts. Across districts, the average conviction rate was 16 per 1,000 population and the average percentage across districts of all charges dismissed by race was 51% Nonwhite.

interest.[35] MLM is an improvement over standard regression techniques (i.e., logistic regression) due to the ability to model relationships both at the individual- and district-level. This modeling technique accounts for any variation in legal and/or extralegal independent variables across districts. MLM also factors in any variation in the outcomes by district.

Figure 4.2 provides an overview of the two different levels and their corresponding measures, as well as the three outcomes examined. Level 1 is tied to the offender and includes legal factors (i.e., case characteristics) and extralegal factors (i.e., demographic and systemic measures). The utility of MLM is the ability to include district characteristics at their appropriate level (i.e., Superior Court district). Level 2 represents the 48 Superior Court districts; the four district characteristics included in Level 2 are represented at the district-level, *not* at the offender-level.

Both the individual- and district-level variables predict the three outcomes of interest – misdemeanor conviction, less serious felony conviction, and active sentence; however, the relationship between the individual-level and district-level variables is another consideration. A specific legal and/or extralegal factor may have a stronger or weaker relationship with an outcome for a specific district. For example, it may be that certain offense types have a stronger effect on the outcomes in one district versus another district. While these variations are accounted for by the model, they were generally weak and are not the focal point of this study, which aims to control for district differences.

Figure 4.2
Overview of Multi-Level Model

Level 2 District
- Population Density
- Single County District
- Conviction Rate
- Dismissal Dispositions by Race

Level 1 Individual

Legal:
- Charged Offense Class
- Convicted Offense Class
- Offense Type
- One or More Prior Conviction
- Prior Record Level
- Habitual Felon Charge
- Active Charge (Classes E-H)
- Charge Reduction

Extralegal:
Demographic
- Age
- Male
- Nonwhite

Systemic
- Attorney Type
- Jury Trial
- Credit for Time Served

Outcomes
- Felony Charge to a **Misdemeanor Conviction**
- Felony Charge to a **Less Serious Felony Conviction**
- Imposition of an **Active Sentence** in a Discretionary Cell

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[35] Further technical information about MLM is available upon request.

Model Results

The following section outlines the major findings for the three discretionary points examined. The three discretionary points represent separate outcomes assessed; however, each outcome can be viewed as a progressive process from charging to sentencing, as shown in Figure 4.3. The number of offenders shown at each decision point in Figure 4.3 represent the total pool of offenders *eligible* for a discretionary decision regardless of whether they received the particular outcome of interest (i.e., a charge reduction, Active punishment).

Figure 4.3
Discretionary Decisions in Charging and Sentencing

Decision 1: Reduction from a felony charge to a **misdemeanor conviction**
The analysis included offenders charged with a felony who were either subsequently convicted of a felony or misdemeanor (n=44,906). Felony charges were reduced for 38% of offenders.

Decision 2: Reduction from a felony charge to a **less serious felony conviction**
The analysis included offenders charged with a felony who were subsequently convicted of a felony of the same class or a less serious felony offense (n=22,864). Felony charges were reduced for 29% of offenders.

Decision 3: Imposition of an **active sentence**
The analysis included offenders convicted of a felony who were in cells of the felony punishment chart where the judge had the option to impose either a probation or prison sentence (n=18,341). Thirty-three percent (33%) of offenders received an active sentence.

SOURCE: NC Sentencing and Policy Advisory Commission, FY 2019 Sentencing Practices Data

Table 4.1 shows the effects of the legal and extralegal factors on the probability of receiving a misdemeanor conviction (Model 1), a less serious felony conviction (Model 2), and an Active punishment (Model 3). The values shown in Table 4.1 indicate the estimated increase (i.e., positive values) or decrease (i.e., negative values) in the average probability of the outcome for a specific independent variable relative to a reference category (where applicable). Each model is discussed individually. Not all variables were relevant for each model (*see* also Figure 4.1).

Table 4.1
Effect of Legal and Extralegal Factors on Discretionary Decision Points

Independent Variables	Estimated Effect on the Probability of:		
	Model 1 **Misdemeanor Conviction** **n=44,906** Average Probability = 24%	**Model 2** **Less Serious Felony Conviction** **n=22,864** Average Probability = 21%	**Model 3** **Active Punishment** **n=18,341** Average Probability = 22%
Individual-Level Characteristics			
Legal Factors			
Charged Offense Class	-12%	16%	n/a
Convicted Offense Class	n/a	n/a	8%
Offense Type			
Person	11%	-11%	9%
Property	Reference	Reference	Reference
Drug (Non-Trafficking)	-14%	26%	N.S.
Other	-30%	-16%	N.S.
One or More Prior Convictions	-6%	n/a	n/a
Prior Record Level	n/a	N.S.	15%
Habitual Felon Charge	n/a	-50%	N.S.
Active Charge (Classes E-H)	n/a	8%	n/a
Charge Reduction	n/a	n/a	3%
Extralegal Factors			
Demographic			
Age	<-1%	<-1%	-1%
Male	-11%	-6%	12%
Nonwhite	N.S.	3%	-4%
Systemic			
Retained Attorney	7%	N.S.	-9%
Jury Trial	-19%	-41%	15%
Credit for Time Served	-22%	-3%	6%
District-Level Characteristics			
Population Density	N.S.	N.S.	-5%
Single County District	N.S.	N.S.	N.S.
Conviction Rate	N.S.	N.S.	N.S.
Dismissal Dispositions by Race	<1%	N.S.	N.S.

Note: "N.S." indicates the estimated effects are not statistically significant. Offenders with missing data were excluded from the analysis. Variables not relevant for the specific model are indicated by "n/a." For categorical and dichotomous independent variables, the results are interpreted in relation to the reference category. The reported effects reflect changes to the average probability.
SOURCE: NC Sentencing and Policy Advisory Commission, FY 2019 Sentencing Practices Data

Probability of Receiving a Misdemeanor Conviction from a Felony Charge

Model 1 included all offenders charged with a felony offense who were subsequently convicted of either a felony or a misdemeanor offense during FY 2019 (n=44,906). Figure 4.4 summarizes the results shown in Table 4.1 for the estimated effect of legal and extralegal factors on the probability of receiving a misdemeanor conviction from a felony charge.

Of offenders charged with a felony, 38% were convicted of misdemeanor offenses; these charge reductions were related to a number of legal and extralegal factors. Overall, legal factors were the most salient predictors of the probability of an offender receiving a misdemeanor conviction, with offense type being the strongest. The strongest effects for extralegal variables were systemic factors.

Figure 4.4
The Probability of Receiving a Misdemeanor Conviction from a Felony Charge

More Likely		Less Likely	
Person Offenses	11%	Other Offenses	-30%
Retained Attorney	7%	Credit for Time Served	-22%
Dismissal Dispositions by Race	<1%	Jury Trial	-19%
		Drug Offenses	-14%
		Charged Offense Class	-12%
		Male	-11%
		One or More Prior Convictions	-6%
		Age	<-1%

Note: For categorical and dichotomous independent variables, the results are interpreted in relation to the reference category. The reported effects reflect changes to the average probability. Only statistically significant findings are shown.
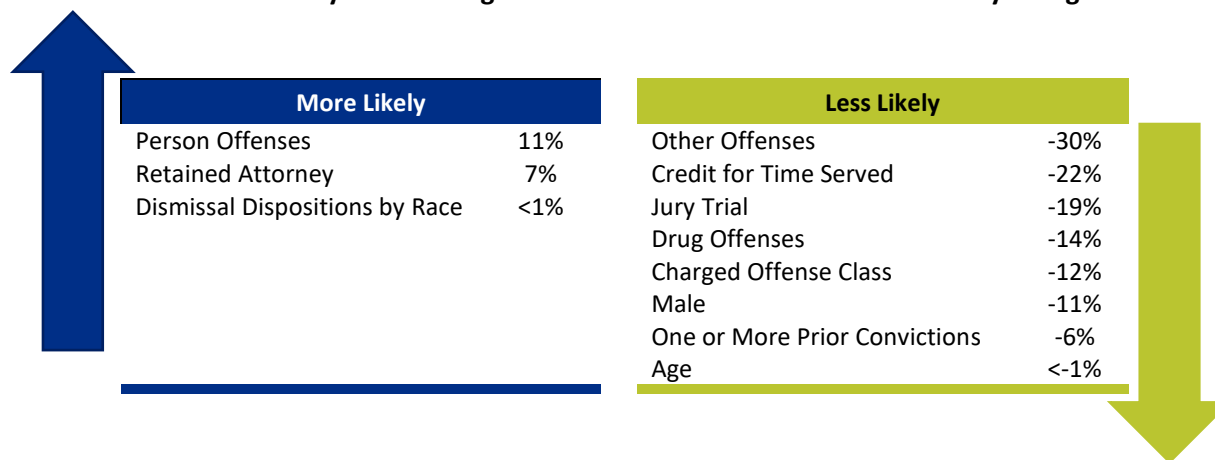SOURCE: NC Sentencing and Policy Advisory Commission, FY 2019 Sentencing Practices Data

The effects for legal factors ranged from a 30% decrease (for an other offense) to an 11% increase (for a person offense) in the probability of receiving a misdemeanor conviction from a felony charge based on the type of offense. For example, offenders charged with an other felony offense were 30% less likely to receive a misdemeanor conviction than offenders charged with a property offense (the reference category). Both charged offense class and criminal history were both associated with a significant reduction in the probability of receiving a misdemeanor conviction from a felony charge; the more serious the charged offense, the less likely an offender was to receive a misdemeanor conviction. Offenders who had one or more prior conviction were 6% less likely to receive a misdemeanor conviction from a felony charge compared to offenders who had no prior convictions.

Several extralegal factors, both demographic and systemic, also affected the probability of receiving a misdemeanor conviction from a felony charge. Male offenders were less likely to receive a misdemeanor conviction than female offenders (-11%). Offenders with credit for time served were also less likely to receive a misdemeanor conviction (-22%) compared to those who did not have credit. Offenders with a privately retained attorney were more likely to receive a misdemeanor conviction (+7%) compared to offenders with other attorney types. Only one district-related factor (dismissal dispositions by race) had a significant effect and increased the probability of receiving a misdemeanor conviction; however, the magnitude of the effect was very weak (<1%).

Probability of Receiving a Less Serious Felony Conviction

Model 2 included all offenders charged with a felony offense who were subsequently convicted of a felony offense during FY 2019 (n=22,864). Twenty-nine percent (29%) of offenders charged with a felony received a charge reduction to a less serious felony conviction. The legal and extralegal factors that significantly predicted the probability of receiving a less serious felony conviction from a felony charge are shown in Figure 4.5. As with Model 1, legal variables were the strongest predictors of a charge reduction to a less serious felony conviction. Extralegal factors were also predictive (however, with weak effect) in Model 2, including again both demographic and systemic factors.

Figure 4.5
The Probability of Receiving a Less Serious Felony Conviction

More Likely		Less Likely	
Drug Offenses	26%	Habitual Felon Charge	-50%
Charged Offense Class	16%	Jury Trial	-41%
Active Charge (Classes E-H)	8%	Other Offenses	-16%
Nonwhite	3%	Person Offenses	-11%
		Male	-6%
		Credit for Time Served	-3%
		Age	<-1%

Note: For categorical and dichotomous independent variables, the results are interpreted in relation to the reference category. The reported effects reflect changes to the average probability. Only statistically significant findings are shown.
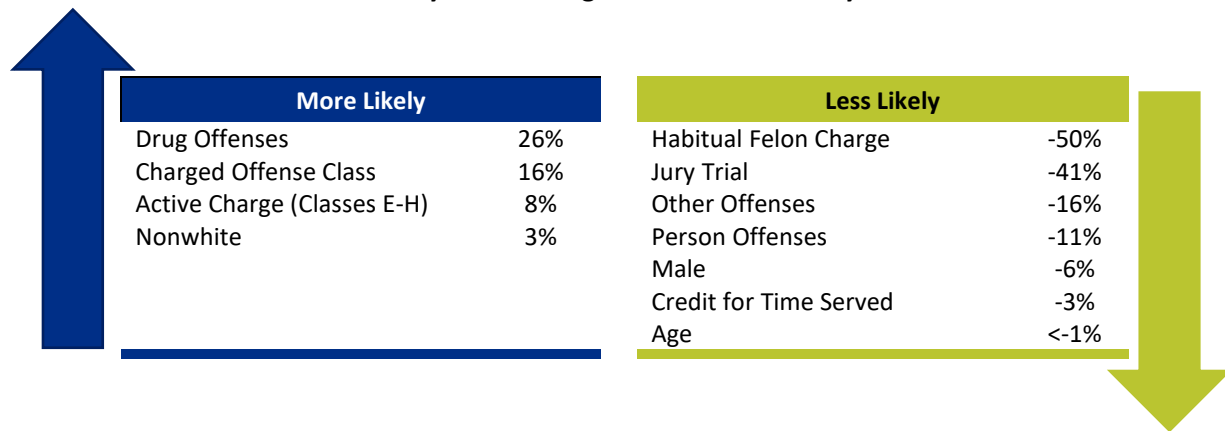SOURCE: NC Sentencing and Policy Advisory Commission, FY 2019 Sentencing Practices Data

Type of offense was among the strongest legal predictors; offenders convicted of drug offenses were more likely (+26%) to receive a felony charge reduction to a less serious felony, while offenders convicted of other and person offenses were less likely (-16% and -11% respectively), compared to those with a property offense. Charged offense class was also predictive of a felony charge being reduced to a less serious felony; the more serious the charged offense class, the more likely an offender was to receive a reduction. Additional charge-related factors were also predictive: offenders charged with a Class E-H felony offense in a felony punishment chart cell that would require a mandatory active sentence if convicted were more likely to receive a felony charge reduction to a less serious felony, while offenders charged as habitual felons were significantly less likely to receive a less serious felony conviction (-50%).

As for extralegal factors, sex (male) and age (older offenders) were predictive of a decreased probability, while race (Nonwhite) was predictive of a slightly increased probability of receiving a charge reduction to a less serious felony conviction. Importantly, these demographic extralegal factors (i.e., race, sex, age) generally had very weak effects. Offenders whose conviction was resolved by jury trial were substantially less likely to have a felony charge reduced to a less serious felony (-41%) compared to those resolved by plea. Offenders with credit for time served had a decreased probability as well, but only by a small percentage (-3%). Notably, none of the district characteristics were significant predictors.

While only findings that were statistically significant have been discussed, it is worth highlighting that, in Model 2, prior record level was *not significant* in predicting the probability of a felony charge reduction to a less serious felony. Criminal history is one of two core components (along with offense class) in sentencing decisions under Structured Sentencing as reflected in the Felony Punishment Chart; this unexpected finding warranted further exploration (*see* below).

Probability of Receiving an Active Punishment

The last discretionary decision examined was the decision to impose an Active punishment (incarceration) when an Active punishment is not mandatory. Model 3 included offenders convicted of a felony offense under Structured Sentencing during FY 2019 who fell into cells of the felony punishment chart where the judge had the option to impose either a probation or prison sentence (n=18,341). One-third (33%) of offenders who were sentenced in these discretionary cells received an active sentence. Figure 4.6 shows the significant factors predictive of whether an Active punishment was imposed.

Figure 4.6
The Probability of Receiving an Active Punishment (Incarceration)

More Likely		Less Likely	
Jury Trial	15%	Retained Attorney	-9%
Prior Record Level	15%	Population Density	-5%
Male	12%	Nonwhite	-4%
Person Offenses	9%	Age	-1%
Convicted Offense Class	8%		
Credit for Time Served	6%		
Charge Reduction	3%		

Note: For categorical and dichotomous independent variables, the results are interpreted in relation to the reference category. The reported effects reflect changes to the average probability. Only statistically significant findings are shown.
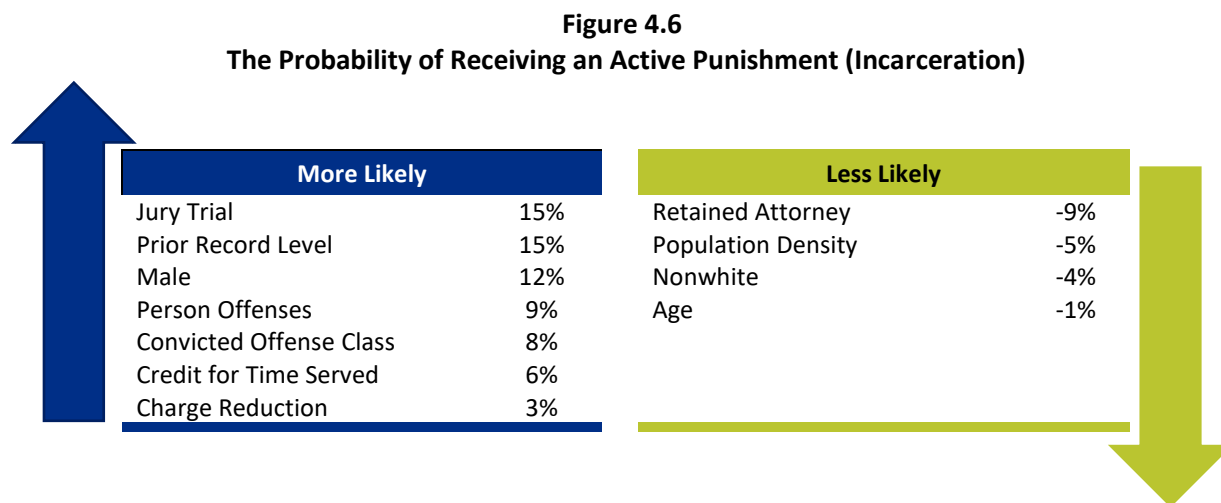SOURCE: NC Sentencing and Policy Advisory Commission, FY 2019 Sentencing Practices Data

As expected, legal factors including criminal history, conviction class, and type of offense were related to whether an offender was sentenced to Active punishment. As offense seriousness increased, the probability of receiving an Active punishment increased (8% for each offense class); similarly, as prior record level increased, the probability also increased (15% per level). Compared to property offenses, offenders convicted of person offenses were more likely to receive an Active punishment. This model also considered the effect of whether or not an offender had a charge reduction; those offenders who had a charge reduction were 3% more likely to receive an Active punishment.

As in the previous models, extralegal factors were also found to be significant. Male offenders were more likely to receive an Active punishment compared to female offenders (12%). Race (Nonwhite) and age (older offenders) were among the weakest predictors (-4% and -1% respectively). Three systemic factors influenced the probability of receiving an active term of imprisonment. Offenders who opted for a jury trial were 15% more likely than those who pled guilty to receive an Active punishment. Offenders

with credit for time served were more likely to receive an Active punishment, while offenders with a privately retained attorney were less likely (-9%).

Only one district characteristic was significant and predictive of receiving an active sentence – population density. Generally, as population density increased, the probability of receiving Active punishment was reduced by 5%.

BOLSTERING FIDELITY IN THE MODELS

Prior to estimating MLM, several tests were conducted to reaffirm the above-described results, some of which differed from results of the 2002 study. These additional examinations sought to understand and explain two unexpected findings: (1) the significant effect of Nonwhite in some of the models and (2) the not statistically significant effect of prior record level in Model 2. These explorations (detailed below) included:

- Testing methodological changes from 2002 to the current study for determining the most serious charged offense class;
- An examination of the effect of criminal history; and
- Testing the strength of legal versus extralegal factors using stepwise modeling.

Methodological Changes

The methodology for determining the offense class for the most serious charge was modified in FY 2019 to preserve additional observations for analysis. The new methodology better identified the class in instances where multiple offense classes are possible for a given offense. Because charge class is a critical variable for the models, it was important to determine whether differences in results were due to this methodological change. As a test, analyses were conducted using the "original" methodology (i.e., the one from the 2002 study). None of the findings changed, suggesting the differences found relative to the 2002 study were not due to this methodological change.

Examination of Criminal History

To test the overall effect of criminal history on discretionary decisions and to test any potential interaction between extralegal factors and criminal history that might be influencing the analysis, additional analyses were conducted that limited models to offenders with no criminal history. All three discretionary decision points were examined for this analysis. With the exception of offense type, most legal variables did not shift in significance when analyses were limited to offenders with no prior criminal history. Notably, however, the effect of race changed from significant to not significant in *both* Model 1 (probability of receiving a misdemeanor conviction from a felony charge) and Model 3 (probability of receiving an Active punishment), which suggests a possible interaction effect between race and prior record level in discretionary charging and sentencing decisions.

Additional MLM analyses were conducted to include an interaction term that tests whether the impact of race had a different effect on discretionary decisions, depending on an offender's criminal history. The results revealed a significant interaction effect between race and criminal history in both Model 1 and Model 3, suggesting that the effect of race on the probability of those discretionary decisions

depends on prior record level. These findings further indicate that examining race alone may not fully capture the impact of this effect given its interaction with criminal history.

Magnitude of Legal and Extralegal Factors

The strength of legal versus extralegal factors was assessed by using stepwise modeling, an iterative model building process. This modeling technique allowed for the examination of the magnitude of legal and extralegal factors in explaining outcomes (i.e., misdemeanor conviction, less serious felony conviction, Active punishment). Across all three discretionary points examined, legal factors remained the most salient factors in explaining outcomes, while extralegal demographic factors and district characteristics provided very little explanatory power in predicting outcomes.

Overall, these stepwise analyses reaffirmed the importance of legal factors in explaining the outcomes over extralegal demographic factors and district characteristics (generally weak in effect).

COMPARISON OF SIGNIFICANT PREDICTORS ACROSS MODELS

Figure 4.7 provides a summary of the results across all three models, grouped by outcome. Statistically significant variables are listed *in order of magnitude* (strongest effect first) indicating whether or not they make a particular outcome more or less likely. Variables that were not significant in the models are listed at the bottom of the figure. Shaded variables indicate those that are either significant or not significant across all models. The summary table indicates the three models had more differences than similarities in terms of significant predictors.

Although there were differences in which legal factors were significant across the models, legal factors were generally the most salient predictors for all outcomes. Notably, offense class (either charge or conviction class) was significant across all three models. Offense type, specifically person offenses, was the only other legal factor that was a significant predictor across all three models. As discussed in the previous section, criminal history was not a consistent predictor across all three models.

Systemic extralegal factors were consistent predictors for all three models. Specifically, credit for time served and jury trial were among the stronger predictors and were associated with an offender receiving the more severe outcome. Certain extralegal demographic factors, age and sex, were significant predictors for the three discretionary decision points examined; however, age was the weakest predictor. Race was a significant predictor in Models 2 and 3, although its predictive effect was very weak.

District characteristics were generally not significant predictors across the models, with two exceptions. Dismissal dispositions by race was predictive of whether an offender was ultimately convicted of a misdemeanor from a felony charge. Population density was predictive of whether an offender received an Active punishment. Both were very weak effects in their respective models.

Figure 4.7
Key Predictors of Discretionary Decision Points: Model Overview

More Favorable			Less Favorable		
Misdemeanor Conviction (*more likely*)	**Less Serious Felony Conviction** (*more likely*)	**Active Punishment** (*less likely*)	**Misdemeanor Conviction** (*less likely*)	**Less Serious Felony Conviction** (*less likely*)	**Active Punishment** (*more likely*)
• Person Offenses • Retained Attorney • Dismissal Dispositions by Race	• Drug Offenses • Charged Offense Class • Active Charge • Nonwhite	• Retained Attorney • Population Density • Nonwhite • Age	• Other Offenses • Credit for Time Served • Jury Trial • Drug Offenses • Charged Offense Class • Male • Priors • Age	• Habitual Felon Charge • Jury Trial • Other Offenses • Person Offenses • Male • Credit for Time Served • Age	• Jury Trial • Prior Record Level • Male • Person Offenses • Convicted Offense Class • Credit for Time Served • Charge Reduction

Not Significant		
Misdemeanor Conviction	**Less Serious Felony Conviction**	**Active Punishment**
• Nonwhite • Population Density • Single County District • Conviction Rate	• Prior Record Level • Retained Attorney • Population Density • Dismissal Dispositions by Race • Single County District • Conviction Rate	• Drug Offenses • Other Offenses • Habitual Felon Charge • Dismissal Dispositions by Race • Single County District • Conviction Rate

Note: Statistically significant variables are listed *in order of magnitude* (strongest effect first). Variables that were not significant in the models are listed at the bottom of the figure. Shaded variables indicate those that are either significant or not statistically significant across all models.
SOURCE: NC Sentencing and Policy Advisory Commission, FY 2019 Sentencing Practices Data

SUMMARY

A number of legal and extralegal factors were shown to be related to an offender's chance of receiving more or less favorable outcomes with regard to felony case processing from charging decisions through the sentencing decision. Throughout the process, legal factors such as offense seriousness and offense type appeared to play a critical role in discretionary decisions that resulted in a more favorable outcome to offenders. Notably, criminal history had bearing on only two of three discretionary decisions, perhaps warranting further investigation (discussed further in the next chapter).

It may seem obvious that legal factors such as offense seriousness and criminal history are given special consideration by judges and prosecutors in their decision-making processes, especially when considering the sentencing system in North Carolina utilizes a punishment chart based on those two factors. Less obvious and of potential concern is the role of extralegal factors, both demographic (age, sex) and systemic (jury trial, credit for time served). In addition, the Superior Court district in which an offender is convicted and sentenced does appear to have a small, but weak, effect on the outcomes examined.

Ultimately, the analyses confirm that legally relevant factors are the most important factors considered by judges and prosecutors in making discretionary decisions. However, what may warrant further investigation is the apparent influence of certain extralegal factors.

CHAPTER FIVE
SUMMARY AND CONCLUSIONS

North Carolina's Structured Sentencing Act is based on a set of principles that aim to achieve truth, certainty, and consistency in sentencing. This study set out to determine if sentencing practices are achieving the stated goals, particularly regarding consistency: are offenders with similar offenses and similar criminal histories receiving similar punishments across the State? This report explored the exercise of discretion in processing felony cases in North Carolina's criminal justice system with a focus on discretionary decisions in sentencing and any possible disparities.

As a first step, and for context, relevant academic literature and publications from other jurisdictions were reviewed. The body of research into sentencing decisions that focused on identifying possible disparities revealed the complexity of research in this arena. Of particular note, across and within academic work and government publications, there was no consistent definition of "disparity." Additionally, findings were mixed: some studies found disparity based on extralegal factors, others found no evidence of disparity, and still others drew no conclusion. Many studies pointed to earlier stage criminal justice system decisions as equally pertinent to the question of disparity in the criminal justice system, likely influencing later stage decisions (such as conviction and sentencing), but added that they are generally understudied due to a lack of empirical data. The collective work shows a persistent interest in determining whether justice, in terms of sentencing, is being meted out fairly and consistently, with the acknowledgment that only partial understanding may be possible due to the effects of discretionary decision-making at earlier stages.

Following the review of existing research, the study next attempted to understand the decision points from charging to conviction and sentencing using aggregate statistical data from FY 2019. Some basic descriptive statistics serve as markers to substantiate the discretionary nature of the process: 98% of all felony convictions were the result of a guilty plea; 53% of convictions originally charged as felonies received a reduction in charges (either to a misdemeanor or to a less serious felony); 67% of felony convictions where both incarceration and probation were authorized by the punishment chart received probation. These statistics were also explored by sex and race, with differences noted in distributions and outcomes. These served as a starting point for further investigation.

The study then aimed to identify some of the legal and extralegal criteria considered in reaching case-based discretionary decisions. Multivariate statistical techniques allowed for measuring the impact of various factors such as offender race or criminal history on case outcomes, independent of all the other factors for which data were available. Additional testing to bolster the findings from the multivariate analysis was conducted, which reaffirmed the results but suggested some possible avenues for future research.

LEGAL AND EXTRALEGAL FACTORS AFFECTING THE PROCESS

In this outcome-oriented framework, the study identified one set of recurring factors that seemed to impact discretionary decision-making. Primarily, this set of factors was comprised of the most salient

legal factors: offense seriousness and type and, in two of three discretionary decisions, criminal history. Generally, as offense seriousness increased and also as criminal history increased, the likelihood of an offender benefitting from a discretionary decision decreased. However, as noted throughout the analysis, criminal history had no bearing on the decision to reduce a felony charge to a less serious felony conviction.

Another set of factors, systemic, also had clear implications for outcomes. Offenders who were convicted as a result of a jury trial were found to receive a less favorable outcome. The same held true for offenders with credit for time served. In some cases, offenders with a privately retained attorney (compared to a court-appointed attorney) had an increased probability of receiving a more favorable outcome, specifically for the decision to reduce a felony charge to a misdemeanor conviction as well as for the decision to impose a non-active punishment.

Importantly for this study, MLM allowed for greater discernment of an important factor in understanding consistency in sentencing outcomes: location. The relationship between the district and case outcomes was significant, but weak in effect. Characteristics of each superior court district were captured to the extent possible through available data (e.g., population density, conviction rate, dismissal dispositions). These district characteristics were found to be not significant or very weak predictors; however, it is possible that other district factors not included may have an influence on decision-making. It stands to reason that some variation across the State in sentencing practices would be expected as prosecutors and judges are locally elected officials, responding to local norms, perceptions, and expectations about crime and punishment.

Finally, and independent of all the legally relevant and systemic factors, outcomes were also impacted by offender demographics, such as sex and, to a lesser degree, age and race (although not across all outcomes). This finding was especially significant in relation to sex: while controlling for offense seriousness, prior record, and other factors, females were still treated much more leniently than their male counterparts. While the courts might have reasons for this difference, such as the presence of young dependent children, the degree of difference might raise some concern.

As noted previously, Nonwhite individuals in North Carolina and elsewhere are overrepresented in the population of convicted offenders and prison inmates compared to their proportion in the general population. In this study, while weak in effect, race was found to be significant in predicting two of three discretionary decisions with Nonwhite individuals slightly more likely to receive a more favorable outcome (either reduction of felony charge to a less serious felony and imposition of an Active punishment). Further investigation of criminal history revealed a possible interaction between race and prior record; when removing offenders with any criminal history from consideration, race was no longer a significant predictor. These findings, taken together, may warrant more examination into whether: (1) criminal history affects certain groups more than others; and/or (2) the interpretation of the importance of criminal history or its calculation has changed over time.

As a final observation on the factors correlated with case processing, it should be noted that many of the effects of these factors are conditional on one another and cumulative. For example, a female offender, on average, will have a greater chance to receive a charge reduction than a male offender and, in addition, will have a more favorable disposition within that reduced offense class than male offenders sentenced in the same class. However, the full impact of these factors on sentencing outcomes, such as a charge reduction, could be moderated by other factors. Incorporating statistical techniques, such as interaction effects, could provide additional insights, for example, by exploring the combined effect of

sex and race, as well as examining how extralegal factors may be moderated by legal factors (e.g., offense type and criminal history).

DIFFERENCES FROM THE 2002 STUDY FINDINGS

The inclusion of new data and the utilization of enhanced statistical techniques make direct comparisons to the 2002 study more difficult. The criminal justice system has also changed in a number of ways since the publication of the 2002 study.[36] However, it is still important to compare and consider areas of similar and divergent findings between the previous and the current study. This exercise can affirm current practices where punishment is administered consistently and help identify areas where attention and improvement are needed (or both).

Both studies confirm the importance and predictive value of legally relevant factors in discretionary decision-making. Charge and conviction class remained salient predictors across all decision points in both the 2002 and the current study. Extralegal demographic factors (sex, age) were also found to influence the probability of receiving certain outcomes in the same direction with similar magnitudes. Although weak in effect, both studies found that as age increased, the probability of getting a reduction from a felony charge to a less serious felony conviction or to a misdemeanor decreased, while the probability of receiving a non-active punishment increased. Sex remained a stronger predictor, with males much less likely to receive a favorable outcome across all decision points in both studies. Findings in both studies also indicated the varying effect of district on outcomes. Lastly, one extralegal systemic factor, method of disposition, had a strong effect. Offenders who were convicted by jury trial were much less likely to receive a favorable outcome compared to those who pled guilty.

There were several notable points of divergence from the 2002 study. While legal factors remained salient predictors, findings related to offense type and prior record level experienced shifts. In 2002, drug offenses (compared to property offenses) were less likely to be reduced from a felony charge to a less serious felony or a misdemeanor (i.e., less favorable charge outcome); in the current study drug offenses were more likely to be reduced to a less serious felony (more favorable outcome). Similarly, person offenses were previously associated with a decreased likelihood of a charge reduction, but in the current study, they were associated with an increased likelihood in a reduction from a felony charge to a misdemeanor conviction. In comparison with 2002, a diminished predictive value (i.e., weaker effect) was found for criminal history, as well as a lack of significance in one of the three discretionary decisions examined.

Findings related to extralegal factors (both demographic and systemic) also diverged in a few ways. While race was found to be not significant across all discretionary decision points in 2002, it was found to be significant (although with weak effects) in two of the three discretionary decisions in this study. Nonwhite offenders had a slightly increased likelihood of receiving a more favorable outcome (felony charge reduction to a less serious felony and non-active punishment) compared to White offenders. Offenders with a privately retained attorney were found to have an increased likelihood of favorable outcomes at all three decision points (compared to those with a court-appointed attorney), while this

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[36] Among others, changes include modifications to the felony punishment chart in 2009 (adjustment of prior record level point ranges and proportionate increases in sentence lengths between prior record levels), The Justice Reinvestment Act of 2011 which changed certain offenses as well as court and correctional processes, and more generally, adjustments by the General Assembly to criminal offenses, including adding new criminal offenses, reclassification of existing offenses, and changes in punishment.

was true in just two of the three outcomes in the current study. Lastly, district characteristics (e.g., population density) were not consistently found to have an effect on outcomes in the current study, while they demonstrated more predictive effect in the previous study.

These differences could be due to uniquities occurring in either or both years examined, could be an indication that factors bearing on discretionary decision-making in case processing may have changed over time, or could be due to external factors. These differences could also be reflective of changes in criminal justice patterns or priorities. Without regular and further study, it is difficult to determine incremental versus sudden change and what may reflect aberrations versus new patterns. More regular study of these issues would shed greater light on these questions.

SUMMARY

As reported by this study, a large volume of felony cases is being moved through North Carolina's Superior Courts, with the majority being disposed primarily based on legally relevant factors. Findings suggest that practices are generally in line with at least one of the goals of Structured Sentencing explored in this study (consistency). Overall, similar offenders are receiving similar outcomes, per the felony punishment chart, which prescribes sentence options based on offense seriousness and criminal history. The research also observed certain extralegal factors that may lead to differential treatment of similarly situated offenders; those should form the starting point for further research and continued public discourse. Notably, these findings do not rule out nor point to the possibility of disparate decisions at earlier steps of the process, which were not examined in this study.

The North Carolina Sentencing and Policy Advisory Commission's Sentencing Practices Study is only the second examination into these issues. The Commission looks forward to further investigating any of the findings reported here, should they implicate any needed policy changes in order to advance the goals of Structured Sentencing.

APPENDIX A

REFERENCES FOR ACADEMIC LITERATURE

LIST OF REFERENCES

Albonetti, Celesta A. 1991. "An integration of Theories to Explain Judicial Discretion." *Social Problems* 38(2): 247-266.

Albonetti, Celesta A. 2002. "The Joint Conditioning Effect of Defendant's Gender and Ethnicity on Length of Imprisonment Under the Federal Sentencing Guidelines for Drug Trafficking and Manufacturing." *Journal of Gender, Race, and Justice* 39: 40-60.

Baumer, Eric P. 2013. "Reassessing and Redirecting Research on Race and Sentencing." *Justice Quarterly* 30(2): 231-261.

Blackwell, Brenda Sims, David Holleran, and Mary A. Finn. 2008. "The Impact of the Pennsylvania Sentencing Guidelines on Sex Differences in Sentencing." *Journal of Contemporary Criminal Justice* 24(4): 399-418.

Blumstein, Alfred. 1982. "On the Racial Disproportionality of United States' Prison Populations." *The Journal of Criminal Law and Criminology* 73(3): 1259-1281.

Blumstein, Alfred, Jacqueline Cohen, Susan Ehrlich Martin, and Michael H. Tonry (Eds.). 1983. *Research on Sentencing: The Search for Reform* (Vol. 1). Washington, DC: National Academy Press.

Brennan, Pauline K., and Cassia Spohn. 2008. "Race/Ethnicity and Sentencing Outcomes Among Drug Offenders in North Carolina." *Journal of Contemporary Criminal Justice* 24: 371-398.

Clair, Matthew, and Alix S. Winter. 2016. "How Judges Think About Racial Disparities: Situational Decision-Making in the Criminal Justice System." *Criminology* 54(2):332-359.

Crawford, Charles. 2000. "Gender, race, and habitual offender sentencing in Florida." Criminology 38(1): 263-280.

Crow, Matthew S., and Julie C. Kunselman. 2009. "Sentencing Female Drug Offenders: Reexamining Racial and Ethnic Disparities." *Women & Criminal Justice* 19(3): 191-216.

Crutchfield, Robert D., April Fernandes, and Jorge Martinez. 2010. "Racial and Ethnic Disparity and Criminal Justice: How Much is Too Much?" *The Journal of Criminal Law and Criminology* 100(3): 903-932.

Doerner, Jill K., and Stephen Demuth. 2010. "The Independent and Joint Effects of Race/Ethnicity, Gender, and Age on Sentencing Outcomes in US Federal Courts." *Justice Quarterly* 27(1): 1-27.

Doerner, Jill K. and Stephen Demuth. 2012. "Gender and Sentencing in the Federal Courts: Are Women Treated More Leniently?" *Criminal Justice Policy Review* 25(2): 242-269.

Engen, Rodney L., Randy R. Gainey, Robert D. Crutchfield, and Joseph G. Weis. 2003 "Discretion and Disparity under Sentencing Guidelines: The Role of Departures and Structured Sentencing Alternatives." *Criminology* 41(1): 99-130.

Engen, Rodney L., and Sara Steen. 2000. "The Power to Punish: Discretion and Sentencing Reform in the War on Drugs." *American Journal of Sociology* 105(5): 1357-1395

Feldmeyer, Ben, Patrick Y. Warren, Sonja E. Siennick, and Malisa Neptune. 2015. "Racial, Ethnic, and Immigrant Threat: Is There a New Criminal Threat on State Sentencing?" *Journal of Research in Crime and Delinquency* 52(1); 62-92.

Franklin, Travis W., and Tri Keah S. Henry. 2019. "Racial Disparities in Federal Sentencing Outcomes: Clarifying the Role of Criminal History." *Crime & Delinquency* 66(1): 3-32.

Frenzel, Erika Davis, and Jeremy D. Ball. 2008. "Effects of Individual Characteristics on Plea Negotiations under Sentencing Guidelines." *Journal of Ethnicity in Criminal Justice* 5(4): 59-82.

Griffin, Timothy, and John Wooldredge. 2006. "Sex-Based Disparities in Felony Dispositions Before Versus After Sentencing Reform in Ohio." *Criminology* 44(4): 893-923.

Hagan, John. 1974. "Extra-Legal Attributes and Criminal Sentencing: An Assessment of a Sociological Viewpoint." *Law & Society Review* 8(3): 357-384.

Hartley, Richard D., and Rob Tillyer. 2018. "Examining Prosecutorial Discretion in Federal Criminal cases: Legal and Extra-Legal Determinants of Declination and Charge Change Decisions." *Justice Quarterly* 35(7): 1195-1225.

Hester, Rhys and Todd K. Hartman. 2017. "Conditional Race Disparities in Criminal Sentencing: A Test of the Liberation Hypothesis from a Non-Guideline State." *Journal of Quantitative Criminology* 33(1): 77-100.

Johnson, Brian D. 2005. "Contextual Disparities in Guidelines Departures: Courtroom Social Contexts, Guideline Compliance, and Extralegal Disparities in Criminal Sentencing." *Criminology* 43(3): 761-796.

Jordan, Kareem L., and Rachel Bowman. 2022. "Interacting Race/Ethnicity and Legal Factors on Sentencing Decisions: A Test of the Liberation Hypothesis." *Corrections: Policy, Practice and Research* 7(2): 87-106.

Kautt, Paula M. 2002. "Location, Location, Location: Interdistrict and Intercircuit Variation in Sentencing Outcomes for Federal Drug-Trafficking Offenses." *Justice Quarterly* 19(4): 633-671.

Kramer, John H. and Jeffrey T. Ulmer. 2009. *Sentencing Guidelines: Lesson from Pennsylvania.* Boulder, CO: Lynne Reinner Publishers.

Kruttschnitt, Candace. 1996. "Contributions of Quantitative Methods to the Study of Gender and Crime, or Bootstrapping Our Way Into the Theoretical Thicket." *Journal of Quantitative Criminology* 12(2): 135-161.

Kutateladze, Besiki, Vanessa Lynn, and Edward Liang. 2012. "Do Race and Ethnicity Matter in Prosecution? A Review of Empirical Studies?" *Vera Institute of Justice*.

Metcalfe, Christi, and Ted Chiricos. 2018. "Race, Plea, and Charge Reduction: An Assessment of Racial Disparities in the Plea Process." *Justice Quarterly* 35(2): 223-253.

Mitchell, Ojmarrh. 2018. "The Continuing Evolution of Race and Sentencing Research and Reviews of This Research." *Journal of Criminal Justice* 59: 29-31.

Mitchell, Ojmarrh. 2005. "A Meta-Analysis of Race and Sentencing Research: Explaining the Inconsistencies." *Journal of Quantitative Criminology* 21(4): 439-466.

Nowacki, Jeffrey S. 2017. "An Intersectional Approach to Race/Ethnicity, Sex, and Age Disparity in Federal Sentencing Outcomes: An Examination of Policy Across Time Periods." *Criminology & Criminal Justice* 17(1): 97-116.

Shermer, Lauren O'Neill, and Brian D. Johnson. 2010. "Criminal Prosecutions: Examining Prosecutorial Discretion and Charge Reductions in US Federal District Courts." *Justice Quarterly* 27(3): 394-430.

Spohn, Cassia. 2013. "The Effects of the Offender's Race, Ethnicity, and Sex on Federal Sentencing Outcomes in the Guidelines Era." *Law and Contemporary Problems* 76(1): 75-104.

Spohn, Cassia, and Pauline K. Brennan. 2011. "The Joint Effects of Offender Race/Ethnicity and Gender on Substantial Assistance Departures in Federal Courts." *Race and Justice* 1: 49-78.

Spohn, Cassia, and Robert Fornango. 2009. "US Attorneys and Substantial Assistance Departures: Testing for Interprosecutor Disparity." *Criminology* 47(3): 813-846.

Spohn, Cassia, and David Holleran. 2000. "The Imprisonment Penalty Paid by Young, Unemployed Black and Hispanic Male Offenders." *Criminology* 38(1): 281-306.

Starr, Sonja B., and M. Marit Rehavi. 2013 "Mandatory Sentencing and Racial Disparity: Assessing the Role of Prosecutors and the Effects of Booker." Yale LJ 123:2-81.

Steffensmeier, Darrel, and Stephen Demuth. 2000. "Ethnicity and Sentencing Outcomes in US Federal Courts: Who is Punished More Harshly?" *American Sociological Review* 65:705-729.

Steffensmeier, Darrell, and Stephen Demuth. 2006. "Does Gender Modify the Effects of Race–Ethnicity on Criminal Sanctioning? Sentences for Male and Female White, Black, and Hispanic defendants." *Journal of Quantitative Criminology* 22(3): 241-261.

Steffensmeier, Darrell, John Kramer, and Cathy Streifel. 1993. "Gender and Imprisonment Decisions." *Criminology* 31(3): 411-446.

Steffensmeier, Darrell, Jeffery Ulmer, and John Kramer. 1998. "The Interaction of Race, Gender, and Age in Criminal Sentencing: The Punishment Cost of being Young, Black, and Male." *Criminology* 36(4): 763-798.

Raudenbush, Stephen W., and Anthony S. Bryk. 2002. *Hierarchical Linear Models: Applications And Data Analysis Methods* (Vol. 1). Thousand Oaks, CA: Sage Publications, Inc.

Ulmer, Jeffery T. 2012. "Recent Developments and New Directions in Sentencing Research." *Justice Quarterly* 29(1):1–40.

Ulmer, Jeffery T., and Mindy S. Bradley. 2006. "Variation in Trial Penalties among Serious Violent Offenses." *Criminology* 44(3): 631-670.

Ulmer, Jeffery T., and Brian Johnson. 2004. "Sentencing in Context: A Multilevel Analysis." *Criminology* 42(1): 137-178.

Ulmer, Jeffrey T. 2005. "The Localized Uses of Federal Sentencing Guidelines in Four U.S. District Courts. Evidence of Processual Order." *Symbolic Interaction* 28(2) 255-279.

Ulmer, Jeffery T., Megan C. Kurlychek, and John H. Kramer. 2007. "Prosecutorial Discretion and the Imposition of Mandatory Minimum Sentences." Journal of Research in Crime and Delinquency 44(4): 427-458.

Weidner, Robert R., and Richard S. Frase. 2003. "Legal And Extralegal Determinants of Intercounty Differences in Prison Use." *Criminal Justice Policy Review* 14(3): 377-400.

Wooldredge, John. 2009. "Short-Term Versus Long-Term Effects of Ohio's Switch to More Structured Sentencing on Extralegal Disparities in Prison Sentences in an Urban Court." *Criminology & Public Policy* 8: 285-312.

APPENDIX B

STUDIES BY GOVERNMENT ENTITIES

Table B.1
Variables for Government Reports

Variable Name	Description
Report Title	title used as a unique identifier in the data set
State	the state publishing the report
Topic of Report	stops
	pre-sentence
	sentencing
	capital punishment
	multiple points in the criminal justice process
	other (i.e., those not falling into another enumerated topic category)
	juvenile justice
	juvenile justice – disproportionate minority contact (DMC)
Report Date	publication date of report
Guideline State	indicates if the state follows a guideline sentencing system[37]
Geographic Region	assigned each state to the Northeast, Midwest, South, or West[38]
Legally Mandated	if the publication of the report was legally mandated by a government entity
Mandate Entity	if mandated, the government entity mandating the publication of the report (i.e., federal, state legislature, state executive, state judicial, or other)
Mandate Frequency	if mandated, how often the report was required to be published (i.e., once, annual, bi-annual, unknown, other)
Level Government	the level of government who published the report (i.e., federal, state legislature, state executive, state judicial, state independent commission, county, municipality, or other)
Methodologies	the research methodologies used within the report

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[37] Guideline states identified using the Sentencing Guidelines Resource Center from the University of Minnesota's Robina Institute of Criminal Law and Criminal Justice; https://sentencing.umn.edu/ .

[38] Geographic regions adopted from the United States Census Bureau's published, *2010 Census Regions and Divisions of the United States*; https://www.census.gov/geographies/reference-maps/2010/geo/2010-census-regions-and-divisions-of-the-united-states.html.

Table B.2
Guideline vs. Non-guideline States for Government Reports

Guideline States	Arkansas, Delaware, Kansas, Massachusetts, Maryland, Michigan, Minnesota, Ohio, Oregon, Pennsylvania, Tennessee, Utah, Virginia, Washington, and the Federal Government
Non-guideline States	Alaska, California, Colorado, Connecticut, Hawaii, Illinois, Indiana, Iowa, Kentucky, Maine, Mississippi, Missouri, Montana, Nebraska, New Jersey, New Mexico, New York, North Dakota, Rhode Island, Vermont, West Virginia, and Wisconsin

APPENDIX C

MULTI-LEVEL ANALYSIS PROFILES BY SEX AND RACE

Table C.1
Reduction from a Felony Charge to a Misdemeanor Conviction
Profile by Sex and Race

		Sex		Race	
	Total	**Female**	**Male**	**White**	**Nonwhite**
	N=44,906	n= 9,892	n=35,014	n= 22,806	n=22,100
	%	%	%	%	%
Individual-Level Characteristics					
Legal Factors					
Charge Class					
Class A Felony	1	<1	1	<1	1
Class B1 Felony	1	<1	1	1	1
Class B2 Felony	<1	<1	<1	<1	<1
Class C Felony	4	3	5	4	5
Class D Felony	5	3	5	3	7
Class E Felony	4	3	5	3	5
Class F Felony	7	6	7	7	7
Class G Felony	9	6	10	7	11
Class H Felony	44	49	42	46	42
Class I Felony	25	30	24	29	21
Offense Type					
Person	15	8	17	12	19
Property	39	49	37	42	36
Drug (Non-Trafficking)	33	37	32	36	30
Other	13	6	14	10	15
One or More Prior Convictions	80	73	82	81	79
Extralegal Factors					
Demographic					
Sex					
Female	22	n/a	n/a	29	15
Male	78	n/a	n/a	71	85
Race					
White	51	66	46	n/a	n/a
Nonwhite	49	34	54	n/a	n/a
Systemic					
Retained Attorney	18	14	19	17	19
Jury Trial	1	1	1	1	1
Credit for Time Served	74	69	76	75	74
Reduction from a Felony Charge to a Misdemeanor Conviction	**38**	**48**	**35**	**38**	**38**

SOURCE: NC Sentencing and Policy Advisory Commission, FY 2019 Sentencing Practices Data

Table C.2
Reduction from a Felony Charge to a Less Serious Felony Conviction
Profile by Sex and Race

		Sex		Race	
	Total	**Female**	**Male**	**White**	**Nonwhite**
	N=22,864	n= 3,821	n=19,043	n= 10,883	n=11,981
	%	%	%	%	%
Individual-Level Characteristics					
Legal Factors					
Charge Class					
Class A Felony	1	1	1	1	2
Class B1 Felony	2	<1	2	2	2
Class B2 Felony	1	1	1	1	1
Class C Felony	8	7	8	7	8
Class D Felony	8	5	9	5	11
Class E Felony	6	5	7	5	7
Class F Felony	9	8	9	10	8
Class G Felony	16	13	17	13	19
Class H Felony	49	60	46	56	42
Offense Type					
Person	21	12	23	16	25
Property	37	50	34	44	30
Drug (Non-Trafficking)	22	29	20	22	22
Other	20	9	23	18	23
Prior Record Level					
Level I	26	36	23	25	26
Level II	27	32	27	29	26
Level III	20	17	20	20	19
Level IV	12	8	13	12	12
Level V	7	3	8	7	8
Level VI	8	4	9	7	9
Habitual Felon Charge	5	2	5	4	5
Active Charge (Classes E-H)	12	5	13	10	13
Extralegal Factors					
Demographic					
Sex					
Female	17	n/a	n/a	24	11
Male	83	n/a	n/a	76	89
Race					
White	48	67	44	n/a	n/a
Nonwhite	52	33	56	n/a	n/a
Systemic					
Retained Attorney	17	14	17	16	18
Jury Trial	2	1	2	2	2
Credit for Time Served	83	79	84	84	83
Reduction from a Felony Charge to a Less Serious Felony Conviction	**29**	**31**	**29**	**25**	**33**

SOURCE: NC Sentencing and Policy Advisory Commission, FY 2019 Sentencing Practices Data

Table C.3
Imposition of an Active Sentence
Profile by Sex and Race

		Sex		Race	
	Total N=18,341 %	**Female** n= 3,328 %	**Male** n=15,013 %	**White** n= 9,183 %	**Nonwhite** n=9,158 %
Individual-Level Characteristics					
Legal Factors					
Charge Class					
Class E Felony	6	5	6	4	8
Class F Felony	9	9	10	11	8
Class G Felony	17	13	18	12	21
Class H Felony	58	66	56	63	53
Class I Felony	10	7	10	10	10
Offense Type					
Person	14	9	15	12	17
Property	41	51	38	46	35
Drug (Non-Trafficking)	25	29	25	26	25
Other	20	11	22	16	23
Prior Record Level					
Level I	26	34	24	25	27
Level II	29	32	29	30	28
Level III	20	17	20	20	19
Level IV	15	11	16	15	15
Level V	7	4	8	7	7
Level VI	3	2	3	3	4
Habitual Felon Charge	1	<1	1	1	1
Charge Reduction	23	22	24	19	28
Extralegal Factors					
Demographic					
Sex					
Female	18	n/a	n/a	25	12
Male	82	n/a	n/a	75	88
Race					
White	50	68	46	n/a	n/a
Nonwhite	50	32	54	n/a	n/a
Systemic					
Retained Attorney	17	14	18	16	18
Jury Trial	1	1	1	1	1
Credit for Time Served	83	79	84	83	83
Imposition of an Active Sentence in a Discretionary Cell	**33**	**20**	**36**	**32**	**34**

SOURCE: NC Sentencing and Policy Advisory Commission, FY 2019 Sentencing Practices Data