



## SMART SENTENCING

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### BULLETIN DEFINITIONS:

• First, unless otherwise specified, all events considered in this report are deemed to have occurred at the first, final disposition for a defendant.

• Second, a sentence to prison is an unmitigated sentence to prison. It does not include any section 559.115 or section 217.785, RSMo program, nor does it include court-ordered detention (CODS).

• Third, a conviction for felony includes a SIS, SES, 559, 217 or unmitigated sentence to prison.

• Fourth, a defendant sentenced to multiple felonies on the same day and in the same court is deemed to have one felony sentence (the most serious).

**MOSAC**  
Is dedicated to supporting public safety, fairness, and effectiveness in criminal sentencing

## ANNUAL REPORT HIGHLIGHTS: A LOOK AT SENTENCING AND SENTENCING DISPARITY

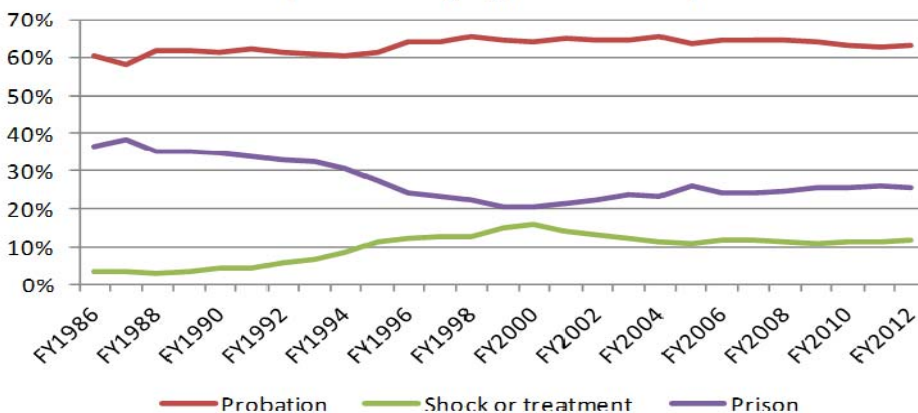
The purpose of this bulletin is to summarize the findings of the Missouri Sentencing Advisory Commission’s Annual Report on Sentencing and Sentencing Disparity 2012. The report itself contains the supporting data and is the first authority for painting a true picture of sentencing and sentencing disparity in Missouri. As you read through this bulletin, the commission hopes you will refer to the report for comparing circuit and county sentencing practices. How

circuit and county practices compare is left for you to decide. However, as you make your comparisons, the following backdrop is meaningful:

- From 1986 to June 30, 2012, Missouri’s prison population increased 320 percent from 9,711 to 31,057.
- A primary reason for the increase was the growth in the sheer number of defendants being sentenced to a felony. Since 1986, felony sentencing has grown by 270 percent.

- Interestingly, over the same time period, the overall percentage of felons placed on probation remained almost static – 60.1 percent in 1986 and 62.8 percent in 2012.
- Commencing in the 1990s, there was distinct increase in the use of section 559.115 and 217.785, RSMo, programs (120-day shock probation, 120-day treatment, post-conviction drug treatment and the long-term drug programs).

Felony sentencing by percent of disposition



# FACTORS DETERMINING MISSOURI'S INCARCERATION RATE

At first glance, the best predictor of prison population would appear to be the number of offenders being sent to prison at their first sentencing.

However, the percentage of growth in the prison population has been greater than the percentage of growth of offenders being sentenced to prison at their first sentencing. The best predictor of changes in the prison population is the number of offenders being sentenced for a felony offense (regardless of disposition) due to the 'revocation effect:' if the total number of offenders sentenced to probation at first sentencing increases then the number of probationers who are later revoked increases. If the number of offenders sentenced to 559 and 217 programs increases then the number of probationers who are later revoked increases.

In fact, the revocation rate of offenders released from a Chapter 559 program is higher than that of offenders who are sentenced to straight probation. (This makes sense because straight probation is, arguably, a lesser punishment than a Chapter 559 program and offenders sentenced to a Chapter 559 program generally have an increased criminal history.) Prior criminal history not only influences sentencing but is also a risk measure. Simply stated, Chapter 559 participants represent a riskier group than those defendants sentenced to straight probation.

Of course, there are other factors that impact the prison population snapshot (that is, the total prison population on a given day) such as parole board release practices; minimum sentences; longer sentences for sex offenders; the 40 percent, 50 percent and 80 percent service rules; and the ever-growing list of dangerous felons (those required to serve 85 percent before parole consideration).

## 1. Felony Sentencing in Missouri

In fiscal 2012 (July 1, 2012, through June 30, 2013), the number of felony sentences

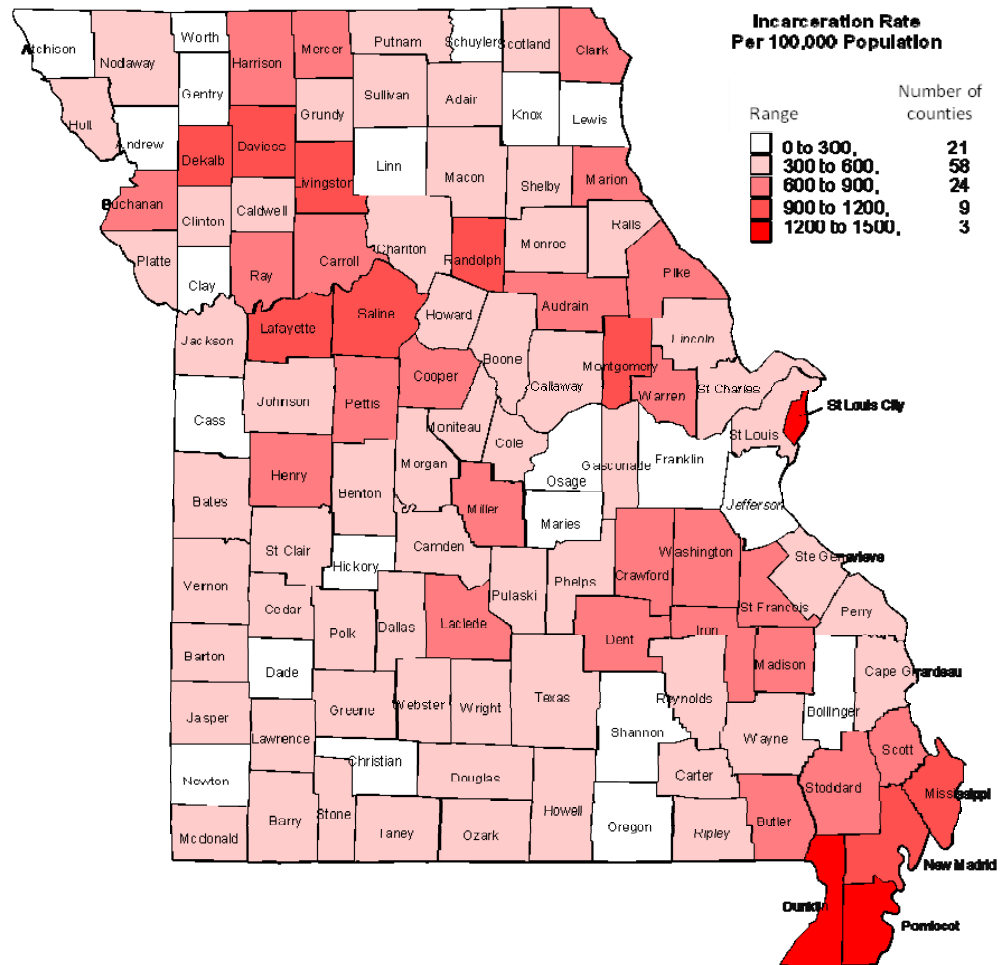
(first, final dispositions including SIS, SES, Chapter 559, Chapter 217 or unmitigated sentences to prison) increased 5.3 percent from 25,861 to 27,237. In 62.8 percent of the 27,237 sentences, probation was granted. The increase of 5.3 percent in fiscal 2012 is large compared with the average annual increase of 1.2-percent in the past decade. In the 1990s, the average annual increase in sentencing was 5.7 percent. This slowing in sentencing in the last decade is a major reason why the grown in the prison population has slowed.

Nevertheless, in the last decade,

the prison population has increased by the near equivalent of a new prison, 1,802 inmates. See page 5.

## 2. Circuit and County Rankings

Great variations exist in how counties sentence. One of the most striking disparities is in the percentage of defendants who, at first, final disposition are sentenced to unmitigated prison commitments, no SIS, no Chapter 559, no Chapter 217, etc. In fiscal 2012, while the state average for unmitigated prison commitments was 25.5 percent, three circuits



# FACTORS DETERMINING MISSOURI'S INCARCERATION RATE

sentenced more than 40 percent of their defendants to prison, while nine circuits sentenced fewer than 20 percent of their defendants to prison. Even when comparing metropolitan areas, significant differences exist: St. Louis city sentenced 29 percent of its defendants to prison compared with 21 percent each by St. Louis County and Jackson County. The counties that used the Chapter 559 programs the most are generally the counties with a low percentage of unmitigated prison commitments.

### *3. Incarceration and Felony Sentencing Rates*

The incarceration rate for fiscal 2012 for a given county is the number of offenders in prison from that county on June 30, 2012, divided by the population of the sentencing county on June 30, 2012. The incarceration rate allows comparisons in sentencing between counties with small populations and counties with large populations. See chart, page 18.

Ranking first is St. Louis city (with a population in excess of 300,000). On June 30, 2012, it had the highest incarceration rate in the state. Ranking 2<sup>nd</sup> and 3<sup>rd</sup> were Dunklin and Pemiscot counties, respectively, with a population 1/7<sup>th</sup> the size of St. Louis city. It would appear that St. Louis city's rate is primarily due to the large number of serious crimes it experiences, resulting in more and longer prison sentences. Dunklin's and

Pemiscot's rates are likely due to the sheer amount of crime per population they experience.

Interestingly, in terms of the amount of crime (violent and nonviolent), St. Louis city is only ranked 14<sup>th</sup> in the state. See chart *Felony Sentencing Rates*, page 20.

### *4. Geographic Sentencing Disparity*

Geographic sentencing disparity is the difference in sentencing around the state for specific offenses. The data show that rural counties more severely sentence offenders with convictions for drugs, DWI and other nonviolent offenses than the metropolitan circuits. For example, rural counties sentence 22 percent of drug offenders to prison while the metropolitan counties send only 11.9 percent of offenders to prison. The sentencing for serious violent and sex offenses is closer but rural counties still sentence more severely. For class A felony violent offenses (murder, robbery, assault and kidnapping), 82.3 percent of offenders are sentenced to prison by metropolitan counties and the average sentence of 17.4 years, while 84.3 percent of offenders are sentenced to prison in rural counties for an average sentence of 22.2 years. See chart, page 24.

### *5. Sentencing Disparity by Race*

Endeavoring to analyze fairly whether race forms the basis of a sentencing disparity requires an examination of the severity of the offense, prior criminal

history and time served.

Notwithstanding the need for this analytical approach, the frank numbers are that the Missouri incarceration rate for blacks (based on 100,000 population increments) is 4.7 times that of whites. Nationally, the rate is 4.1 times that of whites.

Fiscal 2012 sentencing data shows that for the four racial or ethnic groups (black, hispanic, white and other), blacks receive the highest average prison sentences (blacks, 7.2 years; hispanics, 6.8 years; whites, 5.5 years and other, 5.3 years). Further, when compared to whites, blacks have a higher rate of unmitigated prison sentences (blacks, 27.8 percent; hispanic, 33.3 percent; whites, 23.4 percent and other, 20.3 percent). See chart, page 26.

An analysis by offense group (violent, nonviolent, DWI, drug and sex) indicates blacks are more likely to be sentenced to prison and/or have a longer sentence than whites for drug offenses and for violent C and D felonies. See charts, pages 27 and 29. For the remaining offenses (DWI, nonviolent, sex and child abuse, and violent A and B felonies), there are no significant differences among the races.

Prior criminal history could be a reason for sentencing disparities among the races because prior criminal history results, arguably, in more severe sentencing. Blacks have the lowest percentage of offenders in level I (no prior felony convictions and no more than

three misdemeanors) and the highest percentage in level II (No more than two felony convictions). The differences for level III and higher (one or more prison stays) are not significant, however.

Another source of the disparity may lie with the release practices of the Missouri Board of Probation and Parole. For offenders sentenced to a prison sentence, the board has the discretionary responsibility to determine the release dates, subject to statutory restrictions on minimum prison time (section 558.019, RSMo) and the statute that defines conditional release (section 558.011, RSMo).

In fiscal 2012, Missouri Department of Corrections (DOC) released 5,236 offenders to their first release from their commitment. The average time served was 36.5 months, and that comprised 50.1 percent of the aggregate sentence. Blacks served significantly more time than whites (49.6 months compared with 31.9 months), in part, because blacks were sentenced to longer sentences (89.3 months for blacks compared with 68.1 months for whites, see chart on page 31). As a percent of sentence, blacks also served longer than whites (55.5 percent for blacks compared to 46.8 percent for whites) but the difference between the actual time served and the parole board guideline time was similar for all races. The guideline time served is based on a race-neutral risk

## FACTORS DETERMINING MISSOURI'S INCARCERATION RATE

assessment, using risk factors that have been related to recidivism. See chart, page 32.

Many of the differences in sentencing and time served between blacks and other races can be explained, as suggested above, by the seriousness of the offense and a defendant's prior criminal history. This conclusion, of course, begs the questions: Are blacks a targeted population with more arrests, convictions and, in turn, criminal histories? Are blacks charged with the same evenhandedness as other populations, or are they consistently charged with a more serious available charge?

With regard to sentencing disparity by race, this bulletin particularly addresses the black – white comparisons. The report, itself, specifically analyses disparities among the four report classifications: white, black, hispanic and other. The comparisons in this summary are not meant to suggest that some disparities are more important than others. This bulletin addressed the black – white classification because this comparison represents the two

largest populations in the prison system.

### *6. Disparity in the Application of the Death Penalty*

The number of offenders being sentenced to death has been declining for a decade, as have the number of offenders being sentenced for first and second-degree murder. Although there is a great disparity in the number of blacks being convicted of murder compared with other races, there does not appear to be a disparity in the percentage of blacks being sentenced to capital punishment compared with the percentage of other races, either statewide or by county.

### *7. Recidivism and Sentencing Disposition*

According to the data collected by DOC, defendants with a level I criminal history (no prior felonies and no more than three misdemeanors) who are placed on probation are less likely to violate probation and be sent to prison within two years of being placed on probation than those same level defendants who are sentenced to an unmitigated prison sentence at their first

final disposition and are released from prison. See chart, page 40.

The purpose of this bulletin is to serve as a summary of the voluminous report. The commission hopes you will review the entire report. Different readers of the report may come to different interpretations of the data, which is entirely appropriate.

#### **NOTE:**

*SMART SENTENCING INVOLVES USING THE LATEST STATISTICS, INFORMATION, RESEARCH FINDINGS AND EVIDENCE-BASED PRACTICE TO MAKE INFORMED DECISIONS ABOUT HOW TO PUNISH CRIMINAL BEHAVIOR.*

*THE SENTENCING ADVISORY COMMISSION HAS LAUNCHED THIS PERIODIC BULLETIN TO KEEP JUDICIAL DECISION MAKERS CURRENT AS TO THE LATEST INFORMATION RELATED TO SENTENCING PRACTICES AND THEIR IMPACTS. THE BULLETIN IS BEING DISTRIBUTED TO JUDGES, PROSECUTORS, PUBLIC DEFENDERS, PROBATION OFFICERS AND THE PUBLIC VIA E-MAIL AND ON THE SENTENCING ADVISORY COMMISSION'S WEBSITE AT [WWW.MOSAC.MO.GOV](http://WWW.MOSAC.MO.GOV).*

*COMMENTS AND SUGGESTIONS ARE WELCOME AND SHOULD BE SENT TO: [SMART.SENTENCING@COURTS.MO.GOV](mailto:SMART.SENTENCING@COURTS.MO.GOV).*

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