

# Examining the Impact of the Federal Sentencing Guidelines on Racial Disparities in Federal Sentencing

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## ABSTRACT

Racial disparities in federal sentencing have long raised concerns about fairness and the effectiveness of policies intended to mitigate them. This study examines whether judicial adherence to the Federal Sentencing Guidelines significantly reduces Black–White sentencing disparities. Using the United States Sentencing Commission’s Interactive Data Analyzer, I analyzed 26,435 cases from fiscal years 2015–2024. Data were filtered to include only drug trafficking offenses involving Black or White defendants with Category 1 criminal histories. For each of the 94 federal district courts, I calculated the percentage of cases sentenced within the recommended guideline range and the percent difference in average sentence length between Black and White defendants. Linear regression was then used to measure the association between guideline application and racial disparity. Across ten fiscal years, no statistically significant association was found, indicating that judicial application of the Guidelines explains none of the variation in racial disparity. Moreover, these are the first findings to prove that the Guidelines have been ineffective at reducing racial disparity in sentencing. Ultimately, I conclude that the Guidelines are structurally broken and beyond reform. Future research should therefore investigate other contributors to disparity and explore new models of federal sentencing

## INTRODUCTION

In 2008 and 2009, two young men stood before the same judge in a Florida courtroom, both convicted of armed robbery with just one misdemeanor on record and the same sentencing scores. One — Chase Legleitner, a white defendant — was sentenced to less than two years in county jail. The other — Lamar Lloyd, a Black defendant — received 26 years in prison (Johnson et al., 2016). Their cases, eerily similar on paper, yielded drastically different outcomes. In fact, Lloyd's sentence was 1,200 percent greater than Legleitner's. This stark disparity is not an anomaly but a reflection of deeper patterns that have plagued the US justice system at both state and federal levels for decades (Vera Institute, 2018).

Beyond raising concerns about the fairness and legitimacy of the legal system, racial disparities in sentencing have far-reaching economic consequences. Approximately 70-100 million U.S. adults have an incarceration, conviction, or arrest record — the highest rate (~37.5%) in the world. On average, the earnings prospects of formerly incarcerated individuals are reduced by 52 percent. According to the Center for American Progress, “households with a currently or previously incarcerated family member have about 50 percent less wealth than households not affected by incarceration, on average” (Weller et al., 2022). Since Black and Hispanic Americans are disproportionately incarcerated, their employment and earnings prospects are disproportionately affected. Racial disparities in the justice system contribute to as much as 20 percent of the Black–White wealth gap and 40 percent of the Hispanic–White wealth gap (Weller et al., 2022). Therefore, understanding and addressing the drivers of sentencing disparities is critical to reducing economic disparities in the United States.

In the late twentieth century, there were increasing concerns over sentencing disparities in America. Congress, in response, passed the Sentencing Reform Act of 1984, which established the United States Sentencing Commission (USSC). The USSC was primarily tasked with creating the Federal Sentencing Guidelines, a standard mandatory sentencing policy for all 107 federal district and appellate courts. Implemented in 1987, these Guidelines sought to reduce unwarranted disparities. By defining the purposes of sentencing, regularly amending the Guidelines, and conducting research to inform policy recommendations, the USSC aimed to make federal sentencing more transparent, uniform, and equitable (United States Sentencing Commission, 2011). Initially, the USSC succeeded, for the Guidelines reduced judicial discretion and, consequently, disparities in sentencing (Tiede, 2009). However, subsequent legal developments fundamentally reshaped the Guidelines' framework, raising questions about whether they could still achieve their intended goals.

The first major legal challenge to the Federal Sentencing Guidelines arose in the 2005 Supreme Court case *United States v. Booker*. Prior to *Booker*, judges were required to impose sentences within a mandatory range determined by the Guidelines. These ranges were often determined based on facts found by judges rather than juries. The Supreme Court held that increasing a sentence based on facts established by judges violated the Sixth Amendment's guarantee of a jury trial: thus, facts used to determine the sentencing range under the Guidelines must be proved to a jury beyond a reasonable doubt. To remedy this constitutional violation, the Court severed the mandatory provisions of the Federal Sentencing Guidelines, creating an advisory system in which “district courts, while not bound to apply the

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Guidelines, must consult those Guidelines and take them into account when sentencing” (*United States v. Booker*, 2005).

In the wake of the *Booker* decision, the Supreme Court further defined the scope of judicial discretion under the advisory Guidelines. In *Rita v. United States* (2007), the Court held that appellate courts may presume a sentence that falls within the Guidelines to be reasonable, reinforcing their relevance in sentencing (*Rita v. United States*, 2007). However, in *Gall v. United States* (2007), the Court emphasized that appellate courts may not presume sentences outside the Guidelines to be unreasonable, granting district court judges substantial discretion to vary from the Guidelines (*Gall v. United States*, 2007). Finally, in *Kimbrough v. United States* (2007), the Court confirmed that “[a] district judge must include the Guidelines range in the array of factors warranting consideration,” but also explicitly authorized judges to deviate from the Guidelines (*Kimbrough v. United States*, 2007). While these decisions aimed to preserve the Guidelines’ influence, judicial discretion ultimately increased due to their now strictly advisory nature.

With fewer regulations and less reliance on the Guidelines, inter-judge variances and racial disparities in sentencing have increased since *Booker* (Scott, 2010). Some researchers attribute this increase to pre-sentencing differences such as variance in prosecutors, defense attorneys, and plea deals (Starr et al., 2013). Others highlight how disparities swelled directly after the *Booker* and *Gall* decisions, making it highly probable that expanded judicial discretion was the driving factor. More recently, a host of scholars have blamed growing disparities on flaws within the Guidelines themselves.

One key issue stems from the Sentencing Commission’s failure to adequately address the Guidelines’ change from mandatory to advisory. Studies have found that judges who have experience sentencing pre-*Booker* became acculturated to very different sentencing practices than judges appointed after *Booker*. These two cohorts of judges now have vastly different sentencing practices, expanding inter-judge disparities (Yang, 2015). According to the Connecticut General Assembly’s Office of Legislative Research, “a new disparity has developed between those that follow the guidelines to the letter and those who avoid them as unjust.”

The Guidelines also fail to mitigate the influence of judicial politics post-*Booker*. Republican-appointed judges are more likely to depart from the Guidelines to give longer sentences while Democrat-appointed judges more frequently depart to give shorter sentences (Schanzenbach et al., 2008). Often, this political disparity correlates with racial disparity, as on average, Republican-appointed judges sentence black defendants to 3.0 more months than similar nonblack defendants compared to Democrat-appointed judges (Cohen et al., 2019).

According to Federal Judge Jon Newman, the Guidelines are too complex. They require judges and attorneys to make detailed findings and fine distinctions. Sentences vary greatly based on the amount of time an investigator, attorney, or judge devotes to ascertaining all of the Guidelines’ required details (Newman, 2018). Even with this complexity, the Guidelines fail to produce equal punishment assessments for defendants similarly situated because the Guidelines are only used to determine specific sentencing

factors such as criminal history and offense-level; they are unable to consider the unique circumstances of each case (Coppolo, 1994).

Moreover, throughout a trial, as new details are found, many offense-level adjustments are made. At higher base offense-levels, any further increase in offense-level has even greater impact on sentence length. This is what Judge Newman refers to as “incremental immorality,” the principle that every increment of wrongdoing should result in an increasing increment of punishment. “Incremental immorality” is unique to the US justice system and attributable to the Federal Sentencing Guidelines (Newman, 2018).

The aforementioned flaws raise an essential question: in the post-*Booker* era, are the advisory Federal Sentencing Guidelines mitigating or driving racial disparities in sentencing? This study addresses these questions by examining the relationship between judicial application of the Guidelines and racial disparity in sentence length. I specifically focus on the Guidelines’ impact on Black-White racial disparity across all 94 federal district courts during the period 2015-2024 for federal drug trafficking cases. I have two key objectives: (1) determining whether the Guidelines have meaningful influence on sentencing and (2) conditional on such influence, assessing whether the Guidelines reduce or aggravate racial disparity. I hypothesize that (1) the Guidelines significantly influence sentencing and (2) during the period 2015-2024, adherence to the Federal Sentencing Guidelines in Federal District Courts significantly increased Black-White racial disparity in sentence length.

## **METHODS**

### *Data Source*

In order to measure Guideline application and racial disparity in sentencing, I utilized the United States Sentencing Commission’s Interactive Data Analyzer (IDA), an online database that offers filterable federal sentencing data from fiscal years 2015 to 2024 (Hofer, 2012). This study’s scope — years 2015-2024 — was determined based on limitations of available data from IDA. More specifically, I retrieved data from IDA’s “Sentencing Outcomes” and “Guideline Application” sections (Interactive Data Analyzer, n.d.).

### *Data Filtration*

I began by filtering the 663,684 cases reported to the Commission over ten fiscal years to isolate cases that met the following criteria: (1) federal drug trafficking case (2) Black or White defendant (3) defendant with a Category 1 criminal history. I chose to examine drug trafficking cases because racial disparity is particularly pronounced in sentencing for nonviolent and drug crimes (Turner et al., 2021). Most existing research on racial disparities in federal sentencing focuses specifically on Black-White disparities. I limited the analysis to Black and White defendants in order to allow for more direct comparisons between this study’s findings and those of prior investigations. These filters resulted in 26,435 cases that were included in the data analysis. I then divided this pool of cases into groups based on

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federal district court. Courts with zero cases meeting the stated criteria offered no sentencing data and were therefore excluded from the data analysis.

### *Data Collection*

Next, I created a Google Sheet and separated it into 94 rows, each row representing a different district court. IDA's "Guideline Application" section provides data on sentences imposed relative to the Guideline range. In one column labeled "Within Range," I recorded the percentage of cases in each court sentenced within the Guidelines' recommended range. This measured the rate of adherence to the Guidelines (judicial application), the independent variable of this study. The remaining percentage, calculated as the complement to 100%, reflected cases in which judges exercised discretion to vary or depart from the recommended range.

Then, in two new columns labeled "Average Sentence Length (Black)" and "Average Sentence Length (White)," I recorded the average sentence length imposed on Black and White defendants in each court. These data were retrieved from IDA's "Sentence Length" tab, a subsection of "Sentencing Outcomes." Using Google Sheets functions, I calculated two metrics for racial disparity in sentencing, the dependent variable of this investigation: (1) the absolute value difference in average sentence length between Black and White defendants and (2) the absolute value percent difference in average sentence length between Black and White defendants. I chose to use both measures because each offers distinct advantages. Absolute difference provides an easily interpretable view of disparity; for example, a 36-month sentencing gap between two otherwise similar defendants is intuitively meaningful. Percent difference, on the other hand, standardizes these comparisons by measuring the relative size of the gap, allowing for more precise analysis across courts with differing average baseline sentence lengths. Both metrics of racial disparity — absolute difference and percent difference — were calculated in separate columns in the spreadsheet.

### *Data Analysis*

Finally, I measured the relationship between judicial application of the Guidelines and racial disparity in sentence length using Google Sheets data charting and analysis tools. I constructed a scatter chart in which the percentage of cases sentenced within the recommended guideline range (independent variable) was graphed on the x-axis and percent difference racial disparity (dependent variable) was graphed on the y-axis. I used a linear regression model, drawing a Least Squares Regression Line (LSRL) and calculating the coefficient of determination ( $R^2$ ), to show the relationship between the independent and dependent variable.

## **RESULTS**

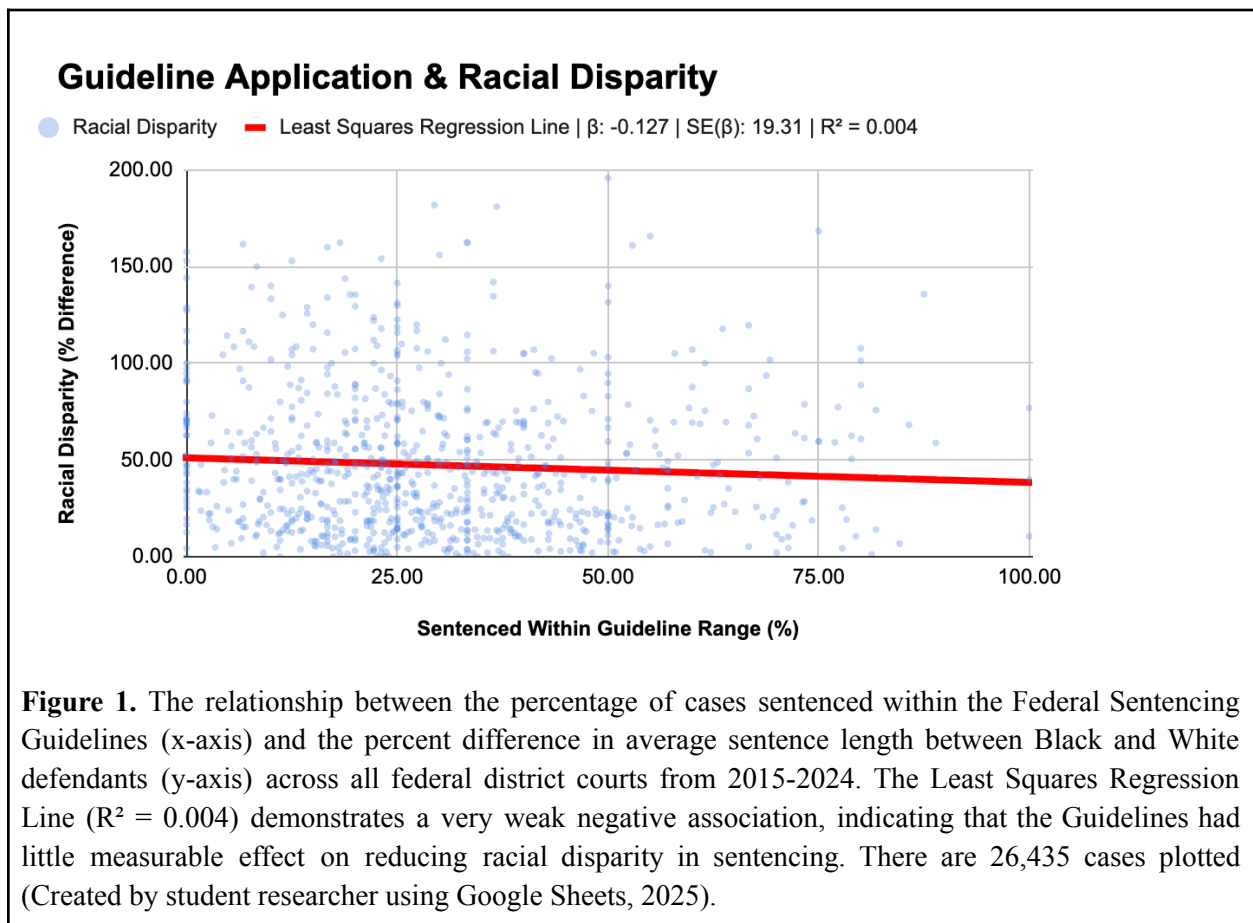
Across 26,435 drug trafficking cases from fiscal years 2015–2024, regression analysis revealed no meaningful association between judicial adherence to the Federal Sentencing Guidelines and Black–White racial disparity in sentence length. I plotted the percentage of cases sentenced within the

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Guidelines (x-axis) against the percent difference in average sentence length between Black and White defendants (y-axis) for all 94 federal district courts.

Figure 1 shows the relationship between judicial application of the Guidelines and racial disparity across all ten years (Figure 1). The regression line has a slight negative slope, indicating that racial disparity tended to decrease as guideline adherence increased. However, the  $R^2$  value (0.004) shows that this relationship was very weak, with guideline adherence explaining only 0.4% of the variation in racial disparity. This suggests that while the Guidelines may have had a small downward directional trend in relation to racial disparity, their actual explanatory power was negligible.



These years also revealed considerable inter-court variability. Several district courts with high guideline adherence still exhibited large racial disparity, demonstrating that guideline adherence alone is insufficient to produce equitable sentencing outcomes across federal courts.

## DISCUSSION

This study is the first to provide clear, quantitative, and empirical evidence that adherence to the Federal Sentencing Guidelines has no meaningful impact on racial disparities in federal sentencing. Across 26,435 cases from 2015–2024, regression analysis yielded an extremely low  $R^2$  value, indicating that Guideline application explains virtually none of the variation in racial disparity.

Interestingly, in some courts where judges applied the Guidelines at high rates, racial disparities persisted, while other courts with low adherence exhibited comparable or smaller disparities. I contend that this phenomenon may be caused by another flaw in the Guidelines: the recommended ranges are too broad. Under the Guidelines, every case is assigned a base offense level, which is then modified by a series of specific offense characteristics (such as drug quantity, use of a weapon, or involvement of a vulnerable victim) and adjustments (such as role in the offense or obstruction of justice). These levels correspond to a grid that produces a sentencing range measured in months. For example, at offense level 20 with a criminal history of Category I, the guideline range is 33–41 months, but at offense level 21 the range jumps to 37–46 months. Judges may sentence anywhere within these ranges.

The issue lies in that these ranges can be wide enough to allow for meaningful disparity even when judges adhere. A judge who routinely sentences Black defendants at the top of the range (e.g., 46 months) and White defendants at the bottom (e.g., 37 months) may technically adhere to the Guidelines while still producing disparate outcomes. In this sense, “adherence” creates the appearance of equity without guaranteeing it in practice. Therefore, narrowing the sentencing ranges could serve to further limit judicial discretion and bias within the constraints of *Booker*.

Alternatively, the Guidelines’ lack of influence on racial disparity in sentencing may point to other causes identified in prior research. Perhaps much of the disparity originates before the sentencing phase. Prosecutorial decisions — including charging practices, the imposition of mandatory minimums, and plea negotiations — create disparities that judges simply inherit. As Starr and Rehavi argue, these pre-sentencing decisions are among the most significant drivers of racial inequity in federal sentencing, and no amount of adherence to the Guidelines can fully undo the disparities established earlier in the process (Starr et al., 2013).

Moreover, this study demonstrates that there is no uniformity in how the Guidelines are applied across the 94 federal district courts. Some districts demonstrate high adherence but large racial disparities, while others with lower adherence display smaller gaps. This inconsistency mirrors what prior scholarship has identified as regional disparity. It will remain difficult to improve the overall effectiveness of the Guidelines if there is no consensus or standard on how they should be applied.

## **FUTURE WORK AND CONCLUSION**

The findings of this study underscore a critical limitation of the Federal Sentencing Guidelines: their inability to reduce racial disparities in sentencing, even when consistently applied. Thus, future work must rethink both the structure of the Guidelines and their role within the larger federal sentencing framework. Over the past two decades, scholars have proposed several reforms that attempt to correct specific flaws within the Guidelines. However, when considered together, these reforms ultimately contradict each other and create new flaws. It is in these contradictions that the central conclusion of this study is derived: the Federal Sentencing Guidelines are structurally incapable of promoting the equity they promise, and consequently may be beyond reform.

The pattern of contradictions is most apparent in the reform proposals themselves. Take Judge Jon Newman, who criticizes the Guidelines as excessively complex. Under the current system, each offense is assigned a base level, which is then modified by dozens of specific offense characteristics and adjustments, creating a sentencing table with 43 offense levels and 6 criminal history categories. Newman argues that this “micromanagement of punishment” encourages arbitrary distinctions, magnifies minor factual differences, and contributes to “incremental immorality,” the tendency for small changes in offense conduct to yield disproportionate increases in sentence length (Newman, 2018). His proposal is to consolidate these levels and adjustments into broader categories. Simplification, he argues, would make the system more transparent and less prone to manipulation. However, this proposal directly contradicts this study’s findings that the ranges are already too broad to prevent disparity. While Newman believes broader categories would enhance fairness, the data from this research suggest that broad ranges allow judges to produce racial inequity even when adhering to the Guidelines.

Legal scholar David Yellen has advanced a different critique, focusing on the Guidelines’ embrace of “real-offense sentencing.” Unlike state judicial systems, which typically calculate sentencing ranges based on the offense of conviction, the federal system requires judges to consider a host of additional conduct, including uncharged offenses, dropped charges, and even acquitted conduct, so long as it can be proved by a preponderance of evidence (Yellen, 2005). Yellen argues that this practice undermines due process, increases prosecutorial leverage, and makes the Guidelines rigid, complex, and unfair. He calls for scaling back real-offense sentencing and moving closer to charge-offense models that emphasize simplicity, transparency, and proportionality. But this solution introduces its own problems as charge-based systems magnify prosecutorial power by tying sentences more tightly to the charges a prosecutor decides to bring.

Litigator Henry Stegner highlights another structural weakness: the lack of meaningful oversight of the Guidelines. Although the Supreme Court declared the Guidelines “advisory” in *Booker*, Stegner argues they remain functionally mandatory because judges must calculate them in every case, appellate courts presume within-Guidelines sentences are reasonable, and judges who depart risk reversal (Stegner, 2018). At the same time, the Sentencing Commission’s work is insulated from effective review. Courts apply only a deferential rational-basis standard to the Guidelines themselves, and they are exempt from the Administrative Procedure Act, which authorizes federal courts to ensure that the actions of federal agencies are not “arbitrary” or “capricious.” Stegner proposes that Congress amend the Sentencing

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Reform Act to subject the Guidelines to the “arbitrary and capricious standard of judicial review.” This would force the Commission to justify its decisions with reasoned analysis to federal appellate courts. Yet, while this might improve transparency and accountability, it does little to address the underlying problems of overcomplexity, real-offense sentencing, and prosecutorial influence.

Attorney Evangeline Zimmerman takes an even more radical position, arguing that the Guidelines were flawed from the start because they rested on a misplaced faith in “mechanical justice.” The Guidelines promised fairness by imposing uniformity, but Zimmerman contends they confused sameness with equity (Zimmerman, 2010). By eliminating judicial discretion, they did not remove bias but simply shifted power to prosecutors, who operate as partisan actors. Moreover, the Commission became highly politicized, as Congress repeatedly blocked reforms (such as narrowing the crack–powder cocaine disparity) in response to political pressure. For Zimmerman, the solution is not to continue adjusting the Guidelines but to return to an indeterminate sentencing model with parole boards. She argues that parole, guided by clear criteria, allows for individualized consideration, forward-looking assessments of rehabilitation and risk, and greater flexibility than rigid guidelines. Parole-based systems, however, were originally criticized for being opaque and arbitrary, and they were the very systems the Guidelines were meant to replace.

Finally, former federal prosecutor Frank Bowman presents perhaps the most damning critique. Bowman argues that the Guidelines are structurally doomed because of their excessive severity, complexity, and politicization (Bowman, 2005). From their inception, he contends, the Guidelines were shaped by congressional mandates and prosecutorial priorities, creating what he calls a “one-way ratchet” of punishment: politically easy to increase (through statutory mandatory minimums) but nearly impossible to reduce. Over time, the Commission lost its independence, and the Guidelines became both harsher and less coherent. For Bowman, the Guidelines are not simply flawed in implementation — they are irredeemably broken in design.

When these reform proposals, spanning roughly twenty years, are considered together, a striking pattern emerges. Each scholar identifies genuine weaknesses, but every “solution” opens new flaws. Simplifying offense levels, as Newman proposes, risks making ranges so broad that bias can thrive, as seen in this study. Curtailing real-offense sentencing, as Yellen recommends, magnifies prosecutorial charging power. Subjecting the Guidelines to judicial review, as Stegner suggests, enhances transparency but leaves intact the Guidelines’ structural flaws. Zimmerman’s revival of parole boards reintroduces individualized discretion but returns to the very opacity that sentencing reform sought to overcome.

These are only the most salient critiques and reform proposals discussed in the literature. Yet they converge in that every attempt to fix one weakness risks exacerbating another. The evidence from this study — providing the only quantitative evidence that the Guidelines are dysfunctional — combined with decades of scholarship extends Bowman’s claim that the Federal Sentencing Guidelines are incapable of fulfilling their intended purpose. Future research must continue to examine the drivers of disparity both before and during sentencing. But policymakers must also confront a more fundamental question: is it worth continuing to amend and reform the Guidelines, or is it time to abandon the framework altogether

and design a new model of federal sentencing? Without such radical rethinking, the Guidelines will remain an ineffective tool for advancing sentencing equity, and racial disparities will persist as a defining feature of the federal justice system.

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