

Strict Sentencing in North Carolina

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POLI 490H, Prof. Baumgartner

UNC-Chapel Hill, Fall 2019

Abstract

This study examines the active prison population in North Carolina taken from the North Carolina Department of Safety. We use statistical research to examine the proportion of individuals serving a harsh or lenient sentence across offense levels. The tables and graphs generated indicated that Black men are more likely to receive a harsh punishment and less likely to receive a lenient punishment than their white counterparts. These figures also give us an idea about how drastic differences in sentencing exist in the state. We seek to examine the role of race in punishments across all offense levels, particularly when examining the specific crimes of first-degree burglary and second-degree murder.

Keywords: strict sentencing, offense levels, harshness, race

December 4, 2019

Introduction

In 1973, Larry Stubbs, age eighteen, was convicted and sentenced to life in prison for burglary in the second degree. A year earlier, thirty-one-year-old George Goins was sentenced to life in prison for kidnapping in the second degree. Stubbs is now sixty-five years old; Goins is seventy-nine. Both have spent the better part of their adult years in prison. Yet, their stories are unusual for those convicted of their crimes.

Our motivation for this study was to analyze how North Carolina's harsher sentencing policies produced a rapidly aging prison population. Specifically, we wanted to examine potential explanations for stories like Goins' and Stubbs'. Why are some men, like Stubbs, being sentenced to life in prison for burglary in the second degree when the median punishment for the crime is 3.7 years? Are there demographic characteristics which explain these stark sentencing disparities or are they all just the product of chance? What crimes display the greatest disparities in sentencing and what groups are put most at risk?

We wanted to analyze potential explanations for these questions, to examine who these inmates are that receive a harsh sentence, and why that might be the case. Through the use of a North Carolina Department of Safety database, accessible to the public on their website, we analyzed who received the strictest sentences across each Offense Class. Categorizing by Offense Class allowed us to better determine if both racial bias and the year of sentencing explain the drastic disparities in sentences received.

Pronounced sentencing differences given for the same crime are a problem affecting the North Carolina prison system. This problem helped shape our research question: Who are the people with severe and lenient sentences in North Carolina, and what is the cause of this extreme disparity in sentencing? Given the literature, we expect that the early 1990s, which exhibited a

spike in crime and the passage of more stringent sentencing legislation, will display a higher number of severely harsh sentences. Additionally, we expect that, based on the literature, black males will receive harsher sentences.

We organize our study by first offering an overview of North Carolina's sentencing history. We next analyze the relevant literature which addresses the role of racial bias, the decade of the sentence, and how both these factors contributed to North Carolina's aging prison population. The section following the literature review explains the development of our quantitative analysis and how the analysis was performed. Finally, we discuss the study's results, its limitations, and its significance.

Literature Review

History of Sentencing

Indeterminate Sentencing

As with most states at the time, North Carolina, prior to the implementation of the Fair Sentencing Act in 1981, operated under indeterminate sentencing law. As Meyer (1993) defines indeterminate sentencing, the system is characterized by "a sentencing scheme that sets only a maximum or both a maximum and a minimum sentence for a particular crime or class of crimes," (Meyer 1993, p. 520). Meyer notes the wide degree of latitude afforded to judges, prison administrators, and parole boards under indeterminate sentencing. Indeterminate sentencing allowed judges to set the punishment anywhere so long as it was within the range dictated by the maximum and the mandatory minimum. Parole authorities, in such a system, set release dates and, along with prison administrators, controlled the specifics of each sentence: where it would be served, under what conditions, and for what amount of time.

North Carolina's indeterminate sentencing produced a relatively unreliable, unequitable system that was ripe with ambiguities. Lerner (1984) notes that many of these ambiguities existed despite indeterminate sentencing being the nation's norm at the time. While North Carolina's state legislature would set a firm minimum and maximum sentence, indeterminate sentencing still allowed for a wide range of possible sentences in between the minimum and maximum, a range over which the judge would enjoy full discretion. Lerner (1984) also makes note that this wide degree of discretion carried over to parole boards which needed to give no reason, recorded or otherwise, for their decisions on when to release an inmate. These ambiguities, fostered by a lack of procedural safeguards, made for a system in which "disparate, uncertain, and unpredictable sentences [were] the norm, not the exception," (Lerner 1984, p. 167). As a way to counter the unequitable and largely unpredictable outcomes fostered by the indeterminate sentencing system, North Carolina passed the Fair Sentencing Act in 1979. North Carolina's first determinate sentencing system would be in effect two years later in July of 1981 (Clarke 1985).

Fair Sentencing Act

The North Carolina Fair Sentencing Act, known as FSA or simply the Act, was in effect from July of 1981 until its repeal in September of 1994 (Floyd 2009). Today, despite its repeal, it continues to apply to crimes committed within that date range (Markham 2014).

The Fair Sentencing Act made several changes to the previous system. Reid (1987) describes these changes as "intended to make sentencing more equitable and predictable by setting standard punishment terms." These standard punishment terms reference the presumptive sentences which the Act spelled out. In the absence of compelling reasons to lengthen or shorten

a felony sentence, judges under the Act were meant to apply these presumptive sentences for the crime (Nichols 1982). The presumptive sentences were organized into a table which preceded the now used sentencing grid. The table included offense classes A through I with corresponding presumptive sentences ranging from no presumptive sentence for murder in the first degree to a presumptive sentence of two years for forgery.

The Fair Sentencing Act further reigned in judge's discretion by eliminating formerly binding indeterminate sentencing law which allowed for judges to set a minimum and a maximum term (Nichols 1982). Under the Act, more discretion was afforded to the state legislature whose determination of appropriate sentences became the presumptive sentences. Rather than enjoying the ability only to set the maximum and minimum, as they did under indeterminate sentencing, this power to set presumptive sentences gave the state legislature greater influence on criminal sentencing (Reid 1987). However, while the Act may have appeared to greatly reduce variability in sentencing, there was still a wide degree of possible sentences for each offense class. Nichols (1982) demonstrates this variability both within and across offense classes. While the maximum sentence for a Class A offense is death, Class J's maximum sentence stands at 3 years imprisonment. Even within a class there is wide variability. In Class C, Nichols notes that a felon could receive "a prison term as long as fifty years or a suspended sentence with no imprisonment at all." While the Act was intended to reduce variability, it was only able to mitigate this persisting problem.

Structured Sentencing

By the mid 1980s, North Carolina had to contend with a ballooning prison population and overcrowded correctional facilities. Crime and conviction rates had increased, most notably for

drug offenders who were targeted by the war on drugs. Ross and Katzenelson (1999) detail that inmates responded to these overcrowded correctional facilities with lawsuits some of which “led to federal court orders governing part of the North Carolina prison system.” North Carolina’s General Assembly, desperate to avoid a total federal takeover, implemented a cap on its prison population in 1987. Consequently, North Carolina experienced an increase in the frequency of paroles and a decrease in average months served from 25.2 in 1987 to 15.7 in 1993 (Ross & Katzenelson 1999). The “truth, consistency [and] certainty” of North Carolina’s judicial sentencing was now under scrutiny (Lubitz 1993).

Rather than allowing for the perpetuation of a system devoid of much consistency, the North Carolina General Assembly sought to establish a more consistent and trusted sentencing structure. Their solution, a result of the 1990 Sentencing Commission, was 1993’s Structured Sentencing (Ross & Katzenelson 1999).

The 1990 Sentencing Commission approached the problem at hand with lofty goals: “to devise a range of proportionate punishments, to maintain a close relationship between sentences imposed and time served (“truth in sentencing”), and to achieve it with correctional costs that are fiscally responsible and empirically predictable,” (Ross & Katzenelson 1999). The end product was Structured Sentencing which produced a number of changes. It first established three criminal penalties: active incarceration, intermediate punishments, and traditional probation. The creation of the latter two categories helped release some of the pressure the state was under for prison beds. Beyond the creation of intermediate and community punishments, Structured Sentencing also brought about the creation of North Carolina’s first sentencing grid (Lubitz 1993).

North Carolina's sentencing grid, the Felony Punishment Chart, was intended to reign in the discretion of judges and provide for greater predictability (Ross & Katzenelson 1999). The grid, complete with aggravated, presumptive, and mitigated ranges, served to aid judges in their sentencing decisions and still does today. The grid is categorized by both prior record level and offense class, with punishments becoming markedly harsher the more prior points one has and the closer to offense Class A one is. As the harshest class, Offense Class A consists of only three sentences: Death, Life without Parole, or Life with Parole, which is only able to be granted to those who are under 18 when sentenced (Spainhour 2017).

The Felony Punishment Chart suggests a sense of predictability when determining the sentence for a crime. According to its metrics, only the prior points the defendant possesses and the offense level of the crime for which he is being tried should be relevant considerations. However, the literature suggests that more than these two factors are being put in consideration. Markham (2013) makes the claim that the sentencing grid is less restrictive than many consider it to be and that there is a great degree of discretion afforded to judges in sentencing, especially in the case of multiple convictions. Markham further argues that while the grid may be more restrictive for serious offenses, judges are still afforded a wide degree of latitude in their decision-making for common offenses.

Markham (2013) cites the most commonly used cell as an example, offense class H with no prior points. This cell would be used for someone convicted of Felony Larceny and Felony Breaking and Entering with no prior points on their criminal record. While the sentencing grid here appears quite restrictive, options read just 5 or 6 for those in the presumptive range, the reality allows for significantly more discretion. When the sentencing takes place the judge here enjoys many options. S/he can choose a consecutive active sentence (a year in prison followed

by 9 months of post-release supervision), a contingent sentence (an active sentence followed by a probationary sentence), a split sentence (including both probation and incarceration), a supervised probation (which can last as short as a couple months or to as long as five years), or community punishment (such as unsupervised probation). The judge also has choices from active to consecutive sentences, from serving time continuously to just on weekends, and whether or not sentences can be run concurrently or not is also dependent on the judge's discretion. While structured sentencing seems to suggest the appearance of severe limitations on judges' discretion, a complaint which has been raised by many judges, the judge still exerts much control over what the sentence for any given inmate will ultimately be (Markham 2013).

While Structured Sentencing may not have limited judge's discretion to the degree some hoped, the act accomplished what it set out to do in terms of increasing the likelihood of serious offenders receiving prison sentences and lengthening prison terms for those serious offenders. Tonry (1999) notes that both of these goals "were achieved the first year, with 100 percent of those convicted of target crimes going to prison." The goal of diverting those convicted of less serious offenses to intermediate and community punishments worked too. Prison beds, which North Carolina desperately needed at the time, were freed up as crime and conviction rates rose (Tonry 1999).

Justice Reinvestment Act

The progression of new sentencing methods in North Carolina has not necessarily meant progress. Welty (2014) argues that overcriminalization has persisted and indeed even increased in North Carolina during this time period. The Justice Reinvestment Act (JRA) was intended to combat this overcriminalization with stated goals to "reduce prison populations and spending on corrections and then to reinvest the savings in community-based programs," (Welty 2014, p.

1947). It is estimated that recent reductions in North Carolina's prison population are due in part to the JRA making it more difficult to revoke probation and its reduction in the severity of the state's habitual felon law (Welty 2014).

Heightening the barrier to revoking probation proved to be a significant measure for the JRA. More than half of admissions to North Carolina state prisons in 2006 were due to probation supervision breaches (Allen 2015). The state government now had the ability to deal with these probation violations by giving violators far less time incarcerated than previously possible. "Quick dips" were now possible in which offenders were put in jail for just two or three days rather than the comparatively longer sentences which previously accompanied probation violations. Cases in which "quick dips" were not deemed sufficient were met with "confinement in response to violation," a 90 day period also shorter than requiring violators to complete their outstanding sentence (Allen 2015).

Notably, the JRA introduced Advance Supervised Release (ASR). This was the only provision included in the JRA which expanded sentencing options for the judiciary (Murdock 2016). The judge is able to rule during sentencing whether or not the defendant will be eligible for ASR. If ASR is granted, the offender is eligible at a released minimum sentence contingent upon his/her completion of a treatment program while incarcerated. Notably, the offender is not penalized for being housed at a facility without such programs and may still be eligible for early release under ASR (Murdock 2016).

The Justice Reinvestment Act has been noted as the most significant change in North Carolina's sentencing law since the Structured Sentencing Act in 1994 (O'Hear 2016). Scott (2019) found statistically significant differences between Structured Sentencing and the Justice

Reinvestment Act in terms of violent crime, property crime, and recidivism despite finding no statistically significant difference in the prison population.

The JRA ushered in many of the now defining characteristics of North Carolina sentencing law: it steered prison populations from prisons and towards local jails; it introduced a new sentencing option allowing accelerated release on the completion of in-prison programs; existing habitual offender laws were altered, a new habitual offender law was created, and a new requirement for post-release supervision was established (Murdock 2016). However, plea-bargaining has mitigated many of the JRA's intended effects. Murdock (2016) writes that the new sentencing options, the accelerated release program and the new habitual offender option, have been relatively underutilized.

North Carolina has progressed from indeterminate sentencing to the Fair Sentencing Act to the Structured Sentencing Act and now to the current system, molded by the Justice Reinvestment Act. Yet, the state has failed to deliver on its lawmakers repeated goal of both equitable and predictable sentences for North Carolina's offenders.

We suspect that the different sentencing policies detailed above contributed to certain people receiving a harsher sentence. For example, as we saw later on in our study, inmates may have received a life sentence for something as nonviolent as first-degree burglary thirty years ago, but in current times, we would see this crime warranting a much more lenient punishment. The decade or political era in which one commits a crime should not dictate their punishment, as we suspect that it does. Next, we look to the large body of existing literature that examines what role race plays in sentencing.

Race and Sentencing

The United States has one of the largest carceral system in the world (Webb 2018). In this system, Black Americans are seven times more likely to be incarcerated than their white counterparts (Pratt). Alexander (2010) places the mass incarceration of Black people within the larger context of historical oppression. Alexander observes mass incarceration as a response to the civil rights victories of the late 60s and the ending of Jim Crow. According to Alexander, mass incarceration is an extension of the United States history which has harmed Black Americans along with slavery and Jim Crow laws. When Slavery was abolished in 1956, Jim Crow soon followed. During the Jim Crow era, the government imposed racist policies that barred Black Americans from the full benefits of American citizenship. After the Civil Rights Movement of the 1960s, the government began to use the “War on Drugs” and “Tough on Crime” rhetoric to target Black communities (Alexander 2010). Due to this targeting by the government, Black people were disproportionately policed, arrested, and sentenced.

In “Discretionary Justice and the Black Offender,” Taunya Banks examined the experiences of Black Americans at every step in the criminal justice system. Banks argued that the discretionary power of police officers, prosecutors, juries, and judges led to the unfair treatment of Black Americans. Police officers are able to have immense discretion over what crimes individuals are arrested for and these decisions often reflect the dominant white culture. Banks notes that the Commission on Law Enforcement and Administration of Justice found that the prosecutor’s background may influence the prosecutor’s perception of defendants. A white middle-class prosecutor may interpret the physical features of an individual like their speech and manner of dress as an indication of their moral unworthiness. However, when prosecutors interact with individuals who belong to the same community, prosecutors may be more likely to view the defendant as a victim of circumstances.

In jury systems, peremptory challenges remain one of the largest threats to Black defendants receiving a fair trial. Peremptory challenges allow prosecutors to remove prospective Black jurors from being selected to participate in the jury. Due to peremptory challenges, Black defendants are often subject to trials where the jury does not reflect their community's background.

Banks also discusses the role of discretion in judicial sentencing. The judge has a lot of discretion in the criminal justice system. Judges have the ability to decide whether an individual receives a fine or imprisonment. If the judge decides to imprison the defendant, the judge gets to decide the length of the sentence in accordance with criminal statutes. In an offense such as robbery, a judge's decision could result in the defendant on probation or the defendant serving a maximum of life in prison.

While there has been legislation to limit the amount of discretion in judicial decisions, judges have a great deal of power in deciding who goes to prison and the length of the term. Banks argued that while under certain circumstances judicial discretion may result in "individual justice," judicial discretion does not result in "equal justice." Black defendants are often under penalized for offenses with Black victims and over penalized for offenses where the defendant harms a white victim. Racial bias within judicial discretion has not been accepted by the Supreme Court which has refused to hear cases on the matter.

Similar to Banks' work, there has been a growing body of literature that has been trying to uncover race's role in sentencing. Currently, there are three different schools of thought about the role of race in criminal sentencing: the differential involvement perspective, the direct-impact perspective, and the interactionist perspective (Pratt). The differential involvement perspective is the idea that Black Americans are over-represented in the criminal justice system and receive

harsher punishments than their white counterparts because Black Americans engage in worse criminal behavior. Researchers who subscribe to the differential involvement perspective believe that race plays little to no role in the sentencing of Black Americans. However, contemporary criminologists, in general, reject the idea that certain groups engage in more criminal behavior (Banks 1977). Researchers who follow the direct-impact perspective tend to believe that Black Americans and other minority groups receive harsher punishment than white Americans even when all other relevant factors are controlled such as prior convictions and the severity of the sentence. Lastly, the interactionist perspective holds that race plays a role in criminal sentencing but only through the interaction between race and some other variable or contextual situation. Most of the contemporary research done on the subject has either supported the interactionist perspective or an interpretation of the differential perspective which argues that race plays little role in sentencing and that the socioeconomic status of the defendant matters far more than his/her race.

The interactionist perspective has been the most commonly supported explanation for the disparities in criminal sentencing. In “The Interaction of Race, Gender, and Age in Criminal Sentencing: The Punishment Cost of Being Young, Black, and Male,” Darrell Steffensmeier et al (2018) found that young Black males were most likely to receive the harshest sentences. However, the discrimination that Black males face decreases with age. Older Black men were not as negatively impacted as their younger counterparts. Moreover, in Steggensmeir’s research, Steggensmeir found that older Black males’ odds of incarceration were slightly lower than that of older white males. However, the decrease in disparities did not hold true for women. Black women received longer sentences than their white counterparts at all age groups. Steggensmeir concluded that perceptions of the defendant’s dangerousness decreased with age for Black men.

However, race-linked perceptions of danger were not as apparent in the sentencing of Black women.

Similarly to Darrell Staggensmeir, Katrina Rebecca Bloch found that race did play a role in sentencing for Black North Carolinians, however, that role was small compared to the effects of gender on the defendant's sentence. In "The Intersection of Race and Gender: an Examination of Sentencing Outcomes in North Carolina" written by Katrina Rebecca Bloch and K.L. Parrotta, Bloch and Parrotta found that both race and gender impacted the severity and the length of the sentence. First the researchers, looked at the two types of charge reductions because charge reductions can have an impact on the length of the prison sentence. They found that when deciding whether a defendant receives prison term vs. a non-prison term the race and gender of the defendants are statistically significant. Black men were more likely to receive a prison sentence than all other race and gender categories. Moreover, Black men were also the least likely to receive a charge reduction from a felony to a misdemeanor. However, in determining the length of the sentence for the defendant the race of the defendant is not significant, only the gender has statistical significance. Men were more likely to see an increase in the length of their sentences compared to their female counterparts. However, in contrast to the research conducted by Staggensmeir, Black women were more likely to be given leniency compared to their white counterparts. Black women were more likely to receive charge reductions and less likely to receive an active sentence. Bloch and Parrotta speculate this may be due to the court's weariness in separating women from their dependent children, especially if that woman is the sole provider for her dependent children. Bloch concludes, that perception of danger is more influenced by the gender of the defendant rather than the race, because even in cases where there was a statistical

difference in the effects of the race for Black men Koch considered those differences to be small.

In the majority of the literature on race and sentencing, even when most researchers did not find a direct relationship between race and the length of the sentence, what they did find was a relationship between race and the judge's decision to give a prison vs. non-prison sentence. In "Race/Ethnicity and Sentencing Outcomes Among Drug Offenders in North Carolina," Pauline K. Brennan and C. Spohn (2008) found that the race of the offender came into play when the Judge was deciding to impose a prison vs. non-prison sentence. White offenders were more likely to be treated leniently, given probation or community service, whereas Black defendants were more likely to be incarcerated. Brennan and Spohn were among one of the few researchers to introduce a race and ethnicity distinction. There have been few researchers who have included the impact of being Hispanic on the sentencing outcomes of offenders. Brennan et al. found that there was no direct link between race and a judge's decision to impose an intermediate sentence like house arrest vs. incarceration. However, they did find a link between ethnicity and the judge's decision to impose an intermediate punishment or incarceration. Hispanic individuals were more likely to be incarcerated rather than receive an intermediate punishment for drug offenses. Brennan speculates the disparity in Hispanic offender from Black and white offenders to possibly be due to "moral panic" surrounding the drug trade and immigration.

In the literature, there was one study that found race not to be a significant factor in the severity of the sentence for defendants. In "The Effect of Race on Sentencing: A Re-Examination of an Unsettled Question," Cassia Spohn et.al (1981) found no evidence of direct racial discrimination in sentencing, rather black men were often charged with more serious offenses and had more serious prior criminal convictions. However, in contrast to traditional

ideas about the differential perspective, Spohn et. al argues that this is not the result of increased criminality but rather that Black people are given harsher sentences than their white counterparts because Black people are less likely to be able to afford a private attorney. Spohn describes the disproportionate sentences Black people receive as a form of indirect racial discrimination.

The researchers found that judges were more likely to discriminate against Black people when deciding whether to give an individual a prison vs non-prison sentences (Spohn et. al 1981). Spohn's finding is similar to that of Boch who also found that the race and the gender of the individual was statistically significant when deciding whether to give a person a prison vs. non-prison sentences like probation.

In conclusion, the body of literature seems to support the idea that the race and the age of the individual impacts the severity of the crime received. Even in cases where there is no direct relationship to race and the length of the sentence, there seems to be an indirect relationship between race and sentencing. Black people live in communities that are over policed meaning it is only logical that they are more likely to have previous offenses. Moreover, due to the racial wealth gap, Black people are also more likely to be impoverished which deters their ability to retain private counsel. There is agreement that racial disparities exist when judges are given discretion in deciding whether to impose a prison vs. non-prison sentences. Lastly, there is an emerging idea in the literature that minority groups tend to be over-punished for crimes that generate moral panic. Hispanics are over-punished for crimes related to the drug trade because of pervasive ideas about Latin America and the global drug trade and Black men are likely to be over-punished for offenses like Black-on-white rape and robbery.

Aging and Sentencing

When marginalized groups are given more severe sentences, their incarceration puts a financial strain on government resources. These severe sentences have caused the prison system to be inundated with people for the past few decades. It was found in an American Civil Liberties Union report that from 1980 to 2010 the prison population grew by 400% as opposed to the general American population which only grew 36%. (Chettiar 2012). With changing sentencing policies increasing the amount of people in jail and the length of their terms, the population of aging prisoners is also growing. Other scholars assessed data from the Bureau of Justice Statistics which showed that the number of state prisoners aged 55 and older more than doubled each decade from 199-2013. (Carson and Sabol 2016).

With the overall increase in the prison population, the number of aging prisoners has also increased. In 1980 the number of prisoners age 55 or older stood at 8,853 whereas in 2012 that number had grown to 124,900. With an expanding number of older prisoners, more problems accompany the changing demographics of the prison population.

The cost to take care of older prisoners is substantially more than the cost of taking care of younger prisoners. With an influx of people in prisons around the nation, more money is being spent on incarceration as a whole. State corrections spending rose 637% over a twenty-five-year period. In the ten-year period between 1988 and 2008, the total state corrections spending increased from \$11 billion to \$52 billion. (Chettiar 2012). A growing number of older inmates yields higher costs for federal and state budgets. Much of that growth is likely to be due to attending the needs of older prisoners. It is estimated that it costs \$68,270 per year to house a prisoner age 50 and older, compared to the \$34,135 cost of housing the average prisoner. It is

also estimated that New York will save \$66,294 annually per aging prisoner by releasing its 50 and older prisoners. (Chettiar 2012).

The growing population of older prisoners can be attributed to tough on crime policies that swept the nation in the 1980s and 1990s. People were given longer prison terms for nonviolent crimes. The number of people serving life sentences rose from 34,000 in 1984 to 140,610 in 2008. Programs like, Three Strikes and habitual offender, that keep nonviolent offenders in prison for decades contribute to the aging population of prisoners (“Old Behind Bars”). Twenty-six percent of the aging population in North Carolina is incarcerated “under habitual offender laws or for drug crimes,” while another 14% are serving sentences for “fraud, larceny, burglary, breaking and entering, and traffic and public order violations.” (Chettiar 2012).

By age 50, the likelihood of one posing a threat to society decreases. It is far less dangerous to release an aging prisoner than a young one; prisoners age 50 or older are 56% less likely to be convicted of a crime after release than inmates age 18 to 24. The foundational goal of incarceration is the incapacitation of criminals yet many correctional officers reported that several of the aging prisoners confined in their prisons were too feeble or incoherent to commit crimes again. (“Old Behind Bars”). We were initially interested in strict sentencing because of the ultimate result of an increase of geriatric prisoners. We proceeded to investigate how the trends of strict sentencing over the last few decades have impacted North Carolina prisoners specifically, and how an aging prison population is an unintended yet prominent consequence.

Data Collection and Measurement

First, we had to code the data file available on the North Carolina Department of Safety into something that Stata could read. This meant that we had to export the data file into an excel

spreadsheet and then manually create the infix for Stata to read. Once we did this, we looked through the variables and decided which would be fundamental to our study. We created a Term Years variable by dividing days sentenced by 365.25. In the database, a life sentence was coded as 999,998 days, or 2737.845 years. We found that several inmates were sentenced to over one hundred years in prison yet these inmates were not listed as a life sentence in prison. Therefore, we decided to change the value of a life sentence in order to better graphically demonstrate the variation in sentencing. We assigned every sentence which was both over eighty years and still under a life sentence to equal eighty years. Life sentences were assigned to a value of ninety years, and death sentences were assigned to a value of ninety-five years. Below the distribution of sentence length for active prisoners in North Carolina is shown. There are 3,263 inmates with a life sentence in North Carolina, however, there are another 452 inmates that have been sentenced to more than eighty years, which could be considered life in most cases.

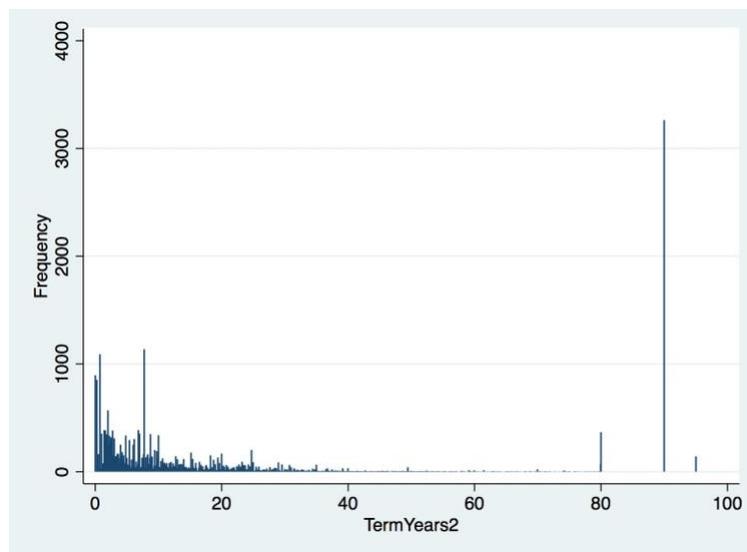


Figure 1. Term Years Rescaled for Active Prisoners

Once we coded term years for active inmates, we looked at the variation in sentencing across each offense level. To do so, we assigned each crime in the database to an offense level.

We did this by using the spreadsheet on Dr. Baumgartner’s teaching site that lists all the laws you can break in North Carolina and their corresponding offense code and punishment class. We paired each crime with an Offense Code, and then assigned each letter code to a corresponding number. Doing this allowed us to see the distribution of punishments across offense levels for active inmates.

Table 1. Offense Class Codes

Offense Class	Crime and Code
A	First degree murder. Coded as 1.
B1 and B2	B1 crimes were classified as 2 and include second degree murder and several sex crimes such as sexual offense in the first degree. B2 crimes were classified as 3 and include attempted first-degree murder and child abuse inflicting serious body injury.
C	Second degree rape, kidnapping in the first degree, assault with a deadly weapon with intention to kill and inflicting serious injury (AWDWWITKISI). Coded as 4.
D	First degree burglary, robbery with a dangerous weapon, first degree arson, etc. Coded as 5
E	Habitual breaking and entering, second degree kidnapping, armed robbery, manslaughter, etc. Coded as 6.
F	Possessing/distributing meth, indecent liberty of child, involuntary manslaughter, possessing a weapon of mass destruction, etc. Coded as 7.
G	Common law robbery, second degree burglary, selling schedule I or schedule II drugs, second degree arson, etc. Coded as 8.
H	Felony breaking and entering, larceny from person, embezzlement, possessing stolen goods, violation protective order, etc. Coded as 9.
I	Possessing schedule I and II drugs, possessing with intent to sell, breaking and entering vehicles. Coded as 10.

The chart above shows how we coded each offense class in our study. Next, we generated our harshness and leniency variable. We needed to decide how we wanted to classify lenient,

expected, and harsh and decided to look at the distribution of term years for each offense level, and created two different levels of harshness. The first version defined a lenient sentence as those whose term years fell below the 10th percentile, a harsh sentence as those whose term years fell above the 90th percentile, and an expected sentence as those whose term years fell in between. We assigned the number one to lenient sentences, two to expected sentences, and three to harsh sentences.

Our second harshness variable defined a lenient sentence as those whose term years fell below the 20th percentile, a harsh sentence as those above the 80th percentile, and expected sentence as those in between. We looked at harshness by offense code to see what trends exist in regard to race. The first table shows the harshness variable among currently active inmates across all offense levels measured at the 10th and 90th percentile. The second table shows the 20th and 80th percentile.

Table 2: Lenient, Expected, and Harsh Sentences for Active Inmates (at 10% and 90% values)

	Frequency	Percentage
Lenient	3,141	8.84 %
Expected	29,986	84.42 %
Harsh	2,395	6.74 %
Total	35,522	100 %

Table 3: Lenient, Expected, and Harsh Sentences for Active Inmates (at 20% and 80% values)

	Frequency	Percentage
Lenient	6,339	17.85 %
Expected	21,007	59.14 %
Harsh	8,176	23.02 %
Total	35,522	100%

As anticipated, the number of inmates classified under an “expected” sentence was much higher when leniency was measured under the 10% value and harshness was measured above the

90% value. Our justification for creating two separate harshness variable frequencies was to show how many inmates fall in between this ten percent increment.

We expected to see that race had an effect on the harshness of sentence received, and created a variable titled “RG6” that split the prison population into six groups based on race and gender. Below is the harshness distribution split up into the six race and gender categories for all active inmates and offense levels.

Table 4. Harshness and Race for Active Inmates at 10% and 90%

	Lenient	Expected	Harsh
Black Males	19,810 9.65%	171,378 83.47%	14,136 6.88%
White Males	11, 573 6.66%	151,929 87.45%	10,224 5.89%
Hispanic Males	2,023 13.91%	11,409 78.44%	1,113 7.65%
Black Females	2,891 12.21%	21,299 85.38%	755 3.03%
White Females	3,838 12.15%	26,132 82.74%	1,614 5.11%
Hispanic Females	107 20.66%	380 73.36%	31 5.98%
Total	40,242	382,527	27,873

Table 5. Harshness and Race for Active Inmates at 20% and 80%

	Lenient	Expected	Harsh
Black Males	3,013 17.19%	10,009 57.10%	4,508 25.72%
White Males	2,162 17.26%	7,673 61.25%	2,693 21.50%
Hispanic Males	323 18.52%	1,044 59.86%	377 21.62%
Black Females	164 22.25%	462 62.69%	111 15.06%
White Females	459 24.38%	1,193 63.36%	231 12.27%

Hispanic Females	12 24.49%	29 59.18%	8 16.33%
Total	6,133	20,410	7,928

Regardless of whether harshness is defined at the 10th and 90th percentiles or the 20th and 80th percentiles, similar trends continue with black males consistently receiving a harsher sentence than that of white males. Males in general tend to receive harsher sentences than females, but this could stem from males committing more heinous crimes that are more likely to garner a harsher punishment. Interestingly, at the 10th and 90th percentile, lenient charges are more common than harsher causes, with 9.65% of black males receiving a lenient sentence below the 10th percentile compared to only 6.88% receiving a harsh sentence. However, when we look at the 20th and 80th percentile, we see that it then becomes more likely that, across black, white, and Hispanic males, an inmate received a harsh sentence than a lenient sentence.

We wanted to see if the variation in sentences changed dependent upon the Offense Class which the crime fell under. Our next step was to create boxplots using the rescaled term years of active inmates across offense levels.

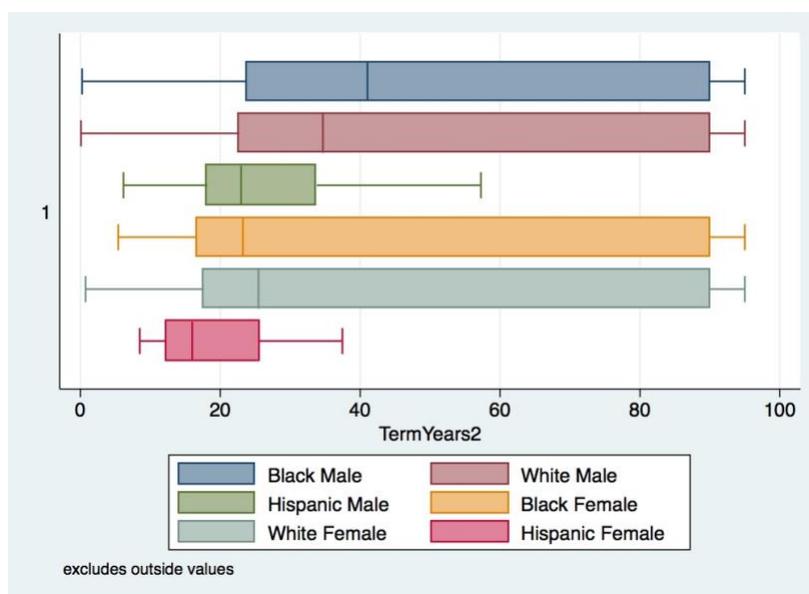


Figure 2: Term Years over Offense Levels 1 & 2 by Race/Gender Variable

Here we see that the median punishment for crimes under Offense Level 1 and Offense Level 2 is highest for black males. Offense Level 1 is a class A felony, first degree murder. Offense Level 2 crimes are B1 felonies, and include second degree murder, first degree rape, and other heinous sex crimes. The sentencing disparities shown by the boxplots' length indicate that sentencing varies to an extreme extent, with some offenders receiving a very minimal sentence (close to zero years), while others received a death sentence (coded as ninety-five years). We then created these boxplots for lower level felonies.

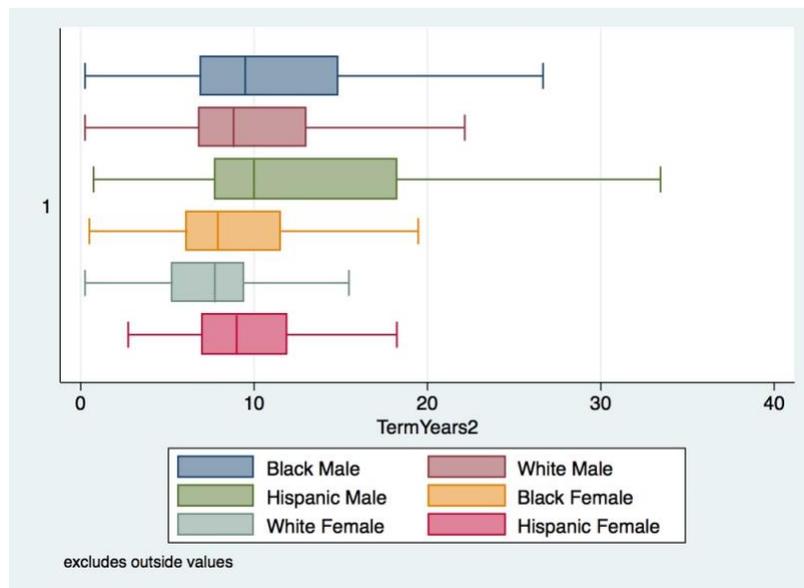


Figure 3: Term Years over Offense Levels 3, 4, and 5 by Race/Gender

Here we see again that black males have a higher median punishment than white males for Offense Level 3,4, and 5 crimes. However, we see that Hispanic Males seem to have a higher median punishment than all groups. Across all race/gender variables, we note that length in sentence has a large range. Below we include the boxplots for Offense Levels 6,7, and 8 in addition to the boxplot for Offense Levels 9 and 10. While these boxplots display clear sentencing disparities across all offense levels, they are even more pronounced when measured

across certain crimes of interest. We were surprised to see that some inmates had received a life sentence for first degree burglary and chose to examine this specific crime's sentencing in greater detail.

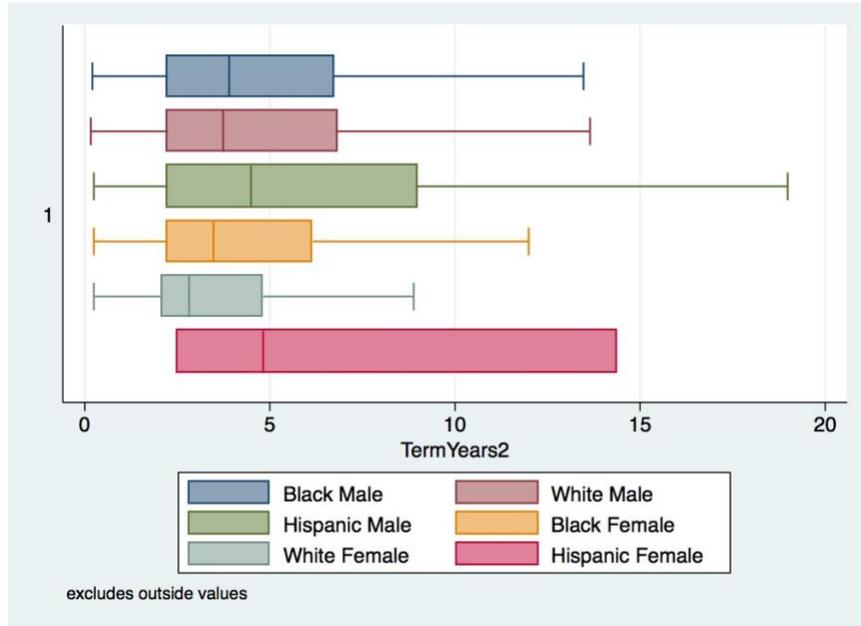


Figure 4: Term Years over Offense Levels 6, 7, and 8 by Race/Gender Variable

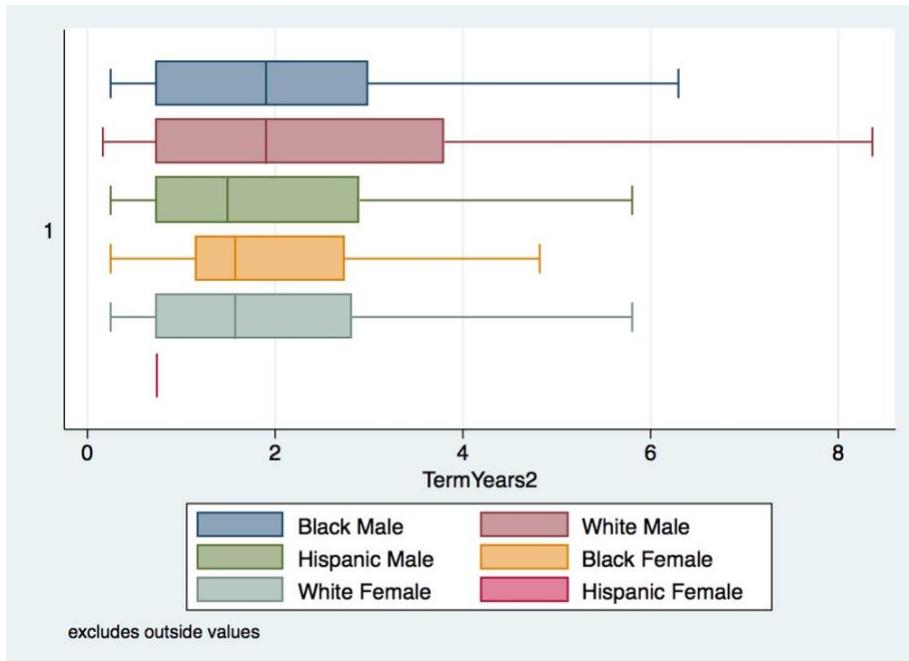


Figure 5: Term Years over Offense Levels 9 and 10 by Race/Gender

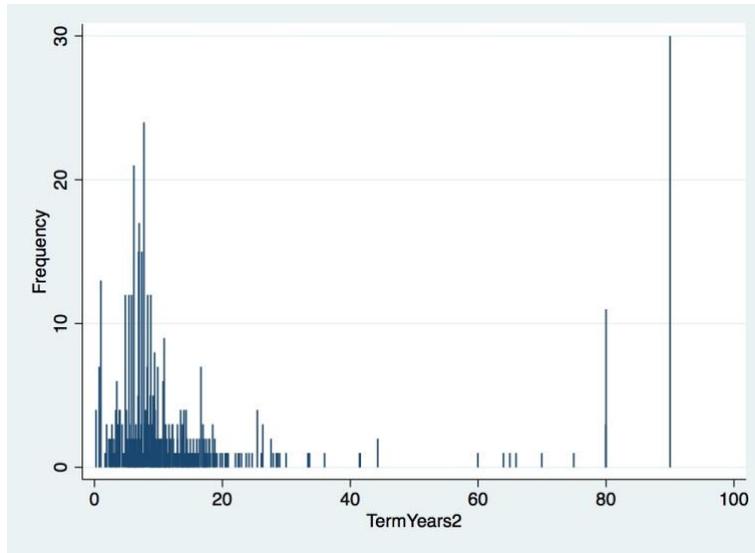


Figure 6: Term Years Distribution for Burglary 1st Degree Charge

Clearly, we can see from this plot that punishment for burglary in the first degree is more concentrated at under twenty years. However, there are still a number of observations sentenced to over forty years. Interested in who received the longer sentences for this crime, we examined the race and sentence type of inmates.

Table 6: Racial Make-up of Inmates convicted of Burglary in the first-degree

	Life Sentence	More than 50 years	Less than 50 years	Total
Black Males	22	14	284	320
	6.88%	4.38%	88.75%	100%
White Males	8	5	183	196
	26.67%	26.32%	36.31%	100%
Hispanic Males	0	0	13	13
	0%	0%	2.58%	100%
Black Females	0	0	7	7
	0%	0%	1.39%	100%
White Females	0	0	17	17
	0%	0%	3.37%	100%
Total	30	19	504	553

Of the thirty inmates sentenced to life in prison for this crime, 73.33% of them were black males. Additionally, we looked at what sentence policy they were convicted under (pre-fair, fair, structured).

Table 7: Sentence Policy of Inmates convicted of Burglary in the first-degree

	Life Sentence	More than 50 years	Less than 50 years
Pre-Fair Sentencing	3 10%	0 0%	0 0%
Fair Sentencing	25 83.33%	13 65%	1 0.19%
Pre-Automated	1 3.33%	2 10%	0 2.58%
Structured	1 3.33%	5 25%	532 99.81%
Total	30 100%	19 100%	504 100%

*We could not find information on Pre-Automated sentencing.

An obvious limitation here, that we will continue to address later on in our paper, is that this is only for active inmates. Clearly there were likely several inmates sentenced to less than fifty years during fair-sentencing. However, now they are inactive, and we are unable to code their term years and therefore their sentence type. One thing we could do was use the column that told us whether an inmate was sentenced to life, death, or part of the regular prison population.

There has been a total of sixty-six inmates sentenced to life in prison for burglary in the first degree throughout time, thirty of which are active now. Of those who were sentenced to life for this crime, forty-four were sentenced during the Fair Sentencing Act, twenty-one were sentenced prior to that, and only one was given a life sentence during Structured Sentencing in the 90s. No one has since received a life sentence for this crime. A final crime that we examined in more detail was Second-degree Murder.

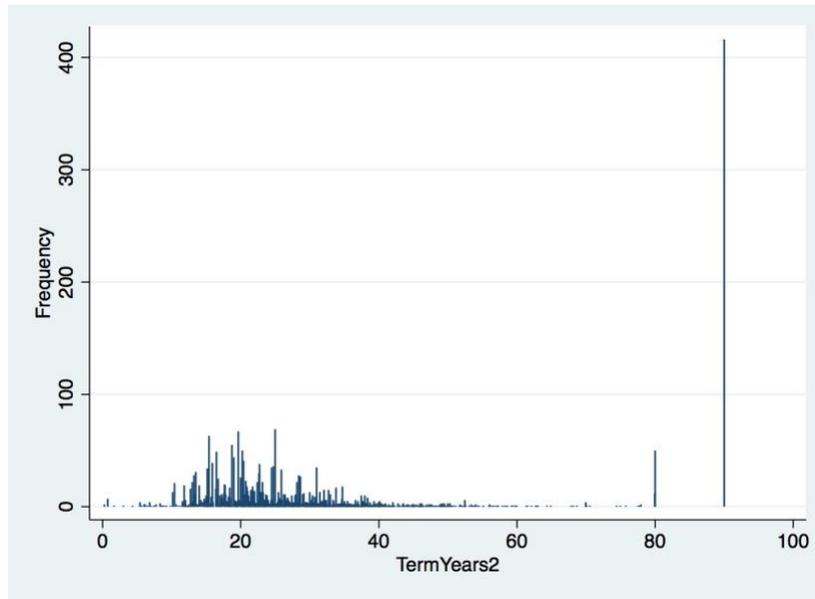


Figure 7: Term Years Distribution Second-degree Murder Charge

While we see a large frequency of inmates being sentenced to life in prison for second degree murder, we also see that there is a high concentration of sentences around twenty to thirty years.

Table 8: Racial Make-up of Inmates convicted of Second Degree Murder

	Life Sentence	More than 50 years	Less than 50 years	Total
Black Males	271 13.50%	100 4.98%	1,636 81.51%	2,007 100%
White Males	122 13.96%	53 6.06%	699 79.98%	874 100%
Hispanic Males	1 0.66%	5 3.29%	146 96.05%	152 100%
Black Females	9 7.89%	2 1.75%	103 90.35%	114 100%
White Females	3 1.92%	2 1.28%	151 96.79%	156 100%
Hispanic Females	0 0%	0 0%	5 100%	5 100%
Total	406	162	2,740	

Of those who were sentenced to life for second-degree murder, 799, or 83.93%, were sentenced during the Fair Sentencing Act, 135 (14.18%) were sentenced prior to that, and only 18 (1.89%), were given a life sentence during Structured Sentencing in the 90s.

Finally, below, we ran regressions on race and our scaled term years variable. The first regression we ran was on term years and the race and gender variable.

Regression between our rescaled Term Years and Race and Gender Variable

`. regress TermYears2 i.RG6`

Source	SS	df	MS			
Model	334336.715	5	66867.343	Number of obs =	34471	
Residual	24053914.2	34465	697.922942	F(5, 34465) =	95.81	
Total	24388250.9	34470	707.521059	Prob > F =	0.0000	
				R-squared =	0.0137	
				Adj R-squared =	0.0136	
				Root MSE =	26.418	

TermYears2	Coef.	Std. Err.	t	P> t	[95% Conf. Interval]	
RG6						
White Male	-3.580728	.3090665	-11.59	0.000	-4.186509	-2.974948
Hispanic Male	-4.341811	.6633236	-6.55	0.000	-5.641947	-3.041675
Black Female	-8.155661	.9933737	-8.21	0.000	-10.10271	-6.208616
White Female	-12.21571	.6406693	-19.07	0.000	-13.47145	-10.95998
Hispanic Female	-10.85176	3.779304	-2.87	0.004	-18.25932	-3.444204
_cons	22.01102	.1995321	110.31	0.000	21.61993	22.40211

Here we see that the term years variable appears to decrease as you move progressively down the race/gender variable. While our p value is significant, our r-squared value is very small. This means that 1.37% of the variance in term years is explained by the race and gender variable. Had we had more controls in our data set (type of counsel, plea deal, prior convictions), we may have been able to establish a real causal relationship.

Our second regression looks into the relationship between the term years variable and race within the specific crime of first-degree burglary.

Regression between Term Years and Race and Gender Variable for First-degree Burglary

```
. regress TermYears2 i.RG6 if Crime=="BURGLARY 1ST DEGREE"
```

Source	SS	df	MS	Number of obs = 553		
Model	6803.17199	4	1700.793	F(4, 548) =	3.49	
Residual	266821.695	548	486.900904	Prob > F =	0.0079	
Total	273624.867	552	495.697224	R-squared =	0.0249	
				Adj R-squared =	0.0177	
				Root MSE =	22.066	

TermYears2	Coef.	Std. Err.	t	P> t	[95% Conf. Interval]	
RG6						
White Male	-5.475346	2.001438	-2.74	0.006	-9.406775	-1.543917
Hispanic Male	-10.57344	6.243035	-1.69	0.091	-22.83665	1.689769
Black Female	-9.931548	8.430827	-1.18	0.239	-26.49224	6.629145
White Female	-12.95791	5.492067	-2.36	0.019	-23.74599	-2.169829
_cons	19.34193	1.233517	15.68	0.000	16.91893	21.76493

Here we see that our results are not significant. Again, had we had more controls in our data set (type of counsel, plea deal, prior convictions), we may have been able to establish a relationship.

Discussion

Our motivation in this study was to understand certain trends that exist in harsh sentencing across active inmates in North Carolina. Perplexed by the situation of Larry Stubbs and George Goins as examples, we graphed the variation in sentencing across offense levels by race. Evidently, there seems to be some sort of trend between longer term years and race across crimes in our box plot graphs, however, the main takeaway is the stark difference in sentences across all offense levels, as demonstrated by the length of our box plots. When looking at cases where the individual crime was the same, there seemed to be a wide variation in outcomes for sentence length.

Our harshness variable allowed us to see the distribution of sentences at two different percentiles; when split up by our race and gender variable, it was clear that women received less harsh sentences across the board than men. Moreover, white men seemed to have a more lenient median sentence than both Black men and Hispanic men.

One limitation in our study is an issue that we ran into when looking at Term Years of inactive inmates. Days sentenced was not given for inactive inmates, so we had to figure out a way to quantify how long these offenders spent in prison. Initially, we used a column that told us the year of last movement. However, an inmate being moved did not necessarily mean that the inmate was released. Movement could mean lots of different things, ranging from expiration and escaping to a new admission or being received from a different prison. We coded an exit year variable for inmates that had actually been released using year of last movement and calculated their term years by subtracting their admission year from their exit year. However, this did not give us information on the exact sentence of inactive inmates. For this reason, we could not examine them in our analysis. Another previously mentioned limitation is that we did not have much to control for in our regressions. Our database did not have information on type of counsel, county, or prior convictions that we could use as controls.

Overall, while we had several limitations in our study, we were still able to find an estimate that showed there is some connection between race and the length of term years. Our biggest contribution, however, is the notion that disparities in sentences exist across all offense levels in North Carolina, some more than others.

References

History of Sentencing

- Allen, R. (2015). Rehabilitation Devolution - How Localising Justice can Reduce Crime and Imprisonment. North Carolina Criminal Law UNC School of Government Blog. Retrieved from <http://www.transformjustice.org.uk/wp-content/uploads/2015/12/TRANSFORM-JUSTICE-REHABILITATION-DEVOLUTION.pdf>
- Clarke, S. H. (1984). North carolina's determination sentencing legislation. *Judicature*, 68(3), 140-152.
- Floyd, J. (2009). The fair sentencing act: Exploring solutions to unintended interpretations of law. *North Carolina Central Law Review*, 32(1), 115-121.
- Lerner, D. G. (1984). North carolina's fair sentencing act: Is it fair. *Wake Forest Law Review*, 20(1), 165-192.
- Lubitz, R. L. (1993). Recent History of Sentencing Reform in North Carolina. *Federal Sentencing Reporter*, 6(3), 129–133. doi: 10.2307/2063965
- Markham, J. (2013). Unstructured Sentencing in North Carolina. Retrieved from UNC School of Government website: <https://www.youtube.com/watch?v=XwuOyDqptbQ>
- Markham, J. (2014). Fair Sentencing in a Nutshell. Retrieved from North Carolina Criminal Law UNC School of Government Blog website: <https://nccriminallaw.sog.unc.edu/fair-sentencing-in-a-nutshell/>

- Meyer, L. B. (1993). North carolina's fair sentencing act: An ineffective scarecrow. *Wake Forest Law Review*, 28(3), 519-570.
- Murdock, R. E. (2016). The Justice Reinvestment Act in North Carolina and Its Impact on Sentencing. *Federal Sentencing Reporter*, 29(1), 39–46. doi: 10.1525/fsr.2016.29.1.39
- Nichols, S. K. (1982). Criminal Procedure -- The North Carolina Fair Sentencing Act. *North Carolina Law Review -- UNC School of Law*, 60(3), 632–655. Retrieved from <https://scholarship.law.unc.edu/cgi/viewcontent.cgi?article=2870&context=nclr>
- O’Hear, M.M. (2016). Justice Reinvestment and the State of State Sentencing Reform. *Federal Sentencing Reporter*, 29(1), 1–5, doi: 10.1525/fsr.2016.29.1.1
- Reid, D. (1987). The Fair Sentencing Act: Setting the Record Straight. *North Carolina Insight*, 42–49. Retrieved from https://nccppr.org/wp-content/uploads/2017/02/The_Fair_Sentencing_Act-Setting_the_Record_Straight.pdf
- Ross, T. W., & Katzenelson, S. (1999). Crime and Punishment in North Carolina: Severity and Costs under Structured Sentencing. *Federal Sentencing Reporter*, 11(4), 207–214. doi: 10.2307/20640170
- Scott, R. (2019). *North Carolina’s Justice Reinvestment Act and Structured Sentencing Act: A Statistical Difference* (Order No. 22619668). Available from ProQuest Dissertations & Theses Global. (2316839006). Retrieved from
- Spainhour, W. E., & Hall, M. (2017). Structured Sentencing in North Carolina. *The Joint Appropriations Subcommittee on Justice and Public Safety*. Retrieved from

[https://www.ncleg.gov/documentsites/committees/JointAppropriationsJPS/2017Session/2017-02-22 Structured Sentencing/003SPAC_Intro_to_Structured_Sentencing_2017-02-22.pdf](https://www.ncleg.gov/documentsites/committees/JointAppropriationsJPS/2017Session/2017-02-22%20Structured%20Sentencing/003SPAC_Intro_to_Structured_Sentencing_2017-02-22.pdf)

Welty, J. (2014). Overcriminalization in north carolina. *North Carolina Law Review*, 92(6), 1935-2026.

<http://libproxy.lib.unc.edu/login?url=https://search.proquest.com/docview/2316839006?accountid=14244>

Tonry, M. (1999). Reconsidering Indeterminate and Structured Sentencing. *National Institute of Justice*. Retrieved from <https://www.ncjrs.gov/txtfiles1/nij/175722.txt>

Race and Sentencing

Alexander, Michelle. (2010). *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*. NEW YORK: NEW PRESS.

Bloch, K. R., Engen, R. L., & Parrotta, K. L. (2014). The intersection of race and gender: an examination of sentencing outcomes in North Carolina. *Criminal Justice Studies*, 27(4), 419–438. doi: 10.1080/1478601x.2014.932787

Brennan, P. K., & Spohn, C. (2008). Race/Ethnicity and Sentencing Outcomes Among Drug Offenders in North Carolina. *Journal of Contemporary Criminal Justice*, 24(4), 371–398. doi: 10.1177/1043986208322712

Pratt , T. C. (n.d.). Race and Sentencing A Meta-Analysis of Conflicting Empirical Research Results . *Journal of Criminal Justice* , 26(6). doi: 10.1016/S0047-2352(98)00028-2

Banks, T. 1977. “Discretionary Justice and the Black Offender.” In *Blacks and Criminal Justice*, edited by C. Owen and J. Bell. Lexington, MA: Lexington Books.

Spohn, C., Gruhl, J., & Welch, S. (1981). The Effect of Race on Sentencing: A Re-Examination of an Unsettled Question. *Law & Society Review*, 16(1), 71. doi: 10.2307/3053550

Steffensmeier, D., Ulmer, J. And Kramer, J. (1998), The Interaction of Race, Gender, And Age In Criminal Sentencing: The Punishment Cost Of Being Young, Black, And Male. *Criminology*, 36: 763-798. Doi:10.1111/J.1745-9125.1998.Tb01265.X

Age and Sentencing

Carson, E. Ann, and William Sarbol. “Aging of the State Prison Population, 1993–2013.” *Bureau of Justice Statistics*, 2016.

Chettiar, Inimai M., et al. “At America's Expense: The Mass Incarceration of the Elderly.” *American Civil Liberties Union*, 2012. <https://www.aclu.org/report/americas-expense-mass-incarceration-elderly>

“Old Behind Bars The Aging Prison Population in the United States.” *Human Rights Watch*, 2012. https://www.hrw.org/sites/default/files/reports/usprisons0112webwcover_0.pdf