**Racial Disparities at Pretrial and Sentencing and
the Effect of Pretrial Services Programs**

Written by:
Isami Arifuku and Judy Wallen

Written for:
The Public Welfare Foundation

Date: December 27, 2012

Revised: March 11, 2013

Racial Disparities at Pretrial and Sentencing and the Effect of Pretrial Services Programs

Abstract

This study examines racial disparities at the pretrial stage and at sentencing using the State Court Processing Statistics (SCPS) and the Colorado Pretrial Assessment Tool (CPAT) databases to focus on differential outcomes for Asian/Pacific Islander (API), Black, Hispanic, Native American, and White defendants. It also considers how pretrial services affect processing decisions and racial disparities. Regression analyses of decisions made at the pretrial stage and sentencing show racial disparities in the SCPS data, particularly for Hispanics and APIs; however, race is not a significant predictor of incarceration at sentencing in the Colorado data despite racial disparities at pretrial. Statistically significant differences in outcomes between defendants by race who are not interviewed and/or ordered into the supervision of pretrial services are mitigated by defendants who are interviewed and/or ordered into supervision of pretrial services when a difference of means analysis is applied. We discuss possible explanations for the effectiveness of pretrial services in mitigating racial disparities as well as some of the benefits to communities that implement such a program.

Pretrial Services Programs

Pretrial services programs generally are offered by county or state government units or nonprofit agency divisions, which administer risk assessment tools to individuals arrested and booked into jail. The results of the assessments are provided to judges who use them in concert with other information, such as the facts and circumstances of the alleged offense, to reach a decision about release and bail. If granted release, a defendant may be supervised by a pretrial services program until his/her case is resolved.

According to the Pretrial Justice Institute's website (Pretrial Justice Institute, n.d.), "In supervised pretrial release, defendants are released on their promise to adhere to certain court-

ordered non-financial conditions, such as reporting in person on a regular basis. Compliance is closely monitored by pretrial services or other criminal justice staff. Failure to comply can result in return to jail." Of particular interest to this study is the statement: "An effective pretrial services program with supervised pretrial release can contribute to reduced detention rates—without jeopardizing community safety or the integrity of the legal process." In the context of racial disparities, if pretrial services decrease the detention population, is the result proportionate by race? Or does the process decrease or increase racial disparities in pretrial decisions, and, as a result, affect racial disparities in sentencing outcomes?

Research Questions

The overarching question is this: How do decisions made at the pretrial stage—detention, bail amount, inability to make bail, and pretrial release—affect racial disparities in sentencing outcomes?

- What are the differences by race at the pretrial phase for defendants who are detained and those who are released on bail, receive the services of pretrial services programs (either the survey to assess risk and/or supervision on release), or are released on their own recognizance (ROR)?

- What are the differences by race at the sentencing phase for defendants who are detained and those who are released on bail, after assessment for risk, or ROR at the pretrial phase?

- Do pretrial services decrease racial disparities?

The study adopts Schlesinger's models (2008) that 1) progressively control for offense seriousness, current case characteristics, and prior record; 2) add detention in the pretrial period; and 3) add adjudication for a felony. This disaggregates decisions made at the pretrial phase that can affect sentencing outcomes. A fourth model is added in this analysis: the participation of defendants in pretrial services.

F:\USERS\Everyone\748 Pretrial Services and Racial Disparities\Reports\Racial Disparities and Pretrial Services 3-11-13.docx

This Study

This study investigates early pretrial decisions and how they affect outcomes in sentencing for White, Black, Hispanic, Native American, and Asian/Pacific Islander (API) defendants using two databases; it also examines the impact of pretrial services programs on the same adjudication outcomes. The study uses the State Court Processing Statistics: Felony Defendants in Large Urban Counties (SCPS) database (2000 to 2006) and the Colorado Pretrial Assessment Tool (CPAT), which consists of data collected from 10 Colorado counties. The databases contain data on decisions made at the pretrial phase that can affect sentences and sentence lengths for these five racial groups.

Findings Summary

Findings from the regression analyses show that sentencing outcomes were greatly influenced by decisions made at the pretrial phase of the adjudication process. In the SCPS data, the largest predictors of the decision to incarcerate and the length of the sentence are pretrial incarceration and adjudication. Latinos fared the worst overall in these analyses, and Latino and API defendants were more likely than White and African American defendants to be sentenced to incarceration across all models.

However, the data from Colorado—in all four models used and employing a variety of controls—show no significant differences by race in the decision to incarcerate. The primary predictors of incarceration for that dataset are prior felony and misdemeanor conviction, being male, and active criminal justice status. At the pretrial phase, outcomes varied among the races analyzed, with White defendants having the best experiences overall: least likely to be denied bail or detained, lowest bail amounts, and most likely to receive recognizance release.

Pretrial services made a difference in several aspects of the study. For example, defendants in Colorado who are assessed for risk and supervised by pretrial services are more than three times more

likely to be released on recognizance than those who are not assessed. SCPS data show that defendants ordered into a pretrial services program are more than 14 times more likely to be released on recognizance. In addition, defendants who receive pretrial supervision have a greater likelihood of having their case dismissed and being sentenced to probation; they are less likely to be incarcerated.

When examined by pretrial service status, release status, race, and outcome, Hispanic, White, Asian, and Native American defendants had a higher percentage of dismissals as compared to those who were released but did not receive pretrial assessment or supervision. Only Native Americans receiving pretrial services had a lower dismissal rate when all cases were considered. All groups receiving pretrial assessment or supervision had lower incarceration rates and higher rates of probation than those who were not provided this service (see Table 17 in Appendix).

Populations in the Study

API and Native American defendants are included even though they represent a relatively small proportion of defendants in the SCPS database (1,180 or 1.9%, and 185 or 0.3%, respectively[1]) and the CPAT database (24 or 1.2%, and 34 or 1.7%, respectively). Official statistics show that, as a group, API involvement in crime has been low; however, specific API ethnicities are disproportionately overrepresented in the justice system (Oh & Umemoto, 2005). National crime statistics for Native Hawaiian and Pacific Islanders are difficult to find because they are included with Asians or placed in the "Other" category in most data. The same can be said for Native Americans, but the FBI indicated that Native Americans comprised 1.4% of all arrests over 18 years of age while they represented 1.7% of the US population (alone, and in combination) in 2009.

Including additional groups in the analyses is consistent with the suggestions of DeMuth (2003), who encourages more studies of criminal justice processing not only by race, but also

---

[1] Ninety-five (95) or 51% come from two counties in Arizona, and some may question the value of including Native Americans in this analysis because of their small numbers. They are included in this analysis to give as full a representation of racial disparities as possible.

ethnicity; Spohn (2000), who indicates that research on racial disparities should be broadened to include other racial and ethnic groups; and Schlesinger (2008), who calls for "more research that breaks down the Black/White binary paradigm of race and begins to explore disparity based on myriad and complex racial categorizations."

Data and Methods

All African American, API, Hispanic, Native American, and White cases from 2000 through 2006 from the SCPS were used in this study. The SCPS tracks data on a sample of felony cases in even numbered years from 1990 to 2006 on the criminal justice processing of felony defendants in 40 jurisdictions representative of 75 large urban counties. The 75 counties represent more than one third of the nation's population and about half of all reported crimes. Data are available on arrest charges, demographic characteristics, criminal history, pretrial release and detention, adjudication, and sentencing. The total number of defendants in the 2000–2006 SCPS database and used in this study is 60,615.[2] The SCPS data do not show whether the defendant was interviewed by a pretrial services program and assessed for risks. It only shows defendants ordered into supervision of the pretrial services program.[3] Also used in the analysis is a second database, which was used in the study to develop the CPAT, "an empirically validated multi-jurisdiction pretrial risk assessment tool for use in any Colorado jurisdiction and … designed to replace existing pretrial assessments in use in Colorado."

---

[2] The SCPS data in this study is not weighted. The SCPS database contains two different kinds of weight: one set for counties with uncertainty in the number and variance of county court filings and another set for jurisdictions with partial month filings. Data from jurisdictions that were not required to provide a full month of filings were weighted to represent the full month. The weighted averages were computed for Figures 1–4. The difference in the rates by race was on average .4% more (in absolute terms) for the African American, Hispanic, and White weighted means; .5% for the Asian weighted means; and .9% for Native American weighted means. For example, a 40.2% unweighted detention rate was 40.6% as a weighted detention rate. The differences in the weighted and unweighted rates/averages did not affect statistical significance and were small enough to have little impact on practical significance; unweighted rates and values are displayed in the analyses.

[3] Two limitations of the SCPS data must be kept in mind. First, those who were ordered to be supervised by a pretrial services program are probably undercounted because in many jurisdictions, some defendants are released on both a monetary bond and into the supervision of pretrial services. If a defendant obtained both a monetary bond and pretrial supervision, he/she was recorded as having a monetary bond because it was not possible to record both. This process undercounts those ordered into supervision by pretrial services. Second, while SCPS can identify which defendants were ordered into supervision of pretrial services, it cannot identify which ones actually reported and participated in the supervision.

F:\USERS\Everyone\748 Pretrial Services and Racial Disparities\Reports\Racial Disparities and Pretrial Services 3-11-13.docx

The CPAT database contains data on 1,970 defendants booked into jail in one of 10 Colorado counties. Two thirds (1,315 or 66%) of those defendants were released from jail at the pretrial stage and the remaining were held in jail until case closure (Pretrial Justice Institute & JFA Institute, 2012). The CPAT database offered an opportunity to conduct the same analysis used on the SCPS data on cases from one state in which defendants in the database were assessed by pretrial services staff. The database not only has information about arrest charges, demographic characteristics, criminal history, pretrial release and detention, adjudication, and sentencing, but includes employment, housing, children, substance use, mental health, age at first arrest, education, family in the area, and other variables.

This study uses the total sample, both male and female, from both the SCPS and CPAT with analyses for White, Black, Hispanic, API, and Native American defendants.

Pretrial Outcomes

This analysis examines pretrial and adjudication decisions and their role in sentencing outcomes by race. Decisions can result in pretrial detention (through denial of bail or setting a bail amount that the defendant may not be able to post) or release (defendant is able to make bail or is able to secure a non-financial release). It looks at whether the defendant was adjudicated for a felony or misdemeanor (all were originally arrested on felonies) when using the SCPS database; because adjudicated offense was not available in the CPAT, arrest for a felony or misdemeanor was used. Outcomes measured are whether or not the defendant was dismissed or sentenced to incarceration, and, if sentenced, the length. Below is a description of the characteristics of defendants affected by the decisions made by the judge, the prosecutor, and themselves. Resulting outcomes, first for the SCPS and then for the CPAT databases, are also included.

The SCPS Data

Several decisions made by the court affect whether defendants remain in custody or are

released to the community at the pretrial phase. Figure 1 using the SCPS data illustrates these decisions and how different racial groups are affected. Some defendants are denied bail. Some who are assigned a bail amount are able to post bail and are released; others may not be able to post bail and are detained. Defendants may be released on their own recognizance or on non-financial conditions.

In summary, Hispanic defendants are most likely to be detained, second most likely to be denied bail, assessed the highest bail amount, and least likely to post bail. In contrast, Native Americans have the lowest percentage of population detained, the highest percentage with non-financial release, the lowest bail, and yet the highest percentage denied bail. African American, API, and White defendants fall between Hispanic and Native American defendants in terms of severity of outcomes.

Figure 1

Pretrial Outcomes for Defendants Arrested for Felony Offenses in Large, Urban Counties from 2000 to 2006, by Race

F:\USERS\Everyone\748 Pretrial Services and Racial Disparities\Reports\Racial Disparities and Pretrial Services 3-11-13.docx
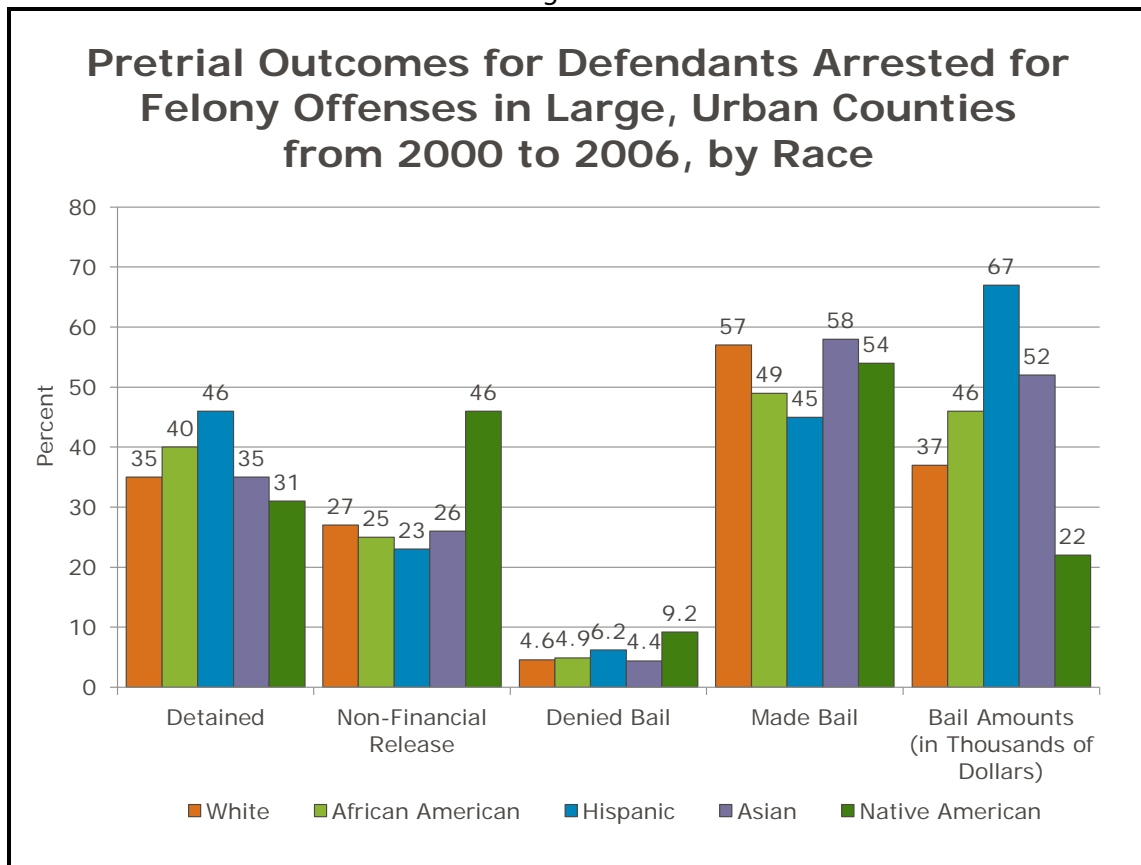
Characteristics of the SCPS cases are shown in Figure 2. Sorted by group, APIs have the lowest percentage of drug offenses, second-lowest percentage of person offenses, the highest percentage of second felonies, and the most counts. Hispanics have the lowest number of pretrial re-arrests and the lowest average counts. African Americans have the highest percentage of drug offenses, pretrial re-arrests, and FTAs. White defendants have the lowest percentage of person offenses and the lowest percentage of second felonies along with Native Americans and African Americans. Native Americans have the highest percentage of person offenses and the smallest percentage of FTAs, along with API defendants.

Figure 2

Case Characteristics of Defendants Arrested for Felony Offenses in Large, Urban Counties from 2000 to 2006, by Race

F:\USERS\Everyone\748 Pretrial Services and Racial Disparities\Reports\Racial Disparities and Pretrial Services 3-11-13.docx
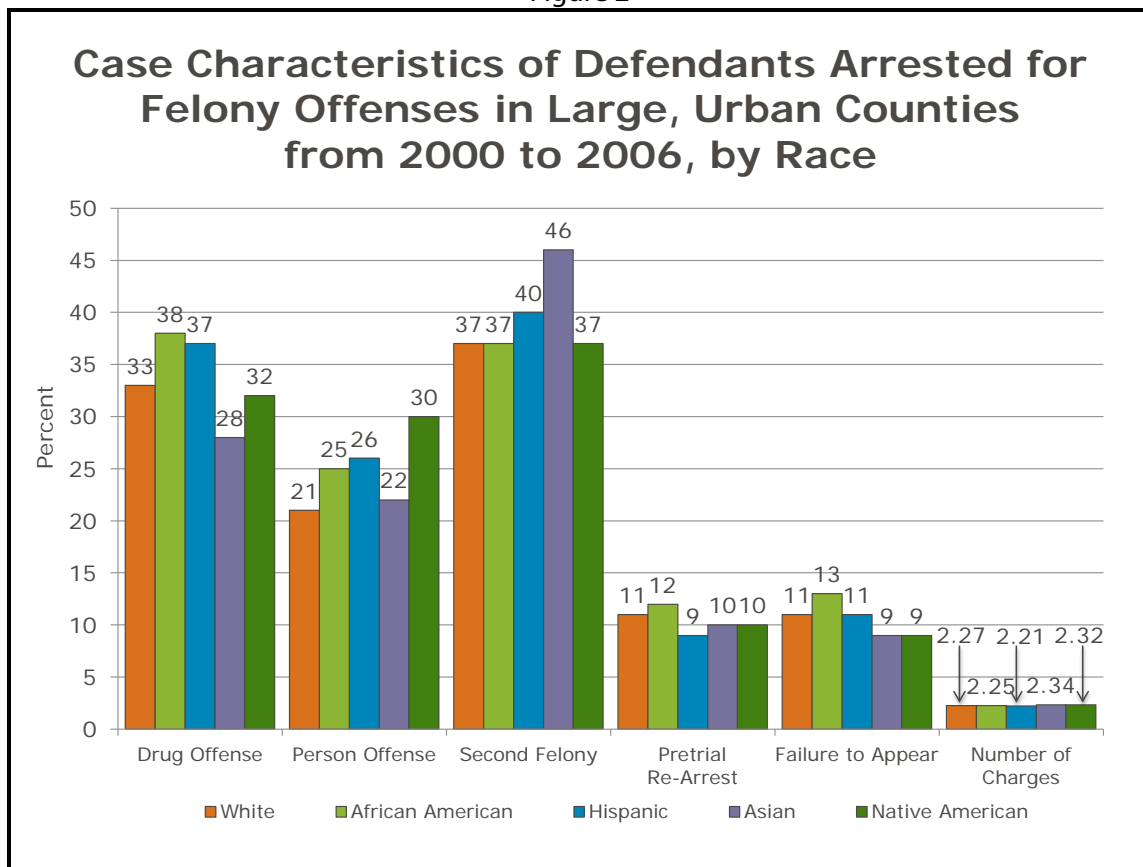
The prior record of persons arrested for felony offenses displayed in Figure 3 shows African Americans have the highest percentage of prior felony convictions and prior misdemeanor convictions, as well as the highest percentage with a prior prison sentence. API defendants represent among the smallest percentage in each of these categories. White and Hispanic defendants are within two percentage points of each other on the same characteristics. The five groups have very similar percentages for active criminal justice status.[4]

Figure 3

Previous Record of Defendants Arrested for Felony Offenses in Large, Urban Counties from 2000 to 2006, by Race

_____
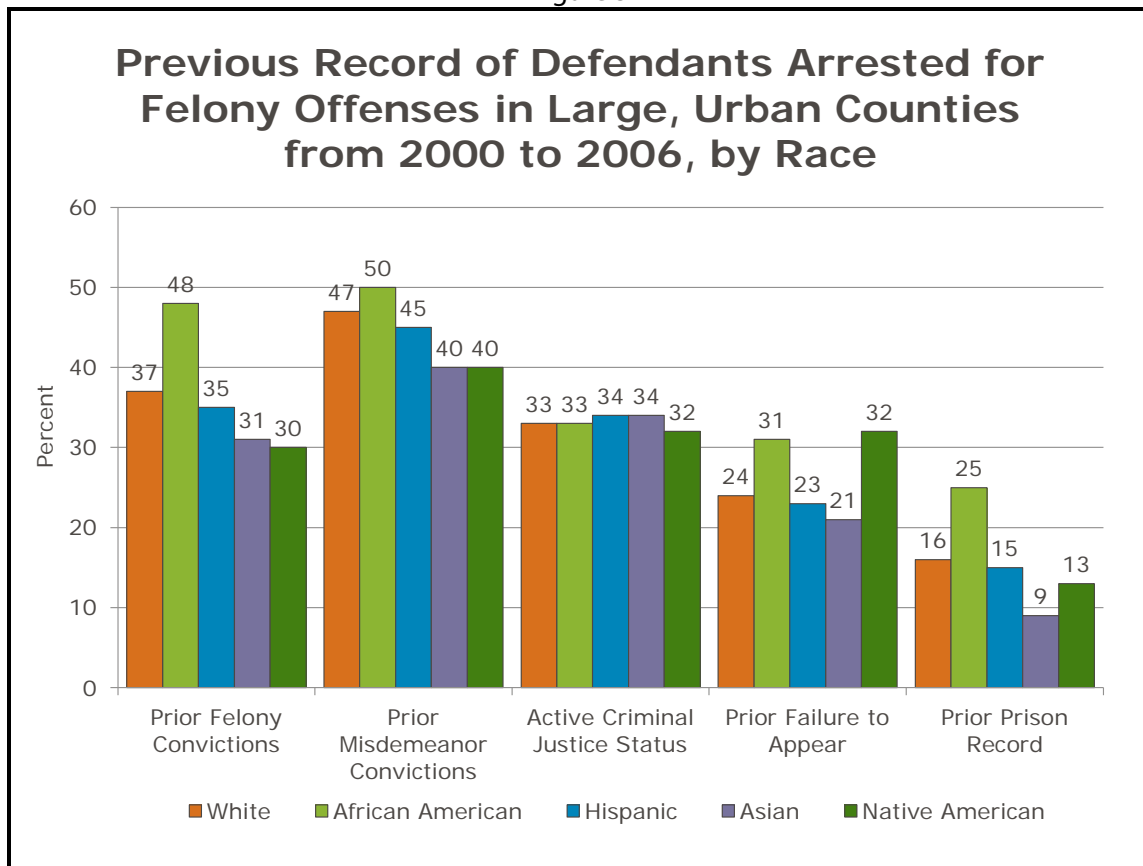
[4] Using the 2 Sample Z-test for Proportions, as compared to White defendants, statistically significant differences were found for the greater likelihood of African American and Hispanic and the lower likelihood of API having a prior felony conviction; the greater likelihood of African American and Hispanic and the lower likelihood of API having a prior misdemeanor conviction; the greater likelihood of Hispanics having an active criminal justice status; the greater likelihood of African Americans and Native Americans and the lower likelihood of API and Hispanics to have a prior FTA; and the greater likelihood of African American and Hispanic, and lower likelihood of API to have a prior prison record. In all these comparisons, $p<.05$.

F:\USERS\Everyone\748 Pretrial Services and Racial Disparities\Reports\Racial Disparities and Pretrial Services 3-11-13.docx

A key decision point is whether defendants are adjudicated as felons or misdemeanants when all were originally arrested for felonies, as it affects sentencing. Figure 4 shows White defendants are least likely to be adjudicated for felonies. Upon adjudication that results in a conviction, Native Americans are the least likely to be incarcerated. Native Americans are given the shortest sentence length, which is almost half that given to White, Hispanic, and API defendants and less than half of the sentence length for African Americans. African American defendants have the second-lowest incarceration rates, but receive the longest sentences. Native Americans, who have the highest percentage adjudicated as felons, have the lowest incarceration rate and average number of months in prison. In contrast, API and Hispanic defendants have the highest percentage of individuals who received a sentence of incarceration and the longest sentences after African Americans.[5]
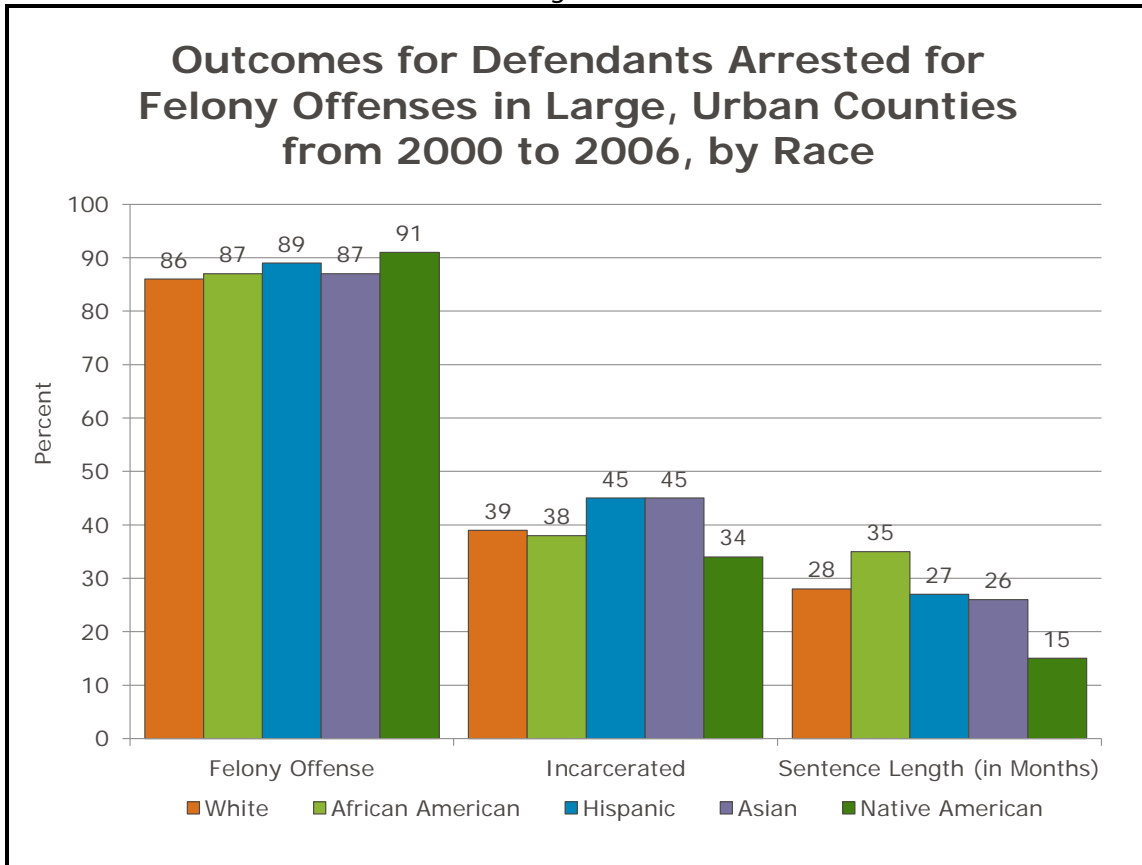
---

[5] Using the 2 Sample Z-test for Proportions, as compared to White defendants, statistically significant differences were found for the greater likelihood of Hispanics and Native Americans to be charged with a felony; the greater likelihood for Hispanic and API defendants to receive a sentence of incarceration; and a greater likelihood for African American defendants to receive longer sentences. In all these comparisons, $p<.05$.

F:\USERS\Everyone\748 Pretrial Services and Racial Disparities\Reports\Racial Disparities and Pretrial Services 3-11-13.docx

Figure 4

Outcomes for Defendants Arrested for Felony Offenses in Large, Urban Counties from 2000 to 2006, by Race

	White	African American	Hispanic	Asian	Native American
Felony Offense	86	87	89	87	91
Incarcerated	39	38	45	45	34
Sentence Length (in Months)	28	35	27	26	15

Findings From the SCPS Data

Table 1 shows how race and prior misconduct affect the decision to incarcerate using logistic regression; it also provides the results of a multiple linear regression on sentence length for each of the four models. The models indicate that prior misconduct and contact with law enforcement are significant factors predicting outcomes. All factors in Model 1 are significant predictors, except for FTA and being Native American. In this model, which controls for case characteristics and prior record, Black defendants have a 7% greater likelihood of incarceration than White defendants (p<=.05); but, as additional controls are added, the likelihood of incarceration is not significant. In contrast, Hispanic and API defendants are more likely than White defendants to be incarcerated in all four models. Assuming all model characteristics are the same, being Hispanic increases the risk of incarceration by 63% under Model 1 and 40% under Model 4 (p<=.01). API defendants have an 18% greater likelihood of incarceration under Model 1 and a 22% greater likelihood in the remaining three models, all significant at p <=.05. Being Native American does not increase the likelihood of incarceration under any of the models.

Being male is a significant factor; however, the fact that racial predictors are still significant indicates the impact of race regardless of gender and the distribution of males in each racial group.

Model 2 adds a control for pretrial detention, the largest predictor of the decision to incarcerate at sentencing. In this model, being Black is no longer a significant risk factor for incarceration. However, being Hispanic still increases the risk of incarceration by 42%; and being Asian increases the risk by 23% as compared to White defendants. Pretrial incarceration increases the risk of incarceration by four compared to those released during the pretrial stage. The same pattern occurs for Model 3, which controls for adjudication as a felony; and in Model 4, where even in the presence of all other risk factors, pretrial services reduce the risk of incarceration by 23%.

Table 1

**The Cumulative Effects of Racially Disparate Processing on Sentencing Outcomes
in Large, Urban Counties From 2000 to 2006**

	Decision to Incarcerate				Sentence Length (in months)			
	Model 1	Model 2	Model 3	Model 4	Model 1	Model 2	Model 3	Model 4
Male	1.35**	1.23**	1.23**	1.23**	.17**	.15**	.15**	.15**
African American	1.07*	1.01	1.01	1.01	.01	.00	.01	.01
Latino	1.63**	1.42**	1.41**	1.40**	-.04**	-.07**	-.09**	-.09**
Asian	1.18*	1.23*	1.22*	1.22*	-.07*	-.06	-.07*	-.07*
Native American	0.88	0.86	0.77	0.97	-.03	.00	-.04	-.03
Pretrial incarceration		4.01**	3.86**	3.76**		.41**	.37**	.36**
Adjudication level			1.46**	1.46**			.57**	.57**
Person offense	1.62**	1.46**	1.51**	1.51**	.35**	.31**	.33**	.33**
Single charge	1.15**	1.12**	1.06	1.05	.11**	.10**	.03*	.03*
Second felony charge	1.61**	1.51**	1.41**	1.40**	.26**	.24**	.15**	.15**
Re-arrest pretrial	0.91*	1.51**	1.48**	1.48**	.03*	.25**	.22**	.22**
Failure to appear	0.94	1.50**	1.47**	1.49**	-.04**	.15**	.13**	.14**
Prior felony conviction	1.51**	1.33**	1.29**	1.29**	.16**	.13**	.10**	.10**
Prior misdemeanor conviction	1.39**	1.32**	1.33**	1.33**	-.09**	-.10**	-.09**	-.09**
Active criminal justice status	1.39**	1.13**	1.12**	1.11**	.17**	.12**	.11**	.11**
Prior failure to appear	1.23**	1.13**	1.15**	1.15**	.04**	.03**	.04**	.04**
Prior prison	2.05**	1.82**	1.82**	1.81**	.30**	.27**	.26**	.26**
Pretrial services				0.77**				-.10**
N	**31,677**	**31,677**	**31,677**	**31,677**	**22,366**	**22,366**	**22,366**	**22,366**

*p<=.05, ** p<=.01

Table 1 also displays the results of a multiple regression with sentencing as the dependent variable. Prior misconduct and offense severity significantly increase the risk of longer sentencing. Being African American does not increase the risk of longer sentencing, but being Hispanic or API actually reduces the risk of longer sentencing in Models 1 through 4 for Hispanics, and Models 1, 3, and 4 for Asians. Being male, as compared to female, increases sentence length by 15% to 17% for all four models. The process of interviewing defendants, assessing risk, and possibly supervising

defendants appears to reduce the risk of longer sentencing by 10%, compared to sentence lengths for those who do not receive pretrial services and whose other model characteristics are identical.

Table 2 shows the results of regression on adjudication level. Being Hispanic or Native American (versus White) increases the risk of felony adjudication by 26% to 34% for Hispanics and by more than 100% for Native Americans. The risk of felony adjudication is not affected by being African American or Asian. Being ordered into the supervision of pretrial services has no significant effect on felony adjudication. For Table 2, the models are done two ways: 1) Pretrial supervision is added first and then pretrial detention is added (Models 2A and 3A); and 2) the sequence is reversed and pretrial detention is added first, then pretrial supervision is added (Models 2B and 3B). This shows that pretrial supervision becomes a significant predictor (increasing the risk of felony adjudication) only with the presence of pretrial detention. This is because defendants who are detained do not have access to pretrial supervision at all, as one must be released to participate. On the other hand, defendants who receive pretrial supervision may have a higher rate of being adjudicated for a felony than those without pretrial services. But they also have a greater likelihood of having the case dismissed (47.5% as compared to 34.6%) and being sentenced to probation (71.6% as compared to 53.0%); they also are less likely to be incarcerated (52.1% compared to 75.4%). When examined by pretrial service status, release status, race, and outcome, Hispanic, White, Asian, and Native American defendants had a higher percentage of dismissals as compared to those who were released but did not receive pretrial assessment or supervision. Only Native Americans receiving pretrial services had a lower dismissal rate when all cases were considered. All groups receiving pretrial assessment or supervision had lower incarceration rates and higher rates of probation than those who were not provided this service (see Table 17 in Appendix).

	Table 2				
Racial Disparities in Level of Adjudication in Large, Urban Counties From 2000 to 2006					
	Model 1	**Model 2A**	**Model 3A**	**Model 2B**	**Model 3B**
Male	0.98	0.98	0.98	0.94	0.94
African American	1.00	1.00	0.98	0.98	0.99
Latino	1.34**	1.34**	1.26**	1.27**	1.28**
Asian	0.95	0.95	0.95	0.95	0.95
Native American	2.09*	2.08*	2.13*	2.13*	2.07*
Pretrial incarceration			1.65**	1.66**	1.69**
Person offense	0.81**	0.81**	0.79**	0.79**	0.79**
Single charge	2.04**	2.05**	2.01**	2.01**	2.02**
Second felony charge	2.76**	2.76**	2.65**	2.65**	2.65**
Re-arrest pretrial	0.97	0.97	1.14**	1.15**	1.15**
Failure to appear	1.00	1.00	1.16**	1.16**	1.16**
Prior felony conviction	1.54**	1.55**	1.46**	1.46**	1.46**
Prior misdemeanor conviction	0.89**	0.89**	0.86**	0.86**	0.86**
Active criminal justice status	1.26**	1.26**	1.16**	1.16**	1.16**
Prior failure to appear	0.92*	0.92*	0.90**	0.89**	0.89**
Prior prison	1.23**	1.23**	1.16**	1.16**	1.16**
Pretrial services		1.04			1.21**
N	**47,997**	**47,997**	**47,997**	**47,997**	**47,997**

*p<=.05, ** p<=.01

Table 3 reveals the results of regression on other pre-sentencing outcomes regarding pretrial detention and bail. Logistic regressions were performed on all outcomes, except for bail amount, in which a multiple linear regression was generated. Being Hispanic (versus White) significantly increases the risk of bail denial (by 29%) and pretrial detention (by 65%), the likelihood of non-financial release (by 9%), and the bail amount (15% for bail amounts close to the mean), while reducing the likelihood of making bail (33%). Being African American (versus White) increases the risk of pretrial detention (by 11%) and the likelihood of non-financial release (by 8%), and reduces bail (by 2% for amounts at or near the mean) and the likelihood of making bail (by 15%). Since the risk of pretrial detention increases, the risk of subsequent unfavorable court decisions increases. Being API increases the bail

amount by 22% (for bail amounts close to the mean) compared to Whites with similar characteristics, but also increases the likelihood of making bail by 50%. Being Native American as compared to White increases the likelihood of non-financial release and being denied bail by more than 120%. On the other hand, defendants who are ordered into supervision by pretrial services see significant decreases in their bail amounts (39% for mean bail amounts) and are 14.4 times more likely to receive non-financial release than those who are not enrolled in such a program (about 10% of pretrial services cases in the SCPS database were financial release cases [surety bonds or other bonds]).

When being ordered into pretrial supervision is not included in the non-financial release model (2), being Black or Hispanic is no longer a significant predictor of non-financial release assuming all other model predictors are the same. This would suggest that being Black or Hispanic (compared with White) is a significant predictor of non-financial release as long as being ordered into pretrial supervision is accounted for comparing Black or Hispanic versus White defendants for the same pretrial supervision status. The first column on the left shows the results for a regression model that excludes pretrial services; the next column shows the results for a regression model that includes pretrial services. In Model 2, Native Americans increase their likelihood of non-financial release to 180%, assuming all model predictors are the same (prior convictions and prison, active criminal justice status, person offense, single charge, prior FTA, and pretrial supervision).

The models indicate that prior misconduct and contact with law enforcement are significant factors predicting outcomes. Preliminary decisions, such as pretrial detention and adjudication level, are significant in predicting subsequent outcomes, including sentence length and incarceration. Therefore, if race affects earlier decision points, the effect of race is compounded, further affecting later court processing outcomes. Also, if prior misconduct is more common for certain races, the effect of race is compounded through prior contact with law enforcement. Both datasets reveal that African Americans tend to have higher prior arrest/misconduct rates than other races.

	Non-Financial Release	Non-Financial Release (2)	Denied Bail	Bail Amount (logged)	Made Bail	Pretrial Incarceration
Table 3						
Racial Disparities in Pretrial Decisions and Outcomes in Large, Urban Counties From 2000 to 2006						
Male	0.73**	0.74**	1.38**	0.12**	0.81**	1.50**
African American	1.08**	1.02	0.96	-0.02*	0.85**	1.11**
Latino	1.09**	1.02	1.29**	0.15**	0.67**	1.65**
Asian	0.91	0.92	0.89	0.22**	1.50**	1.08
Native American	2.24**	2.80**	2.25**	-0.10	0.73	0.94
Bail amount					0.23**	
Person offense	0.51**	0.52**	2.03**	0.31**	0.99	1.62**
Single charge	0.89**	0.86**	1.13*	0.06**	0.79**	1.24**
Second felony charge	0.88**	0.88**	1.20**	0.32**	0.79**	1.55**
Prior felony conviction	0.87**	0.87**	1.51**	0.09**	0.58**	1.81**
Prior misdemeanor conviction	0.91**	0.95*	0.94	0.04**	0.72**	1.38**
Active criminal justice status	0.83**	0.78**	3.85**	0.10**	0.63**	2.00**
Prior failure to appear	1.46**	1.45**	0.96	0.02**	0.82**	1.06**
Prior prison	0.73**	0.74**	1.13**	0.21**	0.76**	1.59**
Pretrial services	14.45**			-0.39**		
N	**33,145**	**33,145**	**56,339**	**34,751**	**34,751**	**56,339**

*p<=.05, ** p<=.01

Table 4 shows dismissal rates under the four models (controlling for offense, case characteristics, and prior record; pretrial detention; adjudication for a felony; and pretrial supervision). African American defendants have a 26% to 32% greater likelihood of dismissal of charges compared to White defendants; in contrast, Asian defendants decrease the likelihood of dismissal by 48% to 33% in comparison to White defendants. Hispanics also decrease the likelihood of dismissal by 7% under Model 1, but once pretrial detention is taken into account, this difference disappears. Pretrial services increase the odds of dismissal by 17%.

	Table 4			
The Cumulative Effects of Racially Disparate Processing on Dismissal Rates in Large, Urban Counties From 2000 to 2006				
	Dismissal – SCPS			
	Model 1	**Model 2**	**Model 3**	**Model 4**
Male	0.95*	1.03	1.00	1.00
African American	1.26**	1.32**	1.27**	1.28**
Latino	0.93**	1.03	0.97	0.97
Asian	0.67**	0.65**	0.52**	0.52**
Native American	1.06	1.02	1.02	0.99
Pretrial incarceration		0.34**	0.34**	0.34**
Adjudication level			6.84**	6.84**
Person offense	1.63**	1.80**	1.83**	1.84**
Single charge	1.02	1.06**	0.89**	0.90**
Second felony charge	0.70**	0.76**	0.54**	0.54**
Re-arrest pretrial	1.06	0.73**	0.63**	0.63**
Failure to appear	1.66**	1.17**	0.49**	0.48**
Prior felony conviction	0.69**	0.77**	0.75**	0.75**
Prior misdemeanor conviction	0.72**	0.76**	0.76**	0.76**
Active criminal justice status	0.72**	0.84**	0.81**	0.81**
Prior failure to appear	1.08**	1.14**	1.21**	1.21**
Prior prison	0.91**	1.01	0.94	0.94
Pretrial services				1.17**
N	**54,354**	**54,354**	**54,354**	**54,354**

*p<=.05, ** p<=.01

Colorado Pretrial Outcomes

Figure 5 shows Colorado pretrial outcomes by race. White defendants are the most likely to be released during the pretrial stage due to their greater likelihood of recognizance release, and 50% are able to post bond; the bond amount is the lowest of any group. African American and Native American defendants are most likely to be detained during the same period; however, Native Americans also have the second highest percentage provided recognizance release. Hispanic defendants have the highest percentage posting bond, whereas Asians are assigned the highest average bond amount.

Figure 5

Pretrial Outcomes of Defendants in a Statewide Database, by Race

F:\USERS\Everyone\748 Pretrial Services and Racial Disparities\Reports\Racial Disparities and Pretrial Services 3-11-13.docx
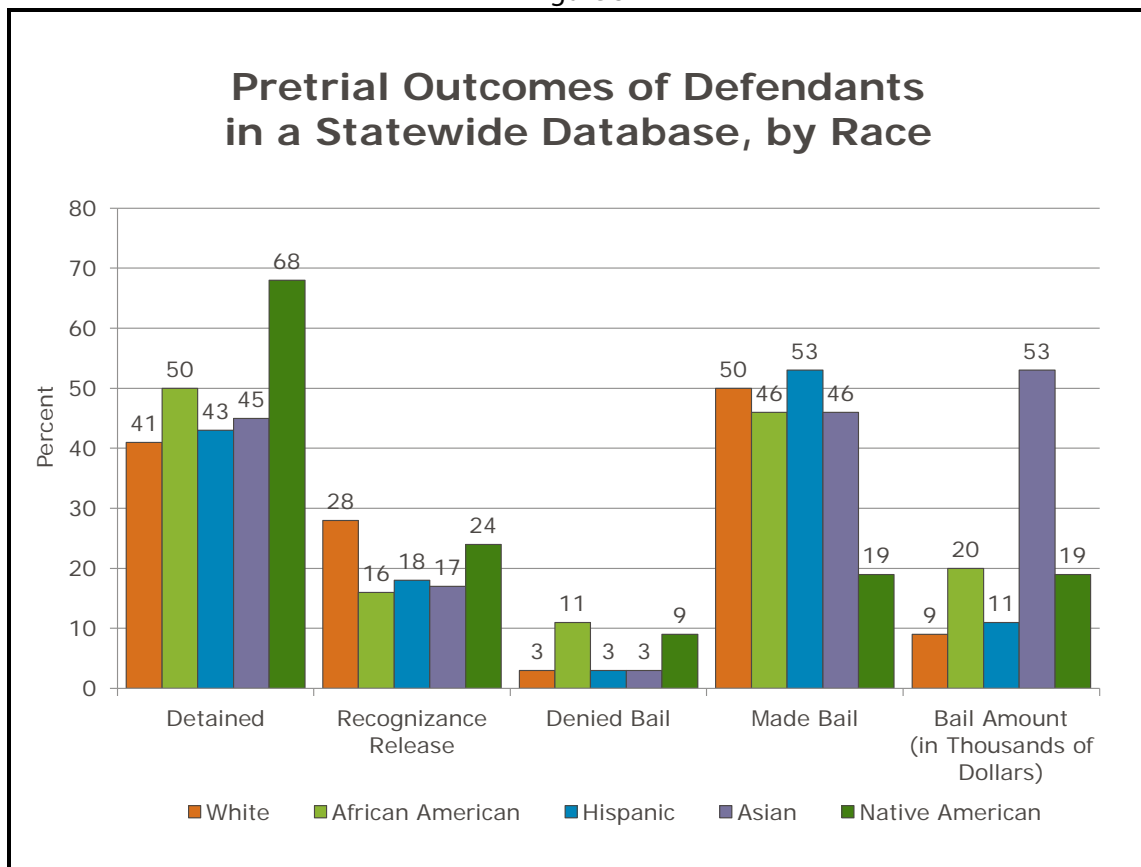
Case characteristics (Figure 6) show drug offense arrests for 21% to 24% of White, African American, Latino, and Native American defendants, and only 7% for APIs. Person offenses represent 25% to 30% for the same four groups, whereas person offenses represent 17% of API offenses. Native Americans and African Americans have the highest percentage with a second felony. African Americans have the highest percentage with a pretrial re-arrest, followed by White and Hispanic defendants. Hispanics have the highest percentage of FTAs as well as the highest number of charges. The mean number of charges is 2.44 for Hispanics, 2.41 for Whites, 2.39 for African Americans, 2.30 for APIs, and 2.27 for Native Americans.[6]

Figure 6

Case Characteristics of Defendants in a Statewide Database, by Race

---
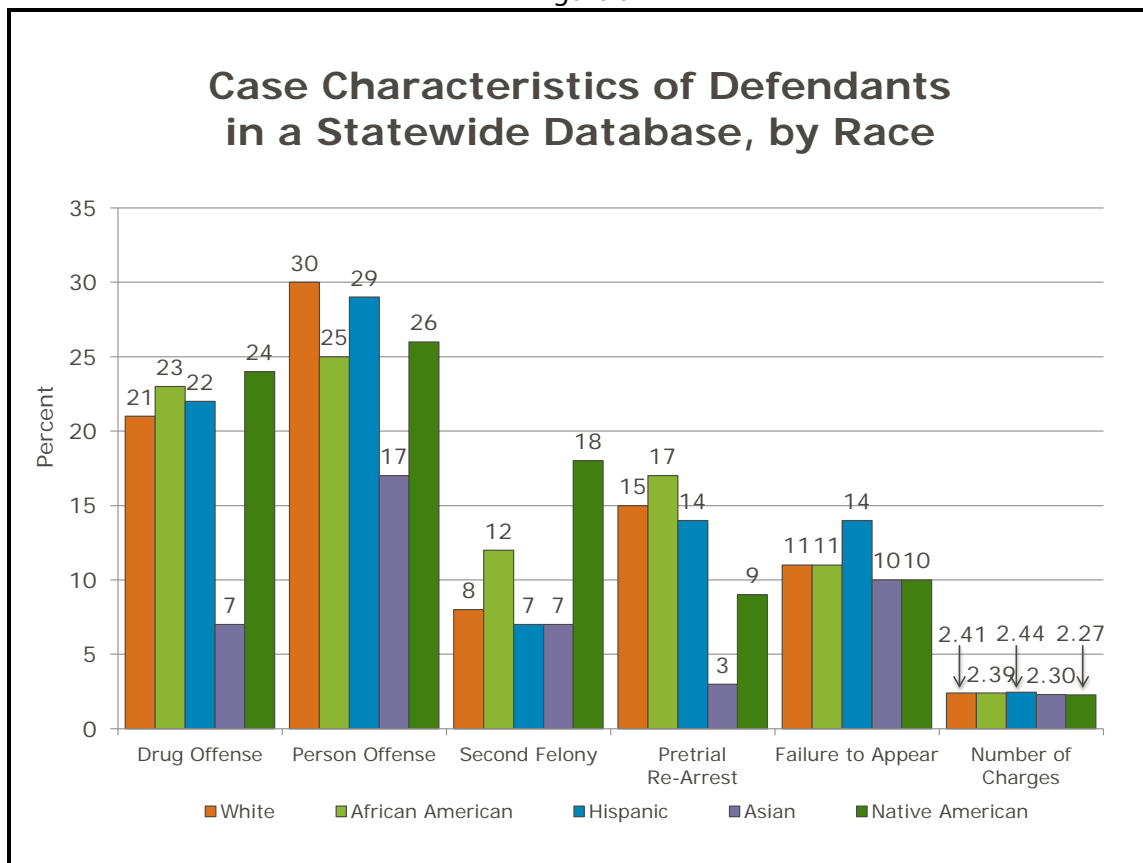
[6] Statistically significant differences (p<.05) as compared to White defendants in Figure 6 are the greater likelihood of Native Americans to have a second felony on their record.

F:\USERS\Everyone\748 Pretrial Services and Racial Disparities\Reports\Racial Disparities and Pretrial Services 3-11-13.docx

Figure 7 shows the previous record of the Colorado defendants. African American and Native American defendants have the highest percentage of prior felony convictions. All groups have between 62% and 66% prior misdemeanor convictions. Asians and Native Americans have the highest percentage of defendants with active criminal justice status, followed by African Americans. More than 50% of persons in all groups have a prior FTA. Native Americans have the highest percentage with a prior prison record.[7]

Figure 7

Previous Record of Defendants in a Statewide Database, by Race

Legend: ■ White ■ African American ■ Hispanic ■ Asian ■ Native American

	White	African American	Hispanic	Asian	Native American
Prior Felony Convictions	31	46	33	24	44
Prior Misdemeanor Convictions	62	65	62	66	65
Active Criminal Justice Status	25	34	27	38	38
Prior Failure to Appear	53	71	63	59	65
Prior Prison Record	46	53	45	37	67

---

[7] Statistically significant differences (p<.05) as compared to White defendants in Figure 7 are the greater likelihood of African Americans to have a prior felony, greater likelihood of African Americans having active criminal justice status, the greater likelihood of African Americans and Hispanics to have previous failures to appear, and the greater likelihood of African Americans and Native Americans to have prior prison records.

F:\USERS\Everyone\748 Pretrial Services and Racial Disparities\Reports\Racial Disparities and Pretrial Services 3-11-13.docx

Figure 8 shows that African Americans in the study have the largest population percentage arrested for a felony offense and the lowest percentage incarcerated, but receive the second-longest sentence. Native Americans have the highest percentage incarcerated, the third-highest felony offense rate, and an average sentence length of 33 months. White defendants are least likely to be arrested as a felon, have the second-lowest percentage (along with African Americans) incarcerated, and receive the shortest sentences. APIs have the second-highest percentage arrested for a felony and the longest average sentence length—nearly twice as long as White defendants.[8]

Figure 8

Outcomes for Defendants
in a Statewide Database, by Race

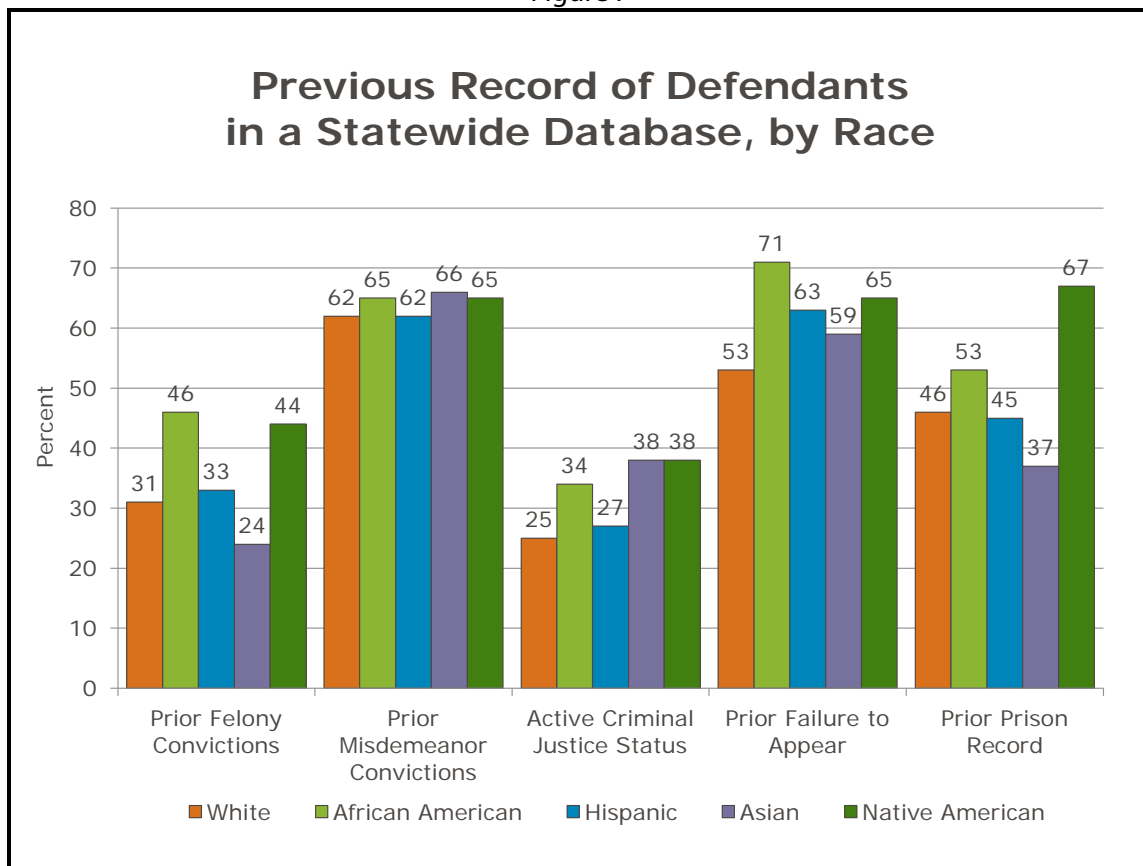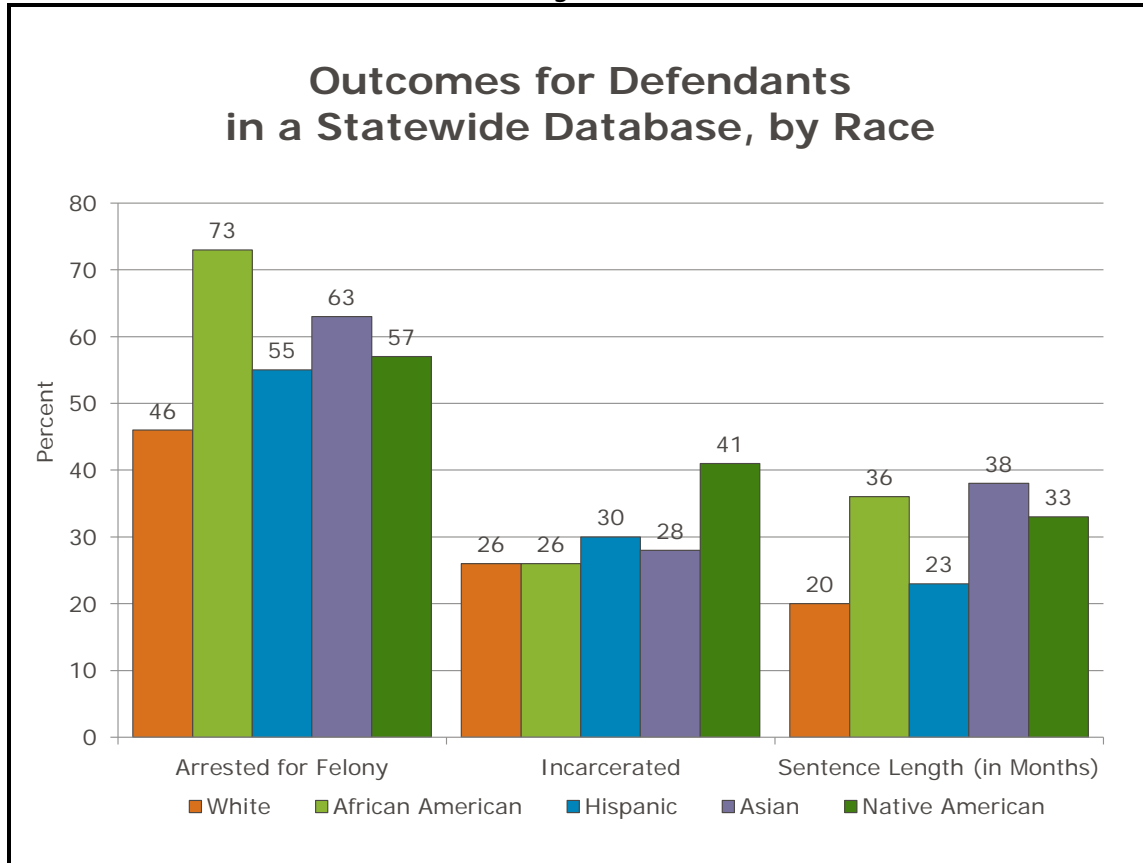[8] Statistically significant differences (p<.05) as compared to White defendants in Figure 8 are the greater likelihood of African Americans and Hispanics to be charged with a felony offense, and the greater likelihood of African Americans receiving longer sentences.

F:\USERS\Everyone\748 Pretrial Services and Racial Disparities\Reports\Racial Disparities and Pretrial Services 3-11-13.docx

Findings From the Colorado Data

Table 5 (next page) shows that for incarceration risk, race is not a significant predictor in the Colorado data for any of the four models or for any of the racial groups; the significant predictors of incarceration are being male rather than female, prior convictions, prior prison, and active criminal status. Participating in the assessment of risk and pretrial supervision in Colorado reduces the risk of incarceration by 34%, given the presence of the other factors (Model 4).

Being African American (versus White) increases the risk of longer sentencing by 14% when controlling for case characteristics, prior record, and detention at the pretrial stage; but this risk is not significant when felony offense is introduced into the model. In Model 4, participation in pretrial supervision decreases sentence length by 4% given the presence of other factors.

Racial disparities in level of adjudication (Table 2 in the SCPS analysis) could not be calculated because the adjudicated charges were not available in the Colorado database.

Table 5

The Cumulative Effects of Racially Disparate Processing on Sentencing Outcomes in Colorado

	Decision to Incarcerate				Sentence Length (in months)			
	Model 1	Model 2	Model 3	Model 4	Model 1	Model 2	Model 3	Model 4
Male	1.79**	1.79**	1.78**	1.77**	-.01	-.01	.00	.00
African American	0.82	0.82	0.88	0.83	.14**	.14**	.06	.06
Latino	1.12	1.12	1.15	1.15	.04	.05	.02	.02
Asian	0.73	0.74	0.77	0.73	.05	.05	.06	.06
Native American	1.69	1.68	1.71	1.66	.07	.07	.06	.06
Pretrial incarceration		1.04	1.08	1.06		.04	.01	.01
Felony offense			0.76*	0.79*			.38**	.38**
Person offense	1.18	1.17	1.12	1.14	.17**	.17**	.19**	.19**
Single charge	0.93	0.93	0.94	0.92	.05	.05	.05	.05
Second felony charge	1.05	1.05	1.17	1.14	.13*	.13*	.04	.04
Re-arrest pretrial	1.05	1.06	1.07	1.18	-.05	-.04	-.03	-.02
Failure to appear	0.93	0.93	0.94	0.93	.12*	.12*	.11*	.11*
Prior felony conviction	2.20**	2.19**	2.27**	2.20**	.05	.05	-.02	-.02
Prior misdemeanor conviction	1.51**	1.50**	1.49**	1.48**	.01	.01	.04	.04
Active criminal justice status	1.40*	1.39*	1.33	1.28	-.08	-.08	-.03	-.04
Prior failure to appear	1.14	1.13	1.13	1.11	-.12*	-.12*	-.10*	-.11*
Prior prison	1.33*	1.32*	1.31*	1.33*	.06	.06	.05	.05
Pretrial services				0.66**				-.04
N	**1,565**	**1,565**	**1,565**	**1,565**	**420**	**420**	**420**	**420**

*p<=.05, ** p<=.01

Table 6 shows the results of logistic regressions that were performed on all pretrial outcomes except for bond amount, in which a multiple linear regression was generated. Being Latino (versus White) significantly decreases the likelihood of recognizance release (34% less), and bond amounts at or close to the mean increase by 7%. Being African American (versus White) increases the likelihood of bail denial by 4.3 times and increases bond amounts at or close to the mean by 30%. Being Native American increases the likelihood of denial of bail by 3.7 times as compared to White defendants, and increases the likelihood of pretrial incarceration by 2.5 times. In addition, Native American bond amounts close to the mean increase by 40%; and decrease the likelihood of posting bond by 68% as

compared to White defendants. API defendants' bond amounts increase by 36% if at or near the mean.

Pretrial supervision increases the likelihood of recognizance release by 3.2.

Table 6					
Racial Disparities in Pretrial Decisions and Outcomes in Colorado					
	Recognizance Release	Denied Bail	Bail Amount (logged)	Made Bail	Pretrial Incarceration
Male	0.66**	2.22**	0.08*	0.91	1.26*
African American	0.95	4.31**	0.30**	0.99	1.19
Latino	0.66**	0.87	0.07*	1.18	0.99
Asian	0.51	1.81	0.36**	1.01	1.13
Native American	0.93	3.72*	0.40**	0.32*	2.47*
Bail amount				0.69**	
Person offense	0.84	5.45**	0.17**	0.95	1.08
Single charge	1.57**	0.51*	-0.05	1.07	0.87
Second felony charge	1.22	1.56	0.32**	1.00	1.24
Prior felony conviction	0.42**	3.05**	0.18**	0.97	1.34*
Prior misdemeanor conviction	0.72*	0.57	-0.04	0.78*	1.24*
Active criminal justice status	0.78	0.92	-0.25**	0.69**	1.50**
Prior failure to appear	0.56**	1.16	0.03	0.81	1.49**
Prior prison	0.65**	2.10*	0.02	0.81	1.35**
Pretrial services	3.20**		-0.06		
N	1,294	1,912	1,431	1,432	1,913

*p<=.05, ** p<=.01

Table 7 shows that being African American increases the likelihood of dismissal of charges

under all four models by 55% to 59% as compared to White defendants. No other differences by race

are statistically significant. Prior court and criminal activity decreases the odds of dismissal, whereas

having a person offense and a single charge increases the likelihood of dismissal of charges by 47% to

51%, respectively.

Table 7
The Cumulative Effects of Racially Disparate Processing on Dismissal Rates
in Colorado Counties From 2000 to 2006

	Dismissal – Colorado			
	Model 1	**Model 2**	**Model 3**	**Model 4**
Male	0.88	0.89	0.89	0.90
African American	1.55**	1.59**	1.55**	1.57**
Latino	0.85	0.85	0.84	0.84
Asian	1.39	1.42	1.40	1.42
Native American	0.97	1.07	1.07	1.07
Pretrial incarceration		0.66**	0.66**	0.66**
Felony offense			1.10	1.10
Person offense	1.47**	1.48**	1.51**	1.50**
Single charge	2.20**	2.19**	2.19**	2.20**
Second felony charge	1.22	1.24	1.19	1.20
Re-arrest pretrial	0.89	0.87	0.87	0.85
Failure to appear	0.58*	0.59*	0.60*	0.60*
Prior felony conviction	1.25	1.29	1.27	1.29
Prior misdemeanor conviction	0.95	0.97	0.97	0.97
Active criminal justice status	0.81	0.85	0.86	0.87
Prior failure to appear	0.84	0.87	0.87	0.87
Prior prison	0.79	0.81	0.81	0.81
Pretrial services				1.13
N	**1,913**	**1,913**	**1,913**	**1,913**

*p<=.05, ** p<=.01

Racial Disparities in SCPS and Colorado Datasets

The results indicate that in the SCPS data, Hispanics tend to have the most punitive outcomes (detention, bail, incarceration), and White defendants tend to have the least punitive outcomes when controlling for case characteristics, prior record, pretrial detention, and adjudication for a felony. Like Hispanics, Asian defendants are significantly more likely than White defendants to be incarcerated under all four models. Being Native American does not increase the likelihood of being incarcerated under any of the models. African Americans have a 7% greater likelihood of incarceration than White

defendants; but, as additional controls are added, the likelihood of incarceration is not significant. At the same time, in the presence of all the risk factors, being ordered into supervision by pretrial services reduces the risk of incarceration by 23%.

In the Colorado data, African Americans and Native Americans, not Hispanics, tend to have the most punitive outcomes; although Hispanics have a slightly higher incarceration rate than the other groups. For incarceration risk, race does not show up as a significant predictor in the Colorado data; instead, the significant predictors of incarceration are prior convictions, prior prison time, and active criminal status. In this database, pretrial services reduce the risk of incarceration in the Colorado data by 34% given the presence of other factors. The question to be investigated in the next section: For which groups and decisions do pretrial services affect racial disparities in sentencing outcomes?

Effect of Pretrial Services on Racial Disparities

Further analyses were conducted using the differences of means test to clarify the effect of pretrial services (ordered into supervision of pretrial services in the SCPS database and interviewed and/or supervised in the CPAT database) on the relationships between race and outcomes (dismissal, sentences of probation, jail, or prison). For each of the sentencing outcomes as well as dismissal of the charges, Hispanic, African American, API, and Native American defendants were separately compared with White defendants in two different scenarios—one where none of the defendants had pretrial services and the other where all of the defendants were provided pretrial services. If, for example, no differences among races for a particular pretrial status are shown, yet differences are shown (or the differences change dramatically) for the other pretrial status, this suggests pretrial services status does affect the relationship between race and outcome. Each outcome by race is shown for both pretrial services and non-pretrial services. If significant differences between defendants of color and White

defendants emerge for those who were ordered to supervision in pretrial services versus not ordered, it shows that pretrial services do affect the relationship between race and the particular outcome.

The regression analyses indicate that the presence of pretrial services may reduce racial disparities or reverse the more punitive outcomes for minority groups. In the SCPS data for individuals who are not ordered into the supervision of pretrial services, Whites tend to have significantly higher dismissal rates (40%) than APIs (31%), and African Americans have significantly higher dismissal rates than Whites (Table 8). In contrast, for those ordered into supervision during the pretrial stage, there is no significant difference in the dismissal rate between Whites and APIs; Hispanics and African Americans with pretrial services have higher dismissal rates than Whites, although the differences are not significant.

		Hispanic	African American	White	API	Native American	Total
Table 8							
Effect of Pretrial Services on Dismissal, SCPS Data							
No Pretrial Services							
Dismiss	No	8,378	13,211	9,937	722	79	**32,327**
	Yes	5,256	10,586	6,510	322	63	**22,737**
	Total	**13,634**	**23,797**	**16,447**	**1,044**	**142**	**55,064**
	% Yes	39%	44%	40%	31%	44%	**41%**
Vs. White	z-statistic	1.82	9.78		5.61	1.16	
	p-value	7%	0%		0%	25%	
	Significantly different from white?	No	Yes		Yes	No	
Pretrial Services							
Dismiss	No	340	690	693	49	20	**1,792**
	Yes	433	826	750	40	15	**2,064**
	Total	**773**	**1,516**	**1,443**	**89**	**35**	**3,856**
	% Yes	56%	54%	52%	45%	43%	**54%**
Vs. White	z-statistic	1.82	1.37		1.29	1.07	
	p-value	7%	17%		20%	19%	
	Significantly different from white?	No	No		No	No	
p<.05							

In the Colorado data (see Appendix), no significant difference appears in the dismissal rates across racial groups for those without pretrial services. However, for those interviewed for risk level and possibly supervised during the pretrial phase, the African American dismissal rate (34%) is significantly higher than the White dismissal rate (19%). African Americans have higher dismissal rates than White defendants in both scenarios, but the difference is not significant for those who did not receive supervision services. (An individual was considered a pretrial services participant if he/she spent one day or more in pretrial supervision.) This is consistent with analyses showing higher

dismissal rates for African American defendants, suggesting the evidence may not be as strong in these cases or that other factors were considered in the original charges.

Sentencing, SCPS

For defendants who were not ordered into supervision of pretrial services during the pretrial stage, significant differences were found in the SCPS database between different racial groups and White defendants for sentences to prison, jail, and probation (see Appendix, Table 10).

- Hispanics, African Americans, and Native Americans are significantly more likely, while APIs are less likely, than White defendants to receive a prison sentence.

- Hispanics and APIs are more likely, while African Americans and Native Americans are less likely, than Whites to be sentenced to jail.

- White defendants are placed on probation—the least severe of the sentences— significantly more often than Hispanic and African American defendants.

For defendants who were ordered into supervision of pretrial services during the pretrial phase:

- No significant disparities are manifested between groups for prison sentences.

- White defendants are less likely to be sentenced to jail than Hispanic, African American, and API defendants.

- Hispanic and African American defendants are less likely, but Native Americans are more likely, than White defendants to be sentenced to probation.

- White defendants receive more lenient sentences. They are placed on probation or jailed at a higher percentage than the other defendants, and a smaller percentage is sent to prison.

Sentence Lengths, SCPS

In the SCPS data, two thirds of defendants not ordered into supervision of pretrial services in the pretrial phase received sentences between 0 and 19 months, 28% were sentenced to 20–99 months, and the remaining were sentenced to 100-plus months (see Appendix, Table 11).

- African Americans are significantly less likely, but APIs more likely, to be sentenced to 0–9 months (the least severe sentence length) than White defendants.

- Hispanic and API defendants are less likely to be sentenced to 10–19 months than White defendants.

- Hispanics, African Americans, and Native Americans are more likely, but Asians less likely, to be sentenced to 20–39 months as compared to White defendants.

- African American and API defendants are more likely than White defendants to be sentenced to 40–99 months.

- Hispanic defendants are more likely than White defendants to be sentenced to 100–179 months.

- Hispanics and African Americans are more likely, and APIs less likely, to receive sentences of 180-plus months.

- White defendants have the highest percentage (70%) receiving sentence lengths of 0–19 months, as compared to 69% of Hispanics, 63% of African Americans, 72% of Asians, and 68% of Native Americans; while 4% of African American defendants receive sentence lengths of 180-plus months as compared to 3% of White, 2% of Hispanic, and 1% of API defendants.

Of defendants ordered into the supervision of pretrial services, 81% were given jail or prison sentences between 0 and 19 months; 15%, 20–99 months; and the rest were sentenced to 100-plus months.

- Hispanic and African American defendants are more likely to receive a 0–9 months and 10–19 months sentence than White defendants.

- No significant differences by race are shown among the other sentence lengths.

- Defendants who receive pretrial services have a higher percentage with the shortest sentences of 0–19 months.

Sentencing and Sentence Lengths, Colorado

The difference of means analysis shows few racial disparities for Colorado defendants who received no pretrial services.

- Black and Native American defendants are more likely than White defendants to be sentenced to prison.

- Jail and probation sentences show no disparities by race.

Table 14 (see Appendix) shows results for defendants who were not interviewed to determine risk level and supervised during pretrial release.

- Black defendants are significantly less likely than White defendants to receive 0–11 months, the least punitive sentence, and more likely to receive sentences of 60-plus months.

- No other disparities were identified.

Table 15 (see Appendix) shows results for Colorado defendants receiving pretrial services.

- Native Americans are more likely than White defendants to be sentenced to prison (the small numbers for all groups precludes generalizing).

- Hispanics are more likely than White defendants to be placed on probation, the least severe sentence.

Sentence length with pretrial services shows no significant differences among the groups (Table 16, Appendix), although only 20% of African American defendants received the shortest sentence of 0–11 months compared to 41% of Hispanic, 35% of White, and no Native American defendants (only one sentenced Native American was in the pretrial services group).

Discussion and Conclusion

The findings of the regression analyses indicate that key decisions made at the pretrial phase of the adjudication process can be critical determinants of sentencing outcomes. Pretrial incarceration and adjudication for a felony are the best predictors of the decision to incarcerate and sentence length in the SCPS data. The analyses show that being Latino increases the risk for denial of bail, decreases the likelihood of making bail, and increases the likelihood of pretrial incarceration at the pretrial stage. At sentencing, Latino and API defendants have greater likelihoods of being incarcerated across all four models. Being African American, in comparison to White, increases the risk for pretrial incarceration at the pretrial stage and increases the risk for incarceration only under Model 1.

The data from Colorado tell a different story. None of the four models (adding controls for case characteristics and prior record [Model 1], pretrial detention [Model 2], adjudication for a felony [Model 3], and pretrial services [Model 4]) result in a significant difference by race in the decision to incarcerate. Only African Americans under Models 1 and 2 show an increased likelihood (14%) of longer sentences. The primary predictors of incarceration are prior felony and misdemeanor conviction, being male, and active criminal justice status. However, at the pretrial phase, African Americans are four times more likely—and Native Americans almost three times more likely—to be denied bail than White defendants. Native Americans are also nearly 2.5% more likely to be detained than White defendants during the pretrial phase. In addition, in comparison to the bail amounts for White defendants, bail amounts at or near the mean increase by 30% for African Americans, 7% for Hispanics, 36% for APIs, and 40% for Native Americans. Native Americans' ability to make bail decreases by 68%, and Hispanics are 34% less likely than Whites to receive recognizance release.

Several findings from the regression analyses suggest pretrial services play a role in how pretrial decisions affect sentencing decisions. Defendants who are assessed for risk and supervised by pretrial services are 3.2 times more likely to be released on recognizance in Colorado than those who

are not assessed and supervised. Defendants who are ordered into the supervision of a pretrial

services program are 14.45 times more likely to be released on recognizance in the SCPS data.

Using the SCPS data, the difference of means analysis compares defendants who were ordered

into the supervision of pretrial services units with defendants who were not so ordered.

- For those who were not ordered into supervision of pretrial services, White defendants have significantly lower prison rates than Hispanics, African Americans, and Native Americans; for those who were ordered into supervision of pretrial services programs, no significant racial disparities in prison sentences are shown.

- Sentence length tends to be less affected by racial disparities when defendants are ordered into supervision of pretrial services than when they are not.

The comparison of defendants who were interviewed and possibly supervised by pretrial

services units with defendants without these same services in Colorado shows that:

- When receiving neither assessment for risk or supervision during pretrial release, Black and Native American defendants receive prison sentences at higher rates than White defendants;

- Under the condition of receiving no pretrial services, jail and probation sentences show no disparities by race;

- For defendants interviewed and supervised during the pretrial phase, Hispanic defendants are more likely than White defendants to receive a probation sentence; and

- When interviewed and supervised in the pretrial phase, no other significant racial disparities are found in sentencing.

Several questions can be asked about the results of the study:

- Why did the significant outcomes at the pretrial phase not affect sentencing decisions in the Colorado data as they did in the SCPS data?

- Why does being interviewed to assess risk and participating in supervision programs in the pretrial phase in Colorado diminish racial disparities?

- Why does being ordered into the supervision of pretrial services in SCPS diminish racial disparities?

One possible answer to these questions, at least as it relates to the Colorado database, is the type of information collected by pretrial services programs and provided to the court. Pretrial services questionnaires provide more objective information than arguments made by the prosecutor or the defense, who want to influence decisions to be more favorable to their own position. As Chief Judge Timothy Evans stated in 2008, before pretrial services returned to Cook County, Illinois: "[r]ight now, we have a system where the judge is not given any objective information. Instead, the judge is placed in a position where he has to rely on what the prosecuting attorney has to say, or what the defense attorney has to say. Both of them, of course, have their own reasons for saying what they say." (Chicago Law Bulletin, December 2008, as reported in *The Pretrial Reporter* [2008]).

The CPAT questionnaire was constructed using experienced, professional pretrial services staff for face-to-face interviews and data entry, and with standardization of the data collection protocol throughout 10 Colorado counties. The data were collected from several sources, including face-to-face interviews, charging documents from the arresting agency, criminal history records, jail information systems, and case tracking systems of pretrial services agencies. It "provides judges, prosecutors, defense attorneys, and pretrial services agency staff with empirically derived information on how to define and what weight to assign various factors when assessing the degree of risk a defendant poses to public safety and non-appearance in court" (Pretrial Justice Institute & JFA Institute, 2012).

For defendants convicted of a felony in Colorado, the sentencing judge often requests the probation department to conduct a pre-sentence investigation (PSI) prior to sentencing. This provides the judge with extensive information on which to base a decision to send the defendant to prison, residential community corrections, or probation. The PSI often contains information from the pretrial program on how the defendant performed on pretrial release. A positive defendant performance

F:\USERS\Everyone\748 Pretrial Services and Racial Disparities\Reports\Racial Disparities and Pretrial Services 3-11-13.docx

while on supervision often gets noted in the PSI and can influence the judge to impose probation or a lesser sentence instead of a harsher or more restrictive sentence.

An interview with the director of a pretrial services program located in a probation department in another state revealed the program regularly provides a one-page review as well as a pre-sentence report for the court. The director noted that a positive report is a strong statement about the ability of the defendant to do well on probation, and generally judges are reluctant to sentence a defendant to jail when he/she has a good record meeting probation conditions during pretrial release.

One other reason for racial disparities at the pretrial stage in the Colorado data not translating into racial disparities in sentencing is that of the 1,315 of 1,970 defendants in the database who were released, 601 participated in pretrial services programs and 714 did not. It is possible that the sizeable number of defendants in pretrial services in Colorado who have the benefits of objective information provided to the judge, positive PSIs written prior to sentencing, and no misconduct (e.g., FTAs) balances out potential racial disparities for defendants who receive no pretrial services.

Currently, pretrial services programs are active in about 400 jurisdictions in the country, which means fewer than 15% of counties provide this service. More research on pretrial services and the multiple benefits they provide to criminal processing should be encouraged. Access to the SCPS data was very beneficial in examining racial disparities and pretrial services; however, a few additional variables would have allowed this study to be more specific. For example, it would be helpful to include variables indicating whether defendants received the assessment for risk, were ordered into supervision while on pretrial release, and/or actually enrolled in pretrial services. The increased interest in pretrial services as a way to incarcerate only those who are a public safety or are at risk of FTA justifies inclusion of these variables. The Colorado database was established specifically to track defendants in 10 counties from pretrial detention to sentencing; its focus is to provide extensive information from multiple sources and include sentencing process outcomes. As an evidence-based practice, the database is essential to tracking specific outcomes; it maintains extensive data that allow

analysis of multiple factors including the calculation of risk, orders for supervision during pretrial release, and enrollment in supervision. The Colorado data is a model of the data needed for additional pretrial services programs research.

The high cost of incarceration, overcrowding in jails and prisons, and the need to maintain public safety are growing concerns for many communities. Decreasing jail populations by using pretrial services programs that provide information to judges to identify and detain defendants at risk of committing a new offense and releasing those at low risk of a new offense can resolve all three issues. This approach is increasingly of interest, particularly in California where the Public Safety Realignment Act of 2011 has highlighted these issues. The ability of the pretrial services process to decrease racial disparities in criminal processing is an additional benefit and should be examined in depth, both in local jurisdictions and large databases.

Bibliography

Demuth, S. (2003). Racial and ethnic differences in pretrial release decisions and outcomes: A comparison of Hispanic, Black, and White felony arrestees. *Criminology*, *42*(3), 873–907.

Oh, A. E., & Umemoto, K. (2005). *Asian and Pacific Islander prisoner reentry: A profile of characteristics, issues and programs*. Asian Americans/Pacific Islanders in Philanthropy (AAPIP).

Pretrial Justice Institute. (n.d.) Retrieved from http://www.pretrial.org/PretrialServices/Pages/default.aspx on July 10, 2010.

Pretrial Justice Institute & JFA Institute. (2012). The Colorado Pretrial Assessment Tool (CPAT).

Schlesinger, T. (2008). The cumulative effects of racial disparities in criminal processing. *The Advocate, (30)*3, 22–34.

Spohn, C. (2000). Thirty years of sentencing reform: The quest for a racially neutral sentencing process. US Department of Justice, Office of Justice Programs. *Criminal justice 2000: Policies, processes, and decisions of the criminal justice system, 3*, 427–501.

The Pretrial Reporter. (2008). Pretrial services return to Cook County. Volume 34, No. 6.

Appendix

Table 9						
Effect of Pretrial Services on Dismissal, Colorado Data						
		Hispanic	**African American**	**White**	**API**	**Native American**	**Total**

		Hispanic	African American	White	API	Native American	Total
No Pretrial Services							
Dismiss	No	327	170	590	20	23	**1,130**
	Yes	61	46	125	3	4	**239**
	Total	**388**	**216**	**715**	**23**	**27**	1,369
	% Yes	16%	21%	17%	13%	15%	**17%**
Vs. White	z-statistic	0.75	1.27		0.55	0.36	
	p-value	46%	20%		58%	72%	
	Significantly different from white?	No	No		No	No	
Pretrial Services							
Dismiss	No	153	35	289	3	5	**485**
	Yes	26	18	67	3	2	**116**
	Total	**179**	**53**	**356**	**6**	**7**	601
	% Yes	15%	34%	19%	50%	29%	**19%**
Vs. White	z-statistic	1.24	2.53		1.92	0.65	
	p-value	22%	1%		6%	51%	
	Significantly different from white?	No	Yes		No	No	
p<.05							

		Hispanic	African American	White	API	Native American	Total
Table 10							
Effect of Pretrial Services on Sentencing							
No Pretrial Services, SCPS Data							
Sentence	Prison	2,749	4,770	2,936	172	33	**10,660**
	Jail	3,770	4,806	3,845	330	24	**12,775**
	Probation	1,577	3,165	2,785	187	17	**7,731**
	Fine	119	204	222	14	2	**561**
	Other	163	266	150	19	3	**601**
	Total	**8,378**	**13,211**	**9,938**	**722**	**79**	32,328
%	Prison	33%	36%	30%	24%	42%	**33%**
	Jail	45%	36%	39%	46%	30%	**40%**
	Probation	19%	24%	28%	26%	22%	**24%**
Prison	z-statistic	4.76	10.49		3.27	2.37	
	p-value	0%	0%		0%	2%	
	Significantly different from White?	yes	yes		yes	yes	
Jail	z-statistic	8.63	3.60		3.73	1.51	
	p-value	0%	0%		0%	15%	
	Significantly different from White?	yes	yes		yes	no	
Probation	z-statistic	14.56	7.01		1.23	1.28	
	p-value	0%	0%		22%	20%	
	Significantly different from White?	yes	yes		no	no	
Pretrial Services, SCPS Data							
Sentence	Prison	42	82	95	4	2	**225**
	Jail	149	279	233	25	3	**689**
	Probation	143	308	349	19	15	**834**
	Fine	3	14	8	0	0	**25**
	Other	3	7	8	1	0	**19**
	Total	**340**	**690**	**693**	**49**	**20**	1,792
%	Prison	12%	12%	14%	8%	10%	**13%**
	Jail	44%	40%	34%	51%	15%	**38%**
	Probation	42%	45%	50%	39%	75%	**47%**

		Hispanic	African American	White	API	Native American	Total
Table 10							
Effect of Pretrial Services on Sentencing							
Prison	z-statistic	0.60	1.02		1.10	0.48	
	p-value	55%	31%		27%	63%	
	Significantly different from White?	no	no		no	no	
Jail	z-statistic	3.19	2.62		2.47	1.74	
	p-value	0%	1%		1%	8%	
	Significantly different from White?	yes	yes		yes	no	
Probation	z-statistic	2.51	2.13		1.57	2.17	
	p-value	1%	3%		12%	3%	
	Significantly different from White?	yes	yes		no	yes	

		Hispanic	African American	White	API	Native American	Total
Table 11							
Sentence Length by Race							
No Pretrial Services, SCPS Data							
Sentence in months	0–9	48%	41%	47%	54%	42%	**45%**
	10–19	21%	22%	23%	18%	26%	**22%**
	20–39	17%	17%	15%	9%	26%	**16%**
	40–99	11%	13%	11%	15%	5%	**12%**
	100–179	2%	3%	2%	4%	0%	**3%**
	180+	2%	4%	3%	1%	0%	**3%**
0–9	z-statistic	1.66	-6.60		3.07	-0.69	
	p-value	10%	0%		0%	49%	
	Significantly different from White?	no	yes		yes	no	
10–19	z-statistic	3.19	1.52		2.45	0.60	
	p-value	0%	13%		1%	55%	
	Significantly different from White?	yes	no		yes	no	
20–39	z-statistic	3.48	4.20		3.57	2.49	
	p-value	0%	0%		0%	1%	
	Significantly different from White?	yes	yes		yes	yes	
40–99	z-statistic	0.17	4.43		2.70	-1.32	
	p-value	86%	0%		1%	19%	
	Significantly different from White?	no	yes		yes	no	
100–179	z-statistic	2.03	1.65		1.79	1.21	
	p-value	4%	10%		7%	23%	
	Significantly different from White?	yes	no		no	no	
180-plus	z-statistic	3.66	3.69		2.49	1.23	
	p-value	0%	0%		1%	22%	
	Significantly different from White?	yes	yes		yes	no	

		Hispanic	African American	White	API	Native American	Total
Table 12							
Sentence Length by Race							
Pretrial Services, SCPS Data							
Sentence in months	0–9	71%	61%	52%	59%	80%	**60%**
	10–19	15%	19%	27%	28%	0%	**21%**
	20–39	7%	8%	9%	0%	20%	**8%**
	40–99	5%	7%	8%	7%	0%	**7%**
	100–179	1%	2%	2%	7%	0%	**2%**
	180+	1%	3%	2%	0%	0%	**2%**
0–9	z-statistic	4.24	2.42		0.69	1.24	
	p-value	0%	2%		49%	21%	
	Significantly different from White?	yes	yes		no	no	
10–19	z-statistic	-3.11	-2.38		0.08	-1.35	
	p-value	0%	2%		94%	18%	
	Significantly different from White?	yes	yes		no	no	
20–39	z-statistic	-0.99	-0.77		-1.74	0.79	
	p-value	32%	44%		8%	43%	
	Significantly different from White?	no	no		no	no	
40–99	z-statistic	-1.36	-0.48		-0.20	-0.66	
	p-value	17%	63%		84%	51%	
	Significantly different from White?	no	no		no	no	
100–179	z-statistic	-0.67	0.12		1.76	-0.31	
	p-value	50%	91%		8%	76%	
	Significantly different from White?	no	no		no	no	
180-plus	z-statistic	-0.67	0.83		-0.74	-0.31	
	p-value	50%	41%		46%	76%	
	Significantly different from White?	no	no		no	no	

		Hispanic	African American	White	API	Native American	Total
			Table 13				
			Sentencing, Colorado Data				
			No Pretrial Services				
Sentence	DOC	34	32	45	1	5	**117**
	Jail	100	33	155	7	8	**303**
	Probation	100	65	190	7	4	**366**
	Other*	93	40	200	5	6	**340**
	Total	**327**	**170**	**590**	**20**	**23**	**1,130**
%	Prison	10%	19%	8%	5%	22%	**10%**
	Jail	31%	19%	26%	35%	35%	**27%**
	Probation	31%	38%	32%	35%	17%	**32%**
DOC	z-statistic	1.06	3.92		0.53	2.23	
	p-value	29%	0%		60%	3%	
	Significantly different from White?	No	Yes		No	Yes	
Jail	z-statistic	1.40	1.83		0.87	0.91	
	p-value	16%	7%		38%	36%	
	Significantly different from White?	No	No		No	No	
Probation	z-statistic	0.51	1.47		0.26	1.50	
	p-value	61%	14%		79%	13%	
	Significantly different from White?	No	No		No	No	

*Other includes fines only, community service only, unknown, deferred, community corrections, and case open.

		Hispanic	African American	White	API	Native American	Total
Table 14							
Sentence Length by Race, Colorado Data							
No Pretrial Services							
Sentence Length	0–11	43%	42%	48%	50%	64%	**46%**
	12–23	25%	8%	25%	0%	9%	**22%**
	24–59	20%	22%	14%	25%	9%	**17%**
	60+	12%	28%	13%	25%	18%	**14%**
0–11	z-statistic	0.89	0.74		0.06	0.97	
	p-value	37%	46%		95%	33%	
	Significantly different from White?	No	No		No	No	
12–23	z-statistic	0.03	2.17		1.15	1.19	
	p-value	98%	3%		25%	24%	
	Significantly different from White?	No	Yes		No	No	
24–59	z-statistic	1.31	1.25		0.63	0.45	
	p-value	19%	21%		53%	65%	
	Significantly different from White?	No	No		No	No	
60-plus	z-statistic	0.16	2.27		0.72	0.52	
	p-value	87%	2%		47%	60%	
	Significantly different from White?	No	Yes		No	No	

		Hispanic	African American	White	API	Native American	Total
Table 15							
Sentencing by Race, Colorado Data							
Pretrial Services							
Sentence	DOC	5	1	8	0	1	**15**
	Jail	33	5	68	0	0	**106**
	Probation	78	16	118	1	3	**216**
	Other*	37	13	95	2	1	**148**
	Total	**153**	**35**	**289**	**3**	**5**	485
%	Prison	3%	3%	3%	0%	20%	**3%**
	Jail	22%	14%	24%	0%	0%	**22%**
	Probation	51%	46%	41%	33%	60%	**45%**
DOC	z-statistic	0.30	0.03		0.29	2.22	
	p-value	77%	98%		77%	3%	
	Significantly different from White?	No	No		No	Yes	
Jail	z-statistic	0.47	1.24		0.96	1.24	
	p-value	64%	22%		34%	22%	
	Significantly different from White?	No	No		No	No	
Probation	z-statistic	2.04	0.55		0.26	0.86	
	p-value	4%	58%		79%	39%	
	Significantly different from White?	Yes	No		No	No	

*Other includes fines only, community service only, unknown, deferred, community corrections, and case open.

		Hispanic	African American	White	Native American	Total
Table 16						
Sentence Length by Race, Colorado Data						
Pretrial Services						
Sentence length	0–11	41%	20%	35%	0%	**36%**
	12–23	43%	40%	44%	100%	**44%**
	24–59	8%	40%	18%	0%	**15%**
	60+	8%	0%	3%	0%	**5%**
0–11	z-statistic	0.50	0.70		0.74	
	p-value	61%	48%		46%	
	Significantly different from White?	No	No		No	
12–23	z-statistic	0.03	0.15		1.13	
	p-value	98%	88%		26%	
	Significantly different from White?	No	No		No	
24–59	z-statistic	1.33	1.21		0.46	
	p-value	18%	23%		64%	
	Significantly different from White?	No	No		No	
60-plus	z-statistic	1.07	0.41		0.18	
	p-value	28%	68%		86%	
	Significantly different from White?	No	No		No	

Table 17

**Outcomes for Defendants with Pretrial Services
Comparing Released and All Cases***

		Dismissal Rates					
		Hispanic	African-American	White	Asian	Native American	Total
Release Cases	no pretrial services	45.3%	48.5%	43.2%	30.0%	50.0%	45.5%
	pretrial services	49.5%	46.6%	49.2%	30.9%	39.4%	47.5%
All Cases	no pretrial services	31.7%	37.9%	33.5%	21.5%	41.6%	34.6%
	pretrial services	49.5%	46.6%	49.2%	30.9%	39.4%	47.5%
		Incarceration Rates					
		Hispanic	African-American	White	Asian	Native American	Total
Release Cases	no pretrial services	67.5%	60.3%	58.1%	60.1%	60.0%	61.2%
	pretrial services	56.8%	52.8%	50.0%	57.9%	25.0%	52.1%
All Cases	no pretrial services	80.3%	75.1%	71.3%	73.9%	78.8%	75.4%
	pretrial services	56.8%	52.8%	50.0%	57.9%	25.0%	52.1%
		Probation Rates					
		Hispanic	African-American	White	Asian	Native American	Total
Release Cases	no pretrial services	69.2%	62.2%	71.2%	86.9%	80.0%	67.8%
	pretrial services	70.9%	64.8%	76.2%	89.5%	95.0%	71.6%
All Cases	no pretrial services	55.3%	46.6%	57.4%	70.0%	58.5%	53.0%
	pretrial services	70.9%	64.8%	76.2%	89.5%	95.0%	71.6%

*All cases include dismissed, acquitted, and diverted cases; incarceration and probation rates include only defendants who were sentenced.