



**Judicial Council of California**  
ADMINISTRATIVE OFFICE OF THE COURTS

455 Golden Gate Avenue • San Francisco, California 94102-3688  
Telephone 415-865-4200 • Fax 415-865-4205 • TDD 415-865-4272

TANI CANTIL-SAKAUYE  
*Chief Justice of California*  
*Chair of the Judicial Council*

WILLIAM C. VICKREY  
*Administrative Director of the Courts*

RONALD G. OVERHOLT  
*Chief Deputy Director*

February 1, 2011

Ms. Diane F. Boyer-Vine  
Legislative Counsel  
State of California  
State Capitol, Room 3021  
Sacramento, California 95814

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

Mr. E. Dotson Wilson  
Chief Clerk of the Assembly  
State Capitol, Room 3196  
Sacramento, California 95814  
[amy.leach@asm.ca.gov](mailto:amy.leach@asm.ca.gov)

Re: Report to the Legislature on the Disposition of Criminal Cases According to the Race and Ethnicity of the Defendant required by Penal Code section 1170.45.

Dear Ms. Boyer-Vine, Mr. Schmidt, and Mr. Wilson:

As required annually by Penal Code section 1170.45, enclosed is the 2009 Judicial Council report on the statewide disposition of criminal cases according to the race and ethnicity of the defendant.

### **Report Process**

For this annual report, the Office of Court Research of the Administrative Office of the Courts (AOC) analyzes felony case disposition data from the California Department of Justice's (DOJ's) Offender-Based Transaction Statistics (OBTS) report file. The data used in the report come from the most recent year for which complete annual data are available. The 2010 report uses data from 2008.

The Criminal Justice Statistics Center of the DOJ is responsible for maintaining the OBTS report file, which tracks the processing of each individual offender from the point of entry into the criminal justice system to the point of exit. OBTS data are based on the year of disposition regardless of when the felony arrest occurred and may be reported a year or more after the arrest.

The OBTS data set from 2008 includes the records of 321,944 persons arrested for felony-level offenses in or before calendar year 2008 and whose dispositions occurred in 2008.

The analysis for the report is based on sentencing information reported to the DOJ that is organized into three broad sentence classifications: acquittal or dismissal, intermediate sanctions, and a sentence of prison. The major findings of the research are discussed below.

### **Limitations of the Findings**

A sentencing outcome is the consequence of many intermediate and interdependent steps within the criminal justice system, from arrest to sentencing. Therefore, sentencing outcomes involve a variety of factors external to the courts, such as local law enforcement policies or district attorneys' charging and plea practices. Under California's determinate sentencing law, sentencing itself is among the least discretionary stages in the adjudication of a criminal case.

Because the data set includes some information on prior record and type of offense, it is possible to control statistically for these variables to ensure that differences in disposition are not attributable to the defendant's prior record or the severity of the offense. At the same time, the absence of data on sentence length and on specific type of prior record limits the conclusions one can confidently make about any observed differences in sentencing by race or ethnicity of the defendant. More detailed information in these categories would allow for greater statistical control over a wider array of factors and thus a more precise comparison of sentencing outcomes for distinct racial and ethnic groups than is possible here. As a result, the findings contained in this report cannot be used on their own as an indication of bias or to identify the cause of differences in sentences within the California criminal justice system.

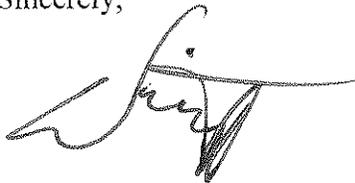
## Findings

The 2010 report to the Legislature includes the following findings:

- When controlling for prior record and type of offense, there were no consistent patterns in the type of sentence. In other words, no single racial/ethnic group systematically received the most or least severe type of sentence.
- Although the data available for this analysis indicate differences in sentencing across racial/ethnic groups, the general patterns of sentencing appear consistent with what one would hope for from the justice system. Across all racial/ethnic groups, defendants with no prior criminal history are the least likely to be sentenced to prison while defendants with one or more prior prison commitments are the most likely to be sentenced to prison.

If you have any questions related to this report, please contact Dag MacLeod, manager of the AOC Office of Court Research, at 415-865-7660.

Sincerely,



William C. Vickrey  
Administrative Director of the Courts

WCV/DM/sh

Enclosures

cc: Members of the Judicial Council

Members of the Judicial Council Criminal Law Advisory Committee

Ronald G. Overholt, Chief Deputy Director, Administrative Office of the Courts

AOC Regional Administrative Directors

Curtis L. Child, Director, AOC Office of Governmental Affairs

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# Judicial Council of California

ADMINISTRATIVE OFFICE OF THE COURTS

EXECUTIVE OFFICE PROGRAMS DIVISION

455 Golden Gate Avenue • San Francisco, California 94102-3688  
Telephone 415-865-7530 • Fax 415-865-4330 • TDD 415-865-4272

TANI CANTIL-SAKAUYE  
*Chief Justice of California*  
*Chair of the Judicial Council*

WILLIAM C. VICKREY  
*Administrative Director of the Courts*

RONALD G. OVERHOLT  
*Chief Deputy Director*

KENNETH L. KANN  
*Director, Executive Office Programs Division*

Report Title: Disposition on Criminal Cases According to the Race and Ethnicity of the Defendant required by Penal Code section 1170.45

Statutory Citation: Penal Code Section 1170.45

Date of Report: December 30, 2010

The Judicial Council has submitted a report to the legislature in accordance with Penal Code Section 1170.45. The following summary is provided under the requirements of Government Code Section 9795.

As with previous years, the report finds that when controlling for prior record and type of offense, there were no consistent patterns in the type of sentence. In other words, no single racial/ethnic group systematically received the most or least severe type of sentence. Although the data available for this analysis indicate differences in sentencing across racial/ethnic groups, the general patterns of sentencing appear consistent with what one would hope for from the justice system. Across all racial/ethnic groups, defendants with no prior criminal history are the least likely to be sentenced to prison while defendants with one or more prior prison commitments are the most likely to be sentenced to prison.

The full report can be accessed here: [www.courtinfo.ca.gov/reference/legislaturereports.htm](http://www.courtinfo.ca.gov/reference/legislaturereports.htm).

A printed copy of the report may be obtained by calling 415-865-7454.



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As of January 19, 2011

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UCLA School of Public Affairs

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Judicial Council of California  
**Administrative Office of the Courts**

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*Chief Justice of California and Chair of the Judicial Council*

William C. Vickrey  
*Administrative Director of the Courts*

Kenneth L. Kann  
*Director, AOC Executive Office Programs Division*

**Primary Authors**

Dag MacLeod, Ph.D., Manager  
Kevin O'Connell, M.A., Senior Research Analyst  
*Office of Court Research*  
*AOC Executive Office Programs Division*





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

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2010 REPORT TO THE CALIFORNIA  
LEGISLATURE AS REQUIRED BY PENAL  
CODE SECTION 1170.45



ADMINISTRATIVE OFFICE  
OF THE COURTS

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OFFICE OF COURT RESEARCH

Judicial Council of California  
Administrative Office of the Courts  
Office of Court Research  
Executive Office Programs Division  
455 Golden Gate Avenue  
San Francisco, California 94102-3688

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

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

Printed on recycled paper.



## Background

In 1997 the California Legislature enacted Penal Code section 1170.45, which directs the Judicial Council to report annually on the disposition of criminal cases statewide according to defendants' race and ethnicity. The appendix of this report includes the complete text of section 1170.45.

The Administrative Office of the Courts (AOC), Office of Court Research analyzed felony cases for this study although the statute does not specify the types of criminal cases to be studied. The data used in the analysis are from 2008, the last year for which complete annual data are available from the California Department of Justice (DOJ). Throughout this report, the combined term *race/ethnicity* and the phrase *race or ethnicity* are employed to correspond to U.S. Census Bureau categorizations.<sup>1</sup>

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

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

## Summary of Findings

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

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<sup>1</sup> In 1997 the Office of Management and Budget announced a revised standard for federal data on race and ethnicity. The revision established a minimum of five categories: Indian or Alaskan Native, Asian, black or African American, Native Hawaiian or other Pacific Islander (PI), and white. See U.S. Census Bureau, Population Division, Special Population Staff, [www.census.gov/population/www/socdemo/race/racefactcb.html](http://www.census.gov/population/www/socdemo/race/racefactcb.html). Because of the small percentage of American Indian defendants in the data set used for this study, this group is included only in descriptive analyses. In addition, a combined category, Asian/Pacific Islander (Asian PI), is used in the analysis to refer to defendants of Asian or Native Hawaiian/other Pacific Islander ethnicity.

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

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

### Limitations of the Findings

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

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

An example that illustrates this important point is the manner in which most felony cases reach disposition in the California trial courts. In California, less than 2 percent of felony cases reach trial, and the majority of those disposed by trial are by jury trial. Thus, the vast majority of felony cases statewide reach disposition before trial, mostly by plea agreements between defense counsel and the district attorney. The trial court judge must review and approve many plea agreements made between defense counsel and the district attorney; however, the sentences for these cases are not determined exclusively by the judge. The findings in this report therefore reflect sentencing outcomes for felony cases that are rarely, if ever, based on the unilateral discretion of a trial court judge.

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

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

## Data Source and Limitations

### Source of Data

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

Two major source documents are combined to make up the OBTS file: (1) fingerprint cards (FD249), which represent official arrests; and (2) *Disposition of Arrest and Court Action* (JUS 8715) forms, which this report refers to as “dispositions.”

### Limitations

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

- OBTS data are based on the year of disposition regardless of when the felony arrest occurred and therefore may be reported a year or more after the actual arrest.
- The OBTS data do not include information about sentence length. Thus it is impossible to assess the relative differences in sentences beyond categorical distinctions (see diagram 1). While certain sentences may be categorically the same—a sentence to prison, for example—they can vary considerably in severity as measured by the length of the sentence.
- Comparisons of county-level data should be made with caution since the level of reporting may vary between jurisdictions and from year to year.
- The data do not represent the total number of adult felony arrests or the total number of dispositions during a given year.
- Dispositions of adult felony arrests in state correctional institutions are excluded from county-level totals.
- Despite the underreporting of dispositions, CJSC is confident that the arrest disposition data received provides an accurate general description of the statewide processing of adult felony arrestees.
- Only the final disposition of an arrest event is included in the OBTS file; intermediate dispositions, such as diversion programs, suspended proceedings, reopenings, retrials, and subsequent actions, are not included.
- If a person is arrested for multiple offenses, the OBTS file contains only the most serious offense based on the severity of possible punishment. If there are multiple

court dispositions, the OBTS file contains only the most serious court disposition and the associated offense.

- Caution should be used when comparing conviction and nonconviction dispositions, since DOJ budget constraints necessitated the processing of conviction dispositions on the basis of priority.
- Information on prior records is incomplete since it is computed only for “new offenders”—those who had a first arrest after August 1982.

### Offender Profile

The OBTS file for 2008 contains a total of 321,944 records of arrest for felony-level offenses in calendar year 2008 or earlier that were disposed in calendar year 2008.<sup>2</sup> The proportion of dispositions has remained relatively constant with small changes. Diagram 1 on the following page shows the number of dispositions at distinct case processing stages for all OBTS felony dispositions in 2008.

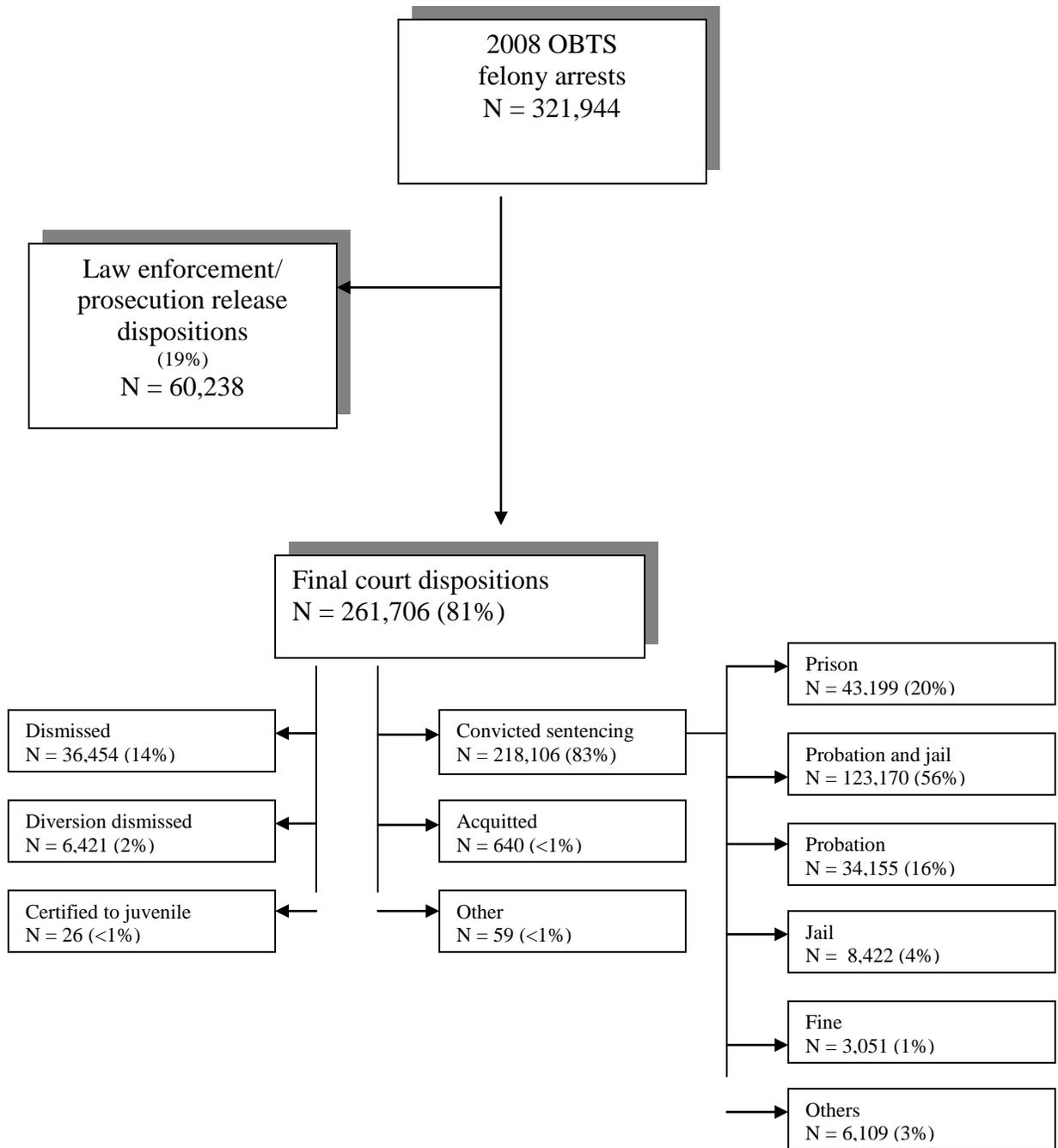
Regardless of race/ethnicity, court dispositions made up 81 percent of all dispositions, while dispositions by law enforcement agencies or the prosecuting attorney accounted for 19 percent. Dispositions by law enforcement agencies include cases dropped for reasons such as insufficient evidence. The breakdown by race/ethnicity for this disposition type is found in table 1.

<b>Table 1: Offenders Released by Law Enforcement Agencies or the Prosecuting Attorney</b>		
Race/Ethnicity	Number Released	Percentage of Releases
Asian PI	1,731	2.87
White	16,906	28.07
Black	15,892	26.38
Hispanic	23,390	38.83
American Indian	274	0.45
Other	2,045	3.39
<b>Total</b>	<b>60,238</b>	<b>100.00</b>

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

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

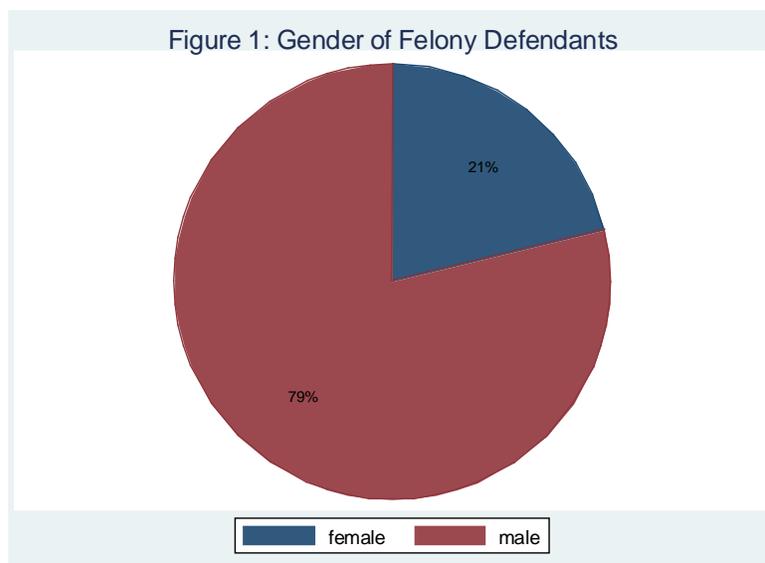


## Demographics of Felony Defendants

Following is a demographic profile of the population of felony defendants who received dispositions in 2008 and are documented in the OBTS file.

### Gender

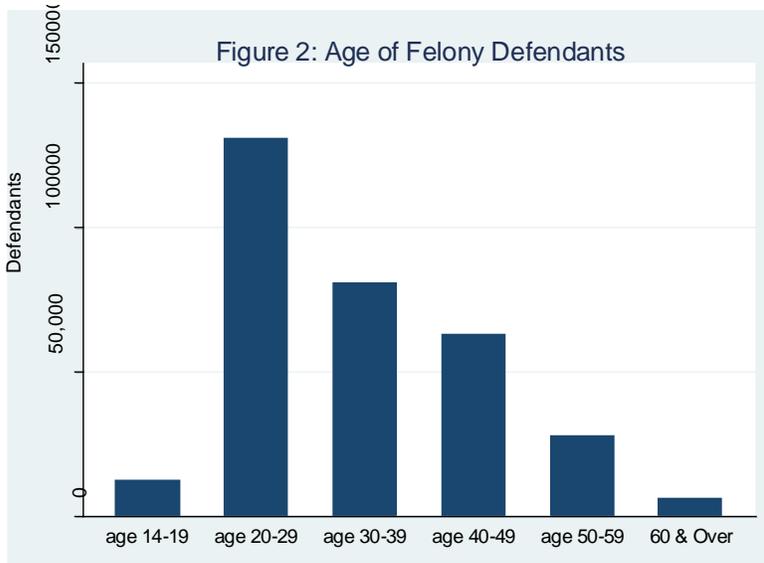
Males made up 79 percent of the defendants reported to have received dispositions in 2008; females made up 21 percent (figure 1). These proportions are consistent with those reported by other agencies, such as the Bureau of Justice Statistics of the U.S. Department of Justice in its biannual *Felony Sentences in State Courts* study. At 79 percent, the proportion of felony defendants in the OBTS file who are male is much higher than the proportion of males in the general population of California, which is roughly 50 percent.<sup>3</sup>



### Age

The OBTS file contains the date of birth and date of disposition for each felony defendant. Values for age were calculated as “age at the time of disposition.” These values were classified into the following age categories used by the U.S. Department of Justice: ages 14–19, 20–29, 30–39, 40–49, 50–59, and 60 or older. Persons aged 20–29 (42 percent) and 30–39 (27 percent) were arrested most frequently. Figure 2 shows the complete distribution by age of all felony defendants in the OBTS file.

<sup>3</sup> U.S. Census Bureau, *Census 2000*, Summary File 1, Table P5.



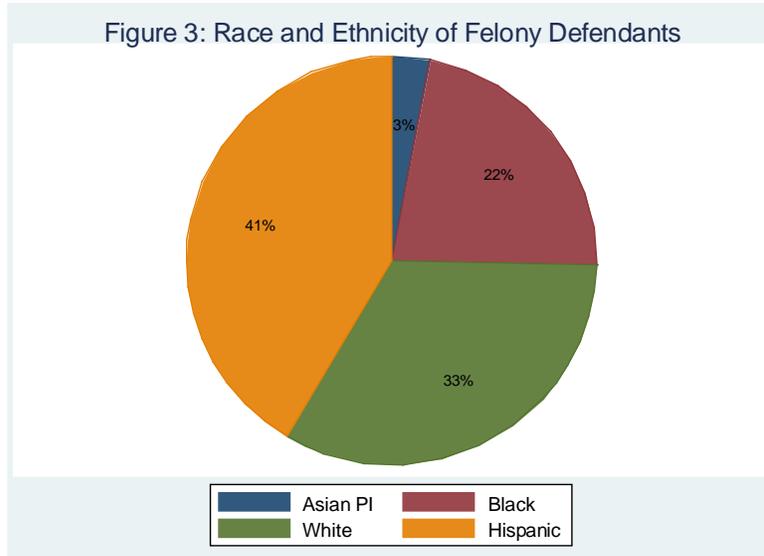
Compared to the California population as a whole, persons aged 20–29 and 30–39 were arrested for felony-level offenses at a disproportionately high rate, whereas persons aged 50–59 and 60 or older were arrested at a disproportionately low rate. Persons aged 14–19 and 40–49 years were arrested at rates only slightly higher than indicated by their proportions in the general population.<sup>4</sup>

### **Race/Ethnicity**

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

<sup>4</sup> U.S. Census Bureau, *Census 2000*, Summary File 1, Table P13.

<sup>5</sup> Because of their small numbers in the sample, persons identified as “other/unknown” in the OBTS file, as well as defendants identified as American Indian, were removed from the analysis.



Hispanics made up the largest percentage of reported felony defendants in 2008 (41 percent), followed by whites (33 percent) and blacks (22 percent). Asian/Pacific Islanders (3 percent) represent only a small proportion of the 2008 felony arrest population.

Blacks were arrested for felony-level offenses at rates significantly higher than their proportion in California's population. Conversely, Asian/Pacific Islanders and whites were arrested at low rates compared to their proportions in California's population. Hispanics were arrested at rates comparable to their proportion of the state's population.<sup>6</sup>

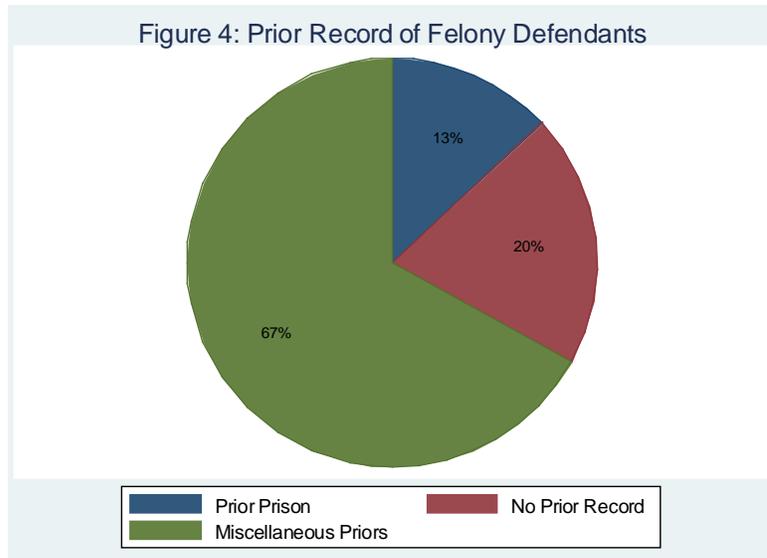
## Prior Criminal Record and Type of Offense

### Prior Criminal Record

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

Information was missing in the prior record field for a significant percentage of records (10 percent). For the records containing valid information, about two-thirds (67 percent) of felony arrestees had miscellaneous prior records while 13 percent had one or more prior prison commitments. The remaining 20 percent of felony arrestees in the OBTS file had no identified prior records. In addition to these data limitations, as noted by the DOJ in its documentation of this data set, information on prior records is available only for those defendants who had a first arrest after August 1982.

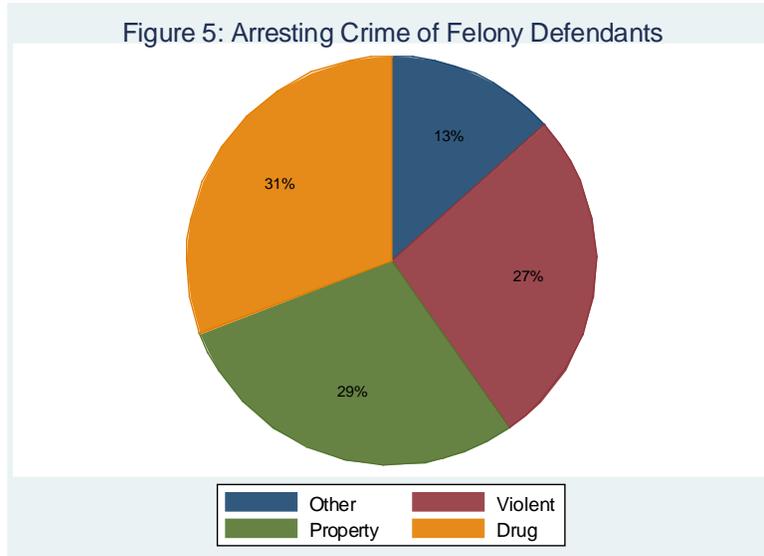
<sup>6</sup> U.S. Census Bureau, *Census 2000*, Summary File 1, Matrices P1, P3, P4, P8, P9, P12, P13, P17, P18, P19, P20, P23, P27, P28, P33, PCT5, PCT8, PCT11, PCT15, H1, H3, H4, H5, H11, and H12.



### Offense Category

For this analysis, offense data provided at the time of disposition in the OBTS file were reclassified into four major offense groupings: violent, property, drug, and other felony (figure 5). These groupings were based in large part on the categories used by the Bureau of Justice Statistics of the U.S. Department of Justice in its biannual *Felony Sentences in State Courts* study. Examples of the offenses included in the violent offense group are homicide, rape, robbery, and assault; offenses in the property offense group include burglary, theft, forgery, and arson; the drug offense group includes all felony-level drug offenses; and offenses in the other felony offense group include all weapons offenses and a range of other offenses such as vandalism and driving under the influence of drugs or alcohol (DUI).

Thirty-one percent of the offenses for which defendants were arrested were drug offenses, followed closely by property offenses (29 percent) and violent offenses (27 percent). The remaining offenses, classified as other felony offenses, accounted for 13 percent of all offenses in the OBTS file.



### Sentencing Information

The OBTS file provides two types of information regarding sentencing in felony cases: a broad sentence categorization (e.g., prison, jail, probation), referred to hereafter as “severity of sentence,” and the type of sentence (e.g., felony, misdemeanor) for each conviction. As the file does not provide data on sentence length, we ranked the sentencing information as follows.

### Severity of Sentence

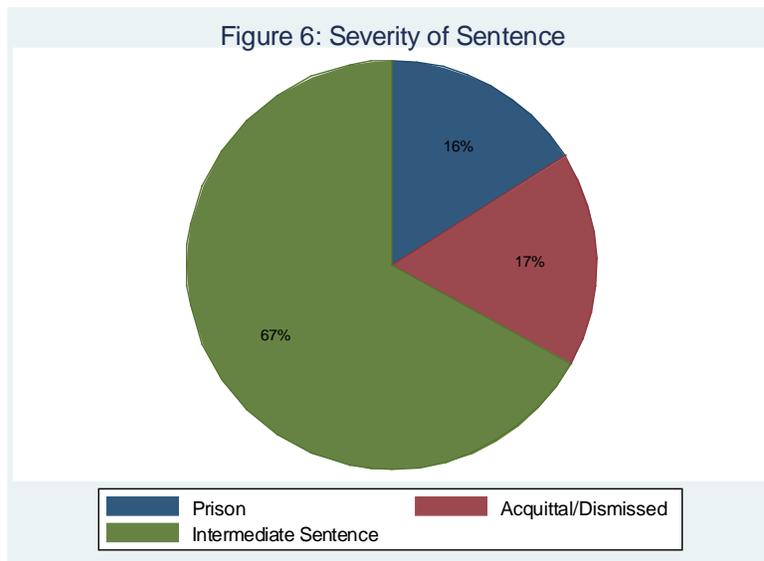
Even without information on length of sentence, for purposes of this study a prison sentence can easily be ranked as the most severe type of sentence among those contained in the OBTS file. Similarly, on the other end of the spectrum, acquittal/dismissal of charges can easily be considered the least severe among possible outcomes.

Nonprison sentences (intermediate sanctions) pose the greatest challenge to the empirical study of sentencing. Intermediate sanctions are harder to compare because there is no single continuum along which all nonprison sentences can be arrayed or ranked.

Moreover, intermediate sanctions are often packaged (e.g., in the “probation and jail” category) to meet different combinations of offender risk and need, adding to the difficulty of ranking the sentence categories in order of severity. To address these issues, we have grouped all intermediate sanctions shown in figure 6—probation and jail, jail, probation, and fine—in a new sentence category called “intermediate sentence.” The categories of sentence severity used in all the analyses in this section are (in decreasing order of severity) prison, intermediate sentence, and acquittal/dismissal.

The percentages in Figure 6 were calculated without controlling for prior record or type of offense. Sixteen percent of the defendants arrested for felony-level offenses received prison sentences, while 67 percent received an intermediate sentence—including jail,

probation, and fine—while 17 percent of the defendants were either acquitted or had their cases dismissed.



## Findings

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

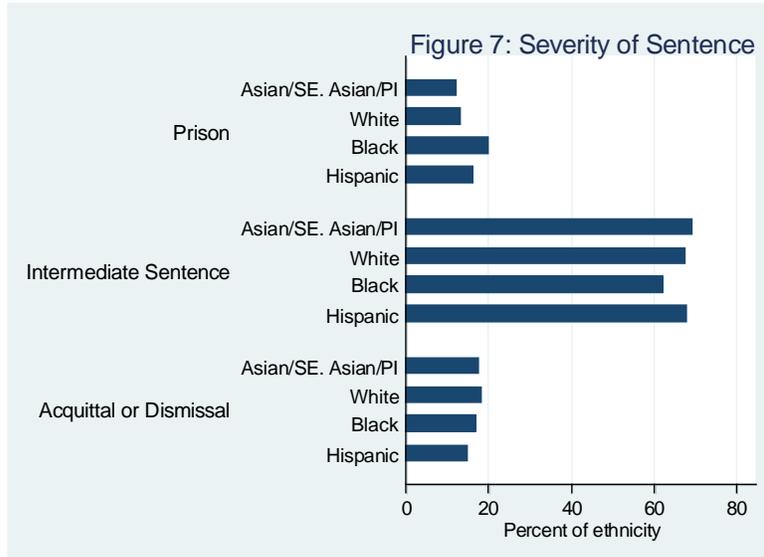
These analyses are the primary focus of this report. Controlling for the factors that dictate specific sentences mandated by California's sentencing laws, we can begin to address the critical question for this mandated study—the degree to which similarly situated offenders receive dissimilar sentences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

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

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

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

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



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

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

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

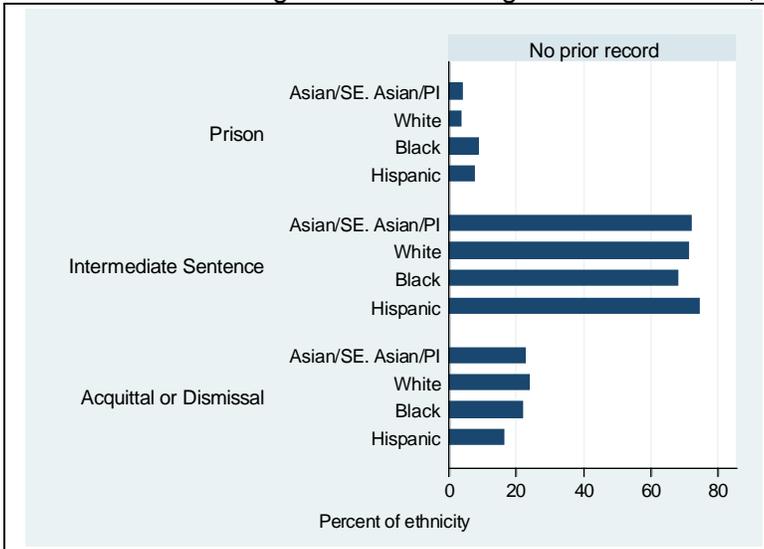
As a reminder, in the analysis not controlling for prior record and type of offense (see figure 7), black defendants were more likely than defendants from the other racial/ethnic groups to receive prison sentences. In many of the later analyses controlling for prior record and type of offense, however,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

The graphics and supporting text that follow focus on variations within three specific types of felony crimes—violent, property, drug—committed by offenders with similar prior records—no prior record, miscellaneous prior record, and one or more prison commitments (figures 8 through 10). These figures show that at the statewide level the relationships between racial/ethnic categories and legal indicators are volatile. In other words, no single group is systematically given more or less severe sentences than any other group.

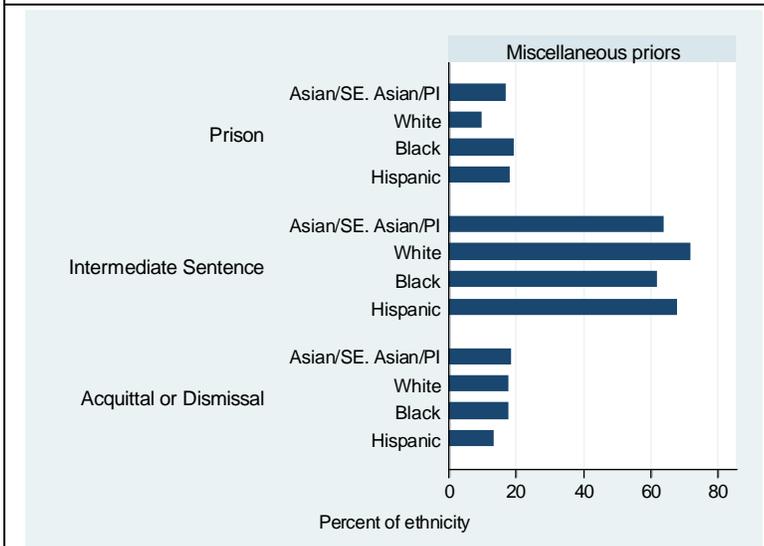
In addition to the volatility of outcomes that results when the analysis controls for similarly situated offenders, it should be noted that the difference in outcomes for any ethnic group is generally quite small—only a few percentage points in range from the highest to the lowest for specific outcomes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

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

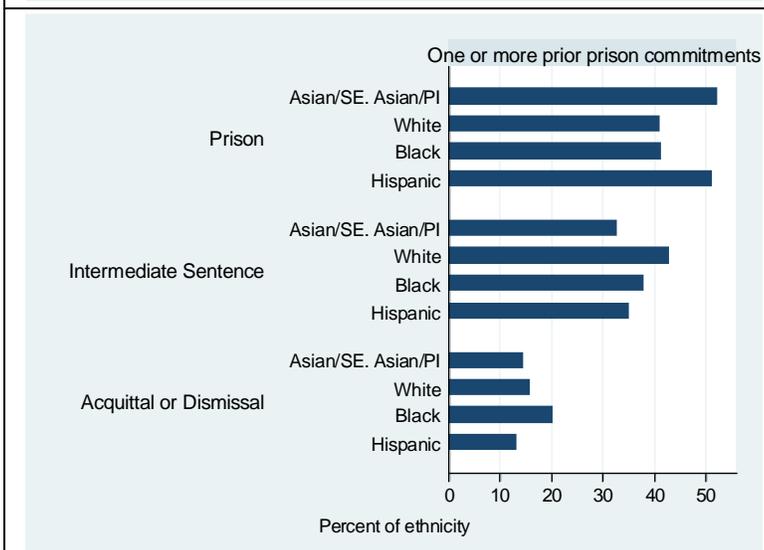
Figure 8: Sentencing of Violent Crimes, Controlling for Prior Record



Looking first at sentences for violent felonies, we see that among those offenders with no prior record, 6.8 percent were given prison terms, with whites given prison terms least often and blacks most often. Whites had their cases acquitted or dismissed most often, followed by Asian/Pis and blacks. Hispanics were given intermediate sanctions most often, with blacks somewhat less likely to receive an intermediate sentence. This chart shows that few first-time convictions for violent offenses result in prison terms.

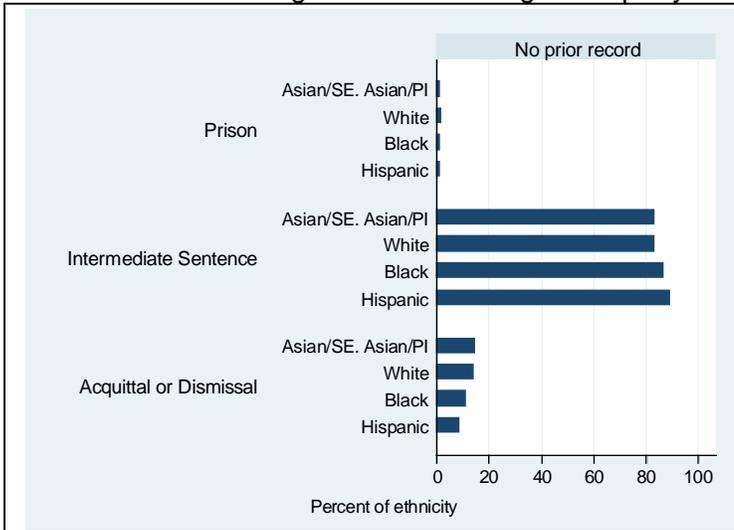


As the prior record of the offender increases in severity, the likelihood of being sentenced to prison also increases, regardless of ethnic group. The overall incarceration rate went from 6.8 percent for offenders with no prior record to 16.2 percent for defendants with miscellaneous priors. Whites again received relatively fewer prison sentences. In this group, Asian/Pis, whites, and blacks were almost equally likely to be acquitted or have their cases dismissed, while Hispanics were acquitted least often.

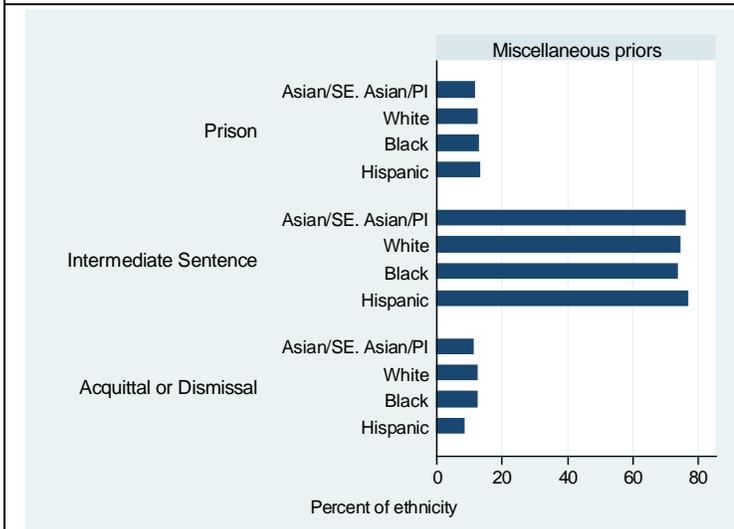


Looking at offenders with the most serious prior records—those with one or more prior prison commitments—we see once again that the rate of incarceration goes up. While 16.2 percent of all offenders with miscellaneous priors were sentenced to prison, 45.3 percent of offenders with one or more prior prison commitment were sentenced to prison. Within this group, Asian/Pis and Hispanics were the most likely to receive prison terms while blacks and whites in this group were acquitted or had their cases dismissed the most often.

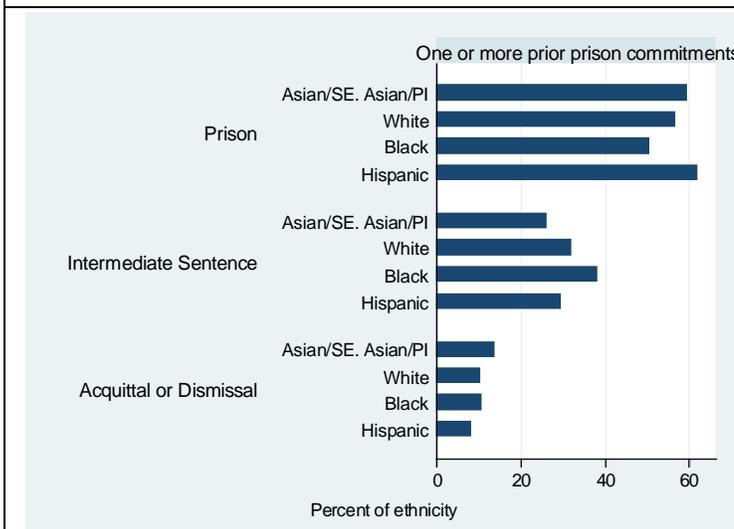
Figure 9: Sentencing of Property Crimes, Controlling for Prior Record



Looking at sentencing for property offenses, we see that less than 2 percent of those with no prior record were sent to prison and that the range across ethnic groups is quite small—at the high end, 2.1 percent of whites were sentenced to prison while, at the low end, 1.3 percent of Hispanics were sentenced to prison. It is noteworthy that the overall rate of sentencing to prison is less than a third of the rate at which all defendants with no prior record were sent to prison for violent felonies. Over 86 percent of all property-crime convictions of offenders with no priors led to intermediate sentences. Hispanics in this group were the most likely to receive an intermediate sentence and the least likely to be acquitted or have their cases dismissed.

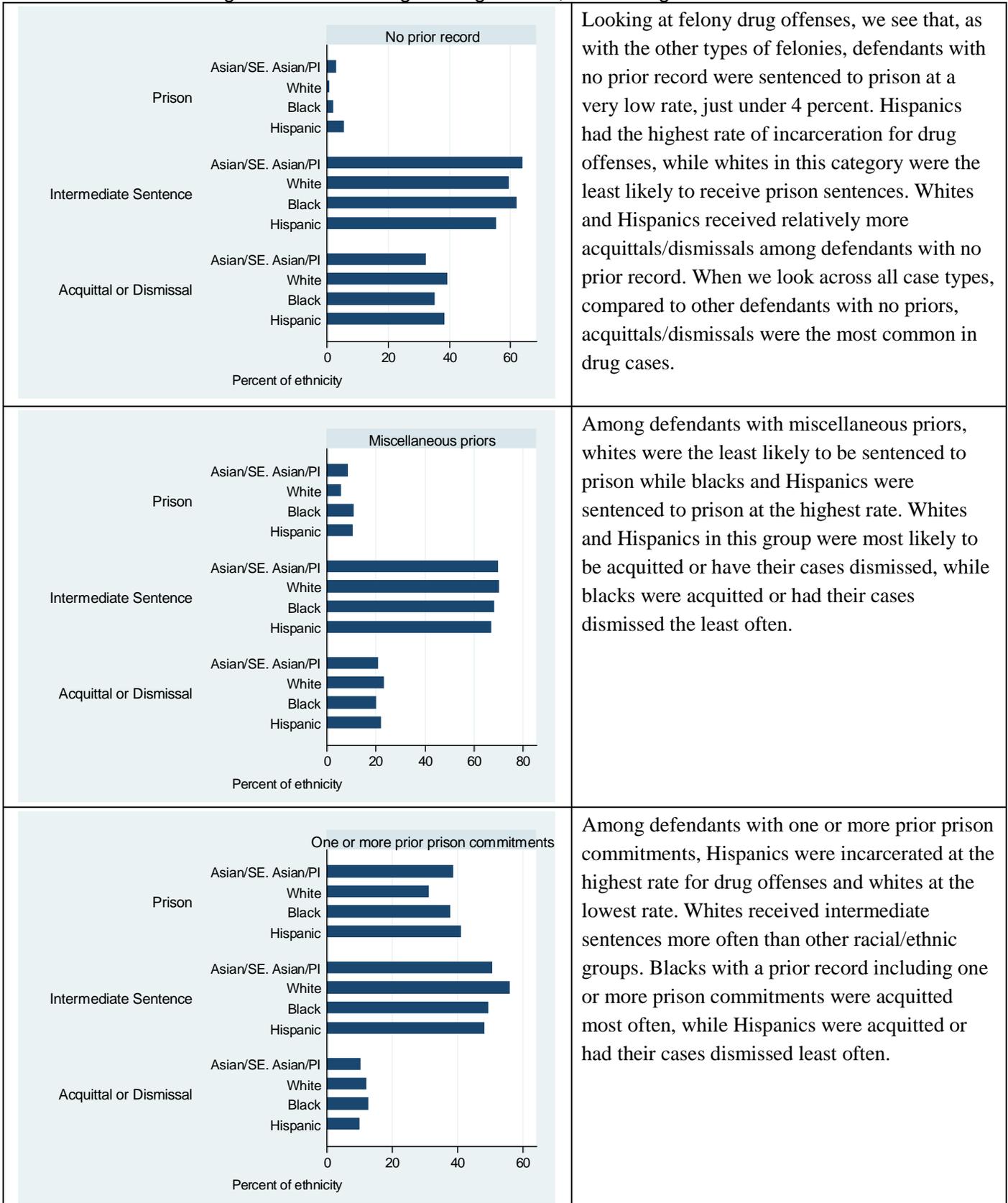


Consistent with violent felonies, as the prior record of the offender increases, so does the likelihood of receiving a prison sentence for property crimes. Among those with miscellaneous priors, all groups were more likely to receive a prison term though Asian/Pis were somewhat less likely to receive a prison term. Blacks were the least likely to receive intermediate sentences, while Hispanics were the least likely to be acquitted or have their cases dismissed.



For property crimes, blacks with one or more prior prison commitments were the least likely to be sentenced to prison, while Hispanics were the most likely to receive a prison sentence. Blacks were also the most likely to receive an intermediate sentence, while Asians/PI were the most likely to be acquitted or have their cases dismissed.

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



Looking at felony drug offenses, we see that, as with the other types of felonies, defendants with no prior record were sentenced to prison at a very low rate, just under 4 percent. Hispanics had the highest rate of incarceration for drug offenses, while whites in this category were the least likely to receive prison sentences. Whites and Hispanics received relatively more acquittals/dismissals among defendants with no prior record. When we look across all case types, compared to other defendants with no priors, acquittals/dismissals were the most common in drug cases.

Among defendants with miscellaneous priors, whites were the least likely to be sentenced to prison while blacks and Hispanics were sentenced to prison at the highest rate. Whites and Hispanics in this group were most likely to be acquitted or have their cases dismissed, while blacks were acquitted or had their cases dismissed the least often.

Among defendants with one or more prior prison commitments, Hispanics were incarcerated at the highest rate for drug offenses and whites at the lowest rate. Whites received intermediate sentences more often than other racial/ethnic groups. Blacks with a prior record including one or more prison commitments were acquitted most often, while Hispanics were acquitted or had their cases dismissed least often.

## Conclusions

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

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

Appendix

**TEXT OF PENAL CODE SECTION 1170.45**

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

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