

1975

## Early Release from Incarceration: Race As a Factor in the Use of Shock Probation

David M. Petersen

Paul C. Friday

Follow this and additional works at: <https://scholarlycommons.law.northwestern.edu/jclc>

 Part of the [Criminal Law Commons](#), [Criminology Commons](#), and the [Criminology and Criminal Justice Commons](#)

---

### Recommended Citation

David M. Petersen, Paul C. Friday, Early Release from Incarceration: Race As a Factor in the Use of Shock Probation, 66 J. Crim. L. & Criminology 79 (1975)

This Article is brought to you for free and open access by Northwestern University School of Law Scholarly Commons. It has been accepted for inclusion in Journal of Criminal Law and Criminology by an authorized editor of Northwestern University School of Law Scholarly Commons.

## EARLY RELEASE FROM INCARCERATION: RACE AS A FACTOR IN THE USE OF "SHOCK PROBATION"\*

DAVID M. PETERSEN† AND PAUL C. FRIDAY‡

Many writers have investigated the phenomenon of the differential administration of criminal justice in the United States. Two particular areas of research have been sentencing disparities resulting from the judicial decision-making process<sup>1</sup> and differences in disposition after conviction.<sup>2</sup> This article is concerned with various legal and nonlegal variables that differentiate between those prisoners who are released on probation by the courts after a period of short-term incarceration and those who remain imprisoned. The decision of the judiciary regarding the approval or denial of early release is viewed as problematic for the purposes of this study.

\* Revision of a paper presented at the Southern Sociological Society Annual Meeting, Atlanta, Georgia, April, 1973. This paper was supported in part by a grant (380-00-J-70) from the Law Enforcement Assistance Administration through the State Planning Agency of the Ohio Department of Economic and Community Development to the Ohio State University Center for the Study of Crime and Delinquency. Such support of funding agent does not necessarily indicate concurrence with the contents or recommendations within.

† Associate Professor of Sociology, Georgia State University.

‡ Associate Professor of Sociology, Western Michigan University.

<sup>1</sup> See, e.g., Bullock, *Significance of the Racial Factor in the Length of Prison Sentence*, 52 J. CRIM. L.C. & P.S. 411 (1961); Garfinkel, *Research Note on Inter- and Intra-racial Homicides*, 27 SOCIAL FORCES 369 (1949); Green, *Inter- and Intra-racial Crime Relative to Sentencing*, 55 J. CRIM. L.C. & P.S. 348 (1964); Parrington, *The Incidence of the Death Penalty for Rape in Virginia*, 22 WASH. & LEE L. REV. 43 (1965); Sellin, *Race Prejudice in the Administration of Justice*, 41 AM. J. SOCIOLOGY 212 (1935); Sellin, *The Negro Criminal: A Statistical Note*, 140 ANNALS 52 (1928); Vines & Jacob, *Studies in Judicial Politics*, 8 TULANE STUDIES POL. SCI. 77 (1962).

<sup>2</sup> Rubin, *Imposition of the Death Sentence for Rape*, in 2 CRIME AND JUSTICE (L. Radzinowitz & M. Wolfgang eds, 1971); Johnson, *The Negro and Crime*, 217 ANNALS 93 (1941); Wolfgang, Kelly & Nolde, *Comparison of the Executed and the Commuted Among Admissions to Death Row*, 53 J. CRIM. L.C. & P.S. 301 (1962).

### SHOCK PROBATION: THE OHIO EXPERIMENT

Ohio, like most other states, provides that after the determination of guilt, if a sentence is passed and probation is not granted, the individual is incarcerated in one of the state correctional institutions. It is the duty of the judiciary to impose a minimum and maximum sentence for the offender as outlined by the Ohio Revised Code. In the past, responsibility for the release of an inmate was vested in the Adult Parole Authority which reviewed each case after a specified time and decided if an individual was to be released or was to remain imprisoned.

In July, 1965, the Ohio General Assembly enacted a statute providing a means for the early release of incarcerated felons from a correctional institution.<sup>3</sup> The statute permitted

<sup>3</sup> The statute provides:

Subject to sections 2951.03 and 2951.09, inclusive, of the Revised Code, the trial court may, upon motion of the defendant made not earlier than thirty days not later than sixty days after the defendant, having been sentenced, is delivered into the custody of the keeper of the institution in which he is to begin serving his sentence, or upon the court's motion during the same thirty-day period, suspend the further execution of the sentence and place the defendant on probation upon such terms as the court determines, notwithstanding the expiration of the term of court during which such defendant was sentenced.

The court shall hear any such motion within sixty days after the filing date thereof and shall enter its ruling thereon within ten days thereafter.

The authority granted by this section shall be exercised by the judge who imposed such sentence unless he is unable to act thereon and it appears that his inability may reasonably be expected to continue beyond the time limit for such action. In such case, a judge of such court or assigned thereto may dispose of a motion filed under this section, in accordance with an assignment of the presiding judge, or as prescribed by the rules or practices concerning responsibility for disposition of criminal matters.

OHIO REV. CODE § 2947.061 (1971).

the placing of incarcerated felons on probation before they served the sentences specified for the offense. The statute makes any felon eligible for early release provided he has not committed a non-probationable act in Ohio.<sup>4</sup> The underlying assumption of the legislation, commonly referred to as "shock probation," is that in deterring crime, a short period of incarceration may be as effective as longer periods of incarceration.<sup>5</sup> The law is intended as a treatment tool and as a compromise between the advantages of incarceration and the advantages of probation.<sup>6</sup>

Unlike the federal "split-sentence" provision,<sup>7</sup> shock probation is not part of the original sentence. Under the Ohio statute, the offender is sentenced to a correctional institution and not to a jail as under the federal statute. The offender must then file a petition to the court to suspend further execution of the sentence no earlier than thirty days nor more than sixty days after the original sentence date.<sup>8</sup> Until the court acts upon the petition, which must be within ninety days, the defendant is unsure of the possible length of his incarceration. Thus, the decision regarding early release of the inmate lies entirely with the court system.

#### METHOD

Data to determine the variables which differentiated between those felons who received early releases and those who remained in the institution were collected at a medium security prison for male offenders between the ages of sixteen and thirty. The sample design included

<sup>4</sup> Non-probationable crimes in Ohio include the following: murder, arson, burglary of an inhabited dwelling house, incest, sodomy, rape, assault with intent to rape and administering poison. OHIO REV. CODE § 2947.061, §§ 2951.03-.09 (1971).

<sup>5</sup> For a review of the literature of the efficacy of the split sentence see Friday & Petersen, *Shock of Imprisonment: Comparative Analysis of Short-Term Incarceration as a Treatment Technique*, 15 CAN. J. CRIM. & CORRECTIONS 281 (1973).

<sup>6</sup> Denton, Pettibone & Walker, *Shock Probation: A Proven Program of Early Release from Institutional Confinement* (mimeograph of Ohio Adult Parole Authority).

<sup>7</sup> 18 U.S.C. § 3651 (1969). For a general discussion of this statute see Hartshorne, *The 1958 Federal "Split-Sentence" Law*, 23 FED. PROBATION 9 (June, 1959).

<sup>8</sup> It should be noted that early release may also be granted by the judge upon his own initiative. OHIO REV. CODE § 2947.061 (1971).

all persons granted shock probation (early release from prison) during 1970. This group is compared with a control group of persons who were *eligible* for early release under Ohio law during the same period, but were not released. The control sample was selected by taking each eligible case appearing before and after each shock probation case as listed in the institutional admissions record log. The total study group was comprised of 575 cases and included 202 shock probation cases and 373 controls. The study utilized institutional case records for both the shock probationers and the institutionalized controls and included data relating to demographic characteristics, offense, prior record and institutional behavior.

#### RESULTS

The variables which discriminated between those inmates released to probation supervision in the community and those who remained incarcerated are presented in Table 1. The following were found to be significantly associated with early release from prison: (1) non-legal variables: race, education, father's education and legal residence; and (2) legal variables: probation department recommendation, offense, prior record, number of bills of indictment and plea.<sup>9</sup>

Examination of the chi-square statistics shows that the non-legal variables of race and education are first and second in their ability to discriminate, while the legal variables of offense type and prior record rank fourth and fifth. The questions which arise from such a ranking are: (1) what is the relative importance of each variable; and (2) what interaction is occurring between the variables.

The analysis demonstrates that race has a pervading influence when other variables are controlled. In its one-to-one relationship with whether an individual is released to community supervision the chi-square statistic is 31.279-significant at the .001 level. The data in Table 1 indicate that of those persons released on shock probation, white inmates were more than twice as likely to be released than black inmates (43.5 per cent versus 20.4 per cent).

<sup>9</sup> Variables which did not produce statistically significant variables include: age, marital status, number of dependents, outstanding detainers and father's occupation.

TABLE 1  
Variables Related to Early Release from Incarceration

Variable	Shock Probation		Incarceration		X <sup>2</sup>	P
	N	%	N	%		
<b>Race</b>						
white.....	157	43.5	204	56.6	31.279	.001
black.....	43	20.4	168	79.6		
<b>Education</b>						
less than 9 years.....	73	25.1	218	74.9	26.138	.001
some high school.....	72	41.4	102	58.6		
high school graduate.....	42	49.4	43	50.6		
some college.....	10	52.6	9	47.4		
<b>Probation Department Recommendation</b>						
for probation.....	28	60.9	18	39.1	24.641	.001
against probation.....	42	38.5	67	61.5		
no recommendation.....	28	21.5	102	78.5		
<b>Offense Type</b>						
personal.....	46	30.5	105	69.5	23.123	.001
property.....	106	33.2	213	66.8		
fraud.....	21	34.4	40	65.6		
narcotics.....	29	69.0	13	31.0		
<b>No. of Prior Adult Arrests</b>						
0.....	7	53.8	6	46.2	15.160	.001
1-2.....	102	42.0	141	58.0		
3 or more.....	93	29.2	226	70.8		
<b>Father's Education</b>						
less than 9 years.....	45	23.8	144	76.2	13.105	.01
some high school.....	21	25.9	60	74.1		
high school graduate.....	30	42.3	41	57.7		
some college.....	12	48.0	13	52.0		
<b>Plea</b>						
guilty.....	185	39.1	288	60.9	9.794	.01
not guilty.....	15	19.7	61	80.3		
<b>Residence</b>						
non-metropolitan.....	46	43.4	60	56.6	5.258	.05
S.M.S.A.....	135	32.1	286	67.9		
<b>Bills of Indictment</b>						
1.....	51	28.8	126	71.2	4.478	.05
2 or more.....	151	37.9	247	62.1		

Furthermore, this relationship between race and sentencing procedure remains strong when selected legal and non-legal variables are held constant (Table 2).

In considering education, the second most discriminating variable, the incidence of early release among black inmates is less than half as great as among white inmates for all levels of education. The exception is in the case of inmates who received educational training be-

yond high school (Table 2). White inmates with some college training are more likely to be released on shock probation than black inmates with the same education (56.3 per cent versus 33.3 per cent), but the statistical relationship is not significant.

When the offense is held constant, there exist significant differences in the type of disposition given to white and black felons (Table 2). White inmates are more likely to be released on

TABLE 2  
Early Release from Incarceration According to the Race of the Offender with Selected  
Variables Held Constant

Variable	Shock Probation				Incarceration				X <sup>2</sup>	P
	White		Black		White		Black			
	N	%	N	%	N	%	N	%		
Education										
less than 9 years.....	60	31.9	12	11.9	128	68.1	89	88.1	13.046	.001
some high school.....	55	51.4	17	25.4	52	48.6	50	74.6	10.459	.01
high school graduate.....	29	64.4	12	30.8	16	35.6	27	69.2	8.183	.01
some college.....	9	56.3	1	33.3	7	43.8	2	66.7	—	.37*
Offense Type										
personal.....	25	38.5	21	24.7	40	61.5	64	75.3	3.190	.10
property.....	90	41.1	14	14.3	129	58.9	84	85.7	20.876	.001
fraud.....	15	35.7	6	31.6	27	64.3	13	68.4	0.001	—
narcotics.....	27	81.8	2	22.2	6	18.2	7	77.8	9.129	.01
No. Prior Adult Arrests										
0.....	6	60.0	1	33.3	4	40.0	2	66.7	—	.37*
1-2.....	86	52.1	15	19.7	79	47.9	61	80.3	21.104	.001
3 or more.....	65	35.0	27	20.4	121	65.0	105	79.6	7.629	.01
Probation Department Recommendation										
for.....	21	61.8	7	58.3	13	38.2	5	41.7	0.000	—
against.....	31	53.4	11	21.6	27	46.6	40	78.4	12.595	.001
none.....	17	27.4	11	16.2	45	72.6	57	83.8	2.926	.10
Bills of Indictment										
1.....	118	45.4	31	23.0	142	54.6	104	77.0	19.016	.001
2 or more.....	39	38.6	12	15.8	62	61.4	64	84.2	11.015	.001

\* Chi-square calculated by Fisher's exact test.

shock probation than blacks for property offenses ( $x^2 = 20.876$ ,  $p > .001$ ) and narcotics offenses ( $x^2 = 9.129$ ,  $p > .01$ ). There exists no statistically significant difference for fraud or personal offenses.

Controlling for the number of previous adult arrests,<sup>10</sup> white inmates remain more likely than black inmates to be released to community supervision if they have a previous history of adult arrests (one to two prior offenses,  $x^2 = 21.104$ ,  $p > .001$ ; three or more prior offenses,  $x^2 = 7.629$ ,  $p < .01$ ). If there are no known prior arrests, the percentage of felons released on shock probation is greater for white than for black inmates (60.0 per cent versus 33.3 per cent). If there are one or two prior arrests,

<sup>10</sup> Because of the institutional records used and the discrepancy between states regarding offense classification, no distinction was made between felony and misdemeanor cases.

then the result is 52.1 per cent versus 19.7 per cent. For three or more prior arrests, the pattern remains, with the white felons released in 35.0 per cent of the cases versus 20.4 per cent for black felons. Race is statistically insignificant only in cases where there is no known prior arrest record.<sup>11</sup>

When both offense and the number of previous adult arrests are held constant (Table 3), the differences in the treatment afforded white and black offenders remain significant for property offenses (one to two prior offenses,  $x^2 = 10.343$ ,  $p < .01$ ; three or more prior offenses,  $x^2 = 7.878$ ,  $p < .01$ ) and narcotics offenses (one to two prior offenses, Fisher's exact test,  $p < .03$ ; three or more prior offenses, Fisher's exact test,  $p < .06$ ). Although all but one of

<sup>11</sup> It should be noted that Ohio's Shock Probation statute is not a first offender act.

TABLE 3  
Early Release from Incarceration According to the Race of the Offender with Offense  
and Number of Prior Arrests Held Constant

Offense Type	No. of Prior Arrests	Shock Probation				Incarceration				X <sup>2</sup>	P
		White		Black		White		Black			
		N	%	N	%	N	%	N	%		
Personal.....	0	1	100.0	1	100.0	—	—	—	—	—	—
	1-2	12	41.4	9	23.1	17	58.6	30	76.9	2.533	.20
	3 or more	12	34.3	11	24.4	23	65.7	34	75.5	0.993	.50
Property.....	0	2	40.0	0	—	3	60.0	1	100.0	—	.67*
	1-2	51	48.1	4	13.3	55	51.9	26	86.7	10.343	.01
	3 or more	37	34.2	10	14.9	71	65.8	57	85.1	7.878	.01
Fraud.....	0	—	—	—	—	—	—	—	—	—	—*
	1-2	11	61.1	1	25.0	7	38.9	3	75.0	—	.20
	3 or more	4	16.7	5	33.3	20	83.3	10	66.7	0.592	.50
Narcotics.....	0	3	75.0	0	—	1	25.0	1	100.0	—	.40*
	1-2	12	100.0	1	33.3	0	—	2	66.7	—	.03*
	3 or more	12	70.5	1	20.0	5	29.4	4	80.0	—	.06*

\* Chi-square calculated by Fisher's exact test.

the remaining relationships are in the expected direction, they do not reach statistical significance.

Considering the influence of probation department recommendations (Table 2), there is no statistically significant difference by race when there is a recommendation favoring probation. Further, both races are more likely to receive an early release if they have a favorable recommendation from their probation department, rather than a negative recommendation or no recommendation at all. There is a statistically significant difference between white and black felons, however, when a probation department recommends against probation ( $x^2 = 12.595$ ,  $p < .001$ ). White felons are more than twice as likely as black felons to be released on shock probation when the probation department has recommended against probation (53.4 per cent versus 21.6 per cent). Moreover, whites are more likely than blacks to be released without a probation department recommendation (27.4 per cent versus 16.2 per cent), although the relationship does not reach statistical significance.

If one considers the effects of the number of bills of indictment, race continues to exert a significant influence on the granting of shock

probation (Table 2). White felons are released on shock probation with greater frequency than black inmates when they have one bill of indictment (45.4 per cent versus 23.0 per cent), as well as when they have two or more such bills (38.6 per cent versus 15.8 per cent). On the other hand, when the number of bills of indictment is compared to whether shock probation is granted or not, and race is controlled, the original significance is lost (whites,  $x^2 = 1.357$ ,  $p > .30$ ; blacks,  $x^2 = 1.542$ ,  $p > .30$ ).

#### PREDICTIVE ATTRIBUTE ANALYSIS

The foregoing analysis has indicated that race was a central factor in the judicial decision-making process. To suggest that race was the strongest differentiating variable and that as a variable it remained significant when other variables were controlled, does not totally convey the differential effect race appears to have on the granting of shock probation.

Sociological research has recognized that in any heterogeneous samples, relationships among the possible predictors and the criterion may vary from one subsample to another.<sup>12</sup> In

<sup>12</sup> See, e.g., Wilkins & MacNaughton-Smith, *New Predictions and Classification Methods in Criminology*, 1 J. RES. CRIME & DELINQUENCY 19

other words, these methods suggest that relationships between predictive attributes and criterion are not always constant. Each of the significant variables in this research may have a different effect in predicting the outcome for either the black subsample or the white subsample.

The method of subdividing the population into relatively homogeneous subgroups was first developed by MacNaughton-Smith and applied in criminological prediction by Wilkins and MacNaughton-Smith and Gottfredson.<sup>13</sup> The first step in the procedure is to determine

(1964); Williams & Lambert, *Multivariate Methods in Plant Ecology: III*, 49 *J. Ecology* 717 (1961); Williams & Lambert, *Multivariate Methods in Plant Ecology: II*, 48 *J. Ecology* 689 (1960); Williams & Lambert, *Multivariate Methods in Plant Ecology: I*, 47 *J. Ecology* 83 (1959).

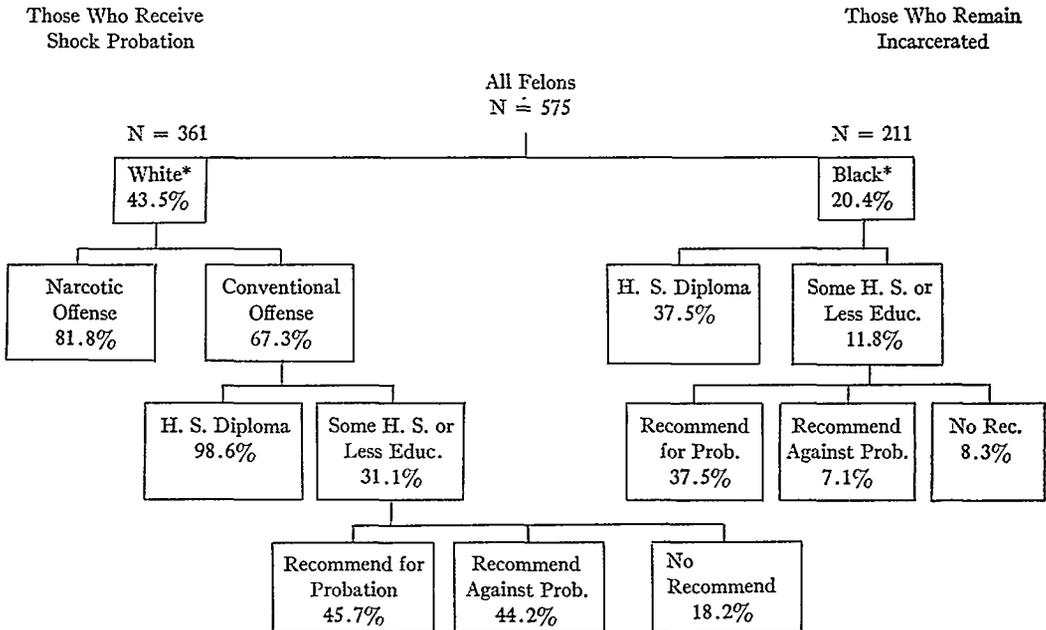
<sup>13</sup> Gottfredson, *The Practical Application of Research*, 5 *CAN. J. CORRECTIONS* 212 (1963); MacNaughton-Smith, *The Classification of Individuals by Possession of Attributes Associated with a Criterion*, 19 *BIOMETRICS* 364 (1963); Wilkins & MacNaughton-Smith, *supra* note 12.

the overall association of each variable-attribute with those receiving shock probation. The chi-square method is used and a rank ordering of the variables is shown in Table 1. The next step is to divide the population according to the criterion most closely associated with receiving shock probation—race. Then, it is necessary to consider the two subsamples (white and black) independently and repeat the chi-square measures of association. This process is continued with each group being again subdivided on the variable with the strongest association, until no significant associations are found, or frequencies become too low to allow for statistical analysis.

This continuous subdivision resulted in the structure in Table 4 which indicates that for blacks, race is the major variable affecting early release from prison. Education is considered, but it does not appreciably affect the probabilities of receiving shock probation. Education is significant for the black inmate if he

TABLE 4

Hierarchical structure of attributes predicting who is granted shock probation



\* % figure indicates per cent who receive shock probation in each subsample.

has a high school diploma, but even then only 37.5 per cent of the sample were granted early releases. Of those with less than a high school diploma, only 11.8 per cent received shock probation. Within this group, it was important to have a positive recommendation from the probation department. If there were a positive recommendation, then 37.5 per cent received early release. If there were a negative recommendation or if there were no recommendation, then respectively, only 7.1 per cent and 8.3 per cent received shock probation.

Thus, for the black felon, race is the most important variable affecting his early release on shock probation. The next most important variables are education and probation department recommendation. The significant point of this analysis is that neither offense nor prior arrest emerge as strong discriminators. Indeed, as Table 5 indicates, when the subsample of

TABLE 5

Over-All Association of Variables with Who Gets Shock Probation: Black Subsample

Variable	X <sup>2</sup>	Significance
Education.....	8.083	(.02)
Offense.....	4.711	non-significant
Plea.....	3.628	non-significant
Probation		
Recommendation.....	2.350	non-significant
Bills of Indictment.....	1.542	non-significant
Prior Arrests.....	0.330	non-significant
Father's Education.....	0.316	non-significant
Residence.....	0.029	non-significant

blacks is analyzed, only education reaches a level of significance ( $p > .02$ ).

Analysis of white felons shows a different pattern (Table 6). After considering race, offense is the most important distinguishing variable. White felons convicted of narcotic violations have the greatest chance of early release on shock probation (81.8 per cent). Of those convicted of conventional offenses—personal, property or fraud offenses—education then enters as the most strongly associated variable. Almost 99 per cent (98.6 of whites convicted of a conventional criminal act who had a high school diploma or advanced education

TABLE 6

Over-All Association of Variables with Who Gets Shock Probation: White Subsample

Variable	X <sup>2</sup>	Significance
Offense.....	21.902	(.001)
Education.....	19.900	(.001)
Prior Arrests.....	11.635	(.01)
Father's Education.....	11.328	(.01)
Probation		
Recommendation.....	6.384	(.05)
Plea.....	1.873	non-significant
Bills of Indictment.....	1.357	non-significant
Residence.....	0.089	non-significant

were granted shock probation, while only 31.1 per cent of those with limited high school education were granted early releases. For the felons in the latter category, the probation department recommendation became important. The fact of a positive or negative recommendation of probation was unimportant. The important factor was whether there was any recommendation. Almost 45 per cent of those with either a positive or negative recommendation received early releases, while only 18 per cent of those with no recommendation received such a disposition.

In sum, for whites the legal variable of offense is important in granting shock probation. The next important variable is education. As with black felons, prior record does not emerge as a dominant variable.

#### DISCUSSION

When an offender is found guilty of a crime, there is usually a certain degree of latitude in the imposition of a sanction. Such latitude provides the judiciary with the discretion to consider the interests of society and the interests of the offender and to impose a penalty which best serves both interests. In most instances of serious crimes, the choice is between incarceration, suspended sentence or probation. In Ohio there is an alternative to the dilemma of prison versus probation. This alternative is to incarcerate the offender for part of his sentence, suspend the remainder of the sentence and then place him on probation. Such a procedure is a judicial decision and not a decision

of a division of the correction or parole board. There are a number of questions that can be raised regarding split sentences (e.g., shock probation) as an alternative form of penal treatment. First, who receives and who is refused a split sentence? Second, what are the characteristics of those offenders who receive a split sentence versus those eligible for a split sentence who receive standard incarceration?<sup>14</sup> The findings of the present study indicate that a number of factors (e.g., race, education and plea) which are not recognized in the Penal Code affect sentencing under this legislation.

The most significant finding to emerge from this analysis is the extent to which the racial variable appears to influence decision-making by the court system. We recognize the complexity of testing the relationship between race and sentencing. Further, we acknowledge that other factors that have been identified as exerting an influence on sentencing disposition in previous research on differential treatment may be pertinent to the data of the present study.<sup>15</sup> Nevertheless, the data support the hypothesis that the judiciary differentiates relative to the sentence disposition by the standard of the race of the offender. The number of legal and non-legal variables that were available from the official records demonstrate that black felons are less likely than white felons to be released to community supervision under the shock probation legislation. Undoubtedly, other factors influence the court's decision, but our analysis discloses marked differences between the races when education, type of offense, number of prior adult arrests and probation department recommendation are considered.<sup>16</sup>

<sup>14</sup> For a discussion of these and other issues see Friday & Peterson, *supra* note 5.

<sup>15</sup> Green identified the race of the victim as having an important influence as to the race of the offender and sentence disposition. Green, *supra* note 1. Information concerning this variable was unavailable to the present study, however.

<sup>16</sup> In contrast, another analysis of the factors utilized for sentencing alternatives by district court judges in the Northern District of California revealed legal variables to be most important to sentence disposition. The legal variables of offense, confinement status, prior record and number of arrests were identified as the first four factors influencing sentencing, while the non-legal variable of race was ranked last. Carter & Wilkins, *Some Factors in Sentencing Policy*, 58 J. CRIM. L.C. & P.S. 503 (1967).

The effects of race on release disposition are even more pointed when the relative influence of each of the legal and non-legal variables are examined for whites and blacks as subsamples. Being black appears to be a sufficient condition to preclude receiving shock probation whereas the quality of being white does not necessarily guarantee receiving shock probation. If a convicted individual is white, then his offense is considered along with education and probation department recommendations. Clearly, the variables influencing early release are different for the races and the relative influence of these variables is different within the races as well. We find these results even more striking in light of the fact that in the north, there have been no studies finding support for the hypothesis that black offenders are treated differentially. Moreover, the present study has found support for differential racial treatment for property offenders. Previous investigations have primarily found support for differentials in treatment attributed to racial considerations only for personal offenses (e.g., homicide) and not property crime.<sup>17</sup> In the present study, when offense is controlled, whites receive significantly more shock probation than blacks. This finding may be mitigated, however, by the finding that offense as a variable is diminished in importance for blacks, but not for whites.

Green has suggested that if minority group discrimination occurs in the administration of justice, it is more likely to occur in the less public phases of the judicial process than in the courtroom.<sup>18</sup> We would suggest that the current procedures for the administration of shock probation provide such a setting of low visibility. All eligible offenders processed through the court system in Ohio, if they are not aware of it at sentencing, are informed by prison officials at time of commitment of the procedure for filing for shock probation consideration. The usual procedure involves a motion by the felon's attorney, or *in propria persona* by the defendant, for a hearing on the granting of such probation. Although it is not

<sup>17</sup> Overby, *Discrimination in the Administration of Justice*, in RACE, CRIME AND JUSTICE (C. Reardon & J. Kuzendall eds 1972); Hindelang, *Equity under the Law*, 60 J. CRIM. L.C. & P.S. 306 (1969).

<sup>18</sup> Green, *supra* note 1.

required, suspension of the original sentence usually involves a hearing. In addition, wardens or superintendents are required to return the prisoner to the court requesting him.

Imprisonment not only protects society by isolating the offender, but also by physically removing the offender, he is no longer visible to the larger society. It should be emphasized that hearings on the granting of shock probation motions are granted at the discretion of the judiciary. Those for whom motions of consideration are refused by the court remain in custody far removed from public scrutiny.

Other judicial considerations may be involved in the process of reconsidering a case for shock probation. We are not in a position to make determinations about other considerations of the judiciary but the high incidence of release for narcotics violations, and the lack of correspondence between probation department recommendations and judicial decisions, may reflect the different experiences of the judges. Release on shock probation provides a less public area where judges can utilize their professional discretion in drug cases, such as cases involving possession of marijuana. At the same time, judges may publicly appear tough by initially issuing harsh prison terms to drug users while simultaneously setting aside these harsh decisions in the relative privacy of the shock probation determination. Similarly, judges and probation department personnel

may have differential experiences regarding the outcome of certain cases placed on probation. This would partially account for the lack of correspondence between probation recommendation and judicial decision.<sup>19</sup>

The conclusiveness of these results are, of course, limited by the size of the sample and the fact that the study was limited to one institution in Ohio. The hazards in generalizing the Ohio experience to other locales must be recognized. One might also note that greater access over time to the courts would be more desirable in order to accurately assess the judicial decision-making process and to answer some of the questions raised. Official records collected in a penal setting do not always include all of the evidence presented to the judicial body which makes the determination regarding early release. We are not in a position to state whether the judiciary considers the discriminating variables in the order we have suggested. Nevertheless, the conclusion is inescapable: when other factors are considered equal, blacks have less chance of receiving shock probation than whites.<sup>20</sup>

<sup>19</sup> See Carter & Wilkins, *supra* note 16.

<sup>20</sup> An important finding is that there is no significant difference between white and black inmates released on shock probation to community supervision in terms of rearrest and reincarceration. Friday, Petersen & Allen, *Shock Probation: A New Approach to Crime Control*, 1 GEORGIA J. CORRECTIONS 1 (1973).