NORTH CAROLINA
SENTENCING AND POLICY ADVISORY
COMMISSION

Study of Sentencing Practices in North Carolina
Superior Court Judges' Conference
June 23, 2022

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NC Sentencing and Policy Advisory Commission

About

Membership
- 28 members representing components of the criminal justice system

Independent
- Members appointed by leaders of all three branches of government

Purpose
- Advise General Assembly and criminal justice agencies on criminal justice policy

Duties

Legislative and other requests

Mandates
- Monitor sentences imposed under Structured Sentencing
- Annual population projections
- Review criminal justice bills and provide fiscal impact
- Biennial recidivism reports (adult, juvenile)
- Evaluate implementation of the Justice Reinvestment Act (JRA)

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Presentation Overview

- Background
  - 2002 Sentencing Commission Study on Sentencing Practices
  - Findings from academic literature
  - Findings from similar studies from other states

- Descriptive Statistics: FY 2019 felony conviction data
  - Description of data and limitations
  - Bivariate findings

- Multivariate analysis
  - Definitions and variables
  - Results and findings

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Background

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Study Components and Timeframe

- Modeled after 2002 Sentencing Commission study on Sentencing Practices

- Interest from Governor, Superior Court Judges' Equity Committee, Conference of District Attorneys

- Includes literature review, studies from other states, descriptive statistics, multivariate analyses

- Research questions examined
  - What were the sentencing practices for felony convictions in the context of legal and extralegal variables?
  - What can we learn from these data?
  - What needs more examination?

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## Key Findings: Academic Literature Review

- No agreed upon definition of sentencing disparity in academic literature
- Most research focuses on a few key decision points:
  - Charge reductions/plea bargains
  - Discretionary sentencing decisions
  - Decision to incarcerate
  - Length of sentence imposed
- Legal factors are strong predictors of sentencing outcomes
- Extralegal factors (i.e., race, sex, and age) are also predictors of sentencing outcomes

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Key Findings: Studies From Other States

- Southern states published fewer reports than other regions
- Guideline states published more reports than nonguideline states
- Reports have increased (especially in the last decade); certain topics are emerging areas for study (e.g., stops), while others have been more consistently studied over time
- Descriptive statistics and regression analysis were the most common methodologies
- Sentencing was the most frequent topic
- Many studies focused on race and sentencing found some level of disparity

Legend:
- Adult and Juvenile Reports
- Adult Reports
- Juvenile Reports
- No Reports Identified
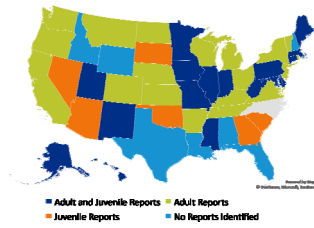
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Statistical Profile
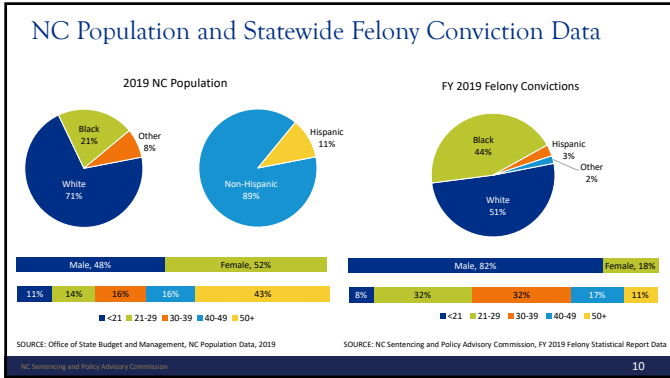### FY 2019 Felony Convictions

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Data Source and Limitations

A *sentencing episode* is identified from court records as the sentence imposed for the *most serious conviction* on a given day of court.

- Data from Sentencing Commission's annual Statistical Report on convictions and sentences imposed.
- Based on data entered into AOC's management information system by the court clerk following the imposition of the sentence.
- Covers all North Carolina counties.
- Unit of analysis is convictions disposed of in a *sentencing episode* in FY 2019 - referred to as "conviction" for simplicity.
- Bivariate analysis only.

NOTE: The unit of analysis differs from the unit of analysis used in the AOC's Trial Court Caseload Statistics. *See Comparison of Statistical Reports and AOC's Trial Court Caseload Statistics* for detail.

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NC Population and Statewide Felony Conviction Data

2019 NC Population

- Black 21%
- Other 8%
- White 71%

- Hispanic 11%
- Non-Hispanic 89%

- Male, 48%
- Female, 52%

| 11% | 14% | 16% | 16% | 43% |

<21 | 21-29 | 30-39 | 40-49 | 50+

SOURCE: Office of State Budget and Management, NC Population Data, 2019

FY 2019 Felony Convictions

- Black 44%
- Hispanic 3%
- Other 2%
- White 51%

- Male, 82%
- Female, 18%

| 8% | 32% | 32% | 17% | 11% |

<21 | 21-29 | 30-39 | 40-49 | 50+

SOURCE: NC Sentencing and Policy Advisory Commission, FY 2019 Felony Statistical Report Data

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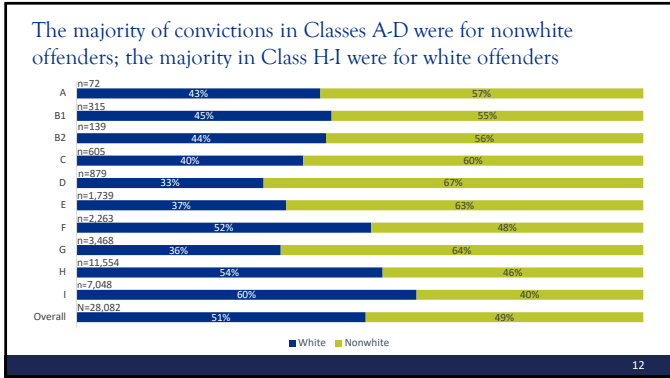## In examining FY 2019 felony conviction data, differences by race, sex, and age were found in...

Distribution of convictions overall

Distributions by offense class and Prior Record Level (PRL)

Use of Active punishment
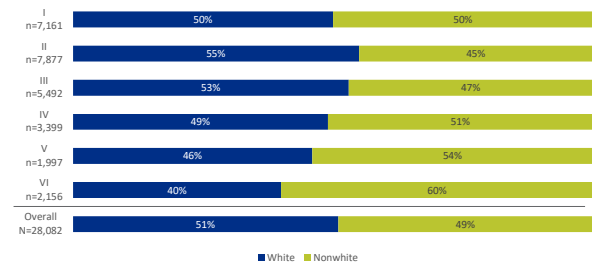
Charge to conviction (i.e., same class or lower class)

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The majority of convictions in Classes A-D were for nonwhite offenders; the majority in Class H-I were for white offenders

Class	n	White	Nonwhite
A	n=72	43%	57%
B1	n=315	45%	55%
B2	n=139	44%	56%
C	n=605	40%	60%
D	n=879	33%	67%
E	n=1,739	37%	63%
F	n=2,263	52%	48%
G	n=3,468	36%	64%
H	n=11,554	54%	46%
I	n=7,048	60%	40%
Overall	N=28,082	51%	49%

■ White ■ Nonwhite

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Generally, as PRL increased, the percentage of nonwhite offenders increased

	White	Nonwhite
I n=7,161	50%	50%
II n=7,877	55%	45%
III n=5,492	53%	47%
IV n=3,399	49%	51%
V n=1,997	46%	54%
VI n=2,156	40%	60%
Overall N=28,082	51%	49%

■ White ■ Nonwhite

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A greater percentage of nonwhite offenders received Active punishment
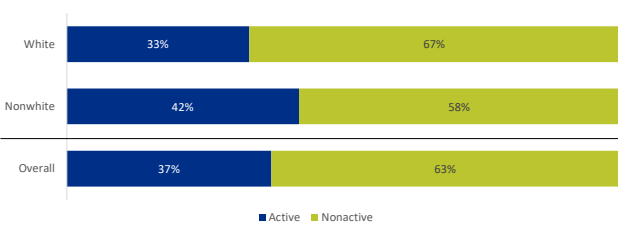
	Active	Nonactive
White	33%	67%
Nonwhite	42%	58%
Overall	37%	63%

■ Active ■ Nonactive

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Overall, a higher percentage of white offenders had a most serious charge and a most serious conviction of the same offense class

	White A	Nonwhite A	White B1	Nonwhite B1	White B2	Nonwhite B2	White C	Nonwhite C	White D	Nonwhite D
Lesser Offense Class	71%	85%	63%	75%	53%	69%	77%	73%	66%	68%
Same Offense Class	29%	15%	37%	25%	47%	31%	23%	27%	34%	32%

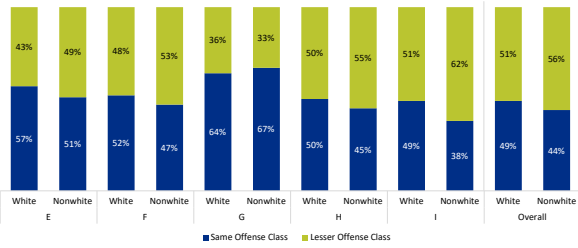■ Same Offense Class ■ Lesser Offense Class
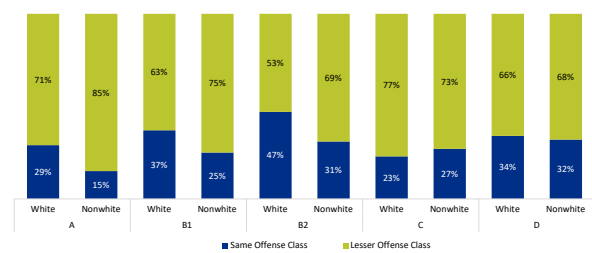
Note: Findings for Classes A – D should be interpreted with caution due to the small number of convictions in those offense classes.

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[Cont'd] Overall, a higher percentage of white offenders had a most serious charge and a most serious conviction of the same offense class


	White E	Nonwhite E	White F	Nonwhite F	White G	Nonwhite G	White H	Nonwhite H	White I	Nonwhite I	White Overall	Nonwhite Overall
Lesser Offense Class	43%	49%	48%	53%	36%	33%	50%	55%	51%	62%	51%	56%
Same Offense Class	57%	51%	52%	47%	64%	67%	50%	45%	49%	38%	49%	44%

■ Same Offense Class ■ Lesser Offense Class

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Females were more frequently convicted in a less serious offense class than they were charged compared to males

Charge		Conviction (%)				Total
		Class A – D	Class E – G	Class H – I	Misdemeanor	
Class A – D	Male	41	37	14	8	4,507
	Female	21	42	22	15	653
Class E – G	Male		63	18	19	7,612
	Female		46	21	33	1,486
Class H – I	Male			53	47	23,396
	Female			45	55	7,831

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A greater proportion of males were sentenced to Active punishment
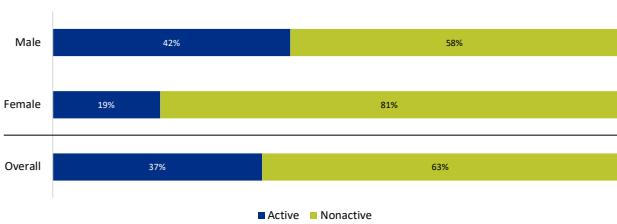
	Active	Nonactive
Male	42%	58%
Female	19%	81%
Overall	37%	63%

■ Active ■ Nonactive

Multivariate Analysis

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Defining the models

Independent Variables

- Legal variables (e.g., class)
- Extralegal variables (e.g., sex)
- Judicial District characteristics (e.g., population density)
  - Judicial Division used as a control for district variation

Dependent Variables

- Points of discretion
  - Conviction and sentencing stage only

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Multivariate Primer

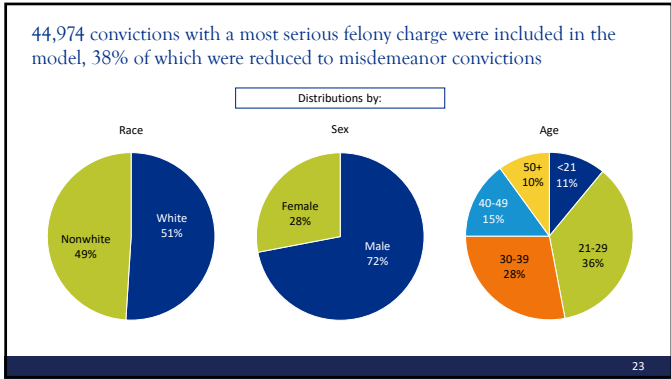| Variable Type	Variable Examples	Interpretation Examples
Categorical	2 Categories Sex (male/female)	Sex Compared to males, the probability of a charge reduction was higher for females
	3+ Categories Prior Record Level	Prior Record Level Compared to offenders in PRL I, the probability of a charge reduction was higher for those in PRL VI
Numeric	Offense Class	Offense Class As the seriousness of offense class increased, the probability of a charge reduction also increased

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Felony Charge → misdemeanor Conviction

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44,974 convictions with a most serious felony charge were included in the model, 38% of which were reduced to misdemeanor convictions

Distributions by:

Race

Nonwhite 49%
White 51%

Sex

Female 28%
Male 72%

Age

50+ 10%
<21 11%
40-49 15%
30-39 28%
21-29 36%

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A higher percentage of females and younger offenders had a felony charge reduced to a misdemeanor conviction

49%   Female
35%   Male
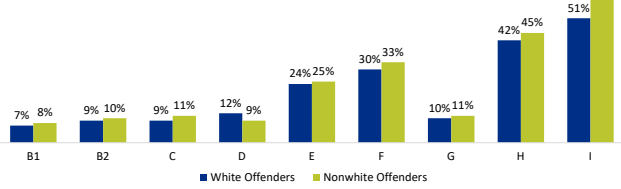45%   <21
41%   21-29
35%   30-39
35%   40-49
37%   50+

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Nonwhite offenders were more likely to be convicted of a misdemeanor compared to white offenders

Percent of Felony Charges Resulting in Misdemeanor Convictions by Offense Class

Offense Class	White Offenders	Nonwhite Offenders
B1	7%	8%
B2	9%	10%
C	9%	11%
D	12%	9%
E	24%	25%
F	30%	33%
G	10%	11%
H	42%	45%
I	51%	62%

■ White Offenders   ■ Nonwhite Offenders

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Regardless of race category, those with any priors were less likely to be convicted of a misdemeanor

White Offenders
- Prior Record: 37%
- No Prior Record: 44%

Nonwhite Offenders
- Prior Record: 36%
- No Prior Record: 45%
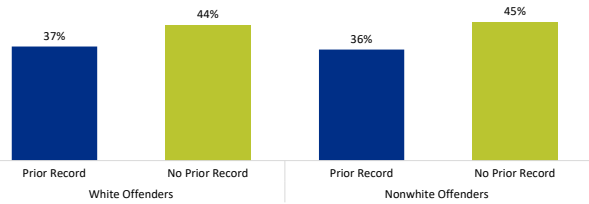
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Significant predictors of whether a felony charge was reduced to a misdemeanor conviction included…

More likely
- Private attorney
- Person offenses
- Higher nonwhite population
- Higher population density

Less likely
- Other offenses
- Jury trial
- Non-trafficking drug offenses
- Charge class
- Male
- Age 21+
- Any priors

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Removing district characteristics from the model changed significance of race; no other variables changed

More likely

Private attorney
Person offenses
Nonwhite

Other offenses
Jury trial
Non-trafficking drug offenses
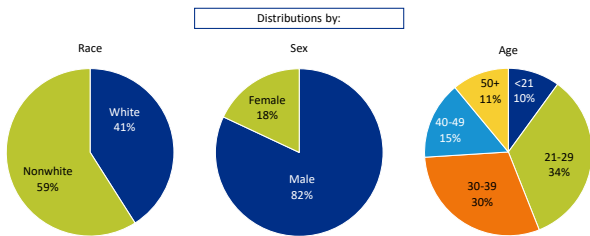Charge class
Male
Age 21+
Any priors

Less likely

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Felony → Less Serious Felony

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22,887 convictions were included in the model, 29% of which were reduced to less serious felony convictions

Distributions by:

Race

White 41%
Nonwhite 59%

Sex

Female 18%
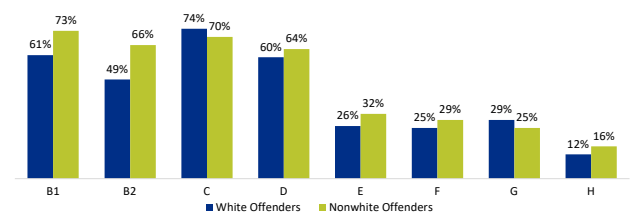Male 82%

Age

50+ 11%
<21 10%
40-49 15%
21-29 34%
30-39 30%

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Younger offenders were more likely to have felony charges reduced to less serious felony convictions; little difference was found by sex

Female: 31%
Male: 29%
<21: 34%
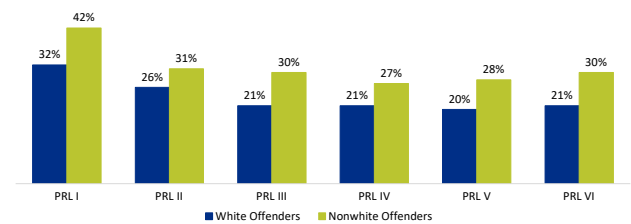21-29: 30%
30-39: 28%
40-49: 27%
50+: 29%
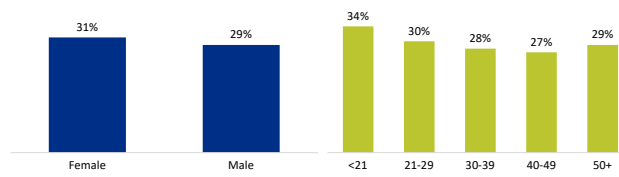
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Generally, nonwhite offenders were more likely to be convicted in a less serious offense class than the original charge

Percent Convicted of a Less Serious Felony Offense
by Offense Class

B1: White 61%, Nonwhite 73%
B2: White 49%, Nonwhite 66%
C: White 74%, Nonwhite 70%
D: White 60%, Nonwhite 64%
E: White 26%, Nonwhite 32%
F: White 25%, Nonwhite 29%
G: White 29%, Nonwhite 25%
H: White 12%, Nonwhite 16%

■ White Offenders   ■ Nonwhite Offenders

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A similar pattern was found when examining PRL

PRL I: White 32%, Nonwhite 42%
PRL II: White 26%, Nonwhite 31%
PRL III: White 21%, Nonwhite 30%
PRL IV: White 21%, Nonwhite 27%
PRL V: White 20%, Nonwhite 28%
PRL VI: White 21%, Nonwhite 30%

■ White Offenders   ■ Nonwhite Offenders

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Significant predictors of whether a felony charge was reduced to a less serious felony conviction included...

More likely ↑

Non-trafficking drug offenses
Charge class
Prior Record Level VI
Nonwhite

Jury trial
Other offenses
Male
Age 21+
Person offenses

Less likely ↓

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Removing district characteristics from the model resulted in no change in significant variables

More likely ↑

Non-trafficking drug offenses
Charge class
Prior Record Level VI
Nonwhite

Jury trial
Other offenses
Male
Age 21+
Person offenses
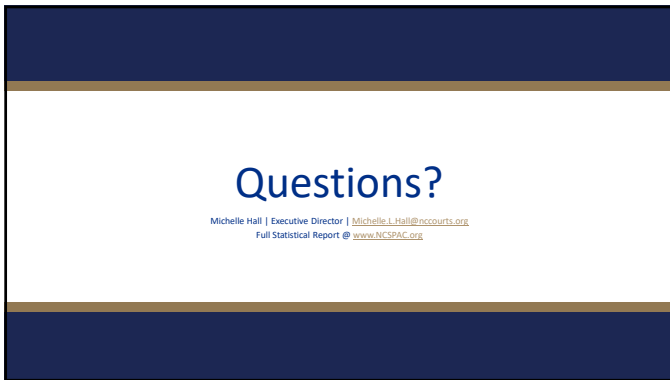
Less likely ↓

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Summary

- Sex, age, method of disposition (i.e., jury trial) had the same effect in both models

- District characteristics were significant in misdemeanor model, non-significant in felony model
  - Removal of district characteristics changed the significance of race from non-significant to significant for misdemeanor model

- As the most serious charge class increased, there was a decreased probability of misdemeanor conviction (misdemeanor model) but an increased probability of a less serious felony conviction (felony model)

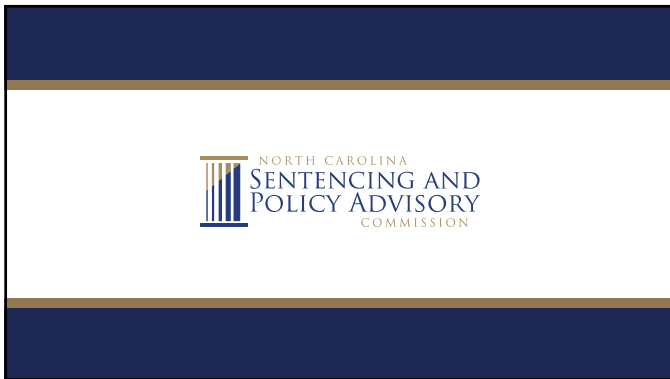- With the exception of PRL VI, PRL was not significant in felony model

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