

# Do Judges Being to “Feel Their Oats?” Assessing the Impact of Judge Tenure on Punitiveness and Sentencing Guidelines Compliance

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## INTRODUCTION

In this study, I assess whether judge tenure impacts sentencing decisions and degrees of punitiveness in line with one of the following theoretical arguments:

On one hand, there is an “autonomy” argument—early career judges might be less apt to express autonomy as they are newly arrived in their role as “judge.” As a result, they may be less punitive and more guidelines compliant in their sentencing practices than more tenured judges. As early career judges’ tenure then increases, so does their sense of autonomy, and they may become more punitive and less guidelines compliant (i.e., sentence more independently). On the other hand, there is a “desensitization” argument—judges may begin their tenure with a higher degree of sensitivity to crime, thus sentencing with reactionary punitiveness. Over time, judges may become desensitized to the futility of incarceration and therefore sentence less punitively and with more compliance. For the autonomy argument, we would expect the use of prison sanctions and upward sentencing departures to increase over a judge’s tenure. In the desensitization argument, we would expect the opposite—use of prison sanctions and departures should decrease.

### Research Aims

1. Is there an association between length of tenure and punitiveness?
2. Is there an association between punitiveness and offender type?
3. Is there an association between length of tenure and noncompliance with sentencing guidelines via upward departures?

## METHOD

### Participants

- Judges serving on the bench from 1994 to 2011 from all 67 Florida counties (N = 905)
- % Male: 70.27%
- % Race and Ethnicity:
  - % Caucasian: 76.31%
  - % African American: 9.51%
  - % Latino: 12.05%
  - % Other: 1.27%

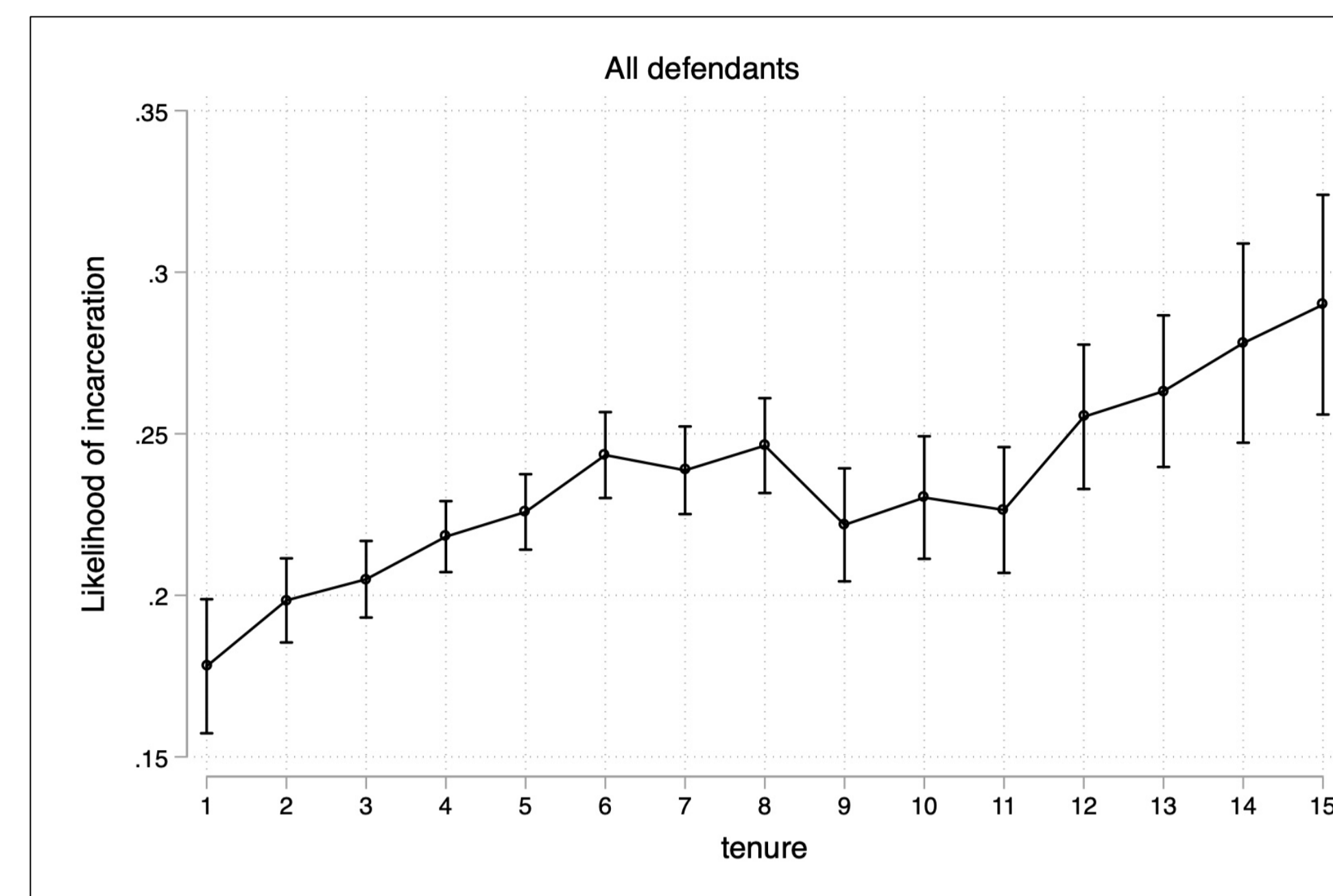
### Measures

- Secondary qualitative data analysis
- Sentencing patterns
- Noncompliance with sentencing guidelines measured in upward departures
- Judicial tenure in relation to upward sentencing departures
- “Focal Concerns” Perspective

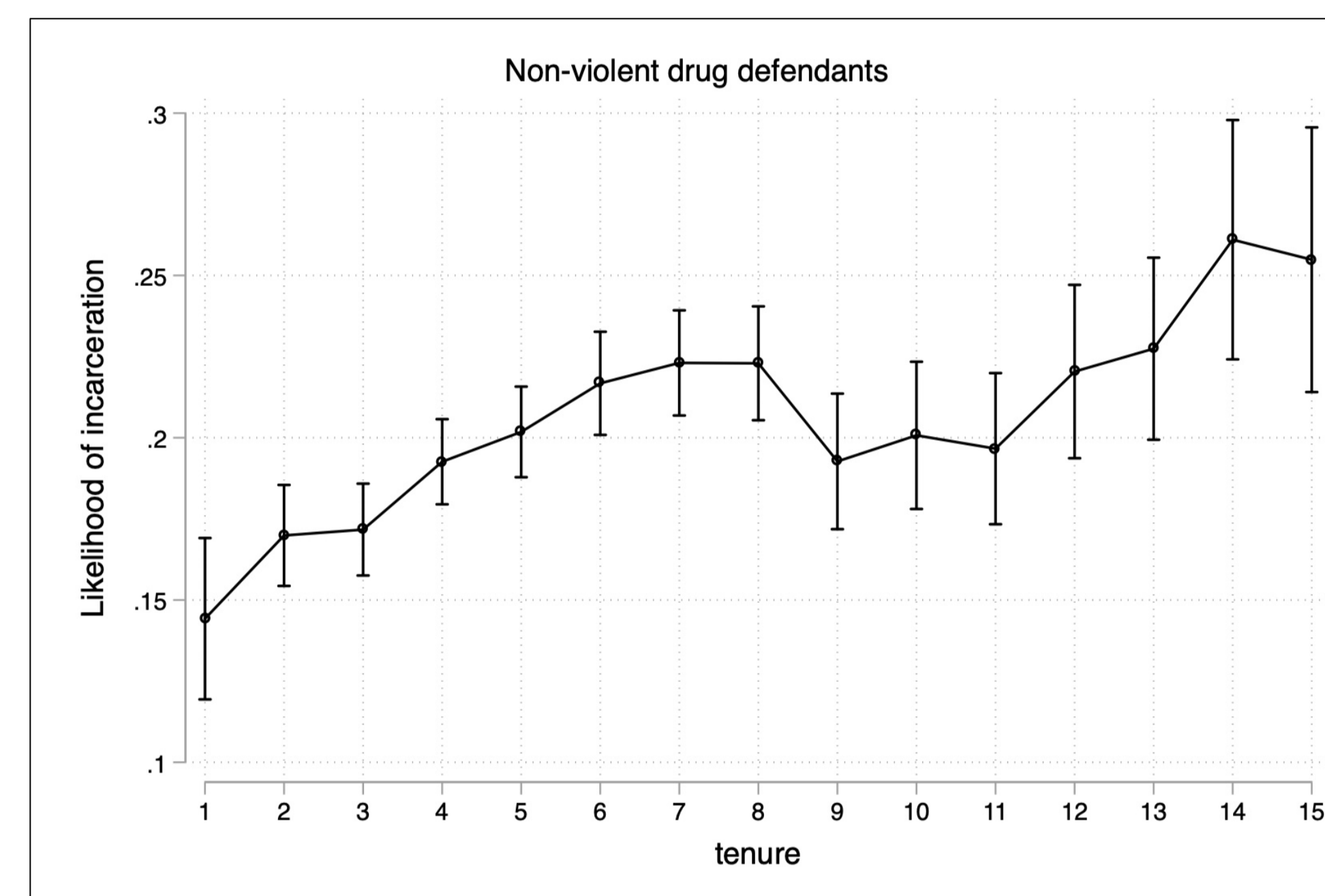
### Procedures

- Frequency distribution of judges and tenure
- Florida Sentencing Guidelines database
- Biennial editions of *The American Bench: Judges of the Nation*
- Circuit court and election websites, state bar association materials, ballotpedia.org, and obituaries
- Coding for four distinct offender types
- Coding for judge start dates

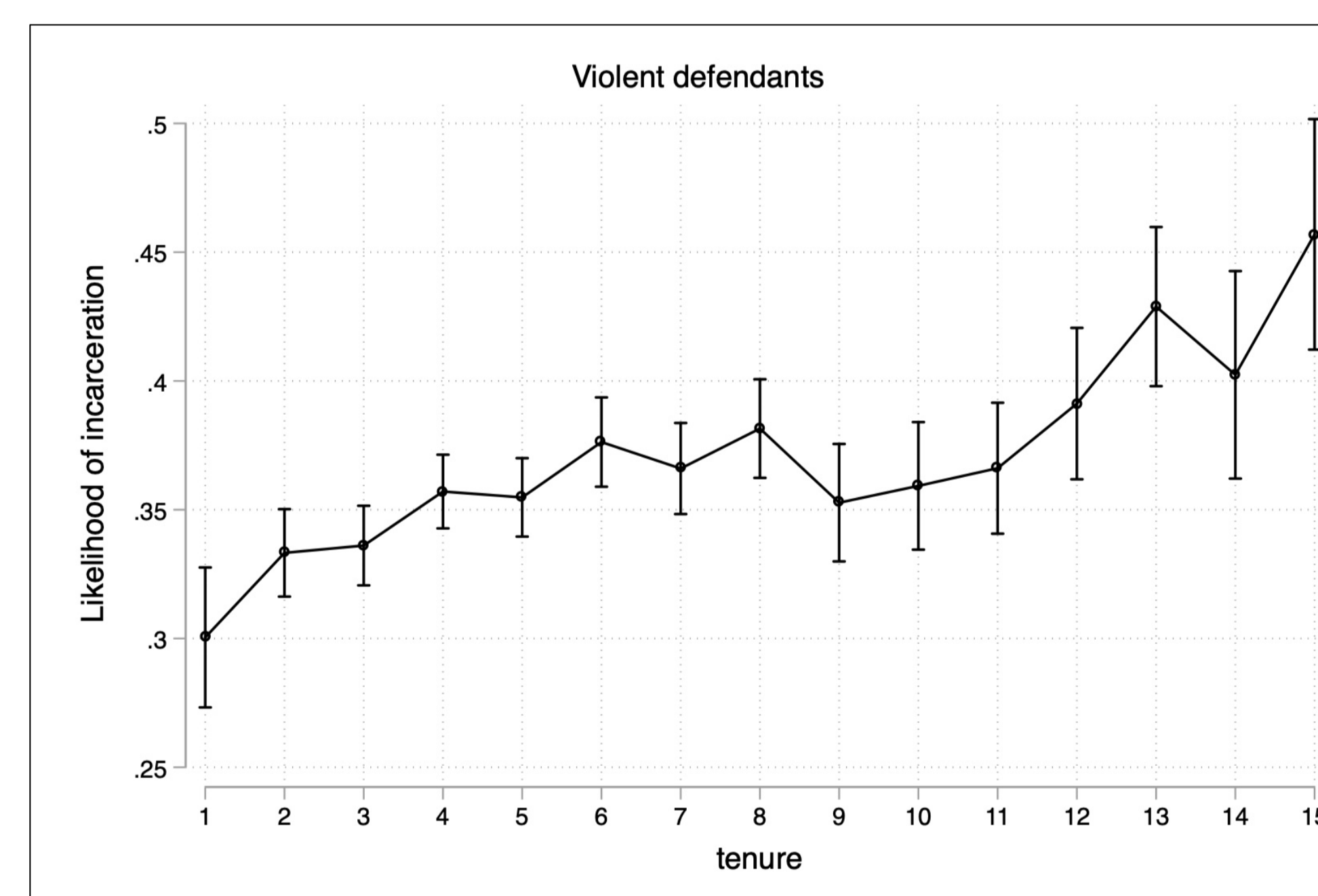
## RESULTS



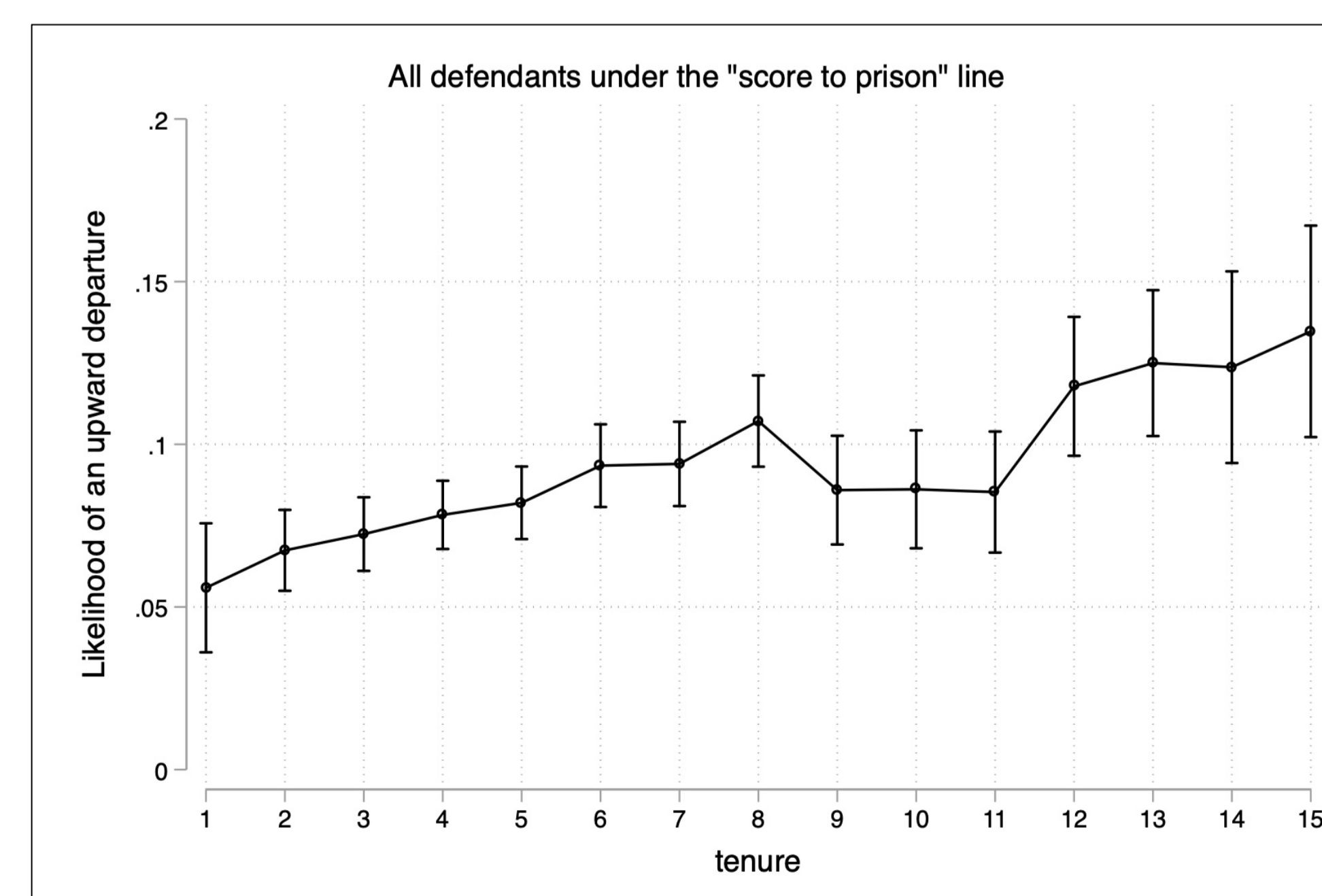
This graph represents all felony defendants, regardless of offender type, included in our data sample. The likelihood of incarceration is measured in the rate of upward departure from state sentencing guidelines. Overall, these results suggest that judges experience a gradual increase in punitiveness within the first 6 years of tenure, followed by a period of sentencing stability. Judges who have served on the bench for 11 years or more experience a sharp increase in punitiveness with tenure.



This graph represents the non-violent drug defendant population of our sample. The incapacitation of such defendants remains a controversial topic amongst criminal justice advocates, due to perceived lessened culpability. The likelihood of incarceration is measured in the rate of upward departure from state sentencing guidelines. These results suggest that judges experience a gradual increase in punitiveness within the first 8 years of tenure, followed by a period of sentencing stability. Judges who have served on the bench for 11 years or more experience a sharp increase in punitiveness with tenure.



This graph represents the violent defendant population of our sample. The likelihood of incarceration is measured in the rate of upward departure from state sentencing guidelines. These results suggest that judges experience a gradual increase in punitiveness within the first 11 years of tenure. There is not period of sentencing stability present amongst this sample population, as judges continue to experience a gradual and then sharp increase in punitiveness with tenure.



This graph represents the sample population of all defendants in which did not meet the necessary requirements to be sanctioned to prison, yet were on a discretionary basis. The likelihood of incarceration is measured in the rate of upward departure from state sentencing guidelines. These results suggest that judges experience a gradual increase in punitiveness within the first 8 years of tenure, followed by a period of sentencing stability. Judges who have served on the bench for 11 years or more experience a sharp increase in punitiveness with tenure.

## DISCUSSION

### Summary of Findings

Overall, findings suggest that tenure may be a source of bias in the judicial decision-making process, leading to persistent sentencing disparities in the criminal justice system. Moreover, results are consistent with the proposed “autonomy” argument, suggesting that as early career judges’ tenure increases, so does their sense of autonomy, punitiveness, and noncompliance with sentencing guidelines. With increased length of tenure, the use of upward departures became increasingly significant amongst all four distinct defendant types. Therefore, tenure is correlated with increased use of prison sanctions and sentencing severity, particularly in those with more than 10 years tenure.

This model of judge evolution with tenure could be due to judge “hardening” to the plight of offenders. It may also be that as judges become increasingly free of administrative obligations with tenure, their sense of autonomy strengthens. Conversely, judges may converge in their sentencing patterns with tenure as they become increasingly influenced by institutional circuit norms and circuit-wide departure rates. It may also be that the judicial socialization process firmly values punitiveness, and as judges conform to conventional judicial norms, they adopt said values. Lastly, said increase in use of upward departures with tenure may be due overcorrection of sentencing guidelines. As sentencing guidelines are amended, judges may become increasingly unfamiliar and choose to sanction according to outdated sentencing ranges.

### Limitations

This study is limited in its ability to identify which factors influence the evolution of autonomy amongst judges. This study also does not account for the effects of prosecutorial discretion in sentencing recommendations and the sanctioning process. These results may not be generalizable to Federal, Appellate or Supreme Court judges due to varying court structure. Additionally, these results may not be generalizable to circuit court judges in northern regions of the United States, as scholars suggest there are significant disparities present amongst northern versus southern judges.

### Implications and Future Directions

The implications of the study yield an inter-judge disparity in the sentences imposed on similarly and non-similarly situated offenders, likely contributing to unwarranted social inequalities and disparities in sentencing within the criminal justice system. The act of judicial decision-making is a highly substantive process, with the act of noncompliance with sentencing guidelines and the issuance of upward departures serving as an even more substantive process. This study’s findings reaffirm results and theories found by several other scholars in the criminal justice context, likely acting as reassurance to the modern literature pool. Additionally, these results leave room for generalizability where other studies do not, as this study concerns state circuit court judges as opposed to federal, appellate, and/or supreme court judges in which other literature primarily focuses on.

The primary implication of this study is that policy surrounding sentencing guidelines, and the ability to issue upward departures on a discretionary basis, may have produced the type of unwarranted sentencing disparities that the guidelines were intended to eliminate. If the purpose of sentencing guidelines is to offer a guideline range appropriate for the majority of offenders, these findings would suggest that judges do not find this to be the case, as the prevalent use of departures suggests guideline inadequacy. This would indicate the need for reform of the sentencing guidelines and associated policy, either specific to the state of Florida or amongst several state circuit courts.