WASHINGTON STATE
Statistical Analysis Center
Informing a data-driven justice system

Sex Offender Sentencing in Washington State

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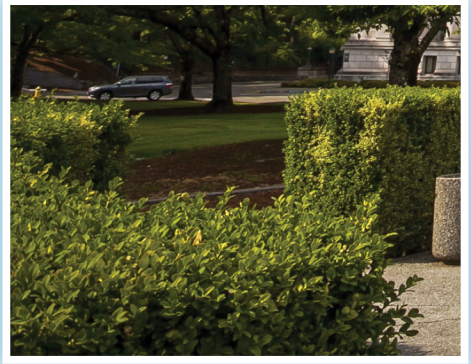

Introduction

Approved activities under the 2017 Sex Offender Registration and Notification Act (SORNA) Reallocation Grant include a review of sex offender sentencing in Washington state. The goal of the review is to determine Washington's current practices around sex offender sentencing, and how they may align with current research and what has been found to be best practice. This report provides a brief overview of sentencing in Washington state, before providing a literature review on sentencing discrepancies for those convicted of sexual offenses around the nation. Finally, the report reviews data from Washington specifically, in an effort to identify any discrepancies in the sentencing of convicted sex offenders. By identifying any existing discrepancies, we are better able to determine areas for improvement in sentencing for those convicted of sexual offenses, thus promoting a justice system that is fair and equitable to those convicted of sex crimes.

The Sentencing Reform Act (SRA) was enacted by the Washington State Legislature in 1981 with a primary goal of ensuring that offenders receive equivalent sentences if they have similar criminal histories and have committed similar crimes.[1] Prior to this decision, sentencing in Washington was indeterminate, and courts across the state had the discretion to determine whether a certain individual would serve prison time and, if so, for how long. Within the maximum sentencing sentence period, the Board of Prison Terms and Paroles would then determine when, or if, to release the individual into the community. For those who committed their crime prior to July 1, 1984, Washington still maintains the Indeterminate Sentence Review Board to set release dates.

On July 1, 1984, Washington formally moved to determinate sentencing with a primary goal of reducing unwarranted disparities in criminal sentencing. The aim of the sentencing guidelines Washington introduced was to address this goal, while still allowing discretion in the judicial system. With the inclusion of sentencing guidelines, the potential for disparity is limited but may still remain. A goal of this report is to determine if there are disparities in the sentencing of sexual offenders and, if so, what factors may influence those disparities.

Literature Review

Researchers have studied the effects of various characteristics such as sex, race, and ethnicity on sentencing outcomes. Chiricos and Crawford[2] found significant evidence of a direct racial impact on sentencing. Their review of 38 different studies found that Black defendants are significantly disadvantaged compared to White defendants when facing imprisonment, though Black defendants were found to be less disadvantaged in urban areas. Additionally, another review found that race and ethnicity play a large role in sentencing decisions. Specifically, Black and Hispanic defendants were more likely than their White counterparts to be sentenced to time in prison.[3]

[1] https://sgc.wa.gov/sites/default/files/public/sgc/documents/historical.pdf

[2] Chiricos, T. G., & Crawford, C. (1995). Race and Imprisonment: A Contextual Assessment of the Evidence. EBSCO Publishing

[3] Spohn C (2000) Thirty years of sentencing reform: the quest for a racially neutral sentencing process. In: Criminal justice 2000, vol 3: policies, processes and decisions of the criminal justice system. Office of Justice Programs, Washington, DC

The same author later found that males tend to get lengthier sentences than females, and an offender's race and ethnicity have an effect on sentencing decisions.[4]

Though there is a large body of evidence suggesting that various offender characteristics may have an effect on sentencing decisions, it is important to discuss the research specific to sex offenders. Several studies have noted discrepancies in the sentencing of sex offenders based on offense and offender characteristics.[5] While research pertaining to sex offenders in this area is becoming more readily available this report utilizes numbers from Washington specifically to try and shed light on our specific circumstances. Knowing the state of sentencing of sex offenders in Washington and any demographic discrepancies allows criminal justice actors to be better infomed and ensure equality in sentencing.

A study released in May 2019 utilized felony sex offense data from the Florida Department of Corrections' Sentencing Guidelines from 1995-2010 to determine if differences in sentencing outcomes exist between male and female sex offenders.[6] The study authors matched male and female sex offenders based on offense severity and prior records scores in an effort to control for disparities in sanction assignment. Overall, results show that female sex offenders were significantly less likely than their male counterparts to receive a prison sentence, are less likely to be sentenced to jail than probation, and are more likely to receive intensive probation. In addition, the authors found statistically significant gender differences in sentence length. Specifically, males received longer prison, probation, and intensive probation sentences.

A 2012 article also analyzed sentencing discrepancies between male and female sex offenders convicted between 1994 and 2004[7]. The authors found that women received longer sentences than men for similar sex offenses. Finally, a 2014 study revealed that in some instances females were treated more leniently in sentencing, in part due to their relationship with their victims.[8]

A study from 2000 found that sentencing results were less related to the victim, and more so to the prior record of the offender and the number of criminal acts in the current case being considered.[9] Recent research, though, has expanded on this and found that characteristics of the victim may have a stronger relationship with sentencing outcomes than originally thought.

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[4] Spohn C, Belenko S (2013) Do the drugs, do the time? The effect of drug abuse on sentences imposed on drug offenders in three U.S. district courts. Crim Justice Behav 40(6):646–670

[5] Patrick, Steven & Marsh, Robert. (2011). Sentencing Outcomes of Convicted Child Sex Offenders. Journal of child sexual abuse. 20. 94-108. 10.1080/10538712.2011.541356.

[6] Shields, R.T., & Cochran, J.C. (2019). The Gender Gap in Sex Offender Punishment. *Journal of Quantitative Criminology*, 1-24.

[7] Embry, R., & Lyons, P. M. (2012). Sex-Based Sentencing: Sentencing Discrepancies between Male and Female Sex Offenders. Feminist Criminology, 7(2), 146–162. https://doi.org/10.1177/1557085111430214

[8] Hassett-Walker, Connie & Lateano, Thomas & Di Benedetto, Michael. (2014). Do Female Sex Offenders Receive Preferential Treatment in Criminal Charging and Sentencing? Justice System Journal, The. 35. 62-86. 10.1080/0098261X.2013.868278.

[9] Levesque, R. J. R. (2000). Sentencing sex crimes against children: an empirical and policy analysis. *Behavioral Sciences & the Law*, *18*(2/3), 331–341. https://doi.org/10.1002/1099-0798(200003/06)18:2/3<331::AID-BSL400>3.0.CO;2-7

In 2011, Patrick and Marsh[10] examined sentencing outcomes for those convicted of sexually abusing children. The authors found that those who committed crimes against an acquantaince or stranger were more likely to receive longer sentences. Moreover, socioeconomic factors such as employment and social relationships were shown to influence harshness of sentencing. The authors also found that the victim's sex played a role in sentencing outcomes. A 2010 study in *The Journal of Social Psychology* found that those convicted of child sexual abuse were more likely to receive shorter sentences if they were in poor health.

Lewis and colleagues[11] analyzed factors in child sexual assault cases (n= 66) that may have influenced sentence length. The authors found that several case factors were related to sentence length. Cases that had multiple offenders were more likely to have longer sentences, as were cases involving children under the age of 12. Cases involving more than one victim, though, did not seem to result in longer sentences. Additionally, in cases where the victim was seen as more credible, it was more likely that the offender would have a longer sentence.

Finally, a 2017 study from Rydberg, Cassidy, and Socia[12] found evidence of several predictors of sentence severity among sex offenders in Pennsylvania. The authors found that older individuals, those who were recidivists, individuals who were White, and those who committed an offense with a victim under the age of 13 were found to receive the harshest sentences. Furthermore, the authors found that offender and case characteristics have an effect on sentencing, but these vary widely.

In short, several peer-reviewed studies indicate that sentences for those who commit sexual offenses may be influenced by a variety of factors, including demographic factors, as well as socioeconomic factors.

Sex Offender Sentencing in Washington

In the fall of 2017, the Washington State Statistical Analysis Center (SAC) conducted a study on sentencing discrepancies among the state's convicted sex offenders. Firstly, the aim of this study was to determine if there were discrepancies among offenders based on demographic characteristics, and to examine how the sentencing guidelines were being applied more broadly. In addition, this study hoped to fill current gaps in knowledge surrounding differences in sentencing and what may be causing those differences. Previous literature has focused mostly on criminal offenders as a whole, with very few articles examining specific subtypes of offenders, such as sexual offenders.

Methods

Data for this study was obtained from the Caseload Forecast Council (CFC) as well as the Administrative Office of the Courts (AOC) for 2004-2015. This data was de-identified by AOC, after each offender was assigned a "Research ID." This variable was used to merge the two data sets together, giving the researcher information on the offender's court case as well as their sentencing outcomes. In some instances an individual's first sex offense in the dataset was a registration offense such as a failure to register from a previous offense not included in the study period. These

[10] Patrick, Steven & Marsh, Robert. (2011). Sentencing Outcomes of Convicted Child Sex Offenders. Journal of child sexual abuse. 20. 94-108. 10.1080/10538712.2011.541356.
[11] Tiffany Lewis, Bianca Klettke & Andrew Day (2014) Sentencing in child sexual assault cases: factors influencing judicial decision-making, Journal of Sexual Aggression, 20:3, 281-295, DOI: 10.1080/13552600.2013.804603
[12] Rydberg, Jason & Cassidy, Michael & Socia, Kelly. (2017). Punishing the Wicked: Examining the Correlates of Sentence Severity for Convicted Sex Offenders. Journal of Quantitative Criminology. 10.1007/s10940-017-9360-y.

cases were removed, and only cases where the offender's first sexual offense was not a registration violation were included in the final dataset. In addition, cases with a missing sentence length were removed. Figure 2 shows the frequency of each initial sex crime.

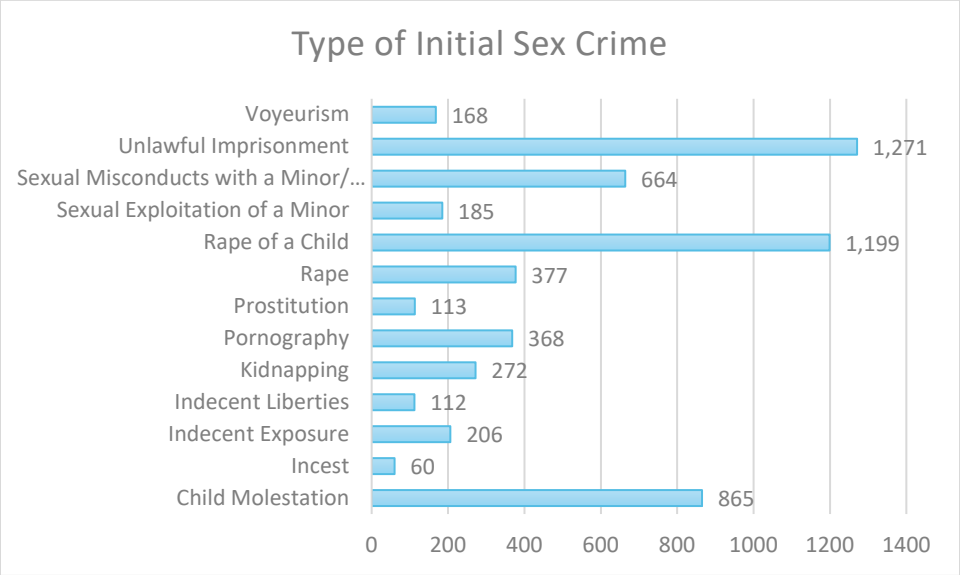
Results

The final sample was comprised of 6,085 sexual offenders convicted of their initial sex offense between 2004 and 2015. The majority of the sample was White (88.69%) and male (96.78%). Due to the small number of offenders in the various racial categories, we created a dummy variable, with White offenders being "1" and Non-White offenders being "0." Additional information on the sample can be found in Table 1. Age was calculated for each offender using their date of birth and the date of sentencing, therefore the age variable may not represent the offender's age at the time of the offense.

Figure 1. Frequencies (N = 6,085)

Variable	Frequency	Percentage
Race		
White	5,2,64	88.69%
Non-White	671	11.31%
Sex		
Male	5,744	96.78%
Female	191	3.22%
Age		
18-24	1,408	23.72%
25-34	1,367	23.03
35-49	1,582	26.66%
50-64	1,458	24.57%
65+	120	2.02%
Median Age: 37.97		

Figure 2. Type of Initial Sex Crime



For this study, we utilized quantile regression. For these analyses, we used the offender score as calculated at the time of sentencing for their initial sex crime. Washington utilizes a sentencing grid, and an individual's sentencing range is based on two factors: offense seriousness, and offender score. The data used for this study included both the low range and high range an individual could be sentenced to, as well as the total number of months (the actual sentence received) they were sentenced to. In an effort to account for the sentencing grid, we developed a new variable called "Deviation" This variable was computed by finding the midpoint of each individual's sentencing range, and computing the deviation of each actual sentence received from that midpoint. Using this variable allowed us to standardize a dependent variable, and measure disparity by controlling for the magnitude and breadth of each individual's sentencing range. The median percent of the ranges for each quantile can be found below. The value of the 25th quantile indicates that roughly 25% of sentences in this study fell below the minimum of their sentencing range. This can occur when judges use their discretion, as well as mitigating factors, to sentence an individual to a shorter length of time.

Median Percent of Sentencing Range Received by Quantile

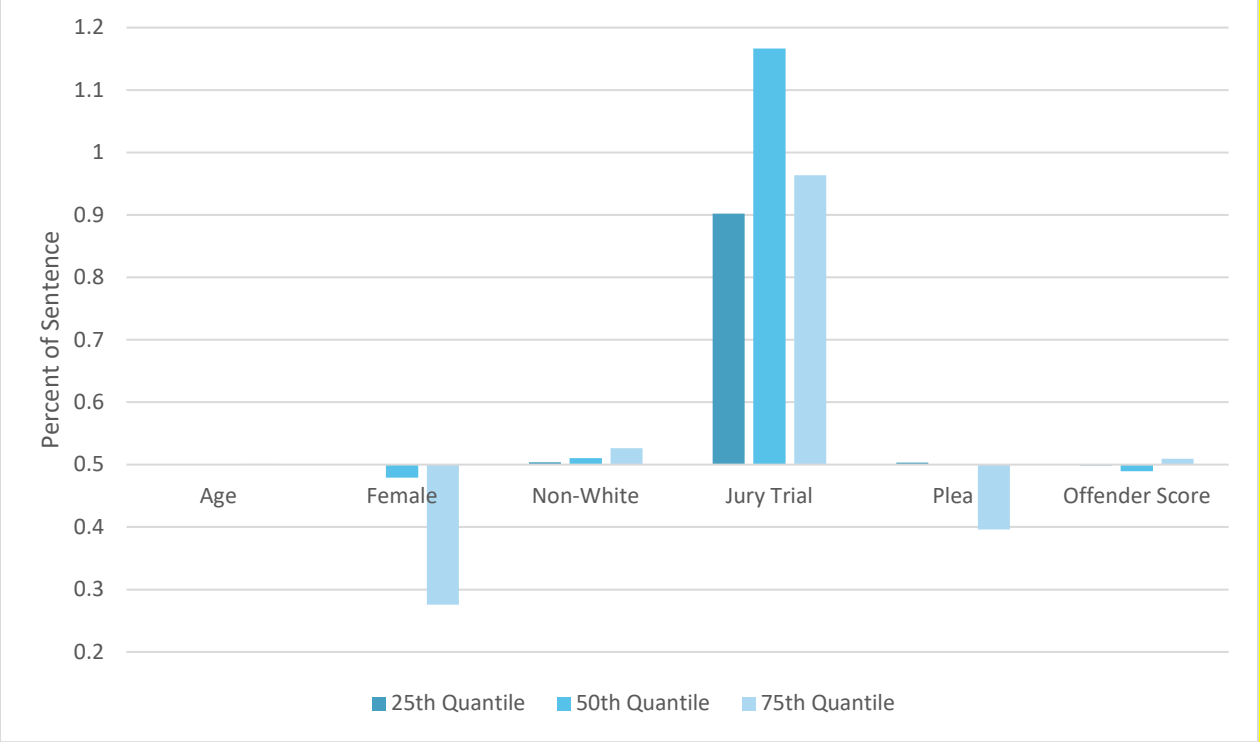
25TH QUANTILE: -136.24%

50TH QUANTILE: 19.58%

75TH QUANTILE: 74.99%

The quantile regression allowed us to analyze the data by quantile of interest (0.25, 0.50, and 0.75). A 2017 article from Rydberg and colleagues[13] asserts that this process allows researchers to avoid "partial or misleading estimates" that may be produced by mean-based estimates seen in traditional analyses such as a linear regression. For example, results from a linear regression may indicate that race is correlated with a higher sentence. This would lead us to say just that, that minorities in the sample received higher sentences. This may only be a partial explanation though. Quantiles allow us to examine the results by section of interest, allowing us to see if race had an effect on those who received the longest, shortest, and average length sentences. Results may indicate that race had an effect on those who received the longest sentences, but not the shortest, painting a more accurate picture of race's role in sentencing. The quantiles (0.25, 0.50, and 0.75) are determined by the dependent variable, in this case, the deviation variable we created.

Figure 3. Deviations in Average Sentence by Quantile



Results from the quantile regression indicate that while each of the factors have some effect on sentencing, having a jury trial is the largest predictor of a longer sentence.

[13] Rydberg, Jason & Cassidy, Michael & Socia, Kelly. (2017). Punishing the Wicked: Examining the Correlates of Sentence Severity for Convicted Sex Offenders. Journal of Quantitative Criminology. 10.1007/s10940-017-9360-y.

Effects of Age on Average Sentence Length

The age of an individual had very little effect on their sentence length. For both the 0.25 and 0.50 quantiles, age produced minimal, statistically insignificant effects. For each one-year increase in age, an individual in quantile 0.25 is likely to see their sentence length lower by 0.05 percentage points of their potential range, while someone in quantile .50 would see no change. For those in the 0.75 quantile, there was still very little effect, with age causing only minor deviations from the overall average in the quantile. Each one-year increase in age in quantile 0.75 is associated with an increase in sentence length of 0.14 percentage point of their potential sentencing range.

Effects of Sex on Average Sentence Length

For those in the lowest quantile, sex had little effect on sentence length. In quantile 0.50 women on average, received a sentence that was slightly lower in their sentencing range than males (-2.08 percentage points). Women in the highest quantile saw the largest departure, on average receiving a sentence that was 22.45 percentage points less of the mid-point of the sentencing range.

Effects of Race on Average Sentence Length

Race also had very little effect on sentencing in the lowest quantile, with individuals who were non-white receiving sentences approximately 0.36 percentage points higher within their sentencing range. The middle quantile sees a slight uptick, with non-white individuals in the 0.50 quantile on average receiving a sentence that is 1 percentage point higher within their sentencing range. Non-white individuals in the highest quantile saw a modest effect on their average sentence length, typically receiving a sentence that was about 2.7 percentage points higher in their sentencing range.

Effects of Jury Trial on Average Sentence Length

Individuals who received a jury trial saw the largest effects on their average sentence length. Even in the lowest quantile, individuals who had a jury trial were given a sentence that was on average, 40.2 percentage points higher within their sentencing range. Individuals in the middle quantile were often sentenced above their sentencing range, seeing a sentence that was a full two-thirds higher (66.67 percentage points). Interestingly, those in the highest quantile, while still high, saw an average sentence length increase of 46.35 percentage points relative to their sentencing range.

Effects of Plea on Average Sentence Length

As plea deals are often used as bargaining chips, it is no surprise that those in the lowest and middle quantiles saw minimal statistical effects from plea deals. This is also due in part to the presence of plea deals in 93.5% of the cases included in this study, thus making their inherent statistical trends somewhat of a standard. Individuals in the highest quantile where plea deals were not as common typically saw a sentence that was about 10 percentage points less of their sentencing range when they had taken a plea deal.

Effects of Offender Score on Average Sentence Length

Offender Score is directly tied to where on the sentencing grid an individual falls, thus directly influencing the sentencing range. Individuals who were in the lowest quantile received a sentence that was on average 12.5 percentage points less of their sentencing range for each one-point increase in Offender Score. Those in quantile 0.50 received a sentence that was, on average, 1 percentage points less of their sentencing range for every one-point increase in Offender Score. Finally, individuals in the highest quantile received a sentence that was 1 percentage point longer relative to their sentencing range for each one-point increase in Offender Score.

Departures from the Sentencing Guidelines

In Washington state the sentencing guidelines have a low range and a high range, though judges have the ability to use their discretion and depart from those recommendations when sentencing an individual. When departing from the guidelines, judges may often use mitigating or aggravating factors to make a determination. The following analyses explore departures further to determine how often they happen and to whom. Overall, 78% of cases in our dataset saw no departure, and their sentence fell within the guidelines range. For those cases that did depart from the guidelines, 17% of cases saw a downward departure, and the remaining 4.75% an upward departure.

Table 7. Chi-Square: Departures by Offender Sex

Sex	Downward Departures	No Departures	Upward Departure	Value
Male	17%	78%	5%	13.25**
Female	25%	73%	2%	

**p <.05; **p <.01; ***p <.001*

Chi-square analyses show that women were significantly more likely to receive a downward departure from the guidelines during sentencing. In 78% of cases, males saw no departure from the guidelines, but when they did, it was more likely to be a downward departure.

Table 9. Chi-Square: Departures by Offender Race

Race	Downward Departures	No Departure	Upward Departures	Value
White	18%	78%	4%	31.53***
Non-White	10%	83%	7%	

**p <.05; **p <.01; ***p <.001*

Chi-square analyses show that non-White offenders were slightly less likely to see a downward departure from the guidelines, though for both Whites and non-Whites, a downward departure was more common. Though the sample size is small, it is notable that non-White offenders had the highest percentage of upward departures at 7%.

Conclusions

Overall, whether an individual received a jury trial was the only factor found to have a consistent effect on the sentence length of sex offenders in Washington state. Unlike previous research, our results do not indicate consistent sentencing discrepancies based on an individual's race, sex, or age. Of note, is that females in the upper quantile received a comparatively shorter sentence. Concerning departures from the sentencing guidelines, the vast majority (78%) of individuals were sentenced within the applicable guidelines ranges. For those who were not, they were more likely to be females who received a downward departure.

These results indicate that demographic disparities are not common in the sentencing of sex offenders in Washington. While additional research should be done to further explore these results, initial results are promising and show that the sentencing guidelines have continued to aid in the creation of a fair judicial system that serves similarly positioned individuals in an equal manner. Future research would benefit from a larger sample size, as well as additional information on the computation of the offender scores. This information would allow researchers to look further into the factors at the front end of the system that may impact offender outcomes later in the system. Furthermore, the Washington State Sentencing Guidelines Commission recently completed a review of the SRA, and recommended additional research be done on the offender score in general[14], as the Council of State Governments found that in Washington the offender score is not predictor of recidivism. Additional research on this topic may add insight to the role that the offender score plays in sentencing and offender recidivism.

[14] https://sgc.wa.gov/sites/default/files/public/SGC/publications/SRA_review_report_rev20190802.pdf