



455 Golden Gate Avenue  
San Francisco, CA 94102-3688  
Tel 415-865-4200  
TDD 415-865-4272  
Fax 415-865-4205  
www.courts.ca.gov

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MR. MARTIN HOSHINO  
*Administrative Director,  
Judicial Council*

December 18, 2014

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

Mr. Danny Alvarez  
Secretary of the Senate  
California State Senate  
State Capitol, Room 3044  
Sacramento, California 95814

Mr. E. Dotson Wilson  
Chief Clerk of the Assembly  
California State Assembly  
State Capitol, Room 3196  
Sacramento, California 95814

*Re: Disposition of Criminal Cases According to the Race and Ethnicity of  
the Defendant: 2014 Report to the California Legislature as Required by  
Penal Code Section 1170.45*

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

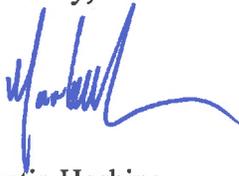
Attached is the Judicial Council report required under Penal Code section 1170.45 on criminal sentencing according to the race and ethnicity of the defendant. Since 2001, the Judicial Council's Office of Court Research has produced this report by analyzing the disposition of felony cases using data provided by the California Department of Justice. Consistent with those of previous years, the 2014 report finds that when controlling for prior record and type of offense, the data show no consistent pattern in the severity of sentences principally related to defendants' race/ethnicity. However, within offense categories (e.g., drug offenses or property

Ms. Diane F. Boyer-Vine  
Mr. Danny Alvarez  
Mr. E. Dotson Wilson  
December 18, 2014  
Page 2

offenses) there are some small but statistically significant differences in the sentencing outcomes among racial/ethnic groups.

If you have any questions related to this report, please contact Ms. Donna Hershkowitz, Director, Court Operations Services, at 818-558-3068 or [donna.hershkowitz@jud.ca.gov](mailto:donna.hershkowitz@jud.ca.gov).

Sincerely,



Martin Hoshino  
Administrative Director  
Judicial Council of California

**Attachment**

cc:

Members of the Criminal Law Advisory Committee  
Ms. Margie Estrada, Policy Consultant, Office of Senate President pro Tempore Kevin de León  
Ms. Fredericka McGee, General Counsel, Office of Assembly Speaker Toni G. Atkins  
Ms. Alison Anderson, Chief Counsel, Senate Committee on Public Safety  
Mr. Gregory Pagan, Chief Counsel, Assembly Committee on Public Safety  
Mr. Mike Petersen, Consultant, Senate Republican Office of Policy  
Ms. Donna Hershkowitz, Director, Court Operations Services, Judicial Council  
Mr. Cory T. Jasperson, Director, Governmental Affairs, Judicial Council  
Mr. Peter Allen, Senior Manager, Communications, Judicial Council  
Ms. Shelley Curran, Senior Manager, Criminal Justice Services, Judicial Council  
Mr. Arturo Castro, Senior Attorney, Criminal Justice Services, Judicial Council  
Ms. Yvette Casillas-Sarcos, Administrative Coordinator, Governmental Affairs, Judicial Council



# JUDICIAL COUNCIL OF CALIFORNIA

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MR. MARTIN HOSHINO  
Administrative Director,  
Judicial Council

December 18, 2014

Report Title: *Disposition of Criminal Cases According to the Race and Ethnicity of the Defendant*

Statutory Citation: Penal Code section 1170.45

Date of Report: December 18, 2014

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 in accordance with Penal Code section 1170.45 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 2013, 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.

Consistent with reports from previous years, the 2014 report finds that when controlling for prior record and type of offense, there is no consistent pattern in the severity of sentence that is principally related to the defendants' race/ethnicity, as defined. However, within offense categories (e.g., drug offenses or property offenses) there are small but statistically significant differences in the sentencing outcomes among the 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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2014 REPORT TO THE CALIFORNIA  
LEGISLATURE AS REQUIRED BY PENAL  
CODE SECTION 1170.45



JUDICIAL COUNCIL  
OF CALIFORNIA

Judicial Council of California  
Court Operations 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).

Printed on recycled paper.

**JUDICIAL COUNCIL OF CALIFORNIA**

**Hon. Tani G. Cantil-Sakauye**

*Chief Justice of California and  
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**Mr. Martin Hoshino**

*Administrative Director*

**Mr. Curtis L. Child**

*Chief Operating Officer*

**OPERATIONS & PROGRAMS DIVISION  
COURT OPERATIONS SERVICES**

**Ms. Donna Hershkowitz**

*Director*

**Ms. Leah Rose-Goodwin**

*Manager, Office of Court Research*

**Mr. David Smith**

*Senior Research Analyst and Primary Author of Report, Office of Court Research*

## **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 2013, 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 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, 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 controlling for prior record and type of offense, the data show no consistent pattern in the severity of sentences that are principally related to the defendants' race/ethnicity. However, within offense categories (e.g., drug offenses or property offenses) there are some small but statistically significant differences in the sentencing outcomes among the racial/ethnic groups.

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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: American Indian or Alaskan Native, Asian or Pacific Islander, Black or African American, Hispanic, and White. (See Fed.Reg., July 8, 1997, Part II, Pages 36873–36946, Office of Management and Budget, Directive 15.) 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.

While this report looks at only a single year of data, it is important to note that reports from previous years have also indicated that the data do not demonstrate 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 any form of differential judicial treatment based on race or ethnicity depends on very specific contexts that could require more study and resources to identify.

### **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 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, less than 2 percent of felony cases reach 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 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 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**

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

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 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 because 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. 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.
- 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.
- Despite the underreporting of dispositions, CJSC has indicated that it is confident that the arrest disposition data received provides an accurate general description of the statewide processing of adult felony arrestees.

- 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 for 2013 contains a total of 303,013 records of arrest for felony-level offenses in calendar year 2013 or earlier that were disposed in calendar year 2013.<sup>2</sup> Diagram 1 on the following page shows the number of dispositions at distinct case processing stages for all OBTS felony dispositions in 2013.

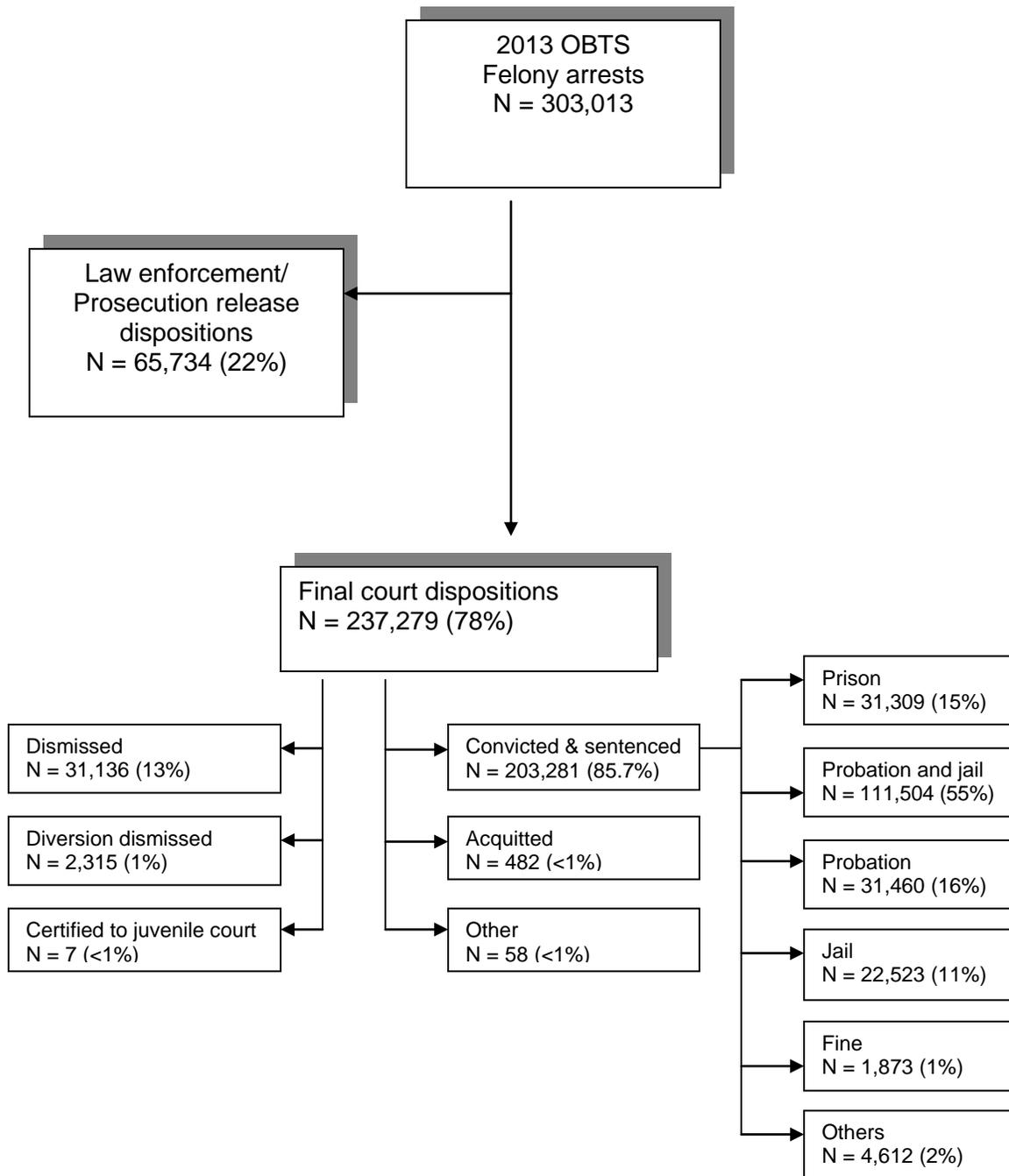
Regardless of race/ethnicity, court dispositions made up 78 percent of all dispositions, whereas dispositions by law enforcement agencies or the prosecuting attorney accounted for 22 percent. Dispositions by law enforcement agencies include cases dropped for reasons such as insufficient evidence. The 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>
Asian/PI	1,865	2.8
White	20,189	30.7
Black	15,765	24.0
Hispanic	25,281	38.5
American Indian	256	0.4
Other/Unknown	2,378	3.6
<b>Total</b>	<b>65,734</b>	<b>100.0</b>

<sup>2</sup> A small number of duplicate records were deleted from the original data file before analyses were conducted to avoid double counting cases discussed in this report.

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



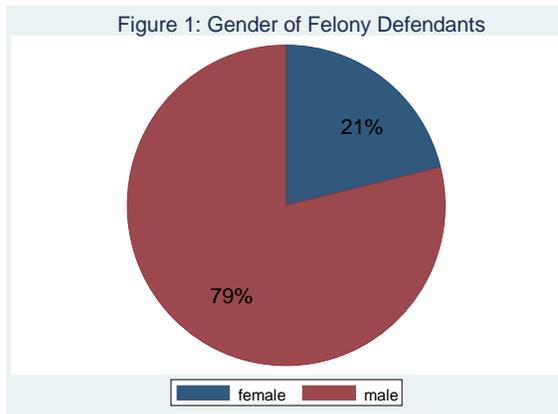
## Demographics of Felony Defendants

Following is a demographic profile of the population of felony defendants who received dispositions in 2013 and are documented in the OBTS file.

### Gender

Males made up 79 percent of the defendants reported to have received dispositions in 2013; 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 biennial *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>

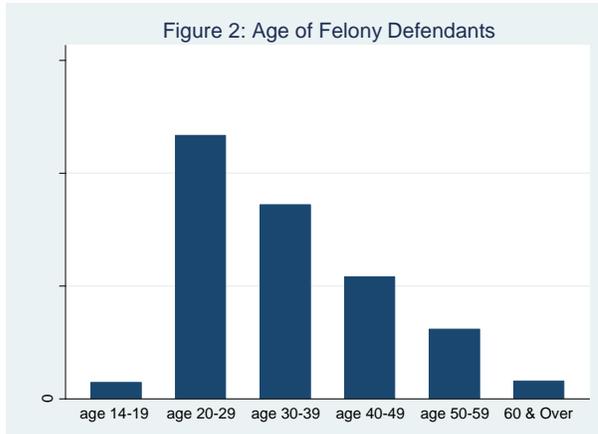


### Age

The OBTS file contains the date of birth and date of disposition for each felony defendant, 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. Department of Justice: ages 14–19, 20–29, 30–39, 40–49, 50–59, and 60 or older. Persons aged 20–29 (39 percent) and 30–39 (28 percent) were arrested most frequently. Figure 2 shows the complete distribution by age of all felony defendants in the OBTS file.

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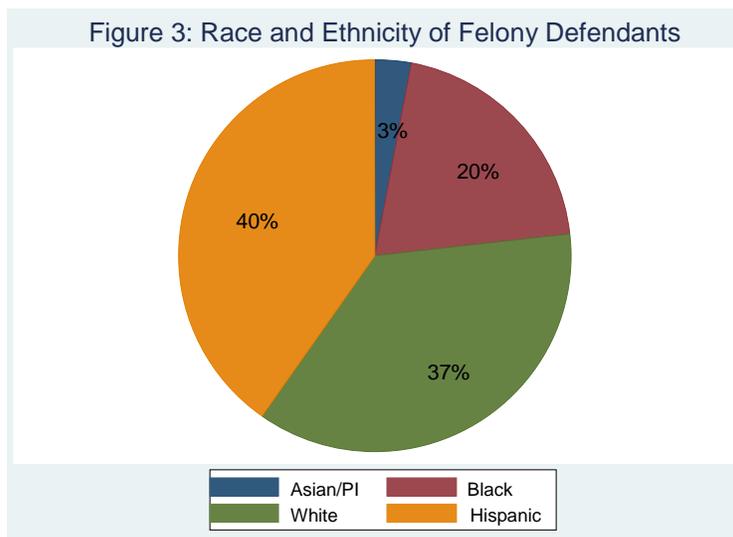
<sup>3</sup> U.S. Census Bureau, “State and County Quick Facts,” 2010.



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 60 or older were arrested at a disproportionately low rate. Persons aged 40–49 were arrested at rates only slightly higher, while those aged 14–19 and 50–59 were arrested at rates slightly lower 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, Black, White, and Hispanic (figure 3).<sup>5</sup>



<sup>4</sup> According to the U.S. Census of 2010, the age group distribution of California residents corresponding to the groups presented in figure 2 is as follows: 15–19 years=3.9%; 20–29 years=14.8%; 30–39 years=13.8%; 40–49 years=14.2%; 50–59 years=12.8%; and 60+ years=16%.

<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. For the remainder of the report, we use the term “Asian” to refer to the broader category of Asian/Pacific Islanders.

Hispanics made up the largest percentage of reported felony defendants in 2013 (40 percent), followed by Whites (37 percent) and Blacks (20 percent). Asians (3 percent) represent only a small proportion of the 2013 felony arrest population.

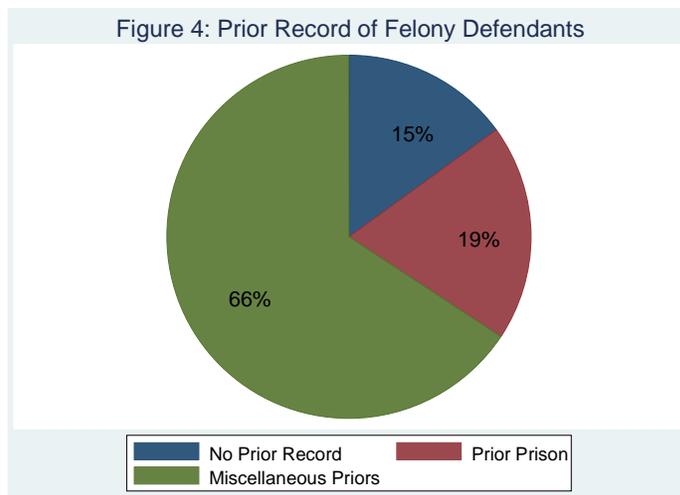
Blacks were arrested for felony-level offenses at rates significantly higher than their proportion in California’s population and Hispanics at rates slightly greater than their share of the population as a whole. Conversely, Asians and to a lesser extent Whites were arrested at lower rates compared to their proportions in California’s population.<sup>6</sup>

## **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 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 (7 percent). For the records containing valid information, two-thirds (66 percent) 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.

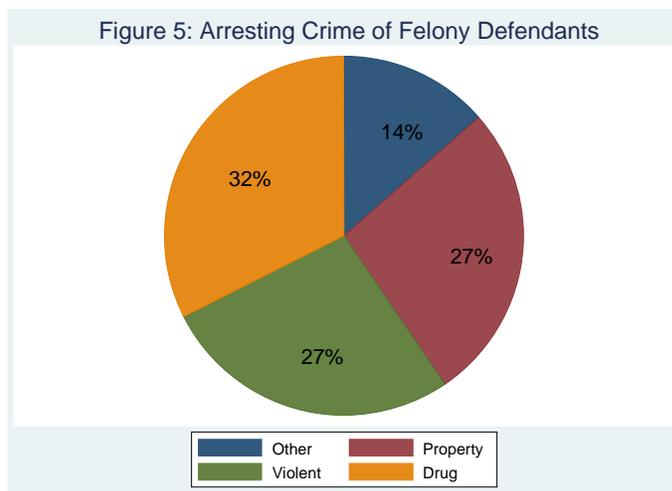


<sup>6</sup> According to the U.S. Census of 2010, the distribution of California residents based on their ethnic group membership is as follows: Asian=13.9%; Black=6.6%; Hispanic=38.2%; White=39.4%; Other=1.9%.

### 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).

Similar proportions of defendants were arrested for drug offenses, property offenses, and violent crimes (32, 27, and 27 percent, respectively), while the remaining offenses, classified as “other felony offenses,” accounted for 14 percent of all offenses in the OBTS file.



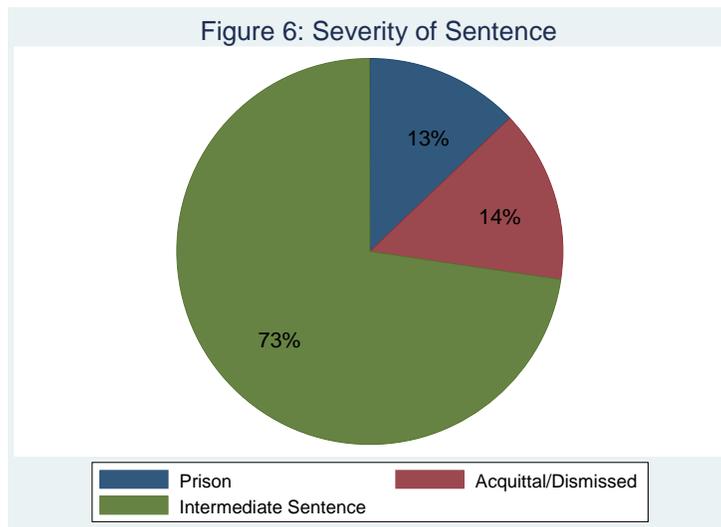
### Sentencing Information

The OBTS data organizes sentences 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>7</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.

The percentages in figure 6 were calculated without controlling for prior record or type of offense. Of the defendants arrested for felony-level offenses, 13 percent received the most severe sentence, prison; and 14 percent received the most favorable outcome, acquittal/dismissal. The remaining 73 percent received an intermediate sentence—including jail, probation, and fine.



## Findings

In the following pages we first look at 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 correlation between criminal history and severity of sentence, or between type of offense and severity of sentence, is not mistakenly interpreted as a correlation between severity of sentence and a defendant’s race or ethnicity.

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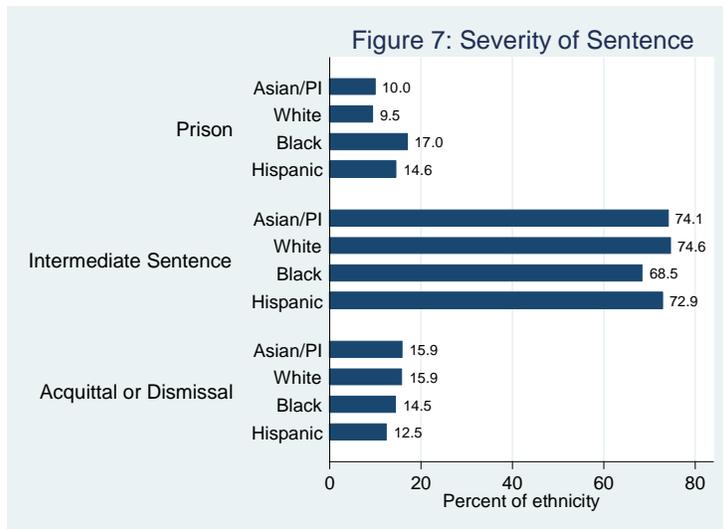
<sup>7</sup> These categorizations will likely become even more problematic in future years as dispositions reflecting criminal justice realignment begin to enter the data set.

Controlling for the factors that dictate specific sentences mandated by California’s sentencing laws allows us to 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 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 and Whites 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 be acquitted or to have their cases dismissed.



These data are 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**

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. However, within each 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.

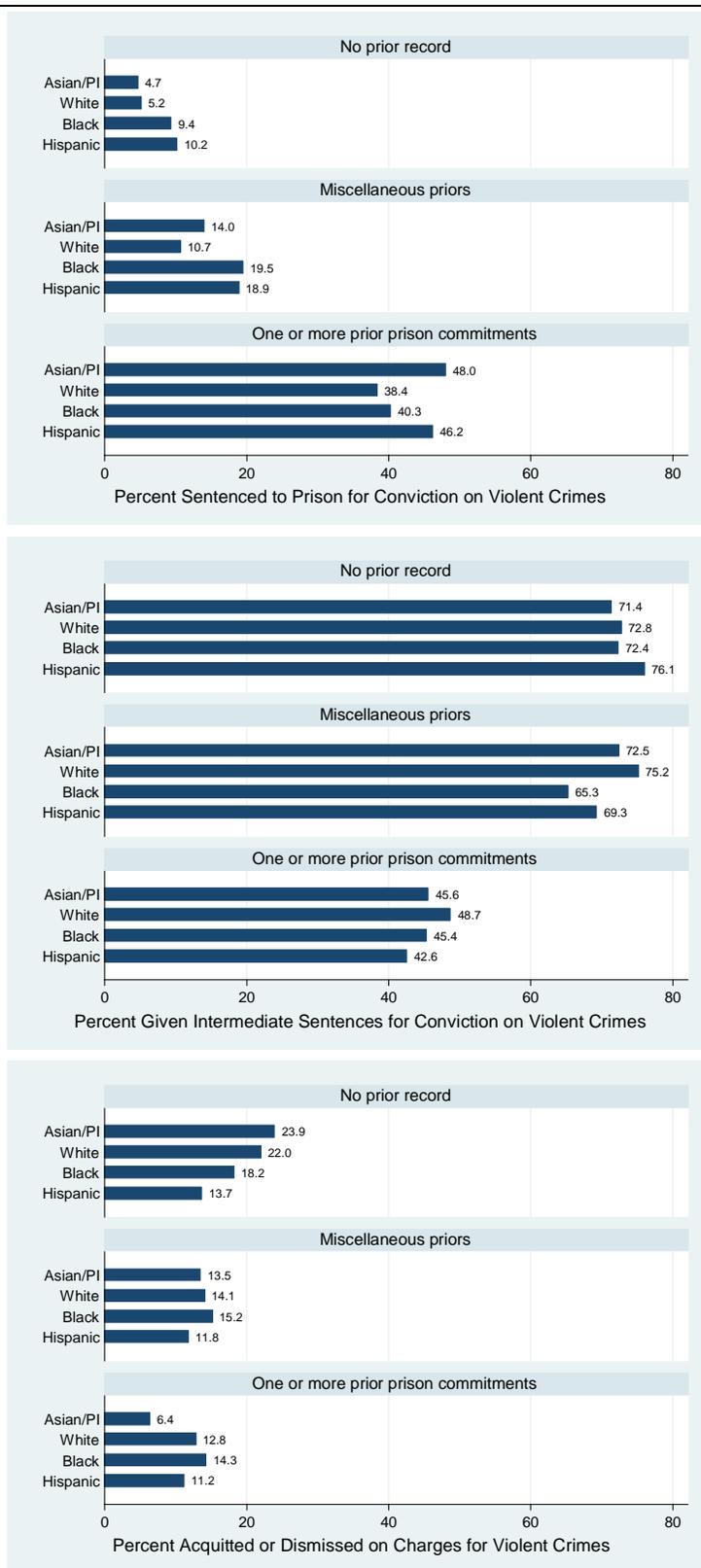
As a reminder, in the analysis not controlling for prior record and type of offense (see figure 7), Black defendants were more likely than defendants from the other racial/ethnic groups to receive prison sentences. In many of the later analyses controlling for prior record and type of offense, however,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

The graphics and supporting text that follow 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 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, when controlling for prior record and type of offense, there are no consistent patterns in the severity of sentence that are related primarily to the defendants' race/ethnicity.

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 explanations accompanying figures 8 through 10.

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. Because 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**



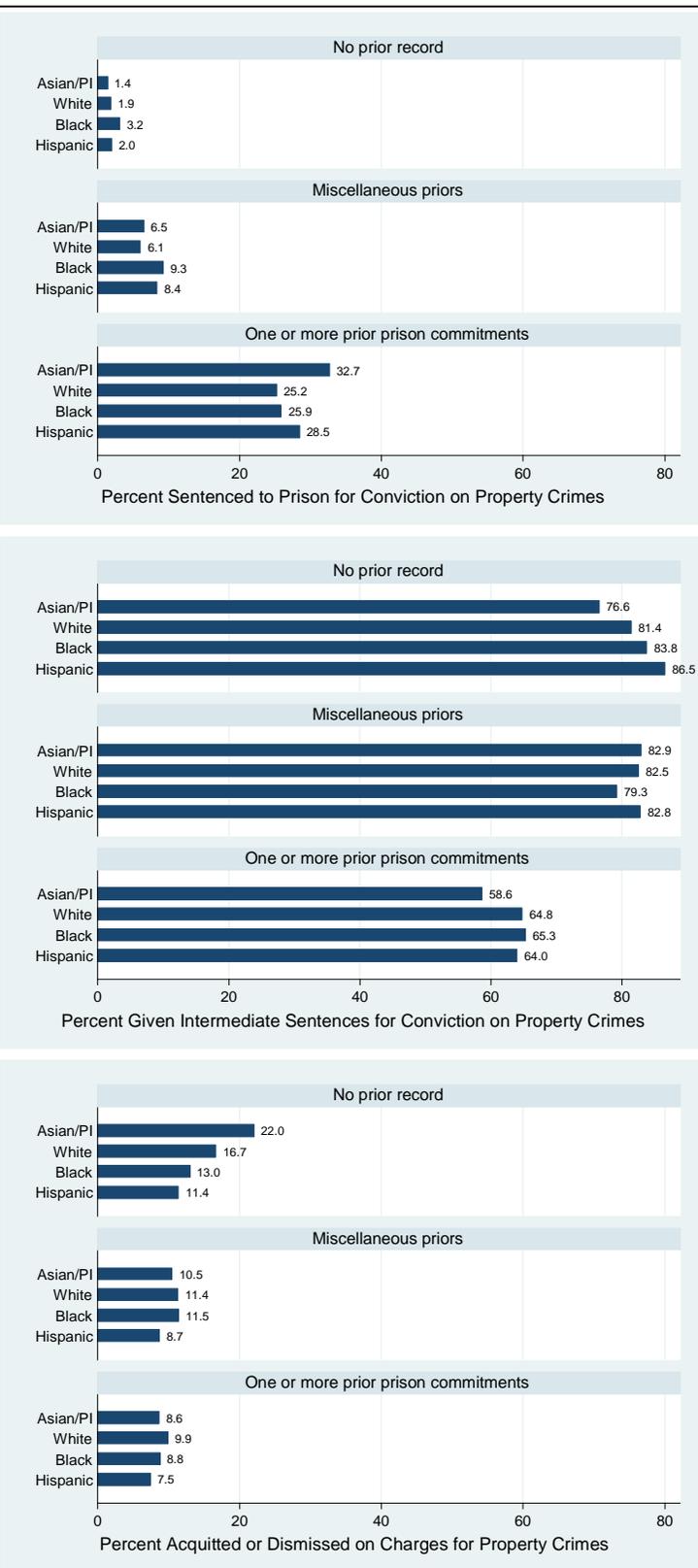
Focusing first on the sentencing of defendants accused of violent crime, the top panel to the left shows convictions that result in a prison sentence. Although there is variability within each of the categories of prior record by which the data are organized, it is also clear that prior record—even in the aggregated categories used for this analysis—has a huge impact on sentencing outcomes.

In the top panel to the left, the percentage of each group sentenced to prison for a violent crime ranges from between 38.4 percent and 48.0 percent for defendants with a prior prison commitment. In contrast, for defendants with no prior record the percentage of each group sentenced to prison for a violent crime ranges from between 4.7 percent and 10.2 percent.

Further, while Asians with a prior prison commitment (48.0%) are more likely than all groups but Hispanics (46.2%) to receive a prison sentence for a violent crime when compared to other defendants with a prior prison commitment, Asians are among the least likely to receive a prison sentence for a violent crime when compared to other defendants with only miscellaneous priors (14.0%) or no prior record (4.7%).

Still focusing on the top panel to the left, while Blacks who have one or more prior prison commitments are less likely than Asians and Hispanics with similar records to receive a sentence to prison (40.3%), they are the most likely to receive a sentence to prison when compared to other defendants with only miscellaneous priors (19.5%).

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



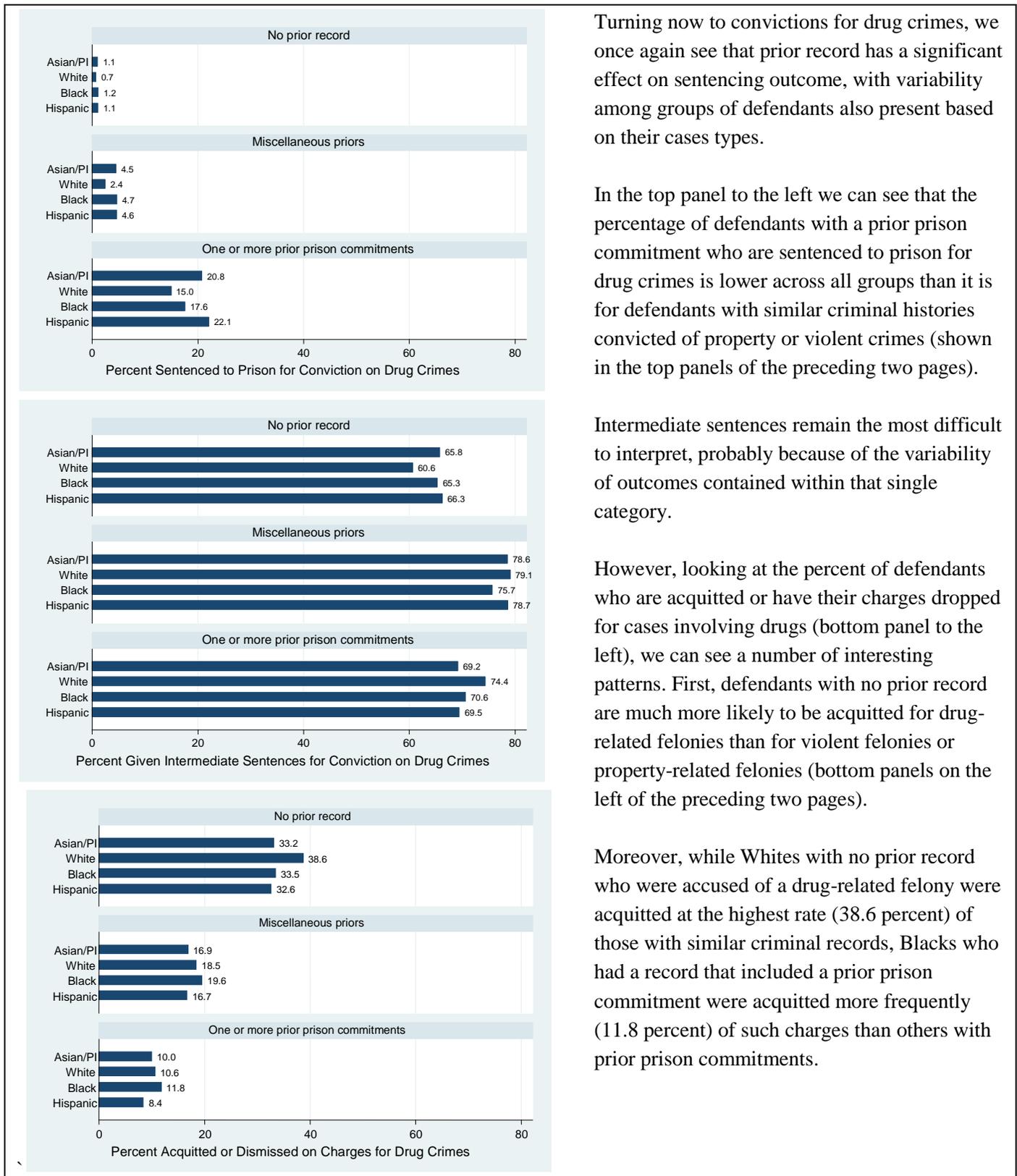
If we now look at sentencing to prison for property crimes, the impact of prior record remains clear, with higher proportions of all groups receiving more severe sentences the more extensive the prior record. While between 25.2 and 32.7 percent of those with a prior prison commitment were sentenced to prison for conviction on a property crime, only between 1.4 and 3.2 percent of those with no prior record were sentenced to prison.

In addition to highlighting the impact of prior record on sentencing outcomes, the set of graphs on this page shows the impact of case type on sentencing. A prison sentence is less likely for those who are convicted of a property crime than it is for those convicted of a violent crime, regardless of prior criminal record (comparing the top panels of this and the previous page).

Turning to the differences across racial/ethnic groups in the top panel to the left, we see that defendants with prior prison commitments are sentenced to prison for property crimes in a pattern that parallels the pattern for violent crime (presented on the previous page). For property crimes, Asians (32.7%) and Hispanics (28.5%) are sentenced to prison at slightly higher rates than Blacks (25.9%) and Whites (25.2%) if they have prior prison records. For violent crimes, Asians (48.0%) and Hispanics (46.2%) are sentenced to prison at a somewhat higher level than Blacks (40.3%) and Whites (38.4%) for defendants who have prior prison commitments.

Comparing intermediate sentences for property crimes (middle panel to the left), to those for violent crimes (middle panel on the preceding page), it is clear that higher proportions of defendants in all racial/ethnic groups received intermediate sentences for property offenses.

**Figure 10: 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 cases types.

In the top panel to the left we can see that the percentage of defendants with a prior prison commitment who are sentenced to prison for drug crimes is lower across all groups than it is for defendants with similar criminal histories convicted of property or violent crimes (shown in the top panels of the preceding two pages).

Intermediate sentences remain the most difficult to interpret, probably because of the variability of outcomes contained within that single category.

However, looking at the percent of defendants who are acquitted or have their charges dropped for cases involving drugs (bottom panel to the left), we can see a number of interesting patterns. First, defendants with no prior record are much more likely to be acquitted for drug-related felonies than for violent felonies or property-related felonies (bottom panels on the left of the preceding two pages).

Moreover, while Whites with no prior record who were accused of a drug-related felony were acquitted at the highest rate (38.6 percent) of those with similar criminal records, Blacks who had a record that included a prior prison commitment were acquitted more frequently (11.8 percent) of such charges than others with prior prison commitments.

## **Conclusions**

When controlling for prior record and type of offense, we identified differences across racial/ethnic groups in patterns of sentencing, but observed no consistent pattern in the severity of sentence that is principally related to the defendants' race/ethnicity. On the other hand, within each of the offense categories (e.g., drug offenses, property crimes) and using the limited controls available we found small but statistically significant differences in sentencing outcomes among racial/ethnic groups. However, 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.