THE ROLE OF PROSECUTORIAL DISCRETION IN CREATING RACIAL DISPARITIES IN SENTENCE LENGTH

Kenny Lo

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I. INTRODUCTION

After U.S federal courts and various state courts adopted sentencing guidelines during the 1970s and 1980s, empirical studies have estimated racial disparities in sentence length after controlling for the guideline recommended sentence (Mustard, 2001 reviews the literature). In doing so, some have attributed the unexplained disparities to potential discrimination by judges (see United States Sentencing Commission, 2010). For example, the racial disparity in sentence length conditioned on the guideline recommendation might be decomposed into a portion that can be explained by racial differences in predictors and a portion that cannot be explained, with the latter representing the role of judicial discretion in creating racial disparities in sentence length. The problem with this type of approach is that the guideline recommendation is itself influenced by prosecutorial discretion in initial charging, plea-bargaining, and fact-finding. Controlling for it filters out the role of the prosecutor's decision-making in producing racial disparities in sentence length while exaggerating that of the judge. Furthermore, resulting policies that restrict judicial discretion could empower the prosecutor to worsen the disparities they are designed to eliminate (see Rehavi & Starr, 2013).

This paper studies the role of prosecutorial discretion in creating racial disparities in sentence length by addressing the following questions: Are there racial disparities in initial charges between comparable offenders arrested for the same offenses? Are there racial disparities in sentence length between comparable offenders arrested for the same offenses? How

much of the racial disparities in sentence length can be explained by racial disparities in initial charges? Prior empirical literature has had difficulty addressing these questions because most datasets only capture information at the sentencing stage and thereby lack readily available scales for measuring the relative severity of initial charges.[1] The current study overcomes these obstacles by using a dataset designed to track adult offenders from arrest through final disposition and by constructing several scales of measuring the relative severity of initial charges based on the past mean of sentence length corresponding to each charge.

Reported felony cases in Pennsylvania that reached final disposition between the calendar years 1980 and 1990 are split into two samples, one from 1985 to 1990 and the other from 1980 to 1984. The first sample serves as the main sample in which the bulk of the analysis is conducted. The second sample serves as the reference sample from which the past mean of sentence length corresponding to each charge in the main sample is calculated. Both samples are restricted to black and white males and cases from counties that lacked a significant population of black offenders are excluded. In addition, cases that resulted in a death sentence, immigration cases, drug cases, and cases with arrest offense codes indicating a reason for detention other than a criminal offense are excluded.

This study employs logistic and ordinary least squares (OLS) regressions to answer the question of whether or not there are racial disparities in initial charges between comparable offenders arrested for the same offenses. The results show that black offenders are significantly more likely to receive a mandatory minimum charge than white offenders after controlling for age, prosecution disposition (felony charge, misdemeanor charge, other charge, or prosecution declined), arrest offense, and county fixed effects (Table 1, column 1). Moreover, they receive

[1] Rehavi & Starr (2012) is a notable exception. It has served as the main motivation and guidance for this paper.

significantly more severe charges based on the past mean of sentence length corresponding to each charge (Table 1, columns 2 and 3). The same regression methods are used to answer the question of whether or not there are racial disparities in sentencing length between comparable offenders arrested for the same offenses. The results show that black offenders are significantly more likely to be convicted and incarcerated than their white counterparts after controlling for age, criminal history (# of court dispositions), prosecution disposition, arrest offense, final pleading (not guilty, guilty, no contest), and county fixed effects (Table 2, columns 1 and 2).

Significant racial disparities in initial charges, albeit a legitimate concern on its own, may or may not translate into significant racial disparities in sentence length. Ultimately, the question of how much of the racial disparities in sentence length can be explained by racial disparities in initial charges is what arrives at the role of prosecutorial discretion in creating racial disparities in sentencing length. To that end, this paper utilizes Recentered Influence Function (RIF) regressions and Oaxaca-Blinder decomposition methods (Blinder, 1973; Oaxaca, 1973; Oaxaca & Ransom, 1994 and 1999) to decompose the raw black-white gaps in sentence length across its unconditional distribution (Firpo, Fortin, & Lemiux, 2009) into that which can be explained by age, criminal history, prosecution disposition, arrest offense, county fixed effects, and final pleading (Table 6, panel A). Initial charge severity measures (mandatory minimum dummy and log past mean of sentence length corresponding to each charge) are subsequently included to assess whether prosecutorial discretion can explain the remaining unexplained racial disparities in sentence length. Although the mandatory minimum dummy does not carry any significant explanatory power, the log past mean of sentence length corresponding to each charge does at every decile (Table 6, panel B). Including this measure in the decomposition renders the

unexplained disparity insignificant at the 9th decile while unexplained disparities remain sizeable and significant at the 3rd and 5th deciles (Table 6, panel C).

II. LITERATURE REVIEW

A. Insufficient Data and Methodology

The literature on racial disparities in sentencing outcomes is one of back and forth commentary on methodology and data. Early studies such as that by Meyers (1979) and Unnever et al. (1980) supported the hypothesis that black defendants receive harsher sentences than white defendants along with theories that purport to explain why. Conflict theory, for example, argues that groups with high social standing have an incentive to inflict greater legal constraints on the socially disadvantaged than on others. In order to engulf the limited resources in society, the powerful is expected to institutionalize differential treatment of minorities, including that of judicial sentencing (see Schwendinger & Schwendinger, 1970). The labeling perspective provides another theory on the matter. It claims that the negative perception of a criminal is more likely to be applied in court to a minority person than a white person who are otherwise equal (see Goode, 1979; Schur, 1971).

Meanwhile, opponents such as Hagan (1975), Hindelang (1969), and Kleck (1981) emphasized that the methodology and data available at the time were insufficient to conclude any racial disparity in sentencing except for capital offenses in the American South. Failure to control for relevant legal variables such as offense severity, criminal history, and the quality of evidence was especially problematic, as noted by Blumstein et al. (1983) and Garber et al. (1983). In response, Kempf et al. (1986) used sentencing data on non-capital offenses from a non-Southern state (Pennsylvania) that included recommended controls and was able to show significant interaction effects of race with legal variables on sentence length.

B. The Debate on Sentencing Guidelines

In 1978, the Pennsylvania General Assembly created the Commission on Sentencing to develop sentencing guidelines aimed at eliminating unwarranted disparities in judicial sentencing (42 Pa.C.S. §2154). This has sparked a debate on the role of judicial discretion in producing racial disparities in sentencing outcomes and the guidelines' effectiveness of limiting that role. Some researchers like Mieth et al. (1985) and Kramer et al. (1993) have argued that the implementation of sentencing guidelines has reduced unexplained racial disparities in sentencing outcomes while others like Rothman (1995) have contended the opposite position. In particular, Gorton et al. (1999) analyzed the pre- and post-guideline effects of race on felony sentence length in Pennsylvania and found that the disparity disappeared after the guidelines were instituted. The authors concluded that sentencing guidelines that only constrain minimum sentencing decisions, such as those in Pennsylvania, are an effective tool in eliminating the racial disparity in sentence length.

The debate on sentencing guidelines has largely ignored the role of prosecutorial discretion in creating racial disparities in sentencing outcomes. Prior empirical research has typically relied on sentencing commission data to estimate racial disparities after controlling for the guideline recommended sentence (Mustard, 2001 reviews the literature). Using data from the Pennsylvania Commission on Sentencing, for example, Johnson (2003) examined the degree to which the racial disparity in departures from the guideline recommendation depended on the type of case disposition (non-negotiated pleas, negotiated pleas, bench trials, and jury trials). The study found that Black and Hispanic defendants are less likely to receive downward departures and more likely to receive upward departures than white defendants and the magnitude of the disparity is conditioned upon the mode of conviction.

C. Prosecutorial and Judicial Discretion

Some empirical studies have assumed the guideline recommendation to capture the underlying criminal conduct of the defendant and thereby attributed unexplained racial disparities in sentencing outcomes to judicial discretion. For example, the United States Sentencing Commission (USSC) attributed the recent growth in the black-white sentencing gap to the expansion of judicial discretion after *United States v. Booker*, in which the Supreme Court struck down the provision of the federal sentencing statute that required federal district judges to issue a sentence within the range of the Federal Guidelines. Without data on arrest and prosecution, however, estimates of unexplained racial disparities in sentencing outcomes are biased if the underlying criminal conduct of black defendants are significantly different from that of their white counterparts who are given the same guideline recommended sentence.

Contrary to the discussed empirical literature, existing legal literature suggests that prosecutorial discretion plays a crucial role in determining sentencing outcomes (see Stith 2008; Miller 2004; Johnson & Gilbert 1996). The initial charge is the prosecutor's most powerful tool as it is the only prosecutorial decision for which unilateral legal authority exists; subsequent plea-bargaining and fact-finding involve the defendant, opposing counsel, jury, and/or judge. A few exceptions in prior empirical literature have accounted for the role of the initial charge in producing racial disparities in sentencing outcomes (See Mieth, 1987; Rehavi & Starr, 2012). Miethe (1987) found significant racial disparities in initial charges favoring whites in Minnesota. Rehavi & Starr (2012) found that at least half of the disparity in sentence length across its distribution can be explained by initial charging decisions, especially that of bringing charges that carry a mandatory minimum sentence.

DATA AND METHODS

A. Description of Dataset

This paper uses the Offender Transaction Based Statistics (OBTS) from 1980 to 1990, which consists of all reported felony cases in Pennsylvania that reached final disposition during that time. It was established in 1973 as one of the components of the Comprehensive Data Systems program by the National Criminal Justice Information and Statistics Services. Designed to track adult offenders from the point of entry into the criminal justice system through final disposition, OBTS provides information on each offender's race, age, arrest offense, prosecution disposition, type of counsel, criminal history, final pleading, type of trial, and case outcomes (Table 1). An offender is defined as any person who has achieved adult status as specified by Pennsylvania law and has been processed by the police, prosecutor, or court regardless of the final determination of guilt. The data is split into two samples, one from 1985 to 1990 and the other from 1980 to 1984. The first sample serves as the main sample in which econometric analysis is performed to answer the three questions put forth in the introduction. The second sample serves as the reference sample from which the past mean of sentence length corresponding to each charge in the main sample is calculated.

B. Restrictions of Sample

Both samples are restricted to black and white males because racial disparity patterns in sentence length affecting black males are of particular policy importance in the United States. Cases that resulted in a death sentence and immigration cases are excluded because the stakes and procedures in those cases are fundamentally different than that of others (Starr & Rehavi, 2012). For the same reason, cases with arrest offense codes indicating a reason for detention other than a criminal offense are also excluded (parole, probation, condit release, and mandatory release violation). Drug cases are excluded because drug quantity, a crucial determinant of the

underlying criminal conduct, is not recorded in the data. Lastly, cases from counties that lacked a significant population of black offenders (5 percent) are excluded because within-county comparisons across race would not have been meaningful for the purpose of this study.

C. Construction of Key Variables

The black indicator is constructed by denoting whether the offender is a non-Hispanic black male or a non-Hispanic white male in the main sample. The mandatory minimum dummy is constructed by indicating whether or not the initial charge carries a mandatory minimum sentence in the main sample. The log past mean of minimum sentence length is constructed by calculating the natural log of the average minimum sentence corresponding to each charge in the reference sample. It is limited to charges for white offenders so as to avoid biasing the measure by differential composition of charges by race. If any given charge is sentenced fewer than 10 times in the reference sample, the corresponding past mean of minimum sentence length is excluded from the main sample.[2] The same procedure applies to the log past mean of maximum sentence length. The conviction indicator is constructed by denoting whether or not the offender is convicted of some crime in the main sample, and the incarceration indicator is constructed by denoting whether or not the offender is incarcerated for at least one day in the main sample. The log sentence length is constructed by calculating the natural log of the average sentence length in the main sample. Table 1 provides summary statistics of all the variables that are used in the following analysis.

ECONOMIC MODELS AND RESULTS

A. Racial Disparities in Initial Charges

[2] The main weakness of this construction is that some charges in the reference sample may not have a thick enough sample of sentences to calculate an accurate average that reflects the true severity of the initial charge.

To answer the question of whether or not there are racial disparities in the likelihood of receiving an initial charge that carries a mandatory minimum sentence between comparable offenders arrested for the same offenses, the current study estimates the following logistic model:

$$logit(MMD_{iac}) = \beta_0 + \beta_1 Black + X_{iac}\gamma + \delta_a + \delta_c$$

where MMD is the mandatory minimum dummy and i, a, and c index the individual offender, arrest offense, and county, respectively. Black denotes the black indicator and X includes age and prosecution disposition. Arrest offense fixed effects are included to capture any differences in the underlying criminal conduct.[3] County fixed effects are included to capture any differences in the enforcement norms across counties. Standard errors are clustered at the arrest offense-county level to allow for correlated errors due to patterns of criminal conduct or enforcement norms within counties. The results show that black offenders are significantly more likely to receive an initial charge that carries a mandatory minimum sentence than their white counterparts (Table 2, column 1). Alternate specifications show that black offenders face up to 0.241 log-odds more than white offenders in receiving such a charge (Table 4, column 1).

To answer the question of whether or not there are racial disparities in initial charge severity between comparable offenders arrested for the same offenses, this study estimates the following OLS model:

$$log(PM_{iac}) = \beta_0 + \beta_1 Black + X_{iac}\gamma + \delta_a + \delta_c$$

where PM is the past mean of minimum and maximum lengths corresponding to each charge and i, a, c, Black, and X are as defined in the logistic model above. Standard errors are clustered at the arrest offense-county level. The results show that black offenders receive significantly more severe charges based on the past mean of sentence length corresponding to each charge (Table 2,

[3] Arrest offense may not truly reflect the underlying criminal conduct, but it is the best possible proxy available.

columns 2 and 3). Alternate specifications show that black offenders face initial charges up to 3.2 percent more severe than that of white offenders (Table 4, columns 2 and 3).

B. Racial Disparities in Sentence Length

The main sentence outcome of interest is sentence length, but not all offenders receive incarceration sentences. Some are not convicted in the first place. Even among those who are convicted, some are not incarcerated. Therefore, this paper follows the literature in treating conviction and incarceration as binary processes that precede the sentence length analysis rather than including non-incarceration sentences as zeros in sentence length (see Ulmer, Light, & Kramer, 2011).

To answer the question of whether or not there are racial disparities in the likelihood of being convicted between comparable offenders arrested for the same offenses, the current study estimates the following logistic model:

$$logit(CI_{iac}) = \beta_0 + \beta_1 Black + X_{iac}\gamma + \delta_a + \delta_c$$

where CI is the conviction indicator and i, a, and c index the individual offender, arrest offense, and county, respectively. Black is the black indicator and X includes age, prosecution disposition, and final pleading. Again, arrest offense fixed effects are included to capture any differences in underlying criminal conduct and county fixed effects are included to capture any differences in enforcement norms across counties. Standard errors are clustered at the arrest offense-county level to allow for correlated errors due to patterns of criminal conduct or enforcement norms within counties. The results show that black offenders are significantly more likely to be convicted than their white counterparts (Table 3, column 1). Alternate specifications show that black offenders face up to 0.638 log-odds more than white offenders in being convicted (Table 5, column 1).

To answer the question of whether or not there are racial disparities in the likelihood of being incarcerated between comparable offenders arrested for the same offenses, this study estimates the following logistic model:

$$logit(II_{iac}) = \beta_0 + \beta_1 Black + X_{iac}\gamma + \delta_a + \delta_c$$

where II is the incarceration indicator and i, a, c, Black, and X are as defined in the logistic model above. Standard errors are clustered at the arrest offense-county level. The results show that black offenders are significantly more likely to be incarcerated than their white counterparts (Table 3, column 2). Alternate specifications show that black offenders face up to 0.550 log-odds more than white offenders in being incarcerated (Table 5, column 2).

To answer the question of whether or not there are racial disparities in sentence length between comparable offenders arrested for the same offenses, the current study first estimates the RIF for each decile of the log sentence length's unconditional distribution:

$$RIF(LSL; Q_t) = Q_t + \frac{t - 1(LSL \leq Q_t)}{f_{LSL}(Q_t)}$$

where LSL is the log sentence length and Q_t the sample quantile and $f_{LSL}(Q_t)$ is the density at that point. Then, OLS regressions are estimated separately with the RIF of log sentence length as the dependent variable for black and white offenders. The resulting unconditional quantile estimates allow the racial disparity at each decile and the mean to be decomposed using pooled Oaxaca decompositions (Jann 2008):

$$RIF(LSL_w; Q_t) - RIF(LSL_b; Q_t) = (\bar{X}_w - \bar{X}_b)'\hat{B}_P + [\bar{X}_w'(\hat{B}_w - \hat{B}_p) - \bar{X}_b'(\hat{B}_b - \hat{B}_p)]$$

where b and w stand for black and white offenders, respectively. X includes age, prosecution disposition, and final pleading. $\hat{B}_P$ is the vector of coefficients from the pooled OLS regression of the RIF on the black indicator and X. Standard errors are clustered at the arrest offense-county level. The results show that significant black-white gaps exist throughout the distribution of

sentence lengths except for the 1st decile. Black offenders receive sentences that are 35.2 percent longer at the mean, 61.3 percent longer at the 3rd decile, 10.2 percent longer at the median, 27.6 percent longer at the 7th decile, and 78.7 percent longer at the 9th decile. Racial differences in final pleading and arrest offense explain most of the raw black-white gaps, but significant disparities remain unexplained at the 3rd, 5th, and 9th deciles (Table 6, panel A).

C. Racial Disparities in Sentence Length Explained by Racial Disparities in Initial Charges

To answer the question of how much of the racial disparities in sentence length can be explained by racial disparities in initial charges, this study adds the mandatory minimum dummy and log past mean of sentence length corresponding to each charge in succession to the previous decompositions. Including the mandatory minimum indicator in the decompositions only slightly reduce those unexplained disparities because it does not carry any significant explanatory power (Table 6, panel B). Including the log past mean of sentence length corresponding to each charge, however, reduces the unexplained disparity at the 9th decile by almost 10 percent and renders it insignificant. Contrary to the mandatory minimum indicator, the log past mean of sentence length corresponding to each charge carries significant explanatory power ranging from 3 to 77 percent of the raw black-white gap at every decile. Nevertheless, unexplained disparities at the 3rd and 5th deciles remain sizeable and significant even after including both initial charge severity measures, which may reflect the role of judicial discretion and/or case processing in producing racial disparities in sentence length (Table 6, panel C).

CONCLUSION

The findings suggest that prosecutorial discretion plays a crucial role in creating racial disparities in sentence length. Not only do black offenders receive significantly harsher initial charges than white offenders, those disparities persist through the criminal justice process and

affect sentence lengths in the end. For the longest sentences, initial charge severity measures explain what would otherwise be significant unexplained racial disparities. Research that overlooks prosecutorial discretion could mistakenly attribute such disparities to judicial discretion and advocate for its restriction. Therefore, it is imperative for policy to balance the reason to limit judicial discretion with the danger of enhancing prosecutorial discretion.

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Table 1: Summary Statistics

	Reference Sample (1980-1984)			Mainproot Sample (1985-1990)		
	N	Mean	BlkMean	N	Mean	BlkMean
Demographics						
Black Indicator	283,367	0.383	N/A	361,952	0.366	N/A
Age	259,033	27.82	27.63	350,496	29.817	29.17
Prosecutor Disposition						
Felony Charge	231,181	0.816	0.828	283,241	0.783	0.738
Misdemeanor Charge	5,079	0.018	0.011	8,105	0.022	0.033
Other Charge	9,918	0.035	0.025	14,630	0.040	0.029
Prosecution Declined	37,193	0.131	0.136	55,976	0.155	0.200
Types of Counsel						
Private Counsel	41,393	0.344	0.298	25,362	0.268	0.155
Assigned Counsel	20,443	0.170	0.218	3,280	0.035	0.044
Self-Representation	5,431	0.045	0.041	6,927	0.073	0.026
Public Defender	53,127	0.441	0.443	59,005	0.624	0.775
Criminal History						
# of Court Dispositions	246,172	2.787	3.023	305,974	2.864	3.069
# of Arrests	283,348	3.435	3.740	361,952	3.758	4.286
# of Charges Filed	283,365	2.421	2.612	361,950	2.421	2.456
# of Convictions	205,594	1.433	1.431	241,597	1.513	1.375
Final Pleading						
Not Guilty	122,036	0.554	0.668	153,703	0.502	0.558
Guilty	99,281	0.440	0.329	149,963	0.490	0.437
No contest	1,427	0.006	0.003	2,310	0.008	0.005
Type of Trial						
Non-jury	119,800	0.487	0.403	31,573	0.103	0.184
Jury	8,364	0.034	0.038	7,250	0.025	0.031
Other	118,014	0.479	0.559	266,839	0.872	0.786
Elapsed Time						
# of Days between Arrest and Court Disposition	222,512	154.705	190.696	288,444	154.730	168.484
# of Days between Arrest and Sentencing	174,289	177.072	211.183	229,884	187.021	217.466
Charge Severity						
Log Past Mean Min (Days)	N/A	N/A	N/A	312,530	3.565	3.865
(S.D.)					(1.308)	(1.330)
Log Past Mean Max (Days)	N/A	N/A	N/A	312,530	4.903	5.063
(S.D.)					(1.024)	(1.119)
Mandatory Min Dummy	243,953	0.076	0.108	303,283	0.097	0.164
(S.D.)		(0.265)	(0.310)		(0.297)	(0.370)
Case Outcomes						
Conviction Indicator	246,178	0.607	0.623	305,976	0.596	0.609
(S.D.)		(0.488)	(0.485)		(0.491)	(0.488)
Incarceration Indicator	185,047	0.353	0.407	237,718	0.370	0.443
(S.D.)		(0.478)	(0.491)		(0.483)	(0.497)
Log Sentence Length (Days)	65,300	5.980	6.149	88,030	5.881	6.099
(S.D.)		(1.419)	(1.379)		(1.263)	(1.354)

Table 2: Initial Charge Severity

	Mandatory Min Dummy	Log Past Mean Min (Days)	Log Past Mean Max (Days)
Black	0.228***	0.014***	0.013***
	(0.046)	(0.004)	(0.004)
Age	0.007***	-0.0004*	-0.0003
	(0.002)	(0.0003)	(0.0002)
Prosecution Disposition:			
Felony Charge	-5.133***	5.058***	6.125***
	(0.680)	(0.065)	(0.057)
Misdemeanor Charge	-12.643***	4.475***	5.489***
	(1.353)	(0.256)	(0.236)
Other Charge	-13.462***	4.127***	5.107***
	(0.911)	(0.088)	(0.077)
N	166,525	298,600	298,600

Col. 1 presents logistic regression coefficients; Cols. 2-3 present OLS coefficients. All include county and arrest-offense fixed effects. Standard errors are clustered by arrest offense-county. *p<0.10, **p<0.05, ***p<0.01

Table 3: Selection into Conviction and Incarceration

	Conviction Indicator	Incarceration Indicator
Black	0.216***	0.550***
	(0.056)	(0.035)
Age	0.004*	0.004**
	(0.002)	(0.002)
Criminal History	0.070***	0.063***
	(0.013)	(0.014)
Prosecution Disposition:		
Felony Charge	8.446***	-1.023***
	(0.477)	(0.288)
Misdemeanor Charge	9.313***	-1.724***
	(0.506)	(0.349)
Other Charge	11.423***	-3.586***
	(0.483)	(0.282)
Final Pleading:		
Not Guilty	-7.748***	-2.384***
	(0.329)	(0.262)
Guilty	0.445	-0.061
	(0.360)	(0.076)
N	296,657	232,856

Cols. 1-2 present logistic regression coefficients. All include county and arrest-offense fixed effects. Standard errors are clustered by arrest offense-county. *p<0.10, **p<0.05, ***p<0.01

Table 4: Alternate Specifications for Initial Charge Severity (Black Coefficients)

	Mandatory Min Dummy	Log Past Mean Min (Days)	Log Past Mean Max (Days)
1. Main Specification	0.228***	0.014***	0.013***
	(0.046)	(0.004)	(0.004)
2a. Sub-sample: Type of Counsel Recorded	0.085*	0.021***	0.018***
	(0.049)	(0.004)	(0.004)
2b. Include Type of Counsel Control	0.127**	0.021***	0.018***
	(0.063)	(0.005)	(0.005)
3a. Include Criminal History Control	0.241***	0.032***	0.028***
(# of Court Dispositions)	(0.048)	(0.004)	(0.004)
3b. Include Criminal History Control	0.230***	0.032***	0.029***
(# of Arrests, Charges Filed, and Convictions)	(0.042)	(0.005)	(0.004)
4a. Cluster by Arrest Offense Only	0.228***	0.014**	0.013***
(Main Specification)	(0.047)	(0.005)	(0.004)
4b. Cluster by County Only	0.228***	0.014***	0.013***
(Main Specification)	(0.060)	(0.004)	(0.003)
5a. Cluster by Arrest Offense Only	0.085**	0.021***	0.018***
(Sub-sample: Type of Counsel Recorded)	(0.043)	(0.003)	(0.003)
5b. Cluster by County Only	0.085***	0.021**	0.018**
(Sub-sample: Type of Counsel Recorded)	(0.011)	(0.009)	(0.008)
6a. Cluster by Arrest Offense Only	0.127**	0.021***	0.018***
(Include Type of Counsel Control)	(0.054)	(0.005)	(0.004)
6b. Cluster by County Only	0.127***	0.021**	0.018**
(Include Type of Counsel Control)	(0.021)	(0.007)	(0.006)
7a. Cluster by Arrest Offense Only	0.241***	0.032***	0.028***
(Include # of Court Dispositions)	(0.056)	(0.006)	(0.005)
7b. Cluster by County Only	0.241***	0.032***	0.028***
(Include # of Court Dispositions)	(0.065)	(0.004)	(0.003)
8a. Cluster by Arrest Offense Only	0.230***	0.032***	0.029***
(Include # of Arrests, Charges Filed, and Convictions)	(0.057)	(0.006)	(0.005)
8b. Cluster by County Only	0.230***	0.032***	0.029***
(Include # of Arrests, Charges Filed, and Convictions)	(0.040)	(0.003)	(0.003)

Col. 1 presents logistic regression coefficients of the Black indicator for alternate specifications of the Table 2 regressions; Cols. 2-3 present OLS coefficients. Standard errors are clustered by arrest offense-county unless stated otherwise. *p<0.10, **p<0.05, ***p<0.01

Table 5: Alternate Specifications for Selection into Conviction and Incarceration (Black Coefficients)

	Conviction Indicator	Incarceration Indicator
1. Main Specification	0.216***	0.550***
	(0.056)	(0.035)
2a. Sub-sample: Type of Counsel Recorded	0.303***	0.533***
	(0.064)	(0.051)
2b. Include Type of Counsel Control	0.195**	0.456***
	(0.081)	(0.046)
3. Include Type of Trial Control	0.218***	0.433***
	(0.052)	(0.038)
4. Include Elapsed Time Control	0.638***	0.535***
	(0.065)	(0.038)
5a. Cluster by Arrest Offense Only (Main Specification)	0.216***	0.550***
	(0.071)	(0.053)
5b. Cluster by County Only (Main Specification)	0.216***	0.550***
	(0.044)	(0.047)
6a. Cluster by Arrest Offense Only (Sub-sample: Type of Counsel Recorded)	0.303***	0.533***
	(0.065)	(0.055)
6b. Cluster by County Only (Sub-sample: Type of Counsel Recorded)	0.303***	0.533***
	(0.023)	(0.051)
7a. Cluster by Arrest Offense Only (Include Type of Counsel Control)	0.195**	0.456***
	(0.081)	(0.046)
7b. Cluster by County Only (Include Type of Counsel Control)	0.195***	0.456***
	(0.023)	(0.039)
8a. Cluster by Arrest Offense Only (Include Type of Trial Control)	0.218**	0.433***
	(0.048)	(0.068)
8b. Cluster by County Only (Include Type of Trial Control)	0.218***	0.433***
	(0.052)	(0.044)
9a. Cluster by Arrest Offense Only (Include Elapsed Time Control)	0.638***	0.535***
	(0.069)	(0.048)
9b. Cluster by County Only (Include Elapsed Time Control)	0.638***	0.535***
	(0.065)	(0.058)

Cols. 1-2 presents logistic regression coefficients of the Black indicator for alternate specifications of the Table 3 regressions. Standard errors are clustered by arrest offense-county unless stated otherwise. *p<0.10, **p<0.05, ***p<0.01

Table 6: Mean & RIF Decompositions of Racial Disparity in Log Sentence Length (Days)

Panel A: No Controls for Initial Charge Severity						
	Mean	10	30	50	70	90
Raw Gap	-0.352***	-0.042	-0.613***	-0.102***	-0.276***	-0.787***
	(0.113)	(0.304)	(0.031)	(0.027)	(0.088)	(0.123)
Unexplained	-0.025	-0.015	-0.486***	0.049***	-0.005	-0.219**
	(0.028)	(0.012)	(0.014)	(0.007)	(0.031)	(0.087)
Explained:						
Age	0.002	-0.001	0.001	0.001	0.004	0.013
	(0.002)	(0.001)	(0.001)	(0.001)	(0.003)	(0.010)
Criminal History	-0.0004	-0.00004	-0.00005	-0.00005	-0.0003	-0.0007
	(0.004)	(0.0003)	(0.0004)	(0.0004)	(0.003)	(0.006)
Prosecution Disposition	0.012	0.002	0.003	0.003	0.011	0.005
	(0.008)	(0.002)	(0.002)	(0.002)	(0.007)	(0.005)
Final Pleading	0.004	0.013***	0.007***	0.004***	-0.027***	-0.065***
	(0.013)	(0.004)	(0.002)	(0.001)	(0.006)	(0.014)
Arrest Offense	-0.344***	-0.041*	-0.138***	-0.158***	-0.259***	-0.519***
	(0.110)	(0.022)	(0.161)	(0.028)	(0.078)	(0.137)
N for White	54,657	54,660	54,660	54,660	54,660	54,660
N for Black	31,999	31,999	31,999	31,999	31,999	31,999

Panel B: Include Mandatory Minimum Dummy						
	Mean	10	30	50	70	90
Raw Gap	-0.351***	-0.042	-0.613***	-0.102***	-0.277***	-0.786***
	(0.113)	(0.030)	(0.031)	(0.027)	(0.088)	(0.123)
Unexplained	-0.024	-0.016	-0.485***	0.049***	-0.003	-0.215**
	(0.027)	(0.012)	(0.014)	(0.007)	(0.031)	(0.086)
Explained:						
Mandatory Min Dummy	-0.023	-0.003	-0.003	-0.004	-0.021	-0.033
	(0.016)	(0.002)	(0.002)	(0.002)	(0.014)	(0.022)
Age	0.002	-0.001	0.001	0.001	0.004	0.013
	(0.002)	(0.001)	(0.001)	(0.001)	(0.003)	(0.010)
Criminal History	-0.0004	-0.00004	-0.00004	-0.00004	-0.0003	-0.0007
	(0.003)	(0.0003)	(0.0004)	(0.0004)	(0.003)	(0.006)
Prosecution Disposition	0.012*	0.003	0.003	0.003	0.011	0.004
	(0.007)	(0.002)	(0.002)	(0.002)	(0.007)	(0.005)
Final Pleading	0.005	0.013***	0.007***	0.004***	-0.026***	-0.064***
	(0.013)	(0.004)	(0.002)	(0.001)	(0.006)	(0.014)
Arrest Offense ratype	-0.323***	-0.038*	-0.135***	-0.155***	-0.240***	-0.490***
	(0.114)	(0.023)	(0.029)	(0.029)	(0.082)	(0.144)
N for White	54,583	54,586	54,586	54,586	54,586	54,586
N for Black	31,975	31,975	31,975	31,975	31,975	31,975

Panel C: Include Mandatory Minimum Dummy and Log Past Mean (Days)						
	Mean	10	30	50	70	90
Raw Gap	-0.227**	-0.044	-0.561***	-0.051**	-0.153*	-0.537***
	(0.110)	(0.030)	(0.032)	(0.028)	(0.091)	(0.131)
Unexplained	-0.015	-0.017	-0.479***	0.052***	-0.015	-0.124
	(0.025)	(0.012)	(0.013)	(0.007)	(0.033)	(0.087)

Table 6: Continued

Explained:						
Log Past Mean (Days)	-0.170**	-0.014**	-0.017**	-0.020**	-0.118**	-0.266**
	(0.082)	(0.007)	(0.008)	(0.010)	(0.057)	(0.129)
Mandatory Min Dummy	-0.008	-0.001	-0.001	-0.002	-0.009	-0.010
	(0.007)	(0.001)	(0.001)	(0.001)	(0.008)	(0.009)
Age	0.003	-0.0003	0.0003	0.001	0.004	0.011
	(0.003)	(0.0005)	(0.0004)	(0.001)	(0.004)	(0.012)
Criminal History	0.002	0.0002	0.0002	0.0003	0.002	0.005
	(0.003)	(0.0002)	(0.0002)	(0.0003)	(0.002)	(0.006)
Prosecution Disposition	0.001	0.001	0.001	0.001	0.004	-0.008
	(0.004)	(0.002)	(0.001)	(0.001)	(0.003)	(0.006)
Final Pleading	0.001	0.010***	0.007***	0.005***	-0.022***	-0.055***
	(0.010)	(0.004)	(0.002)	(0.001)	(0.005)	(0.012)
Arrest Offense	-0.041	-0.022	-0.071***	-0.088***	0.001	-0.090
	(0.050)	(0.018)	(0.024)	(0.022)	(0.043)	(0.063)
N for White	39,101	39,104	39,104	39,104	39,104	39,104
N for Black	30,388	30,388	30,388	30,388	30,388	30,388

Col. 1 presents Oaxaca pooled decompositions of the black-white gap of log sentence length (days) at the mean. Cols. 2-6 present Oaxaca pooled decompositions in the recentered influence function at the deciles. Standard errors are clustered by arrest offense-county. *p<0.10, **p<0.05, ***p<0.01

Table 7: Alternate Specifications of Log Sentence Length (Days) Explained by Log Past Mean (Days)

	Mean	10	30	50	70	90
1. Main Specification	-0.170**	-0.014**	-0.017**	-0.020**	-0.118**	-0.266**
	(0.082)	(0.007)	(0.008)	(0.010)	(0.057)	(0.129)
2a. Sub-sample: Type of Counsel Recorded	-0.126*	-0.008*	-0.011*	-0.011*	-0.134*	-0.310*
	(0.074)	(0.005)	(0.006)	(0.006)	(0.079)	(0.182)
2b. Include Type of Counsel Control	-0.125*	-0.012*	-0.015*	-0.017*	-0.108*	-0.170*
	(0.073)	(0.007)	(0.009)	(0.010)	(0.063)	(0.100)
3. Include Type of Trial Control	-0.155**	-0.013**	-0.016**	-0.019**	-0.108**	-0.247**
	(0.075)	(0.006)	(0.008)	(0.009)	(0.052)	(0.120)
4. Include Elapsed Time Control	-0.161**	-0.013**	-0.016**	-0.019**	-0.111**	-0.256**
	(0.078)	(0.007)	(0.008)	(0.009)	(0.054)	(0.125)
Cluster by Arrest Offense (1.)	-0.170	-0.014	-0.017	-0.020	-0.118	-0.266
	(0.112)	(0.010)	(0.012)	(0.013)	(0.077)	(0.176)
Cluster by County Only (1.)	-0.170***	-0.014***	-0.017***	-0.020***	-0.118***	-0.266***
	(0.046)	(0.004)	(0.005)	(0.005)	(0.035)	(0.076)
Cluster by Arrest Offense Only (2a.)	-0.126	-0.008	-0.011	-0.011	-0.134	-0.310
	(0.078)	(0.005)	(0.007)	(0.007)	(0.083)	(0.191)
Cluster by County Only (2a.)	-0.126***	-0.008***	-0.011***	-0.011***	-0.134***	-0.310***
	(0.017)	(0.001)	(0.002)	(0.002)	(0.033)	(0.044)
Cluster by Arrest Offense Only (2b.)	-0.125	-0.012	-0.015	-0.017	-0.108	-0.170
	(0.077)	(0.007)	(0.009)	(0.011)	(0.066)	(0.105)
Cluster by County Only (2b.)	-0.125***	-0.012***	-0.015***	-0.017***	-0.108***	-0.170***
	(0.017)	(0.002)	(0.003)	(0.003)	(0.015)	(0.046)
Cluster by Arrest Offense Only (3.)	-0.155	-0.013	-0.016	-0.019	-0.108	-0.247
	(0.102)	(0.009)	(0.011)	(0.013)	(0.071)	(0.164)
Cluster by County Only (3.)	-0.155***	-0.013***	-0.016***	-0.019***	-0.108***	-0.247***
	(0.041)	(0.004)	(0.005)	(0.005)	(0.031)	(0.073)
Cluster by Arrest Offense Only (4.)	-0.161	-0.013	-0.016	-0.019	-0.111	-0.256
	(0.107)	(0.009)	(0.011)	(0.013)	(0.073)	(0.170)
Cluster by County Only (4.)	-0.161***	-0.013***	-0.016***	-0.019***	-0.111***	-0.256***
	(0.042)	(0.004)	(0.005)	(0.005)	(0.032)	(0.071)

Col. 1 presents alternate specifications of log sentence length (days) explained by log past mean (days) at the mean. Cols. 2-6 present alternate specifications of log sentence length (days) explained by log past mean (days) in the recentered influence function at the deciles. Standard errors are clustered by arrest offense-county unless stated otherwise. *p<0.10, **p<0.05, ***p<0.01