

Looking Beyond the Sentence

Research Summary

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Racial disparities in the criminal legal system have a profound and far-reaching impact on individuals, families, communities, and the economy (Couloute and Kopf 2018). Research has found that all these outcomes disproportionately impact nonwhite people (Bushway 1996; Dietrich 2002; Fellner and Mauer, 1998; HHS 2000; Holzer, Raphael, and Stoll 2001; Pager 2003; Uggen and Manza 2002; Wheelock 2005). Pressure to examine and revise policies to reduce racial disparities in the criminal legal system has risen in recent years; these priorities are not new, however, nor are they easily achieved.

Identifying and reducing racial disparities at all points in the criminal legal system is crucial because of the devastating consequences system involvement can have on individuals, families, and communities. Most studies exploring these disparities are siloed from each other and limited to a single outcome measure, comparison group, and/or comparison time point, meaning policymakers have to rely on incomplete information when making decisions. This is especially true for federal decisionmakers, who are impacted by mandates made in multiple agencies. Federal sentencing decisionmakers specifically are impacted by US attorney general directives, legislation, Supreme Court rulings, and amendments to the US federal sentencing guidelines. These policies affect several decisionmakers at different stages in the federal sentencing process (e.g., attorneys' application of mandatory minimum statutes, federal probation officers' determination of final offense level, federal judges' sentence decisions).

With funding from National Institute of Justice, we [measured racial disparities across stages](#) in the federal sentencing process [for multiple racial groups, detecting when statistically significant changes occurred](#) in measured racial disparities between fiscal years 1999 and 2021, [and identified which policies \(e.g., legislation, US attorney general directives, Supreme Court rulings, amendments to US federal sentencing guidelines\) likely impacted significant decreases most](#). Here, we summarize the purpose, methods, results, and conclusions from [Looking Beyond the Sentence: Examining Policy Impacts on Racial Disparities in Federal Sentencing across Stages and Groups and over Time](#).

METHODS

We used publicly available federal sentencing data for FY1999 through FY2021, which consisted of 1,623,744 cases, and used exact matching to match cases on age group, sex, primary sentencing guideline, district of sentencing, fiscal year, education status, whether the person is of Hispanic origin, US citizenship status, and whether the case was resolved through a trial or guilty plea. We used ordinary least squares and logistic regressions to measure racial disparities for six elements across three key stages in federal sentencing: (1) the charge stage, represented by mandatory-minimum eligibility and statutory maximum eligible sentence; (2) the computation stage, represented by the final offense level and total criminal history points; and (3) the sentence stage, represented by total sentence length and the number of months sentenced below the maximum of the guideline range (table 1).

TABLE 1

Federal Sentencing Stages and Elements*Six elements used for racial disparities and policy analyses*

Stages and elements	Element definitions
Charge stage	
Mandatory-minimum eligibility	Charged and convicted or not under a statute carrying a mandatory minimum penalty
Statutory maximum eligible sentence	Statutory maximum (in months) given all charged and convicted concurrent and consecutive maximum imprisonment months
Computation stage	
Final offense level	The final offense level resulting from all Chapter 2, Chapter 3, and Chapter 4 computations
Total criminal history points	The total number of criminal history points
Sentence stage	
Total sentence length	Total length of imprisonment including prison, alternatives of confinement, time served, and undischarged terms of imprisonment via §5G1.3 (rounded to the nearest month)
Months below guideline range maximum	The difference between the maximum possible months recommended in the guideline range and the actual total sentence

Source: Urban research team.

We measured the disparities between the matched white and nonwhite groups for each element and fiscal year. To examine whether those differences are consistent between groups and over time, we changed the reference group (i.e., white) to Black, American Indian/Alaska Native, and Asian/Pacific Islander. To examine whether the measured changes varied by offense type, we compared the measured differences between the white and nonwhite groups for the four most common guidelines in Chapter 2 of the US sentencing guidelines (§2D1.1, §2L1.2, §2B1.1, and §2K2.1).

We conducted a structural break analysis to detect statistically significant changes in the disparities over time (i.e., breakpoints). We focused solely on the breakpoints when disparities decreased to determine which federal policies may have driven those significant decreases in measured racial disparities. Because some subgroup analyses contained small sample sizes and large standard errors, we planned to use only the dates from the white/nonwhite comparisons. But because of the extreme differences found in the Black/non-Black subgroup analyses, we included the breakpoints for those in the policy review (table 2). Using the identified breakpoints, **we conducted a comprehensive search of all legislation, Supreme Court rulings, amendments to the US sentencing guidelines, and US attorney general directives** enacted during the breakpoints and up to two years before to identify which policies may have contributed to the identified decreases in racial disparities.

TABLE 2

Fiscal Year Breakpoints Depicting Significant Decreases in Racial Disparities*White/nonwhite and Black/non-Black disparities, by sentencing element used for policy review*

Sentencing element	White/nonwhite disparities	Black/non-Black disparities
Mandatory minimum eligibility	FY2005	FY2005, FY2017
Statutory maximum sentence	FY2004	FY2003, FY2011, FY2015
Final offense level	FY2014	FY2002, FY2005, FY2012
Total criminal history points	FY2008, FY2017	FY2011, FY2017
Total sentence length		FY2013
Months below guideline range maximum	FY2014	FY2014

Source: Authors' analysis of US Sentencing Commission individual sentencing data, FY1999 through FY2021.

RESULTS

The size and trends of the measured racial disparities differed for each stage in the federal sentencing process. Still, the **largest disparities and differences between groups were in the charge stage**. Conversely, **total sentence length consistently had the lowest measured disparities over time and the smallest differences between groups**. This is important because the sentence is the element used most often in racial disparity studies. Although critical to understand, conclusions drawn about the size and nature of racial disparities in federal sentencing have likely been understated because sentence length and type have been the sole focus of such studies.

The size, direction, and trends of disparities differed greatly between racial groups, indicating that people's experiences throughout the federal sentencing process differ. Furthermore, the breakpoints showed that policies impact people from each group differently. On the one hand, **the racial disparities differed by the primary sentencing guideline under which people were sentenced**. Many policies target specific offenses and thus can impact racial disparities for those offenses individually. On the other hand, **the data also demonstrated many similarities between the primary sentencing guidelines** (e.g., between §2D1.1 and §2K2.1). Although policies may be intended for specific offenses, they may impact others.

Policies impact groups differently, reach across stages in the federal sentencing process, and impact multiple system actors. Most notably, after each US attorney general issued a directive, a breakpoint occurred. **Also, some policies we identified were enacted years before the effect was registered**. In the interim, additional policies were enacted to clarify confusing language and operationalize the original policies, and likely combined to produce the registered effect.

In the later years (FY2016 and later), the disparities flipped as those who had typically received advantages began receiving disadvantages, although no breakpoint occurred. Contentious presidential elections, increased conversations and awareness about racial injustices, the later outbreak of COVID-19, and other significant national political, social, or cultural events in the past five years could explain that flip and other changes we identified in disparities over time. Moreover, several retroactive policies were enacted over the 22 years we examined that could have impacted racial disparities. Without data for before and after those retroactive policies took effect, their true impact cannot be known.

RECOMMENDATIONS

Racial disparities are a multilayered and multifaceted issue that no one investigation or policy will solve. It is critical to examine all data from multiple perspectives. Given the results of this study, we recommend the following:

- Consider the entire federal sentencing process together when investigating disparities.

- Measure and account for disparities among all demographic groups, in addition to those between white and nonwhite or white and Black people, to understand the broad range of experiences of all people in the sentencing process.
- Extend impact analyses beyond the apparently relevant policies, offense types, and groups to fully understand the breadth and depth of policy impacts.
- Conduct further research into the effects the US attorney general and US attorneys have on racial disparities throughout the sentencing process.
- Include clear statements in laws, directives, rulings, and amendments that are operational from the outset and require minimal clarification or subjective interpretation.
- Conduct further inquiry into the impact of retroactive policies and social factors on disparities, and additional examination of the aforementioned flip in a few years to understand the long-term change and its contributing factors.

It is essential to remember that people pass policies, implement them, and, most importantly, are punished based on them. Consistent examination and thoughtful approaches are needed to combat disparities for all people.

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