

Bice: Supreme Court didn't release study showing Black men 28% more likely to do prison time in Wisconsin

Daniel Bice

Milwaukee Journal Sentinel, February 12, 2021

For nearly a year, state Supreme Court officials sat on a court-authorized study that found clear racial disparities in the sentencing of felons by Wisconsin courts.

The [23-page report](#), completed in January 2020, concluded that Black men convicted of felonies have a 28% greater chance of ending up in prison in Wisconsin than white men. The odds of Black men receiving prison time are even higher for more serious felonies.

Called "Race and Prison Sentencing in Wisconsin," the study found a similar bias in the sentencing of Hispanic men and an even worse one for Native American men convicted of felonies.

As for white male felons, they were 21% less likely than non-white male felons of ending up behind bars. It found no racial bias in the sentencing of women.

"Among men, a clear pattern emerges where American Indian, Black and Hispanic defendants are more likely than whites to be sentenced to prison versus another outcome like jail, probation or a fine," concludes the study written by **Michael Thompson**, [head of the Office of Research and Justice Statistics for the courts](#).

Using information from the state's online case management system, Thompson looked at nearly 180,000 felony cases over 10 years. His work builds on that of [others looking at racial disparities in Wisconsin sentencing](#).

Despite the state-funded study's impressive sweep, it doesn't appear that it was ever shared with the general public or even with the Wisconsin judiciary.

The existence of the report first came to light when Supreme Court Justice **Patience Roggensack** referenced it. Despite the state-funded study's impressive sweep, it doesn't appear that it was ever shared with the general public or even with the Wisconsin judiciary.

But Roggensack [misrepresented](#) the report's findings in her email, which was headed "racial concerns." She applauded Wisconsin judges for their work on these "challenges" while citing Thompson's work.

"I have the utmost confidence in the Wisconsin judiciary," Roggensack wrote. "My research and that of Dr. Thompson have shown that my confidence in the Wisconsin judiciary is well placed.

Wisconsin has judges who show repeated concerns for the challenges that those who come before the courts face."

Roggensack, head of the conservative faction that controls the court 4-3, declined to respond to several questions about the report. A Supreme Court spokesman provided the **Journal Sentinel** with a copy of the study only after being asked what Thompson research she was citing.

Supreme Court Justice **Rebecca Dallet**, a liberal on the high court, said she appreciates Roggensack's interest in the issue of racial bias but called on the chief justice to release Thompson's study to the general public.

"This latest study confirms what I and many others have been saying, which is that we have a long way yet to go to have a system that truly treats all equally," wrote Dallet, a former prosecutor and circuit court judge. "We should continue to examine this issue and be proactive in the courts on reducing and eliminating racial bias."

Dallet was one of 28 judges who wrote a letter to Wisconsin judges in June calling for making the bench more racially diverse and broadly acknowledging how implicit bias affects the legal system. Roggensack's email downplaying judges' role in creating racial disparities came in response to that letter.

Asked by the Milwaukee Journal Sentinel to review Thompson's work, a specialist in the subject said the results of his work are clear.

"Overall, when I read the study, I think I'm looking at clear documentation of racial disparities in sentencing in the in/out decision," said Pamela Oliver, an emerita sociology professor at the University of Wisconsin-Madison.

Oliver said disparities in sentencing usually show up with a judge's ruling on whether to lock someone up — which she called the "in/out decision" — not in the length of the sentence. She said that was the finding of the 2007 Wisconsin Sentencing Commission report, which was removed from the state website several years ago.

Oliver said Thompson's work is well-organized and uses a standard approach to the issue.

"What the study on its face says quite clearly is that American Indian, Hispanic, and Black men were more likely to be sentenced to prison than White men" after statistical controls are taken into consideration, Oliver said via email.

Roggensack, the chief justice, has long had an interest in the issue of racial disparities in sentencing.

In 2016, she wrote an article for the **Marquette Lawyer** magazine entitled "Race and Sentencing in Wisconsin Criminal Courts — a Preliminary Inquiry."

"In the research that underlies this article, I attempted to ascertain whether race affected judicial sentencing in Wisconsin," Roggensack wrote in her June email to Wisconsin judges. "I did so because of media articles that stressed the disproportionate percentage of African Americans in Wisconsin prisons, and I was concerned that the inference from those articles was that Wisconsin courts were biased."

But Roggensack's seven-page study failed to come to any specific conclusions.

Two years later, the court system brought on Thompson and created the Office of Research and Justice Statistics as part of the online case management system. Since 2019, Thompson's agency has been under the director of state courts.

Supreme Court spokesman **Tom Sheehan** said the racial bias study was the first report by Thompson's office. "It was initiated by the Chief Justice as a follow-up to her previous work," Sheehan said.

In the study, Thompson did a statistical analysis on 178,910 felony convictions from 2009 to 2018 in all 10 judicial districts in the state. He took into consideration such factors as the severity of the initial and final charge, whether guilt was determined via trial and criminal history over the previous five years.

The report came to these major conclusions for those convicted of felonies in the state, once those issues were taken into consideration:

- Native American men have 34% higher odds than white men to land in prison.
- African American men had 28% higher odds than white men to receive prison sentences. Black men were also five times as likely to be sent to prison if convicted at trial instead of by plea agreement.
- Hispanic men were 19% more likely to be sent to prison than white men.
- White men were 21% less likely to end up behind bars than men of other races, but when sentenced, all men receive similar sentence lengths. Overall, white women are no more or less likely than other women to receive a prison sentence.

"Differences in sentencing by race remain — especially among men — even when we account for consequential factors such as charge severity, reduction in highest initial charge severity, trial-determined guilt, drug offenses, criminal history, age, and district within Wisconsin," the report concluded.

Oliver, the retired sociology professor, said the study made it clear that all 10 judicial districts in the state favor white men when deciding who should go to prison after being convicted of a felony.

But Oliver said it was interesting that the report shows, after the controls were taken into consideration, Milwaukee County — which has the state's largest Black population — sends fewer people to prison than other districts and appears to have less of a bias against Black men.

"The other thing the results say is, given that you were sentenced to prison, there is not much of a difference in how long the sentence is," Oliver said. She added: "The 'action' in sentencing disparity is in the in/out prison/no prison decision, not in the sentence length."

Contact Daniel Bice at (414) 313-6684 or dbice@jrn.com. Follow him on