

Sentencing in Michigan's 22nd Circuit Court



State Court Administrative Office

Summary

Black defendants who were sentenced between 2015 and 2019 in Michigan’s 22nd Circuit Court of Washtenaw County received higher sentencing guidelines scores compared to White defendants. Sentencing guidelines scores are a key piece of information to consider when comparing sentencing outcomes. Through Prior Record Variables (PRVs) and Offense Variables (OVs), judges are advised of past criminal history and information about how a crime was committed, and judges are required to consider this information in imposing a sentence.

A fair and equitable court system requires consistency in sentencing, regardless of a defendant’s race/ethnicity. However, in straddle cell cases, where sentencing types vary, the study found that sentencing scores do not fully account for differences in the percentage of defendants sentenced to prison.

Michigan Sentencing Guidelines

The State of Michigan developed a Sentencing Guidelines system to be used when imposing a sentence for a criminal case. Judges are required to determine the applicable guidelines range and take it into account when imposing a sentence. The State of Michigan Sentencing Guidelines Manual¹ provides instructions to criminal justice professionals on how to develop a recommendation for the type of sentence to be imposed along with a range of time, in months, for the minimum term of a prison sentence. The sentencing guidelines manual takes into consideration two factors: (1) defendant’s prior criminal history and (2) circumstances surrounding the offense. A set of questions related to the defendant’s prior criminal history are answered and a numerical score is calculated known as the Prior Record Variable score (PRV). A different set of questions related to the current offense are also answered and a numerical score is calculated known as the Offense Variable score (OV). The PRV and OV scores are then entered into the proper sentencing guidelines grid, based on the crime group of the offense, and a sentencing guideline cell is determined within the grid. That cell provides a recommended sentence type (intermediate, straddle, or prison) along with a range of time, in months, for the minimum term of a prison sentence, should a prison sentence be imposed. Finally, if a prison sentence is imposed, the minimum term will be set by the judge based on guidance from the range of time calculated using the sentencing guidelines manual. The maximum term is determined by state statute.

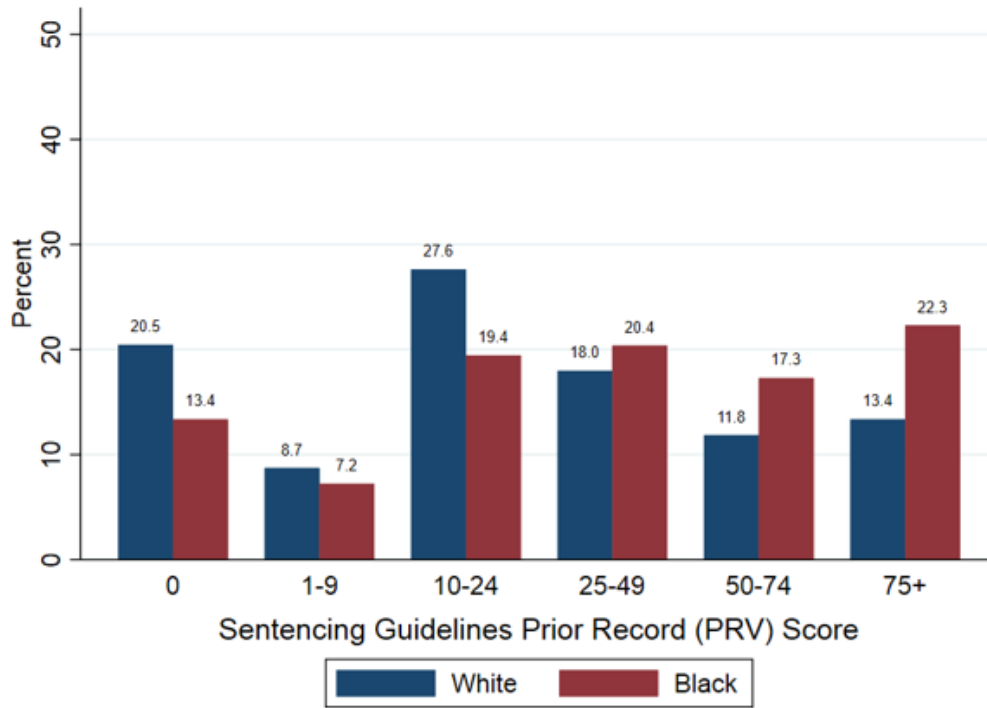
Figure 1 provides a visual depiction of variation in PRV scores and OV scores comparing Black and White defendants sentenced between 2015 and 2019 in Michigan’s 22nd Circuit Court. The graph in Panel A provides the distribution of PRV scores and Panel B is for OV scores. Each bar in these graphs represents a bin of scores. For example, the first bar in Panel B shows the percentage of White defendants that scored between 0 and 9 points and the second bar in Panel B shows the same information for Black defendants. As can be seen in both graphs, White defendants tend to score on the lower end of both PRV and OV score, as compared to Black defendants who score higher. The difference is more pronounced for prior record variables.

**Any conclusions expressed herein do not necessarily represent the views of the Criminal Justice Administrative Records System (CJARS) or participating data providers. Prior to minor editorial changes for grammar and consistency, this study was reviewed and approved by the University of Michigan Health Sciences and Behavioral Sciences Institutional Review Board (IRB-HSBS), under reference number: HUM00221938.*

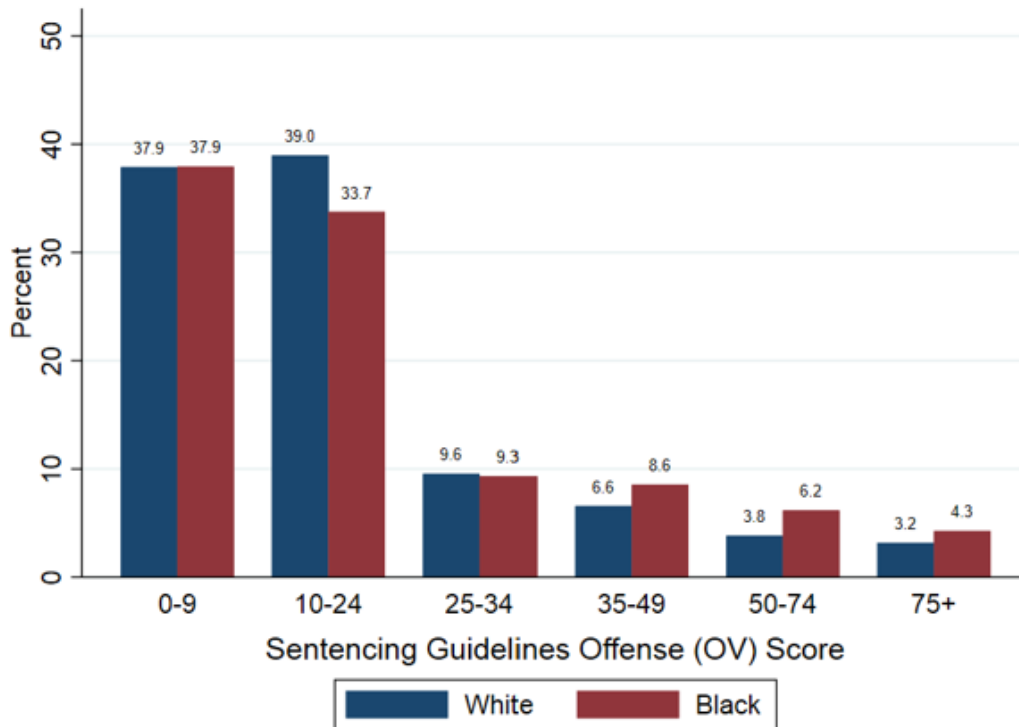
¹ www.courts.michigan.gov/publications/felony-sentencing-resources/sentencing-guidelines-manuals. As noted in the Manual: “In 2015, the Michigan Supreme Court rendered the previously-mandatory sentencing guidelines advisory only. *People v Lockridge*, 498 Mich 358 (2015).”

Figure 1: Prior Record and Offense Sentencing Guideline Scores for Black and White Defendants

(a) Prior Record Variable Score Distribution



(b) Offense Variable Score Distribution



Note: These graphs include 4,118 cases sentenced between 2015 and 2019 in Michigan's 22nd Circuit Court. Each bar represents a bin of sentencing guidelines scores. Panel A is for prior record variables and Panel B is for offense variables.

Median PRV and OV scores by race and judge were also calculated. Overall, across all judges and all cases sentenced between 2015 and 2019, the median PRV score was 20 and 35 for White and Black defendants, respectively. The median OV score across all judges was 11 for both Black and White defendants. Median sentencing guideline scores further broken down by judge and sentencing guidelines cell type can be found in Appendix Table 1.

Many individual and systemic factors may contribute to this disparity. For instance, differences in economic opportunity may alter the types of illicit activity. Similarly, potential historical practices of racial profiling could create gaps in prior record scores. There are also certainly other plausible factors, and it is beyond the scope of this report to determine the causes and the relative importance of such factors that generate higher sentencing guideline scores for Black defendants compared to White defendants. Ultimately, judges are faced with Black defendants who receive higher sentencing guideline scores on average, which mechanistically increases the resulting sentencing outcomes. This impact on sentencing outcomes is important to consider since the sentencing guideline scores are outside the control of judges, and do not reflect judicial decision-making.

Current Study

In the current study, the Michigan Department of Corrections (MDOC) provided the Criminal Justice Administrative Records System (CJARS) at the University of Michigan with data that covers cases sentenced between 2015 and 2019 in Michigan's 22nd Circuit Court. During this time period, 4,118 cases were sentenced (55.7 percent were Black defendants and 44.3 percent were White defendants).² These cases were distributed across judges as follows: Judge Archie Brown sentenced 1,123 cases; Judge Carol Kuhnke sentenced 998 cases; Judge Darlene O'Brien sentenced 1,062 cases; and Judge David Swartz sentenced 935 cases.

Variation in sentencing practices across judges was examined in two areas of judicial decision-making. The first was to focus on examining differences in types of sentences imposed. This was accomplished by first producing a simple distribution of different types of sentences imposed by judges to understand variation across judges in the use of prison, jail, and probation. However, this does not take into account the importance of sentencing guidelines when considering sentence type. To better understand judicial decision-making, we focused on an area of sentencing guidelines, namely, straddle cell cases, where sentencing options range from probation alone to prison terms. Straddle cells in sentencing guideline grids contain more variability in sentences imposed, which provides a better opportunity to study judicial decision-making.

As a complementary exercise, we examined differences in minimum prison sentence lengths, which can also capture instances of judicial discretion. As a starting point, we first calculated the average prison sentence length imposed by judges. Again though, this does not take into consideration the importance of sentencing guidelines in the sentencing process. Therefore, we considered how prison sentences varied across judges in relation to sentencing guidelines. To do this, we examined the length of the minimum prison term for defendants whose sentencing guidelines scores placed them into sentencing guideline grids where prison was the recommended

² Only cases with a Black or White defendant were included in the analyses in this report because other racial/ethnic groups did not represent a large enough sample to conduct analyses on. Additionally, the data used for this study did not include information about ethnicity (i.e., Hispanic/Latino origin). This represents a limitation in this study because Hispanic/Latino defendants could not be identified and thus are present in the other racial categories that were included in the analysis (i.e., Black and White defendants). For context to understand the impact of this data limitation, available estimates from the U.S. Census Bureau indicate that Hispanic/Latino individuals represent 4.9 percent of Washtenaw County's population in 2021: www.census.gov/quickfacts/washtenawcountymichigan.

sentence (i.e., prison cells). Focusing on these two aspects of sentencing provided an opportunity to examine variation in sentencing practices while also considering recommended minimum prison sentence length ranges.³

Results

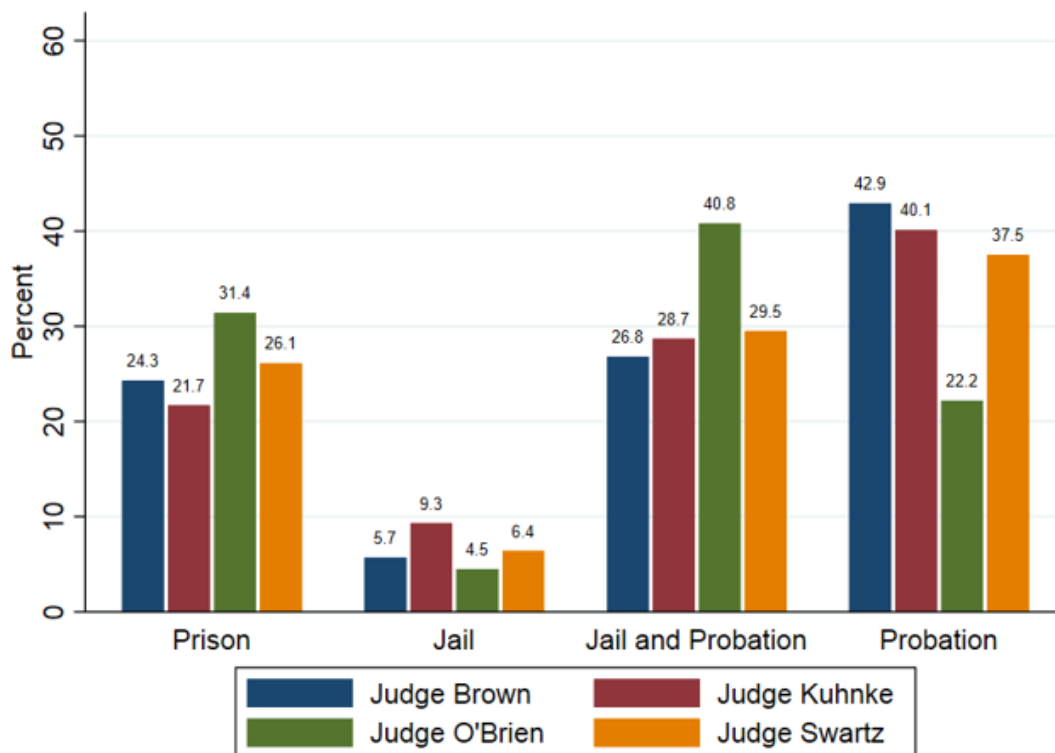
Distribution of Types of Sentences Imposed

Figure 2 provides a simple distribution of the types of sentences imposed by each judge for the cases sentenced, broken down by race (Panel A for Black defendants and Panel B for White defendants). The bars in each graph are grouped by sentence type with a bar for each of the four judges. Types of sentences defendants can receive include prison, jail only, a combination of jail and probation, or probation only.

As can be seen in Figure 2, there is some variation in types of sentences imposed across judges. For example, Judge O’Brien most commonly uses the combined jail and probation sentence more than half of the time (52.4 percent of cases) for White defendants (Panel B) compared to the other judges which use this sentence type in closer to a third of cases. Examining the same graph for Black defendants (Panel A) also shows that Judge O’Brien sentenced 31.4 percent of Black defendant to prison as compared to 16.3 percent of White defendants. But notably, Figure 2 does not take into consideration sentencing guideline scores and therefore portrays an incomplete picture of judicial decision-making. Even though Figure 2 lacks key pieces of information for understanding the nature of sentencing practices, it is presented to provide basic information about sentences imposed.

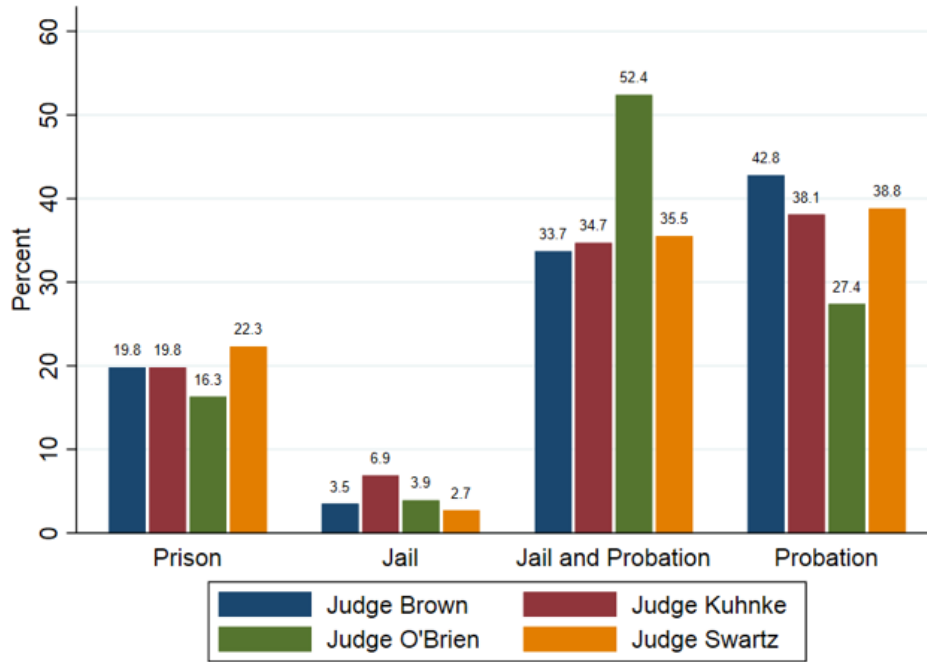
Figure 2: Distribution of Sentence Type, by Race and Judge

(a) Black Defendants



³ Notably, sentencing agreements also play an important role in sentencing outcomes. However, the nature in which this data is collected and recorded made it infeasible to consider in this report.

(b) White Defendants

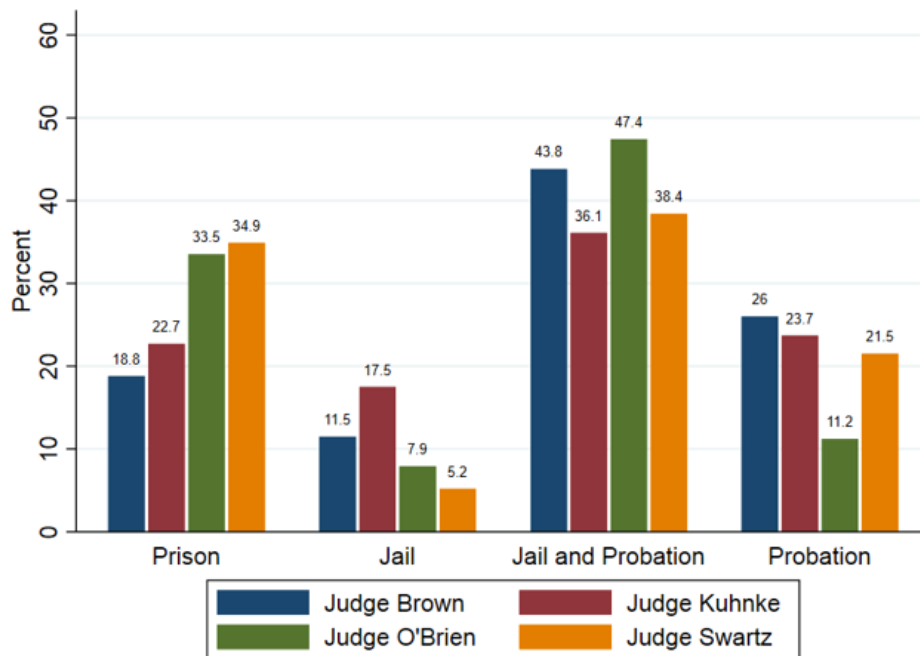


Note: These graphs include 4,118 cases sentenced between 2015 and 2019 in Michigan’s 22nd Circuit Court. Each bar represents the percentage of cases that a given judge sentenced to a specific type of sentence.

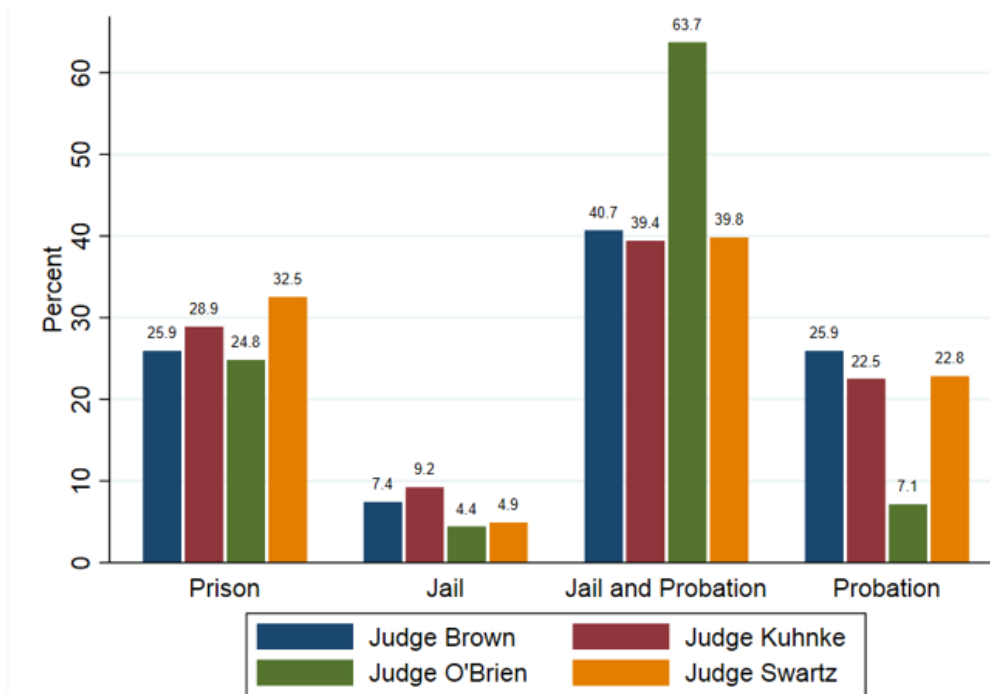
The next figure in this section, Figure 3, focuses more narrowly on the distribution of sentence types for straddle cell cases. A straddle cell is an area on a sentencing guideline grid where judges can choose either a community-based sentence or incarceration. Examining these cases provides a more narrowly focused picture of sentencing practices across judges within the context of sentencing guidelines.

Figure 3: Distribution of Sentence Type for Straddle Cell Cases, by Race and Judge

(a) Black Defendants



(b) White Defendants



Note: These graphs include 1,302 straddle cell cases sentenced between 2015 and 2019 in Michigan's 22nd Circuit Court. Each bar represents the percent of straddle cell cases that a given judge sentenced to a specific type of sentence.

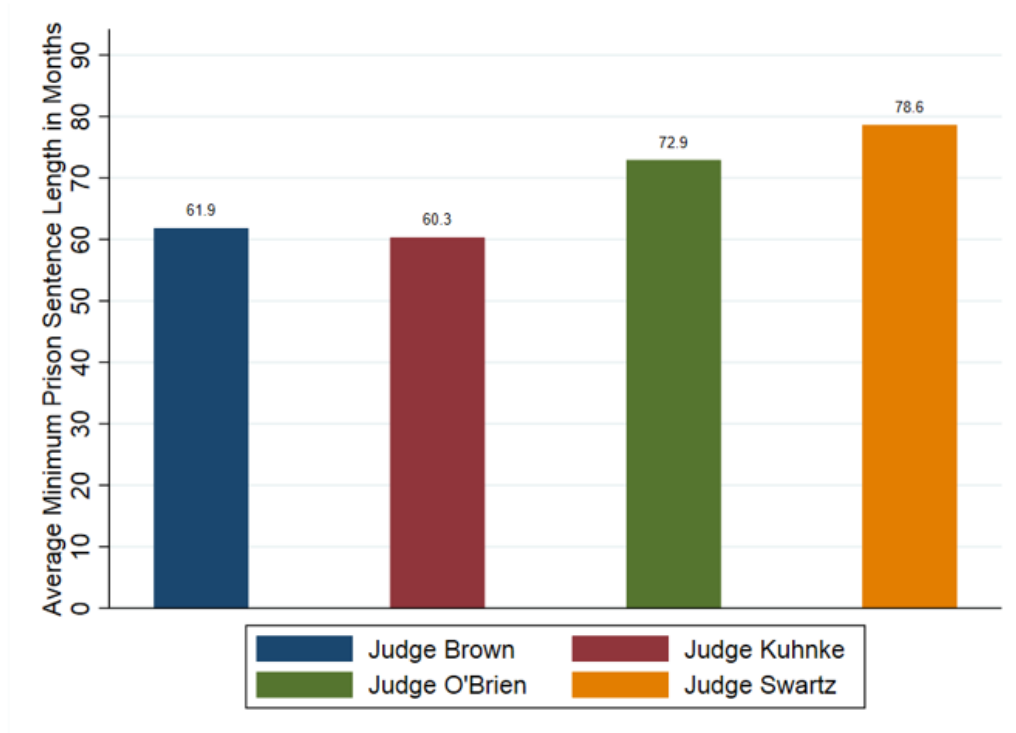
The graphs in Figure 3 present the distribution of sentence types within straddle cell cases, broken down by Black and White defendants in Panels A and B, respectively. The graphs show that some variation exists across judges. For example, Judge O'Brien chose the combined jail/probation sentence in 63.7 percent of straddle cell cases for White defendants (Panel B) while no other judge surpassed the use of this type of sentence in more than 40.7 percent of cases. Comparatively, this same type of sentence saw less of a spread in its use across judges for Black defendants (Panel A). Yet for other types of sentences, there was more variation across judges (e.g., probation sentences for both Black and White defendants). There was also variation observed across judges in the use of prison sentences for Black and White defendants. Specifically, Judge Brown and Judge Kuhnke imposed prison sentences in a larger proportion of cases with White defendants as compared to Black defendants, whereas the opposite was true for Judge O'Brien and Judge Swartz. This information indicates that variation in sentencing across judges remains when focusing more narrowly on straddle cell cases.

Length of Minimum Incarceration Terms Imposed

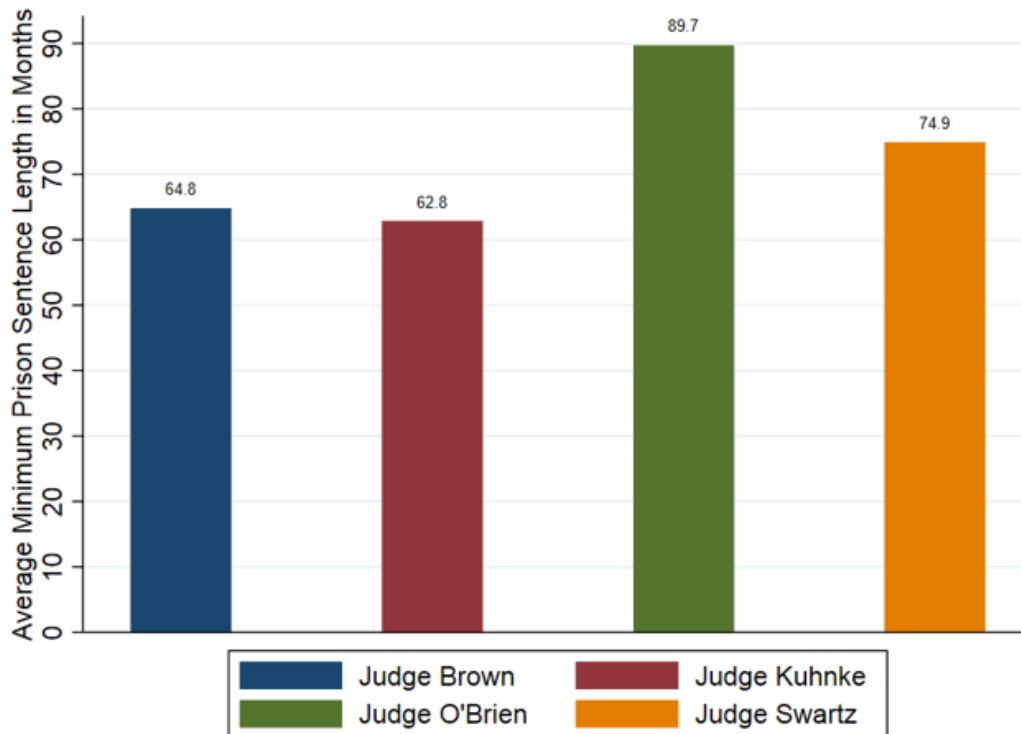
The last section of this report provides information about the length of the minimum term of incarceration when a prison sentence was imposed. Figure 4 shows the average length (in months) of the minimum term of incarceration for cases that fell into a prison cell for sentencing guidelines and the court imposed a prison term. These figures are separated into two panels, Black defendants are represented in Panel A and White defendants are represented in Panel B. As an example, this figure shows that Judge Brown imposed an average minimum prison term length of 64.8 months for White defendants and an average minimum prison term length of 61.9 months for Black defendants. It is important to point out that Figure 4 does not include information related to the sentencing guidelines score for these cases. This will be discussed next.

Figure 4: Average Minimum Term Length (in months) of Prison Sentences Imposed, by Race and Judge

(a) Black Defendants



(b) White Defendants



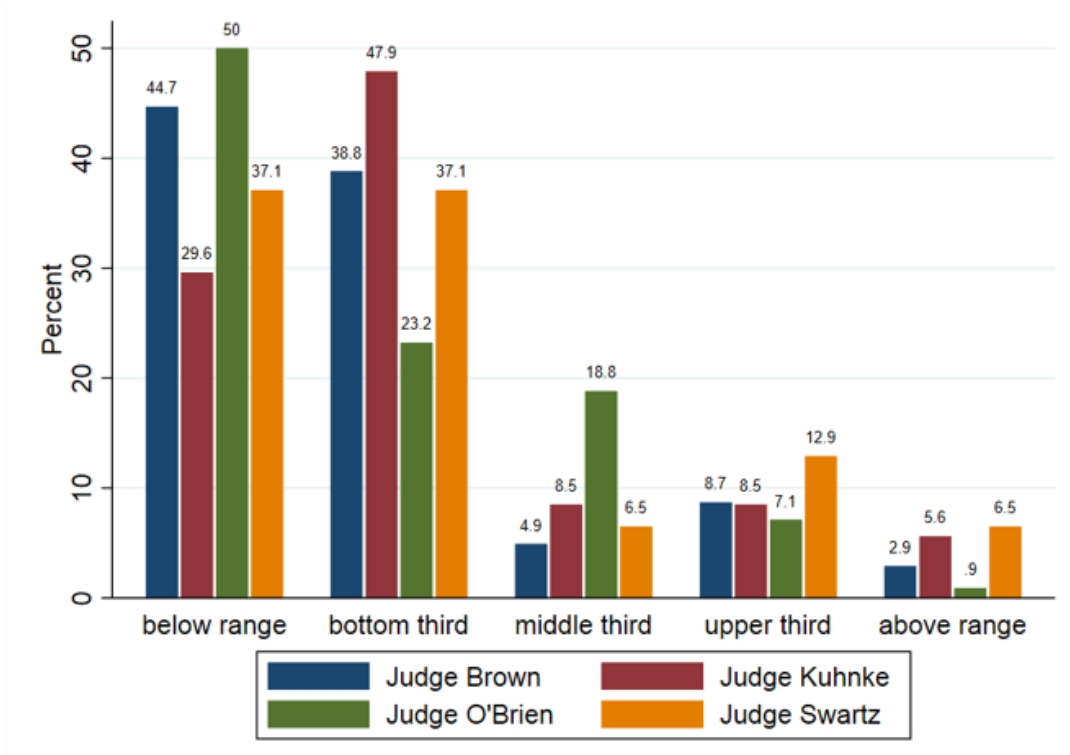
Note: These graphs include 526 prison cell cases sentenced to prison between 2015 and 2019 in Michigan's 22nd Circuit Court. Each bar represents the average minimum prison sentence length imposed by a judge for cases that fell into a prison cell in the sentencing guideline grid.

The last figure in this report, Figure 5 also focuses on cases that fell into a prison cell for the sentencing guidelines and had a prison sentence imposed, but incorporates sentencing guideline information into the consideration of minimum prison sentence length. Specifically, the graphs in Figure 5 show the proportion of this sample of cases that judges sentenced below the recommended sentencing guideline range, in the lower third of the recommended range, in the middle third of the recommended range, in the upper third of the recommended range, or above the recommended range. This information is presented to better understand where within (or outside) of the sentencing guideline range judges imposed sentences (i.e., high versus low end of the sentencing guideline range). This would, for example, indicate whether Black defendants tend to be sentenced on the higher or lower end of the sentencing guideline range, which could be compared to where within the sentencing guideline range White defendants tend to be sentenced. The information in the graphs in Figure 5 are important because they give context to differences in PRV and OV scores observed in Figure 1.

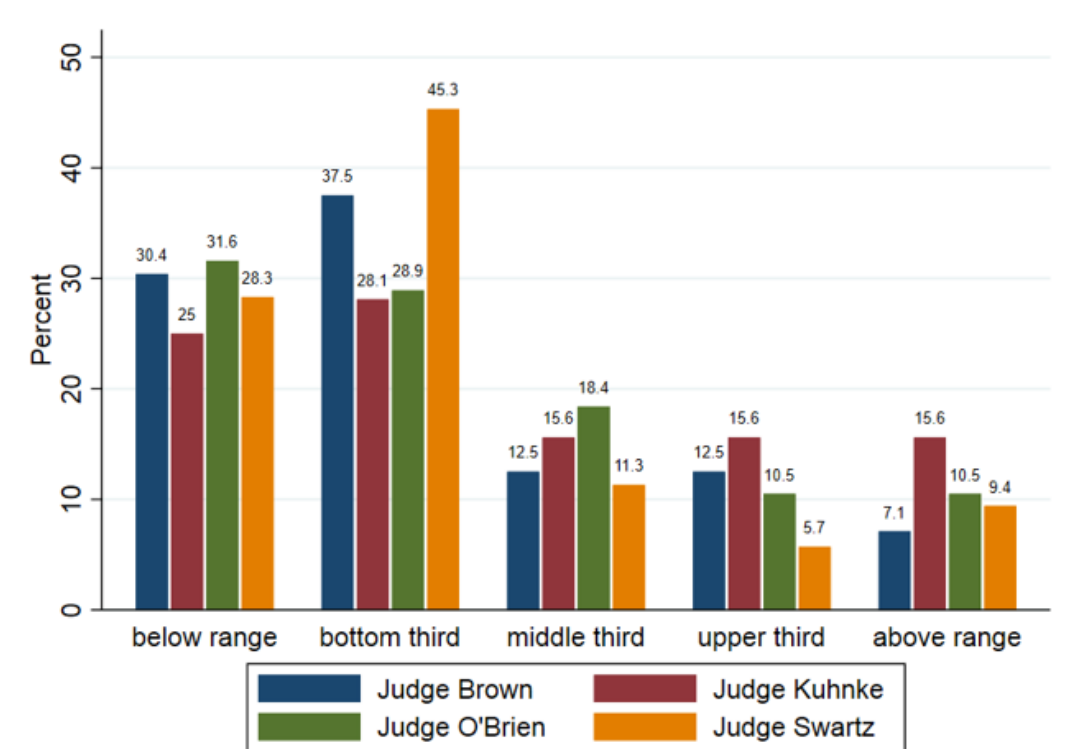
The graphs in Figure 5 include the breakdown of sentences for Black defendants in Panel A and White defendants in Panel B. These graphs show that some variation exists across judges in terms of minimum prison terms imposed, relative to sentencing guidelines. For example, Judge O'Brien sentenced exactly half of all Black defendants (Panel A) below the sentencing guidelines range whereas Judge Kuhnke sentenced 29.6 percent of Black defendants below the range. Another observation from these graphs is that judges most commonly sentenced both Black and White defendants below or in the lower third of the sentencing guidelines range. Relatively fewer cases with either Black or White defendants were sentenced in the upper third or above the sentencing guidelines range. For example, the highest percentage of cases sentenced above the range with a Black defendant (Panel A) by any one judge was 6.5 percent, as compared to 15.6 percent of cases with a White defendant (Panel B). Finally, the tendency of judges to sentence Black defendants below the range at a higher rate than White defendants provides context to Figures 4 and 1 which showed that Black defendants receive higher sentencing guideline scores (Figure 1), yet receive on average relatively similar minimum prison sentences (Figure 4). This indicates the importance of considering sentencing guidelines when examining sentencing outcomes.

Figure 5: Minimum Prison Sentence Length Relative to Sentencing Guidelines Range for Prison Cell Cases, by Race and Judge

(a) Black Defendants



(b) White Defendants



Note: These graphs include 526 prison cell cases sentenced to prison between 2015 and 2019 in Michigan’s 22nd Circuit Court. The graph focuses on sentencing guideline prison cell cases where the judge imposed a prison sentence. Each bar represents the percent of cases where the judge sentenced the defendant below the sentencing guideline range, in the bottom third of the range, in the middle of the range, in the upper third of the range, or above the sentencing guideline range.

Appendix

Table 1: Median Sentencing Guideline Scores, by Race and Judge

| | PRV Scores White Defendants | PRV Scores Black Defendants | OV Scores White Defendants | OV Scores Black Defendants |
|---|--------------------------------|--------------------------------|-------------------------------|-------------------------------|
| All cases | | | | |
| Judge Brown | 20 | 35 | 10 | 11 |
| Judge Kuhnke | 25 | 32 | 10 | 10 |
| Judge O'Brien | 15 | 37 | 10 | 11 |
| Judge Swartz | 20 | 35 | 11 | 10 |
| Straddle cell cases | | | | |
| Judge Brown | 45 | 55 | 11 | 11 |
| Judge Kuhnke | 60 | 57 | 15 | 10 |
| Judge O'Brien | 60 | 62 | 15 | 11 |
| Judge Swartz | 50 | 60 | 11 | 11.5 |
| Prison cell cases sentenced to prison | | | | |
| Judge Brown | 60 | 72 | 35 | 45 |
| Judge Kuhnke | 75 | 60 | 32.5 | 45 |
| Judge O'Brien | 57.5 | 61 | 47.5 | 50 |
| Judge Swartz | 22 | 66 | 45 | 42.5 |
| Cases with probation only sentence imposed | | | | |
| Judge Brown | 10 | 20 | 5 | 5 |
| Judge Kuhnke | 10 | 15 | 10 | 5.5 |
| Judge O'Brien | 7 | 15 | 5 | 5 |
| Judge Swartz | 10 | 10 | 5 | 5 |
| Cases with jail/probation sentence imposed | | | | |
| Judge Brown | 20 | 40 | 15 | 11 |
| Judge Kuhnke | 22 | 15 | 11 | 11 |
| Judge O'Brien | 20 | 25 | 11 | 10 |
| Judge Swartz | 20 | 37 | 15 | 11 |
| Cases with jail only sentence imposed | | | | |
| Judge Brown | 60 | 67.5 | 5.5 | 10 |
| Judge Kuhnke | 50 | 75 | 11 | 6 |
| Judge O'Brien | 57 | 80 | 10 | 7 |
| Judge Swartz | 62.5 | 60 | 12.5 | 6.5 |
| Cases with prison sentence imposed | | | | |
| Judge Brown | 52 | 65 | 25 | 30 |
| Judge Kuhnke | 65 | 62 | 20 | 35 |
| Judge O'Brien | 65 | 70 | 30 | 35 |
| Judge Swartz | 42.5 | 70 | 25 | 21 |

Note: The median values presented in this table were calculated on cases sentenced between 2015 and 2019 in Michigan's 22nd Circuit Court. Median sentencing guideline scores are presented for all cases, cases that scored into a straddle cell for sentencing guidelines, cases that scored into a prison cell for sentencing guidelines and were sentenced to prison, cases where a probation only sentence was imposed, cases where a jail/probation sentence was imposed, cases where a jail only sentence was imposed, and cases where a prison sentence was imposed.