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# 2003

## Race and Juvenile Sentencing in Utah

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During 2002, the Utah Sentencing Commission analyzed the consistency rate of juvenile sentencing decisions with the Juvenile Sentencing Guidelines. The data collected for that analysis provides an opportunity to examine differences in outcome based upon the race of the juvenile offender.

The data in this analysis includes all juveniles sentenced by the Utah Juvenile Court between January 1999 and December of 2000. This assessment will focus on deviations from the sentencing guideline recommendation. However, this assessment is not continuing research regarding consistency between sentences and the matrix. Here, the guidelines are providing a way to compare outcomes for minority and non-minority offenders while controlling for differences in terms of offense history and severity of the current offense. This allows the analysis to “modestly” control for these two factors that are often used to explain why different offenders receive different levels of sanctions. The control is “modest” because the guideline matrix very broadly categorizes current offense types and also broadly summarizes a juvenile’s offense history.

Juveniles in the study are classified as minority or non-minority, with white juveniles being classified as non-minority and the remaining being classified as minority. **Aggravation** is defined as a sentence or recommendation that is for a higher level sanction than that recommended by the guideline. For example, the guideline recommends probation, and the sentence is for community placement. **Mitigation** includes cases where the opposite occurs. The juvenile receives a sanction

that is a lesser level sanction than that recommended by the guideline. This analysis begins with an examination of rates of aggravation and mitigation among minority/non-minority youth. Analysis then turns to an examination of aggravating and mitigating factors and their usage among minority/non-minority youth.

The analysis will examine probation officer recommendations and actual sentences, in terms of aggravation and mitigation to see if there are differences among minority and non-minority juveniles. This will be done while controlling for the influence of differing offense histories and severity of presenting offenses. The analysis will also examine whether there are differences within each sanction category.

Analysis will also evaluate whether the number of aggravating or mitigating factors imposed differ among minorities and non-minorities. Finally, we will examine the different aggravating and mitigating factors to see if any of the factors are imposed unevenly among minority and non-minority offenders. This will be the only issue questioning the integrity of the Juvenile Sentencing Guidelines. If it is found that certain factors may be applied unevenly among minorities and non-minorities, the Utah Sentencing Commission may consider, in light of this information, whether the factor has value. If it finds the factor’s value does not exceed the impact it may have on minority offenders, the Commission should seriously consider eliminating the factor.

Table 1 provides an overview of the juveniles sentenced during the two years under examination and what the guidelines recommended for these juveniles. There were a total of 11,386 juveniles sentenced. Of these 9,017 (79.2%) were non-minority youth and 2,369 (20.8%) were minority youth.

Of the over 11,000 guideline recommendations, 4,646 (40.8%) were for other sanction (e.g. fines, community service, restitution), 4,883 (42.9%) were for probation, 1,029 (9.0%) were for state supervision, 351 (3.1%) were for community placement, and 477 (4.2%) were for secure care. It is important to keep in mind that the guideline recommendation is calculated using the juvenile's offense history and the severity of the current offense. As such, the guidelines provide us with a way to control for these elements.

**Table 1: Guideline Recommendation and Minority Status**

			Minority Status		Total
			No	Yes	
Guideline Recommends	Other Sanction	Number of Juveniles	3,745	901	4,646
		Percentage	41.5%	38.0%	40.8%
	Probation	Number of Juveniles	3,819	1,064	4,883
		Percentage	42.4%	44.9%	42.9%
	State Supervision	Number of Juveniles	817	212	1,029
		Percentage	9.1%	8.9%	9.0%
	Comm Placement	Number of Juveniles	265	86	351
		Percentage	2.9%	3.6%	3.1%
	Secure Care	Number of Juveniles	371	106	477
		Percentage	4.1%	4.5%	4.2%
Total	Number of Juveniles		9,017	2,369	11,386
	Percentage		100.0%	100.0%	100.0%

the probation officer when all sanction categories are considered together.

In cases where the guideline recommended other sanctions, 25.2% of minority youth were recommended for an aggravated sanction by probation officers compared to 16.5% for the non-minority youth. The data indicates that minority youth who qualify for other sanctions are more likely than non-minority youth to receive an aggravated recommendation by the probation officer.

## Probation Officer Recommendations for Aggravation

The following examines cases where probation officers recommend a more restrictive sanction than the sentencing guideline recommends. The examination is specifically analyzing the relationship between aggravated sentence recommendation and the race of the juveniles involved.

Table 2 shows the proportion of minority and non-minority youth who were recommended for an aggravated sanction by the probation officer. Only the sanction categories that demonstrated statistically significant differences between minorities and non-minorities are shown. The first table shows the distribution for all sanction types combined. The other tables include the same for other sanction and probation guideline recommendations specifically.

Looking at all sanctions, 19.1% of the minority youth had a recommendation by the probation officer for an aggravated sanction compared to 13.4% of the non-minority youth. Statistical tests strongly indicate the minority youth are more likely than non-minority youth to have their guideline recommendation aggravated by

In the cases where the guidelines recommended probation, 16.4% of the minority juveniles had the probation officer recommend an aggravated sanction compared to 11.8% of the non-minority offenders. In this category of sanctions, minority youth were more likely than non-minority youth to receive an aggravated recommendation. There were no significant differences found between groups when looking at state supervision or community placement. Secure care cannot be aggravated as it is the most restrictive option reflected on the guideline.

**Table 2: Probation Aggravated Recommendation and Minority Status**

Probation Officer Aggravated: All Sanction Types Included				
		Minority Status		Total
		No	Yes	
PO Aggravated	Number of Juveniles	1,212	452	1,664
	Percentage	13.4%	19.1%	14.6%

Probation Officer Aggravated: Other Sanction				
		Minority Status		Total
		No	Yes	
PO Aggravated	Number of Juveniles	618	227	845
	Percentage	16.5%	25.2%	18.2%

Probation Officer Aggravated: Probation				
		Minority Status		Total
		No	Yes	
PO Aggravated	Number of Juveniles	452	175	627
	Percentage	11.8%	16.4%	12.8%

## Probation Officer Recommendations for Mitigation

The following examines cases where probation officers recommend a less restrictive sanction than the sentencing guideline recommends. The examination is specifically analyzing the relationship between mitigated sentence recommendation and the race of the juveniles involved.

**Table 3** shows the proportion of minority and non-minority youth who were recommended for a mitigated sanction by the probation officer. Probation is the only sanction included in the table, as it was the only type of sanction where a statistically significant difference was found between minorities and non-minorities.

Combining all types of sanctions, there were no statistically significant differences in probation officer recommended mitigation between minority and non-minority youth. For both groups, approximately 16% of the youth had their sentences mitigated (not shown in **Table 3**).

Looking to the table, non-minority youth were recommended for a sanction less restrictive than probation 24.4% of the time while minority youth received a similar recommendation 20.4% of the time. The difference between the groups is statistically significant. In this case, non-minority youth were more likely than minority youth to receive a recommendation for a mitigated, or lesser, sanction from the probation officer.

In no other category of sanction type (state supervision, community placement, or secure care) were there found any differences in mitigation among minority and non-minority youth. The category of other sanctions cannot be mitigated as it is the least restrictive sanction type enumerated on the guideline.

## Summary of Probation Officer Recommendations

In many instances, there was a relationship between the race of the juvenile and outcomes in terms of probation officers' recommendations for aggravation and mitigation. There were statistically significant differences in probation officer aggravated recommendations for all sanction types combined, all in the favor of non-minorities. Here, minority youth, while controlling for offense history and severity of presenting offense via the sentencing guidelines, were more likely than non-minority youth to receive a recommendation for an aggravated sanction.

**Table 3: Probation Mitigated Recommendation and Minority Status**

Probation Officer Mitigated: Probation				
		Minority Status		Total
		No	Yes	
PO Mitigated	Number of Juveniles	933	217	1,150
	Percentage	24.4%	20.4%	23.6%

This situation also holds true when looking specifically at recommendations that are aggravated up from other sanctions and probation. Together, these sanction types accounted for 83.7% of all juveniles included in this analysis. No differences were found with regard to state supervision or community placement.

Although there were no overall differences found with regard to probation officer mitigation recommendations, a difference was found with regard to probation recommendations, again in the non-minority offenders' favor. Non-minority offenders were more likely than minority offenders to receive a mitigated recommendation away from probation by the probation officer. Juvenile's qualifying for probation accounted for 42.3% of the juveniles in this analysis.

The findings in this section of the analysis are troubling, due to the consistency of the findings in favor of non-minorities. Further research in this area is needed to assist in determining whether the differences found are due to true differences in behavior and history between minorities and non-minorities, or whether subtle biases exist in the juvenile justice system.

## Hearing Officer Aggravates Sentence

This section of the analysis looks at the actual sentence imposed by the hearing officer, most commonly a Juvenile Court Judge. The sentences examined here are cases where the hearing officer imposes a sanction more restrictive than that recommended by the guidelines. Specifically, the analysis looks at the likelihood of minority youth having their sentences aggravated compared to non-minority youth.

**Table 4** shows aggravated sentences among all sanction types and aggravated sentences for those youth with a guideline recommendation for other sanction. These were the two categories examined where there were statistically significant differences between minorities and non-minorities.

In the categories where differences were found, minority youth were more likely to have their sentences aggravated above the guideline recommendation when compared to non-minority youth. Looking at all sanction types, 22.1% of minority youth had their sentences aggravated while 18.0% of non-minority youth had their sentences aggravated.

The category of other sanction was the only specific sanction type that revealed significantly different outcomes between minorities and non-minorities. In this case, minority youth who qualified for other sanctions were more likely than non-minority youth to have their sentences aggravated. Specifically, 31.7% of the minority youth had their sentences aggravated compared to 23.6% of the non-minority youth.

The sanction categories of state supervision and community placement did not reveal significant differences between the groups examined.

**Table 4: Hearing Officer Aggravated Sentence and Minority Status**

Hearing Officer Aggravated: All Sanction Types Included				
		Minority Status		Total
		No	Yes	
Sentence Aggravated	Number of Juveniles	1621	524	2145
	Percentage	18.0%	22.1%	18.8%

  

Hearing Officer Aggravation: Other Sanction				
		Minority Status		Total
		No	Yes	
Sentence Aggravated	Number of Juveniles	885	286	1171
	Percentage	23.6%	31.7%	25.2%

## Hearing Officer Mitigates Sentence

This section examines instances where the hearing officer sentences the youth to a sanction less restrictive than that recommended by the guideline. As shown in **Table 5**, the sanction categories of probation and state supervision were the two categories where significant differences were found in outcomes for minority and non-minority youth.

When looking at mitigation among categories of sanctions, differences were found with regard to youth who qualified for probation and state supervision. In both cases, non-minority youth were more likely to have their sentences mitigated than minority youth. In the case of probation, 39.6% of the non-minority youth had their sentences mitigated compared to 35.7% of the minority youth. In the case of state supervision, 50.8% of the non-minority youth had their sentences mitigated compared to 42.9% of minority youth. No difference was found between the groups for the sanction categories of community placement, secure care, or all sanction types combined.

## Summary of Hearing Officer Findings

Again some troubling patterns emerge when we examined outcomes for minority and non-minority youth in terms of actual sentences imposed compared to guideline recommendations. When looking at both aggravated and mitigated sentences, the differences found consistently favored the non-minority youth. In sanction categories where differences were found, minority youth were more likely to receive a harsher sentence while non-minority youth are more likely to receive a more lenient sentence.

Within the context of the guidelines, it is more difficult to explain these differences away by arguing minority youth simply have stronger offense histories or were brought to court on more serious charges. These are both accounted for in the sentencing guidelines. However, other aggravating and mitigating factors could be at play. The analysis will next examine their use among minority and non-minority youth.

**Table 5: Hearing Officer Mitigated Sentence and Minority Status**

Hearing Officer Mitigated: Probation				
		Minority Status		Total
		No	Yes	
Sentence Mitigated	Number of Juveniles	1511	380	1891
	Percentage	39.6%	35.7%	38.7%

  

Hearing Officer Mitigated: State Supervision				
		Minority Status		Total
		No	Yes	
Sentence Mitigated	Number of Juveniles	415	91	506
	Percentage	50.8%	42.9%	49.2%

## Assessment of Aggravating and Mitigating Factors

The Juvenile Sentencing Guidelines include a set of aggravating and mitigating factors. These factors attempt to provide additional considerations in individual sentencing decisions that may justify departure from the recommended sentence on the guideline matrix. The guideline includes 17 aggravating factors and 10 mitigating factors. This list is not exhaustive.

An analysis of these factors is important for several reasons. First, the factors can assist in explaining why, in some instances, minority youth were more likely to receive an aggravated sentence than non-minority youth, and why, in some instances, non-minority youth were more likely to receive a mitigated sentence than minority youth. Second, if specific factors are associated with minority or non-minority status, the Sentencing Commission may determine the factor is biased enough to merit removal from the guidelines.

**Table 6** shows the percentage distribution of minority and non-minority youth among the aggravating and mitigating factors where the differences were statistically significant. Consistent with previous findings, for all aggravating factors showing a significant difference between minority and non-minority youth, minority youth were more likely than non-minority youth to have the factor applied. Similarly, for the one mitigating factor showing significant difference, non-minority youth were more likely than minority youth to have the factor applied.

**Prior Violent Delinquent Conduct** is where the defendant has demonstrated, by his prior history of delinquency adjudications, a propensity for violent, delinquent conduct. Comparing groups, 4.2% of minority youth had this factor applied, and 2.1% of non-minority youth had this factor applied.

**Repetitive Delinquent Conduct** is adjudication for the same or similar offense on two or more previous,

**Table 6: Aggravating & Mitigating Factor Use Among Minority and Non-Minority Youth**

Aggravating Factors		
	Non-Minority	Minority
Prior Violent Delinquent Conduct	2.06	4.18
Repetitive Delinquent Conduct	11.20	15.58
Custody Status At Time of Offense	1.83	3.42
Supervision to Monitor Restitution	1.32	2.15
Lack of Amenability with Lesser Sanctions	7.27	10.85
Lack Attendance or Participation in Educational Programs	5.75	9.71
Probation Violations, contempts, etc.	3.49	5.57
Mitigating Factors		
Voluntary Redress or Treatment	2.60	1.48

separate occasions or a gross number of prior offenses. Comparing groups, 15.6% of minority youth had this factor applied, and 11.2% of non-minority youth had this factor applied.

**Custody Status At Time of Offense** means the offender was in the custody of the Division of Youth Corrections at the time the offense was committed. Comparing groups, 3.4% of minority youth had this factor applied, and 1.8% of non-minority youth had this factor applied.

**Supervision to Monitor Restitution** indicates a long period of supervision is necessary to monitor the offender's restitution responsibilities. Comparing groups, 2.2% of minority youth had this factor applied, and 1.3% of non-minority youth had this factor applied.

**Lack of Amenability with Lesser Sanctions** means the offender has demonstrated a lack of cooperation with lesser restrictive sanctions through violation or a prior or current period of probation. Comparing groups, 10.9% of minority youth had this factor applied, and 7.3% of non-minority youth had this factor applied.

**Lack of Attendance or Participation in Educational Programs** means at the time of the delinquent act, the juvenile has failed to attend or participate in school or other appropriate educational or vocational programs, without medical or other proper excuse. Comparing groups, 9.7% of minority youth had this factor applied, and 5.8% of non-minority youth had this factor applied.

**Probation Violations, Contempts, etc.** indicates the juvenile has probation violations, other contempt orders, or non-judicial actions that should be considered. Comparing groups, 5.6% of minority youth had this factor applied, and 3.5% of non-minority youth had this factor applied.

**Voluntary Redress or Treatment** (the only mitigating factor showing significant difference) means before adjudication the offender compensated or made a good faith effort to compensate the victim of the offense for any damage or injury sustained, or, before adjudication, the offender voluntarily sought professional help for drug/alcohol treatment, or any other recognized compulsive behavioral disorders related to the offense. Comparing groups, 2.6% of non-minority youth had this factor applied, and 1.5% of minority youth had this factor applied.

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Any number or aggravating or mitigating circumstances can be applied to any case. Additional analysis examined the number of factors applied to the adjudication to determine if there were differences among minority and non-minority youth. A significant difference was found regarding the application of aggravating factors, where minority youth had an average of 2.3 factors applied per adjudication, while non-minority youth had an average of 1.9 factors applied per adjudication. No difference was found with regard to the number of mitigating factors applied to minority and non-minority youth's cases.

## **Summary of Aggravating and Mitigating Factors**

There are differences in the application of aggravating and mitigating factors between minority and non-minority youth. The aggravating factors negatively affect minority youth, and mitigating factors positively affect non-minority youth. This makes previous findings more difficult to interpret. In one instance, it could be argued minority youth were different from non-minority youth based upon their aggravating characteristics, and this led to the finding that minority youth were more likely than non-minority youth to have their sentences aggravated. In another instance, it could be argued that the factors themselves are racially biased or that the factors were simply used to justify disproportionate departure from the guideline matrix.

Some of the aggravating factors, even if disproportionately applied, may be very relevant to public safety and justify a more intrusive intervention. These factors include prior violent delinquent conduct, repetitive delinquent conduct, custody status at the time of the offense, and probation violations/contempts/etc.

However, other factors are arguably tied to socio-economic factors that may be racially biased. The aggravating factors relevant here include supervision to monitor restitution and lack of attendance or participation in educational programs. The one mitigating factor found to be disproportionately applied, voluntary redress or treatment could, also be socio-economically biased against minority youth.

In sum, these are policy issues that should be addressed by the Utah Sentencing Commission. Further research could shed light on whether some of the factors are or are not used among minority and non-minority youth who are situated similarly. For example, issues such as prior violent delinquent conduct, repetitive delinquent conduct, and probation violations/contempts are comparable based upon a juvenile's offense history. Research could examine whether

there appears to be racial bias in the use of a factor when controlling for circumstances such as those previously stated.

## **Summary**

The bottom line is that both minority and non-minority youth should be treated similarly by the juvenile justice system. We would expect both to receive the guideline recommendation at the same rate, to receive aggravated sentences at the same rate, and to receive mitigated sentences at the same rate. The most common reasons for differences in outcome among offenders are severity of current offense and volume of offense history. Both of these issues are broadly accounted for in the juvenile guideline matrix. Other aggravating and mitigating factors that could account for difference in outcome are also included in the juvenile guideline. Looking to these assists in explaining differences in outcome among juveniles.

While we would expect minority and non-minority youth to receive similar outcomes, this research found that among various sanction types they did not. Where differences were found in rates of aggravated sanctions, the outcome negatively impacted minority offenders. Similarly, where differences were found in rates of mitigated sanctions, the outcomes positively impacted non-minority offenders. This is a strong indication of difference in treatment of minority and non-minority offenders.

When the analysis turned to an examination of aggravating and mitigating factors, which could assist in explaining the difference in treatment, we found that minority youth were more likely to have aggravating factors applied to their cases. In the seven aggravating factors where significant differences were found between minority and non-minority youth, the factor was used at a larger rate for minority youth. In the one mitigating factor where significant differences were found between minority and non-minority youth, the factor was used at a larger rate for non-minority youth. As a whole, this could explain the differences in sentencing outcome found between the groups. Additionally, minority youth, on average, have a larger number of factors applied when compared to non-minority youth. Based upon these factors, it could be argued that minority offenders truly are different than non-minority offenders, and we should not expect similar outcomes between groups.

However, this finding leads to additional questions that should be asked and further research that should be conducted. As pointed out, some aggravating and mitigating factors could be disproportionately used based upon socio-economic factors that are often tied to minority status. The Sentencing Commission must determine whether the value of these factors

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outweighs the potential impact on disproportionate sentence outcome. Other factors which, on their face, are not socio-economic can be reviewed via further research to determine if they are, in fact, being equally imposed. For example, data is available to dig deeper to see if both minority and non-minority youth who commit offenses while under custody status have the corresponding aggravating factor utilized at the same rate. Similar research could be conducted with regards to the aggravating factors of prior violent delinquent conduct, repetitive delinquent conduct, and probation violations/contempts/etc.

Another consideration is that the guideline matrix categorizes offense history categories and presenting offense in such a broad fashion as to not tightly control for them. Offense history on the matrix looks at the number of prior misdemeanors, felonies, person felonies, and firearm felonies. Presenting offense on the matrix categorizes offenses in terms of offense degree (1st, 2nd, 3rd, Class A, Class B, Class C) and whether the offense is against persons, property, or public order. It could be argued that these categories are too broad, meaning one offender with two prior felonies and presenting with a 2nd degree person felony may actually be different than an offender with the same history and presenting offense. For example, one may have two prior 2nd degree felonies while the other has two prior 3rd degree public order felonies. Both would land on the same cell in the matrix, but they may be considered different enough to warrant different treatment.

However compelling this argument may be, the guidelines were crafted with an agreement that categories were adequate to group offenders into sanction categories. Also, based upon the findings of this research, in order for this argument to be relevant, we would have to assume that in most situations minority offenders were those with the more serious felonies and more serious offense histories. This contention could also be the subject of further research.

Keeping in mind that the guideline matrix accounts for prior delinquent conduct in terms of number of prior misdemeanors, felonies, person felonies, and firearm felonies, one policy consideration is whether the aggravating factor of repetitive delinquent conduct is duplicative. Additionally, the aggravating factor of prior violent delinquent conduct also appears accounted for in the matrix by giving serious consideration to prior person felonies and prior firearm felonies. Again, it could be argued that some juveniles present with so many prior offenses that the matrix doesn't give them enough consideration. Although this situation is likely, the Sentencing Commission should consider whether its value as a factor outweighs its disproportionate usage against minority youth.

One final consideration is a look at how juveniles disperse across the guideline matrix. The matrix is comprised of 50 individual cells. However, current research shows that 69% of juveniles fall in only seven of those cells. Research also indicates that in comparing aggravation and mitigation, cases are more likely to be mitigated than aggravated. Finally, research also shows consistency between the matrix and actual sentences are actually quite low. Together these factors appear to indicate the guideline matrix, on a whole, does not adequately categorize juvenile offenders or make sanction recommendations judges feel comfortable following. It could be argued that sentencing is an individualized decision that cannot be simply quantified or summarized into a group of cells on a matrix. That being the case, those making sentencing decisions must consider issues beyond offense history and presenting offense. These other issues may also be what leads minority youth, in some cases, to be treated differently than non-minority youth.

Again, this is an issue the Sentencing Commission should examine. One of the benefits of sentencing guidelines is they assist in ensuring equal treatment among similarly situated offenders. Without guidelines, subtle biases can creep into sentencing decisions. Issues that may impact sentencing beyond those accounted for in the matrix may include whether English is spoken in the home, whether a parent is in the home after school, educational attainment. Although relevant, these issues could adversely impact minority youth and assist in explaining the outcomes found in this research.