



Sentencing Guidelines Neutrality Review, Part 1

Nate Reitz | Executive Director
Presented July 23, 2020

1

“Sentencing should be neutral with respect to the race, gender, social, or economic status of convicted felons.”

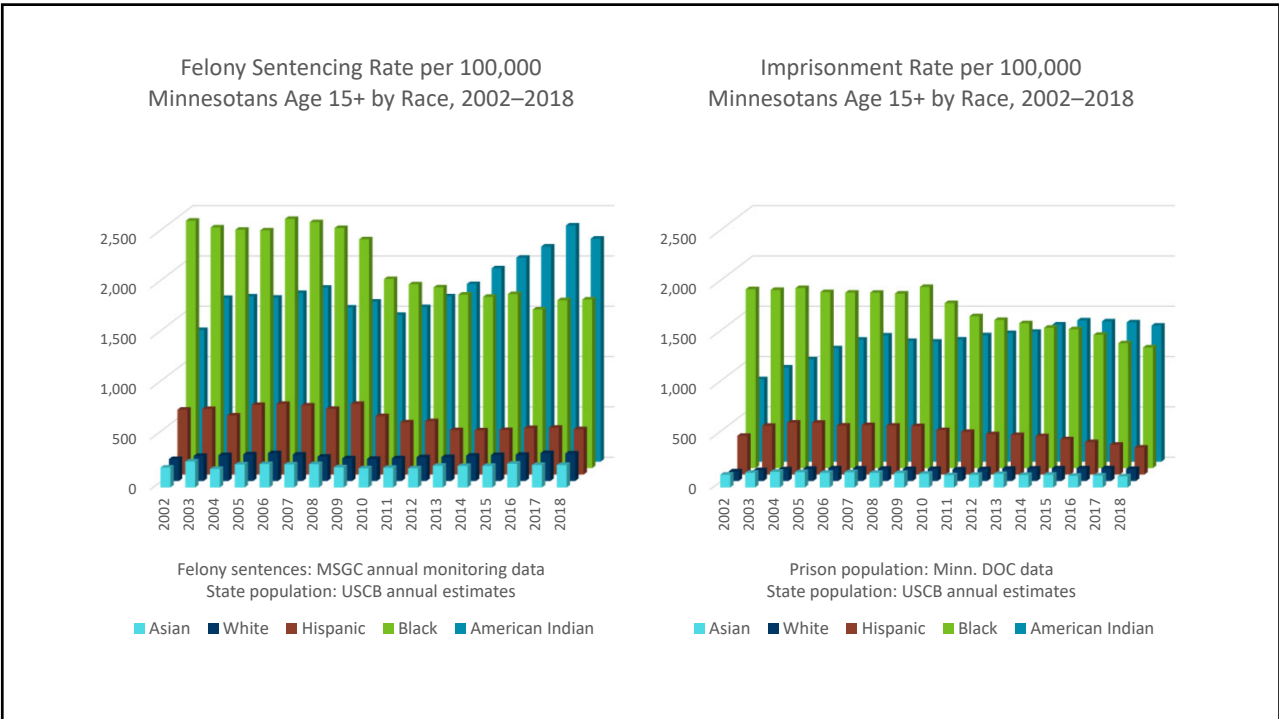
Minnesota Sentencing Guidelines, 1980–2020

2

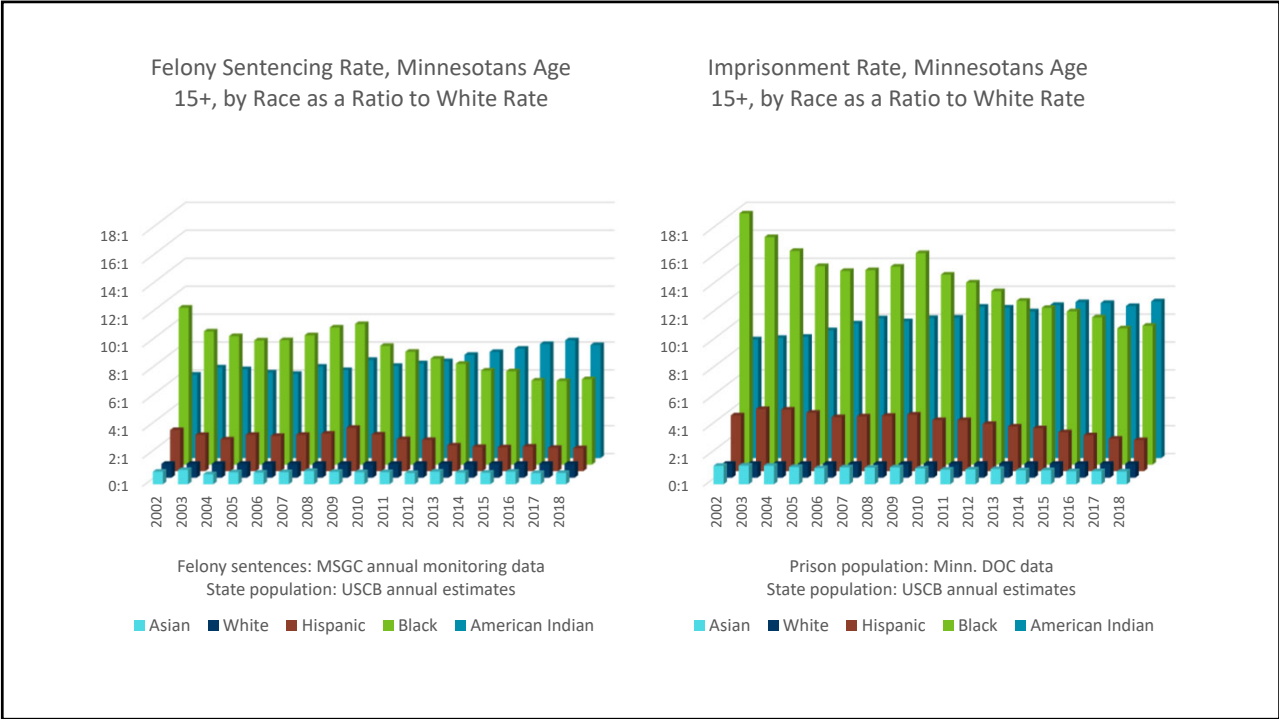
Is sentencing neutral with respect to race?

- One way to begin to look at this question is to review racial groups’ rate of representation among felons sentenced each year, and within the prison population
- “Rate”
 - A comparison between the group’s representation in the general population and the group’s representation in the felony and prison population
 - Expressed in terms of a rate per 100,000 Minnesota residents, age 15+, of that race
- How do sentencing and imprisonment rates compare, by race?

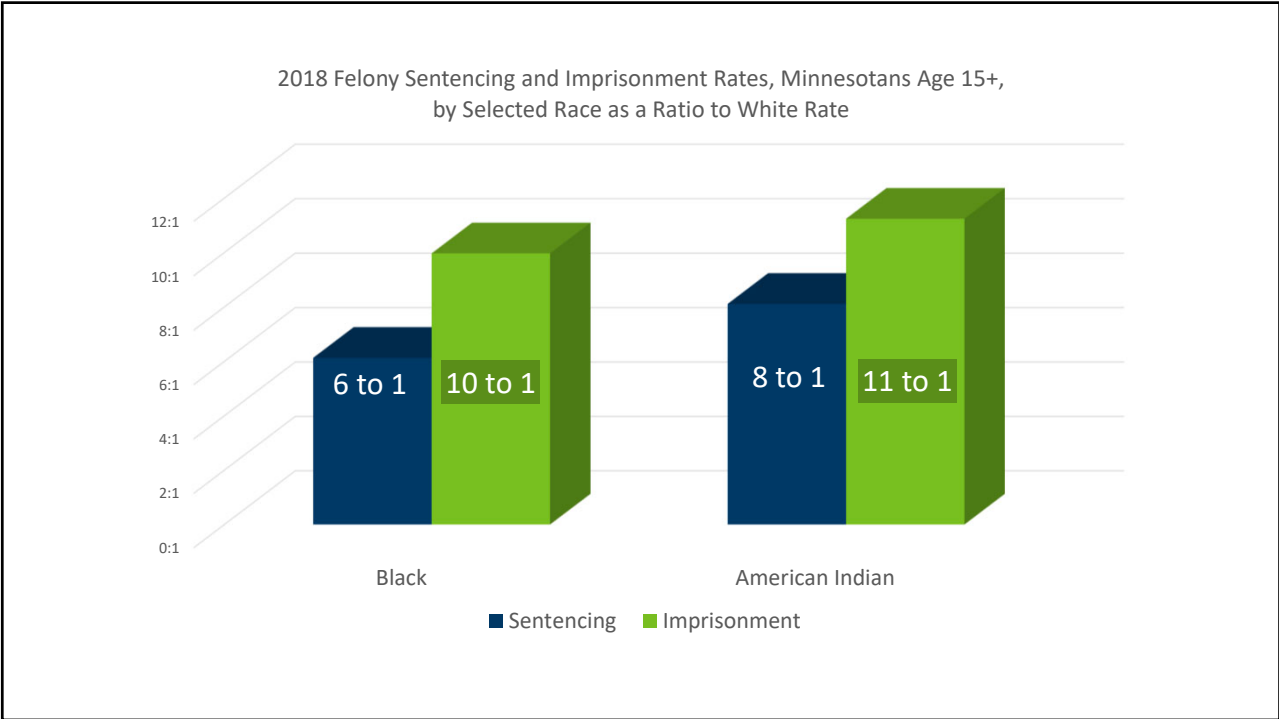
3



4



5



6

The Commission's research mandate

Subd. 6. **Clearinghouse and information center.** The commission, in addition to establishing Sentencing Guidelines, shall serve as a clearinghouse and information center for the collection, preparation, analysis and dissemination of information on state and local sentencing practices, and **shall conduct ongoing research regarding Sentencing Guidelines, use of imprisonment and alternatives to imprisonment, plea bargaining, and other matters relating to the improvement of the criminal justice system.** The commission shall from time to time make recommendations to the legislature regarding changes in the Criminal Code, criminal procedures, and other aspects of sentencing.

This information shall include information regarding the impact of statutory changes to the state's criminal laws related to controlled substances, including those changes enacted by the legislature in Laws 2016, chapter 160.

- *Minn. Stat. § 244.09, subd. 6 (emphasis added).*

7

For the neutrality review, what research is realistic?

Within existing resources—

- What individual characteristics—race, gender, social, or economic—can we research?
- What areas of the Sentencing Guidelines affecting sentencing neutrality can we examine?
- Are there other areas of the criminal justice system we can review?



8



Research into individual characteristics

- Data collected by MSGC on sentencing worksheets:
 - Defendant's race
 - Defendant's gender
 - Defendant's age
 - County of offense
- Data that may be available through courts:
 - Defendant's home ZIP code (for broad socioeconomic inferences)
 - Whether defendant qualified for public defender (public assistance/economic)
 - ICE holds' existence (alienage/deportability)
- Data not likely to be available without intensive, case-level research:
 - Defendant's social history or current social situation
 - Defendant's employment history or specific economic situation
 - Victim's race, gender, age, location, or socioeconomic information

9



Research into criminal justice system: Presentence

- We have data on who is convicted and sentenced for a felony
- We lack data on—
 - Pretrial confinement (but some jail credit data may be available)
 - Charging and plea-bargaining practices
 - Diversion, specialty courts, & stays of adjudication
 - Juveniles—other than revoked EJJ
- Possible areas for research—
 - Are there neutrality issues with offenses enhanced due to criminal history (e.g., DWI, Assault 5, Domestic Assault)?
 - Can we use our DSRA-impact research to learn something about charging and plea-bargaining practices?

10



Research into criminal justice system: Sentence

- Two major drivers of prison beds are the presumptive sentence and departures (or lack of departures)
- Research would examine various Sentencing Guidelines and statutory policies for neutrality
 - Criminal history score
 - Offense severity
 - Mandatory minimums
 - Permissive ranges
 - Consecutive sentencing
 - Other policies
- Emphasis would be on prison-bed impact of each policy, and demographic prison-bed distribution
- Research would also examine dispositional and durational departure (or non-departure) practices for neutrality on different groups
- Special focus on offenses creating largest prison-bed demand
- Also: Probationary jail, life sentences

11



Research into criminal justice system: Postsentence

- Probation revocations are also a driver of prison beds
- Research issue: Whether probation revocations add to prison population in a neutral way
- Research issue: Whether the stay of imposition/stay of execution decision affects subsequent revocations in a neutral way
- Are probation durations neutrally imposed?
- Are conditions of probation neutrally imposed?
- Do we have data on supervised release returnees?

12

Next steps for staff

Today—

- Get Commission's guidance regarding individual characteristics, or aspects of the criminal justice system, that are particularly interesting or uninteresting for research

Then—

- Work with other agencies to build necessary data connections
- Close 2019 sentencing monitoring data set for inclusion in research
- Begin reporting research findings as early as September meeting