

Analysis shows large decline in criminal sentencing race gap

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Racial and ethnic gaps in criminal sentences have declined, in some cases significantly, since the mid-1990s, a new analysis of state, county and federal data suggests.

For example, the overall sentence length gap between whites and blacks in [federal courts](#) decreased by more than 80 percent between 1996 and 2016.

The analysis also found declines in the disparity between how often blacks are sentenced to prison compared to whites.

While many studies have noted the differences in the sentencing of blacks and Hispanics compared to whites, this analysis is one of the first to examine how this has changed over time, said Ryan King, co-author of the new work and professor of sociology at The Ohio State University.

King said the findings surprised him.

"Before we did this analysis, I thought the racial and ethnic gap would stay pretty flat or maybe even increase slightly," he said.

"These results show we have a reason for optimism. I don't want to be a Pollyanna. But if our goal is to have an equitable criminal justice system, we should acknowledge the progress that has been made, while being mindful that there still is a gap."

King conducted the analysis with Michael Light, associate professor of sociology and Chicano/Latino studies at the University of Wisconsin-Madison. They presented their results Aug. 13 in New York City at the annual meeting of the American Sociological Association.

Some of the results were also reported earlier in *Crime and Justice: A Review of Research*.

The researchers used three data sets that collectively include more than 2 million criminal cases dating back to the 1980s or 1990s, depending on the source.

The data sets are federal sentencing data from 1992 to 2016; Minnesota Sentencing Guideline Commission data from 1981 to 2017; and State Court Processing Statistics data between 1990 and 2009, which consists of data from large urban counties in 25 states across the country.

The three [data sets](#) are quite different, but "they all tell a pretty consistent story—not identical, but similar," King said.

"I think what surprised me most was the trend in the federal system and how much it has changed since about 2009," he said.

In 1992, blacks were sentenced to roughly 27 more months in prison than whites, increasing to a difference of 42 months in 1996. Since then, the difference has dropped dramatically. In 2016, the gap was only eight months—an 80 percent reduction from 20 years earlier.

But other statistics also showed improvement, such as a reduction in the race gap relating to the probability of going to prison rather than getting probation or another kind of sentence.

In 1996, blacks in the federal system were nearly 14 percent more likely

to receive a [prison sentence](#) than were whites. That gap was halved, to about 7 percent, in the mid-2000s.

The researchers examined other ways of looking at sentencing trends to see if they also showed a decline in the [racial gap](#).

In one analysis, King and Light examined what is called the presumptive sentence. The federal system and some states give judges guidelines to follow when determining what the appropriate or typical sentence should be for a particular crime, taking into account factors such as the severity of the crime and the perpetrator's criminal history.

They found that in 1992, whites in the federal system received only 81 percent of the recommended prison sentences on average, while blacks received 90 percent of their presumptive sentences—a 9 percent difference. That difference shrunk slightly—to 6 percent—by 2016, results showed.

The results for Hispanics were more complex and reflected a tale of two groups: citizens and noncitizens.

"When you look at the sentencing disparities between Hispanics and whites, overall they are very large. But when you pull out the noncitizens and look only at citizens, it tells a different story," King said.

Hispanics, including non-citizens, were 17 percent more likely than whites to be incarcerated relative to their presumptive sentence in 1992 in the federal system, increasing to 26 percent in 2016.

But if you look only at U.S. citizens, the disparity is much smaller and trending toward more equality with whites, King said.

"Excluding immigration offenses, being a Hispanic noncitizen greatly

increases the probability of going to prison for the same crime compared to Hispanic citizens," he said.

This trend started long before the Trump administration, King noted.

The gap in [sentence](#) length between non-Hispanic whites and Hispanics has consistently stood at 5 percent or less, and by 2016 there was practically no disparity between the groups in the federal system.

Several factors may have contributed to the decline in the racial sentencing gap, according to King.

On the federal level, the election of Barack Obama in 2008 and appointment of the first black attorney general likely played a role.

The Fair Sentencing Act of 2010, which reduced the disparity in sentences for crack versus powder cocaine, was also a key, because blacks were much more likely to be convicted under the much harsher crack-cocaine penalties.

But the data from the Minnesota court system and the State Court Processing Statistics show the progress in reducing the gap goes beyond these federal trends.

"It isn't just the result of federal policy changes and decisions by key people in powerful positions," King said. "There's more contributing to this trend."

One contributor may have been more media attention to the racial gap issue, particularly after 2000. That message reached the legal community.

For example, the Minnesota data showed that, over time, judges were

increasingly giving sentences to blacks that were shorter than the guidelines recommended.

"I think it may have been changes in judicial norms. Judges don't want racial disparities. They may have observed it happening and made adjustments along the way, trying to be more equitable," King said.

But the research results don't mean that there isn't work yet to be done, he said.

"We've come a long way in the United States, but the gap hasn't disappeared."

More information: Ryan D. King et al. Have Racial and Ethnic Disparities in Sentencing Declined?, *Crime and Justice* (2019). [DOI: 10.1086/701505](https://doi.org/10.1086/701505)

Provided by The Ohio State University

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