

Reserved for the Worst of the Worst? An Analysis of the North Carolina Death Penalty System

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Abstract

Since the creation of the modern death penalty system in the United States, there have been concerns about whether is being applied proportionately or if defendants are receiving the death penalty for arbitrary reasons. This study uses data from North Carolina between 1980 and 2018 to test whether the death penalty has been applied proportionately according to the severity of the capital crime and the defendant's prior record, or if the defendant's race influences their likelihood to receive a death sentence. The results show that the death penalty has not been applied proportionately and that white defendants are more likely to receive a death sentence than black defendants for similar crimes.

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Introduction

In 1976 the Supreme Court created the guidelines for the modern death penalty system.¹ Since then, researchers have been conducting studies to see if the death penalty meets the standards set out by the Supreme Court. The majority of research has found that while some of the legal factors the Supreme Court said states should take into account when determining who deserves the death penalty are being utilized, extra-legal factors like the race of the offender and the race of the victim have also influenced the probability that a case will result in a death sentence. In this paper I will look at the extent to which legal factors and extra-legal factors affect the probability that a death eligible case in North Carolina will result in a death sentence from 1980 to 2018 by assessing whether the death penalty is being applied proportionately to the worst crimes and the worst criminals.

I will begin by reviewing prior court decisions and laws that have defined our current death penalty system. I will then review studies that seek to test whether the standards imposed by the Supreme Court have been upheld. Next, I will discuss how I seek to test the same question and add to our current knowledge about what makes someone more likely to receive a death sentence. Finally, I will discuss my results and their implications.

Legal Review

In 1972 the Supreme Court declared the death penalty unconstitutional. Though a majority of the justices agreed that the death penalty's current application was unconstitutional, they could not agree on a common reason. Justice Douglas argued that the death penalty was

¹ Gregg v. Georgia, 428 U.S. 153, (1976).

cruel and unusual because the application of the death penalty discriminated against black, low-income, and unstable defendants. Justices Stewart and White focused on the rarity of death sentences and argued that because the death penalty was so rare, it did not do anything that a lesser punishment could not achieve. Justices Brennan and Marshall continued the argument that the purpose of the death penalty could be achieved with lesser punishments but went a step further and argued that because lesser punishments could achieve the same purpose, the death penalty was unconstitutional in principle instead of simply in application.²

Almost immediately after *Furman v. Georgia*, states began to create new death penalty systems that would account for the concerns stated by the justices. In 1976, the Court looked at these new systems and created the guidelines for a constitutional death penalty system. They stated that the death penalty should not be used arbitrarily, should not be used capriciously, and should be proportional to the severity of the crime. To decide if a case deserved a death sentence, they established that a jury needed to be allowed to consider aspects of both the individual offender and the particular offense.³ This meant that states could not mandatorily impose the death sentence for a crime, there needed to be room for the jury's discretion.⁴

Following *Gregg v. Georgia*, there were many cases that focused on defining what it meant for the death penalty to be proportional to a crime. The idea of proportionality was first considered by the Court in 1910 through their decisions in *Weems v. U.S.* In this case, the Supreme Court expanded the meaning of the 8th amendment and stated that a punishment was cruel and unusual if it was disproportionately severe to the crime. To decide if a punishment was too severe, the Court looked at the punishments given to more severe crimes. If these

² *Furman v. Georgia*, 408 U.S. 238, (1972).

³ *Gregg v. Georgia*, 428 U.S. 153, (1976).

⁴ *Woodson v. NC*, 428 U.S. 280 (1976).

punishments were the same or less severe than the punishment given to the defendant at hand, then the punishment was disproportionately severe and thus cruel and unusual.⁵

Though the Court requires that a death sentence be proportional to the crime at hand, it is not necessarily required for a state to conduct a proportionality review.⁶ However, some states have been forced to re-add a proportionality review after removing it because without the review, the application of the death penalty in the state was found to be arbitrary and discriminatory.⁷ If a state requires a proportionality review, then it must be guided by the severity of the offense and punishment, the sentences imposed on other offenders in the same jurisdiction, the sentences imposed in other jurisdictions for the same crime, and whether more serious crimes were subjected to lesser punishments.⁸ If a court is looking at the proportionality of a punishment for a general crime rather than an individual defendant, then their decision should be guided by objective factors like public attitudes, history, precedent, legislative attitudes, and the response of the jury.⁹

When someone receives a death sentence in North Carolina, the Supreme Court of North Carolina must automatically review the sentence to determine if there were any errors, if the sentence was arbitrary, or if the sentence was disproportionate to the punishment in similar cases.¹⁰ When considering similar cases, the North Carolina Supreme Court looks at all cases after 1977 which have been tried as capital cases and have been reviewed by the N.C. Supreme Court. Though the Court considers all of the similar cases in their proportionality review, they

⁵ *Weems v. United States*, 217 U.S. 349, 380-381 (1910).

⁶ *Pulley v. Harris*, 465 U.S. 37 (1984).

⁷ *Walker v. Georgia*, 555 U.S. 979 (2008).

⁸ *Solem v. Helm*, 463 U.S. 277 (1983).

⁹ *Coker v. Georgia*, 433 U.S. 584 (1977).

¹⁰ N.C.G.S. §15a-2000d

are not required to cite all of the cases they have used to come to their decision.¹¹ If a death sentence was overturned, it will be treated as a life sentence for future reviews.¹²

Another issue that has appeared before the court multiple times is the use of statistical studies. The Court has previously allowed statistical studies to be used to demonstrate the lack of deterrent value and rarity of the death penalty.¹³ They have also allowed statistical studies to be used in proving discriminatory intent. Most cases require that a study show a stark pattern of a policy impacting one race more than another; however, results in studies concerning jury discrimination do not have to be as stark.¹⁴

Though the Court had a history of using statistical studies in their decisions concerning the death penalty and in cases concerning discriminatory intent, they did not allow statistical studies to show discriminatory intent in capital cases. They argued that the decision to give someone a death sentence rests mainly with the jury, which is unique to each case. They also argued that the state could argue against any claim of discriminatory intent by stating that the defendant received a death sentence because they committed a capital crime. However, the Court also stated that a state legislature could pass laws allowing for the use of statistical studies in their state.¹⁵

In 2009 North Carolina followed the Court's suggestion and passed the Racial Justice Act to give courts the power to use statistical studies to prove discrimination in the application of the death penalty. The act stated that discrimination could be proved through statistical studies that found death sentences were imposed significantly more frequently either on persons of one race

¹¹ State v. Williams 301 S.E.2d 335, 308 NC 47 (1983).

¹² State v. Bacon 446 S.E.2d 542, 337 N.C. 66 (1994).

¹³ Furman v. Georgia, 408 U.S. 238, (1972); Woodson v. NC, 428 U.S. 280 (1976).

¹⁴ Village of Arlington Heights v. Metropolitan Housing Development Corp., 429 U.S. 252 (1977).

¹⁵ McCleskey v. Kemp, 481 U.S. 279 (1987).

compared to others or cases with victims of one race compared to others. These studies could be at the county, district, judicial division, or state level and could look at the time period when the death sentence was sought or imposed.¹⁶ The act was later amended in 2012 and repealed in 2013. However, by 2013 over 100 people on death row had already applied for hearings based on the Racial Justice Act.¹⁷

Since the Racial Justice Act was repealed, appellate courts began dismissing the hearings that were filed because of the Act. However, in 2020 the N.C. Supreme Court ruled that the amendment and subsequent repeal of the Racial Justice Act could not be used retroactively. This meant that anyone who filed for a hearing when the original act was passed could still have their hearing and possibly be given a new trial if the court finds evidence of discrimination, thus opening the door for the 100 people who requested hearings to use empirical studies to prove discrimination and request a new trial.¹⁸

Literature Review

There are two main types of studies that look at the proportionality of the death penalty. The first type of study controls for the presence of aggravating and mitigating factors that the prosecutor and jury take into account when determining if a case warrants a death sentence. Since these studies look at each individual aggravator and mitigator, they can be helpful when

¹⁶ North Carolina Racial Justice Act, N.C.G.S. § 15A-2010 (2009).

¹⁷ American Bar Association, In Landmark Decision, “North Carolina Supreme Court Strikes Down Retroactive Application of Racial Justice Act Repeal,” *American Bar Association*, (2020), https://www.americanbar.org/groups/committees/death_penalty_representation/project_press/2020/summer/north-carolina-strikes-retro-application-of-rja-repeal/

¹⁸ State v. Ramseur, 843 S.E.2d 106, 374 N.C. 658 (2020); State v. Burke, 843 S.E.2d 246, 374 N.C. 617 (2020).

looking at proportionality on the micro-scale, which is when courts look at restricting the use of a punishment.¹⁹

The aggravating and mitigating factors that decide whether or not someone receives a death sentence differ from state to state. The most common aggravators among states are the defendant having a prior record, the victim being a member of law enforcement, the crime being conducted to interfere with justice, and the murder being committed at the same time as another felony. The specific felonies that count as an aggravator also differ between states but over 20 states list a form of criminal sexual conduct, kidnapping, robbery, and burglary. The most common mitigators are the age of the defendant, whether the defendant was only an accomplice to the crime, and whether the defendant was under extreme duress or domination.²⁰

Studies that control for aggravators and mitigators are useful to see the individual effect that each aggravator and mitigator have on a case's outcome. This can show whether juries weigh some aggravators or mitigators differently than the rest. These studies typically find that the general presence of aggravators increases the probability that a case will result in a death sentence.²¹ When looking at specific aggravators, studies have found that the presence of another

¹⁹ William Berry II, "Evolved Standards, Evolving Justices: The Case for a Broader Application of the Eighth Amendment," *Washington University Law Review* 96, no. 1 (2018): 105-152.

²⁰ Frank Baumgartner, Marty Davidson, Kaneesha Johnson, Arvind Krishnamurthy, and Colin Wilson, *Deadly Justice: A Statistical Portrait of the Death Penalty* (Oxford: Oxford University Press, 2018)

²¹ Eric Baumer, Steven Messner and Richard Felson, "The role of victim characteristics in the disposition of murder cases," *Justice Quarterly* 17, no. 2 (2000): 281-307.; William Bowers, "The Pervasiveness of Arbitrariness and Discrimination under Post-Furman Capital Statutes," *The Journal of Criminal Law and Criminology* 74, no. 3 (1983): 1067-1100.; Jacqueline Ghislaine Lee, Ray Paternoster, and Michael Rocque, "Capital Case Processing in Georgia After McCleskey: More of the Same," in *Race and the Death Penalty: The Legacy of McCleskey v. Kemp*, ed. David Keys and R. J. Maratea (Colorado: Lynne Rienner Publishers, 2015), 53.; Jefferson Holcomb, Marian Williams, and Stephen Demuth, "White Female Victims and Death Penalty Disparity Research." *Justice Quarterly* 21, no. 4 (2004): 877-902.

felony,²² the number of victims,²³ and the defendant's prior record all increase the likelihood that a case will result in a death sentence. However, it is still unclear how the length of the defendant's prior record matters since studies have only looked at whether or not the presence of any prior record has influenced the outcome.²⁴

The second type of study controls for the severity of the crime committed. The main purpose of these studies is to test whether the death penalty is being reserved for the most severe crimes. These studies are helpful when assessing proportionality at the macro-level, when courts look at declaring a punishment altogether unconstitutional, because they can show if the system as a whole is being applied proportionally.²⁵

The concept of what makes a crime more severe than others has been debated both in theory and practice. The first attempts to measure severity of crimes used surveys of the public asking respondents to rank different crimes and how they perceived the severity of each crime.²⁶ However, some people argued that these surveys were too general and did not capture important attributes of crimes. To account for this, some researchers started surveying victims of crimes and asked them to rate their specific crime.²⁷ Others had concerns with the use of surveys in

²² Bowers, "Discrimination Under Post-Furman Statutes,"; Ghislaine Lee, Paternoster, Rocque, "Capital Case Processing"; Holcomb, Williams and Demuth, "White Female Victims,"

²³ Ghislaine Lee, Paternoster, Rocque, "Capital Case Processing,"; Holcomb, Williams and Demuth, "White Female Victims,"

²⁴ Baumer, Messner and Felson, "Victim Characteristics,"; Ghislaine Lee, Paternoster, Rocque, "Capital Case Processing,"

²⁵ Berry II, "Evolved Standards," 105-152.

²⁶ Thorsten Sellin and Marvin E. Wolfgang, *The Measurement of Delinquency*, (New York: John Wiley and Sons, 1964).

²⁷ James Lynch and Mona Danner, "Offense Seriousness Scaling: An Alternative to Scenario Methods," *Journal of Quantitative Criminology* 9, no. 3 (1993): 309-322

general and questioned whether there was a consensus between different groups of people.²⁸ One solution to this problem was to measure the severity of crime by the total cost imposed by the crime, including injury rates, jury awards, and the value of a life.²⁹ Another was to measure severity by ranking crimes based on where they typically occur in an offender's history. The argument behind this strategy was that more severe crimes would occur after less severe crimes. So, if a crime typically occurs after another, it is more severe.³⁰

In practice, most studies measure the severity of a crime by the number of aggravators and mitigators present.³¹ However, this method does not take into account the possibility that some aggravators and mitigators are more important to juries than others. Some studies try to measure this by weighing the aggravators and mitigators by the likelihood they will result in a death sentence.³² Other studies measure severity in terms of the prison sentence that an offender would receive for committing a crime.³³ This method is especially helpful for measuring the

²⁸ Francis Cullen, Bruce Link, Lawrence Travis II, John Wozniak, "Consensus in Crime Seriousness: Empirical Reality or Methodological Artifact," *Criminology* 23, no. 1 (1985): 99-118.

²⁹ Mark Cohen, "Some New Evidence on the Seriousness of Crime," *Criminology* 26, no. 2 (1988): 343-354.

³⁰ Rajeev Ramchand, John MacDonald, Amelia Haviland, and Andrew Morral, "A Developmental Approach for Measuring the Severity of Crimes," *Journal of Quantitative Criminology* 25, no. 2 (2009): 129-153.

³¹ David Baldus, Charles Pulaski, and George Woodworth, "Comparative Review of Death Sentences: An Empirical Study of the Georgia Experience," *Journal of Criminal Law and Criminology* 74, no. 3 (1983): 661-753.; Robert Schopp, "The Nebraska Death Penalty Study: An Interdisciplinary Symposium – Introduction," *Nebraska Law Review* 81, no. 2 (2002): 479-485.; David Baldus; George Woodworth; David Zuckerman; and Neil Weiner, "Racial Discrimination and the Death Penalty in the Post-Furman Era: An Empirical and Legal Overview with Recent Findings from Philadelphia," *Cornell Law Review* 83, no. 6 (1998): 1638-1770.; Beth Bjerregaard, Dwayne Smith, John Cochran, and Sondra Fogel, "A Further Examination of the Liberation Hypothesis in Capital Murder Trials," *Crime & Delinquency* 63, no. 8 (2017): 1017-1038.; Thomas Keil and Gennaro Vito, "Race and the Death Penalty in Kentucky Murder Trials: An Analysis of Post-Gregg Outcomes," *Justice Quarterly* 7, no. 1 (1990): 189-207. Glenn Pierce and Michael Radelet, "Death Sentencing in East Baton Rouge Parish 1990-2008," *Louisiana Law Review* 71, no. 2 (2011): 647-674.; Amy Stauffer, Dwayne Smith, John Cochran, Sondra Fogel, and Beth Bjerregaard, "The Interaction Between Victim Race and Gender on Sentencing Outcomes in Capital Murder Trials: A Further Exploration," *Homicide Studies* 10, no. 2 (2006): 98-117

³² Baldus, Pulaski, and Woodworth, "Empirical Study of Georgia,," Baldus; Woodworth; Zuckerman; Weiner, "Recent Findings from Philadelphia,"

³³ Jeffrey Segal, Avani Mehta Sood, and Benjamin Woodson, "The Murder Scene Exception – Myth or Reality? Empirically Testing the Influence of Crime Severity in Federal Search-and-Seizure Cases," *Virginia Law Review* 105, no. 3 (2019): 543-594; Patricia Warren, Ted Chiricos, and William Bales, "The Imprisonment Penalty for

prior record of an offender as they can calculate the “career seriousness score” of an offender to see how many years in prison they would receive for every crime they have committed.³⁴

Within both types of studies, there is evidence that race affects the likelihood that a case will result in a death sentence. Race can affect a case mainly through either the race of the victim or the race of the defendant. A majority of the studies mentioned have found evidence that cases with white victims are more likely to result in a death sentence compared to cases with other victims.³⁵ However, some studies have also found no evidence of the race-of-victim effect.³⁶

There is much less support for the race-of-offender effect. Some studies have found support that black offenders are more likely to receive a death sentence than white offenders, but others have not.³⁷ Further, in a review of empirical studies about the death penalty, the US General Accounting Office stated that of the studies where there was a race-of-offender-effect,

Young Black and Hispanic Males: A Crime-Specific Analysis,” *Journal of Research in Crime and Delinquency* 49, no. 1 (2012): 56–80.

³⁴Susan Burton, Matthew Finn, Debra Livingston, Kristen Scully, William Bales, and Kathy Padgett, “Applying a Crime Seriousness Scale to Measure Changes in the Severity of Offenses by Individuals Arrested in Florida,” *Justice Research and Policy* 6, no. 1 (2004): 1–18.

³⁵Baldus, Pulaski, and Woodworth, “Empirical Study of Georgia,”; Baldus; Woodworth; Zuckerman; Weiner, “Recent Findings from Philadelphia,”; Baumer, Messner and Felson, “Victim Characteristics,”; Ghislaine Lee, Paternoster, Rocque, “Capital Case Processing,”; Bjerregaard, Smith, Cochran, and Fogel, “The Liberation Hypothesis,”; Bowers, “Discrimination Under Post-Furman Statutes,”; Ghislaine Lee, Paternoster, Rocque, “Capital Case Processing,”; Holcomb, Williams and Demuth, “White Female Victims,”; Keil and Vito, “Kentucky murder trials,”; Pierce and Radelet, “East Baton Rouge Parish,”

³⁶David Baldus, George Woodworth, Catherine Grosso, and Aaron Christ, “Arbitrariness and Discrimination in the Administration of the Death Penalty: Legal and Empirical Analysis of the Nebraska Experience,” *Nebraska Law Review* 81, no.2 (2002): 486-756; Schopp, “An Interdisciplinary Symposium”; Stauffer, Smith, Cochran, Fogel, and Bjerregaard, “Victim Race and Gender,”

³⁷Baldus; Woodworth; Zuckerman; Weiner, “Recent Findings from Philadelphia,”; Bowers, “Discrimination Under Post-Furman Statutes,”; Keil and Vito, “Kentucky murder trials,”

25% of the studies found that white offenders were more likely to receive a death sentence than black offenders.³⁸

Most studies find that racial bias in some form is still present when controlling for either the severity or the aggravators present in the case. There is contradicting evidence on where the bias will be the most present. Some cases have found that there is more bias in mid-range severity cases.³⁹ A theory that explains this phenomenon is the liberation hypothesis, which states that extra-legal factors like the race and gender of the offender and victim will have the greatest effect in cases within the mid-range of severity because in lower-level severity cases it is clear that a defendant should not receive a death sentence and in higher-level severity cases it is clear that a defendant should receive a death sentence. Cases in the mid-range severity are not as clear and leave more room for discretion. This can cause jurors to be “liberated” from a clear decision and may cause them to rely on extra-legal factors to make a decision.⁴⁰

Other studies have found that there is more bias in the higher severity cases.⁴¹ These studies theorize that there is a black sheep effect. The black sheep effect is a theory in psychology that states that group members are polarizing in their evaluation of other members.

³⁸ United States General Accounting Office. “Death Penalty Sentencing: Research Indicates Pattern of Racial Disparities,” *United States General Accounting Office*, (1990): 6.

³⁹ Baldus, Pulaski, and Woodworth, “Empirical Study of Georgia,”; Baldus; Woodworth; Zuckerman; Weiner, “Recent Findings from Philadelphia,”; Dennis Devine, Jennifer Buddenbaum, Stephanie Houpp, Nathan Studebaker, and Dennis Stolle, “Strength of evidence, extraevidentiary influence, and the liberation hypothesis: Data from the field,” *Law and Human Behavior* 33, no. 2 (2009): 136–148; Rhys Hester and Todd Hartman, “Conditional Race Disparities in Criminal Sentencing: A Test of the Liberation Hypothesis From a Non-Guidelines State,” *Journal of Quantitative Criminology* 33, no. 1 (2017): 77–100.

⁴⁰ Harry Kalven Jr. and Hans Zeisel. *The American Jury*. (Boston: Little, Brown and Company, 1966).

⁴¹ Bjerregaard, Smith, Cochran, and Fogel, “The Liberation Hypothesis,”; William Hauser and Jennifer Peck, “The Intersection of Crime Seriousness, Discretion, and Race: A Test of the Liberation Hypothesis,” *Justice Quarterly* 34, no. 1 (2017): 166-192; Norbert Kerr, Robert Hymes, Alonzo Anderson, and James Weathers, “Defendant-juror similarity and mock juror judgments,” *Law and Human Behavior* 19, no. 6, (1995): 545–567.

This means that group members will perceive good ingroup members better than good outgroup members. However, it also means that members will perceive bad ingroup members worse than bad outgroup members.⁴² Kerr et al. were the first to connect this theory to severity rankings and stated that based on the black sheep hypothesis, cases in the lower-level and higher-level severity rankings would have more bias than mid-level severity cases.⁴³

Methodology

While studies that look at the presence of aggravators and mitigators are useful to see the effects of said aggravators and mitigators, I am more concerned with assessing the N.C. death penalty system as a whole. This assessment lends itself more towards studies that look at the severity ranking of a crime, since simply looking at which aggravators are present would not show how all of the aggravators and mitigators present in a case work together. I will therefore be examining whether the death penalty is being applied proportionately based on the severity of a capital crime.

The dataset I used was gathered from the Automated Criminal Infractions System (ACIS). This dataset is used by the North Carolina Administrative Office of the Courts to track all felonies committed in North Carolina. It was started in 1982 and all counties, except Mecklenburg, were added to the dataset by January 1990.⁴⁴ However, some counties added felonies that were committed before 1982. Though the dataset does not include a variable for

⁴² Marques, J. M. (1990). The black sheep effect: Outgroup homogeneity in social comparison settings. In D. Abrams & M. Hogg (Eds.), *Social identity theory: Constructive and critical advances* (pp. 131-151). London: Harvester Wheatsheaf.

⁴³ Kerr, Hymes, Anderson, and Weathers, "Defendant-juror similarity"

⁴⁴ North Carolina Administrative Office of the Courts, "ACIS Citizen's Guide: Searching the Automated Criminal/Infractions System," *North Carolina Judicial Branch*. (2017).

capital crimes, I was able to use other variables in the dataset to identify capital crimes. In North Carolina, Class A felonies are the only felonies that are capital eligible. These include 1st degree murder, murder of an unborn child, and unlawful use of a nuclear, biological, or chemical weapon of mass destruction.⁴⁵ Based on these felonies, I removed everyone in the dataset that was not charged, arraigned, or convicted of a capital crime. I also included cases where the text for the offense listed “Murder” but did not list the specific degree. Each person in ACIS is given a unique PersonID that is specific to them and listed with every offense they have committed in their lifetime. Once I had the list of everyone who was charged, arraigned, or convicted of a capital crime, I then used this PersonID to find all other felonies they committed.

Based on the prior proportionality studies I reviewed, the most important variables to include in analysis are the race of an offender and victim, the severity of the crime, and the offender’s prior record. ACIS does not include information about the victim so I will not be able to include that variable in my analysis. However, it does include the race of the offender which will be included in my analysis.

To measure the severity of the crime and prior record, I used the total months in prison the offender would have received based on the N.C. punishment grid. I chose this method for both practical and theoretical reasons. The first is that the punishment grid incorporates pieces from all of the theories about how to best measure severity. The punishment grid was made to ensure that every offender received a punishment that was equal to the injury caused by the offense, considers the culpability of the defendant, protects the public, promotes rehabilitation, and deters further crime.⁴⁶ Further, the grid was created by lawmakers, who are elected as

⁴⁵ N.C.G.S. § 14-17; N.C.G.S. 14-23.2; N.C.G.S. 14-288.2.

⁴⁶ N.C.G.S. §15a-1340

representatives of the public. This means that the punishment grid was made with the public's ranking of severity, via representatives, and the cost of the crime.

I also chose to use the punishment grid to measure the severity of the crimes because it is a quantitative measure. Many of the aggravators and mitigators allowed by N.C. law are either not in ACIS or cannot be easily quantified. Two of the more problematic factors are the aggravator of a felony being “especially heinous, atrocious, or cruel” and the mitigator which allows anything the jury deems to have mitigating value to be a mitigator.⁴⁷ These catch-all factors could feasibly be present in any case and cannot be quantified without making personal judgements on what qualifies as heinous, atrocious, or cruel. Further, by using the punishment grid, I can go further than looking at the simple presence of some aggravators. Using the punishment grid, I can calculate the total punishment an offender would have received for their prior record and capital crime. This includes each additional felony they committed during the capital crime instead of just using one to qualify as the aggravator for felony murder. This also allows me to look at the extent to which prior record influences a death sentence instead of just looking at its presence.

To create the severity variable, I first assigned Class levels to all the variables based on the convicted offense text. For cases where the convicted offense text stated general crimes like “conspiracy” or “aid and abet” I used the text of the offense they were charged and arraigned of to narrow down the offense they were likely convicted of. For example, if someone was charged and arraigned of 1st degree murder but convicted of conspiracy, I assigned them as a B2 felony since they likely were convicted of conspiracy to commit 1st degree murder. If the charged and

⁴⁷ N.C.G.S. §15a-2000

arraigned text did not further clarify the Class level, I assigned the lowest possible Class. Most of the differences between classes were small, for example if someone was convicted of “Murder” the Class options were either Class A for 1st degree murder or Class B1-B2 for 2nd degree murder. However, there were some larger differences. Most of these large differences came from drug crimes as there was a wide variation in possible classes depending on the number of grams they were in possession of.

Once all of the classes were assigned, I then labelled each offense as either a prior offense, a capital offense, or an offense after the capital offense. Using the code I used at the beginning to indicate capital eligible crimes, I saved the date of both the arrest and conviction for the capital crime. Anything with both an arrest date and conviction date more than two months before or after the capital crime was marked as prior record and after the capital offense, respectively. I then deleted any crimes that occurred after the capital crime. I also identified the crimes that only had either the arrest date or the conviction date two months apart from the capital crime. Using the defendants name, the N.C. offender search, and news articles, I examined these cases to determine if they were part of the capital crime. Most of the time, the conviction with one different date was a crime that happened before the capital crime but was only discovered during the capital investigation or trial.

Once every conviction was labelled, I created a punishment variable for the offender’s prior record and capital crime. Each offense was given a punishment value that matched the lowest possible sentence they would receive based on the N.C. punishment grid. A simplified version of the grid is seen below.

Table 1

Felony Class	Punishment
A	Life Without Parole or Death
B1	192-240 Months in prison
B2	125-157 Months in prison
C	58-73 Months in prison
D	51-64 Months in prison
E	20-25 Months in prison
F	13-16 Months in prison
G	10-13 Months in prison
H	5-6 Months in prison
I	4-6 Months in prison

The full punishment grid assigns higher punishments for offenders with prior records or who had aggravators present. Since I am using the offender's prior record in the severity analysis already, using these higher punishments would in effect, count the prior record twice. Therefore, I treated each conviction as if the offender had no prior records. I also treated each case as if there were no aggravators or mitigators present since there was no way to determine if the cases had aggravators or mitigators. I used the lowest punishment and then totaled the prior punishment and capital punishment each offender would have received.

The final variable in my analysis is the dependent variable, which is whether or not a case resulted in a death sentence. ACIS did not originally have a variable that measured death sentences; however, I had another dataset that listed everyone in NC who received a death sentence. Using the defendant's name, birthday, race, gender, arrest date, conviction date, and

county the crime occurred in, I was able to match the people who had a death sentence to their respective PersonID in ACIS. Most people had the same spelling for their name in ACIS and the death sentence dataset. A few people had minor spelling differences or went by a nickname in the death sentence dataset. Nevertheless, these people still matched on the other variables. In total, I found 356 matches and 188 missing people. 147 of the missing matches were prior to 1980.

In total, the independent variables I am able to measure after matching ACIS with other information are the severity of the capital crime, severity of the defendant's prior record, and race of the defendant. I am also able to identify the gender of the defendant but there have only been 11 women in North Carolina who have received a death sentence which is not enough cases to draw any meaningful comparisons. My dependent variable is whether or not the defendant received a death sentence. Based on the prior research, I expect that both the severity of the crime and the defendant being black will increase the likelihood that the case will result in a death sentence. Since the severity of the crime and the presence of a prior record has been found to increase the likelihood that a case will result in a death sentence, I also expect that the severity of a defendant's prior record will increase the likelihood that a case will result in a death sentence. While there is competing evidence for both the liberation hypothesis and the black sheep effect, the black sheep effect is relatively newer and there is more evidence for the liberation hypothesis. I therefore believe that there will be more bias in the mid-range severity cases where juries are given more discretion. This means my hypotheses are as follows.

1. The more severe a capital crime is, the more likely it will result in a death sentence.
2. The more severe a defendant's prior record is, the more likely the case will result in a death sentence.

3. The higher the defendant's total severity score is, the more likely the case will result in a death sentence.
4. Black offenders will be more likely to receive a death sentence than white offenders.
5. The race of the offender will have a greater effect on the probability that a case will result in a death sentence in cases within the mid-range of severity for the capital crime, prior record, and total severity.

Before conducting the analysis, there were a few cases that needed to be addressed.

Around 10 people had the same PersonID as another person. These cases had minor differences in name spelling but different birthdays, races, and genders. There were also a few people who had multiple capital eligible crimes. In the main dataset, I identified the first capital crime as the defendant's prior record. I then re-added these prior capital crimes under a new PersonID so each capital conviction would have its own observation. For offenders who had multiple capital crimes and received a death sentence, I used news articles to assign their death penalty to the specific crime for which they received the death penalty for.

Once I had the total months in prison that each offender would receive for their prior record and capital crime, I used the group command in Stata to assign a number to each punishment according to its sequence in the range of punishments for both the prior record and capital punishment. Using this sequence, I used the cut command to create 10 levels of severity of approximately equal size. To create the total punishment scale, I added these two scores together.

Results: Proportionality

The first hypothesis I tested was whether or not the death penalty was being applied proportionately according to the severity of the defendant’s prior record and their capital crime. Table 2 shows the progression of capital cases beginning with all cases that had a capital eligible charge and ending with the number of death sentences ranked by the severity of the defendant’s prior record. The last two columns also show the percent of capital charges that led to a capital conviction and the percent of capital convictions that then led to a death sentence.

Table 2

Progression of Cases with a Capital Charge Ranked by the Severity of the Defendant’s Prior Record

Prior Record Severity	Capital Charges	Capital Convictions	Capital Conviction Rate (%)	Death Sentences	Death Sentencing Rate (%)
1	9,539	2,055	21.54	254	12.36
2	713	159	22.30	14	8.81
3	524	117	22.33	10	8.55
4	242	57	23.55	5	8.77
5	267	60	22.47	7	11.67
6	417	93	22.30	12	12.90
7	270	58	21.48	11	18.97
8	302	76	25.17	8	10.53
9	283	89	31.45	13	14.61
10	292	104	35.62	12	11.54
Total	12,849	2,868	22.32	346	12.06

The prior record levels are in order from lowest to highest severity. When looking at the conviction rates, there is a slight, but consistent, increase for the first levels until level 5. Then between levels 7 and 10 there is a larger increase. The highest severity level, level 10, also has the highest conviction rate. Overall, there is some support for convictions being applied proportionately, but only among the higher severity levels. While there is a consistent increase in the first five severity levels, it is not large enough to show a clear difference between categories.

However, it is also important to note that in none of the categories do a majority of cases result in a capital conviction.

While there is some support for convictions being proportional to a defendant’s prior record, there is no support that death sentences are proportional. While there are some increases in death sentence rates between severity levels, there are more dips than in the conviction rates. Further, the severity level with the highest percent of death sentences was level 7 as opposed to the highest severity level. Since there is no consistent increase in death sentencing rates across severity levels, there is not support for the first hypothesis.

Next, I created the same progression table as Table 2 but ranked cases according to the severity of the capital crime. Below in Table 3 are these results.

Table 3

Progression of Cases with a Capital Charge Ranked by the Severity of the Capital Crime

Capital Crime Severity	Capital Charges	Capital Convictions	Capital Conviction Rate (%)	Death Sentences	Death Sentencing Rate (%)
1	7,905	1,416	17.91	109	7.70
2	383	64	16.71	5	7.81
3	501	104	20.76	5	4.81
4	689	113	16.40	10	8.85
5	955	243	25.45	33	13.58
6	462	118	25.54	18	15.25
7	523	136	26.00	20	14.71
8	472	138	29.24	8	5.80
9	487	174	35.73	27	15.52
10	472	362	76.69	111	30.66
Total	12,849	2,868	22.32	346	12.06

Starting at level 4, we see another small yet continuous increase in conviction rates. This increase continues for the rest of the severity levels and drastically increases between levels 9

and 10. Level 10 is the highest severity level and also has the highest conviction rate. Level 10 is also the first level where a majority of the cases resulted in a capital conviction. This again provides support for convictions being applied proportionately and provides stronger support than the prior record results.

Once again, the results for death sentencing rates are less consistent than the conviction rates. However, they are more consistent than the death sentencing rates in the prior record results. Between levels 3 and 6 there are consistent and noticeable increases. Similarly to the convictions, there is also a large increase between levels 9 and 10. Level 10 also has the highest sentencing rate, though again a majority of the cases do not result in a death sentence. In total, there is some support that the severity of a capital crime increases the likelihood that a case will result in a death sentence and thus there is some support for hypothesis 2. However, this support is not as consistent as the influence that the severity of a capital crime has on the likelihood a case will result in a capital conviction.

I next combined the prior record and capital crime scores to create a total severity score. These results are in Appendix A. While the increase in conviction rates is not as consistent as the prior record or capital crime severity results, there are still increases between levels 2 to 4, 8 to 11, 12 to 14, and 16 to 19. The second highest level also has the highest conviction rate, and the highest level is only 3% lower. The top three levels also have a majority of cases resulting in a capital conviction. Overall, this again provides some support that convictions are being applied proportionately.

The death sentencing rates were once again less consistent than the conviction rates however from levels 4 to 8 there was a consistent increase. But, the highest sentencing rates are

in level 16 instead of 20 and none of the categories have a majority of people receiving a death sentence. Overall, this provides little support for the third hypothesis.

Finally in regards to proportionality, I looked at the proportion of death sentences within each severity category to see where the most death sentences were distributed. These results are seen in Appendix B. The main takeaways from these graphs are that the vast majority of death sentences are being given out at the lowest severity level instead of being saved for the highest severity levels. Over 70% of the people sentenced to death had no prior record and over 30% of the people sentenced to death had the lowest possible severity rating for their capital crime. When paired with the inconsistent rates across severity levels, this does not provide evidence that the death penalty is being applied proportionality.

Results: Arbitrariness

The next hypothesis I tested was whether black defendants were more likely to receive a death sentence than white defendants. To do this I created the same tables as before but separated each by race. The results for the defendant's prior record are in Appendix C. In almost every level, white defendants were more likely to receive a conviction and a death sentence than black defendants. The only exceptions were levels 3 and 6 for convictions and levels 5 and 8 for death sentences. This does not support the fourth hypothesis and instead finds support for the opposite effect.

The results for the severity of the capital crime are in Appendix D. Once again, for almost every severity level white defendants are more likely to receive a capital conviction and a death sentence than black defendants. The only exceptions are levels 2 and 5 for convictions. This again does not support the fourth hypothesis.

Finally, the results for the total severity scores are listed in Appendix E. While there are more exceptions in the total severity categories, for the most part white defendants are more likely to receive a capital conviction and death sentence. There are only 2 exceptions for convictions in levels 3 and 7 but 7 exceptions for death sentences in levels 9, 12, 13, 15, 16, 18, and 20.

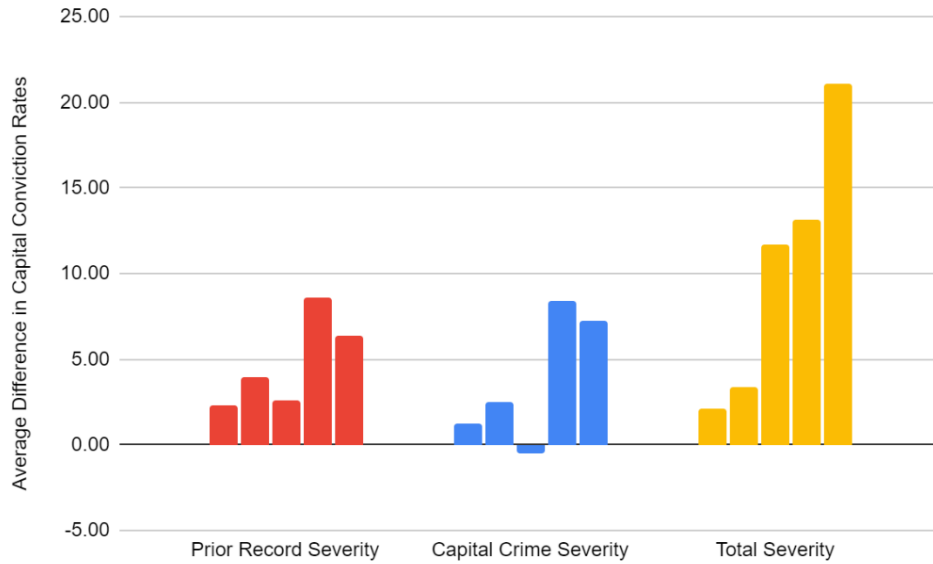
Results: The Liberation Hypothesis

When looking at every measurement of severity, there is no support for Hypothesis 4. Further, there is evidence that an opposite relationship is occurring and that white offenders are more likely to receive a death sentence than black offenders for similar crimes. Since there is still a difference in how offenders are treated by their race, I will continue to test the liberation hypothesis. However, I will test it by looking at the amount of bias against white offenders across severity levels instead of black offenders.

To see how the effects of the defendant's race differs across severity levels, I narrowed down the severity levels to 5 categories: lowest, low-middle, middle, high-middle, and highest severity. I then assigned the former scale to these categories in order. I then took the average difference in the percent of cases that resulted in a capital conviction and a death sentence for white offenders compared to black offenders. These results can be found in Appendix F. Below is a graph showing the average differences of conviction rates.

Figure 1

Impact of Severity Level on Race Effects of Capital Conviction Rates

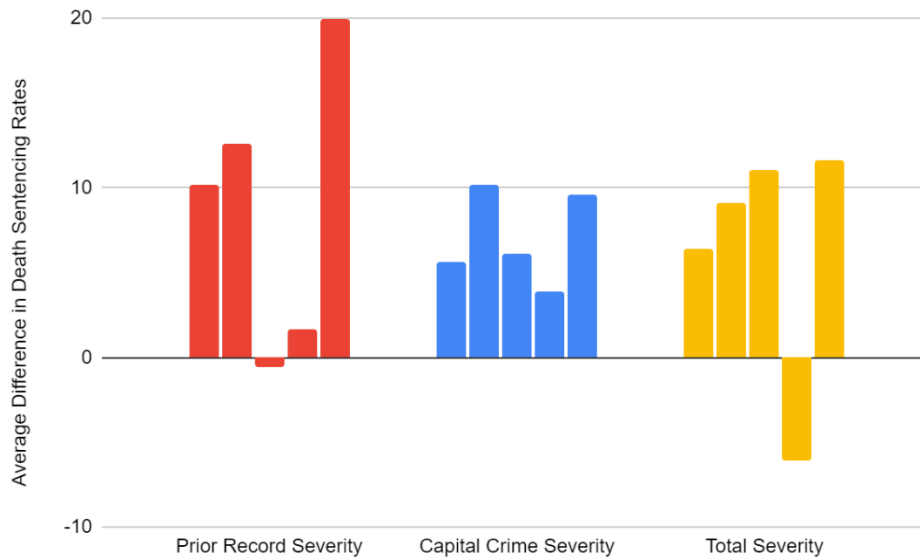


From left to right each severity category has the scores for the lowest, low-middle, middle, high-middle, and highest severity levels. Both the scores for the prior record and capital crime severity show that mostly, as the severity level increases so does the racial differences. This pattern is even stronger when the two are combined in the total severity category as there is no dip in the middle and the highest category also has the highest average difference. None of these results support the liberation hypothesis and therefore the fifth hypothesis as the middle category does not have the highest racial differences. However, these results do support the black sheep theory as white defendants are being treated more harshly as the severity level increases.

Below is a similar graph that shows the results for the death sentencing rates.

Figure 2

Impact of Severity Level on Race Effects of Death Sentencing Rates



These results also do not support the liberation hypothesis as the middle severity level does not have the highest differences in any of the categories. Both the prior record and total severity results support the black sheep hypothesis as there is a clear increase in differences as the severity increases, even with the gaps in the middle and high-middle categories. However, this pattern is not as clear for the capital crime severity differences. These differences seem to be more scattered and do not follow a clear pattern either way, thus providing support to neither theory.

Conclusion

My results to show some evidence that as the severity of the capital crime increases, so does the chance that a defendant will receive a death sentence. However, the same is not true for the defendant's prior record or the total severity ranking of the defendant. Further, the vast majority of death sentences are at the lowest severity ranking for each scale. If the death penalty was being applied proportionately, we would expect the opposite to be true and for a consistent increase in death sentences as severity increases. The fact that there is not a consistent pattern

and that most death sentences are in the lower levels therefore supports the claim that the North Carolina death penalty is not being applied proportionately and that some other arbitrary factor is affecting the probabilities.

Though my results do not show support for black offenders being more likely to receive a death sentence than white offenders, they do not necessarily contradict prior research. This is because I did not have access to the race of the victims. Prior literature has shown much more evidence for the race-of-victim effect and has shown that the race of the offender matters most when looking at the combinations of offender-victim race. Since most homicide offenders kill victims that are the same race as them, it is possible that my results show that white offenders are more likely to receive a death sentence not because they themselves are white, but because their victims are white.⁴⁸

Finally, while my results do not support the liberation hypothesis, they do support the black sheep effect. The only exception to this were the results from the differences in death sentencing rates between severity levels of the capital crime. However, this may not be contradictory to the theory. The black sheep effect rests on the theory that members of an in-group will severely punish other in-group members who committed a heinous act. By the time the jury decides on which sentence a defendant will receive, they have already been convicted of a capital eligible crime. It is possible that since the defendant has already been convicted of a capital crime, the in-group will feel the need to punish the defendant no matter what the severity of the crime was. This could explain why there were little differences in death sentencing rates between severity levels of the capital eligible crime.

⁴⁸ Baumgartner, Davidson, Johnson, Krishnamurthy, and Wilson, *Deadly Justice*

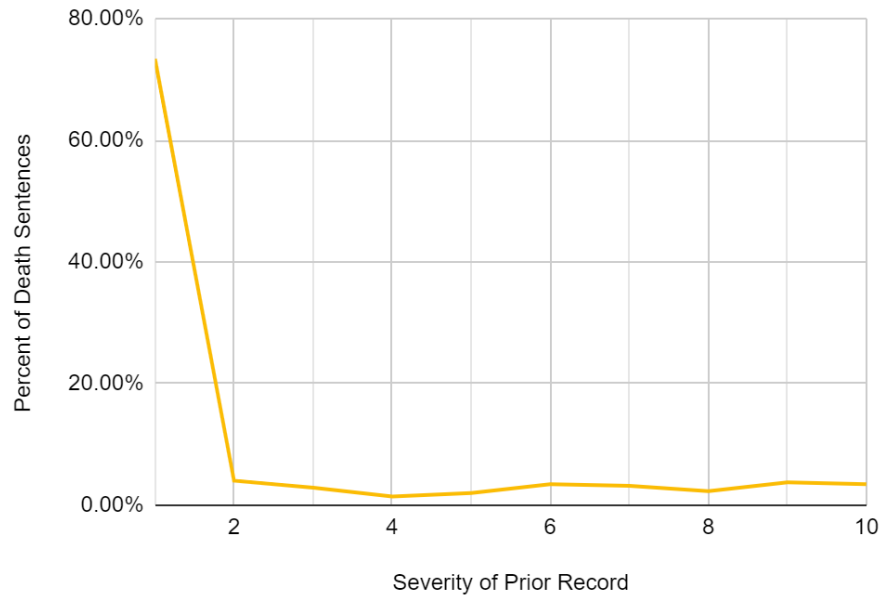
Appendix A

Progression of Cases with a Capital Charge Ranked by the Total Severity of the Defendant's
Prior Record and Capital Crime

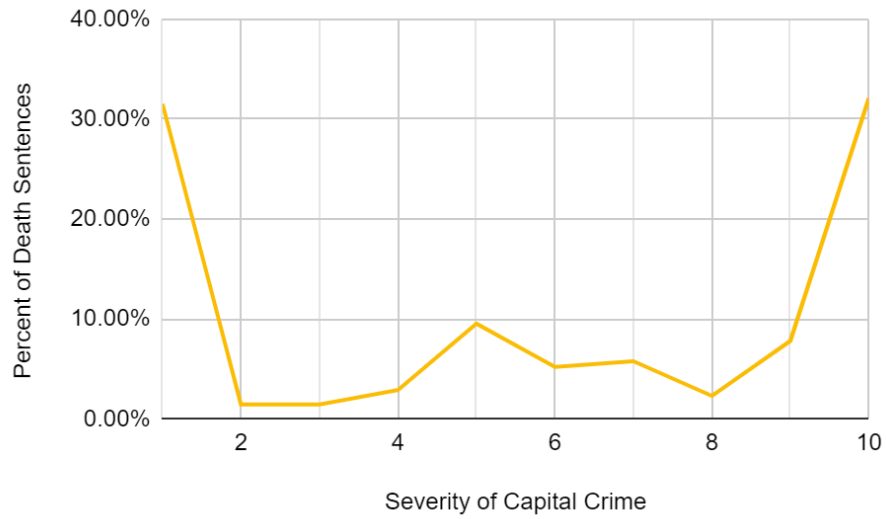
Total Severity	Capital Charges	Capital Convictions	Capital Conviction Rate (%)	Death Sentences	Death Sentencing Rate (%)
2	6,310	1,095	17.35	88	8.04
3	654	117	17.89	8	6.84
4	532	106	19.92	4	3.77
5	625	104	16.64	8	7.69
6	887	210	23.68	23	10.95
7	614	145	23.62	18	12.41
8	565	128	22.65	17	13.28
9	617	150	24.31	9	6.00
10	628	172	27.39	29	16.86
11	618	336	54.37	85	25.30
12	193	46	23.83	9	19.57
13	156	58	37.18	9	15.52
14	119	48	40.34	6	12.50
15	96	38	39.58	11	28.95
16	81	28	34.57	9	32.14
17	60	24	40.00	3	12.50
18	44	26	59.09	2	7.69
19	32	24	75.00	6	25.00
20	18	13	72.22	2	15.38
Total	12,849	2,868	22.32	346	12.06

Appendix B

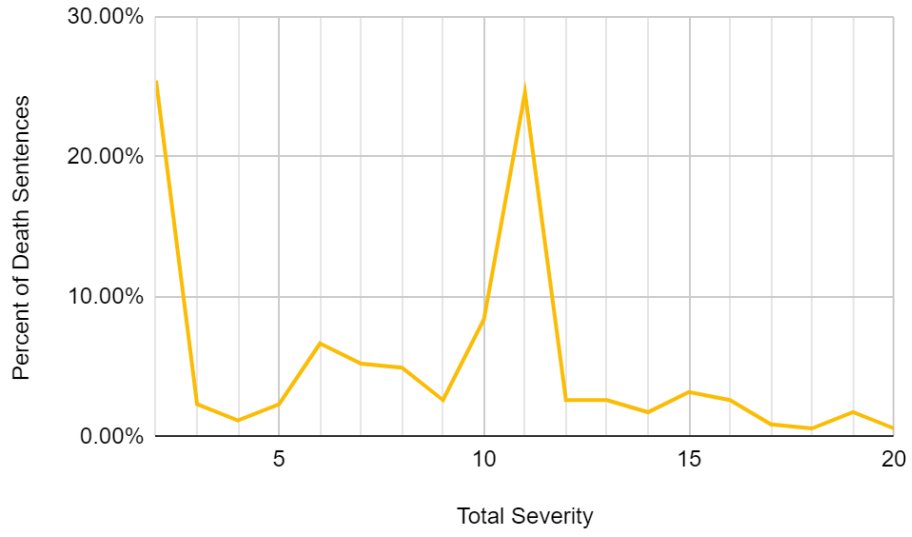
Distribution of Death Sentences Across Prior Record Severity Levels



Distribution of Death Sentences Across Capital Crime Severity Levels



Distribution of Death Sentences Across Total Severity Levels



Appendix C

Progression of Cases with a Capital Charge and a White Defendant Ranked by the Severity of the Defendant's Prior Record

Severity of Prior Record	Capital Charges	Capital Convictions	Capital Conviction Rate (%)	Death Sentences	Death Sentencing Rate (%)
1	3,114	760	24.41	117	15.39
2	167	39	23.35	8	20.51
3	98	21	21.43	3	14.29
4	62	19	30.65	4	21.05
5	55	16	29.09	1	6.25
6	73	14	19.18	2	14.29
7	62	17	27.42	4	23.53
8	56	18	32.14	1	5.56
9	58	18	31.03	7	38.89
10	60	27	45.00	5	18.52
Total	3,805	949	24.94	152	16.02

Progression of Cases with a Capital Charge and a Black Defendant Ranked by the Severity of the Defendant's Prior Record

Severity of Prior Record	Capital Charges	Capital Convictions	Capital Conviction Rate (%)	Death Sentences	Death Sentencing Rate (%)
1	5,474	1,126	20.57	117	10.39
2	513	116	22.61	6	5.17
3	409	94	22.98	7	7.45
4	174	37	21.26	1	2.70
5	199	40	20.10	4	10.00
6	334	77	23.05	9	11.69
7	199	38	19.10	7	18.42
8	232	54	23.28	4	7.41
9	207	61	29.47	5	8.20
10	222	75	33.78	7	9.33
Total	7,963	1,718	21.57	167	9.72

Appendix D

Progression of Cases with a Capital Charge and a White Defendant Ranked by the Severity of the Defendant's Capital Crime

Severity of Capital Crime	Capital Charges	Capital Convictions	Capital Conviction Rate (%)	Death Sentences	Death Sentencing Rate (%)
1	2,415	493	20.41	52	10.55
2	117	16	13.68	2	12.50
3	123	30	24.39	4	13.33
4	156	27	17.31	4	14.81
5	288	72	25.00	11	15.28
6	145	38	26.21	8	21.05
7	123	47	38.21	9	19.15
8	150	47	31.33	3	6.38
9	134	51	38.06	11	21.57
10	154	128	83.12	48	37.50
Total	3,805	949	24.94	152	16.02

Progression of Cases with a Capital Charge and a Black Defendant Ranked by the Severity of the Defendant's Capital Crime

Severity of Capital Crime	Capital Charges	Capital Convictions	Capital Conviction Rate (%)	Death Sentences	Death Sentencing Rate (%)
1	4,776	824	17.25	48	5.83
2	229	33	14.41	2	6.06
3	361	72	19.94	1	1.39
4	473	79	16.70	5	6.33
5	592	158	26.69	19	12.03
6	290	74	25.52	9	12.16
7	370	84	22.70	10	11.90
8	283	85	30.04	5	5.88
9	308	105	34.09	14	13.33
10	281	204	72.60	54	26.47
Total	7,963	1,718	21.57	167	9.72

Appendix E

Progression of Cases with a Capital Charge and a White Defendant Ranked by the Total Severity of the Defendant's Prior Record and Capital Crime

Total Severity	Capital Charges	Capital Convictions	Capital Conviction Rate (%)	Death Sentences	Death Sentencing Rate (%)
2	2,074	420	20.25	39	9.29
3	174	27	15.52	4	14.81
4	138	33	23.91	3	9.09
5	158	28	17.72	3	10.71
6	254	65	25.59	9	13.85
7	176	38	21.59	9	23.68
8	140	46	32.86	11	23.91
9	184	47	25.54	2	4.26
10	180	53	29.44	17	32.08
11	179	117	65.36	41	35.04
12	33	12	36.36	2	16.67
13	27	11	40.74	1	9.09
14	28	16	57.14	4	25.00
15	14	8	57.14	1	12.50
16	15	6	40.00	1	16.67
17	13	7	53.85	2	28.57
18	6	4	66.67	0	0.00
19	5	4	80.00	2	50.00
20	7	7	100.00	1	14.29
Total	3,805	949	24.94	152	16.02

Progression of Cases with a Capital Charge and a Black Defendant Ranked by the Total Severity of the Defendant's Prior Record and Capital Crime

Total Severity	Capital Charges	Capital Convictions	Capital Conviction Rate (%)	Death Sentences	Death Sentencing Rate (%)
2	3,577	589	16.47	42	7.13
3	435	77	17.70	3	3.90
4	371	68	18.33	1	1.47
5	415	69	16.63	4	5.80
6	558	131	23.48	11	8.40
7	403	99	24.57	7	7.07
8	400	78	19.50	6	7.69
9	394	97	24.62	6	6.19
10	399	100	25.06	10	10.00
11	400	194	48.50	39	20.10
12	150	34	22.67	7	20.59
13	127	47	37.01	8	17.02
14	86	30	34.88	2	6.67
15	74	27	36.49	7	25.93
16	62	21	33.87	8	38.10
17	43	15	34.88	1	6.67
18	34	19	55.88	1	5.26
19	24	17	70.83	3	17.65
20	11	6	54.55	1	16.67
Total	7,963	1,718	21.57	167	9.72

Appendix F

Average Differences Between Conviction Rates of White and Black Defendants

Severity Rank	Prior Record	Capital Crime	Total Severity
Lowest	2.28	1.21	2.07
Low-Middle	3.91	2.53	3.36
Middle	2.56	-.50	11.65
High-Middle	8.60	8.40	13.19
Highest	6.39	7.24	21.09

Average Differences Between Death Sentencing Rates of White and Black Defendants

Severity Rank	Prior Record	Capital Crime	Total Severity
Lowest	10.17	5.58	6.40
Low-Middle	12.59	10.22	9.09
Middle	-.58	6.07	11.03
High-Middle	1.63	3.87	-6.11
Highest	19.94	9.63	11.65

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