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## An Assessment of Sentencing Disparities among American Indians within the Eighth, Ninth, and Tenth Federal Circuit Courts

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An Assessment of Sentencing Disparities among American Indians within the Eighth,  
Ninth, and Tenth Federal Circuit Courts

by

Makenzie Laron Aaby

A thesis submitted in partial fulfillment of the  
requirement for the degree of

Master of Science  
in  
Criminology and Criminal Justice

Thesis Committee:  
Ryan M. Labrecque, Chair  
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Portland State University  
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## Abstract

Assessing the effect of race on crime is an important topic of criminology and criminal justice research. Prior investigations have sought to uncover if racial disparities exist within certain aspects of the criminal justice system, such as arrests, trials, and sentencing. The existing scholarship, however, has largely focused on assessing differences between Black and Hispanic offenders in relation to White offenders. There has been little academic exploration to examine if racial disparities exist among American Indian offenders during criminal justice processing. To address this gap in knowledge, this study analyzes data collected from the United States Sentencing Commission to assess if American Indians receive different sentencing outcomes, when compared to other racial groups. The findings from a series of binary logistic and ordinary least square regression analyses suggest that American Indians are sentenced to prison more often than White, Black, and Hispanic offenders, but receive similar sentence lengths compared to Whites and shorter sentence lengths compared to Blacks and Hispanics. The implications of these results are discussed.

## Dedication

Nsayka łatwa k<sup>h</sup>apa lip<sup>h</sup>yi hilu-saliks•<sup>r</sup> pi nawita-wawa•<sup>r</sup>  
Shulchast xaxa?•<sup>r</sup> pi skukum  
łq'up uyxat•<sup>r</sup> hayash-t'əmanəwas k<sup>h</sup>apa kusax  
kimtəks ili?i-na?a•<sup>r</sup>  
tənəs laxw k<sup>h</sup>apa chxi

Nsayka k<sup>h</sup>anawi kaku-ixt, kakwa chakchak•<sup>r</sup> nsa mash-lup  
Uk miłayt, kakwa anqati  
Tipi? xalaql łəq'əł, nsa q<sup>h</sup>awaq•<sup>r</sup>  
Uk nsa shawash kəmtəks-yutlił

Bastən-man alta munk-hilu nsa ili?i  
Bastən-man wawa nsayka miłayt t'sipi

Nsayka wik kuri pi ipsət  
Mitxwit nsa pi miłayt-k<sup>h</sup>anumakwst  
Wik Bastən-man alta-əlqi t'səm  
Uk nsa shawash kəmtəks-yutlił

Nsa təmtəm, hayu miməlust  
Tilikum, łushmən pi tənəs k<sup>h</sup>ilay  
Ixtixit, khanawi ława miməlust  
k<sup>h</sup>apa Bastən-man lima

wawa skin-p<sup>h</sup>eynt•<sup>r</sup> łaska dret  
Nsayka wik palach hlu saliks  
łaska wik munk-huli nsa shawash kəmtəks-yutlił

-Spiritwind

A traditional prayer/poem, about Native American pride, remembering those who were lost, and to never give up.

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-Makenzie Aaby

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## Introduction

The criminal justice system is comprised of many working parts, and researchers have dedicated their time to investigating if differences exist at the law enforcement level (Beckett, Nyrop, & Pfingst, 2006; Smith & Alpert, 2007; Correll et al., 2007; Smith, Visher, & Davidson, 1984), the judicial level (Beicher & Spohn, 2005; Schlesinger, 2005; Franklin, 2013; Steffensmeier, Ulmer, & Kramer, 1998), and the correctional level (Blankenship et al., 2005; Braithwaite, Treadwell, & Arriola, 2005). Researchers have assessed for potential differences in these outcomes between groups, such as men and women (Braithwaite et al., 2005; Doerner, 2012; Mustard, 2001; Steffensmeier et al., 1998), the young and old (Mustard, 2001; Steffensmeier, Kramer, & Ulmer, 1995; Steffensmeier et al., 1998), and minorities and whites (Mustard, 2001; Wilmot & DeLone, 2010; Steffensmeier et al., 1998). Although it is important to assess differences in criminal justice processing outcomes between all of the potential subgroups, one area of particular focus has been on race and sentencing.

Current scholarship on race and sentencing tends to suggest that racial minorities (e.g. Blacks and Hispanics) receive a more severe criminal sentence as compared to Whites (Mitchell, 2005; Wu, 2016). This research has predominately focused on Black, Hispanic, and White offenders and how the former two are treated differently than the latter. Leaving other racial groups, such as American Indians, underrepresented in research. Focal concerns theory, is one theory, that has been used to explain sentencing differences between Black, Hispanic, and White offenders, and could possibly apply to American Indians. Using focal concerns theory as a theoretical framework, it is possible



that American Indians may be treated differently than other races across the criminal justice system. This study focuses on assessing one aspect of the criminal justice processing, the criminal sentencing decision making. More specifically, this study uses sentencing data collected from the United States Sentencing Commission to test if American Indians are sentenced more often and for longer periods of time than other races in the eighth, ninth, and tenth federal circuit courts.<sup>1</sup>

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<sup>1</sup> These circuits include Alaska, Arizona, Arkansas, California, Colorado, Guam, Hawaii, Idaho, Iowa, Kansas, Minnesota, Missouri, Montana, Nebraska, New Mexico, North Dakota, Northern Mariana Island, Oklahoma, Oregon, South Dakota, Utah, Washington, and Wyoming.

## Background

### Race and Crime

Race and crime are undoubtedly intertwined in the United States (Crutchfield, Fernandes & Martinez, 2010; Mieder, 1993). Research on crime and justice suggests racial and ethnic minorities are treated differently across the entirety of the criminal justice system. Studies reveal, for example, that racial and ethnic minorities (primarily Blacks and Hispanics/Latinos) are treated more severely by criminal justice actors, when compared to Whites (Crutchfield et al., 2010; Franklin, 2015; Mitchell, 2005; Wu, 2016). Punitive treatment appears to be delivered at all phases of the criminal justice processing, including by police officers at time of arrest (Beckett, Nyrop, & Pfingst, 2006; Smith & Alpert, 2007; Correll et al., 2007; Smith, Visher, & Davidson, 1984); by prosecutors during plea deals and trials (Beicher & Spohn, 2005; Schlesinger, 2005), and by judges at sentencing (Franklin, 2013; Steffensmeier et al., 1998; Everett & Wojtkiewicz, 2002). Other research, however, suggests such disparities do not exist, or are less severe, when other legally relevant factors (e.g., criminal history, multiple counts, offense type) are considered (Mitchell, 2005; Wu, 2016).

Researchers seek to uncover reasons for the differences. Scholars suggest the differences may be the result of more extensive criminal records, unemployment and poverty, or judicial biases at trial (Steffensmeier et al., 1998; Roberts, 1997; Roberts, 2008; Fern, 2007). One popular theoretical perspective to explain these differences is focal concerns theory (Steffensmeier et al., 1998), which examines judicial discretion during sentencing. Focal concerns theory contends judges should make sentencing

decisions based on three factors: (1) blameworthiness and culpability of offenders, (2) desire to protect the community, and (3) concerns and consequences (Steffensmeier et al., 1998). While such considerations are ideal, court officials rarely have the time, or information, to adequately evaluate defendants regarding focal concerns and base decisions, instead, on the concept of bounded rationality (Steffensmeier et al., 1998; Albonetti, 1997). Such exigencies may create perceptual short hands, resulting in using readily available information, such as, criminal history, offense type, and the defendant's cooperation, when making sentencing decisions (Steffensmeier et al., 1998).

Focal concerns theorists also suggest racial stereotypes may play a role in sentencing resulting in some defendants being treated differently (Steffensmeier et al., 1998). In addition, other factors such as sex, race, and ethnicity frequently play a role in the decision-making process for judges (Steffensmeier et al., 1998). Research on focal concerns theory suggests female, older, and White non-foreigner defendants tend to receive shorter sentences (van Wingerden, van Wilsem, & Johnson, 2016; Demuth, 2003; Demuth & Steffensmeier, 2004; Steffensmeier & Demuth, 2006). Additional studies also reveal information readily available (i.e. criminal history, multiple counts, and the defendants cooperation at trial) for judges frequently influences whether the defendant is incarcerated and the sentence length (Johnson, 2006). Johnson (2003) finds that race, more specifically minority status, affects sentencing outcomes at a higher rate than legal variables.

The United States government sought to try and find a way to limit judicial discretion and create sentencing guidelines. The Sentencing Reform Act of 1984 was

introduced to increase uniformity in sentencing. The act creates mandatory minimum sentencing guidelines, to limit judges' discretionary sentencing power. In 2005, the *United States v. Booker* decision changed the federal sentencing guidelines. In a majority decision, the United States Supreme Court struck down the federal sentencing guidelines, and allowed judges to use discretion in sentencing lengths, while referencing a wide range of factors, including criminal history, offense type, multiple counts, and other legal relevant measures. Yang (2015) examines United States Sentencing Commission data from 1994 to 2009, pre- and post-Booker sentencing outcomes for Black, Hispanic, and White criminal defendants and finds there is a 6% increase in sentencing after the Booker ruling, for Blacks and Hispanics, compared to White offenders. While research has been conducted both in the pre- and post-Booker era, there is a lack of research in following the Booker decision which includes White, Black, Hispanic, and American Indian offenders.

### **American Indians and Sentencing**

American Indians comprise approximately 3% of the United States federal prison population, while only accounting for around 1% of the United States population (Franklin, 2013). While much of the academic literature existing on race and crime focuses on Black, Hispanic, and White offenders, there remains an inadequate amount of research on American Indians (Wilmot & DeLone, 2010). Existing research on American Indians and crime is limited to studies on tribal land (e.g. Luna-Firebaugh & Tippeconnic Fox, 2014; Smith, 2010), prison violence (Berg & DeLisi, 2006), and juveniles (Luna-Firebaugh & Tippeconnic Fox, 2014), with a few studies on American Indians and

sentencing (see however, Alvarez & Bachman, 1996; Wilmot & DeLone, 2010; Franklin, 2013).

According to focal concerns theory, racial stereotypes play a role in sentencing because they may be used to inform the blameworthiness, culpability, and dangerousness of the offender. For example, one stereotype for Blacks is they are aggressive, violent, and are prone to criminal behavior, which could result in judges perceiving Black defendants as being more dangerous and threatening to society (Steffensmeier et al., 1998). A stereotype that may be used for American Indians is that they are drunks, uncivilized and behave as savages (Alvarez & Bachman, 1996; Mieder, 1993). American Indians are considered to be genetically predisposed to alcohol use and abuse, resulting in widespread criminal activity (Leiber et al., 2007). Judges may therefore be more likely to sentence American Indians in order to get them away from alcohol and protecting the community from drunken outbursts. Other stereotypes suggest American Indians are intrigued with warfare and are predominantly interested in bloodshed, cruelty, and outrage. This belief might cause judges to see them as unable to alter their dangerous behaviors. Stereotypes, like those mentioned above, and the substantial oppression American Indians have faced over the years, have led to isolation and cultural barriers between races (Osler, 2015; Alvarez & Bachman, 1996; Wilmot & DeLone, 2010). Given these stereotypes, it is possible that American Indians may be treated more severely than Whites, and other racial minority offenders across many criminal justice situations, including sentencing decisions (Alvarez & Bachman, 1996; Wilmot & DeLone, 2010).

Literature on American Indians and sentencing is not common, but indicates that disparities in sentencing may exist (Alvarez & Bachman, 1996; Wilmot & DeLone, 2010; Franklin, 2013). For example, Alvarez and Bachman (1996) reports that American Indians who were convicted for burglary or robbery were nearly six times as likely to receive longer sentences compared to Whites in Arizona. Another investigation in Minnesota concludes American Indians received more punitive sentencing decisions at the front and back ends of the criminal justice process (Wilmot & DeLone, 2010). Furthermore, a federal district courts study reveals American Indian offenders are incarcerated 37% more often and receive an average of 4% longer sentences than White offenders (Franklin, 2013). The same study finds that young American Indian males are even more disadvantaged when examining decisions of incarceration, though they are treated more leniently in sentence lengths, compared to White offenders (Franklin, 2013).

Research on American Indians and sentencing has several limitations. Most research conducted on American Indians and sentencing uses data sets from more than 10 to 15 years ago (Alvarez & Bachman, 1996; Wilmot & DeLone, 2010; Franklin, 2013), causing them to lack a generalizability for current racial sentencing differences. Research on American Indians is also jurisdictionally limited, with most conducted at the state level (Alvarez & Bachman, 1996; Wilmot & DeLone, 2010), or district level (Franklin, 2013), studies that focus on the circuit level are seemingly non-existent. There have been, however, many calls for more research in this area (Alvarez & Bachman, 1996; Wilmot & DeLone, 2010; Franklin, 2013).

## **Current Study**

Existing research on race and crime, especially on race and sentencing focusing on Black, Hispanic, and White criminal defendants, suggests there are serious negative effects on racial minorities. Focal concerns theory has been used to explain why stereotypes may lead to racial disparities among Black and Hispanic offenders at sentencing. I argue that focal concerns theory is also applicable to American Indians and advance the notion that American Indian stereotypes, such as barbaric, brutal, and violent nature, may also lead to worse sentencing outcomes for American Indians. By using focal concerns theory as a guide, the goal of this study is to evaluate sentencing disparities among multiple races, including American Indians, Blacks, Hispanics and White criminal defendants. More specifically, I propose the following two hypotheses:

*Hypothesis One: American Indian, Black and Hispanic criminal defendants will be sentenced more severely than White criminal defendants, net of legal and extra-legal factors.*

*Hypothesis Two: Compared to White criminal defendants, American Indian defendants will be sentenced more severely than Black and Hispanic criminal defendants.*

## Method

To evaluate these two hypotheses, I analyze data collected by the United States Sentencing Commission (USSC). The USSC is an independent agency that operates within the judicial branch of the United States federal government, that tries to reduce sentencing disparities and promote transparency and proportionality in sentencing. The USSC also continuously creates and monitors sentencing guidelines while also assisting other branches of government develop effective and efficient crime policies. All the data that is collected by the USSC is free of identifying information and is publicly available online yearly. This data includes demographic information on cases, which is useful for examining sentencing outcomes by racial and ethnic groups. I examine sentencing differences within the eighth, ninth, and tenth federal circuit court for the fiscal year of 2016.<sup>2</sup> The jurisdictional focus is important because little empirical attention has been paid to sentencing differences within circuit courts generally (Franklin, 2013; Crutchfield, Bridges, & Pitchford, 1994). Furthermore, these four circuits were selected because they have the highest proportions of American Indians, which is necessary to conduct the empirical analyses described below.

Immigration offenses are excluded in this investigation because American Indians are United States citizens and could not be convicted of an immigration offense.<sup>3</sup> The final sample has 11,443 individuals who were sentenced for felony and misdemeanor

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<sup>2</sup> The following states are included within circuit eight, nine, and ten: Alaska, Arizona, Arkansas, California, Colorado, Guam, Hawaii, Idaho, Iowa, Kansas, Minnesota, Missouri, Montana, Nebraska, New Mexico, North Dakota, Northern Mariana Island, Oklahoma, Oregon, South Dakota, Utah, Washington, and Wyoming.

<sup>3</sup> This study excluded 13,023 cases that involved illegal aliens and 9,144 immigration cases.



crimes in the eight, ninth, and tenth federal circuits. Approximately 42% of the sample are White, 21% are Black, 23% are Hispanic, and 10% are American Indian (see Table 1).

### **Dependent Measures**

There are two sentencing decision points made in each case. The first is whether or not the defendant is sentenced to prison. This *incarceration* variable is coded 1 for yes and 0 for no. Second, once a decision to incarcerate an offender is made, the judge must also determine the length of the sentence. *Sentence length* is coded as a continuous variable measured in months. This variable was capped at 470 months (the length of a life sentence) and naturally logged to correct for a skewed distribution (see also Franklin 2013; Deorner & Demuth, 2010).

### **Independent Measures**

The main independent variable in this study is race. Racial and ethnic variables were combined to allow for the comparison of *White, Black, Hispanic, and American Indian* offenders.<sup>4</sup> If the offender indicated their ethnicity was Hispanic or Latino, they were categorized as Hispanic. Race is coded as a series of dummy variables (coded 1 for yes; 0 for no) to identify if the offender is White, Black, Hispanic, or American Indian.

Several legal measures were introduced into the analysis to assist in isolating the independent effects of race and ethnicity on the dependent variables. *Minimum Sentence* is a continuous variable measured in months, that measured the mandatory minimum sentence for the crime that is recommended by federal guidelines. This variable was

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<sup>4</sup> Due to the racial composition of the circuits, Asian offenders (<3%) were excluded due to few cases.

naturally logged to correct for a skewed distribution. *Multiple Counts* is a dichotomous variable measuring if the defendant was convicted of one count (coded as 0) or multiple counts (coded as 1). *Prior Criminal History* is a dichotomous variable measuring if the offender had criminal history points applied to their sentence (coded 1 for yes; 0 for no). *Offense Type* is a series of dummy variables (coded 1 for yes; 0 for no) to identify if the offender was convicted of a person crime (e.g., murder, assault, robbery), property crime (e.g. arson, burglary, auto theft), drug crime (e.g. trafficking drugs, manufacturing drugs, simple possession), white collar crime (e.g. fraud, tax offenses, extortion, forgery), weapon crime (e.g. firearm use, firearm possession, firearm trafficking), sex crime (e.g. sexual abuse, child pornography), and all other offenses (e.g. gambling, prison offenses, wild life offenses).

A series of dummy variables was also created (coded 1 for yes; 0 for no) to track if judges followed the federal sentencing guidelines or departed from it. *Above guideline* accounts for sentences given that were above the federal sentencing guidelines, regardless of the reason. *Below guideline* accounts for sentences given that were below the federal sentencing guidelines, regardless of the reason. *Significant assistance departure* accounts for when the judge sentences below the guideline range due to the defense assisting other federal cases. *Early disposition departure* accounts for when the judge sentences below the guideline range due to prompt cooperation of the defendant. *Government departure* accounts for when a judge sentences below the guideline range for cases not under significant assistance departure and early disposition departures, where the defendant

assisted the government. *Within Range* accounts for cases where the judges sentenced within the federal guidelines.

In addition to legal measures, this study also incorporates a few extra-legal measures to assist with the isolation the independent effects of race and ethnicity on the two dependent variables. *Age* is measured as a continuous variable in years from birth year, at the time of sentencing. *Male* is a dichotomous variable (coded 1 for male; 0 for female). *Education* is coded as a series of dummy variables (coded 1 for yes; 0 for no), comparing less than high school diploma, college, and high school graduate or GED. *Circuit*, is coded as a series of dummy variables (coded 1 for yes; 0 for no) to compare federal circuit courts 8, 9, and 10.

### **Analysis**

The statistical analyses in this study are carried out in three steps. First, this study compares the descriptive characteristics of the sample across the different racial categories and the entire sample. I also conduct a bivariate correlation matrix with all of the variables in this study (see Appendix). Second, a series of binary logistic regression analyses was conducted using the dependent variable of incarceration in four models. Then, a series of ordinary least square regression analyses using the continuous dependent variable of logged sentence length in four separate models. The first model, or base model, includes only racial information, the second introduces legal measures into the model, the third introduces extra-legal measures, and fourth model also controls for the sentencing circuit. The four separate models are used to provide an initial baseline of

racial disparities, to evaluate the if the presence of legal, extra-legal, and circuit factors explain differential treatment.

## Results

Descriptive statistics for the full sample of offenders as well as racial subsamples are presented in Table 1. A correlation matrix comparing the racial subsamples to the dependent and independent variables is presented in the Appendix. Table 1 shows around 86% of the offenders are receiving a prison sentence, compared to those receiving alternative sentences (i.e. probation and parole, house arrest, and electronic monitoring). American Indian offenders, compared to White offenders have a higher percentage of receiving a prison sentence (89% and 83%, respectively), however, American Indian offenders have a lower percentage than both Black (90%) and Hispanic offenders (90%). When looking at sentence length, the average length for all offenders was 40 months. American Indian offenders average sentence length was shorter than White offenders (32 months and 41 months, respectively), while also being shorter than the average sentence length for Black (46 months) and Hispanic offenders (37 months).

Table 1  
*Descriptive Statistics for the Total Sample and Racial/ethnic Subsamples*

	Total ( <i>n</i> = 11,443)	White ( <i>n</i> = 4,817)	American Indian ( <i>n</i> = 1,088)	Black ( <i>n</i> = 2,409)	Hispanic ( <i>n</i> = 2,656)
	Mean (SD)	Mean (SD)	Mean (SD)	Mean (SD)	Mean (SD)
<b>Dependent Variables</b>					
Incarceration	.86 (.34)	.83 (.38)	.89 (.31)	.90 (.30)	.90 (.30)
Ln Sentence Length <sup>a</sup>	3.69 (1.13)	3.72 (1.18)	3.46 (1.16)	3.82 (1.04)	3.61 (1.06)
<b>Independent Variables</b>					
<i>Legal Measures</i>					
Ln Minimum Sentence	3.90 (1.13)	3.93 (1.23)	3.61 (1.20)	3.91 (1.05)	4.02 (.97)
Multiple Counts	.20 (.40)	.21 (.41)	.14 (.35)	.23 (.42)	.18 (.39)
Prior Criminal History	.85 (.36)	.82 (.38)	.94 (.24)	.95 (.22)	.79 (.41)
Offense Type					

Person	.07 (.25)	.04 (.19)	.35 (.48)	.04 (.19)	.03 (.17)
Property	.02 (.15)	.03 (.16)	.03 (.18)	.02 (.13)	.01 (.11)
Sex	.08 (.27)	.13 (.34)	.13 (.34)	.04 (.19)	.02 (.14)
Weapon	.18 (.39)	.16 (.37)	.11 (.32)	.35 (.49)	.13 (.33)
Drug	.39 (.49)	.33 (.47)	.19 (.39)	.32 (.47)	.66 (.48)
White Collar	.18 (.38)	.23 (.42)	.05 (.21)	.18 (.38)	.11 (.31)
Other	.08 (.27)	.09 (.28)	.14 (.35)	.07 (.25)	.05 (.21)
<b>Sentencing Guidelines</b>					
Within	.35 (.48)	.34 (.48)	.47 (.50)	.44 (.50)	.24 (.43)
Above	.03 (.17)	.03 (.16)	.07 (.26)	.04 (.20)	.02 (.13)
Below	.26 (.44)	.28 (.45)	.22 (.41)	.26 (.44)	.22 (.41)
Significant					
Assistance	.14 (.35)	.16 (.36)	.06 (.24)	.11 (.31)	.15 (.36)
Early					
Disposition	.06 (.24)	.02 (.13)	.01 (.10)	.01 (.09)	.23 (.41)
Government	.16 (.37)	.18 (.38)	.18 (.38)	.14 (.35)	.16 (.37)
<b>Extra-Legal Measures</b>					
Age	37.48 (12.043)	41.37(12.574)	34.02 (10.480)	35.39 (10.538)	33.07(10.403)
Male	.81 (.39)	.80 (.40)	.81 (.40)	.88 (.33)	.77 (.42)
<b>Education</b>					
Non-High School					
Graduate	.26 (.44)	.15 (.36)	.37 (.48)	.30 (.46)	.41 (.49)
High School Graduate /					
GED	.41 (.49)	.43 (.50)	.43 (.50)	.42 (.50)	.37 (.48)
College	.33 (.47)	.42 (.49)	.20 (.40)	.29 (.45)	.22 (.41)
<b>Circuits</b>					
8	.35 (.48)	.41 (.49)	.35 (.48)	.54 (.50)	.11 (.31)
9	.47 (.50)	.39 (.49)	.48 (.50)	.31 (.46)	.67 (.47)
10	.19 (.39)	.20 (.40)	.17 (.38)	.15 (.36)	.22 (.41)

Note. <sup>a</sup>n= 9,566  
Ln= natural log

Table 1 also shows that one in five of all offenders were charged with multiple counts, and more than four out of five offenders had a prior criminal history. The most frequent sentence type was drug crimes, followed by weapon and white collar crimes for the entire sample. While one out of every three American Indian offenders were

convicted of person crimes, less than one in 20 Black, Hispanic, and White offenders were convicted of the same crime. The second leading offense type for American Indians following person crimes, was drug crimes with less than one in five being convicted. For both White and Hispanic offenders drug crimes was the leading offense type, with one third of White criminal defendants, and two thirds of Hispanic criminal defendants be convicted. For Black offenders, the highest proportion, just over one third, were convicted of weapon crimes.

Roughly a third of offenders from the entire study was sentenced with the federal guidelines and six out 10 offenders were sentenced below the federal guideline, and very few were sentenced above. For American Indian offenders, however, around one out of 10 were sentenced above federal guidelines, the highest of all the races. Approximately a quarter of the entire sample did not finish high school, and one third went attended some form of college, while the rest of the study either finishing high school or obtained a GED. The average age for those sentence to federal prison was 37 years old for the entire study, however White offenders were older, and Hispanic offenders were the youngest.

Table 2 presents the series of binary logistic regression models that assess the influence of race on the incarceration decision. When looking at the base model, the odds ratio shows that American Indians are 83% more likely to be sentenced to prison when compared to White offenders. The odds ratio in Model 2 shows that American Indians offenders are 124% more likely to be sentence to prison as compared to White offenders. While American Indians odds ratio rose, the influences of race decreased for Black and

Table 2

*The Effects of Race on Incarceration (n = 11,443)*

Race <sup>a</sup>	Model 1			Model 2			Model 3			Model 4		
	b	SE	OR	b	SE	OR	b	SE	OR	b	SE	OR
American Indian	.61	.11	1.83***	.80	.17	2.24***	.66	.17	1.94***	.65	.17	1.91***
Black	.66	.08	1.93***	.25	.11	1.29*	.15	.12	1.16	.19	.12	1.21
Hispanic	.64	.07	1.90***	.31	.11	1.36**	.11	.11	1.12	.06	.12	1.06
<i>Legal Measures</i>												
Ln Minimum Sentence				1.78	.06	5.92***	1.76	.06	5.81***	1.75	.06	5.78***
Multiple Counts				.55	.12	1.74***	.58	.12	1.78***	.57	.12	1.76***
Prior Criminal History				.72	.10	2.06***	.60	.10	1.82***	.63	.10	1.88***
<i>Offense Type<sup>b</sup></i>												
Person Crimes				.10	.22	1.10	.03	.22	1.03	.00	.22	1.00
Property Crimes				-.32	.23	.73	-.27	.23	.77	-.30	.24	.74
Sex Crimes				.31	.29	1.37	.23	.29	1.26	.25	.29	1.28
Weapon Crimes				.17	.14	1.19	.01	.14	1.01	.01	.14	1.01
White Collar Crimes				-.19	.11	.83	-.02	.12	.98	-.05	.12	.95
Other				-.04	.14	.96	-.03	.15	.97	-.06	.15	.95
<i>Sentencing Guidelines<sup>c</sup></i>												
Above				1.46	.70	4.31*	1.34	.69	3.81	1.37	.69	3.94*
Below				-3.07	.15	.05***	-3.01	.15	.05***	-3.01	.15	.05***
Significant Assistance				-3.49	.17	.03***	-3.43	.18	.03***	-3.45	.18	.03***
Early Disposition				-2.88	.23	.06***	-2.91	.23	.05***	-3.07	.23	.05***
Government				-3.27	.16	.04***	-3.23	.16	.04***	-3.28	.17	.04***



Table 2 (Continued)

	Model 1			Model 2			Model 3			Model 4		
	<i>b</i>	SE	OR	<i>b</i>	SE	OR	<i>b</i>	SE	OR	<i>b</i>	SE	OR
<i>Extra-Legal Measures</i>												
Age				-.02	.00	.98***	-.02	.00	.98***	-.02	.00	.98***
Female				.45	.09	1.56***	.44	.09	1.56***	.44	.09	1.56***
<i>Education<sup>d</sup></i>												
Non-High School Graduate				.09	.11	1.09	.08	.11	1.09	.08	.11	1.09
College				-.24	.10	.79*	-.24	.10	.78**	-.24	.10	.78**
<i>Circuits<sup>e</sup></i>												
8							-.34	.10	.71***	-.34	.10	.71***
10							-.27	.11	.77**	-.27	.11	.77**
R <sup>2</sup>	.02			.49			.51			.51		

OR= Odds ratio

Ln= natural log

Note. <sup>a</sup>White was the reference group, <sup>b</sup>Drug Crimes was the reference group, <sup>c</sup>Within Guidelines was the reference group, <sup>d</sup>High School Graduate/GED was the reference group, <sup>e</sup>Circuit 9 was the reference group.\**p*<.05, \*\**p*<.01, \*\*\**p*<.001

Hispanic offenders when compared to White offenders. Results signify that offenders who were charged with multiple counts, had a prior criminal history and a longer minimum sentence were significantly more likely to be incarcerated. Offense types like property crimes had the lowest effect on being incarcerated, while person crimes, sex crimes, and weapon crimes had the highest effects.

Model 3 further incorporates the influence of legal measures, including age, sex and education level of the offender influences the incarceration decision. While the odds ratio for American Indians decreased from the previous model it remains significant, American Indians offenders are 94% more likely to be sentenced to prison compared to White offenders. Black and Hispanic offenders odds ration also decreased but both races are more likely to be sentenced to prison when compared White offenders (29% and 12%, respectively). Offenders who are younger, male and who did not graduate high school were more likely to be incarcerated.

Model 4 incorporates information regarding the circuit the offenders were sentenced. American Indian offender have an odds ratio of 91%. Model 4 shows that Hispanic offenders are 6% more likely to be sentenced to prison as compared to White offenders; and that Black offenders are 21% more likely to be sentenced to prison as compared to White offenders. The findings in the fourth model demonstrate that the disparate treatment between Hispanic and White offenders is almost fully accounted for by legal measures, extra-legal measures and the location of sentencing. While also showing that when compared to White offenders, American Indian offenders are almost

twice as likely to be sentenced to prison, which is higher than both Black and Hispanic offenders.

Model 4 also shows that offenders who are being convicted on multiple counts and have a prior criminal history are more likely to be sentenced to prison. While offense type did not produce significant results, if the offender was convicted of a sex or weapon crime they were more likely to be sentenced to prison, than if they committed a drug crime. The odds of being sentenced above federal guidelines increased and became significant. The findings also show that being a young male who did not attend college increases one's risk of being sentenced to prison. An offender is less likely to be sentenced to prison in circuit 8 and 10 when compared to circuit 9.

Table 3 displays the ordinary least square regression models for the effects that race has on the logged sentenced length. When looking at base model, American Indian offenders receive an 18% shorter logged sentence length, compared to White offenders. Black offenders received a logged sentence length 13% longer, and Hispanic offender received a logged sentence length that is roughly 8% shorter than White offenders. Model 2 shows an increase for American Indians, in the sentence length, and shows that they are treated statistically similar as White offenders. Model 2 also shows that offenders who have longer minimum sentences, multiple counts, and a prior criminal history are more likely to receive a longer logged sentence. Furthermore, offenders who are convicted of weapon crimes receive a longer logged sentence as compared to drug offenses, and offenders who are convicted of a sex crime receive, roughly, the same sentence length.

Model 3 further incorporates extra-legal measures into the model. In this model,

Table 3

*The Effect of Race on Sentence Length (n = 9,566)*

	Model 1			Model 2			Model 3			Model 4		
	<i>b</i>	SE	Exp( <i>b</i> )	<i>b</i>	SE	Exp( <i>b</i> )	<i>b</i>	SE	Exp( <i>b</i> )	<i>b</i>	SE	Exp( <i>b</i> )
<i>Race<sup>a</sup></i>												
American Indian	-.20	.04	.82***	.00	.03	1.00	.00	.03	1.00	.00	.03	1.00
Black	.13	.03	1.13***	.07	.02	1.07***	.06	.02	1.06***	.05	.02	1.05**
Hispanic	-.08	.03	.92**	.02	.02	1.02	.01	.02	1.01	.03	.02	1.03
<i>Legal Measures</i>												
Ln Minimum Sentence				.80	.01	2.22***	.79	.01	2.20***	.79	.01	2.20***
Multiple Counts				.21	.02	1.24***	.21	.02	1.24***	.22	.02	1.24***
Prior Criminal History				.20	.02	1.22***	.18	.02	1.20***	.18	.02	1.20***
<i>Offense Type<sup>b</sup></i>												
Person Crimes				-.05	.03	.95	-.06	.03	.94*	-.05	.03	.95
Property Crimes				-.20	.06	.82***	-.21	.06	.81***	-.21	.06	.81***
Sex Crimes				.00	.03	1.00	-.02	.03	.98	-.02	.03	.98
Weapon Crimes				.07	.02	1.07***	.04	.02	1.04*	.04	.02	1.05*
White Collar Crimes				-.22	.02	.80***	-.21	.02	.81***	-.20	.02	.82***
Other Crimes				-.22	.03	.80***	-.24	.03	.79***	-.24	.03	.79***
<i>Sentencing Guidelines<sup>c</sup></i>												
Above				.60	.04	1.83***	.60	.04	1.82***	.60	.04	1.81***
Below				-.55	.02	.58***	-.54	.02	.58***	-.54	.02	.58***
Significant Assistance				-.73	.02	.48***	-.72	.02	.49***	-.72	.02	.49***
Early Disposition				-.81	.03	.45***	-.78	.03	.46***	-.77	.03	.46***
Government				-.60	.02	.55***	-.60	.02	.55***	-.58	.02	.56***

Table 3 (Continued)

	Model 1			Model 2			Model 3			Model 4		
	<i>b</i>	SE	Exp( <i>b</i> )	<i>b</i>	SE	Exp( <i>b</i> )	<i>b</i>	SE	Exp( <i>b</i> )	<i>b</i>	SE	Exp( <i>b</i> )
<i>Extra-Legal Measures</i>												
Age				.00	.00	1.00	.00	.00	1.00	.00	.00	1.00
Male				.16	.02	1.18***	.16	.02	1.18***	.16	.02	1.18***
<i>Education<sup>d</sup></i>												
Non-High School Graduate				-.01	.02	.99	-.01	.02	.99	-.01	.02	.99
College				-.05	.02	.95***	-.05	.02	.95***	-.05	.02	.95***
<i>Circuits<sup>e</sup></i>												
8							.07	.02	1.07***			
10							-.05	.02	.95**			
R <sup>2</sup>				.01		.69	.69		.69			.69

Ln= naturally log

Note. <sup>a</sup>White was the reference group, <sup>b</sup>Drug Crimes was the reference group, <sup>c</sup>Within Guidelines was the reference group, <sup>d</sup>High School Graduate/GED was the reference group, <sup>e</sup>Circuit 9 was the reference group.\**p*<.05, \*\**p*<.01, \*\*\**p*<.001

American Indian offenders are still sentenced statistically similarly to White offenders. This model also shows that age has no significant effect of sentence length, and males have an 18% increase in logged sentence compared to females. In model 4, American Indian offenders are treated statistically similar to White offenders regarding the logged sentence length. While the length continued to decrease for Black offenders, it increased for Hispanic offenders. Black offenders receive a 5% longer sentence, whereas, Hispanic receive a sentence length 3% longer. The findings in the fourth model show that compared to White offenders, American Indian offenders are not sentenced differently in terms of length, while Black and Hispanic offenders receive slightly longer logged sentences when accounting for circuits, legal and extra-legal measures.

This model also shows that offenders with multiple counts and a prior criminal history were more likely to receive a longer logged sentence. Offenders who were convicted of a weapons crime were also more likely to receive a longer logged sentence than those convicted of a drug crime. Furthermore, offenders who were convicted of person or sex crimes, received nearly the same sentence as those convicted of drug crimes. In model 4, age did not appear to influence sentence length, yet male offenders had an 18% longer logged sentence length. Additionally, going to college decreased the logged sentence length compared to offenders who graduated high school or received the GED. Offenders who were convicted in circuit 8 are more likely to receive a longer logged sentence compared to those convicted in circuit 9. Whereas, offenders convicted in circuit 10 were likely to receive a shorter logged sentence as compared to the offenders who were sentenced in circuit 9.

## Discussion

Empirical findings from the study provide mixed support for the two hypotheses and reveal insightful patterns in sentencing for American Indian offenders. The results generally support hypothesis one, which states that American Indian, Black, and Hispanic criminal defendants will be sentenced more severely than White defendants, net of legal and extra-legal factors. A few other findings are worth highlighting, regarding hypothesis one. The first is that all three of the minority offender groups (American Indians, Blacks, and Hispanics) are found to be more likely to be sentenced at a higher rate when compared to White offenders. While American Indians are 91% more likely to be incarcerated, Blacks are 21% more likely, and Hispanics are 6% more likely to be sentenced to prison. The second finding worth mention (see table 3) for Black and Hispanic offenders is that they receive a longer sentence, 5% and 3% respectively, as compared to White criminal defendants.

Hypothesis two states American Indian criminal defendants will be sentenced more severely than Black and Hispanic criminal defendants, when compared to White defendants. Empirical findings show mixed support for this hypothesis. When it comes to the decision of incarceration, American Indians are treated sentenced to prison more often than White offenders, and the magnitude of this difference is larger than the one that exists between Black and Hispanic offenders when compared to White offenders. These results, however, also show that while American Indians are nearly twice as likely to be sentenced to prison compared to White offenders, this racial group receives statistically similar sentence lengths as White offenders.

As discussed earlier, Franklin (2013) conducted a study using USSC data for fiscal years 2006-2008, focusing on the potential sentencing differences of American Indians at the district level. The findings from the present study largely support and expand Franklin's (2013) although there are some important differences. Both studies find that American Indians are more likely to be sentenced to prison. However, while Franklin (2013) finds that American Indians receive longer sentences compared to Whites, the present study determines both American Indian and White offenders receive similar sentence lengths. Although the design of these two studies are not exactly the same, questions arise as to the potential causes for the differences in the results. The present paper suggests the federal sentencing process has not yet reached a point where race and ethnicity have no bearing on sentencing outcomes.

As shown in Table 1, American Indians have a higher proportion of offenders being convicted of person crimes, much higher than the other racial groups. Interestingly, Tribal jurisdiction and courts cannot prosecute or hold trials that involve felony crimes. While these charges and offenses would be handled at the state level for Black, Hispanic, and White criminal defendants, American Indians are transferred into federal court. This difference in criminal processing may attribute to the findings here related to sentence length.<sup>5</sup>

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<sup>5</sup> Both sets of regression analyses were run excluding person crimes to determine if American Indian's high proportion of person crimes is the cause of differential treatment. The full model of the ordinary least square regression finds that American Indians receive a 4% shorter sentence length compared to White offenders, while the full model of the binary logistic regression finds that American Indians have an odds ratio of 81% and are still nearly twice as likely to be sentenced to prison as compared to White criminal defendants.



In interpreting the results of this study, it is important to acknowledge the limitations of the study. First, this study examined only three circuit courts and results may not be generalizable to all sentencing jurisdictions.<sup>6</sup> Future studies should incorporate all 13 circuits to examine disparities across the nation. Second, there is a limitation on data available for testing. The study relied on secondary information, which focuses only on offenders and sentencing decisions. Future research should use data collected in courtrooms to account for all actors involved in sentencing decisions. Third, this data only looks at federal crimes, which raise questions whether such differences may exist at other levels (e.g., state).

Despite these limitations, this study provides strong evidence that American Indians endure sentencing disparities within the three federal circuit courts examined here. It is not clear whether these differences apply to differently among Tribal groups residing in the United States. Future studies on American Indians and sentencing should be more in-depth and qualitative, in nature, by attempting to acknowledge diversity within American Indian population. The USSC gathers sentencing decision data in such a way it results in treating American Indians as a homogenous group, despite there being thousands of tribes, with numerous cultural variations between them.

Theoretical implications for the present study are limited because focal concerns theory was unable to be fully tested. Rather, focal concerns theory was used here only as a framework to anticipate differences. The study does not possess the data necessary to formally test the theory among American Indians. Even so, because data suggest focal

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<sup>6</sup> The 3 circuits include 21 states and 2 United States territories. Ten circuits which included 29 states and 2 United States territories were excluded.

concerns theory could apply to American Indians and explain sentencing differences, as it does for Black and Hispanic offenders. Future research should conduct qualitative research within courtrooms to determine judges' and other courtroom actors' dispositions and explanations for sentencing decisions. Future researchers should continue to examine differences between all racial groups regarding the sentencing process, while paying special attention to American Indians and other frequently-forgotten racial groups (e.g., Asian, Pacific Islander, Middle Eastern).

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## Appendix

Table 4  
*Intercorrelations for Racial Groups and Dependent/Independent Variables*

	White	American Indian	Black	Hispanic
<b>Dependent Variables</b>				
Incarceration	-.09**	.03**	.06**	.06**
Ln Sentence Length	.03**	-.05**	.07**	-.04**
<b>Independent Variables</b>				
<i>Legal Measures</i>				
Minimum Sentence	.04**	.01	-.01	-.03**
Multiple Counts	.01	-.05**	.03**	-.03**
Prior Criminal History	-.06**	.08**	.15**	-.08**
Offense Type				
Person	-.10**	.38**	-.06**	-.08**
Property	.03**	.02*	-.02**	-.04**
Sex	.15**	.06**	-.08**	-.12**
Weapon	-.05**	-.06**	.22**	-.08**
Drug	-.10**	-.14**	-.08**	.30**
White Collar	.11**	-.11**	.00	-.10**
Other	.02*	.07**	-.03**	-.07**
Sentencing Guidelines				
Within	-.02*	.08**	.09**	-.13**
Above	-.03**	.08**	.03**	-.05**
Below	.05**	-.03**	.01	-.05**
Significant Assistance	.05**	-.07**	-.04**	.02*
Early Disposition	-.15**	-.07**	-.11**	.35**
Government	.03**	.01	-.03**	.00
<i>Extra-Legal Measures</i>				
Age	.28**	-.09**	-.09**	-.20**
Male	-.02	.00	.09**	-.06**
Education				
Non-High School Graduate	-.22**	.08**	.04**	.18**
High School Graduate / GED	.04**	.01	.00	-.05**



College	.17**	-.09**	-.04**	-.12**
<i>Circuits</i>				
8	.11**	.00	.21**	-.27**
9	-.13**	.01	-.16**	.23**
10	.04**	-.01	-.05**	.04**

Note. \* p<.05, \*\* p<.01  
Ln= natural log

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Research Integrity (Research & Strategic Partnerships)  
IRB (Human Subjects Research Review Committee)  
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Date: December 04, 2017

To: Ryan Labreque / Makenzie Aaby, Criminal Justice and Criminology



From: Lindsey Wilkinson, IRB Chair

Re: IRB review determination for your protocol # 174433, entitled: "Assessing if Sentencing Disparities Exist Among Native Americans and Alaska Natives within the Federal Circuit Courts."

**Notice of IRB Review and Determination - Initial Review  
Exempt Review Category 4; as per Title 45 CFR Part 46**

In accordance with your request, the PSU Research Integrity office, on behalf of the IRB (Human Subjects Research Review Committee), has reviewed and approved your protocol for compliance with PSU policies and DHHS regulations covering the protection of human subjects. Research Integrity has determined your protocol qualifies for exempt review and is satisfied that your provisions for protecting the rights and welfare of all subjects participating in the research are adequate. Please note the following requirements:

**Approval:** You are approved to conduct this research study after receipt of this approval letter, and the research must be conducted according to the plans and protocol submitted (approved copy enclosed).

**Consent:** Consent is waived as the project consists of secondary analysis of publicly available de-identified data.

**Changes to Protocol:** Any changes in the proposed study, whether to procedures, survey instruments, consent forms or cover letters, must be outlined and submitted to Research Integrity immediately. The proposed changes cannot be implemented before they have been reviewed and approved by Research Integrity.

**Adverse Reactions and/or Unanticipated Problems:** If any adverse reactions or unanticipated problems occur as a result of this study, you are required to notify Research Integrity office within 5 days of the event. If the issue is serious, approval may be withdrawn pending an investigation by the IRB.

**Completion of Study:** Please notify Research Integrity as soon as your research has been completed. Study records, including protocols and signed consent forms for each participant, must be kept by the investigator in a secure location for three years following completion of the study (or per any requirements specified by the project's funding agency).

If you have questions or concerns, please contact the Research Integrity office in Research & Strategic Partnerships at [hsrrc@pdx.edu](mailto:hsrrc@pdx.edu) or call 503-725-2227.