

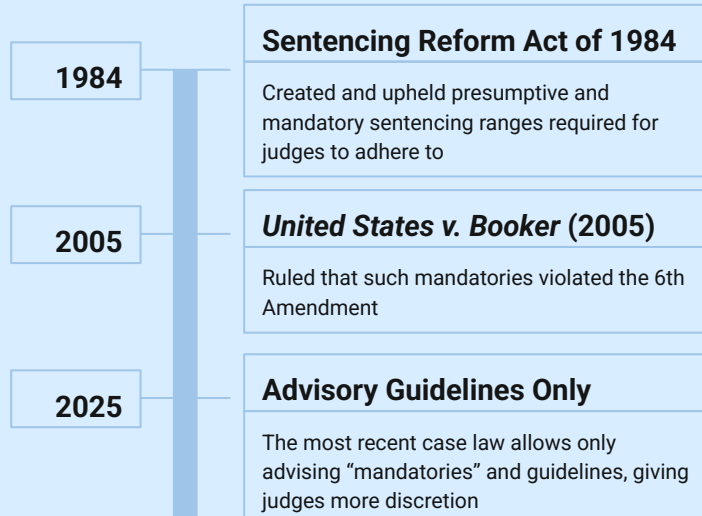
*Practical Justice: The
Role of the Judiciary in
Shaping Sentencing
Policy Reforms*

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How does the judiciary affect the efficacy and implementation of policy reforms related to racial sentencing disparities?



My Perspective

- My analysis centers on judicial actors
- Understanding the demographics, thought processes, and perceptions of judges is essential to developing policy solutions

Judicial Implementation

- What is it?
 - The process of judges applying law and policy in real-world court settings
- Why it matters
 - Judges are the key actors that translate policies from dormant ideas to impactful practices
 - Even well-designed reforms can remain ineffective if judicial resistance is present

Core Questions

- What values inform current sentencing practices and willingness to adopt new methods?
- How are racial sentencing disparities impacted by judicial values and demographics?
- Why are current policies remaining ineffective, and how can future policies better facilitate effective judicial implementation?

Literature Review & Background

01. Racial Sentencing Disparities

02. The Judiciary

03. Interactions with Current Policy

01.

Disparities

- Black and Hispanic men face sentences that are 19 months and 5 months longer on average (Bushway et al., 2023)
- Black Americans are imprisoned at a rate 5 times higher than White Americans (Ghandnoosh & Barry, 2023)
- Inequalities in access to resources, systemic disadvantages, higher crime rates and policing, and overt bias (McElroy & Shrantz, 2000)
- Homogenous judicial demographics and subconscious biases also contribute to a lack of accountability and racial inequalities in sentencing (Harris, 2023)
- Harms political engagement and trust in the legal system (Gutierrez & Pettit, 2022)

02.

Judiciary

- Resistance to change due to fears of rigid structures that could reduce individual judicial discretion (Plesničar, 2024)
- Cognitive biases and personal interests impact sentencing (Gamliel & Peer, 2013) & (Rachlinski & Wistrich, 2017)
- Lower Federal Court Judges: 10% African American, 7% Hispanic, 4% Asian American, <1% mixed race and/or Indigenous (Center for American Progress, 2020)
- Judges are more likely to rule in favor of plaintiffs of their own race (increased accountability when a racial minority judge is present) (Rachlinski & Wistrich, 2017)

03.

Current Policy

- Over 20% of judge departures from sentencing guidelines are attempts to fix inequalities (Kaiser & Spohn, 2018)
- Disparities in sentencing increased after *Booker* due to more judicial discretion and harmful policies (Fischman & Schanzenbach, 2012)
- Formulaic guidelines are received well only by judges who highlight pragmatic factors (Liu & Nir, 2021)
- Dependence on a individual philosophy of justice, availability of resources, defendant factors (Smith, 2020)
- Authority of trial judges or the sentencing commission? (Fish, 2016)
- Judges highly dislike the use of recidivism risk-assessment algorithms and similar tools (Pruss, 2023)
- Mandatory minimums are disliked have been proven to exacerbate racial sentencing disparities (Fischman & Schanzenbach, 2012)

Methodology

Research Design & Analysis

- Qualitative policy analysis
 - Intersection of policy reform proposals and the judiciary at the federal level
 - My study focuses on the federal level due to the uniformity in policy and practices & higher data availability
- Comparative thematic analysis
 - Identified themes related to judicial discretion and resistance and the reception of policy reforms by judges
 - Contrasted current policy reforms with the themes in judicial attitudes and implementation patterns

Data & Limitations

- Case law & precedent
- Sentencing Commission reports
- Demographic reports
- Academic literature
- Limited by...
 - Reliance on secondary interpretations
 - Focus on the federal level

Findings: Themes

Disconnection

- Many judges view current sentencing reforms as disconnected from the realities of courtroom decision-making
- Most reforms do not incorporate feedback or experiences from judges
- The central actors in guideline reform implementation are largely removed from policy design

Autonomy

- Judge's departures from policy are largely based in a fear of the removal of professional judicial autonomy
- Judges resist reforms that appear to limit discretion or impose algorithmic or rigid solutions

Resistance

- Policy that does not align with or account for judicial values is often met with passive or active resistance
- Judges have the power to shape the efficacy of reforms since they can choose whether adjust sentencing

Interpretation

- Discretion allows flexibility but must be balanced with structure guardrails
- Sentences are based on judge's justice philosophies, cognitive biases, and contextual interpretations
- Demographic imbalances impact judicial interpretations and accountability, therefore shaping sentencing disparity and outcomes

Findings: The Comparative

<i>Policy Approach</i>	<i>Judicial Attitudes/Tensions</i>
Structured sentencing guidelines	The rigidity is perceived as a limit on autonomy by the judiciary
Top-down reforms	A lack of judicial input creates disconnection between real-world implementation and the intention of the policy
Data tools/Algorithms	Malaligned with judicial sentencing practices, seen as lacking contextual awareness, met with resistance
Discretion-only	Beneficial for providing individualization, but a lack of diversity and cognitive biases mean that interpretations are often inequitable

Conclusions & Recommendations

- What policy approach is missing from the comparative?
 - Collaborative and iterative approaches
- Judicial “buy-in” is essential for effective policy
- A lack of communication with judges weakens legitimacy and effectiveness
 - Judicial support and understanding removes disconnection and maintains autonomy
- Impactful implementation is equally as important as policy design
- Dialogue-based solutions are more sustainable than top-down mandates
 - Minimizing resistance through collaboration is key to unlocking real progress through efficacy
- Reforms that include education, judicial training, and structured discretion show potential for balancing fairness and flexibility
- Increased judicial diversity makes equality more attainable
 - Allowing contextual interpretation while maintaining guardrails and encouraging diverse perspectives preserves discretion while addressing disparity

The Future of Policy Reform

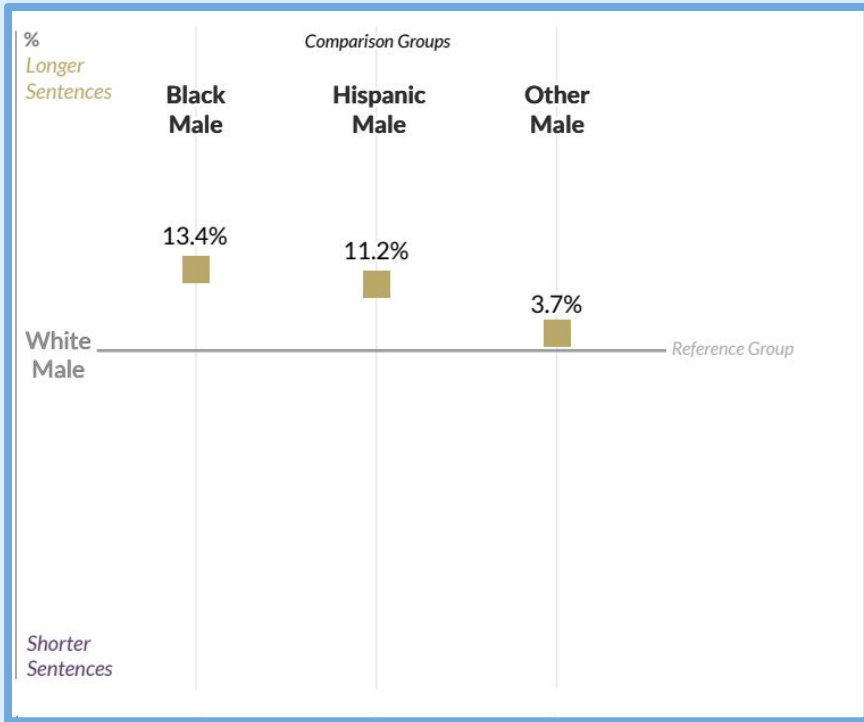
- Facilitate dialogue in the policy design process
- Invest in judicial policy education and diversity
- Re-evaluate current structured models and policy
- Pilot and test collaborative policy models that implement feedback mechanisms
- Future research could explore state-level practices in depth and engage in primary judicial research

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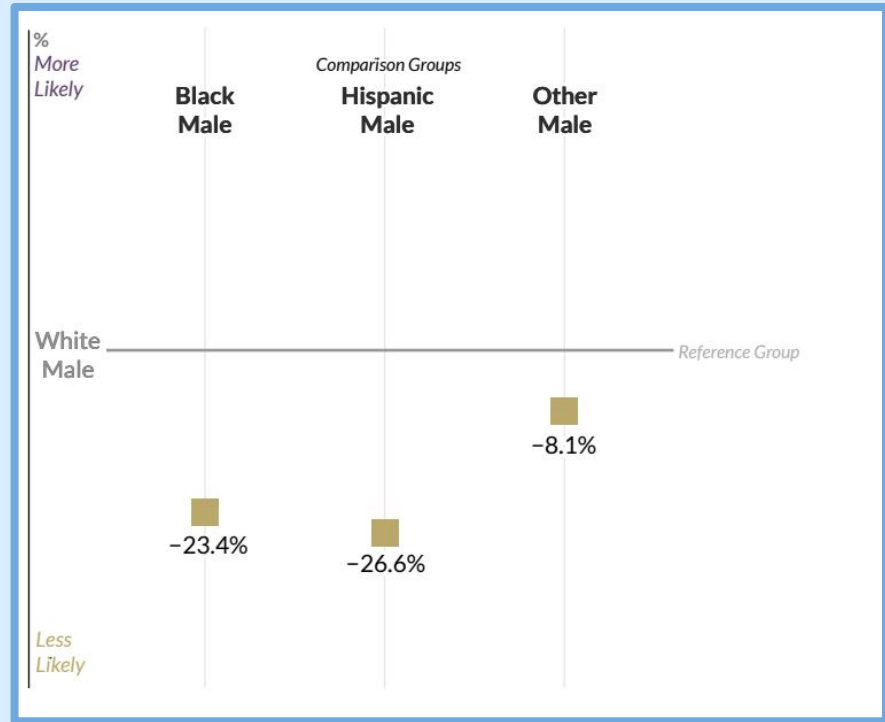
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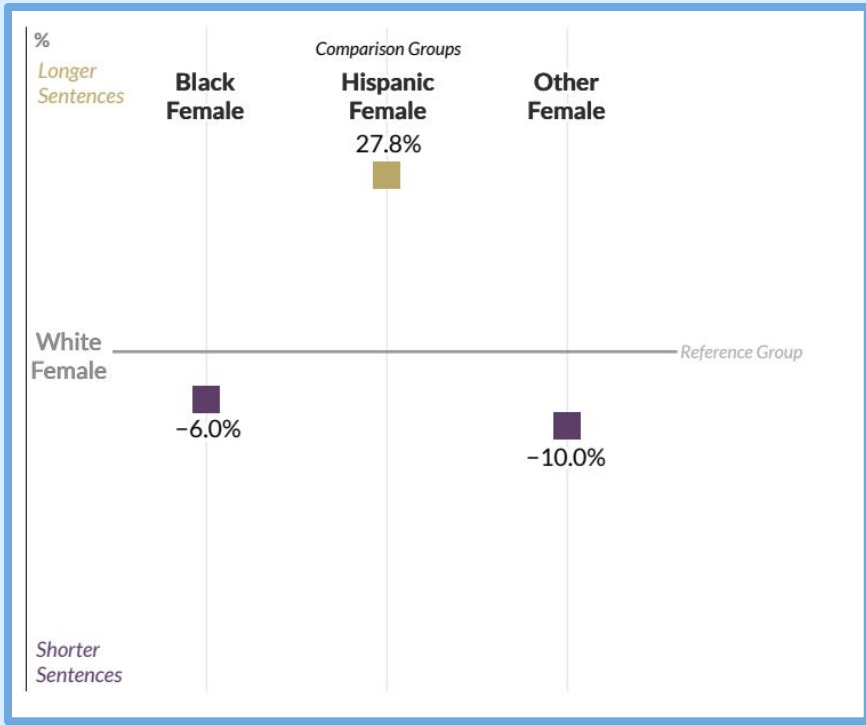
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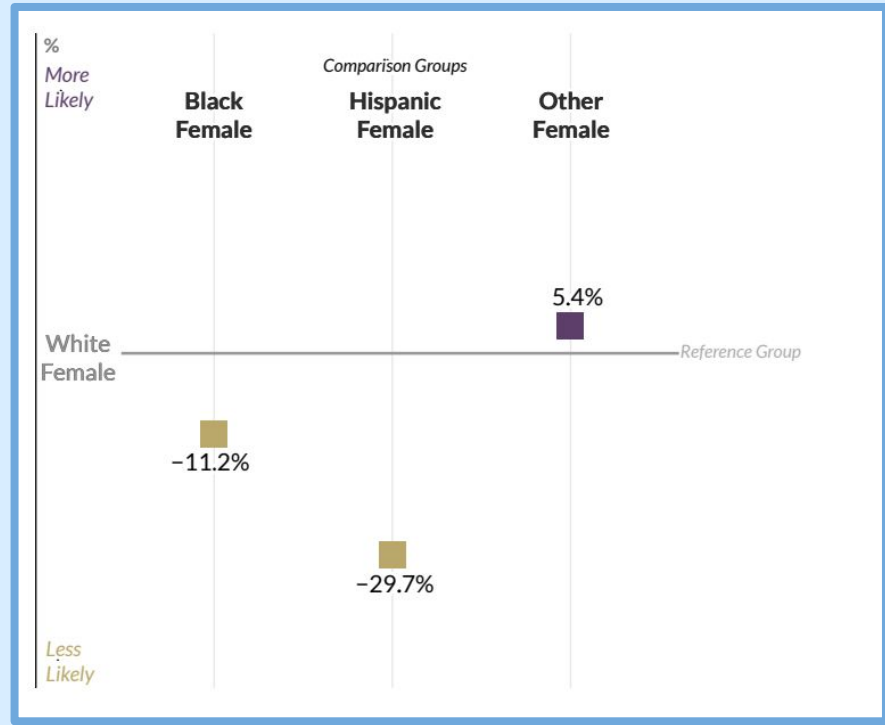
Average Length of Sentences



Likelihood of Probation-Only Sentence



Average Length of Sentences



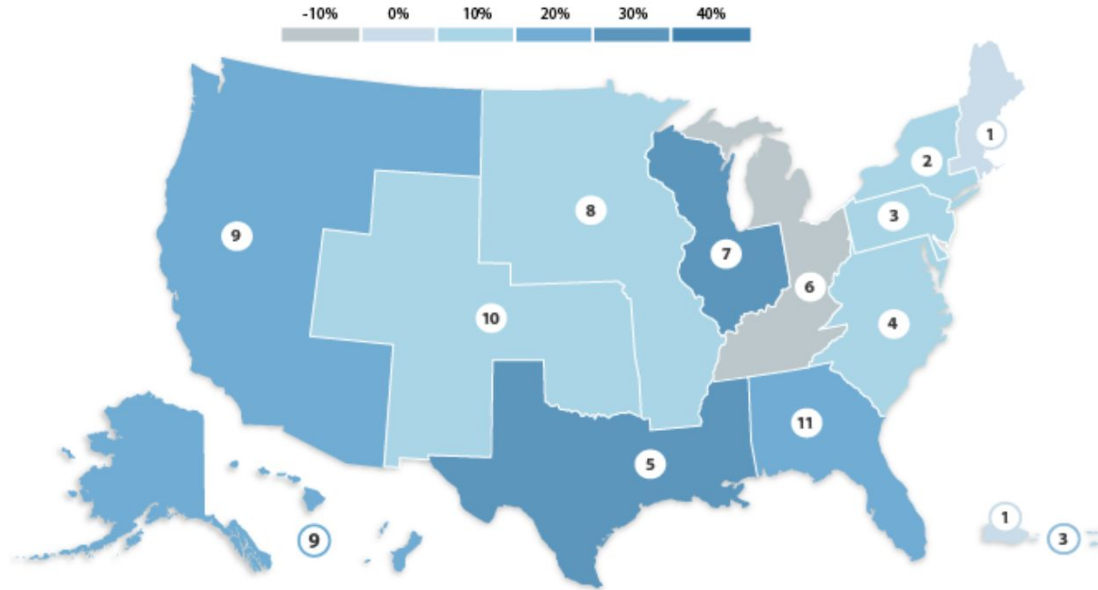
Likelihood of Probation-Only Sentence

Source: United States Sentencing Commission, "Demographic Differences in Federal Sentencing 2023 (Full Report)," available at https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2023/20231114_Demographic-Differences.pdf (accessed April 2025).

FIGURE 2A

The composition of federal circuit courts do not reflect the populations they serve

Gaps in the racial and ethnic diversity of the U.S. Courts of Appeals compared with the general populations of the jurisdictions they preside over



Source: Federal Judicial Center, "Biographical Directory of Article III Federal Judges, 1789-present: Advanced Search Criteria," available at <https://www.fjc.gov/history/judges/search/advanced-search> (accessed April 2025).