

**A Focused Look at Sentencing  
in Multnomah County:  
Addressing Over-Representation  
of Racial and Ethnic Minorities**

A Report by the Multnomah County  
Local Public Safety Coordinating Council (LPSCC)  
Task Force on Minority Over-representation  
in the Criminal Justice System

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# A Focused Look at Sentencing in Multnomah County:

Addressing Over-Representation of Racial and Ethnic Minorities—

## Executive Summary

1. For the purposes of this study disproportionate sentencing is defined as:
  - a. *A greater percentage of a particular racial or ethnic group sentenced to prison rather than probation in grid blocks 8G, 8H, and 8I.* Under Oregon Sentencing Guidelines the judge has the choice of sentencing a defendant to state prison or to probation for these three grid blocks. Because these grid blocks allow for relatively wider latitude in sentencing, if there is disproportionate sentencing of racial or ethnic minorities this is where it should be most apparent.
  - b. *Longer sentences to prison, jail, or work release that cannot be accounted for by non-racial factors.*
2. There is not disproportionate sentencing to prison versus probation for crimes that are indicted under Ballot Measure 11. For some Ballot Measure 11 crimes Whites received shorter prison sentences than Blacks and Hispanics. For some Ballot Measure 11 crimes Blacks received the longest prison sentences.
3. There is not disproportionate sentencing to prison versus probation for non-BM11 person, property and sexual crimes. However, Whites received longer prison sentences than Blacks or Hispanics.
4. With drug crimes, the majority of crimes in this study:
  - a. Hispanics who are not US citizens disproportionately received prison sentences. This is because non-US citizens, who are here illegally, are not eligible for probation.
  - b. US citizens appear to have an equal opportunity for probation in lieu of prison. The small number of Hispanics who are US citizens (21 of 155 Hispanics sentenced for drug crimes) limits the validity of statistical testing.
  - c. Hispanic non-US citizens received shorter prison sentences than US citizens.
  - d. Up to 5 Hispanic US citizens may have received longer prison sentences for drug crimes of comparable seriousness. Small sample size limits the validity of statistical testing.
5. This should be considered an exploratory study. Several things were learned that can improve future studies of disproportionate sentencing. These include:
  - a. Improvements in sample selection;
  - b. Addition of key data elements such as citizenship and type of drug;
  - c. A larger sample size to permit finer statistical analysis.

# A Focused Look at Sentencing in Multnomah County:

## Addressing Over-Representation of Racial and Ethnic Minorities

### I. Introduction

- *Charge to the Working Group on Minority Over-Representation in the Criminal Justice system*

In June 1998, Multnomah County's Local Public Safety Coordinating Council (LPSCC) made it a priority to investigate possible racial or ethnically-biased disparities in the administration of criminal justice. LPSCC appointed a Working Group on Minority Over-Representation in the Criminal Justice System.

The goals of the Working Group were to:

1. Assess the operation of the justice system within the County to determine if, and to what extent, racially or ethnically-biased decision-making and disparity exists in Multnomah County's criminal justice system; and
2. Report back to the Council with an Action Plan that includes an assessment of this issue and recommendations to reduce any disparate practices and inequitable conditions that may exist in the system.

- *Report 1: An Assessment and Action Plan*

To meet goal one the Working Group submitted an initial analysis that states for 1998 crimes:

“Harsher sentences are more often applied to people of color. Similarly, lenient options are more often granted to white offenders. Sentences are often negotiated as a plea bargain between prosecution and defense.”<sup>1</sup>

For **misdemeanors** it was not valid to compare sentences for misdemeanor crimes as a whole across racial/ethnic groups because there was no way to account for prior criminal history or seriousness of the crime. Either of those two variables can substantially affect severity of sentences. So the Working Group examined two misdemeanors: Trespass II and Driving Under the Influence of Intoxicants (DUII). No racial/ethnic disparities were found for DUII sentences but for Trespass II: “African Americans received a jail sentence in 66% of the cases whereas whites went to jail in only 43% of the cases. The over-representation of African Americans in trespass with a jail sentence may be correlated to drug arrests.”<sup>2</sup>

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<sup>1</sup> Ensuring Equitable Treatment in the Criminal Justice System: Addressing Over-Representation of Racial and Ethnic Minorities, An Assessment and Action Plan, DRAFT Report, October 2000, Page iv.

<sup>2</sup> Ensuring Equitable Treatment . . . , p. 74.

- ***Recommendation for a Focused Look at Sentencing of Felonies***

The initial sentencing analysis for **felonies** examined five grid blocks. This allowed for comparing the sentences of defendants with similar criminal histories and similar crime severity. The initial analysis was limited because 1998 cases alone did not provide a large enough sample for valid statistical analysis. The Report concluded, “Although in many cases the analysis of the grid blocks produced too few cases for reliability, there is a pattern of differing sentencing outcomes, particularly for African Americans, [which] needs further analysis. The Working Group is interested in analyzing (“drilling down”) into this issue further to learn of other factors that may contribute to sentencing in order to understand this decision point better and find out why such disparities occur.”<sup>3</sup>

- ***The Follow-up Study***

This follow-up study investigates some of the sentencing disparities that were found by the Working Group. This study focuses on felonies in three grid blocks-- 8G, 8H, and 8I--because these grid blocks allow for relatively wider latitude in sentencing. If there is disproportionate sentencing of racial or ethnic minorities this is where it should be most apparent.

The study was begun in early 2001 by Lyman Louis, a researcher employed by LPSCC. Mr. Louis’ employment with LPSCC ended in spring 2002, after data collection had been completed on over 900 case files from the Multnomah County District Attorney’s office. In fall of 2002 LPSCC issued a Request for Proposals for a contractor to complete the project. Three bids were received to complete the study. James I. Carlson was selected as the contractor and completed this report. Mr. Carlson had several prior years of experience as a researcher supporting LPSCC. He also had exercised some oversight of Lyman’s Louis, while Mr. Louis was working on the initial stages of this study. His familiarity with the Multnomah County criminal justice system and its data bases, along with the carefully organized electronic database that Mr. Louis had developed, allowed for a relatively smooth transition and completion of the project.

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<sup>3</sup> *Ibid.* p. 76.

## II. Sentencing and Grid Blocks

- *Oregon Sentencing Guidelines*

The initial report of the Working Group, *Ensuring Equitable Treatment in the Criminal Justice System*, provides an excellent introduction to Oregon’s sentencing process.<sup>4</sup> The following text briefly summarizes that material. Readers who would like a more complete explanation of the sentencing process should consult the Working Group’s initial report.

The 1987 Legislative Assembly directed the Criminal Justice Council to develop sentencing guidelines for felony crimes. One goal of the process was to: “Establish sentencing uniformity, so that offenders who commit similar crimes and have similar criminal histories receive similar sentences.”<sup>5</sup>

The sentencing guidelines set ‘presumptive sentences’ for convicted felons based on the seriousness of the crime of conviction and the offender’s prior criminal history. The guidelines are contained in a grid—consisting of 11 rows and 9 columns. A simplified version of the sentencing grid is displayed on the next page. Crimes are arranged by seriousness—Row 11 at the top of the grid is the most serious, for example, murder. Row 1 and the bottom is the least serious, for example, possession of a relatively small amount of a controlled substance. The offender’s prior criminal history is represented by 9 columns. Column A, on the left, is offenders with the most serious criminal history—three or more prior convictions for person-to-person felonies. Column I, on the right is for offenders with no prior felonies or adult Class A misdemeanor convictions.

The grid is separated into two parts by a solid black diagonal line. For grid blocks above the line, the presumptive sentence is prison for a term within the range of months indicated in the grid block. Prison sentences are followed by a term of post-prison supervision (formerly called parole). For most offenses post-prison supervision is from 1-3 years, depending upon the crime seriousness category of the offense of conviction.

For grid blocks below the dispositional line, (gray area on next page) the presumptive sentence is probation. For most offenses, the presumptive length of probation supervision is determined by the crime seriousness category of the offense of conviction. Each grid block below the dispositional line includes a maximum jail term and a maximum number of sanction units that can be imposed.

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<sup>4</sup> *Ensuring Equitable Treatment in the Criminal Justice System: Addressing Over-Representation of Racial and Ethnic Minorities, An Assessment and Action Plan, Section III--Sentencing*, James Ellis, Presiding Judge, State of Oregon Circuit Court, Multnomah County, pp. 71-73 and Appendix VI, *Oregon Sentencing Guidelines Overview*, Tracey Cordes, J.D., Program Manager, Oregon Criminal Justice Commission pp. 119-126.

<sup>5</sup> *Ibid.*, p. 119.

- **Grid Blocks 8G, 8H, and 8I**

Each grid block contains a presumptive sentence. To keep the following illustration simple, the presumptive sentence is shown only for the three grid blocks that are included in this study. For grid block 8G the presumptive sentence is 21-22 months in prison; for grid block 8H, 19-20 months in prison; for grid block 8I 16-18 months in prison. Prison means time served in one of the state penitentiaries or state operated work release camps, if the judge allows that option.

**A Simplified Representation of Oregon’s 2002 Sentencing Guidelines  
Highlighting Grids 8G, 8H, and 8I**

<i>Post-Prison Supervision</i> (formerly called Parole)								4 or more adult ‘A’ ‘misdos’ or 1 adult non-person felony or 3 or more juvenile non-person felonies	No more than 3 adult ‘A’ ‘misdos’ or 2 juvenile non-person felonies	No juvenile felonies or adult ‘A’ ‘misdos’	Probation Duration	
	A	B	C	D	E	F	<b>G</b>	<b>H</b>	<b>I</b>			
<i>3 years</i>	11	<b>White grid blocks indicate presumptive sentences of prison.</b>									<b>Optional Probation</b>	<i>5 years</i>
	10											
	9											
	<b>8</b>	21-22	19-20	16-18								
	7	<b>Gray grid blocks indicate presumptive sentence of probation.</b>										<i>3 years</i>
<i>2 years</i>	6											
	5											
	4											
<i>1 year</i>	3											
	2											
	1	<i>18 months</i>										

For grid blocks 8G, 8H, or 8I the judge may impose optional probation instead of prison. Under optional probation the defendant remains in the community under supervision by a probation officer, just as they would if they fell into a grid block in the gray area of the sentencing grid. Optional probation may include some local jail time. The maximum local jail time would be one year. Under Oregon’s local control statute (SB1145) a sentence of one year and one day would result in imprisonment in the state prison rather than the county jail; prison sentences one year or less are served in county jails.

### III. How was the study done?

- *Who is included in the study?*

The cases that were studied were taken from a list of all active cases that fell in these three grid blocks during calendar years 1998, 1999, and 2000. The list was obtained from DACTS (District Attorney Case Tracking System). “Active” turned out to have several meanings. Active may mean that a case had its original trial and sentence during one of these three years. However, a case may be active more than once during a year, and/or for several years in a row. Reopening the case is most likely if the defendant receives a sentence of probation in the original trial; each time the defendant allegedly violates the conditions of probation the case may return to the judge. Because “active” was defined as either of the above the sample included cases that may have had the original trial before 1998 but were brought before a judge during 1998, 1999, or 2000. This analysis is based on the original sentence, not upon subsequent actions by a judge such as revoking probation.

**Table 1: Count of Cases in Grid Blocks 8-G, 8-H, and 8-I**

	Unknown	Pre 1996	1996	1997	1998	1999	2000	TOTAL
<b>Number of Active Cases</b> (may appear in more than 1 year)					539	598	435	1572
<b>Year of original court case</b> (unduplicated)	26	24	21	36	311	300	238	956

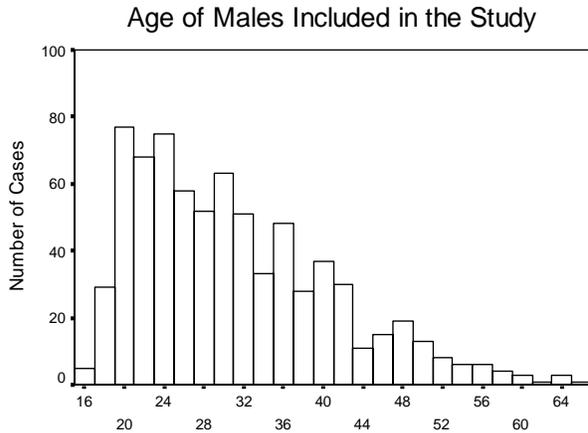
The total of 1572 active cases was unduplicated resulting in 1221 unique case numbers over the three year study period. A few individuals had more than one case so there are slightly less than 1221 unique individuals. The 1221 cases were the original target for this study.

Data was eventually gathered on 956 of the 1221 cases. A quick analysis showed that the 265 missing cases (1221 – 956) were not so different that their exclusion would bias the study. The missing cases were not included due to time and cost constraints.<sup>6</sup> Subsequent analysis showed that there were not enough Blacks or Hispanic US citizens for finer statistical analysis to be definitive. One lesson for future research is not to give up sample size, even when it saves time and cuts costs.

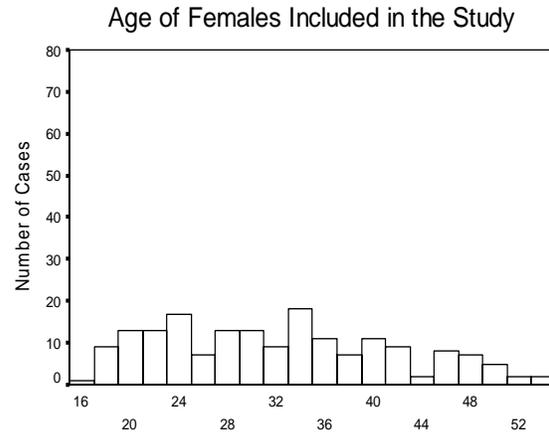
Seventy-five percent of defendants were indigent and required state supported defense. Sixty-five percent had no prior felonies. Seven percent were already on probation or post-prison supervision. Thirty-five percent appeared to have an alcohol or drug issue; only 4% appeared to have a mental health issue. The sample is primarily males (81%). The median age for males is 29; for females 31. The peak concentration of males is in the early 20’s. Females are well represented into their early 40’s. The following graphs show these two distributions.

<sup>6</sup> Carlson, James I., District Attorney Case File Reviews—Technical Report, February 2, 2003, Multnomah County Local Public Safety Coordinating Council.

Graph 1



Graph 2



The racial/ethnic background of defendants is one of the most important variables, given the purpose of this study.

**Table 2: Ethnicity of Cases in Grid Blocks 8-G, 8-H, and 8-I**

	Unknown	Asian	Black	Hispanic	Native American	White	TOTAL
<b>Ethnic / Racial Background of Defendants</b>	4	15	133	175	5	624	956

There are not enough Asians or Native Americans for valid statistical analysis. The analysis for sentencing disparity only includes Blacks, Hispanics, and Whites.

Length of time in the Metropolitan area / State of Oregon is an important variable that can affect the number of days a defendant spends in the county jail. Persons with no firm connection to the local area are considered poor candidates for pre-trial release, which increases their chance of being held in county jail pending trial.

**Table 3: Length of time in Metropolitan area / State of Oregon by Racial / Ethnic Group**

	White	Black	Hispanic
Missing data	N = 259 <b>42%</b>	N = 38 <b>29%</b>	N = 40 <b>23%</b>
Less than 3 months	N = 8 <b>1%</b>	N = 2 <b>1.5%</b>	N = 34 <b>19%</b>
3-11.99 months	N = 7 <b>1%</b>	N = 2 <b>1.5%</b>	N = 30 <b>17%</b>
1-4.99 years	N = 45 <b>7%</b>	N = 6 <b>4%</b>	N = 39 <b>22%</b>
5 or more years	N = 305 <b>49%</b>	N = 85 <b>64%</b>	N = 32 <b>18%</b>
Total cases	N = 624	N = 133	N = 175

Two things are immediately clear from Table 3. First, missing data is a problem. Criminal justice data systems are not made for researchers. They gather information, as needed, at various stages of processing. The above information

comes from the Pre-Trial Release form. If a defendant did not go through the pre-trial release process their data is missing.

Second, there are marked differences between racial /ethnic groups. (Differences between racial/ ethnic groups are statistically significant (Chi-square,  $p < .001$ ). Whites are much less likely to have pre-trial release data. This most likely indicates that they are able to post bail or, if they do not post bail, are more likely than Blacks or Hispanics to be released on their own recognizance just after booking into the jail. Failure to secure pre-trial release at the time of booking means that a person must remain in jail pending trial, unless the judge chooses to release the defendant on their own recognizance.

- ***How was the data gathered?***

District Attorney personnel used the list of active cases to retrieve the actual hard copy files. Case files are stored in multiple locations. Because cases may be re-opened at any time, files can be active in one of multiple working units in the District Attorney's Office. If inactive, they can be in local storage, or if inactive for a while they could be in off-site long term storage. On occasion they could be misfiled, which would necessitate a site review of all possible locations. Finally, a case may be expunged which means it could not be found in any of the above locations. This complexity led to some delays in finding the case files, but with effort all were eventually located except one, which may have been an expunged case.

When the files were retrieved the LPSCC researcher reviewed them and coded 46 different data elements into an electronic database. This process of reviewing the data files and constructing the data base is referred to as 'extracting' the data. Up to the time his employment ended, the LPSCC researcher had extracted 949 case files.

At this point there was a gap of approximately 6 months during which no further work was done on the study. A consultant was contracted to finish the study in fall 2002. An electronic data base, without backup explanation, was the only available completed work. However, the data base had been carefully and clearly constructed. Each data element had a clear reference to its source document in the case file. Therefore, it was not difficult to resume work using the same methodology.

The consultant drew a 6% sample (59 files) of the 949 records that had already been extracted to duplicate and document the data collection process. This is referred to as the 'validity check'. The consultant's data was compared with the files that had already been extracted. Based on this comparison, 10 of the 46 fields were eliminated as too problem prone for use in the final analysis. That report

primarily technical and is not reproduced here. It should be read by anyone who would like to build upon the lessons learned in gathering data for this study.<sup>7</sup>

The review process and initial data analysis also revealed that three key data elements should have been collected but were not:

- 1) if there were sentences on multiple counts (charges), whether the sentences were concurrent or consecutive;
- 2) if the sentence was probation, whether or not jail days and work release were imposed;
- 3) US citizenship and presence or absence of an INS (Immigration and Naturalization Service) hold.

Absence of this data made it impossible to determine if disproportionate sentencing was occurring while controlling for other potentially significant variables.

To correct these omissions the electronic record of each case was printed using DACTS, the District Attorney Case Tracking System. This resulted in a 6-volume set which serves as backup documentation for each case this study. During March and April 2003 the consultant went through these volumes and added the key missing information to the data base. Additional potentially useful data elements were also added to the original file. These included the date of the original sentence, the number of times the case appeared before a judge for probation violations, whether or not probation cases were revoked, the resulting prison term for revoked probation, as well as current status of the case (open, closed, inactive).

Additional data on US citizenship was obtained from DSS-Justice, a data warehouse maintained by Multnomah County. Subsequent analysis showed that the citizenship data, which has not been widely used in DSS-Justice, needed further validation. DSS-Justice data on citizenship appears to be largely self-report and unreliable. For example, a comparison of DSS-Justice data and INS data shows that the INS routinely deports US citizens, which is not INS policy; more likely, detainees report erroneous citizenship along with frequently erroneous names. Further verification of citizenship and place of birth was sought in the State of Oregon LEDS data base (Law Enforcement Detection System). Combining LEDS and INS data, made it possible to determine citizenship for most of the Hispanics in the sample.

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<sup>7</sup> Carlson, James I., Review of Data Collected and Missing Data: District Attorney Case File Reviews, Multnomah County Local Public Safety Coordinating Council, Portland, Oregon, January 2003.

- *What crimes are included in this study?*

Grid Blocks 8G, 8H, and 8I are all Crime Seriousness 8 ('CS8'—Row 8 of the Sentencing Guidelines). CS8 crimes include, but are not limited to: Burglary 1, Delivery of a Controlled Substance Within 1000 feet of a school, Distributing Drugs to a Minor, Inmate Possessing a Firearm or Weapon, Manslaughter II, Rape II, Sodomy II, etc. Therefore, grid blocks 8G, 8H, and 8I have a mix of sexual offenses, other person-to-person, property, and drug crimes.

Some of these crimes, such as Manslaughter 1, Rape II and Sodomy II, fall under Ballot Measure 11 (BM11). BM11 mandates Determinate Sentences (ORS 137.635-7) that supercede the sentences shown on the sentencing grid. Defendants convicted for a BM11 are not eligible for probation, which is otherwise an option in grid blocks 8G, 8H, or 8I. Therefore, a racial or ethnic group that committed more BM11 crimes would have less option for probation than a racial or ethnic group that did not commit as many BM11 crimes. Because of this, the crimes in grid blocks 8G, 8H, and 8I must be separated; only the non BM11 cases should be compared to determine if racial/ethnic groups receive the same opportunity for probation.

Furthermore, a person charged with a BM11 crime may receive a sentence to a less serious non-BM11 crime. For example a person charged with Sexual Abuse I (BM11) may be convicted on Attempted Sexual Abuse I (non-BM11). This may occur for one of two reasons. An Indictment Charge that falls under BM11 may be 'pled down' to a lesser charge that does not fall under BM11; or, defendants may not be allowed to plea down but are convicted of a lesser charge because more serious charges are not substantiated. Forty percent of cases in the sample that were indicted as BM11 charges ended with the defendant being found guilty of non-BM11 charges. If the lesser conviction results from a 'plea down' the terms of the plea agreement often call for a more severe sentence than would normally be given to that lesser charge. The net effect in these 'plea down' cases would be a less severe sentence than if the defendant was convicted of the original charge.

The presence of charges that are pled down from BM11 can result in a grossly misleading analysis. A researcher looking at sentences for the lesser crime (for example Attempted Sexual Abuse I, which is non-BM11) might conclude that some defendants being sentenced for Attempted Sexual Abuse I are receiving harsher treatment than others whose original charge was Attempted Sexual Abuse I. If a racial /ethnic group is being disproportionately allowed to plea down BM11 charges to a lesser level, their sentences to that lesser level would appear to be harsher than those of a group who did not receive an equal opportunity to plea down their charges. Without reference to the prior BM11 charge, a researcher could erroneously conclude the group was being discriminated against, when in fact it was being treated more favorably than other groups who were not given equal opportunity to plea down. Because of this complication, sentences to

indictments that start as BM11 must be analyzed separately from persons originally indicted on non-BM11 charges.

Table 4 shows the types of indictment charges that are included in the sample.

**Table 4: Types of Charges in Grid Blocks 8-G, 8-H, and 8-I**

	Charge Group	Number of Cases	Percent of Cases
<b>BM11 Cases</b>	Sexual offenses	105	11%
	Person-to-person	59	6%
	<b>Subtotal BM11</b>	<b>164</b>	<b>17%</b>
<b>Non-BM11 Cases</b>	Primarily drugs	724	76%
	Sexual offenses	10	1%
	Person-to-person	23	2%
	Property only	35	4%
	<b>Subtotal Non-BM11</b>	<b>792</b>	<b>83%</b>
<b>TOTAL CASES</b>		<b>956</b>	<b>100%</b>

Due to the small number of BM11 person-to-person cases and the small number of non-drug/ non-BM11 cases the analysis was focused on the following groups:

**Table 5: Analysis Groups of Cases in Grid Blocks 8-G, 8-H, and 8-I**

Analysis Group	Number of Cases	Percent of Total Cases
BM11 Cases	164	17%
Non-BM11 Cases—Person, property, sexual offenses	68	7%
Non-BM11 Cases—Primarily drugs	722	76%
<b>TOTAL CASES</b>	<b>956</b>	<b>100%</b>

Further analysis of drug cases showed that they needed to be separated for adequate analysis. Drug cases varied considerably in perceived seriousness and ultimate sentence.

By now it should be apparent why the original Working Group analysis and report erroneously concluded that Blacks and Hispanics receive more severe sentences than whites in certain grid blocks. Grid Blocks do not adequately control for crime seriousness. Therefore, a simple comparison of prison versus probation or length of prison sentences, for all crimes in a grid block is invalid. Even within a grid block, or group of grid blocks of roughly equal crime seriousness, such as those included in this study, the variation in crime seriousness is too great to assume that all defendants sentenced in that grid block should receive an equal opportunity for probation. Nor does simple comparison of sentencing outcomes by grid block control for other variables such as citizenship. As we shall see, citizenship, along with crime seriousness, accounts for much of the apparent sentencing disparity between racial/ ethnic groups.

## IV. Is there disproportionate sentencing of racial and ethnic minorities?

### • *Ballot Measure 11 Crimes*

There are currently 23 Ballot measure crimes. They can be roughly categorized into sexual offenses versus other person-to-person crimes. For this analysis, sexual crimes begin with Rape I and end with Compelling Prostitution in the following list.

**Table 6: Ballot Measure 11 Crimes**

<i>Charges</i>	<i>Oregon Revised Statute (ORS)</i>
Aggravated Murder	ORS 163.095
Murder	ORS 163.115
Attempted Murder	ORS 163.115
Attempted Aggravated Murder	ORS 163.095
Conspiracy to Commit Murder	ORS 163.450/ 163.115
Conspiracy to Commit Aggravated Murder	ORS 163.450/163.095
Manslaughter I	ORS 163.118
Manslaughter II	ORS 163.125
Arson I (intentional and threat of serious physical injury)	ORS 164.325
Assault I	ORS 163.185
Assault II	ORS 163.175
Kidnapping I	ORS 163.235
Kidnapping II	ORS 163.225
Robbery I	ORS 164.415
Robbery II	ORS 164.405
Rape I	ORS 163.375
Rape II	ORS 163.365
Sexual Abuse I	ORS 163.427
Sodomy I	ORS 163.405
Sodomy II	ORS 163.395
Unlawful Sexual Penetration I	ORS 163.411
Unlawful Sexual Penetration II	ORS 163.408
Compelling Prostitution	ORS 167.017

Defendants are commonly charged with multiple ‘counts’. These counts may include a mixture of BM11 and non-BM11 crimes. Any defendant who was indicted on at least one of the above was included in the BM11 group. Forty percent of the 164 persons who fell in this group were later convicted on charges that did not include at least one BM11 crime. These individuals were left in the BM11 group because the severity of their final sentence is strongly influenced by the prior BM11 charge.

**Table 7: Analysis of BM11 Cases in Grid Blocks 8-G, 8-H, and 8-I**

	<b>White</b>	<b>Black</b>	<b>Hispanic</b>
Sexual offenses	N = 75 <b>65%</b>	N = 15 <b>58%</b>	N = 14 <b>93%</b>
Other Person-to-person	N = 41 <b>35%</b>	N = 11 <b>42%</b>	N = 1) <b>7%</b>
Subtotal BM11	N = 116	N = 26	N = 15

N = number of cases

Note the small sample size for Blacks and Hispanics. Even with the small sample size the differences in Table 7 are statistically significant (Chi-square  $p = .052$ ). This means that the racial/ethnic differences in Table 7 have a 94.8% chance of being upheld if subsequent samples are taken. It is not unreasonable to conclude that there are differences in the types of BM11 crimes that different racial/ethnic groups are most likely to commit.

The central question of this study is whether members of different racial/ethnic groups that commit comparable crimes receive comparable dispositions—specifically do they get equal opportunity for prison vs. probation. Remember, that for BM11 crimes probation is an option only if a defendant is allowed to plea to a non-BM11 offense.

Table 8 shows the answer to the question. Due to the small sample size sexual offenses and other person-to-person offenses are combined.

**Table 8: Is there Disproportionate Sentencing of BM11 Cases in Grid Blocks 8-G, 8-H, and 8-I?**

	<b>White</b>	<b>Black</b>	<b>Hispanic</b>
Sentenced to prison	N = 86 <b>74%</b>	N = 17 <b>65%</b>	N = 13 <b>87%</b>
Sentenced to probation	N = 30 <b>26%</b>	N = 9 <b>35%</b>	N = 2 <b>13%</b>
Subtotal BM11	N = 116	N = 26	N = 15

The observed differences are not statistically significant (Chi-square,  $p = .325$ ). It may be that Hispanics are somewhat more likely to go to prison; however, the sample size is too small to say so with any reasonable surety.

Is it possible that the greater percentage of Hispanics going to prison is because 14 of 15 were charged with sexual offenses? Table 9 shows that this is not a possible explanation. Sexual offenses are the most likely to receive probation. In reading the case files it is evident that many of the victims of sexual offenses involve family members or acquaintances of the perpetrator. It is not unusual in these circumstances for the family or their friends to advocate for alternatives to prison. In 30% of the sexual offenses in this sample, probation (and treatment) was considered a better option.

**Table 9: What is the influence of sexual offenses on sentencing?  
of BM11 cases in Grid Blocks 8-G, 8-H, and 8-I?**

<b>BM11 Crime Group</b>	<b>Sexual Offenses</b>	<b>All Other Person-to Person</b>
Sentenced to prison	N = 74 <b>70%</b>	N = 49 <b>83%</b>
Sentenced to probation	N = 31 <b>30%</b>	N = 10 <b>17%</b>
<b>Subtotal BM11</b>	N = 105	N = 59

The differences in Table 9 are statistically significant if one accepts a 5.3 out of 100 chance of error (Chi-square,  $p = .053$ ). If this level of error is accepted, sexual offenses are more likely to receive probation than are other person-to-person offenses. Remember that Grid Blocks 8-G, 8-H, and 8-I are unique; they contain defendants with the least serious prior criminal histories. It should not be assumed that defendants who are convicted of sexual offense-BM11 crimes in other grid blocks, and are therefore not part of this study, receive the same opportunity for probation in lieu of prison.

#### Length of incarceration analysis—BM11 crimes

We have established that Blacks, Whites, and Hispanics get an equal opportunity for probation versus prison (Table 8). But is probation really more lenient, since it may have jail days? The answer is simple for BM11 crimes. The 123 persons sentenced to jail for BM11 crimes received an average prison sentence of 74 months. Of the 41 who received probation, 18 had an associated jail sentence averaging 4.8 months; one of these also had 6 months of work release. Of the 23 who received probation with no jail, 11 got work release averaging 9.5 months. Clearly, probation is a more lenient sentence, even with the possibility of jail and work release.

No statistically significant differences emerged when comparing if Whites, Blacks, and Hispanics received equal jail days or work release days. However, with prison sentences, it is clear that Blacks and Hispanics received an average longer sentence than whites. Table 10 shows these differences along with other variables that could explain the difference. It goes into considerable detail because this appears to be one of the few possibilities of disparate sentencing found in this report.

Table 10 shows 116 individuals (versus the total of 123 sentenced to prison) due to loss of individuals with missing race data, or who were Asian or Native American. The first two rows—number sentenced to prison and percent of racial/ethnic group sentenced to prison are carried forward from Table 8 for comparison. We have already seen that these differences are not statistically significant. However, the months incarcerated—shown in Line 3—is a statistically significant difference. Blacks and Hispanics clearly fare worse than Whites.

**Table 10: Differences in Prison Sentence for BM11 Cases Sentenced in Grid Blocks 8-G, 8-H, and 8-I?**

	<b>White</b>	<b>Black</b>	<b>Hispanic</b>
Number sentenced to prison	N = 86	N = 17	N = 13
Percent of racial/ ethnic group sentenced to prison (not a statistically significant difference, Chi-square .325)	74%	65%	87%
Average months incarcerated (Statistically significant difference, ANOVA .074)	<b>72</b>	<b>86</b>	<b>83</b>
<b>Average months incarcerated--Concurrent versus Consecutive Sentences</b>			
Sentenced to only one count (Statistically significant difference, ANOVA p =.022)	<b>50</b> N=37	<b>81</b> N=7	<b>67</b> N=6
Concurrent sentencing (two or more count) (not a statistically significant difference, ANOVA p =.265)	<b>58</b> N=24	<b>71</b> N=3	<b>87</b> N=2
Consecutive sentencing (two or more count) (not a statistically significant difference, ANOVA .p =.738)	<b>121</b> N=23	<b>94</b> N=6	<b>107</b> N=4
<b>Average months incarcerated—by type of offense</b>			
Sexual crimes sentenced to prison (not a statistically significant difference, ANOVA p =.671)	<b>85</b> N=53	<b>91</b> N=8	<b>85</b> N=12
Other person-to-person crimes sentenced to prison (Statistically significant difference, ANOVA p =.036)	<b>50</b> N=33	<b>82</b> N=9	<b>60</b> N=1

Note: ANOVA testing was performed on variables normalized to Log10.

Several variables besides race/ ethnicity could be responsible for these differences in length of prison sentence.

1. If a defendant is sentenced to more than one count the judge has the option of having them serve those sentences concurrently (at the same time) versus consecutively (one after the other). Consecutive sentencing will result in longer total time in prison. Table 10 compares the average sentences of defendants sentenced under just one charge (hence concurrent vs. consecutive is irrelevant), under concurrent charges, and under consecutive charges. Whites fare better with sentencing to a single charge. The differences in prison months for concurrent sentencing and consecutive sentencing level are not statistically significant.
2. We saw in Table 9, page 16, that sexual crimes in these grid blocks were somewhat less likely to receive a prison sentence. The bottom section of Table 10 shows that if a prison sentence is received for sexual crimes it tends to be longer than sentences for ‘other person-to-person crimes’. This may be because sexual crimes frequently have multiple counts. Whites, Blacks, and Hispanics, do not differ by much in their sentences for sexual crimes. Blacks received considerably longer prison sentences than Whites and Hispanics for ‘other person-to-person crimes’.

Other factors were considered that could explain the more lenient prison sentences of Whites. These include:

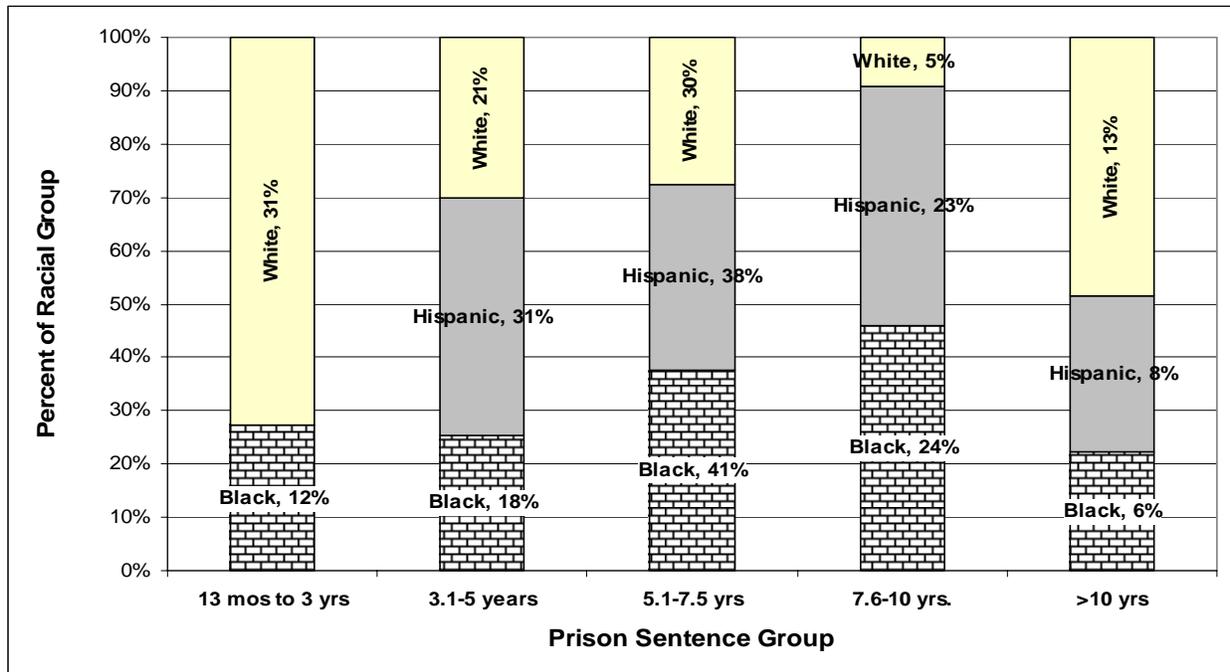
- a. Defendants already on probation/parole did not receive statistically significantly longer sentences than defendants not on probation/parole;

- b. Defendants who pled guilty generally received shorter sentences—70 months—versus defendants who were convicted by trial—96 months.
- c. Defendants with prior felonies generally received longer sentences than those without prior felonies, but the differences were not statistically significant.
- d. Grid Block is not a useful comparator because Ballot Measure 11 mandated sentences supercede the Grid Block guidelines.

In sum, Whites appear to do considerably worse with consecutive sentencing than either Blacks or Hispanics, but this difference is not statistically significant.

Whites do about the same as Blacks or Hispanics in sexual crimes. Whites do better than Blacks and Hispanics in ‘other person-to-person crimes’. The following graph displays the net result of all the above differences combined.

**Graph 3: Summary of BM11 Prison Sentences by Race**



Thirty-one percent of Whites, versus 12% of Blacks and no Hispanics received prison sentences in the 13 month to 3 year category. The small sample size makes it difficult to statistically sort out why this is occurring. If there is disproportionate sentencing, this is one of the few places in the study where it may be.

***For Ballot Measure 11 crimes there is not substantiated disproportionate sentencing of Whites, Black, and Hispanics to prison versus probation. However, for some BM11 crimes Whites received disproportionately shorter sentences if they received a prison sentence. Blacks received longer prison sentences for some BM11 crimes.***

- ***Non-Ballot Measure 11 Person, Property, and Sexual Crimes***

This is a small group of 68 cases that were not pled down from BM11 indictments and are not drug crimes. Most cases contain multiple counts. The group can be characterized as follows:

**Table 11: Non-BM11 Person, Property, and Sexual Crimes**

<i>Indictment Charges</i>	Number of Cases	Percent of Cases
Sexual and person crimes not rising to BM11 severity, e.g., Attempted Sodomy I, Attempted Kidnap I	17	25%
Burglary and/or Theft complicated with Person to Person crimes	17	25%
Burglary and/or Theft without Person to Person crimes	34	50%
<b>TOTAL</b>	<b>68</b>	<b>100%</b>

The classification into these three groups demonstrates the difficulty of finding a “pure” set of property crimes for analysis. Fully 33% of property crimes (burglary or theft) are complicated by person to person charges.

Because of the small sample size, the Non-BM11 person, property, and sexual crimes are analyzed together.

**Table 12: Is there Disproportionate Sentencing of Non-BM11 Person, Property and Sexual Cases in Grid Blocks 8-G, 8-H, and 8-I?**

	<b>White</b>	<b>Black</b>	<b>Hispanic</b>
<b>Sentenced to prison</b>	N = 13 <b>26%</b>	N = 3 <b>33%</b>	N = 2 <b>40%</b>
<b>Sentenced to probation</b>	N = 37 <b>74%</b>	N = 6 <b>67%</b>	N = 3 <b>60%</b>
Subtotal BM11	N = 50	N = 9	N = 5

Looking just at the percentages in Table 12, it is tempting to say that Hispanics are more likely to go to prison. However, due to the small number of cases the differences are not statistically significant (Chi-square  $p = .748$ ). The above table has three ‘cells’ where the number of cases is less than 5 (3 Blacks sentenced to prison, 2 Hispanics sentenced to prison, 3 Hispanics sentenced to probation). Valid chi-square testing requires that no more than 20% of cells have an ‘N’ less than 5. Once again, the importance of sample size is underscored. Another sample would produce a different result about 3 out of 4 times.

Length of incarceration analysis-Non-BM11 Person, Property, and Sexual Crimes

For the 18 members of this group that received prison sentences, the respective sentences were: Whites—47 months; Blacks—17 months; Hispanics—26 months. The difference is statistically significant (ANOVA  $p = .029$  but again, sample sizes are small. There are not statistically significant differences in the length of prison sentences for: 1) males vs. females; 2) persons currently ‘on’ or ‘not on’ probation/post prison supervision. Nor are there statistically significant differences in jail

days or work releases days for those who receive probation. The small sample size makes it impossible to do further statistical analysis with the non-BM11 group.

***Except for longer prison sentences for Whites, there is no substantiated disproportionate sentencing of Whites, Black, and Hispanics for non-BM11 person, property, and sexual crimes.***

- ***Drug Crimes***

Unauthorized delivery (DCS), manufacturing (MCS), or possession (PCS) of a controlled substance are Crime Seriousness 8 (CS8) offenses if substantial quantities are involved or if the defendant is indicted on a ‘commercial drug offense’. MCS, DCS, and PCS involving lesser amounts and non-commercial offenses fall into CS6 or below. Only drug crimes falling into CS8 and specifically Grid Blocks 8G, 8H, or 8I are included in this study.

There is no doubt that Hispanics who are not US citizens and who are convicted of CS8 drug charges face a much higher likelihood of going to prison. The District Attorney’s office has a policy that persons who are in the country illegally are not eligible for probation; prison is the alternative, although often with a shorter term. After serving their term non-US citizens are generally deported by the INS, which maintains a ‘hold’ on the individual to prevent release on their own recognizance.

Citizenship data was not easily available for this study. Citizenship is collected at various stages of criminal justice processing, but is often self-reported and unreliable. More reliable indicators are whether the Immigration and Naturalization Service (INS) has deported the individual; it is INS policy not to deport US citizens. The State of Oregon LEDS data base was also referenced for the 45 of 155 Hispanics in the drug sample who were not deported; citizenship data was available for 19 of the 45. All 45, however had a place of birth. A US place of birth was considered to be a US citizen. A non-US birth with no other information (not deported and missing LEDS citizenship) was considered ‘of uncertain citizenship’; there are 10 such Hispanics in the drug sample. Five Hispanics of uncertain citizenship received prison sentences and may be pending deportation; five received probation and are either US citizens or non-citizens legally in the US. These 10 Hispanics and 1 white non-citizen were eliminated from the following analysis. This reduced the drug sample from 710 to 699 cases.

Of the 155 Hispanics in this study who were convicted of drug crimes: 124 (80%) were non-US citizens; 21 (14%) were US citizens; 10 (6%) were of uncertain citizenship. There is a barely large enough sample size of Hispanic US citizens to statistically evaluate whether US citizens receive equal sentencing.

A further breakdown of Hispanic non-citizens by whether or not they are legally in the US is unavailable and would result in unacceptably small group size for statistical analysis. Therefore, the Hispanic non-citizen group contains a mix of

persons in the US legally, hence eligible for probation, and here illegally and not eligible for probation. These data limitations confound any attempt to clearly separate the effects of race, citizenship and whether or not non-citizens were legally in the US when the crime was committed. Table 13 shows that 18% of Hispanic non-US citizens received sentences of probation, and presumably were legally in the US.

**Table 13: Is there Disproportionate Sentencing of Drug Crimes in Grid Blocks 8-G, 8-H, and 8-I?**

	<b>White-US citizens</b>	<b>Black-US citizens</b>	<b>Hispanic-US citizens</b>	<b>Hispanic non-US citizens</b>
Sentenced to prison	N = 64 <b>14%</b>	N = 26 <b>26%</b>	N = 6 <b>29%</b>	N = 101 <b>82%</b>
Sentenced to probation	N = 392 <b>86%</b>	N = 72 <b>74%</b>	N = 15 <b>71%</b>	N = 23 <b>18%</b>
<b>Total drug cases with known citizenship</b>	N = 456	N = 98	N = 21	124

The differences in Table 13 are statistically significant (Chi-square,  $p = .001$ ). The question it raises is whether Whites receive more lenient sentences than Blacks and Hispanic US citizens. A further question is whether the policy of not allowing probation for persons illegally in the US has an adverse impact on Hispanic-US citizens.

The drug crimes in the three grid blocks are a complex mix of manufacturing, distributing, and possession, complicated in some cases by other charges such as child neglect, resisting arrest, felon in possession of a firearm, or driving under the influence. The drug crimes in the three grid blocks also vary by type of drug. Drugs are divided into several categories by federal law. Schedule 1 and Schedule 2 drugs are the primary concern of this study.

Schedule 1:

Drugs with a high abuse risk. They have no approved/accepted medical use in the United States under federal law. Included are Heroin, LSD, and Marijuana.

Schedule 2:

Drugs with a high abuse risk but also have accepted medical uses. These include certain narcotic and stimulant or depressant drugs. Examples are morphine, cocaine (e.g., ‘crack’), percodan, and dextroamphetamine (‘meth’).

The type of drug, and well as whether the defendant was involved in manufacturing, and/or distribution, or only possession all had significant effects on the likelihood of jail vs. probation. Table 14 (next page) summarizes these relationships. For simplicity, abbreviations are used. MCS1 means ‘Manufacturing a Controlled Substance, Schedule 1’. DCS means ‘Distributing a Controlled Substance’. PCS means ‘Possession of a Controlled Substance’. The percentages show percent of each racial /ethnic group that was convicted in each charge group.

Table 14 categories are ‘forced choice’ meaning that if a person appears in one group, they are not allowed to appear in another. MCS2 is primary as it results in the greatest likelihood of prison; a person convicted of MCS2, with or without other charges, always ends up in this group. The next choices are ‘DCS2 within 1000 feet of a school’ or ‘DCS1 within 1000 feet of a school’. If a case does not fall into these first three groups the choice moves to ‘DCS2 with child neglect or endangerment’ or ‘DCS1 with child neglect or endangerment’. These cases usually involved having a child in the home where distribution was occurring; a few involved using minors to distribute the controlled substance. If a charge did not fall into one of the above categories, but involved DCS and other charges such as felon in possession of a firearm or driving under the influence, it was put into the ‘DCS2 complicated by other charges’, or if only Schedule 1 drugs were involved, into ‘DCS1 complicated by other charges’. Pulling out all the previous cases results in DCS2 and DCS1 groups that are not complicated by other charges; these are the two largest groups of cases. If a case did not fall into a previous category and involved MCS1 (‘grow your own’) it fell into the MCS1 category. Finally, if the charges did not fall into one of the above, simple possession (PCS1 or 2) is the default and final category. PCS cases all began with more serious charges but resulted in only a conviction on possession or conspiracy to possess.

**Table 14: The Relation of Drug Charge and Sentence to Probation vs. Prison (Grid Blocks 8-G, 8-H, 8-I)**

Drug Charge Group	Number of Cases	Percent of Defendants Sentenced to Prison	Average Months in Prison	Race/ethnicity		
				% of Whites	% of Blacks	% of Hispanics
MCS2 as primary charge	41	49%	24.5	8%	0%	4%
DCS2 complicated by other charges	24	42%	23.2	4%	5%	1%
DCS2 only	<b>199</b>	44%	16.6	<b>22%</b>	<b>24%</b>	<b>53%</b>
DCS2 within 1000 feet of a school	60	37%	17.3	2%	<b>46%</b>	3%
DCS 1 only	<b>171</b>	22%	16.3	<b>26%</b>	8%	<b>30%</b>
DCS 1 with child neglect or endangerment	30	17%	15.0	5%	3%	2%
DCS1 within 1000 feet of a school	16	12%	14.5	2%	1%	3%
MCS1 not included in the above	<b>112</b>	12%	17.8	<b>22%</b>	7%	3%
DCS 2 with child neglect or endangerment	17	6%	35	3%	4%	0%
DCS1 complicated by other charges	8	0%	-	2%	0%	1%
PCS 1 or 2	21	0%	-	4%	2%	1%
All drug cases with known citizenship	<b>699</b>	29%		100%	100%	100%

Table 14 shows that:

- Persons convicted of MCS2 or DCS2 (whether or not DCS2 is complicated by other charges) are more likely to go to prison;
- Persons convicted of MCS1 or DCS1 are much less likely to go to prison.

- Child neglect or endangerment as a co-charge appears to be a protective factor against going to prison, perhaps out of desire of judges to preserve the parent-child relationship. This holds true whether Schedule 1 or Schedule 2 drugs are involved.
- No person convicted of PCS 1 or 2, whether or not there were complicating charges, went to prison. Likewise, the few cases that are ‘DCS1 complicated by other charges’ did not result in prison. These and the PCS 1 or 2 charges are removed from further analysis—the number of cases was too small for further analysis of this group to be statistically significant.

Table 14 also shows that there are significant differences in the types of drug crimes for which each racial/ ethnic group is likely to be convicted.

- Whites were most likely to be convicted of DCS1 or MCS1-only; convictions which are less likely to result in a prison sentence. Whites also had a relatively high percent of convictions in DCS2, which resulted in a greater likelihood of prison.
- Blacks were more likely to be convicted of DCS2, often within 1000 feet of a school, which resulted in higher likelihood of prison.
- Hispanics were most likely to be convicted of DCS2-only or DCS1-only; the former bringing higher likelihood of prison, the latter less.

Table 14 shows that one cannot compare sentences across different racial/ethnic groups for all drug crimes together (as does Table 13). A valid analysis requires comparing whether persons who commit drug crimes of equal perceived seriousness receive comparable sentences. This requirement can be roughly achieved by grouping drug crimes into three categories; these are shown by the gray bands crossing Table 14 and shown in summary form in Table 15.

**Table 15: Three Drug Crime Categories of Approximately Equal Seriousness for Further Analysis**

<b>Drug Charge Categories for Further Analysis</b>	<b>Number of Cases</b>	<b>Percent of Defendants Sentenced to Prison</b>
All MCS2 and DCS2 cases, whether or not they are complicated by any other charges <u>except child neglect or endangerment</u>	<b>324</b>	<b>43%</b>
All MCS1 and DCS1 cases plus DCS2 with child neglect or endangerment	<b>346</b>	<b>17%</b>
Drug crimes which did not result in prison, PCS1 and PCS2 or DCS1 complicated by other charges	<b>29</b>	<b>0%</b>
Total for ‘drill down’ analysis	<b>699</b>	

Table 16 shows the results of the MCS2/DCS2 analysis. Without reference to race or citizenship, 43% of persons convicted of MCS2 received a prison sentence.

Table 16 shows that this is not uniform across race and citizenship.

**Table 16: Is there Disproportionate Sentencing of MCS2 and DCS2 Cases in Grid Blocks 8-G, 8-H, and 8-I?**

	White-US citizens	Black-US citizens	Hispanic-US citizens	Hispanic non-US citizens
<b>Sentenced to prison</b>	N = 47 <b>29%</b>	N = 22 <b>30%</b>	N = 5 <b>46%</b>	N = 65 <b>86%</b>
<b>Sentenced to probation</b>	N = 117 <b>71%</b>	N = 51 <b>70%</b>	N = 6 <b>54%</b>	N = 11 <b>14%</b>
Total MCS2/DCS2 Crimes	N = 164	N = 73	N = 11	N = 76

The differences in Table 16 are statistically significant (Chi-square  $p = .001$ ). However, statistical significance disappears (Chi-square  $p = .498$ ) when Hispanic non-US citizens are removed and the test is re-run to compare whether US citizens receive differential treatment. Again, due to small sample size, what appears to be disproportionate sentencing of Hispanic US citizens cannot be confirmed statistically.

Table 17 shows the results of the MCS1/DCS1 analysis. Without reference to race or citizenship, 17% of persons convicted of MCS1/DCS1 received a prison sentence. Table 17 shows clearly that Hispanic non-US citizens do worse than this overall average.

**Table 17: Is there Disproportionate Sentencing of MCS1/DCS1 (including DCS2 with child neglect or endangerment) in Grid Blocks 8-G, 8-H, and 8-I?**

	White-US citizens	Black-US citizens	Hispanic-US citizens	Hispanic non-US citizens
<b>Sentenced to prison</b>	N = 17 <b>6%</b>	N = 4 <b>17%</b>	N = 1 <b>11%</b>	N = 36 <b>77%</b>
<b>Sentenced to probation</b>	N = 250 <b>94%</b>	N = 19 <b>83%</b>	N = 8 <b>89%</b>	N = 11 <b>23%</b>
Total MCS1/DCS1 Crimes	N = 267	N = 23	N = 9	N = 47

There are too few Black and Hispanic US citizens sentenced to prison to meet a statistical requirement that no more than 1 (20% maximum) of the above cells be lower than 5; valid statistical testing cannot be performed. It certainly appears that US citizens are being given equal opportunity for probation; however, the small sample size makes this finding questionable.

### Multivariate analysis of drug cases

The confounding effect of multiple interacting variables (covariates) has been emphasized throughout this report. The sample size was almost large enough to ‘drill down’ to subgroups that are comparable on crime seriousness and citizenship; however, the small number of Blacks and Hispanic-US citizens in some subgroups pushes the limits of valid statistical analysis.

Multivariate analysis allows for simultaneously considering the effects of multiple interacting variables for drug crimes as an undivided group. A subcontractor was hired with expertise in multivariate analysis. His analysis confirms that after covariates are considered, race/ethnicity is not a statistically significant predictor of whether a defendant gets a prison vs. probation sentence for drug crimes.

The multivariate analysis found the following variables to be strong predictors of a prison vs. probation sentence:

- Gender
- Whether or not the defendant is already on probation or parole
- Whether or not a defendant pleads guilty or goes to trial
- Citizenship (non citizens have a higher risk of prison—confirmation of previous analyses)

### **Gender**

Asians, Native Americans, and persons of uncertain citizenship are included in the following analyses, as there is no longer any reason to exclude them.

Table 18 shows the effect of gender.

**Table 18: The Relation of Gender and Sentence to Probation vs. Prison (Grid Blocks 8-G, 8-H, 8-I)**

	<b>Females</b>	<b>Males</b>
<b>Sentenced to prison</b>	N = 19 <b>12%</b>	N = 187 <b>33%</b>
<b>Sentenced to probation</b>	N = 141 <b>88%</b>	N = 376 <b>67%</b>
Total Drug Cases	N = 160	N = 563

Females have a considerably smaller risk of going to prison than men for drug crimes. Differences in Table 18 are statistically significant (Chi-square  $p = .001$ ).

## Probation/Parole

Table 19 shows the effect of currently being on probation or parole.

**Table 19: The Relation of Probation/Parole Status and Sentence to Probation vs. Prison (Grid Blocks 8-G, 8-H, 8-I)**

	Missing data	Not currently on Probation or Parole	Currently on Probation or Parole
<b>Sentenced to prison</b>	N = 51 20%	N = 127 30%	N = 28 58%
<b>Sentenced to probation</b>	N = 201 80%	N = 297 70%	N = 20 42%
Total Drug Cases	N = 252	N = 424	N = 48

As might be expected, defendants who are currently on probation or parole are much more likely to receive a prison sentence. Differences in Table 19 are statistically significant (Chi-square  $p = .001$ ).

## Guilty Plea versus Trial

It is commonly believed that going to trial rather than pleading guilty decreases one's chance of going to prison. Only 38 defendants with drug charges tried this option. Did it improve their chances?

**Table 20: The Relation of Type of Trial and Sentence to Probation vs. Prison (Grid Blocks 8-G, 8-H, 8-I)**

	Court or Jury Trial	Plea of Guilty
<b>Sentenced to prison</b>	N = 19 50%	N = 187 27%
<b>Sentenced to probation</b>	N = 19 50%	N = 498 73%
Total Drug Cases	N = 38	N = 685

A trial definitely does not decrease the risk of going to prison. Differences in Table 20 are statistically significant (Chi-square  $p = .009$ ).

## Length of incarceration analysis—Drug Crimes

A multivariate analysis was also conducted of the length of prison sentence for those sentenced to prison. The analysis found that the predictor with the strongest statistical significance (ANOVA  $p = .05$ ) was Grid Block. The mean incarceration months are: 8G—28 months; 8H—21 months; 8I—18 months. These, as expected, show the grid block with the most serious prior criminal background—8G—has the longest sentences. Sentences are progressively less with less criminal history. The multivariate analysis also showed that citizenship had effects as well as Hispanic race, after citizenship was taken into account. Thus there is some confirmation that Hispanic US citizens may in some instances receive disproportionate treatment. Table 21 shows this data.

**Table 21: Relation of Race, Citizenship Status and Type of Drug Crime to Prison Incarceration Months**

	<b>White-US citizens</b>	<b>Black-US citizens</b>	<b>Hispanic-US citizens</b>	<b>Hispanic non-US citizens</b>
<b>Number sentenced to prison— all drug crimes combined</b>	N = 64	N = 26	N = 6	N = 101
<b>Percent of racial/ ethnic group sentenced to prison</b> (from Table 13, page 21)	<b>14%</b>	<b>26%</b>	<b>29%</b>	<b>82%</b>
<b>Average months incarcerated— all drug crimes combined</b> (Statistically significant difference, ANOVA p = .010)	<b>19 months</b>	<b>21 months</b>	<b>25 months</b>	<b>16 months</b>
<b>All MCS2 and DCS2 cases whether or not they are complicated by any other charges except child neglect or endangerment</b> (Statistically significant difference, ANOVA .001) NOT statistically significant when Hispanic non-US citizens are excluded and only US citizens are compared, ANOVA p = .272	<b>20 months</b> N = 47	<b>21 months</b> N = 22	<b>27 months</b> N = 5	<b>16 months</b> N = 65
<b>All MCS1 and DCS1 cases plus DCS2 with child neglect or endangerment</b> (Not a statistically significant difference, ANOVA p = .904)	<b>17 months</b> N = 16	<b>20 months</b> N = 4	<b>16 months</b> N = 1	<b>17 months</b> N = 37

As we have seen, the type of drug charge must be considered before concluding that racial/ ethnic groups receive disproportionate treatment. The comparisons below the gray bar control for seriousness of the drug crime; the comparisons above the gray bar do not.

- Hispanic non-US citizens receive shorter prison sentences for MCS2/DCS2 than any other group. The shorter prison sentence for Hispanic non-US citizens may be because they are often sent to prison for a severity of crime that would result in probation for most US citizens.
- Five Hispanic US citizens sentenced for MCS2/DCS2 received longer sentences (an average of 27 months). However, when Hispanic non-US citizens were excluded and statistical testing was re-calculated, there were not statistically significant differences in length of prison sentence for US citizens.
- There are not statistically significant differences in sentencing for MCS1/DCS1.

Multivariate analysis of days in jail days and work release days did not find that racial/ethnic group was a factor after other factors were considered.

Jail days for drug crimes were increased for:

- persons who were at their current address less than 3 months—36 jail days
- persons at their current address more than 3 months but less than 1 year—23 jail days versus 14-15 jail days for persons at their current address more than 1 year.
- persons who were indigent--24 days in jail versus 11 days for the non-indigent

- persons with no apparent mental health problem--3 days more in jail.
- Work release days for drug crimes were increased for:
- Grid Block 8H and 8I, the grid blocks for persons with less severe criminal histories
  - Persons who went to trial—25 days versus 17 days for those who pled guilty

### • *Conclusions and limitations of findings*

The initial report of the LPSCC Working Group on Minority Over-representation concluded: “Although in many cases the analysis of the grid blocks produced too few cases for reliability, there is a pattern of differing sentencing outcomes, particularly for African Americans, [which] needs further analysis. The Working Group is interested in analyzing (“drilling down”) into this issue further to learn of other factors that may contribute to sentencing in order to understand this decision point better and find out why such disparities occur.”<sup>8</sup>

This report has cut, sliced, and drilled down to the limits of statistical analysis in three Grid blocks--the grid blocks where disproportionate sentencing is most likely to occur due to wider latitude in sentencing.

We have seen that for the judges’ decision to grant probation in lieu of prison there is not disproportionate sentencing in:

- Ballot Measure 11 crimes (17% of the sample);
- Non-Ballot Measure 11 person, property, and sexual crimes (7% of the sample).

Drug crimes, which are the remaining 76% of the sample, do show an overall disproportionate sentencing to prison versus probation (see Table 13, page 21). However, drug crimes vary considerably in degree of perceived seriousness, and hence sentence. Racial/ ethnic groups vary in the types of drug crimes they commit; therefore, comparing sentences for drug crimes as a whole is misleading.

Two drug crime categories were created that have similar likelihood of prison:

- Manufacturing or Distribution of a Schedule 2 drug
- Manufacturing or Distribution of a Schedule 1 drug. ‘DCS2 with child neglect or endangerment’ was included in this second category due to its lower likelihood of going to prison.

Analysis of these two subgroups showed that Hispanic non-US citizens have a much higher likelihood of being sentenced to prison. US citizens appear to receive equal opportunity for probation, although the small sample size of US-citizen Hispanics limits the power of statistical testing.

Multivariate analysis confirms the above findings for drug cases. In addition, multivariate analysis found three additional important predictors of whether or not a defendant goes to prison

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<sup>8</sup> *Ibid.* p. 76.

- a. Females have a smaller chance of going to prison than males;
- b. Persons already on probation or parole have a higher chance of going to prison;
- c. Persons who plead guilty rather than go to trial have a smaller chance of going to prison.

Length of sentence to prison, as opposed to the prison versus probation decision, may show disproportionate sentencing:

- a. For some Ballot Measure 11 crimes Whites received shorter prison sentences; for some BM11 crimes Blacks received longer prison sentences.
- b. For non-Ballot Measure 11 person, property and sexual crimes Whites received longer prison sentences;
- c. Hispanic US citizens received longer prison sentences for MCS2/DCS2 cases (5 individuals—not statistically significant);
- d. Hispanic non-US citizens received shorter prison sentences.

The fact that Whites received shorter sentences for some crimes and longer sentences for others should give pause to any assertion of an overall pattern of leniency toward Whites. Undetermined other factors could equally well be the cause.

The limits of statistics deserve comment. Statistics can find patterns in groups. Statistics cannot determine if there was disproportionate sentencing in a single case or in a very small number of cases. Sample size was a continuing problem throughout this analysis due to the small number of Hispanics who were US citizens and to the small number of Blacks in some drill down categories. The result is that after excluding non-US citizens from analysis any racial/ethnic disparity that affects US citizens is hard to find. One cannot say with statistics that racial/ethnic disparity doesn't exist. Statistics can say that if disproportionate sentencing exists its effect is small; other non-racial factors not considered in this report may be the cause.

The initial Working Group analysis that found an overall pattern of leniency toward Whites was overstated. It did not adequately control for other factors—citizenship and crime seriousness--that this study shows are primary determinants of a prison vs. probation sentence. It is to the credit of the Working Group that they chose to publish their initial findings at all. That they chose to publish tentative results, while calling attention to potential limitations, is a testament to the openness of their process. That the findings were not generally sustained should urge caution among persons and groups eager to find discrimination to ensure that this disgrace has no part in our legal system. What appears to be discrimination on the surface may not be when other factors are considered.