

Ethnic Disparities in Sentencing and the Washington Sentencing Reform Act: The Case of Yakima County

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Introduction

An important issue confronting the criminal justice system is sentencing disparity. Sentencing disparity involves inequitable sanctions imposed on individuals who have committed similar offenses. These inequalities in sentencing patterns have allegedly centered on group differences and may reflect an ethnic or racial bias.

Numerous studies have explored this issue, sparking considerable controversy. Many of these early works provided findings which supported the view that sentencing bias against nonwhites existed.¹ Neubauer suggests courts in the south strongly discriminated against African Americans—evident from a 70% execution rate of all prisoners since 1930. For cases of rape, 90% of all prisoners executed were black.² Another study argues that sentencing disparity is neither restricted to the south, nor limited to capital punishment cases. In an analysis of Pennsylvania data for 1977, sentencing disparity was observed in urban, suburban, and rural areas after controlling for prior record and using tests of statistical significance and measures of association. Results indicated a greater disparity in suburban areas with a small minority population, but within easy commuting distance from a large African American population.³

Other researchers have focused on non-black minority groups. A study of Hispanics and court processing in El Paso observed that ethnicity had an indirect effect through bail status. Moreover, being Hispanic was the single best predictor of guilty verdicts in El Paso.⁴ Another study focusing on Native Americans discovered that they were more likely to be sent to prison for offenses for which whites received non-prison sanctions. Additionally, when whites were sent to

prison for similar offenses, they were more likely to receive parole than Native Americans.⁵

The racial characteristic of the judge has also been found to impact sentencing disparity.⁶ While no significant differences were found between white and black judges when sentencing black defendants, black judges were more likely to sentence white defendants to prison than were white judges.

Sentencing disparity has been observed in Washington. According to a study conducted by the Institute for Public Policy and Management, University of Washington (1986), during the 1980-82 period blacks were nine times more likely to be imprisoned than whites, Hispanics one and one-half times more likely, and Native Americans three times more likely. The study further indicates that minorities are more likely to be "charged with serious and violent offenses," "more likely to be detained prior to trial," "less likely to plead guilty," and "more likely to be sentenced to prison."⁷

In an effort to reduce sentencing bias, among other goals, states have been moving away from indeterminate sentencing statutes which provide considerable sentencing discretion to determinate sentencing which supplies guidelines, thus constraining discretion formerly enjoyed by judges and parole boards. Washington has joined this movement. It adopted the Sentencing Reform Act (SRA) in 1981, and the statute became effective in July 1984. Two of the stated purposes of the SRA were: (1) Ensure that the punishment for a criminal offense is proportionate to the seriousness of the offense and the offender's criminal history, and (2) Be commensurate with the punishment imposed on others committing similar offenses.⁸

To achieve neutrality in sentencing patterns, the SRA provides a sentencing grid with ranges of permissible sanctions (see Appendix for grid). The grid is composed of two variables: Seriousness Level and Offender Score. Seriousness Level focuses on the current conviction and ranges from "I" (least serious, e.g., possession of stolen property) to "XIV" (most serious, e.g., aggravated murder). Offender Score is based on criminal history, including the number of current convictions and prior separate convictions which were concurrently served, and ranges from "0" to "9" (first-time offender to repeat offender). Excluding Seriousness Level XIV, which carries a life sentence without parole or the death penalty regardless of Offender Score, the sentencing grid has 130 active cells.

For every felony conviction, SRA permits two possible sentence lengths dependent upon circumstances. The first is the standard sentence and may include a combination of total confinement (prison), partial confinement (work release), and community service. Under the standard sentence, the combination of these three must equal a total sentence which falls within the prescribed grid range. The second sentencing possibility is the alternative sentence which permits departures from the grid. Alternative sentences involve the First-Time Offender Waiver, Special Sexual Offender Sentencing Alternative, and the Exceptional Sentence. An Exceptional Sentence, which is one that is outside of the grid range, must be justified in writing by the sentencing judge based upon the unique and compelling circumstances included in the case. Of the two possible groups of sanctions, nearly three-quarters (73.6% in fiscal 1987) of all

felony cases state-wide fell under the standard sentence. The First-Time Offender Waiver was used in 18.9% of the 1987 cases and the Exceptional Sentence was rarely used at all—only 3.6%, with the remaining cases included in the “Special Sex Offender” category.⁹ Thus, while alternative sentence options are available, the vast majority of felon offenders are given standard sentences based on the seriousness of the crime and criminal history.

Within the standard sentence, however, opportunities for sentencing disparity exist. SRA permits all or a portion of the sentence of up to one year to be served as partial confinement in a work release program. This, in turn, has an impact on the period of actual jail confinement. Given these condition options which can be imposed, this study seeks to assess the success of the SRA in achieving sentencing neutrality.

The Study

Yakima county was selected as the site for this exploratory study. With a 1980 population of 172,508, it ranks sixth in population in Washington. Moreover, Yakima possesses two large ethnic populations. It has the second largest Native American concentration in the state—6,656, and, with a population of 25,455, it also has the second largest Hispanic settlement. Together these two minority groups constitute slightly under 20% of Yakima’s total population. State-wide these two groups make up only 4.4% of Washington’s population.¹⁰ Aside from the large ethnic concentration, the county is overwhelmingly rural in character and is economically dependent on agriculture.

Raw data used for this study was collected by the Washington Sentencing Guidelines Commission and provided to the authors through the assistance of the Commission’s director—Dr. David L. Fallen. The Commission supplied Yakima county data for fiscal years 1982, and 1986 through 1989. The authors hoped to compare sentencing patterns prior to SRA with patterns after the law took effect. This would have allowed an independent assessment of earlier studies which suggested a disparity problem for the state as a whole with the Yakima experience. The 1982 data set for Yakima county involved, however, a stratified random sample of felony convictions. Thus, only 248 cases were available for processing. After controlling for the effects of seriousness of crime and past criminal history, each cell contained too few cases (fewer than five) to extract statistical significance for any observed relationship. A subsequent run using case weights to reflect the population of adult felony convictions in Yakima county proved equally fruitless in overcoming the problem. Unfortunately, given data limitations the authors are unable to empirically comment on pre-SRA conditions in Yakima. Thus, sentencing disparity may, or may not, have existed.

Although the question of pre-SRA conditions in Yakima cannot be addressed, the post-SRA situation can be explored. The second data set, which covered fiscal years 1986 through 1989, included 4307 useable cases. Of these, 2145 cases fell in the standard sentence category, excluding exceptional downward departures from the SRA range. These cases, controlling for crime level and criminal history, produced fifteen cells for investigation.

Three independent variables and two dependent variables were selected for study. The independent variables included ethnicity (white, Native American, Hispanic), gender (female, male), and age (18-24, 25-30, 31-36, 37 and over). Dependent variables for study were total confinement (prison/jail sentence in months) and partial confinement (authorized work release in months).

Mindful of contemporary research in this area,¹¹ the authors wanted to control for the possible impact of extralegal variables, e.g., socioeconomic status of the defendant. Limitations in the available data prevented such a line of inquiry. The data provided by the Sentencing Guidelines Commission did include, however, the verdict method used to arrive at conviction. As Table 1 indicates, the vast majority of felony convictions for the 1986-89 period were resolved through plea bargaining, without regard to ethnic group, gender or age.

To assess observed deviations in sentencing means for each independent variable, a difference of means test (ANOVA program) was used for each of the fifteen relevant cells. The study involved two ANOVA runs: one for total confinement (actual prison/jail time), and the other for partial confinement (authorized work release). If sentencing neutrality has been achieved under the SRA, one would expect to observe no significant difference between various groups of felons when controlling for seriousness of crime and past criminal history.

Table 1

FREQUENCY OF VERDICT METHOD BY ETHNIC GROUP, GENDER, AND AGE FOR YAKIMA COUNTY, 1986-1989^a

	Bench Trial		Jury Trial		Guilty Plea		Unknown	
	%	(N)	%	(N)	%	(N)	%	(N)
ETHNICITY								
White	1.3	(15)	2.0	(24)	96.6	(1152)	0.2	(02)
Native American	0.0	(00)	0.0	(00)	100.0	(104)	0.0	(00)
Hispanic	2.9	(20)	2.3	(16)	94.2	(652)	0.6	(04)
GENDER								
Female	0.8	(02)	1.1	(03)	97.4	(258)	0.8	(02)
Male	1.8	(33)	2.2	(40)	95.6	(1732)	0.3	(06)
AGE								
18-24	1.6	(11)	1.6	(11)	96.2	(652)	0.6	(04)
25-30	2.4	(18)	1.5	(11)	95.8	(704)	0.3	(02)
31-36	1.4	(05)	3.3	(12)	95.0	(341)	0.3	(01)
37 or over	0.7	(02)	3.0	(09)	96.0	(285)	0.3	(01)

^aPercentages may not sum to 100% due to rounding-off error.

Findings

Of the fifteen cells investigated, only four indicated that the difference of means for total confinement was significant for at least one of the three independent variables. The results can be found in Table 2. For each of the four relevant cells, major differences in total confinement are observed along ethnic lines, gender was important to one cell, and age of felon proved insignificant. Hispanic defendants in three of the four cells received periods of total incarceration nearly twice as long on average than their white counterparts.

Table 2
DIFFERENCE OF MEANS TEST INVOLVING TOTAL CONFINEMENT
TIME ORDERED FOR ETHNIC, GENDER, AND AGE RELEVANT CELLS^a

Cell ^b	Variable	Mean ^c	N	Standard Deviation	Significance Level
I,0	ETHNICITY				
	White	.493	171	.523	
	Native American	.575	13	.806	
	Hispanic	.806	51	.454	
					.006
	GENDER				
	Female	.357	72	.379	
	Male	.644	169	.542	
					.002
	AGE				
18-24	.611	91	.499		
25-30	.518	81	.514		
31-36	.642	38	.616		
37 or over	.459	33	.431		
				****d	
II,1	ETHNICITY				
	White	2.095	78	1.587	
	Native American	1.464	07	1.247	
	Hispanic	2.726	55	1.520	
					.045
	GENDER				
	Female	1.648	19	1.422	
	Male	2.311	134	1.528	

	AGE				
18-24	2.116	57	1.371		
25-30	2.485	59	1.770		
31-36	1.650	21	1.360		
37 or over	2.652	17	1.366		

(Table 2 continued next page)

Table 2 (Continued from previous page)

DIFFERENCE OF MEANS TEST INVOLVING TOTAL CONFINEMENT TIME ORDERED FOR ETHNIC, GENDER, AND AGE RELEVANT CELLS^a

Cell ^b	Variable	Mean ^c	N	Standard Deviation	Significance Level	
II,4	ETHNICITY					
	White	12.969	18	3.291		
	Hispanic	9.801	09	4.716		
					.044	
	GENDER ^c					
	AGE					
	18-24	10.358	12	4.146		
	25-30	13.439	12	4.002		

VI,0	ETHNICITY					
	White	7.501	33	6.140		
	Hispanic	12.001	56	2.379		
					.000	
	GENDER					
	Female	10.731	07	4.316		
	Male	10.513	86	5.816		

	AGE					
		18-24	11.647	31	2.697	
		25-30	11.087	22	8.442	
		31-36	10.353	21	4.718	
	37 or over	7.698	17	6.285		

^aRelevant cells included only those in which one of the independent variables was significant. Values for variables with less than five cases per cell were ignored.

^bCells were defined by seriousness of current offense, "I" through "XIV," and by offender score based on criminal history, "0" through "9." The designation "I,0" refers to least serious crime level with no prior criminal history.

^cSentence mean given in months.

^dA probability level of .05 or less was used as the level of significance. The designation of "****" indicates the differences of means is not significant.

^eDue to a limited number of "female" cases, the variable "gender" was removed from the analysis.

Results for Native Americans are mixed. As there were fewer Native American cases available for analysis, they were included in two of the four cells. In one cell Native Americans received slightly more imprisonment time than whites, the other slightly less. Compared with Hispanics, however, Native Americans in each cell on average received total confinement sentences which were less.

While ethnic differences in total confinement are observed in each of the relevant cells, the variation may be due to the intervening effects of the other two independent variables. That is, Hispanics may receive longer total confinement sentences because they tend to be younger, or perhaps more likely to be male. In one of the cells (I,0), gender was a significant indicator of sentencing. To test this possibility, multiple classification analysis was applied to the relevant cells for significant independent variables. Given two or more interrelated factors, this procedure explores the net effect of each variable when the differences in the other factors are controlled. In other words, it investigates the unique contribution ethnic heritage has on total confinement independent of age and gender. Table 3 contains the results of the multiple classification analysis for total confinement.

Table 3

MULTIPLE CLASSIFICATION ANALYSIS OF RELEVANT INDEPENDENT VARIABLES FOR TOTAL CONFINEMENT TIME ORDERED^a

Cell ^b	Grand Mean ^c	Variable	N	Adjusted Independent Effect ^d
I,0	.56	ETHNICITY		
		White	169	-.06
		Native American	13	.05
		Hispanic	51	.20
		GENDER		
		Female	67	-.16
Male	166	.07		
II,1	2.29	ETHNICITY		
		White	77	-.22
		Native American	07	-.75
		Hispanic	53	.41
II,4	11.91	ETHNICITY ^e		
		White	18	1.14
		Hispanic	09	-2.28
VI,0	10.27	ETHNICITY ^e		
		White	33	-2.50
		Hispanic	54	1.53

^aOnly those independent variables from Table 2 which had significance levels of .05 or less were included.

^bCells were defined by seriousness of current offense, "I" through "XIV," and by offender score based on criminal history, "0" through "9."

^cThe grand mean is expressed in months; thus, ".56" is equal to about seventeen days.

^dThe adjusted independent effect provides the actual impact of each value controlling for the impact of the other independent variables; thus, it controls for the possible interrelationship of “ethnicity,” “gender,” and “age.”

^eDue to a limited number of “Native American” cases in these cells, the value was removed from the analysis.

The adjusted effects for significant independent variables in Table 3 confirm the results observed in Table 2. In the first cell, all defendants serve an average of .56 months (approximately seventeen days) in total confinement for committing a Level I crime with no previous criminal history. Whites receive a total confinement sentence, however, which is .06 months (two days) less than their Native American and Hispanic counterparts. Hispanics serve six days more than the average total confinement, or eight days more than whites. Among these two groups, Hispanics receive longer total confinement periods than whites in all but one cell. It must be remembered that this situation occurs for defendants guilty of the same seriousness level crime and similar criminal records controlling for gender and age effects.

The second difference of means test explored possible sentencing disparity in partial confinement—that part of the standard sentence which was authorized to be served in a work release program separate of total confinement. The results are found in Table 4. Of the fifteen cells, four had significant differences for one of the three independent variables (two of these four cells were not significant in the total confinement analysis). In three of these relevant cells ethnicity of defendant was an important indicator of work release time, age was significant in one, and gender proved unimportant. In the first two relevant cells, whites received nearly three times the work release as Hispanics. Only in cell II,4 is the pattern reversed. Once again, the results for Native Americans are mixed with twenty-two defendants receiving no partial confinement in cell II,0, while seven receiving a month of work release time in cell II,1.

Table 4

DIFFERENCE OF MEANS TEST INVOLVING AUTHORIZED WORK-RELEASE TIME FOR ETHNIC, GENDER, AND AGE RELEVANT CELLS^a

Cell ^b	Variable	Mean ^c	N	Standard Deviation	Significance Level
II,0	ETHNICITY				
	White	.128	232	.351	
	Native American	.000	22	.000	
	Hispanic	.032	274	.212	
					.000
	GENDER				
	Female	.049	67	.165	
	Male	.094	485	.565	
					****d

Table 4 (Continued from previous page)

Cell ^b	Variable	Mean ^c	N	Standard Deviation	Significance Level
	AGE				
	18-24	.117	186	.821	
	25-30	.081	205	.297	
	31-36	.060	83	.251	
	37 or over	.078	75	.333	

II,1	ETHNICITY				
	White	.832	78	1.315	
	Native American	1.001	07	1.335	
	Hispanic	.313	55	.976	
					.020
	GENDER				
	Female	.553	19	1.085	
	Male	.687	134	1.246	

	AGE				
	18-24	.714	57	1.212	
	25-30	.649	59	1.267	
	31-36	.787	21	1.356	
	37 or over	.412	17	.958	

II,4	ETHNICITY				
	White	.000	18	.000	
	Hispanic	1.998	09	3.994	
					.023
	GENDER ^e				
	AGE				
	18-24	.580	12	2.259	
	25-30	1.498	12	3.524	

IV,1	ETHNICITY				
	White	.759	19	1.842	
	Hispanic	.721	11	1.604	

	GENDER ^e				
	AGE				
	25-30	.000	16	.000	
	31-36	1.133	07	1.935	
					.005

^aRelevant cells included only those in which one of the independent variables was significant. Values for variables with fewer than five cases per cell were ignored.

^bCells were defined by seriousness of current offense, "I" through "XIV," and by offender score based on criminal history, "0" through "9." The designation "I,0" refers to least serious crime level with no prior criminal history.

^cSentence mean given in months.

^dA probability level of .05 or less was used as the level of significance. The designation of "*****" indicates the differences of means is not significant.

^eDue to a limited number of "female" cases, the variable "gender" was removed from the analysis.

To assess the unique effect of each significant variable, the multiple classification analysis procedure was repeated for partial confinement. The results appear in Table 5. Table 5 lends support for the patterns observed in Table 4—namely, Hispanics are less likely than whites and Native Americans to receive partial confinement, controlling for the possible interrelationship of the independent variables.

Conclusions

Earlier studies of the pre-SRA period suggest that sentencing disparity was a problem in Washington. As the number of available cases for Yakima county in 1982 was limited, this assertion proved untestable. Concerning the post-SRA period (1986-89), findings of this study suggest that the reform has been moderately successful in Yakima county. The data does not reflect widespread disparity. Of the fifteen SRA cells investigated, only four in the case of total confinement and three in the case of partial confinement indicated a significant difference among ethnic groups. While sentencing disparity may not be widespread in Yakima county, it does persist. Hispanic defendants are more likely, within the ranges established by law, to receive sentences which are more severe than whites or Native Americans; i.e., longer periods of total confinement. This situation existed after controlling for seriousness of crime and criminal history. The stated purpose of the SRA is to reduce the impact "of extra-legal factors such as local politics and attitudes, age, gender, race, pretrial incarceration, employment, education, or variation in judicial leniency. . . ." ¹² In this endeavor Hispanics in Yakima county have yet to fully benefit from stated goals of the SRA.

Native Americans were not as harshly impacted as Hispanics. While Native Americans received significantly more severe sentences in two cells, no overall sentencing disparity pattern is observed. And, contrary to other studies, ¹³ the data indicate gender and age of defendant have no major impact on sentencing in Yakima county.

The focus of this study has been on the effects of legislation designed to promote sentencing neutrality after court processing, i.e., after the question of guilt has been determined. More subtle forms of institutional bias may still exist within the justice system. ¹⁴ These may involve the use of discretionary authority by the police to arrest one suspect and not another and at the prosecutorial level when the charge is selected. Thus, the forms of biases in sentencing may be changing.

Table 5

MULTIPLE CLASSIFICATION ANALYSIS OF RELEVANT INDEPENDENT
VARIABLES FOR WORK-RELEASE TIME^a

Cell ^b	Grand Mean ^c	Variable	N	Adjusted Independent Effect ^d
II,0	.07	ETHNICITY		
		White	230	.06
		Native American	21	-.07
		Hispanic	269	-.05
II,1	.65	ETHNICITY		
		White	77	.21
		Native American	07	.56
		Hispanic	53	-.38
II,4	.67	ETHNICITY ^e		
		White	18	-.77
		Hispanic	09	1.54
IV,1	.77	AGE ^f		
		25-30	16	-.83
		31-36	07	.58

^aOnly those independent variables from Table 4 which had significance levels of .05 or less were included.

^bCells were defined by seriousness of current offense, "I" through "XIV," and by offender score base on criminal history, "0" through "9."

^cThe grand mean is expressed in months; thus, ".07" is equal to about two days.

^dThe adjusted independent effect provides the actual impact of each value controlling for the impact of the other independent variables; thus, it controls for the possible interrelationship of "ethnicity," "gender," and "age."

^eDue to a limited number of "Native American" cases in this cell, the value was removed from the analysis.

^fDue to a limited number of cases, age groups "18-24" and "37 or older" were excluded from the analysis.

Notes

¹M. E. Wolfgang, A. Kelly, and H. C. Nolde, "Comparisons of the Executed and Commuted Among Admissions to Death Row," *Journal of Criminal Law, Criminology, and Police Science* 53(1962): 301-311; see also, H. A. Bedau, "Death Sentences in New Jersey," *Rutgers Law Review* 19 (1964): 1-2.

- ²E. Neubauer, *American Courts and the Criminal Justice System* (Monterey: Brooks/Cole, 1984), 370-71.
- ³K. L. Kempf and R. L. Austin, "Older and More Recent Evidence on Racial Discrimination in Sentencing," *Journal of Quantitative Criminology* 2(1986): 29-48.
- ⁴G. D. LaFree, "Official Reactions to Hispanic Defendants in the Southwest," *Journal of Research in Crime and Delinquency* 22(1985): 213-237.
- ⁵T. Bynum, "Parole Decision Making and Native Americans," in *Race, Crime, and Criminal Justice*, eds. R. L. McNeely and C. E. Pope (Newbury Park: Sage), 75-87.
- ⁶S. Welch, M. Combs, and J. Gruhl, "Do Black Judges Make a Difference?" *American Journal of Political Science* 32 (1988): 126-136.
- ⁷Institute for Public Policy and Management, *Racial and Ethnic Disparities in Imprisonment* (Seattle: University of Washington, 1986), ii.
- ⁸D. G. Lovell, *Sentencing Reform and the Treatment of Offenders* (Seattle: The Washington Council on Crime and Delinquency, 1985), 13-21.
- ⁹David L. Fallen, *Sentencing Practices Under the Sentencing Reform Act* (Olympia: Sentencing Guidelines Commission, 1987), 31.
- ¹⁰Office of Financial Management, *1988 Population Trends for Washington State* (Olympia: Forecasting Division, 1988), Table 11, p. 52.
- ¹¹C. Spohn, J. Gruhl, and S. Welch, "The Effect of Race on Sentencing: A Re-examination of an Unsettled Question," *Law and Society Review* 16(1981-82): 178-185; see also, D. B. Griswold, "Deviation From Sentencing Guidelines: The Issue of Unwarranted Disparity," *Journal of Criminal Justice* 15(1987): 317-329.
- ¹²Fallen, 6.
- ¹³C. Spohn, S. Welch, and J. Gruhl, "Women Defendants in Court: The Interaction Between Sex and Race in Convicting and Sentencing," *Social Science Quarterly* 66 (1985): 178-185.
- ¹⁴Marjorie Zatz, "The Changing Forms of Racial/Ethnic Biases in Sentencing," *Journal of Research in Crime and Delinquency* 24(1987): 69-92.

APPENDIX

WASHINGTON SENTENCING GRID^a

Seriousness Level	Offender Score ^b									
	0	1	2	3	4	5	6	7	8	9 ^c
XIV	Life Sentence Without Parole/Death Penalty									
XIII	240-320	250-333	261-347	271-361	281-374	291-388	312-416	338-450	370-493	411-548
XII	123-164	134-178	144-192	154-205	165-219	175-233	195-260	216-288	257-342	298-397
XI	62-82	69-92	77-102	85-113	93-123	100-135	129-171	139-185	159-212	180-240
X	51-68	57-75	62-82	67-89	72-96	77-102	98-130	108-144	129-171	149-198
IX	31-41	36-48	41-54	46-61	51-68	57-75	77-102	87-116	108-144	129-171
VIII	21-27	26-34	31-41	36-48	41-54	46-61	67-89	77-102	87-116	108-144
VII	15-20	21-27	26-34	31-41	36-48	41-54	57-75	67-89	77-102	87-116
VI	12-14	15-20	21-27	26-34	31-41	36-48	46-61	57-75	67-89	77-102
V	6-12	12-14	13-17	15-20	22-29	33-43	41-54	51-68	62-82	72-96
IV	3-9	6-12	12-14	13-17	15-20	22-29	35-43	43-57	53-70	63-84
III	1-3	3-8	4-12	9-12	12-16	17-22	22-29	33-43	43-57	51-68
II	0-3	2-6	3-9	4-12	12-14	14-18	17-22	22-29	33-43	43-57
I	0-2	0-3	2-5	2-6	3-8	4-12	12-14	14-18	17-22	22-29

^aSource: David L. Fallen, *Sentencing Practices Under the Sentencing Reform Act* (Olympia: Sentencing Guidelines Commission, 1987), 85.

^bAll indicated ranges are given in months.

^cColumn indicates an offender score of 9 or more.