



# JUDICIAL COUNCIL OF CALIFORNIA

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September 20, 2017

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

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

HON. DOUGLAS P. MILLER  
*Chair, Executive and Planning Committee*

Mr. Daniel Alvarez  
Secretary of the Senate  
State Capitol, Room 400  
Sacramento, California 95814

HON. DAVID M. RUBIN  
*Chair, Judicial Branch Budget Committee  
Chair, Litigation Management Committee*

HON. KENNETH K. SO  
*Chair, Policy Coordination and  
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Mr. E. Dotson Wilson  
Chief Clerk of the Assembly  
State Capitol, Room 3196  
Sacramento, California 95814

HON. HARRY E. HULL, JR.  
*Chair, Rules and Projects Committee*

HON. MARSHA G. SLOUGH  
*Chair, Technology Committee*

*Re: Disposition of Criminal Cases According to the Race and Ethnicity of  
the Defendant: 2017 Report to the California Legislature as Required by  
Penal Code Section 1170.45*

Hon. Marla O. Anderson  
Hon. Brian John Back  
Hon. Richard Bloom  
Hon. Stacy Bouluware Eurie  
Hon. Kyle S. Brodie  
Hon. Ming W. Chin  
Hon. Samuel K. Feng  
Hon. Scott M. Gordon  
Hon. James M. Humes  
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Ms. Audra Ibarra  
Mr. Patrick M. Kelly  
Hon. Dalila C. Lyons  
Ms. Donna D. Melby  
Hon. Gary Nadler  
Ms. Debra Elaine Pole  
Hon. Dean T. Stout

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

Attached is the Judicial Council report required under Penal Code section 1170.45 on criminal sentencing according to the race and ethnicity of the defendant. Since 2001, the Judicial Council's Office of Court Research has produced this report by analyzing the disposition of felony cases using data provided by the California Department of Justice.

#### ADVISORY MEMBERS

Hon. Jeffrey B. Barton  
Hon. C. Todd Botke  
Hon. Daniel J. Buckley  
Mr. Jake Chatters  
Mr. Richard D. Feldstein  
Ms. Kimberly Flener  
Hon. David E. Gunn

The 2017 report indicates that when grouping defendants according to the extensiveness of their prior criminal records and types of offense, the data show a complex pattern in the severity of sentences that defendants receive. When directly comparing defendant groups in the context of the severity of their criminal offenses and prior criminal histories, sentencing outcomes are variable and appear to be primarily associated with defendants' prior criminal record and offense type. Due to data

MR. MARTIN HOSHINO  
*Administrative Director,  
Judicial Council*

Ms. Diane F. Boyer-Vine  
Mr. Daniel Alvarez  
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September 20, 2017  
Page 2

limitations that are outlined in the report and highlighted by the Criminal Justice Statistics Center of the California Department of Justice, we encourage the reader to exercise caution in attempting to attribute causes for the observed differences in sentencing among racial/ethnic groups.

If you have any questions related to this report, please contact Ms. Lucy Fogarty, Deputy Director of Budget Services, at 415-865-7587.

Sincerely,



Martin Hoshino  
Administrative Director  
Judicial Council

MH/DS

Attachment

cc: Members of the Judicial Council's Criminal Law Advisory Committee  
Ms. Margie Estrada, Chief Counsel, Senate Judiciary Committee  
Mr. Gregory Pagan, Chief Counsel, Assembly Committee on Public Safety  
Mr. Alf Brandt, Senior Counsel, Office of Assembly Speaker Anthony Rendon  
Ms. Jessica Devencenzi, Policy Consultant, Office of Senate President pro Tempore Kevin de León  
Ms. Anita Lee, Senior Fiscal Policy Analyst, Legislative Analyst's Office  
Mr. Mike Petersen, Consultant, Senate Republican Policy Office  
Mr. Paul Dress, Consultant, Assembly Republican Office of Policy & Budget  
Mr. Peter Allen, Director, Communications, Judicial Council  
Ms. Shelley Curran, Director, Criminal Justice Services, Judicial Council  
Mr. Cory T. Jasperson, Director, Governmental Affairs, Judicial Council  
Mr. Zlatko Theodorovic, Director, Budget Services, Judicial Council  
Ms. Lucy Fogarty, Deputy Director, Budget Services, Judicial Council  
Ms. Leah Rose-Goodwin, Manager, Office of Court Research  
Ms. Laura Speed, Supervising Attorney, Governmental Affairs, Judicial Council  
Ms. Yvette Casillas-Sarcos, Administrative Coordinator, Governmental Affairs, Judicial Council



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MR. MARTIN HOSHINO  
Administrative Director,  
Judicial Council

Report title: *Disposition of Criminal Cases According to the Race and Ethnicity of the Defendant: 2017 Report to the California Legislature as Required by Penal Code Section 1170.45*

Statutory citation: Penal Code section 1170.45

Date of report: September 20, 2017

The Judicial Council has submitted a report to the Legislature in accordance with Penal Code section 1170.45, which requires an annual report on the statewide disposition of criminal cases according to defendants' race and ethnicity.

The following summary of the report is provided under the requirements of Government Code section 9795.

As with all reports submitted since 2001, the Judicial Council's Office of Court Research analyzed felony disposition data for this report. The data used in the analysis are from 2016, the last year for which complete annual data are available from the California Department of Justice. Throughout the report, the terms *race* and *ethnicity* are based on U.S. Census Bureau categorizations.

The 2017 report indicates that when grouping defendants according to the extensiveness of their prior criminal records and types of offense, the data show a complex pattern in the severity of sentences that defendants receive. When directly comparing defendant groups in the context of the severity of their criminal offenses and prior criminal histories, sentencing outcomes are variable and appear to be primarily associated with defendants' prior criminal record and offense type. Due to data limitations that are outlined in the report and highlighted by the Criminal Justice Statistics Center of the California Department of Justice, we encourage the reader to exercise caution in attempting to attribute causes for the observed differences in sentencing among racial/ethnic groups.

The full report can be accessed here: <http://www.courts.ca.gov/7466.htm>.

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

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

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2017 REPORT TO THE CALIFORNIA  
LEGISLATURE AS REQUIRED BY PENAL  
CODE SECTION 1170.45



JUDICIAL COUNCIL  
OF CALIFORNIA

Judicial Council of California  
Budget Services  
Office of Court Research  
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).

**JUDICIAL COUNCIL OF CALIFORNIA**

**Hon. Tani G. Cantil-Sakauye**  
*Chief Justice of California and  
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**Mr. Martin Hoshino**  
*Administrative Director  
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*Manager, Office of Court Research*

**Mr. David Smith**  
*Senior Research Analyst and Primary Author of Report*

## **Background**

Penal Code section 1170.45 directs the Judicial Council to report annually on the statewide disposition of criminal cases according to defendants' race and ethnicity. The complete text of section 1170.45 is attached as an appendix to this report.

Consistent with all reports submitted since reporting began in 2001, the Judicial Council's Office of Court Research analyzed felony disposition data for this report. The data used in the analysis are from 2016, 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* 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 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, this report introduces controls for prior criminal history and type of offense. In other words, it seeks to compare sentencing outcomes for defendants who were convicted of similar offenses and had similar criminal histories.

## **Summary of Findings**

When grouping defendants according to the extensiveness of their prior criminal records and types of offense, the data show a complex pattern in the severity of sentences that defendants receive. Findings indicate that the strongest overall correlates of sentence severity are a defendant's prior criminal record and the severity of offense committed, although other factors are associated with sentencing outcomes, including a defendant's racial/ethnic group membership. However, when directly comparing defendant groups in the context of the

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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 the following racial/ethnic categories: American Indian or Alaskan Native, Asian, Black or African American, Hispanic or Latino, Native Hawaiian or Other Pacific Islander, and White. (See Office of Management and Budget, Statistical Policy Directive 15, 62 Fed.Reg. 58782–58790 (Oct. 30, 1997).) 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.

severity of their criminal offenses and prior criminal histories, sentencing outcomes are variable and appear to be primarily associated with defendants' prior criminal records and offense types.

Although this report looks at only a single year of data, reports from previous years have also indicated that prior criminal record and the severity of offense are the strongest correlates of the sentence defendants receive. Moreover, although some racial/ethnic groups receive more severe sentences in a certain year, these findings tend to vary from year to year. This suggests that any form of differential judicial treatment based on race or ethnicity depends on specific contexts that require more study and resources to identify.

### **Limitations of the Findings**

The limited nature of the data on sentence and prior record limits the conclusions that can be drawn from the Offender-Based Transaction Statistics (OBTS) archive. While the data contains general information about the type of sentence that felony defendants receive (e.g., a sentence to prison vs. acquittal or dismissal of charges), no information is provided pertaining to sentence length. Furthermore, although the OBTS data include general information on the number of prior felony offenses a defendant may have committed, it lacks information on prior offense type. This lack of information about sentence length and type of prior offense greatly limits the conclusions one can confidently draw 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, a sentencing outcome is the consequence of many intermediate and interdependent steps within the criminal justice system. On that basis, it is difficult for studies of sentencing outcomes to take into account all factors associated with sentencing decisions, including local law enforcement policies and district attorney charging and plea practices. Under California's determinate sentencing law, sentencing itself may be viewed as 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, the most recent data available indicate that less than 3 percent of felony cases reach disposition through trial.<sup>2</sup> 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 plea agreements made between defense counsel and the district attorney; however, the sentences for these cases are not determined exclusively by the judge. The

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<sup>2</sup> Judicial Council of Cal., *2016 Courts Statistics Report: Statewide Caseload Trends, 2005–2006 Through 2014–2015*, Table 8a, Felonies—Method of Disposition, by County, p. 114.

findings in this report, therefore, reflect sentencing outcomes for felony cases that are rarely, if ever, based on the unilateral decision of a trial court judge.

Another confounding factor is that within the 58 superior court jurisdictions in California, there may be important differences in arrest and 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, subtle but meaningful differences will exist between jurisdictions in the operation of the justice system and the counties' population characteristics.

## **Data Source and Limitations**

### **Source of Data**

Historically, the Criminal Justice Statistics Center (CJSC) of the California Department of Justice (DOJ) has taken responsibility for maintaining the 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 generated by CJSC.

Two major source documents are combined to make up the OBTS file: (1) fingerprint cards (FD-249), 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 includes a number of caveats bearing on the use and limitations of the OBTS data file, including the following:

- 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.
- The OBTS data represent the felony arrest and disposition records that the criminal justice system has forwarded to the DOJ in a calendar year. More specifically, approximately 65–75 percent of adult felony arrest dispositions are reported annually. Given the fluctuations in the processing and reporting of this data by justice system entities, the OBTS data should not be considered an exacting record of the total number of adult felony arrests or the total number of dispositions for a calendar year.
- 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 excluded. In addition, dispositions of adult felony arrests in state correctional institutions are excluded from county-level totals.

- If a person is arrested for multiple offenses, the OBTS file contains only the most serious offense based on the severity of possible punishment. In the case of 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, given that DOJ budget constraints necessitate the processing of conviction dispositions on the basis of priority.
- Information on prior records is incomplete because it is computed only for “new offenders”—those who had a first arrest after August 1982.

### **Offender Profile**

The OBTS file, once culled for a small number of duplicate cases, contains a total of 206,627 records of arrests for felony-level offenses in calendar year 2016 or earlier that were disposed in calendar year 2016.<sup>3</sup> Diagram 1 on the following page shows the number of dispositions at distinct case processing stages for all OBTS felony dispositions in 2016.

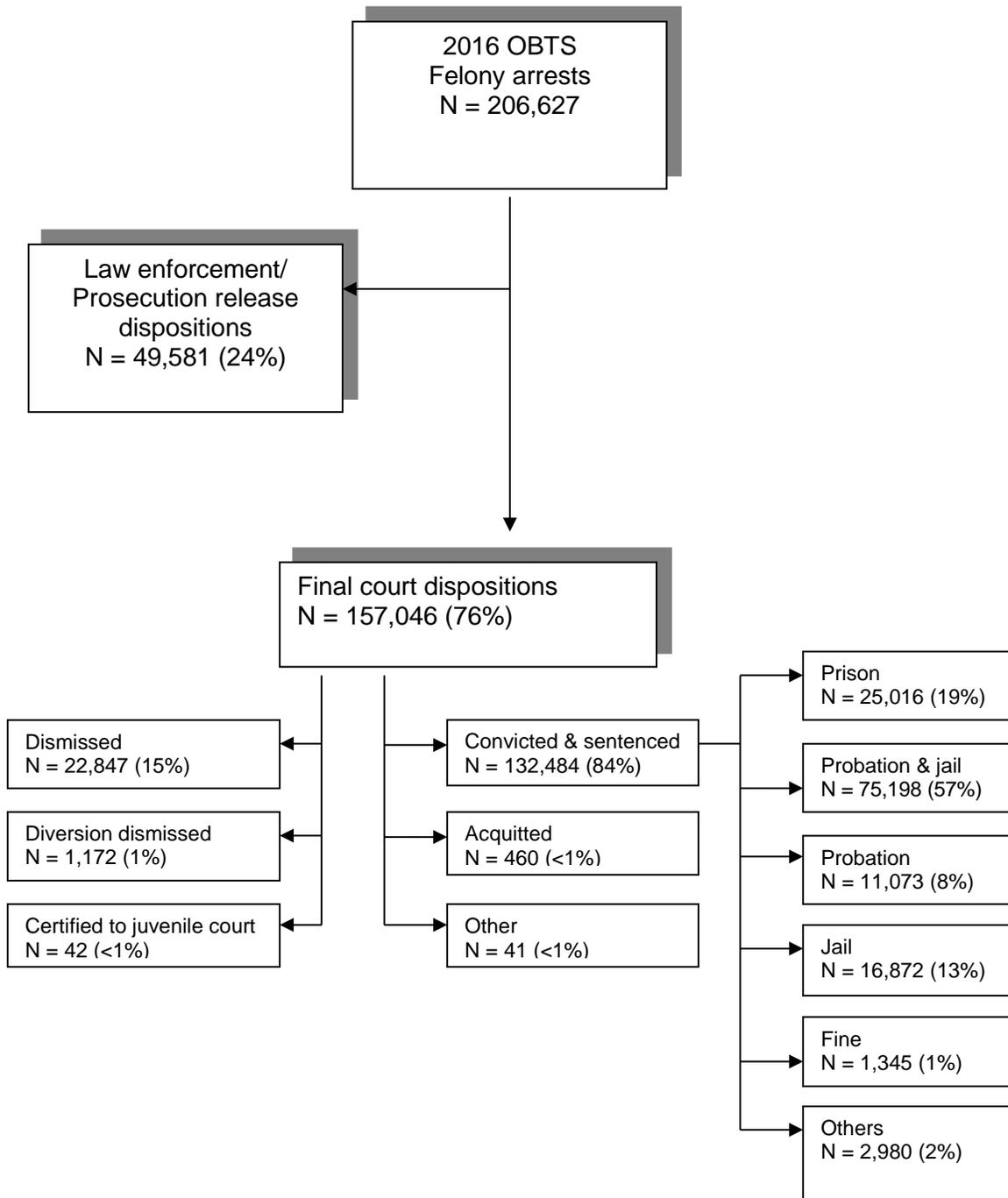
Regardless of race/ethnicity, court dispositions made up 76 percent of all dispositions, whereas dispositions by law enforcement agencies or the prosecuting attorney accounted for 24 percent. Dispositions by law enforcement agencies include cases dropped for reasons such as insufficient evidence. The breakdown by race/ethnicity for this disposition type is found in table 1.

**Table 1: Offenders Released by Law Enforcement Agencies or the Prosecuting Attorney**

<b>Race/Ethnicity</b>	<b>Number Released</b>	<b>Percentage of Releases</b>
American Indian or Native Amer.	216	0.4
Asian/PI	1,571	3.2
Black or African American	12,026	24.3
Hispanic or Latino	20,266	40.9
White	13,411	27.0
Other/Unknown	2,091	4.2
<b>Total</b>	<b>49,581</b>	<b>100.0</b>

<sup>3</sup> Before analyses were conducted, a small number of duplicate records (less than 1 percent) were deleted from the original data file to avoid the possibility of double counting cases discussed in this report.

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

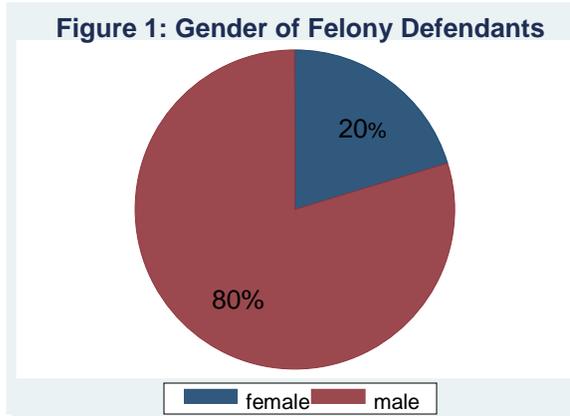


**Demographics of Felony Defendants**

In the following summary, a demographic profile is provided of the population of all felony defendants that received dispositions in 2016 and that were documented in the OBTS file for the same time period.

## Gender

Males made up 80 percent of the defendants reported to have received dispositions in 2016; females made up 20 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 biennial *Felony Sentences in State Courts* study. At 80 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>4</sup>

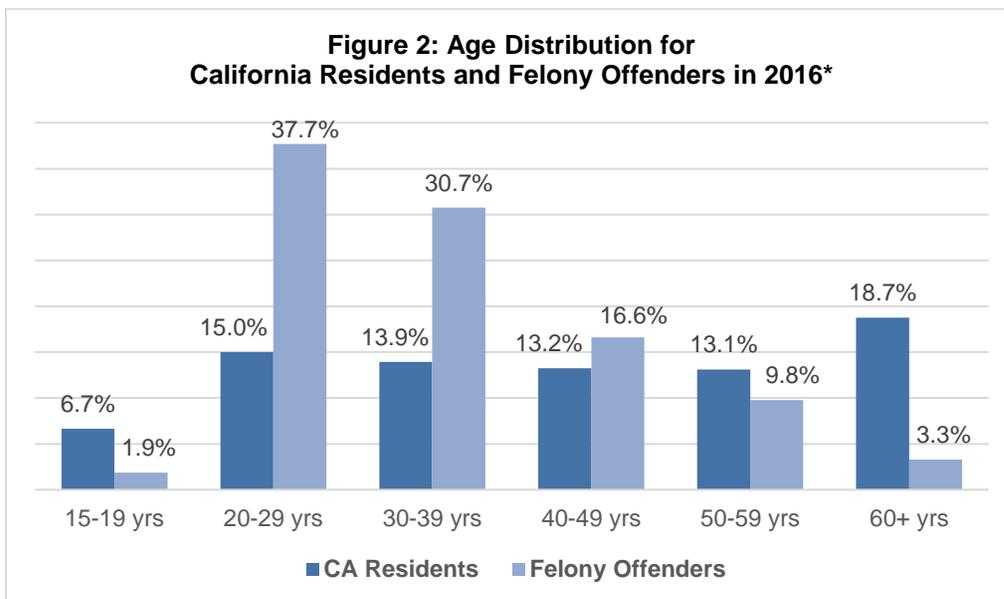


## Age

The OBTS file contains the date of birth and date of disposition for each felony defendant, which allows us to calculate “age at the time of disposition.” This information was classified into the following age categories used by the U.S. Census Bureau: ages 15–19, 20–29, 30–39, 40–49, 50–59, and 60 or older.

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<sup>4</sup> Demographic data pertaining to gender/sex are based on the U.S. Census Bureau’s 2015 American Community Survey one-year estimates for California, as provided by request from the California Department of Finance, 2017.



\* Note: Percentages for California residents and felony offenders are based on the entire populations of each group.

Compared to the California population as a whole, defendants aged 20–29 (37.7%) and 30–39 (30.7%) were arrested for felony-level offenses at disproportionately high rates, while those aged 40–49 (16.6%) were arrested at somewhat higher rates. Defendants aged 15–19 (1.9%) and 60+ (3.3%) were arrested at disproportionately lower rates than their representation in the California population, while those aged 50–59 (9.8%) were arrested at somewhat lower rates.<sup>5</sup>

### Race/Ethnicity

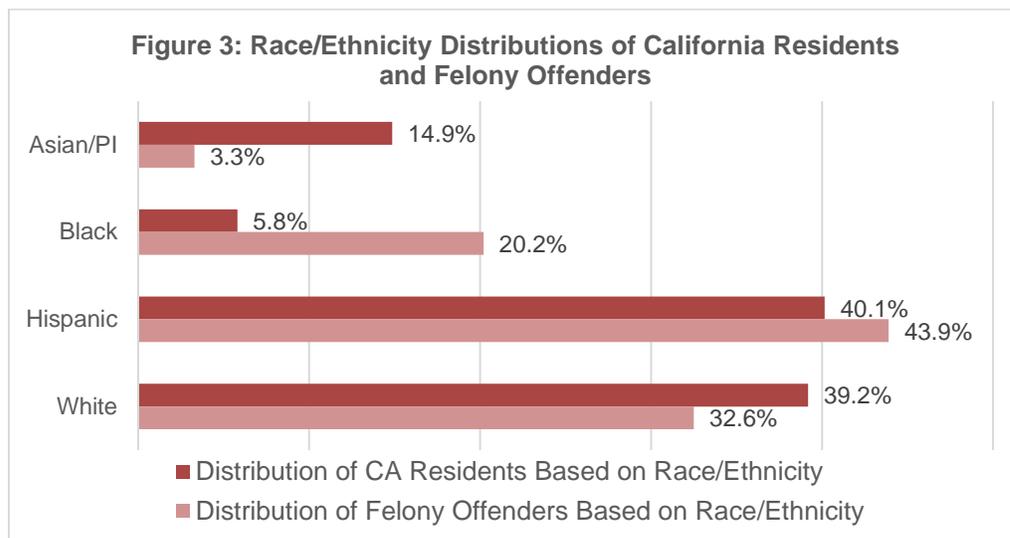
Racial/ethnic data on criminal defendants were reclassified according to the categories used by the U.S. Census Bureau. These categories are identified as Asian/Pacific Islander, Black, White, and Hispanic (figure 3).<sup>6</sup>

<sup>5</sup> Demographic data pertaining to age were drawn from the U.S. Census Bureau’s 2015 American Community Survey for California, [https://factfinder.census.gov/bkmk/table/1.0/en/ACS/15\\_1YR/B01001/0400000US06](https://factfinder.census.gov/bkmk/table/1.0/en/ACS/15_1YR/B01001/0400000US06).

<sup>6</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 or Native American, were removed from the analysis. For the remainder of the report, the term “Asian” refers to the broader category of Asian/Pacific Islander offenders, Black refers to Black or African American offenders, and Hispanic refers to Hispanic and Latino offenders.

The U.S. Census Bureau’s 2015 American Community Survey of California residents indicates that Hispanics (40.1%) comprised the largest demographic group of residents in that survey year followed closely by Whites (39.2%). In the same survey Asians (14.9%) residents comprise the third largest demographic group in the state, with Black (5.8%) residents representing the smallest of the major demographic groups (Figure 3).<sup>7</sup>

Like the California census data show, Hispanics made up the largest percentage of felony defendants in 2016 (43.9%), followed by Whites (32.6%). In contrast to the census data, Blacks (20.2%) represented the third-largest group of felony defendants, while Asians (3.3%) represented only a small proportion of the 2016 arrest population (figure 3).



Taken together, these findings indicate that Blacks were arrested for felony-level offenses at rates significantly higher than their proportion in California’s population. Hispanics were arrested at rates somewhat greater than their share of the population as a whole, while Whites were arrested at a somewhat lower rate proportionally. Asians were arrested at much lower rates compared to their proportion of California’s population.

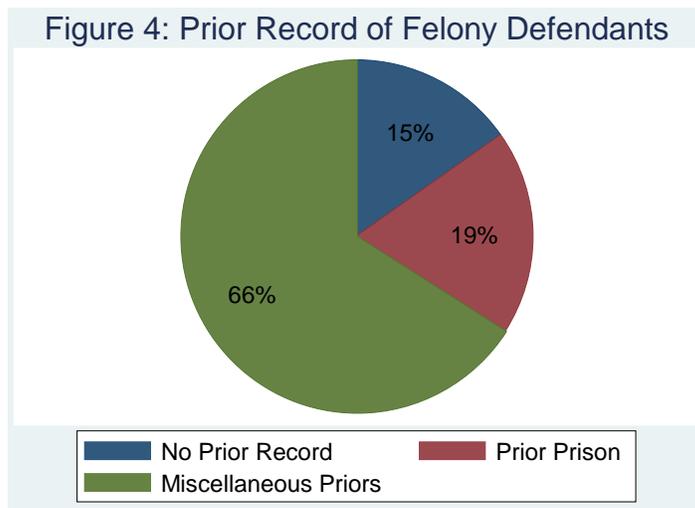
<sup>7</sup> Demographic data pertaining to race/ethnicity were drawn from the U.S. Census Bureau’s 2015 American Community Survey one-year estimates for California, as provided by request from the California Department of Finance, 2017.

## Prior Criminal Record and Type of Offense

### Prior Criminal Record

The OBTS file identifies the type of prior record, if any, for each felony arrestee. Information is limited to categories indicating the arrestee has no prior prison commitments, a “miscellaneous” prior record, or a prison record involving one, two, or three or more prior prison commitments. A miscellaneous prior record pertains to a defendant with a criminal record that does not include a prior prison commitment. These indicators were consolidated to include three categories of criminal history for defendants: no priors, miscellaneous priors, and one or more prior prison commitments (figure 4).

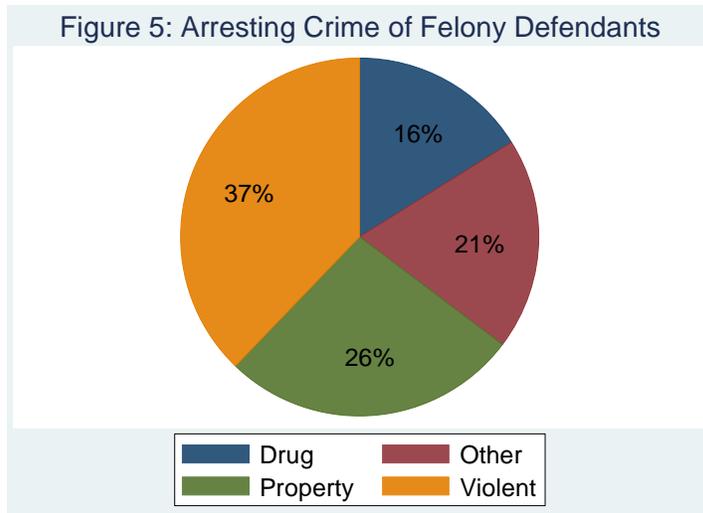
Information was missing in the Prior Record field for a significant percentage of records (6%). For the records containing valid information, a little less than two-thirds (66%) of felony arrestees had miscellaneous prior records, and 19 percent had one or more prior prison commitments. The remaining 15 percent of felony arrestees in the OBTS file had no identified prior records. In addition to these data limitations, as noted by the DOJ in its documentation of this data set, information on prior records is available only for those defendants who had a first arrest after August 1982.



### Offense Category

For this analysis, offense data provided at the time of disposition in the OBTS file were reclassified into four major offense groupings: Violent, Property, Drug, and Other felony (figure 5). These groupings were based in large part on the categories used by the Bureau of Justice Statistics of the U.S. Department of Justice in its biennial *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.

The largest proportion of felony defendants were arrested for violent crimes (37%), followed by defendants charged with property offenses (26%) and other felony offenses (21%). Defendants charged with drug offenses (16%) comprised the smallest group in the OBTS file for calendar year 2016.



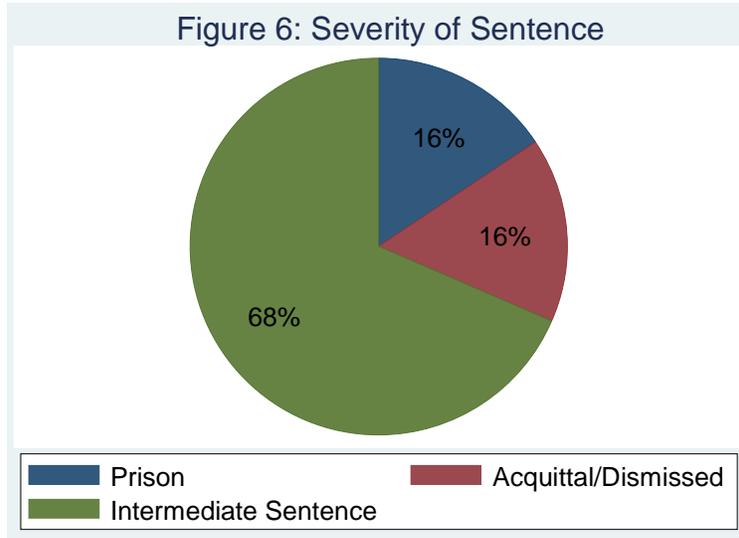
### Sentencing Information

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

Nonprison sentences (intermediate sanctions) pose the greatest challenge to the empirical study of sentencing. Intermediate sanctions are harder to compare because no single continuum exists along which all nonprison sentences can be arrayed or ranked. Moreover, intermediate sanctions are often combined in the original DOJ data (e.g., within the “probation and jail” category) to allow for different configurations of offender risk and need. These combinations are not readily disaggregated in the OBTS data, which adds to the difficulty of ranking specific nonprison sentence categories in order of their severity.<sup>8</sup> To address these issues, all intermediate sanctions shown in figure 6—probation and jail, jail, probation, and fine—have been grouped 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.

<sup>8</sup> These categorizations may become even more problematic as dispositions reflecting criminal justice realignment and legislative mandates like Proposition 47 continue to enter the data set.

The percentages in figure 6 were calculated without controlling for prior record or type of offense. Of the defendants arrested for felony-level offenses, 16 percent received the most severe sentence, prison; and 16 percent received the most favorable outcome, acquittal/dismissal. The remaining 68 percent received an intermediate sentence—including jail, probation, and/or fine.



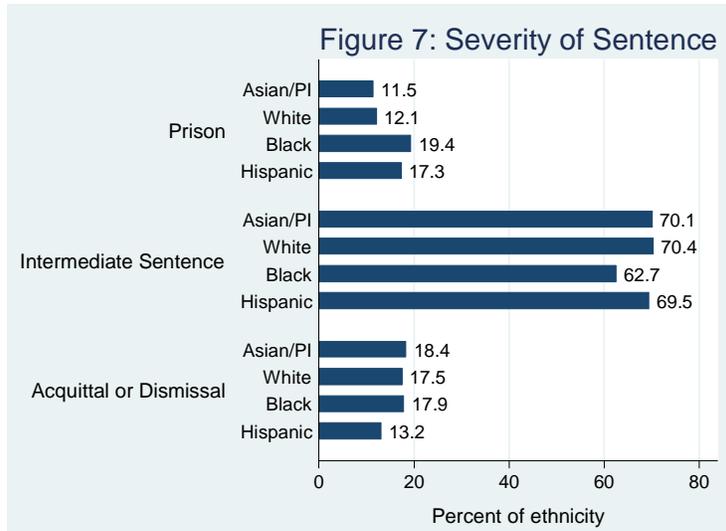
## Findings

The following paragraphs focus first on outcomes by the defendants' race/ethnicity without controlling for prior record or type of offense. This information is presented for illustrative purposes only. The second set of analyses controls for prior record and type of offense to ensure that a relationship between criminal history and severity of sentence, or between type of offense and severity of sentence, is not mistakenly interpreted as a relationship between severity of sentence and a defendant's race or ethnicity.

Controlling for the factors that dictate specific sentences mandated by California's sentencing laws helps us address the critical issue for this mandated study: the degree to which similarly situated offenders receive dissimilar sentences on the basis of their race/ethnicity. All general findings discussed in this report are statistically significant unless otherwise noted.

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

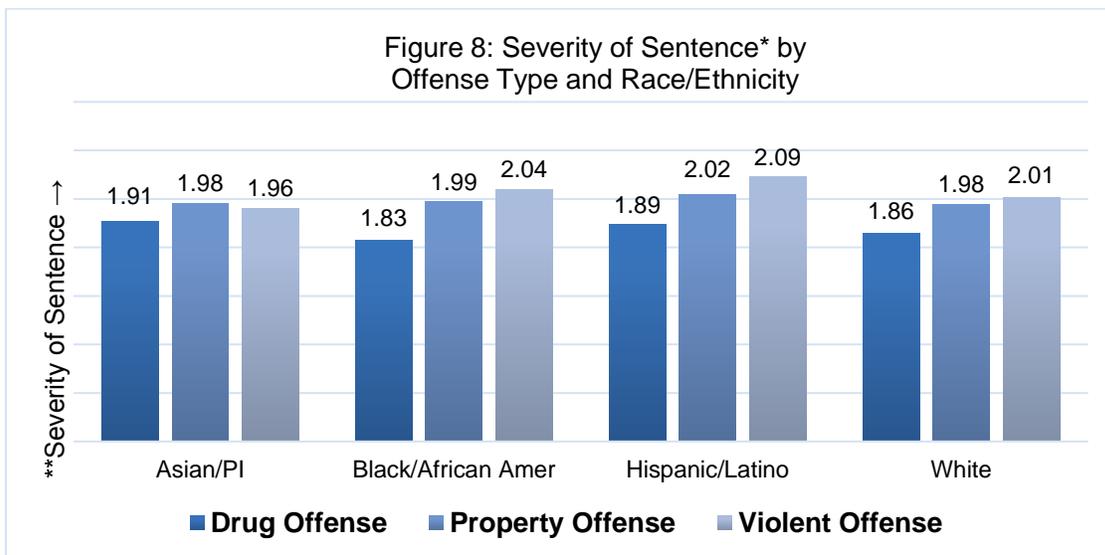
Figure 7 illustrates the proportion of defendants from each racial/ethnic group who received any one of the three severity-of-sentence outcomes. The data presented in this figure do not control for prior record or type of offense. Without controlling for these contextual factors, figure 7 indicates that Black defendants (19.4%) arrested for felony-level offenses were the most likely among the racial/ethnic groups to receive prison sentences. Asians (11.5%) and Whites (12.1%) were the least likely to receive prison sentences. Blacks (62.7%) were the least likely to receive intermediate sentences (i.e., probation and jail, jail, probation or fine). Hispanics (13.2%) were the least likely to be acquitted or to have their cases dismissed.



This data is presented to illustrate the importance of controlling for factors relevant to sentencing, such as prior record and offense type. By grouping defendants based on their prior records and offense types, it becomes possible to compare sentencing outcomes for defendants convicted of similar offenses and having similar criminal histories.

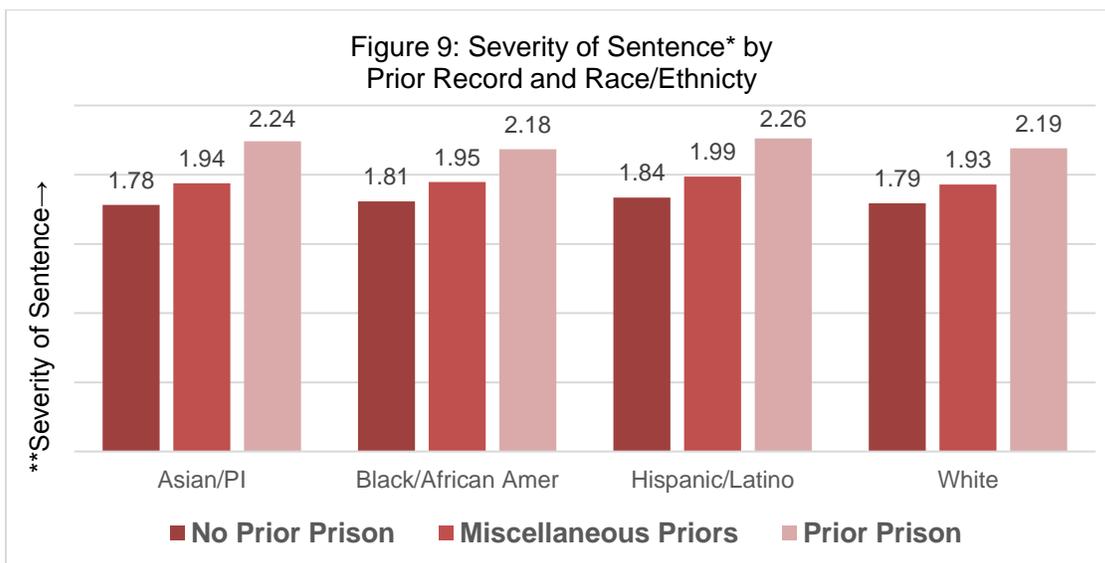
### Overall Results When Controlling for Prior Record and Type of Offense

When grouping defendants according to the extensiveness of their prior criminal records and the types of criminal offense committed, the OBTS data show a complex pattern in the severity of sentences that defendants receive. Findings in this year's data continue to indicate that the strongest overall correlates of sentence severity are a defendant's prior criminal record and the severity of offense committed, although there are other factors that are associated with sentencing outcomes including a defendant's racial/ethnic group membership. In the figures below these differences based on race/ethnicity are illustrated within the context of defendants' offense type (figure 8) and prior criminal record (figure 9).



\* Averages for Sentencing Severity are controlled for the effects of Prior Record, Age, and Gender.

\*\* Sentencing Severity scale: 1=Acquittal/Dismissal, 2=Intermediate Sentence, 3=Prison Sentence.



\* Sentencing Severity averages are controlled for the effects of Severity of Offense, Age, and Gender.

\*\* Sentencing Severity scale: 1=Acquittal/Dismissal, 2=Intermediate Sentence, 3=Prison Sentence.

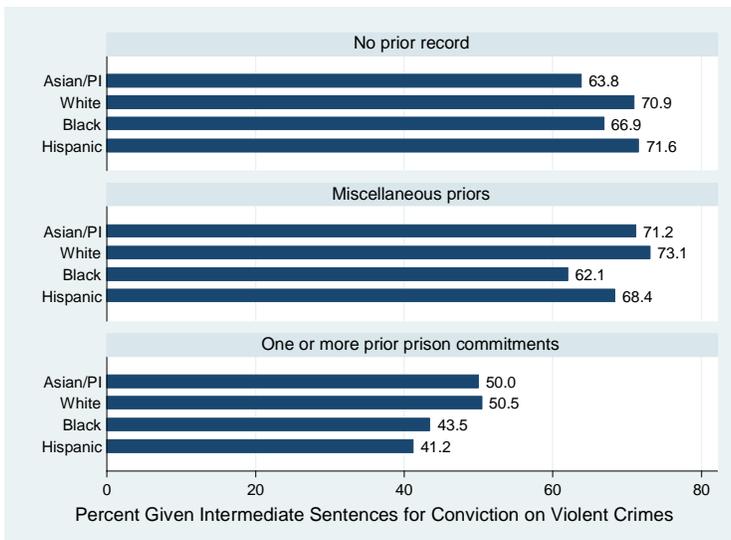
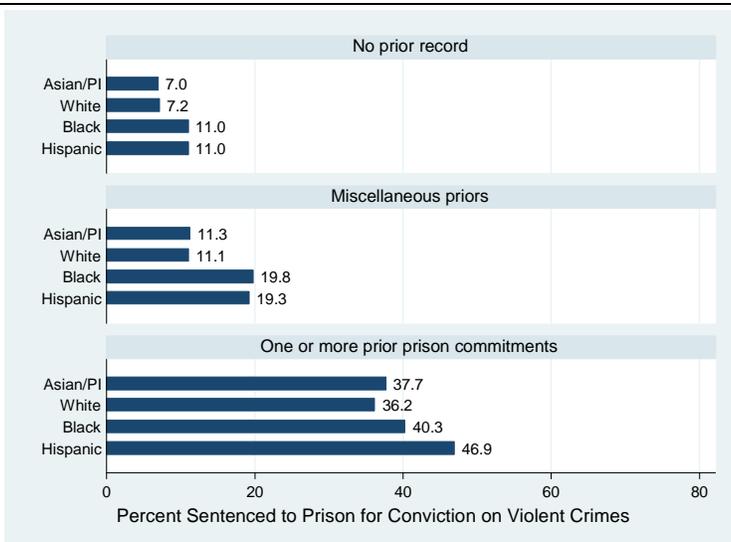
Before turning to the next set of findings it is important to remember that in analyses that do not control for prior record and type of offense (see figure 7), Black defendants were more likely than defendants from the other racial/ethnic groups to receive prison sentences. In many of the later analyses controlling for prior record and type of offense, however, the effects of race on sentencing outcomes are more complex.

The figures and supporting text that follow again focus on variations within three specific types of felony crimes—violent, property, and drug—committed by offenders with similar prior records. Criminal record types include: No prior record, Miscellaneous priors, and One or more prior prison commitments (figures 10 through 12). These figures show that at the statewide level the relationships between racial/ethnic categories and legal indicators are

variable. The variability among groups is highlighted in the explanations accompanying figures 10 through 12.

Although the findings that follow show that both the type of crime and the offender's prior criminal history are the dominant factors in determining sentences, each control is slightly different in its distribution and its effect on ethnic groups. It should also be noted that because this report looks at these relationships proportionally, increases in one type of sentence will correspond to decreases in other types of sentences.

**Figure 10: Sentencing of Violent Crimes, Controlling for Prior Record**



Focusing first on the sentencing of defendants accused of violent crime, the top panel to the left shows convictions that result in a prison sentence. Although there is variability within each of the categories of prior record, it is also clear that prior record has a substantial impact on sentencing outcomes.

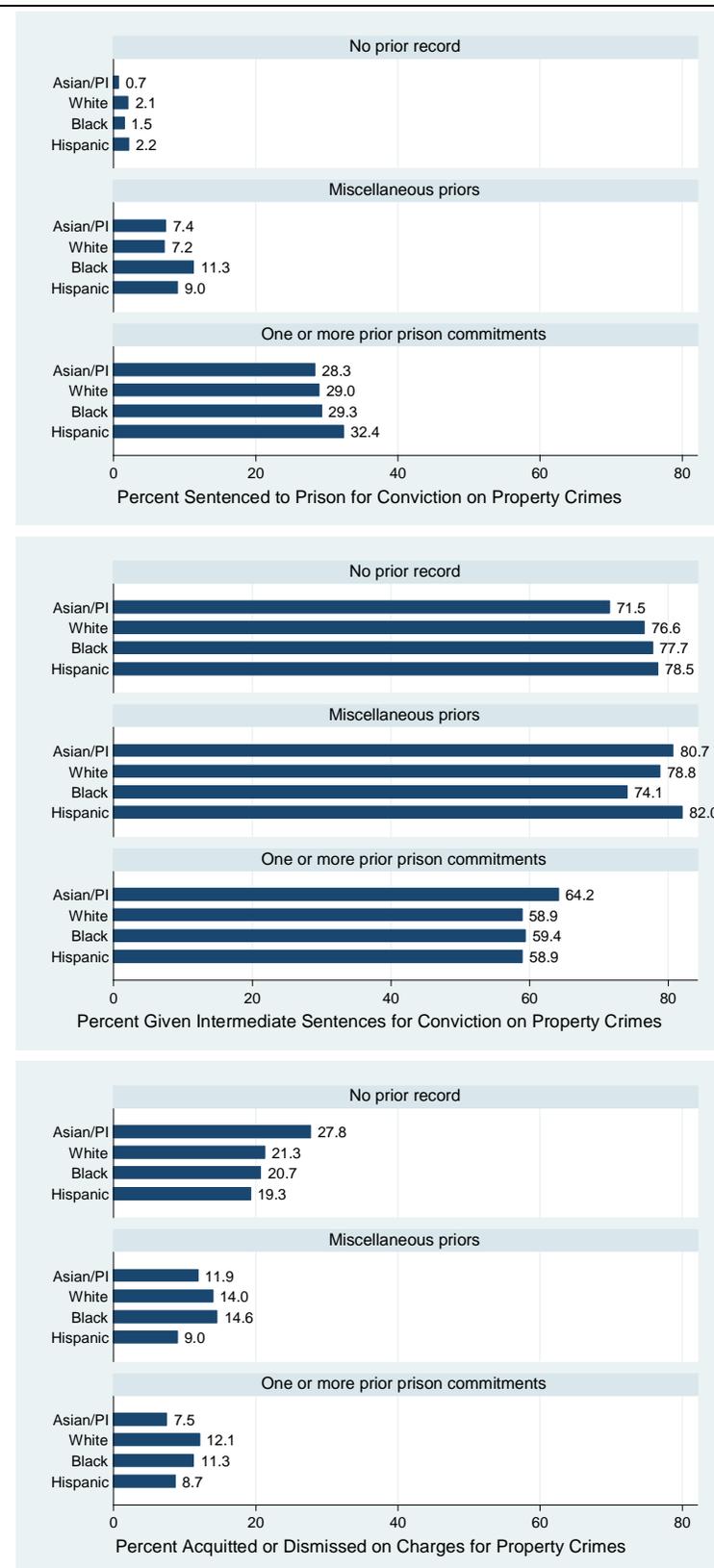
In the top panel to the left, the percentage of each group sentenced to prison for a violent crime ranged from 36.2 to 46.9 percent for defendants with a prior prison commitment. By contrast, for defendants with no prior record, the percentages of groups sentenced to prison for a violent crime were as low as 7.0 percent and not higher than 11.0 percent.

Turning again to the top panel to the left, Hispanics (46.9%) and Blacks (40.3%) with a prior prison commitment were more likely than Asians (37.7%) and Whites (36.2%) to receive prison sentences for a violent crime, a pattern repeated within the top left panel.

In the middle left panel it is apparent that Hispanics (71.6%) and Whites (70.9%) with no priors, Whites (73.1%) and Asians (71.2%) with miscellaneous priors, and Whites (50.5%) and Asians (50.0%) with prior prison commitments were the most likely to receive intermediate sentences for their conviction for violent offenses.

Focusing on the bottom panel to the left, Blacks (16.2%) and Whites (13.3%) who had one or more prior prison commitments were somewhat more likely to be acquitted or have their charges dismissed for violent crimes, as were Black (18.1%) and Asian (17.5%) defendants with miscellaneous priors. For defendants with no prior prison commitments, Asians (29.2%) and Blacks (22.1%) were more likely to be acquitted or have their charges dismissed than were other groups of defendants.

**Figure 11: Sentencing of Property Crimes, Controlling for Prior Record**



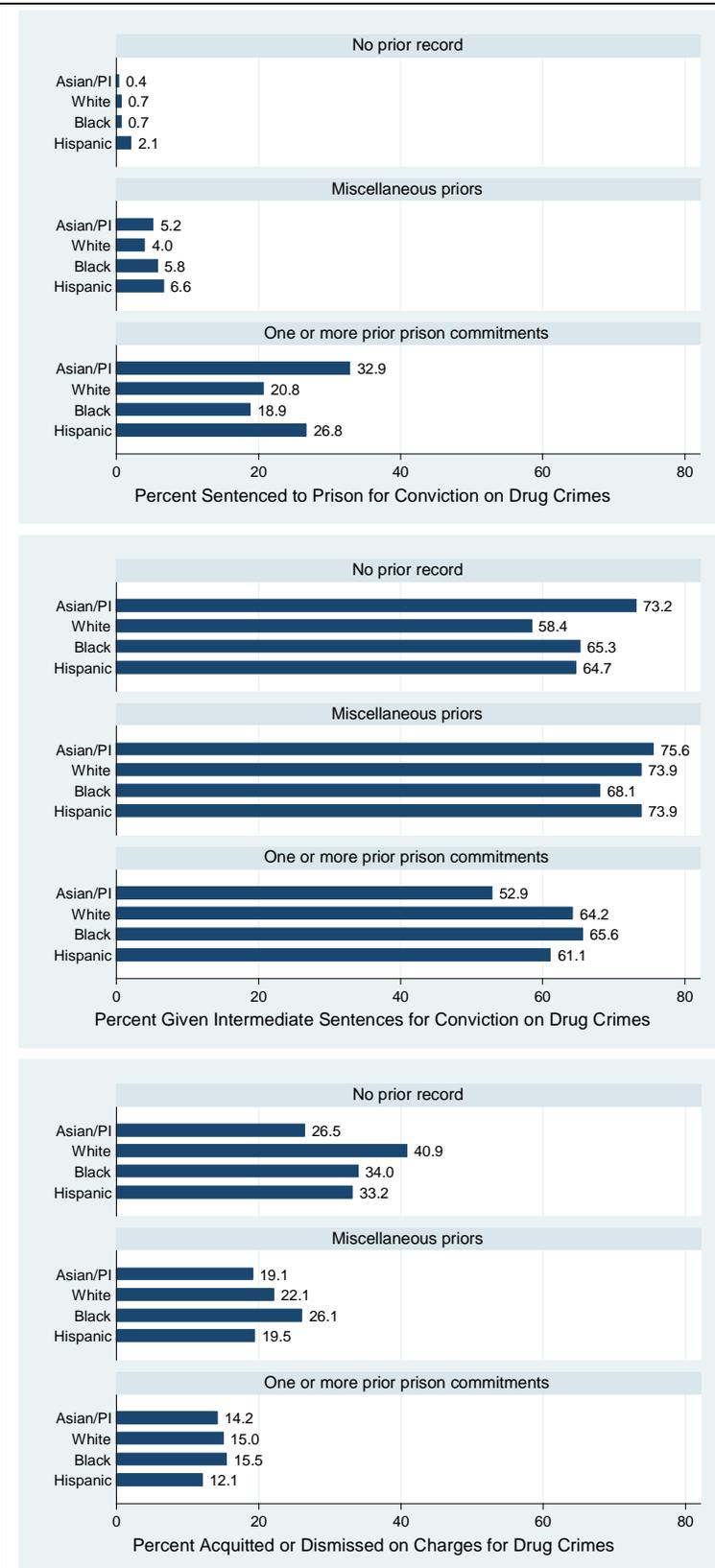
Looking now at sentencing to prison for property crimes, the impact of prior record remains clear, with higher proportions of all groups receiving more severe sentences the more extensive the prior record. While between 28.3 and 32.4 percent of those with a prior prison commitment were sentenced to prison for conviction on a property crime, only between 0.7 and 2.2 percent of those with no prior record were sentenced to prison.

In addition to highlighting the impact of prior criminal record on sentencing outcomes, the graphs for figures 10 and 11 show the impact that the severity of the offense may have on sentencing. As in years past, a prison sentence was less likely for those convicted of a property crime than for those convicted of a violent crime, regardless of prior criminal record (comparing the top panels of figures 10 and 11). Partly because findings are proportional, this pattern tends to be reversed when comparing intermediate sentences for property crimes (middle panel to the left) to those for violent crimes (middle panel, figure 10) in all racial/ethnic groups. In this instance, all groups convicted for property crimes more frequently received intermediate sentences than did defendants committing violent crimes.

Within the category of property crimes, Hispanics (32.4%) and Blacks (29.3%) were sentenced to prison at somewhat higher rates than other groups if they had prior prison records, while Asian defendants (64.2%) with prior prison commitments received intermediate sentences for property crimes more frequently.

Turning to the bottom panel on the left, Asians (27.8%) and to a lesser extent Whites (21.3%) were acquitted or had their charges dismissed for property crimes more frequently than did Blacks (20.7%) and Hispanics (19.3%) when they had no prior record. Further, Blacks (14.6%) and Whites (14.0%) were acquitted somewhat more frequently for property crimes when they had miscellaneous priors, as were Whites (12.1%) and Blacks (11.3%) who had records involving prior prison commitments.

**Figure 12: Sentencing of Drug Crimes, Controlling for Prior Record**



Turning now to convictions for drug crimes, we once again see that prior record has a significant effect on sentencing outcome, with variability among groups of defendants also present based on their case types.

In the top panel to the left, findings indicate that the percentage of defendants with a prior prison commitment who were sentenced to prison for drug crimes tended to be lower than for defendants with similar criminal histories convicted of property or violent crimes (shown in the top panels of figures 10 and 11).

Intermediate sentences remain difficult to interpret, probably because of the variability of outcomes contained within that single category. However, it may be noted that Asians (73.2%) and to a lesser extent Blacks (65.3%) were the most likely to receive intermediate sentences if they had no prior record, while Blacks (65.6%) and Whites (64.2%) were somewhat more likely to receive a sentence of this type if they had one or more prior prison commitments.

Turning to defendants who had been acquitted or had their charges dropped for cases involving drugs (bottom panel to the left), the data indicate that defendants with no prior record tended to be acquitted for drug-related felonies with greater frequency than defendants who had committed violent or property-related felonies (bottom panels of figures 10 and 11).

Moreover, Whites (40.9%) and Blacks (34.0%) with no priors who were accused of felony drug offenses were acquitted more frequently than other groups with similar criminal records, Blacks (26.1%) and Whites (22.1%) with miscellaneous priors were acquitted with somewhat greater frequency than Asians (19.1%) or Hispanics (19.5%) with similar criminal backgrounds. Finally, Blacks (15.5%) and Whites (15.0%) with prior prison commitments were more likely to be acquitted of drug offenses than Asians (14.2%) and Hispanics (12.1%) with similar criminal histories.

## **Conclusions**

When grouping defendants according to the extensiveness of their prior criminal records and types of offense, the data show a complex pattern in the severity of sentences that defendants receive. As in years past, findings indicate that the strongest overall correlates of sentence severity are a defendant's prior criminal record and the severity of offense committed, although other factors are associated with sentencing outcomes, including a defendant's racial/ethnic group membership. However, when directly comparing defendant groups in the context of the severity of their criminal offenses and prior criminal histories, sentencing outcomes are variable and appear to be primarily associated with defendants' prior criminal records and offense types.

It should be noted that 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**

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.