

## RACE, SEX, AND PRISON SENTENCE DISPARITY

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**INTRODUCTION** Sentencing constitutes a critical stage in criminal justice administration in the United States. Among the crucial problems is sentence disparity, defined as the imposition of substantially different sentences for the same or similar offenses without apparent legal justification. Sentencing disparity cannot be explained by legal factors in sentencing, and is influenced by extra-legal factors such as the race or sex of the offender (Council of Judges 1974).

Conflict theorists suggest that disparities arise from a host of extra-legal factors which discriminate against the less powerful groups in society (Quinney 1969, 1970; Chambliss & Seidman 1971). Most conflict theorists emphasize the effect of the offender's race on decisions in the criminal justice process, and some recognize the influence of the offender's sex. The race variable has been tested frequently for its effect on sentence disparity, with controversial and contradictory results.

An early researcher found some difference in length and type of sentence with black offenders having more severe and longer sentences than white offenders (Sellin 1928, 1935). But the effects of the seriousness of the offense and recidivism of the offender were not considered. Other studies showed similar results, but they also had problems in method, or overstated the relation between race and sentence (Martin 1934; Lemert & Rosenberg 1948; Garfinkel 1949; Bullock 1961; Wolfgang et al 1962). More recent researchers using race as a predictor of sentence found contradictory results (Green 1960 1964; Rubin 1966; Partington 1965; Judson et al 1969; Chiricos & Waldo 1975; Kelly 1976; Eisenstein & Jacob 1977). Green concluded that race and other extra-legal variables have little effect on sentence length.

A very detailed statistical re-analysis of these studies found

that race was not consistently related to length and type of sentence (Hagan 1974). Others found that female offenders tended to receive lighter sentences, perhaps reflecting a paternal attitude to women (Nagel 1969; Pope 1975).

Given the assertions of conflict theorists, particularly as regards race, the results of fifty years of research on sentencing disparity do not support the theory. However, much of the previous research lacks sophisticated method, and fails to state carefully the importance of correlations and statistical significance.

**DATA COLLECTION** Data in this study were collected from the classifications department of the Oklahoma State Penitentiary at McAlistier, for 1368 inmates in residence during some part of 1975. Length of sentence was measured in months, or minimum time for indeterminate sentences. Life sentences were recorded as 300 months. Sentences longer than 25 years were scored as 400 months, and death sentences were scored as 500 months.

Legally relevant variables included seriousness of offense and the offender's criminal history. For seriousness of offense, a total of 20 offenses, ranging from possession of drugs, as least serious, to felony murder, as most serious, were included as ordered in Figure 1. The seriousness of offense was based on Federal Bureau of Investigation uniform crime reports, listing of serious crimes, and the Oklahoma penal code.

The other legally relevant variable, prior criminal record, was indicated by whether or not the inmate had been convicted of a previous adult felony. Race originally was measured by noting whether the inmate was white, black, Indian, or Mexican-American, and later was collapsed into white and non-white, since very few fell in the Indian or Mexican American category.

TABLE 1: CORRELATION OF RACE AND SEX TO LENGTH OF SENTENCE

Offense	N	r <sub>05</sub>	Sex		Race	
			0-order	2d-order	0-order	2d-order
			All	1238	.06	.09
Drug	72	.23	.09	.09	.30	.23
Property	460	.09	.04	.01	.00	.01
Sex	121	.17			.22	.20
Violence	377	.10	.15	.15	.04	.04
Homicide	208	.14	.27	.20	-0.04	-0.03

FIGURE 1: CRIME CATEGORIES  
IN ORDER OF SERIOUSNESS

- 1 Drug Offenses
  - Possession, & driving intoxicated
  - Possession, & intent to distribute
  - Drug sales
- 2 Property Offenses
  - Larceny
  - Automobile theft
  - Fraud & embezzlement
  - Forgery
  - Burglary
  - Arson
- 3 Sex Offenses
  - Indecent assault, attempted rape
  - Homosexuality, sodomy
  - Rape
- 4 Violent Personal Offenses
  - Assault, attempted assault
  - Aggravated assault
  - Robbery
  - Attempted murder
- 5 Homicide Offenses
  - Manslaughter
  - Second degree murder
  - First degree murder
  - Felony murder

. Pearson zero-order and partial correlations were calculated to relate length of sentence, race, and sex. Bivariate correlations were examined for sentence length with race and sex. Partial correlations were used to control for the effects of seriousness of offense and recidivism while examining the correlation between sentence and sex and race. The use of the Pearson correlation assumes continuous interval measurement of all variables. It assumes that the variables are related in a linear fashion. However, the Pearson correlation is a robust statistic in that its assumptions can be

violated within reason (Bohrnstedt & Carter 1971). The offenders included 95 percent males, and 5 percent females. About 63 percent were white; 31 percent were black; 5 percent were Indian, and less than 1 percent were Mexican-American. The ratios were similar in all offense categories except sex offenses, which did not include females.

RESULTS Zero-order correlations of race and sex with sentence length are shown in Table 1. Neither race nor sex had any relation with length of sentence. The second-order correlations were found for each variable while controlling for the legally relevant variables of seriousness of offense and recidivism. Again, the correlations were negligible.

. When the sample was broken down in 5 offense categories, also shown in Table 1, sex showed a negligible correlation with sentence length, but race had a moderate correlation with sentence length. Longer sentences for drug offenses were associated with minority status. The partial correlations, controlling for seriousness of offense and recidivism also showed a negligible correlation with sex, and about the same moderate correlation with race. Thus, the impact of race held regardless of the seriousness of the drug offense or the impact of recidivism.

. In the property offense category, from larceny to arson, there were 460 offenders. All correlations between sex and sentence and race and sentence were almost zero, and race and sex appeared to have no influence on length of prison sentence. For sex

offenses, from molestation to rape, there were 80 male offenders, and the bivariate correlation between race and sentence length was .22, suggesting a small positive relation between minority status and longer sentences. This correlation remained unchanged when controlling for seriousness of offense and recidivism. The fourth category, violent offenses included 377 offenders. Race had no relation, and sex had a very slight correlation with sentence length. The correlations were unaffected by controls for seriousness of offense and recidivism.

The 4 homicide offenses from manslaughter to felony murder included 208 offenders. Here sex correlated moderately with the length of sentence, while race had no relation. Males were slightly more likely to get longer sentences. When controlled for seriousness of offense and recidivism, the correlation between sex and length of sentence was slightly reduced while the correlation between race and length of sentence remained near zero.

**DISCUSSION** The analysis of the data does not indicate support for the assumptions of conflict theory on the effects of minority status. Only in 2 of the 5 offense categories, drug offenses, and sex offenses, did race prove to have any relation with length of sentence. But these correlations might indicate discrimination in two categories relative to moral beliefs and values. The data in this study did not contain data on the victims of sex offenses, which precluded consideration of variance in rape victim types. Nor was the specific drug identified in the drug offenses. One study found the type of drug affected by the social class of the offender (Chiricos & Waldo 1975).

Sex correlated to a small degree only in homicide offenses, in which females received shorter sentences. Otherwise, sex did not prove significant. The small number of females in the study makes this finding less meaningful.

These findings are not conclusive. The data are restricted to the state of Oklahoma, and cannot be generalized beyond that. The amount of information on each offense was limited, and there was very little substantive information on the circumstances unique to each offense. Finally, this study deals with only one stage in the total criminal justice process. The length of sentence may simply be the result of a long process of discrimination which has already excluded the more powerful members of society. Certainly, conflict theorists have been concerned with discrimination in all aspects of the process from arrest to trial, when they asserted that a variety of extralegal factors like race, social class, education, plea bargaining, and some types of attorneys were significant factors. As regards prison sentences, conflict theory has not received substantial support by research studies. Conflict theory seems more applicable to issues involving the smooth functioning of the system through plea bargaining and other organizational issues than to attributes of the offenders.

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WEXLER Continued from page 34.

the objective and gradualist approach to science is essential. But it must be wedded to a depictive, prophetic, and apocalyptic set of voices if the social sciences are to create, rather than discover social reality.

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